GICHI OZHIBI'IGE OGAAMIC
ADMINISTRATIVE OFFICE

February 4, 2026
(corrected February 5, 2026)

Mr. Terence Hubbard
President, Impact Assessment Agency of Canada
22nd Floor, Place Bell
160 Elgin Street
Ottawa, ON K1A 0H3

Via Electronic Submission

Dear Mr. Hubbard,

I am writing to you on behalf of the Government of the Anishinaabe Nation in Treaty #3 (the "**Nation**" or "**GCT3**") to express fundamental concerns with the Initial Project Description ("**IPD**") prepared by the Nuclear Waste Management Organization ("**NWMO**"). The IPD proposes a facility to manage all Canada's existing high-level used nuclear fuel for the duration of its toxicity, estimated to be 1 million years (the "**Project**").

Your Agency introduced the New Year by posting the 1,233 page IPD on your Registry on January 5, 2026, with the demand that comments be provided on the IPD Summary by the end of day February 4, 2026.[1] This is an unreasonable timeframe and the Impact Assessment Agency of Canada ("**IAAC**") should seek comments on the IPD in its entirety.

I. Summary of Issues

GCT3's fundamental concerns may be summarized as follows:

1. The IPD ignores Nation laws (i.e. Manito Aki Inaakonigewin or "**MAI**"), as well as the Crown's constitutional and statutory duties owed to the Nation for a Project proposed within the Territory of the Nation in Treaty #3 ("**Treaty #3 Territory**").

[1] Note: GCT3 reserves the right to submit additional comments on the entire IPD at any point during the Planning Phase. IAAC's 30-day comment period on the IPD Summary does not provide a meaningful opportunity to review and comment on NWMO's full IPD during the standard IAA Planning Phase timeframes in the *Impact Assessment Act,* SC 2019, c 28, s 1 ("**IAA**"). NWMO refused GCT3's December 11, 2025 request for the copy of the IPD that was submitted to IAAC on December 9, 2025. Given the unique significance of this impact assessment for NWMO's hazardous waste disposal plan, IAAC must provide a procedural fair process during the IAA Planning Phase. Pursuant to Canadian Law, this process must also advance Reconciliation and facilitate meaningful consultation and accommodation.

2. The timing of the IPD breaches Agency commitments to the Nation to work collaboratively on MAI/IAA Harmonization.

3. The IPD improperly seeks to avoid any *Impact Assessment Act* (IAA) review of serious social and unique technical challenges which led to NWMO's selection of site.

4. Impact Assessment is required: IPD ambiguity ignores key IAA factors.

5. The IPD fails to provide information demanded by IAA regulations and the MAI Framework and contains scoping issues and information deficiencies.

6. Since 2020 the federal Crown through the Agency and GCT3 have been involved in Nation-to-Nation discussions on MAI/IAA Harmonization for any nuclear used fuel site in Treaty #3 Territory. It is completely contrary to these Nation-to-Nation discussions for NWMO, which is not the Crown and has no authority to determine legal rights, to take a position regarding the Nation's status under Section 35 of Canada's Constitution.

Issue #1: NWMO fails to identify the Nation and Manito Aki Inaakonigewin

The Nation in Treaty #3 and Treaty #3 Communities have existed since time immemorial.

NWMO's failure to identify the Nation and Manito Aki Inaakonigewin is dishonourable and disrespectful. For over two decades, GCT3 has generously shared information with NWMO. It has also hosted educational programming for NWMO regarding the Nation's governance structure, laws (including Manito Aki Inaakonigewin), protocols and ceremony.

NWMO was created in 2002 pursuant to the federal Nuclear Fuel Waste Act ("**NFWA**").[2] The NFWA obligated the NWMO to study three prescribed options to identify the preferred option to provide long-term management of Canada's high-level used nuclear fuel. The NWMO completed this study in 2005. Its recommendation that the preferred option be Adaptive Phased Management was endorsed by Cabinet in 2007 (the "**Endorsed Study**"). Neither the NFWA nor the Endorsed Study addressed or approved site selection.

The IPD reflects NWMO's effort to initiate federal impact assessment of its preferred site for Adaptive Phased Management, but a lot has changed in the Canadian legal landscape since 2005. The IPD does not reflect this new reality. Concerning Indigenous rights, Canada shifted away from extinguishment policies to the recognition of rights following the release of the Truth and Reconciliation Commission's Final Report in 2015.[3] In 2014, the Supreme Court of Canada made the first declaration of Aboriginal title.[4] In 2020, the Alberta Court of Appeal found that the Alberta Energy Regulator's refusal to defer a decision on a project application pending negotiations for a plan relating to respecting treaty rights was "not honourable" and was "not reconciliation".[5] On this basis, the Alberta Court of Appeal set aside the decision and reminded Alberta that "the Crown must keep promises made during negotiations designed

[2] *Nuclear Fuel Waste Act*, SC 2002, c 23.

[3] Truth and Reconciliation Commission (2015), "Canada's residential schools : the final report of the Truth and Reconciliation Commission of Canada" <https://publications.gc.ca/site/eng/9.807830/publication.html>; Truth and Reconciliation Commission (2015), "Calls to Action" <https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf>.

[4] *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44.

[5] *Fort McKay First Nation v Prosper Petroleum Ltd*, 2020 ABCA 163 at para 83.

to protect treaty rights."[6] In 2021, Canada passed the *United Nations Declaration on the Rights of Indigenous Peoples Act* ("**DRIPA**").[7]

1. Crown duties owed to the Nation

NWMO's Project within the Treaty #3 Territory triggers the Crown's duty to consult and accommodate both the Nation and Treaty #3 Communities. NWMO's Project also triggers federal review. NWMO's Project also triggers Manito Aki Inaakonigewin processes of both the Nation and Treaty #3 Communities (i.e. Ozhibiige Inaakonigewin).[8]

The Nation's "**MAI Framework**" will: assess NWMO's Project in accordance with Anishinaabe Inakonigaawin (laws) and governance. The Nation's MAI Framework will include culturally-appropriate assessments that respect Anishinaabe knowledge and support Treaty #3 decision-making. The Nation's MAI Framework will assess the potential effects of NWMO's Project on inherent and Treaty #3 rights within Treaty #3 Territory. The Nation's MAI Framework includes a Visioning Phase, Scouting Phase, Hunting & Gathering Phase, and a Feasting Phase. The *Manito Aki Inaakonigewin Process of Project Evaluation and Decision Making* is attached as Schedule 1, which provides further details on what is expected to be achieved during each phase. GCT3 shared the MAI Framework with IAAC and NWMO.

Canada's federal impact assessment regime supports Indigenous-led assessments, enhances Indigenous decision-making during impact assessments, and must be interpreted in a manner that aligns with the *UN Declaration on the Rights of Indigenous Peoples* (the "**UN Declaration**").[9] Article 29(2) of the UN Declaration reads, in full, as follows, "States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent."[10]

It is completely inappropriate that NWMO's IPD ignores the history of Treaty #3 Territory and the laws of the Nation including Manito Aki Inaakonigewin and the Nibi Declaration. This ignorance raises valid questions around IAAC's ability to conduct a fair, independent and rigorous review of NWMO's nuclear waste plan. There is also active litigation involving NWMO and a Treaty #3 Community relating to NWMO's Project.[11] Additionally, there are widespread critiques of NWMO's approach from a variety of Anishinaabe, Indigenous and academic perspectives calling out NWMO's nuclear waste plan as **nuclear colonialism**.[12]

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[6] *Fort McKay First Nation v Prosper Petroleum Ltd*, 2020 ABCA 163 at para 83.

[7] *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14.

[8] GCT3 Office of the Ogichidaa (September 1, 2022), "Media release: Statement on the proposed Deep Geological Repository in Treaty #3 Territory" <https://gct3.ca/wp-content/uploads/2022/09/September-1-2022-Statement-on-the-proposed-Deep-Geological-Repository-in-Treaty-3-Territory.pdf>.

[9] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295; *Impact Assessment Act*, SC 2019, c 28, s 1, Preamble, s 21.

[10] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295, Art 29(2).

[11] *Eagle Lake First Nation v The Attorney General of Canada, The Minister of Natural Resources (The Hon. Jonathan Wilkinson, M.P.) and the Nuclear Waste Management Organization*, Court File No. T-3066-24.

[12] Warren Bernauer and Elysia Petrone (2025), "Scale and colonialism in nuclear waste siting: The geography of spent nuclear fuel in northwestern Ontario, Canada" Canadian Geographer 69: e70033.

As a result of this situation created by NWMO, IAAC must now take steps to rectify the significant core impact assessment issues that are rearing their ugly heads through NWMO's IPD. To be blunt, it is clear that Canada's impact assessment process can not proceed until IAAC and GCT3 complete Manito Aki Inaakonigewin / Impact Assessment Act Harmonization ("**MAI/IAA Harmonization**"). I understand that IAAC and GCT3 co-developed a Framework for MAI/IAA Harmonization (Schedule 1).

The Nation expects a lot more from IAAC and NWMO as federal Crown entity representatives. IAAC and NWMO have "a duty to learn"[13], "a duty to act"[14], and a duty to respect Anishinaabe legal orders of both the Nation and Treaty #3 Communities, which includes Manito Aki Inaakonigewin and Ozhibiige Inaakonigewin. It is deeply disappointing that NWMO's IPD does not even meet bare minimum standards set out in the *Information and Management of Time Limits Regulations*.[15] NWMO is driving the Planning Phase into oncoming traffic; a Phase which is a new step in the federal framework as part of the new landscape that replaced *Canada Environmental Assessment Act, 2012*[16] ("**CEAA 2012**") with the *Impact Assessment Act*[17] ("**IAA**").

At a high level, the shift from CEAA 2012 to the IAA was meant to advance Reconciliation. The purpose of the IAA, as described by the Honourable Catherine McKenna, is to:

> … advance Canada's commitment to reconciliation and get to better project decisions by recognizing indigenous rights and working in partnership from the start. We [Canada] will make it mandatory to consider indigenous traditional knowledge alongside science and other evidence. Indigenous jurisdictions would have greater opportunities to exercise powers and duties under the new impact assessment act, and we would increase the funding available to support indigenous participation and capacity development relating to assessing and monitoring the impacts of projects.[18]

IAAC needs to get this right from the start. Given that NWMO's IPD states that IAAC and the Federal Family, whoever they are[19], reviewed an earlier copy of the IPD outside of Canada's regulatory process, GCT3 is concerned about the relationship between IAAC and NWMO. IAAC has effectively already demonstrated that it is incapable of coordinating the assessment of NWMO's Project alone. IAAC needs to coordinate and cooperate with the Nation and Treaty #3 Communities.

IAAC has offered the Nation $3,000 to review over 1,233 pages of legal (regulatory) and technical material. As noted above, Canada promised increased funding to, among other goals, level the playing

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[13] The Honourable Chief Justice Lance S.G. Finch (2012), "The duty to learn: Taking account of Indigenous legal orders in practice" The Continuing Legal Education Society of British Columbia, Indigenous Legal Orders and the Common Law Conference 2012 <https://clebc.wpenginepowered.com/wp-content/uploads/2018/04/TheDutytoLearn-HonourableChiefJusticeLanceSGFinch.pdf>.

[14] The Honourable Chief Justice Robert J. Bauman (November 17, 2021), "A duty to act: Remarks of the honourable Robert J. Bauman, Chief Justice of British Columbia" Canadian Institute for the Administration of Justice, Annual Conference 2021 <https://afn.bynder.com/m/1dcd52b987763e1b/original/Duty-to-Act.pdf>.

[15] *Information and Management of Time Limits Regulations*, SOR/2019-283.

[16] *Canadian Environmental Assessment Act, 2012*, SC 2012, c 19, s 52.

[17] *Impact Assessment Act*, SC 2019, c 28, s 1.

[18] Bill C-69, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, 42nd Parliament, 1st Session, Second reading: February 14, 2018, Sitting 264 (1705).

[19] This is under review and GCT3 has made various ATIP requests of IAAC seeking clarity on this event, as well as others.

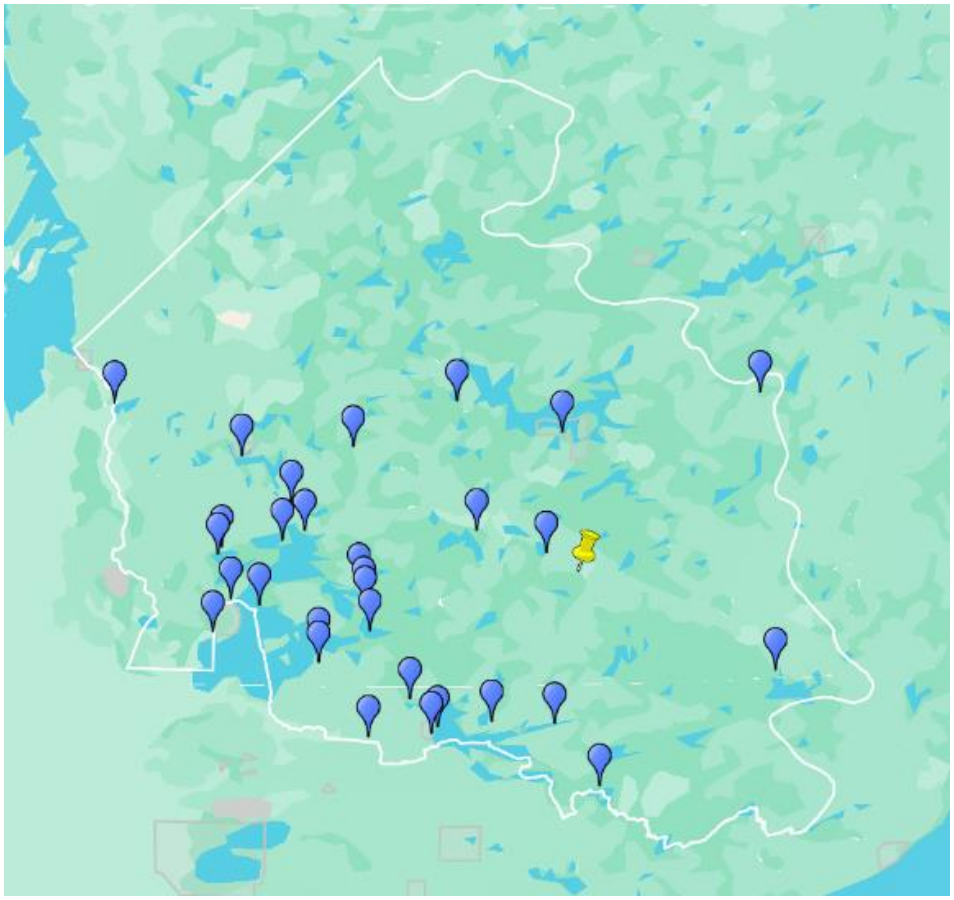
field. This is an example of poor decision-making being exercise by IAAC during the IAA process including the Planning Phase. Again, this indicates that IAAC is incapable of coordinating the assessment of NWMO's Project alone. GCT3 and IAAC must complete MAI/IAA Harmonization prior to proceeding any further along, alone.

To be clear, GCT3 is providing these comments in order to discharge any reciprocal onus to participate in Crown consultation processes to avoid any legal prejudice that a Canadian court may find. GCT3 expects IAAC and NWMO staff to immediately arrange cost recovery mechanisms with GCT3 Territorial Planning Unit ("**TPU**") staff as Canada is imposing NWMO's Project onto the Nation and Treaty #3 Communities. It is not an option to withhold reasonable capacity funding to support the Nation and Manito Aki Inaakonigewin as a tactic to run roughshod over inherent and Treaty #3 rights.

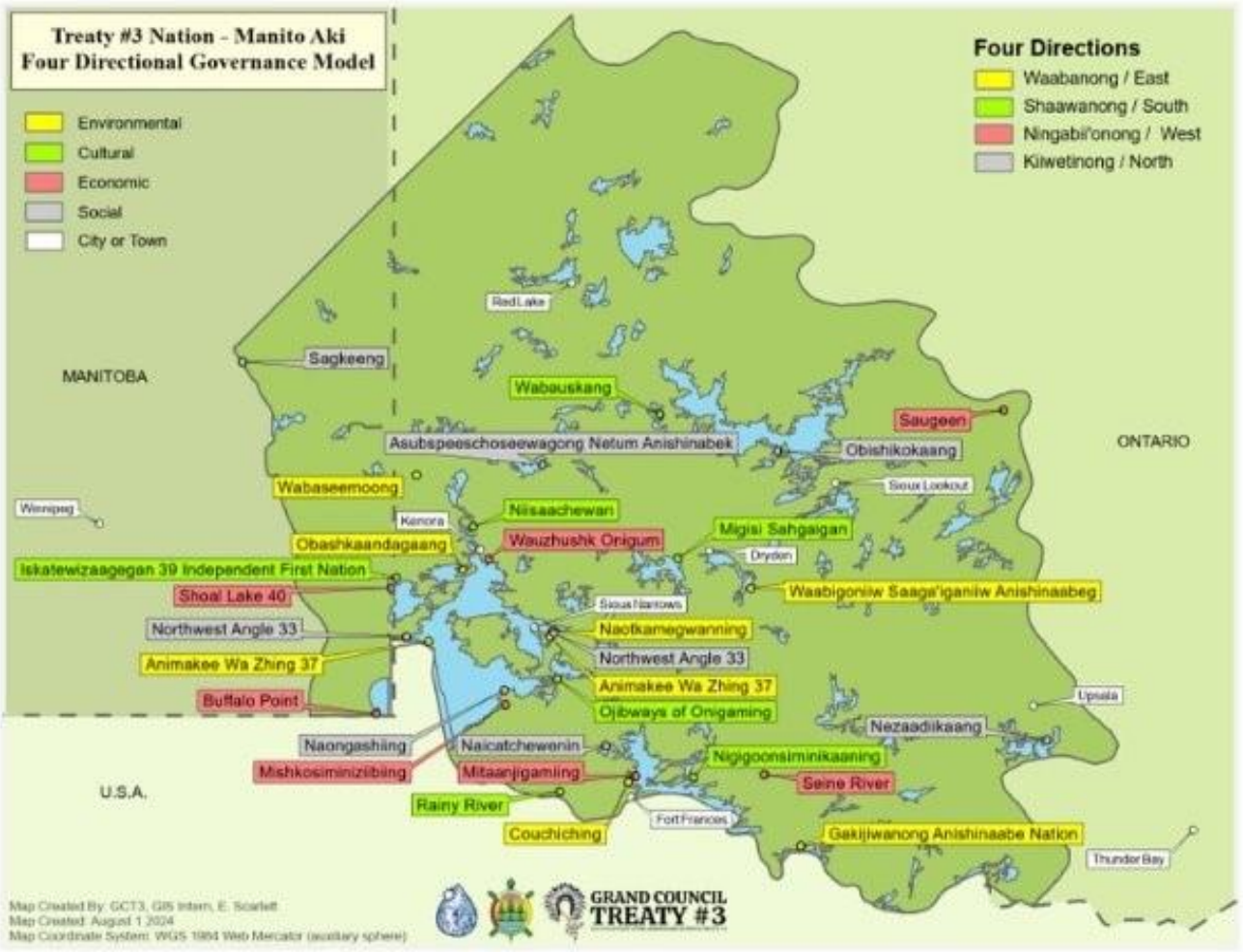
Lastly, to be fair, it is laudable of NWMO, a federal Crown entity, to acknowledge and agree to respect the absolute sovereignty of Wabigoon Lake Ojibway Nation. It is an expectation that the sovereignty of all Treaty #3 Communities and the Nation are respected.

2. <u>The Nation and Anishinaabe Inakonigaawin (law)</u>

The Anishinaabe Nation in Treaty #3 is a traditional governance structure that represents 28 Treaty #3 First Nations across the Treaty #3 Territory. Below is a map of Treaty #3 Territory, the 28 Treaty #3 First Nations (*see: below pinpoints*) and the proposed site for NWMO's Project (*see: yellow pinpoint*):



The Nation makes decisions relating to Treaty #3 Territory using its Four Direction Governance Model ("**4DGM**"). Below is a map of Treaty #3 Territory and the Nation's 4DGM system of governance:



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Today, visitors entering Treaty #3 Territory are welcomed by highway signs that aim to foster a greater sense of place and cultural awareness, and to promote not only respect for Anishinaabe territories, but an understanding of jurisdiction as well. Below is the highway sign:

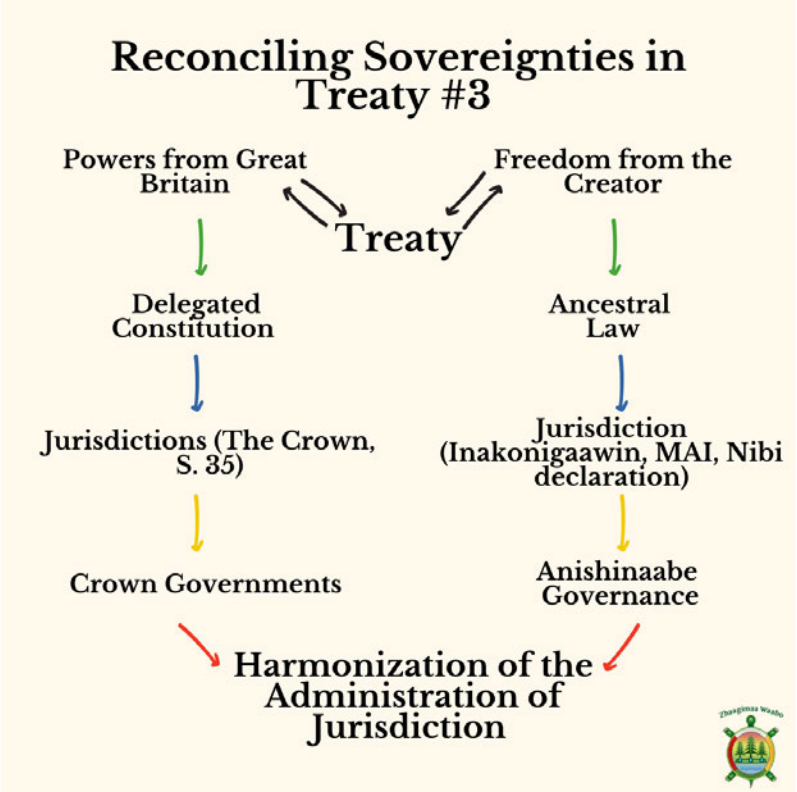
Ogichidaa Kavanaugh explains that "[t]hese signs not only mark a physical boundary, but embody an enduring sovereignty of the Anishinaabe Nation in Treaty #3" and "extend a welcome to all who enter the territory, while reminding them of their responsibility to abide by the inherent laws that are present within it."[20]

At the time Canada amended its Constitution in 1982 to explicitly recognize the special status and rights of Indigenous peoples, the existing right of self-determination was already supported in history and law. This right is characterized as an "inherent right" because Canada did not create nor grant it to Indigenous peoples; instead, Canada simply recognized and affirmed that Indigenous peoples have this right. Canada's entrenchment of Indigenous rights, including the inherent right of self-determination, through Section 35 is meant to provide Indigenous jurisdictions constitutional immunity against Crown encroachments.

The Nation has inherent jurisdiction (power to make, implement, and enforce Anishinaabe Inakonigaawin, i.e. MAI) and authority (any power other than law-making powers, such as decision-making power, i.e. MAI Visioning). The Nation has been clear with IAAC and CNSC that it wants to work in harmony with Canadian laws.

[20] GCT3 (January 17, 2024), "New Signage Proudly Marks Entry to the Territory of the Anishinaabe Nation in Treaty #3, and Encourages Respect for Aki and Nibi" <https://gct3.ca/new-signage-proudly-marks-entry-to-the-territory-of-the-anishinaabe-nation-in-treaty-3-and-encourages-respect-for-aki-and-nibi/>.

The below chart from Anishinaabe Elder Fred Kelly compares the Canadian and Anishinaabe sources of law, the original relationship between the two sovereigns, and the power of reconciling Anishinaabe sovereignty with Crown sovereignty:



To be clear: Anishinaabe jurisdiction is inherent to Anishinaabe people because it is gifted from the Creator and received and celebrated through ceremony. Anishinaabe jurisdiction and authority exists independently of Canadian recognition.

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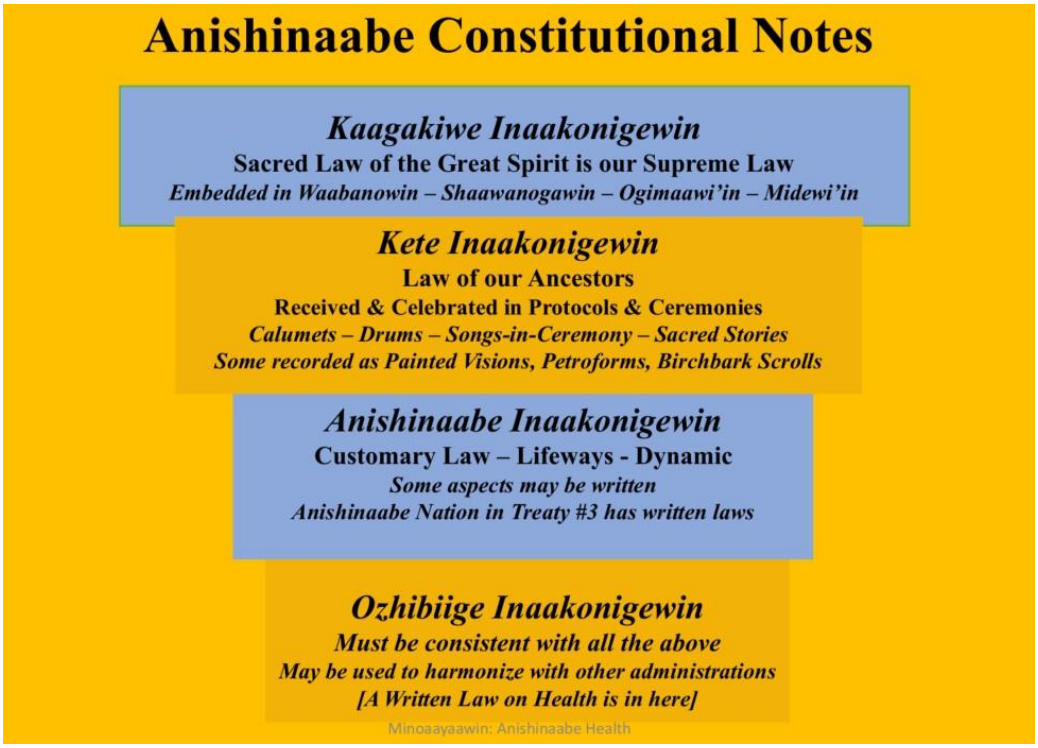
The below chart from Elder Fred Kelly provides further detail on Anishinaabe law-making:



Treaty #3 was signed on a Nation-to-Nation basis on October 3, 1873. The Supreme Court of Canada in *R. v. Sioui* has recognized that First Nations signatories to historic treaties had the capacity to enter binding treaties with the Crown as sovereign, independent nations.[21] Treaty #3 is a historic agreement that symbolizes the enduring partnership between Anishinaabe peoples and the English. Treaty #3 did not surrender Anishinaabe lands to the Crown.

Prior to the signing of Treaty #3, it is well documented that antecedents of the Nation exercised a form of collective governance. For example, in 1849, the Grand Council of Chiefs prohibited Christianity, "forbidding a planned mission station and school on the Rainy River; a warning was issued that any attempt to build would be met by soldiers who would dismantle any structures."[22] This warning was issued on the basis that the Anishinaabe people held exclusive occupation and control over the lands that are now subject to Treaty #3. Other examples include the "allocation of resources to be harvested, matters of war, HBC relations and treaty deliberations."[23]

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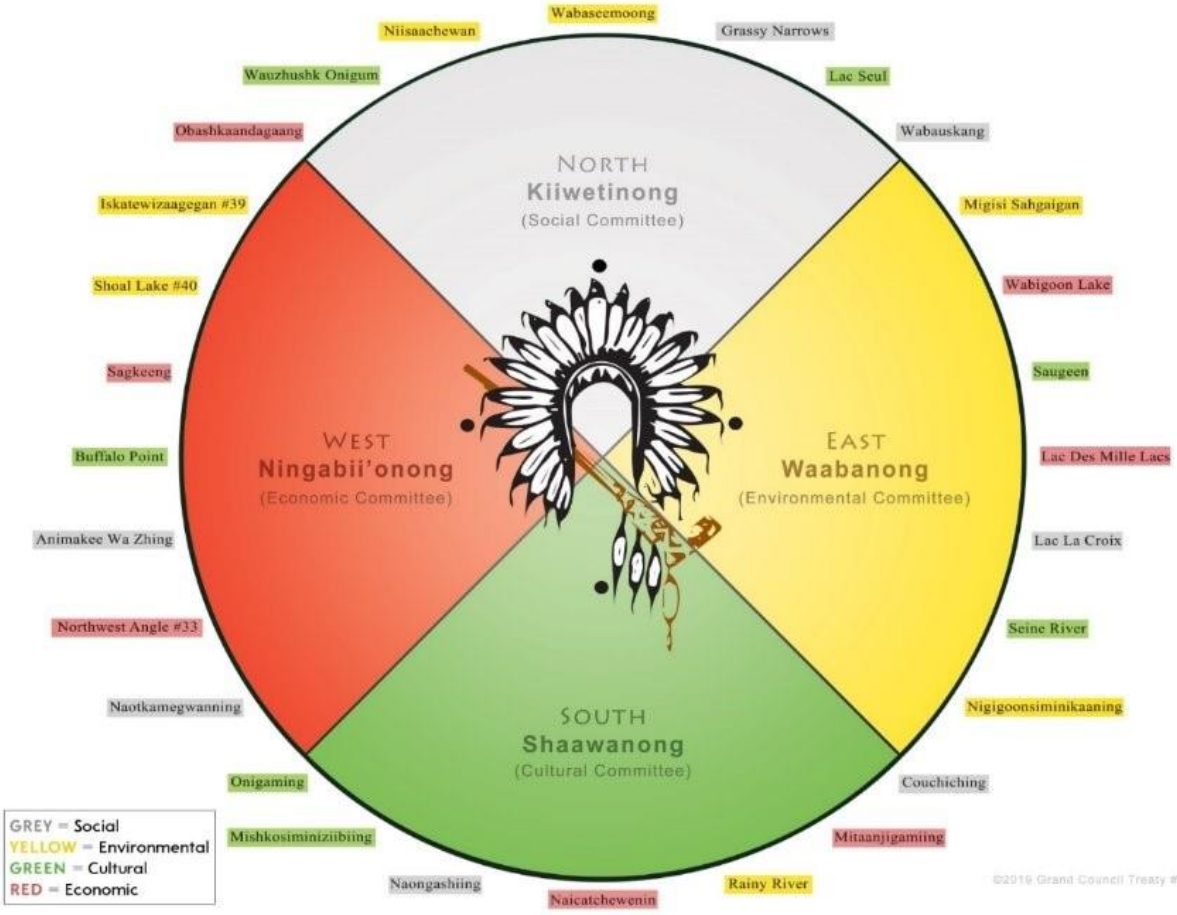
[21] *R v Sioui*, 1990 CanLII 103 (SCC), [1990] 1 SCR 1025 at 1053.

[22] *Keewatin v Minister of Natural Resources*, 2011 ONSC 4801 at para 228. The trial decision in this matter made several important and favourable findings of fact which were not reversed on appeal. Most notably, the trial judge, relying on uncontradicted historical evidence, found that a precursor to GCT3 operated as a governing body well before Treaty #3 was signed, and exercised regional self-determination over Treaty #3 Territory lands, resources, culture, and politics. With these findings of fact, settler law corroborates GCT3's status as an Indigenous governing body who has exercised consensus-based, regional self-determination over Treaty #3 Territory since well before Treaty #3 was signed.

[23] *Keewatin v Minister of Natural Resources*, 2011 ONSC 4801 at para 223.

In June 1997, the Nation conducted its first traditional selection process and Ogichidaa (Grand Chief) Francis Kavanaugh was mandated to implement a traditional and functional form of governance in the Territory of Treaty #3. Ogichidaa Kavanaugh is now serving his 4th term and has been involved with the Nation (and GCT3) for over 45 years; which puts NWMO's existence (est. 2002) into perspective. NWMO, as a proponent, is in no position to make determinations regarding the jurisdiction of the Nation or enforceability of MAI.

GCT3 is the body responsible for the administration of the Nation. The Nation has established and implements its 4DGM system of governance through National Assembly, Chiefs in Assembly, Special Chiefs in Assembly, Committees, Ad Hoc Committees (i.e. Resource Revenue Sharing) and Councils (i.e. Gitiziminan (Elders), Oshkiniigiig (Youth Executive), Mizi'iwe Aana Kwat (2SLGBTQQIA+), Gaagiidoo-Ikwewag (Women) and Mamawichi-Gabowitaa-Ininiwag (Men)). The below chart depicts the 4DGM system of governance:



Further information regarding the Nation's governance can be found on GCT3's website, as well as through the various Ogichidaa Teachings on Youtube. Additionally, further information on the Nation's 4DGM system of governance can be found on GCT3's nibi website.

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On October 3, 1997, with approval of the Elders and validation in traditional ceremony, as well as ratification by the National Assembly, Manito Aki Inaakonigwen was brought into law. Manito Aki Inaakonigewin is also referred to as the Great Earth Law and Law of Natural Resources. GCT3 directs IAAC to learn more about the the Nation's power to make laws through Ogichidaa Teachings – Written Law video on YouTube.

As stated in GCT3's MAI Toolkit, which is available on GCT3's website and attached as Schedule 2 to this letter:

> At the beginning of time, Sagima Manito gave the Anishinaabe duties and responsbilities to protect, care for, and respect the land. These duties were to last forever, in spirit, in breath and in all of life, for all of eternity. The spirit and intent of Manito Aki Inaakonigewin signifies the duty to respect and protect lands that may be affected from over-usage, degration and unethical processes.
> …
>
> Manito Aki Inaakonigewin states that the Anishinaabe in Treaty #3 have the right to meaningful engagements and that there must be respect for inherent and treaty rights. It is therefore considered to be **unlawful to proceed with developments within Treaty #3 without the authorization of the Anishinaabe Nation in Treaty #3**. Any Crown or proponent development/activity that occurs that may affect natural resources must abide by these rights and roles of the duty to engage with the Nation in Treaty #3. (Emphasis added.)

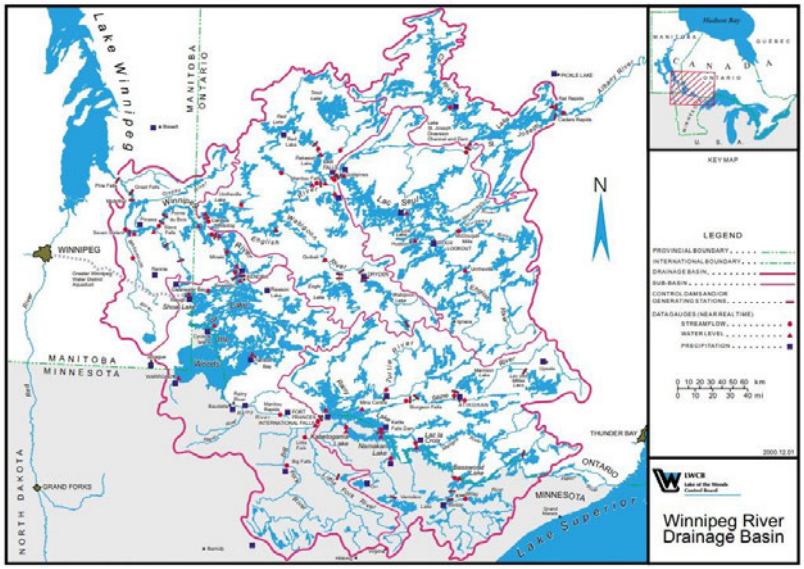
NWMO's IPD must reflect that in addition to various other reviews and approvals that it is subject to, NWMO's Project cannot lawfully proceed without the authorization of the Nation.

In 2019, at a Chiefs in Special Assembly, Treaty #3 Leadership passed Resolution CA-19-01 relating to the Commitment to Manito Aki Inaakonigewin. It was resolved, among other matters, that the Chiefs in Assembly formally execute the commitment made to honour, respect and follow Manito Aki Inaakonigewin.

In May 2019, the Nibi (Water) Declaration of the Nation was ratified by the Chiefs-in-Assembly. The Nibi Declaration was developed by the Gaagiidoo-Ikwewag (Women) Council in accordance with Manito Aki Inaakonigewin. In addition to the historic examples above, Nibi (water) is an illustrative example of a matter within Treaty #3 Territory that applies to the Nation. For example, any potential contamination of the Wabigoon River has the potential to impact numerous communities and ecosystems. Communities in the watershed are very conscious of this fact, having experienced one of Canada's worst environmental disasters as a result of the poisoning of the river with mercury between 1962 and 1970. That mercury remains present in the environment and continues to have lasting and significant impacts on the health of local residents.

Below is a copy of the Nibi Declaration:

Treaty #3 Territory encompasses the Lake Winnipeg watershed in Northwest Ontario and Southeast Manitoba, including the Rainy-Lake of the Woods watershed. Below is a map from the Lake of the Woods Control Board depicting the Watershed and shows the concept that “[t]hrough its flow and movement, nibi cleanses itself and connects us all … brings [Anishinaabe] together as families, communities and as a nation”:



For more information on the Nation's Nibi Declaration please visit GCT3's Nibi website.

3. Agency's Statutory Duties owed to the Nation under IAA and DRIPA

Section 12 of the IAA imposes an unconditional duty on the Agency to offer to consult *and* cooperate with (i) any "jurisdiction" which has "powers, duties or functions in relation to an assessment of environmental effects of the designated project," and (ii) any "Indigenous group that may be affected by the carrying out of the designated project."

The IAA thus requires the Agency to offer to consult and cooperate with two different types of potential participant in the Planning Phase.

One type of participant is a "jurisdiction." The IAA defines this term. The IAA specifies that even if a participant meets the definition, the duty on the Agency applies only if the jurisdiction has "powers, duties or functions in relation to an assessment of environmental effects of the designated project." The terms, "powers, duties or functions", refer to types of legal authority. When the IAA uses the term, "assessment" in relation to environmental effects, it is referring to information gathering. Information gathering is not the same as "regulating" or "addressing" environmental effects. Thus, the Agency duty applies where a jurisdiction has authority to gather information on the effects of a project this is also subject to the IAA.

The second type of participant is an "Indigenous group." The IAA does not define this term. This is a new term.[24] The IAA specifies that an Indigenous group triggers the duty where it "may be affected by the carrying out of the designated project."

On January 7, 2026, as the Chief Executive Officer of GCT3, I led the participation of several senior members of the management team at the GCT3 in a call with the Agency, led by Mr. Ian Ketcheson,

[24] The former Act, the *Canadian Environmental Assessment Act, 2012* ("CEAA/12") did not use this term, the term, "group" or the term, "Indigenous."

Vice-President of Indigenous Relations and Corporate Services and Chief Financial Officer. During the call, GCT3 made three issues central: first, does the Nation have status under the IAA? Does the Manito Aki Inaakonigewin have status under the IAA? When would the Agency conclude the negotiations with GCT3 on an agreement respecting MAI/IAA Harmonization. IAAC casually and repeatedly sidestepped answering any of these questions.

We start with the issue of "jurisdiction". This issue arises in relation to the Agency's duty to offer to consult and cooperate with jurisdictions under section 12 of the IAA.

Reviewing the situation of Ignace Township, the Township does not meet the definition of "jurisdiction" under the IAA. In particular, reviewing paragraph (d) of this definition, the Township may be a body established by an Act of the Ontario legislature, namely, the *Municipal Act*, as amended. However, the *Municipal Act* imposes a geographic restriction on the authority of municipalities. Section 19(1) of this Act advises that municipal by-laws and resolutions apply only within its boundaries. The Project Description makes clear that the Project is 35 km northwest of the Township. The Township thus has no "powers, duties or functions" in relation to this Project. As such, for the Township, the IAA definition of "jurisdiction" denies it status as a "jurisdiction".

There is power in the IAA to consider an "Indigenous governing body" to enter into an agreement with the Minister under s.114(1)(e), but only after IAA regulations authorize such agreements. No such regulations exist. This is inconsequential as the Honour of the Crown lies upstream of Crown legislation, including subordinate legislation.

For the Nation, the issue of jurisdiction is not confined to the terms of any statute. By entrenching Indigenous rights in Canada's Constitution, section 35(1) ensured that the right of self-determination would enjoy significant immunity from federal and provincial legislation (laws). As recognized by the UN Declaration, Indigenous peoples have inherent rights which are recognized under customary international law. Further, 2021 federal legislation, DRIPA has incorporated UNDRIP into Canadian law. These rights include the right to conserve and protect the environment (Art.29.1) and their cultural heritage (Art.31.1), determine and develop priorities and strategies for changes to their lands (Art.32.1), and promote, develop and maintain their institutional structures (Art.34).

For these reasons, the Nation must be recognized as a "jurisdiction" regardless of the temporal restriction set out in the IAA pending regulations entirely within the Crown's control. This is because the Crown's duty to consult and accommodate does not end with impact assessment hearings, nor is it contingent on any particular legislation being passed.[25] It lies upstream of legislation.

GCT3 also wishes to elaborate on the relevance and importance of MAI. The Agency has had knowledge of Manito Aki Inaakonigewin for over half a decade. The Agency has also funded GCT3 initiatives aimed at fulfilling GCT3's mandate to implement MAI.[26] The Agency knows exactly what it does and what it means: it is unquestionably this Nation's exercise of "powers, duties or functions" in relation to "an assessment of the environmental effects" of a "designated project" (i.e., a proposed "action and/or activity") in Treaty #3 Territory (Toolkit, p.4). Further, on numerous occasions, GCT3 has had discussions with the Agency about its contents. It is thus clear that MAI has many components, including "Build partnerships", "Protect the environment", "Protect sacred sites", "Protect ceremonial grounds throughout the territory", "On joint harmonization and implementation process." It involves steps

[25] See Section 3.5, above, for more on this topic.

[26] GCT3 (April 2022), "Treaty #3 Land Manager's Toolkit" <https://gct3.ca/wp-content/uploads/2024/08/GCT3-Land-Managers-Toolkit.pdf>, attached as Schedule 3.

to gather information, collaborate, coordinate and cooperate with Treaty #3 First Nations, and support Nation and Treaty #3 Leadership decisions about proposed development within Treaty #3 Territory. IAAC has supported other Manito Aki Inaakonigewin initiatives such as the Pathways Forward work.

The MAI Framework is clearly established. It was co-developed with the Agency. The only thing that remains is the need to develop project-specific plans.

Furthermore, the Agency invested a lot of time to co-develop the Nation-to-Nation MAI/IAA Framework.

Based on years of discussions with the Agency, GCT3 insists that coordination, cooperation and collaboration requires the Agency to work immediately with GCT3 to develop and implement the MAI/ IAA Harmonization.

Issue #2: The timing of the IPD breaches Agency commitments to the Nation to work collaboratively on MAI/IAA Harmonization

1. NWMO must complete the planning and regulatory agreement with the Nation

In January 2020, NWMO narrowed its internal site selection process from twenty-two sites down to Ignace (i.e. Treaty #3 Territory) and South Bruce (i.e. Saugeen Ojibway Nation Territory). Following this announcement, on August 5, 2020, at Couchiching First Nation, Treaty #3 Territory, the Chiefs in Assembly authorized GCT3 to negotiate an agreement with NWMO that will, among other things, "facilitate dialogue between GCT3, Treaty #3 First Nations, and the NWMO on Manito Aki Inakonigaawin".[27]

Based on this resolution, as well as others before it[28], GCT3 and NWMO launched negotiations of a Relationship Agreement to advance this mandate, as further directed by Treaty #3 Leadership during a Special Chiefs Assembly held in September 8-9, 2020, in Kenora, Ontario. Given the change in circumstance, namely NWMO shortlisting Treaty #3 Territory, these negotiations took place from October 2020 to October 2022 to address the expanded list of asks that Treaty #3 Leadership directed GCT3 to negotiate.

On October 5, 2022, at Lac Seul First Nation, Treaty #3 Chiefs in Assembly passed a resolution directing Ogichidaa Kavanaugh to execute the Relationship Agreement with NWMO (the "**2022 Relationship Agreement**").[29] This was a highly debated resolution within the Nation and Treaty #3 Leadership resolved:

[27] *Resolution of the Grand Council Treaty #3 Special Chiefs Meeting*, Resolution #CA-20-38.

[28] *Resolution of the Grand Council Treaty #3 Chiefs-in-Assembly*, Resolution #CA-09-23; *Resolution of the Grand Council Treaty #3 Chiefs-in-Assembly*, Resolution #CA-10-23; *Resolution of the Grand Council Treaty #3 Chiefs-in-Assembly*, Resolution #CA-19-01. Anishinaabe Nation in Treaty #3 and Nuclear Waste Management Organization renew Relationship Agreement.

[29] GCT3 Office of the Ogichidaa (October 6, 2022), "Media release: Anishinaabe Nation in Treaty #3 and Nuclear Waste Management Organization renew Relationship Agreement" <https://gct3.ca/wp-content/uploads/2022/10/October-6-2022-Anishinaabe-Nation-in-Treaty-3-and-Nuclear-Waste-Management-Organization-renew-Relationship-Agreement.pdf>.

1. "the Treaty #3 Chiefs-in-Assembly continue support for the Elders Declaration CA-11-14 that makes clear that … [NWMO's Project] will not be developed at any point in the Treaty #3 Territory; and

2. the Treaty #3 Chiefs-in-Assembly … mandate the Ogichidaa and Grand Council Treaty #3 administration to enter into the relationship agreement as presented on October 4, 2022 … in order to strategically implement and defend the position that no [NWMO Project] is to be constructed for the storage of nuclear waste in Treaty #3 Territory and any resource development is decided upon through the jurisdiction of the Anishinaabe Nation in Treaty #3 and Treaty #3 Communities."[30]

Pursuant to the 2022 Relationship Agreement, NWMO committed to negotiating a planning and regulatory agreement with GCT3, that would outline NWMO's support for the implementation of Manito Aki Inaakonigewin, should NWMO identify the Treaty #3 Territory location as its preferred site (the "**PARA**"). Parties agreed that they would endeavour to finalize the PARA prior to NWMO concluding its site selection process. GCT3 believes that this critical work must be completed prior to the impact assessment proceeding any further.

That said, NWMO and GCT3 completed its discussion on fundamental principles that would guide NWMO and GCT3 implementation of the PARA. Those are attached as Schedule 4.

Additionally, NWMO and GCT3 also mapped out how they would work together during impact assessment and what agreements would be necessary and when.

These were particularly important to NWMO as establishing the relationship between itself and GCT3 in working together during planning and regulatory phases of the Project.

Treaty #3 Chiefs communicated to NWMO that the Relationship Agreement and PARA represented the Nation's open mind to an assessment of the Project.

2. <u>IAAC must complete MAI/IAA Harmonization with the Nation</u>

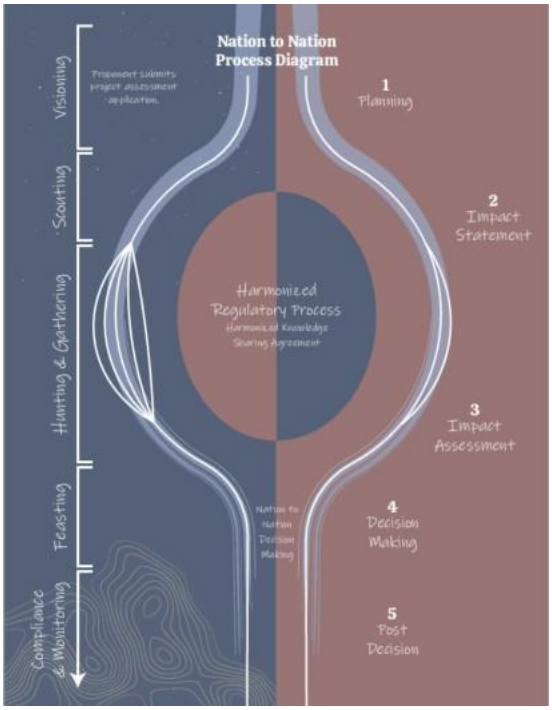
On November 4, 2020, GCT3 wrote to IAAC requesting a meeting to discuss how GCT3 and IAAC may cooperate, should NWMO identify the location within Treaty #3 Territory. Thereafter, on January 21, 2021, GCT3, IAAC and the CNSC met to discuss MAI and opportunities for collaboration in federal impact assessments.

At that meeting, IAAC shared its view that "there is very little in the IAA to limit the Agency's ability to develop an agreement with GCT3 for collaboration on the assessment of projects subject to impact assessment." IAAC also communicated that it is "able and willing to develop such an agreement with GCT3" for the NWMO project. At the same meeting, GCT3 communicated to IAAC its desire to reach agreement on MAI for the NWMO project early and prior to NWMO filing its IPD. IAAC agreed that working together in the pre-planning phase is beneficial and will allow for IAAC and GCT3 to make progress towards some form of agreement for collaboration.

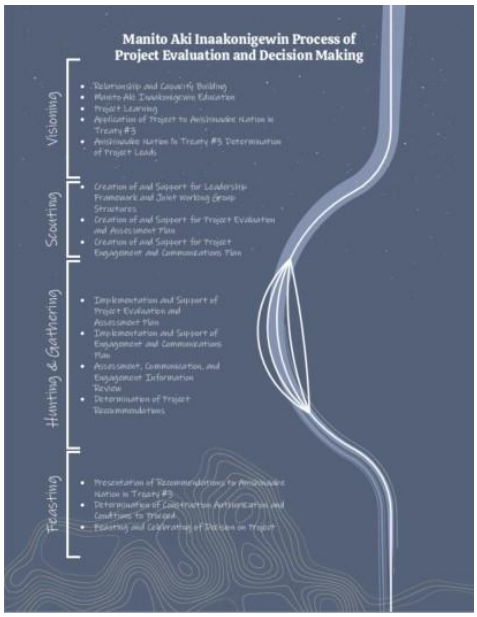
Parties have yet to reach some form of agreement for collaboration between IAAC and GCT3. However, GCT3 and IAAC are pleased that significant progress has been made including Parties co-developing since that meeting, GCT3, IAAC and CNSC co-developed an IAA/MAI Harmonization Plan based on the existing MAI and IAA Frameworks. That was meant to further guide Parties' negotiation of some

[30] *Resolution of the Grand Council Treaty #3 Chiefs-in-Assembly*, Resolution #CA-22-26.

form of agreement for collaboration. A copy of the most recent plan is attached within Schedule 1 and reproduced below:



And:



In 2024, in Toronto, Ontario, GCT3 walked through this visual with NWMO to demonstrate that the MAI Framework is complete. NWMO referred to this as the “eyeball” graphic and that more detail was required. It is curious that NWMO interpreted it this way as Western academics in Canada would easily

identify this as a "two-eyed seeing" framework.[31] Apart from that, GCT3 believes that the MAI Framework, together with all of the information shared to NWMO for over half a decade, provides the same amount of detail as the IAA Framework and that it is in project specific agreements (i.e. PARA) and plans (i.e. IAAC's Indigenous Engagement and Partnership Plan, Cooperation Plan, Permitting Plan and Tailored Impact Statement Guidelines) that the details of what work is to be done, who is responsible for that work, etc. is laid out.

3. NWMO's IPD causes harm to MAI

In order to address GCT3's concerns around timing, it pushed NWMO to finalize the PARA prior to NWMO's site selection decision. Thereafter, it pushed NWMO to finalize the PARA prior to submitting its IPD. NWMO refused and the results of that failure are evident throughout its IPD.

As detailed under the MAI Framework, one phase in the Nation's MAI process is MAI Visioning. Similar to IAA's Planning Phase, MAI Visioning sets the parameters and roles and responsibilities for conducting assessments of the potential effects of NWMO's nuclear waste plan on inherent and Treaty #3 rights within Treaty #3 Territory. As noted in the MAI Toolkit, Applications under Manito Aki Inaakonigewin are guided by the 4DGM system of governance, taking into account the Mental, Physical, Spiritual, and Social Impacts.

NWMO agreed that it made sense to launch MAI Visioning prior to submitting and triggering federal impact assessment regime and standard statutory timeframes set out under the IAA. Parties agreed to this to address GCT3's concern that launching MAI Visioning and IAA Planning Phase concurrently does not make sense and imposes an enormous capacity constraint on the Nation and Treaty #3 Communities. NWMO failed to implement this commitment made during negotiations which causes harm to MAI.

NWMO ended communications with GCT3 leading up to its site selection decision and following site selection to the submission of its IPD.

4. NWMO's IPD impairs Treaty #3 Leadership Decision-Making

The Nation represents 28 Treaty #3 First Nations. IAAC's 30-day timeframe to review and comment NWMO's IPD does not provide a meaningful opportunity for the Nation to participate. It certainly does not provide *prima facie* enough time to coordinate a meeting amongst 28 Treaty #3 Chiefs to review and discuss the same at the Nation level.

This is why NWMO agreed with GCT3 that it was appropriate to launch the MAI Framework, including MAI Visioning, in advance of launching the IAA framework.

Issue #3: The IPD improperly seeks to avoid any IAA review of serious social and unique technical challenges which led to NWMO's selection of site

History is important.

[31] Cheryl Bartlett, Murdena Marshall, and Alberta Marshall (2012), "Two-Eyed Seeing and other lessons learned within a co-learning journey of bringing together indigenous and mainstream knowledges and ways of knowing" Journal of Environmental Studies 2: 331-340.

As set out above, since time immemorial, the antecedents of the Nation have had jurisdiction over all lands now proposed for hazardous nuclear waste disposal and all surrounding lands within at least seventy kilometres. By contrast, NWMO's history dates back to 2002.

Unacceptably, the IPD filed by the NWMO ignores the undisputed history of Treaty #3 Territory.

The IPD cannot credibly claim an "Acknowledgment of Truths" when it ignores the profound history of this area.

The IPD also ignores recent history. Pursuant to detailed guidance provided by the 2001 federal *Nuclear Waste Management Act*, the NWMO prepared and finalized a 2005 Final Study which was endorsed by cabinet in 2007 (the "**Endorsed Study**"). The Endorsed Study considered and evaluated a specified list of alternatives to select the preferred way forward for the future management of all of Canada's used nuclear fuel. However, the 2001 legislation did not approve any site. Nor did it prescribe any process to consider alternative locations to select a preferred site.

At the time of the Endorsed Study (2007), federal environmental assessment law authorized the NWMO to proceed with site selection under the authority of the 1992 *Canadian Environmental Assessment Act*. However, the NWMO ignored this law. Similarly, from 2012 to 2019, the NWMO ignored the application of then-new *Canadian Environmental Assessment Act, 2012.* The NWMO filed the 2026 IPD pursuant to the 2019 federal *IAA*, as amended in 2024.

After choosing to avoid any regulatory oversight of its actions from 2007 to 2025, the IPD seeks to commence an impact assessment which proceeds on the basis that what the NWMO did from 2007 to 2025 cannot be questioned. The IPD avoids any regulatory review of how the NWMO selected the site it now proposes and proposes no such review in the future impact assessment.

Although the Endorsed Study did not implement a site selection process, it did demand that the selection of a site met rigorous criteria for technical suitability and status as a willing host community.

The 1,233-page IPD provides no description of NWMO's site selection process or thus any demonstration that what the NWMO did from 2007 to 2025 implemented rigorous criteria for either technical suitability or willing host community status.

1. Context *for rigorous criteria regarding technical suitability*

A unique feature of spent nuclear fuel from reactors is the duration of its toxicity. Despite its 263-page length, the main report filed as the IPD fails to address the duration of the toxicity of used fuel. It says only that used nuclear fuel remains radioactive for "a very long time."[32] However, Appendix D of the IPD attaches the Endorsed Study. Appendix 3 to the Endorsed Study advises that used nuclear fuel loses radiation over time and that it approaches background levels after 1 million years.[33]

This unique length of time engages at least two obvious points of contrast. The first contrast relates to history: a used fuel bundle has increased toxicity for 200 times longer than the world's earliest recorded history (i.e. approximately 5,000 years). The second contrast relates to sustainable development,

[32] NWMO (December 2025), "Initial Project Description: Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project" <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 6/1233.

[33] NWMO (December 2025), "Initial Project Description: Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project" <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 1101/1233.

namely development in relation to future generations. One nuclear fuel bundle generates energy for "about 12 to 18 months."[34] A human generation is 20 to 30 years in duration. If one uses 25 years as the benchmark, a fuel bundle generates electricity for between 4 to 6 percent of a single human generation. Thereafter, following this use, it will be toxic for the next 40,000 generations.

The premise of Adaptive Phased Management approved in the Endorsed Study is that today's engineering can safely protect humans and the environment from toxicity for this 1 million-year period.

The Endorsed Study describes the geological context as follows:

> The geosphere, or host rock, provides the principal barrier between the used fuel containers and the surface environment. Both the Canadian Shield granite and the Ordovician sedimentary rock basins are examples of naturally occurring geological formations which have long-term stability, good rock strength, and low groundwater flow. Large areas exist with sufficient depth below the surface and lacking in mineral resources that they are very unlikely to be disturbed by erosion or accidental drilling.[35]

The Endorsed Study describes the hydrological design context as follows:

> Clay-based materials would be used to surround and protect the containers, to fill the void spaces in the repository, to limit the movement of groundwater and dissolved material, and to protect workers during container placement operations. These are referred to as sealing systems, and involve materials such as high-performance concrete and swelling bentonite clay.[36]

Ideally, Adaptive Phased Management would rely on experience to find the preferred site. However, clearly there is no experience sufficient to meet the two-part demand for this site, namely that (1) the site will be geologically stable for the next 1 million years, and (2) the facility for this site will be hydrologically impermeable for the same 1 million years. Instead, at best, Adaptive Phase Management can only address the pragmatic situation of demonstrating what is comparatively best - what is best compared to alternatives. Thus, pragmatically, Adaptive Phased Management seeks (1) a site that is, among alternatives, most likely to be stable for the next 1 million years, and (2) a facility design for the site that is, among alternatives, most likely to be impermeable for the next 1 million years.

These are extraordinary technical challenges. Yet, the IPD proposes to exempt these challenges from all regulatory and public scrutiny provided by an impact assessment. The IPD proposes no review of siting or thus any opportunity to demonstrate that what is proposed meets either of these geological and hydrological challenges.

This is unacceptable.

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[34] NWMO (December 2025), "Initial Project Description: Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project" <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 1100/1233.

[35] NWMO (December 2025), "Initial Project Description: Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project" <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 900/1233.

[36] NWMO (December 2025), "Initial Project Description: Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project" <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 1100/1233.

2. Context for rigorous criteria regarding willing host community status

The Endorsed Study repeatedly makes clear that siting involves “both technical and social dimensions” (p. 228). It also makes clear the two-way basis of this integration:

> (1) On the one hand: " There was general agreement that a willing community should be sought to host the waste with the caveat that any willing host community must also be proven to be technically appropriate."[37]
>
> (2) On the other hand: “Technical and scientific factors associated with confirming the geology and suitability of the site are important, and regulatory processes will demand that a strong safety case be demonstrated. However, confidence in the technical aspects of the site alone is unlikely to provide the assurances that people seek in order to implement the project successfully.”[38]

Regarding the social dimension of site selection, the Endorsed Study repeatedly articulated that engagement should focus on who is potentially impacted. It elaborated on this point by advising that: "Ethically, engagement should ensure that those who most directly could be exposed to harm or risk of harm are involved. We must understand concerns of regions and communities that are affected directly and indirectly."[39] Both points demand consultation that is impact-based: the greater the potential impact, the greater the consultation.

Regarding communities, the Endorsed Study distinguished between "host communities" and "communities in the vicinity of any future facility."[40] Beyond communities, the Endorsed Study advised that "A special responsibility is owed to potentially impacted Aboriginal peoples."[41]

The Endorsed Study did not ever define the meaning of a "host community." Instead, it advised that "Arriving at an appropriate definition of ‘host community’, and understanding its characteristics, values, goals and concerns, will be an important starting point for assessing and managing potential socio-economic and cultural effects."[42]

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[37] NWMO (December 2025), “Initial Project Description: Deep Geological Repository (DGR) for Canada’s Used Nuclear Fuel Project” <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 865/1233.

[38] NWMO (December 2025), “Initial Project Description: Deep Geological Repository (DGR) for Canada’s Used Nuclear Fuel Project” <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 988/1233.

[39] NWMO (December 2025), “Initial Project Description: Deep Geological Repository (DGR) for Canada’s Used Nuclear Fuel Project” <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 802/1233.

[40] NWMO (December 2025), “Initial Project Description: Deep Geological Repository (DGR) for Canada’s Used Nuclear Fuel Project” <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 802/1233.

[41] NWMO (December 2025), “Initial Project Description: Deep Geological Repository (DGR) for Canada’s Used Nuclear Fuel Project” <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 802/1233.

[42] NWMO (December 2025), “Initial Project Description: Deep Geological Repository (DGR) for Canada’s Used Nuclear Fuel Project” <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 1035/1233.

In its section on Implementation, the Endorsed Study devoted attention to "Engaging Communities of Interest"[43] and "Consultation with Aboriginal Peoples."[44] Elsewhere, the Endorses Study advised that:

> Much of the discussion in this chapter focuses on the management of potential impacts in the communities closest to the central site - the willing host, recognizing that this is where effects are likely to be greatest and the actions required, most significant. However, we recognize that there may be other areas potentially affected or implicated through the implementation process. We will ensure that all potentially affected are positioned to be active participants in decisions taken in implementing Adaptive Phased Management. All potentially affected parties must be afforded fair and equitable treatment, in engagement with NWMO, in assessing potential significant socio-economic effects, and in managing those effects.[45] (emphasis added)

For the Nation, the Endorsed Study also previewed the situation now associated with the proposed site:

> There was some belief that an area could be found that is sufficiently remote to not be in anyone's community. Participants in Aboriginal dialogues suggested, with their traditional territories in mind, there is no such place.[46]

As will be set out below, the Nation questions the NWMO position that the proposed site is within any municipal community. Further, the Nation considers the relevant region and communities to be entirely Anishinaabe and part of Treaty #3.

3. Municipal context

The IPD identifies the Township of Ignace as the host municipality for the proposed Project.

Factually, the Project Description identifies the Township of Ignace as approximately 35 km southeast of the proposed site. It also identifies three communities as closer than Ignace Township: (i) Borup Corners, approximately 10 km to the northeast; (ii) Dyment, approximately 13 km to the northwest; and (iii) Dinorwic, approximately 20 km to the northwest.[47] Factually, from an Ontario perspective, identifying Ignace as the host community for a Project 35 km away is analogous to claiming that the Town of Oakville in the southeastern part of Halton Region is the host community for Union Station, which is east of Halton Region, also east of Peel Region, and near the Lake Ontario waterfront several municipal boundaries away.

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[43] NWMO (December 2025), "Initial Project Description: Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project" <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF pp 987-988/1233.

[44] NWMO (December 2025), "Initial Project Description: Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project" <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 988/1233.

[45] NWMO (December 2025), "Initial Project Description: Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project" <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF pp 1035-1036/1233.

[46] NWMO (December 2025), "Initial Project Description: Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project" <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 777/1233.

[47] NWMO (December 2025), "Initial Project Description: Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project" <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF pp 1039-1040/1233.

Nothing in the Endorsed Study provides any basis to consider Ignace as a host community for this Project. At most, Ignace is a community of interest along the haul route to the Project. As such, Ignace is like other municipalities of interest. It has no special status.

It is contrary to Ontario law to consider Ignace as a host community for this Project. Ontario municipalities are creatures of statute. They have no inherent authority. By statute, municipal authority is limited to the territory within a municipality's boundaries. Therefore, this Township has no legislative authority over this Project. Equally, Ignace has no legal authority to sign an agreement over a Project outside its boundaries.

Rather than explain its status, the IPD simply presumes that Ignace is the host municipality.

Further, the IPD proposes no impact assessment review of how the NWMO defined "host community," considered Ignace to be a host community, or integrated its approach to the host community into its technical challenges with site selection.

At the time of the Endorsed Study: "Among key issues of concern to participants in the dialogue workshops in particular were how the boundaries of “willing host communities” will be defined."[48] There was a 28-year gap between the Endorsed Study and the filing of the Project Description with the Agency in late 2025. During this period, the NWMO had legal options - perhaps obligations - to carry out a federal environmental assessment that would have carried out regulatory review of site selection as an alternative means of carrying out this Project. NWMO did not engage these options. Instead, the NWMO chose to carry out a non-regulatory process which found a site without transparency or legal scrutiny.

This approach to declaring a municipal host community is unacceptable.

4. Indigenous Peoples context

The Endorsed Study concluded that "A special responsibility is owed to potentially impacted Aboriginal peoples."[49]

The Anishinaabe Nation of Treaty #3 is clearly the Aboriginal people most impacted by this proposed Project. GCT3 represents this Nation. The Project is entirely within the Treaty lands of the Nation.

Similarly, recalling the Endorsed Study, "ethically," the NWMO needed to understand the "concerns of regions and communities that are affected directly and indirectly."[50] The Nation represents the region most affected by the Project, directly and indirectly. Under Treaty #3, there are 28 First Nation communities. Outside of reserve lands allocations set aside for the use and benefit of one band, as defined under the *Indian Act*, treaty lands and watersheds are often used by one or more communities.

[48] NWMO (December 2025), “Initial Project Description: Deep Geological Repository (DGR) for Canada’s Used Nuclear Fuel Project” <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 865/1233.

[49] NWMO (December 2025), “Initial Project Description: Deep Geological Repository (DGR) for Canada’s Used Nuclear Fuel Project” <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 802/1233.

[50] NWMO (December 2025), “Initial Project Description: Deep Geological Repository (DGR) for Canada’s Used Nuclear Fuel Project” <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 802/1233.

The Endorsed Study committed NWMO to "ensure that all potentially affected are positioned to be active participants in decisions taken in implementing Adaptive Phased Management."[51] However, contrary to the Endorsed Study, the IPD pays virtually no regard to the Nation.

The failure of the IPD to recognize the "special responsibility" owed to the Nation, as represented by GCT3, is unacceptable.

Recalling the two-way integration of technical and social aspects of site selection set out in the Endorsed Study, there is no basis to exempt the social aspect of site selection from impact assessment. In particular, future impact assessment should: (i) address the NWMO approach to defining the "host community", (ii) describe how Ignace qualifies as a host community, and (iii) demonstrate how the NWMO site selection process best addressed and integrated technical and host community demands.

Issue #4: Impact Assessment is required: IPD ambiguity ignores key IAA factors

GCT3 seeks an impact assessment under the *Impact Assessment Act* (IAA). GCT3 seeks impact assessment for the designated Project proposed by NWMO to construct and operate a new facility for the long-term management of irradiated nuclear fuel that is now nuclear waste.

1. Process to require federal impact assessment

The IAA makes no provision for automatic impact assessment. Instead, it provides a two-stage process. The first stage is determining that what is proposed is a "designated project" within the meaning of the IAA. Where a project is listed in the Schedule to the federal *Physical Activities Regulations* SOR/2019-285, it satisfies the first part. The Project described above is listed in the Schedule to these Regulations in paragraph 28(b), so the first part of the process is complete.

The second stage of the process involves a Planning Phase which culminates with a decision by the Impact Assessment Agency of Canada (the "Agency") whether the Project requires impact assessment. The planning process commences with the proponent of the designated project providing the Agency with an initial description of the project (the "**IPD**") which addresses the information prescribed in Schedule 1 to Regulations passed as SOR/2019-283. On receipt of the IPD, the Agency must post it on the Agency's Internet site[52] and invite the public to provide comments on the IPD within the time period specified by the Agency.

Additionally, section 12 of the IAA demands that the Agency offer to consult with (i) any "jurisdiction" which has "powers, duties or functions in relation to an assessment of environmental effects of the designated project," and (ii) any "Indigenous group that may be affected by the carrying out of the designated project."

Section 14(1) of the IAA requires that the Agency provide the proponent of the designated project with a summary of the issues with respect to the project that it considers relevant. This summary must include issues raised by the public "or any jurisdiction or Indigenous group that it consulted under section 12." Section 14(2) demands that the Agency post on its Internet site this summary of the issues provided to the proponent.

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[51] NWMO (December 2025), "Initial Project Description: Deep Geological Repository (DGR) for Canada's Used Nuclear Fuel Project" <https://iaac-aeic.gc.ca/050/documents/p88774/164317E.pdf> at PDF p 1035/1233.

[52] *Impact Assessment Act*, SC 2019, c 28, s 1, s 10(2).

Section 15(1) of the IAA requires that the proponent provide the Agency with a notice that sets out how the proponent intends to address the issues referred to in section 14, including "any issues that relate to the adverse effects that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*." Section 15 of the IAA also allows the Agency to require the proponent to provide additional information, amend its IPD to include that information, and provide an amended public notice that includes that information or details the Agency specifies. On receipt of a satisfactory notice from the proponent, the Agency must post the notice on its Internet site.[53]

After posting its s.15(3) notice, section 15(1) of the IAA requires the Agency to address the last step in the two-part statutory process by deciding whether impact assessment is required.

Subsection 15(2) sets out seven "factors" which the Agency must "take into account" in its decision. These factors are extremely important so they are set out in entirety in the table below.

Table:
Factors to be Taken into Account by the Agency in its section 16(1) decision

Factors

16 (2) In making its decision, the Agency must take into account the following factors:
(a) the description referred to in section 10 and any notice referred to in section 15;
(b) the adverse effects within federal jurisdiction — or the direct or incidental adverse effects — that may be caused by the carrying out of the designated project;
(c) any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982;
(d) any comments received within the time period specified by the Agency from the public and from any jurisdiction or Indigenous group that is consulted under section 12;
(e) any relevant assessment referred to in section 92, 93 or 95;
(f) any study that is conducted or plan that is prepared by a jurisdiction — in respect of a region that is related to the designated project — and that has been provided to the Agency;
(f.1) whether a means other than an impact assessment exists that would permit a jurisdiction to address the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that may be caused by the carrying out of the designated project; and
(g) any other factor that the Agency considers relevant.

Limitation

(2.1) The Agency may decide that an impact assessment is required only if it is satisfied that the carrying out of the designated project may cause adverse effects within federal jurisdiction or direct or incidental adverse effects.

Parliament added the seventh factor set out in paragraph 16(2)(f.1) and subsection 16(2.1) in 2024. Both changes followed the 2023 decision of the Supreme Court of Canada to strike down the IAA on

[53] *Impact Assessment Act*, SC 2019, c 28, s 1, s 15(3).

the basis that, among other things, the section 16 decision was unconstitutional.[54] The amendments seek to ensure that impact assessment is required only where the designated project is likely to have, as defined, "adverse effects on federal jurisdiction" or "direct or incidental adverse effects," or both.

2. All adverse effects of this Project will be within federal jurisdiction to regulate and mitigate

The 2023 Supreme Court of Canada decision in *Reference re Impact Assessment Act* (the "*IAA Reference*") declared the original IAA framework to require impact assessment in section 16 unconstitutional because of its failure to ensure that every decision to require impact assessment was based on the designated project being likely to cause adverse effects within federal jurisdiction. The addition of s.16(2.1) to the IAA in 2024 underscores the importance of this factor.

There can be no doubt that this designated project proposed by NWMO is likely to have adverse effects within federal jurisdiction.

For decades, Canada relied on the *Atomic Energy Control Board Act* to regulate nuclear energy relying upon the federal constitutional power to declare works for the general advantage of Canada to govern all works involving nuclear energy. However, in 1993, the Supreme Court of Canada expanded the basis of federal constitutional authority over nuclear energy. According to all members of the Court (through three different opinions on other topics), nuclear energy was a "national concern" under the federal power over peace, order and good government. [55] Following this opinion, the federal government passed the *Nuclear Safety Control Act* to regulate all aspects of nuclear energy, not just its application to specific "works".

The terminology of the IPD and the earlier 2005 report endorsed by the federal cabinet in 2005 describe the Project in terms which are consistent with the caselaw. The Project involves hazardous "nuclear fuel" not “nuclear waste”; and it involves the "long-term management" of this fuel, not its "disposal."

Under both aspects of federal authority over nuclear energy, there is broad federal authority to regulate all effects of the proposed nuclear energy facility. These effects appear similar to the federal power to regulate the effects of other federal undertakings such as interprovincial pipelines. As such, all adverse Project effects are "adverse effects within federal jurisdiction" as defined or "direct or incidental adverse effects" as defined.

Thus, regarding this core factor in s.16(2), any adverse effects which may be caused by the Project would be adverse effects within federal jurisdiction.

3. Harmonized impact assessment is the best way to address the adverse effects of this proposed Project

GCT3 has also considered the meaning and application of the factor set out in s.16(2)(f.1) of the IAA. This factor addresses a factor whose presence argues against requiring impact assessment.

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[54] *Reference re Impact Assessment Act,* 2023 SCC 23 at paras 150-154.
[55] *Ontario Hydro v Ontario (Labour Relations Board),* 1993 CanLII 72 (SCC), [1993] 3 SCR 327 at 331. At the time of this decision, the federal declaratory power over nuclear works and undertakings was indicated in section 18 of the *Atomic Energy Control Act*, RSC 1985, c A-16. This Act was replaced by the *Nuclear Safety and Control Act*, SC 1997, c 9 in 2000. Section 71 of the *Nuclear Safety and Control Act*, SC 1997, c 9 provides for the federal government’s declaratory power over nuclear works and undertakings.

Below, GCT3 sets out its submissions on why there are no means other than impact assessment for not requiring impact assessment.

GCT3 focuses on one possible "means other than impact assessment."

> *CNSC authority under the NSCA does not provide a reasonable basis to not require impact assessment of the proposed Project*

The IAA term, "jurisdiction," includes a "federal authority" and thereby includes the Canadian Nuclear Safety Commission (CNSC). Under the NSCA, the CNSC has legal authority to regulate all adverse effects of this proposed Project, and thereby "address" these adverse effects. Thus, the legislation authorizing this federal authority provides a means other than impact assessment to address adverse effects within federal jurisdiction.

This federal "means" of addressing adverse effects long pre-dates the IAA. However, the IAA does not support the conclusion that this other "means" displaces the need for impact assessment. The IAA contains a new arrangement to harmonize impact assessment with the regulatory powers exercised by the CNSC under the NSCA.

Long prior to the IAA, the Approved Study came about after the NSCA was passed into law in 2001, but nevertheless repeatedly commits the NWMO to carrying out a future federal environmental assessment in Phase 1 of the future steps to approve a new facility.

Therefore, the jurisdiction of the CNSC under the NSCA does not appear to provide a relevant basis to not require impact assessment of the proposed Project.

Issue #5: The IPD fails to provide information demanded by IAA regulations and the MAI Framework and contains numerous serious errors relating to scoping issues and information deficiencies

Please refer to the Appendix.

Issue #6: Since 2020 the federal Crown through the Agency and GCT3 have been involved in Nation-to-Nation discussions on MAI/IAA Harmonization for any nuclear used fuel site in Treaty #3 Territory. It is completely contrary to these Nation-to-Nation discussions for NWMO, which is not the Crown and has no authority to determine legal rights, to take a position regarding the Nation's status under Section 35 of Canada's Constitution.

Since the signing of Treaty #3, in 1873, the Nation in Treaty #3 and the Crown have been working together on a Nation-to-Nation basis.

Since 1997 the Nation has had a written "impact assessment" law.

Pursuant to Manito Aki Inaakonigewin, since 2020, the Nation has reached out to the federal Crown to have a Nation-to-Nation discussion on cooperative impact assessment. In these discussions, the Agency has been the representative of the Crown and has accepted the Nation status of GCT3. Additionally, the Agency brought in the NWMO into these discussions and NWMO never contested the Nation status of GCT3 in these discussions.

All of these discussions occurred in a situation when there was no specific site. NWMO's January IPD is the first document under the IAA to propose a Project that has a specific site. The site is within in

Treaty #3 Territory. Yet, contradicting the specifics of the site location, NWMO introduces the position that there is no Nation having status in this impact assessment.

And at the same time, NWMO introduces a second contradiction. It claims that it has exclusive status to propose and implement a national plan. NWMO says repeatedly that this is "Canada's plan". But NWMO is a creature of statute and its statute says nothing about this site being "Canada's plan". Its statute does not deal with a specific site, it just deals with Adaptive Phase Management. The NFWA required a study to identify and select a preferred option for managing Canada's high-level used nuclear fuel. NWMO completed its Study in 2005, whose preferred option was endorsed by Cabinet in 2007. The Endorsed Study expressly refrained from endorsing a site. The NFWA also refrains from any endorsement of a site. NWMO is not the Crown, is not Canada, and has no legal authority to determine any Indigenous rights anywhere in Canada. Further, NWMO has no Crown endorsement for this site. It thus has no basis to speak for Canada that this site is "Canada's plan" unless and until it is approved by a future Government of Canada decision.

Throughout its discussions with the Crown through the Agency, the Nation has sought an agreement to cooperate and harmonize impact assessment. It is utterly contrary to these discussions involving the federal Crown for the NWMO to claim it its IPD that there is no possible basis to these discussions involving the Nation because the Nation has no status relevant to impact assessment.

This NWMO behaviour is not simply contradictory; it is offensive to the Honour of the Crown and the discussions that have gone on since 2020.

II. Summary of the Nation's expectations for What is Required and When

1. Immediately arrange reasonable cost recovery mechanisms[56], including funding for technical expertise to, among other things, evaluate the geological and hydrogeological merits of the proposed site and its design, compared to alternatives, as NWMO's Project imposes significant costs on the Nation (February 2026)

2. Completion of MAI/IAA Harmonization Plan, including provision for Anishinaabe expert participation on the future IAA/CNSC hearing panel (MAI/IAAC co-developed Harmonization Plan) (1st Quarter 2026)

3. Co-develop the Tailored Impact Statement Guidelines, including amendment to the scope of the impact assessment to include and focus on demonstrating the technical and social merits of the Site Selection process (1st Quarter 2026)

4. Co-develop the Indigenous Engagement and Partnership Plan, Cooperation Plan, and Permitting Plan (1st Quarter 2026)

5. Co-develop the Hearing Panel Terms of Reference and schedule, including provision for the Nation to participate in the nomination of the hearing panel (2nd Quarter 2026)

6. Following IAAC completion of steps 1 – 5, commencement of Impact Assessment (2nd Quarter, 2026)

GCT3 remains ready, willing and able to work with the IAAC on these actions.

[56] IAAC's $3,000 PFP allocation is not sufficient to facilitate meaningful participation.

III. Parameters for GCT3's Comments on NWMO's IPD

These are GCT3 comments. It understands that Treaty #3 First Nations intend to submit comments.

For greater certainty, GCT3 respects both the Nation and Community jurisdiction, authority and decision-making processes. The Nation and Community laws and processes relating to the environment co-exist. The environment is necessarily an area of shared jurisdiction between Treaty #3 First Nations, as well as between Treaty #3 First Nations and the Nation.

For greater certainty, GCT3 supports Wabigoon Lake Ojibway Nation. GCT3 supports NWMO's "scope in" communities of Eagle Lake First Nation, Lac des Mille Lacs First Nation, Lac Seul First Nation, and Seine River First Nation. GCT3 supports all 28 Treaty #3 First Nations.

IV. Closing

Treaty #3 is a historic agreement that symbolizes the enduring partnership between Anishinaabe People and the Crown. It must be respected. GCT3 has been carrying out the Mandate of Nation to implement the Relationship Agreement 2.0 with NWMO and to set up framework that supports the jurisdiction and authority of both the Nation and Treaty #3 First Nations. This Mandate has provided IAAC and NWMO the opportunity to build partnerships, provide regulatory certainty, and create process efficiencies, to the extent possible. A lot of good work has happened since 2021 when IAAC committed to reaching agreement with GCT3.

The Nation's Mandate has not shifted.

Given the uniqueness of this impact assessment, GCT3 hopes to continue to keep working together during impact assessment in order to support Nation-to-Nation decision-making.

Sincerely,
<Original signed by>

Lucas King

Chief Executive Officer
Grand Council Treaty #3

cc: Ogichidaa Francis Kavanaugh
Gaakinawataagizod Cheyenne Vandermeer
Treaty #3 Chiefs
Mr. Chris Herc, Director, Territorial Planning Unit, GCT3
Mssrs. Gary Allen & Dan Morriseau, Political Office, GCT3
Ian Ketcheson Vice President, Indigenous Relations Sector

(corrected February 5, 2026)