



Via Email and Electronic Submission

August 13, 2026

Ms. Kim Noble
Manager, Consultation Operations, Impact
Assessment Agency of Canada
22nd Floor, Place Bell
160 Elgin Street
Ottawa, ON K1A 0H3

Re: The Anishinaabe Nation in Treaty #3's exclusion from IAAC's Cooperation Plan and Indigenous Engagement and Partnership Plan

Dear Ms. Noble:

Thank you for your July 21 letter responding to GCT3's July 10 letter regarding the Anishinaabe Nation in Treaty #3's exclusion from IAAC's Cooperation Plan and IEPP for the proposed DGR Project.

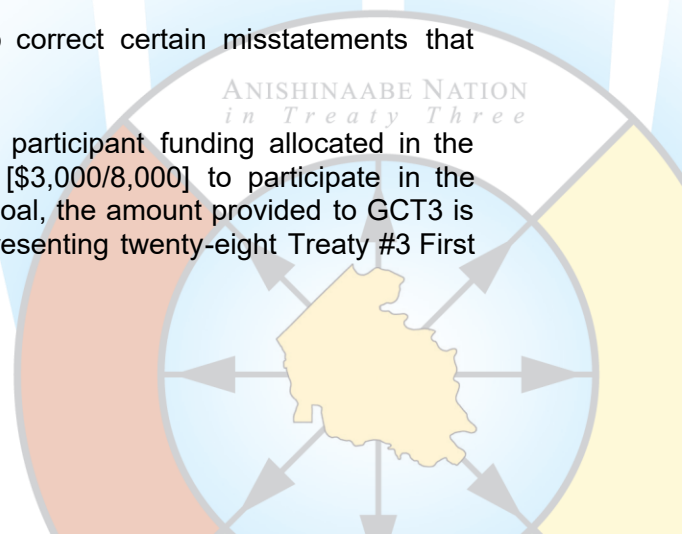
This letter (a) corrects certain misstatements in IAAC's July 21 letter, (b) identifies four ways in which Canada's current approach to the Anishinaabe Nation in Treaty #3 does not uphold the honour of the Crown, and (c) requests clarification on outstanding matters and IAAC's July 21 information requests.

GCT3 believes that its concerns are best addressed by implementing the Manito Aki Inaakonigewin – Impact Assessment Act harmonization framework (the "**Framework**") that has been co-developed by IAAC, CNSC and GCT3. IAAC's July 21 letter did not reference our Framework in any depth, despite the significant joint work undertaken on it.

(a) Misstatements in and Clarifications to IAAC/CNSC's July 21 Letter

Before proceeding further, we believe it is necessary to correct certain misstatements that appear in your July 21 letter:

- Page 2, paragraph 2 states "GCT3 was awarded participant funding allocated in the public stream." What IAAC provided GCT3 was [\$3,000/8,000] to participate in the Planning Phase. If meaningful participation is the goal, the amount provided to GCT3 is grossly insufficient for a traditional government representing twenty-eight Treaty #3 First





Nations on this unique project. NWMO, for its part, has provided GCT3 with no funding whatsoever to participate in the regulatory process (i.e. Planning Phase and Integrated Assessment) for the DGR Project.

- Page 2, paragraph 3 states “[i]f a project was proposed in an area that was designated under a land claim agreement or self-government agreement, the body that governs that area would be considered a jurisdiction based on the definition under the IAA.” For Ontario, if a project is located within provincial boundaries, then provincial jurisdiction is engaged. Similarly, the jurisdiction and authority of the Anishinaabe Nation in Treaty #3, which includes Manito Aki Inakonigewin, is engaged by the DGR Project because it is being proposed in Treaty #3 Territory. Like the Crown, GCT3 and the Treaty #3 First Nations have concurrent jurisdiction and authority over Treaty #3 Territory pursuant to Manito Aki Inakonigewin. IAAC is aware of this from our joint work. Furthermore, whether or not a land claim or self-government agreement exists is irrelevant to the question of whether the duty to consult is owed. In one prior case, the Federal Court rejected the federal government’s attempts to justify the exclusion of the Dene Tha’ from a cooperation plan under the *Canadian Environmental Assessment Act*. The Federal Court found that the absence of a settled land claim was legally irrelevant as to the existence of the duty to consult given that the Dene Tha’ held rights under Treaty #8 that stood to be affected by the project.¹
- Page 2, paragraph 4 states that IAAC/CNSC have “been consistent in our approach to working with GCT3 to explore how to harmonize the implementation of MAI concurrently with the integrated assessment process, including to reduce duplication for the proponent by determining how our process could align and where information could be shared.” GCT3 does not agree. Previously, we were working collaboratively with IAAC/CNSC, co-developing plans and documents such as the Framework and even collaborating on letters from GCT3 to the Minister of Environment and Climate Change. In January 2021, at a meeting between IAAC, CNSC, and GCT3, IAAC stated “[t]he Agency is of the view that there is very little in IAA to limit the Agency’s ability to develop an agreement with GCT3 for collaboration on the assessment of projects subject to impact assessment. The Agency is interested in working with GCT3 to develop such an agreement for the Project.” In July 2025, you stated that “IAAC and CNSC remain committed to developing an approach to harmonize Manito Aki Inakonigaawin and the integrated assessment process that Treaty #3 signatories can consider as an option for participation in the future assessment for the proposed DGR project.” Now, IAAC and CNSC does not even see fit to recognize the existence of the Anishinaabe Nation in Treaty #3 other than as a party engaged in “public participation” on the DGR Project. In Dene Tha’, the Federal Court also confirmed that “a public forum process is not a substitute for formal consultation.”²

¹ *Dene Tha’ First Nation v. Canada (Minister of Environment)*, [2006 FC 1354](#) (“Dene Tha’”) at paras. 42, 74.

² *Dene Tha’* at para. 104.



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- Page 3, paragraph 2 states “a draft harmonization plan template was shared with GCT3 in early July 2025 to begin identifying our respective processes and roles, key opportunities for information sharing, and the participation of potentially impacted Treaty 3 Nation.” We regard this as an inaccurate, self-serving narrative that does not reflect the foundation of Parties’ discussions since January 2021. Following up on the co-developed Framework, GCT3 sent IAAC/CNSC a draft Letter Agreement reflecting the parties’ discussions at that time. On April 25, 2025, IAAC responded by disregarding the substance of the draft Letter Agreement entirely, instead issuing arbitrary ultimatums for its continued engagement. IAAC and CNSC have acted inconsistently with previous commitments and discussions with GCT3 around issues relating to developing “such an agreement for the Project” which was meant to be ready to propose as an “option” to Treaty #3 First Nations prior to Canada launching its impact (integrated) assessment.
- Page 2, paragraph 1 states “[b]ased on the information shared to date, IAAC and CNSC’s current understanding is that the six GCT3 member First Nations identified in the IEPP are the most likely to be potentially impacted by the DGR project.” **Please detail the process and criteria used by IAAC/CNSC in making its determination that these Treaty #3 First Nations are “most likely to be potentially impacted” and the associated reasoning used to arrive at that conclusion.**
- Page 2, paragraph 1 states “[a]ll identified potentially impacted First Nations have indicated to IAAC and CNSC that they would like to work directly with IAAC and CNSC for the purposes of consultation and engagement for the proposed project.” **Please provide details as to how IAAC/CNSC framed this discussion with IAAC’s “identified potentially impacted First Nations” and whether IAAC and CNSC mentioned whether it intended to implement the Framework option to those First Nations.** As acknowledged by IAAC/CNSC, the co-developed Framework provided space for multiple assessments working together in a harmonized manner (i.e., Crown, Treaty #3 First Nations, the Nation’s Manito Aki Inakonigewin), to reflect concurrent jurisdictions engaged by the DGR Project. Meaning, both the Anishinaabe Nation in Treaty #3 Manito Aki Inakonigewin process and Treaty #3 First Nations processes can co-exist, can work in harmony/parallel, and can each feed into decision-making. For greater certainty, this process can also include community-led Ozhi’bige Aki Inakonigewin process that can be independent of the Anishinaabe Nation in Treaty #3’s Manito Aki Inakonigewin process but can also harmonize with it at the discretion of the Treaty #3 First Nation. GCT3 has and will continue to respect and promote all Treaty #3 jurisdictions within Treaty #3 Territory. GCT3 is concerned that IAAC and CNSC’s confusing, inconsistent approach has caused further misunderstandings and risks pitting Treaty #3 First Nations against one another, which is not honourable.



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- Page 2, paragraph 1 states “IAAC and CNSC’s approach to consultation and engagement, as well as the contents of the IEPP, can be updated and adapted as IAAC and the CNSC receive and gather more information on the potential impact of the project and Indigenous rights that may be affected”. **Please detail IAAC/CNSC’s formal process to update and adapt its plans and documents to include GCT3.**
- Page 3, paragraph 3, IAAC makes three explicit information requests of GCT3. **Please confirm that once GCT3 provides the information requested that IAAC intends to amend its plans and documents to recognize GCT3’s role and jurisdiction in Treaty 3 territory, and if so, how it intends to do so, and how the MAI/IAA Framework will be implemented. Please also confirm that IAAC will accept, in response to these information requests, a resolution that has been duly passed by the Anishinaabe Nation in Treaty #3 and clarify the essential elements to be included in such a resolution.**

(b) Breaches of the Honour of the Crown

Independent of the misstatements above, GCT3 is concerned that Canada’s conduct reflects at least four distinct failures to uphold the honour of the Crown:

1. First, Canada has already breached the duty to consult by finalizing the Cooperation Plan, IEPP, and Tailored Impact Statement Guidelines without meaningful consultation and accommodation. These documents establish the framework governing all subsequent steps of the DGR Project’s regulatory and environmental review processes. The situation is analogous to the 2006 *Dene Tha’* decision, where the Federal Court found a breach of the duty to consult because the Cooperation Plan for that project (which the Court described as “the blueprint from which all ensuing regulatory and environmental review processes” would flow) was developed and finalized without any consultation with the Dene Tha’, even though the Crown had, by that stage, already engaged with other potentially affected Indigenous groups in shaping the same process, in breach of the Crown’s obligations to the Dene Tha’.³
2. Second, Canada has further compounded this error by excluding the Anishinaabe Nation in Treaty #3 from the IEPP itself, and therefore from directly participating in the environmental assessment process. The courts have described environmental assessment processes as “a detailed investigation of the environmental effects of a project and ... critical to the process leading to an environmental assessment certificate” and found that excluding Indigenous peoples impermissibly denies them “access to an important part of the high-level planning process.” Further, consultation conducted outside a formal environmental assessment process, including through parallel discussions outside, cannot substitute for formal inclusion within the assessment process itself.⁴

³ *Dene Tha’* at paras. [100-107](#).

⁴ *Nlaka’pamux Nation Tribal Council v. British Columbia (Environmental Assessment Office)*, [2011 BCCA](#)



3. Third, because the DGR Project involves the permanent storage and disposal of hazardous waste on a permanent basis, Article 29 of UNDRIP is engaged, requiring free, prior and informed consent and monitoring programs developed and implemented by affected Indigenous peoples. The Federal Court has held that Article 29 requires Crown consultation processes to be tailored to a Nation's Indigenous laws, knowledge, practices, and directed toward finding mutual agreement, with tribunals making reasonable efforts to adapt their processes accordingly. Given the DGR Project's far greater volume and duration of used nuclear fuel storage than the low-level waste in *Kebaowek*, this obligation applies with at least equal, if not greater, force here.⁵ The Anishinaabe Nation in Treaty #3 has been clear with IAAC/CNSC that for the DGR Project, **Manito Aki Inaakonigewin authorizations are a required element of this**, in addition to consent from Treaty #3 First Nations.
4. Fourth, agreeing to develop the Manito Aki Inaakonigewin and Impact Assessment Act harmonization plan attracts the honour of the Crown and requires IAAC to fulfill its promise to make genuine efforts to finalize and implement it. In *Fort McKay First Nation v Prosper Petroleum Ltd*, the Alberta Court of Appeal found that the Alberta Energy Regulator failed to consider the role of negotiations between the Government of Alberta and Fort McKay First Nation in making a public interest determination over a project, and that the honour of the Crown had been engaged by those negotiations.⁶

GCT3 wishes to emphasize that these are not necessarily four separate or mutually exclusive problems requiring four separate approaches. However, there is a common theme to each error: IAAC and CNSC's paternalistic practice of engaging only six Treaty #3 First Nations, without formally engaging the Anishinaabe Nation in Treaty #3 as the territory-wide traditional government. This mirrors a concern the courts have previously flagged in analogous circumstances, that Crown consultation processes are inadequate where only individual communities, and not the overarching Nation-level governing body, are engaged.⁷ As set out above, IAAC and CNSC are both aware of all jurisdictions (i.e. Treaty #3 First Nations and Anishinaabe Nation in Treaty #3) within Treaty #3 Territory via the joint work on the Framework.

Implementing the Framework that GCT3, IAAC, and CNSC jointly developed between 2020 and 2024 carries the potential to address all four issue simultaneously: it would provide a regulatory approach harmonized with Indigenous laws, formally recognize the Anishinaabe Nation in Treaty #3 into the Cooperation Plan and/or IEPP and assessment process itself, tailor the process to Manito Aki Inaakonigewin as UNDRIP requires when seeking consent, and follow through on Canada's commitments regarding the recognition and respect for Indigenous rights.

⁷⁸ {"NNTC"} at paras. 97-98.

⁵ *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319 ("Kebaowek") at para. 133.

⁶ *Fort McKay First Nation v Prosper Petroleum Ltd*, 2020 ABCA 163 at paras. 66, 70.

⁷ *Kebaowek* at para. 153, *NNTC* at para. 53.





GCT3 therefore remains eager to meet with IAAC and CNSC to continue building off of the co-developed Framework and continue working towards an agreement on collaboration for the DGR Project between the Anishinaabe Nation in Treaty #3, IAAC and CNSC.

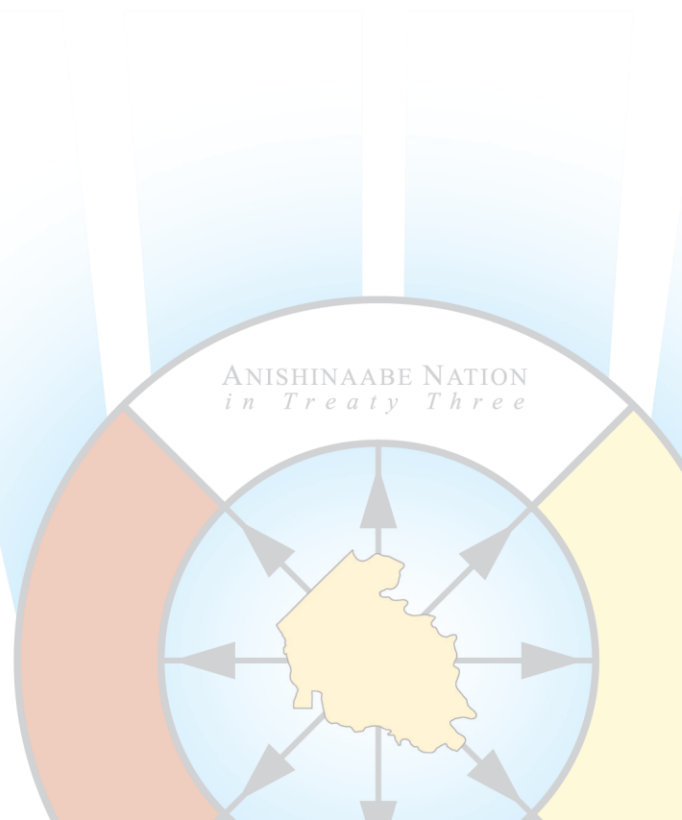
(c) Request for Clarity regarding GCT3's Exclusion from IEPP

Additionally, GCT3 has not yet received a response to the following inquiries in our July 10 letter.

Namely:

1. Confirmation as to whether IAAC intentionally excluded GCT3 from the IEPP during the Planning Phase.
2. If IAAC confirms that GCT3 was intentionally excluded during the Planning Phase:
 1. the basis and reasons for that exclusion;
 2. the future process, criteria and timeline for the IAAC and the CNSC to add an "Indigenous Nation or community" to the IEPP List; and
 3. the further information, if any, required by IAAC and the CNSC to add an "Indigenous Nation or community" to the IEPP List and the extent to which this relates to the three information requests referenced above.

If IAAC did not intentionally exclude GCT3 from the IEPP list during the Planning Phase, please advise GCT3 on the future process, criteria and timeline applicable to updating the IEPP to include GCT3 and the extent to which this relates to the three information requests referenced above.





Conclusion

Once GCT3 receives complete responses to its earlier July 10 inquiries and clarification as to IAAC's July 21 information requests, GCT3 will be able to respond to those requests.

Thank you for your attention to GCT3's requests, and we look forward to hearing back from you. GCT3 remains available to meet with IAAC on resuming and continuing our collaboration. I ask that you please respond no later than August 25, 2026, as we have a Special Chiefs Meeting scheduled with Treaty #3 Chiefs on the DGR Project on August 26, 2026.

Sincerely,

Chris Herc

Chris Herc

Director, Territorial Planning Unit

Grand Council Treaty #3

cc: Ogichidaa Francis Kavanaugh, GCT3
Gaakinawataagizod Cheyenne Vandermeer, GCT3
Chief Terry Allen, Chair, GCT3 Environmental Chiefs Committee
Treaty #3 Chiefs
Mr. Lucas King, Chief Executive Officer, GCT3
Mssrs. Gary Allen & Dan Morrieseau, Political Office, GCT3
Mr. Terry Hubbard, President, Impact Assessment Agency of Canada
Mr. Ian Ketcheson, Vice President, Indigenous Relations Sector, Impact Assessment Agency of Canada
Mr. Pierre Tremblay, President, Canadian Nuclear Safety Commission

