



**KEBAOWEK FIRST NATION'S STATEMENT ON THE WITHHOLDING
OF CONSENT IN RELATION TO THE PROPOSED NEAR SURFACE
DISPOSAL FACILITY**

SEPTEMBER 30, 2026

PREAMBLE

This statement has been prepared in response to the Federal Court's direction in *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319 by providing a formal update on Kebaowek First Nation ("Kebaowek")'s engagement in the renewed and resumed consultation process that the Court directed to be completed on or before September 30, 2026, with respect to the proposed Near Surface Disposal Facility ("NSDF").

Following the Federal Court's decision, Kebaowek developed our *Rights and Responsibilities Assessment Law* (the "Law") to set out a Free, Prior, and Informed Consent ("FPIC") process for the assessment of external projects on our Territory and guide the community's assessment of the proposed NSDF. Under Kebaowek's Law, and the workplan developed under it, Kebaowek was to complete an assessment of the project and issue a final Decision Statement under section 19 of the Law on whether to grant consent or refuse to grant consent to the NSDF.

At this time, Kebaowek cannot issue a Decision Statement under the Law as a direct result of the actions of Canadian Nuclear Laboratories ("CNL") and the Canadian Nuclear Safety Commission's ("CNSC"). As a result of the actions of CNL and CNSC, we were forced to suspend our process and all consultation on August 24, 2026.

The constitutional duty to consult and accommodate has not been discharged. The proposed NSDF has the potential to cause serious, long-term, potentially irreversible and novel adverse impacts to our rights if it proceeds as envisioned. Our right to FPIC has been breached by this process and the conduct of the CNSC and CNL. We have not been provided with the appropriate opportunity to complete our assessment of the project under our Rights and Responsibilities Assessment Law.

The absence of Kebaowek's consent at this point in time should not be interpreted as a conclusive or permanent decision on the proposed NSDF. Rather, it signals the need for further good-faith engagement, including through the provision of adequate funding and meaningful dialogue about how Kebaowek's expressed concerns during the resumed consultation process may be substantially addressed.

A NOTE FROM KEBAOWEK'S ASSESSMENT COMMITTEE

The right to Free, Prior and Informed Consent is recognized and protected by the United Nations Declaration on the Rights of Indigenous Peoples. As Algonquin Anishinabeg, we are land defenders and water protectors. We protect Ninga Aki (mother earth); we care for mother earth. Our first treaty was with mother earth. Kebaowek's Rights and Responsibilities Assessment Law is an acknowledgment of Kebaowek's laws and our rights.

It was important to be part of this work because it will directly affect the health of Ninga Aki for generations to come. This is not just about a disposal facility; it is about something bigger. The solution needs to last forever.

We have invested so much in this process: emotionally, physically, and spiritually. We've met a minimum of once a week—sometimes two to three times a week, not counting the hours of reading and familiarizing ourselves with the material. We have spent time traveling to visit the site and have taken time away from our families and our everyday lives to learn about this project.

There was so much energy and hope when we started the process, but it has felt like that has slipped away as the process continued. It constantly feels like we are being looked down on, as if our knowledge is inferior. This process was an opportunity for CNL and CNSC to do things differently. Instead, it feels like history is repeating itself.

The timing of this statement, on National Day for Truth and Reconciliation, feels especially important. Call to Action 92 calls on businesses to build respectful relationships and obtain our free, prior, and informed consent. Respect for Indigenous rights, UNDRIP and FPIC must be reflected in practice. We were supposed to be able to use this process to tell our truth and to understand the truth about this project. All of this has been taken away from us. Reconciliation is more than words.

We ask those reading this statement to start by watching the [video](#) Kebaowek has put together to share what this process means to members of leadership, staff, and the Kebaowek Assessment Committee.

Kebaowek's Assessment Committee

INTRODUCTION

The United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) and the federal *United Nations Declaration on the Rights of Indigenous Peoples Act* (“UNDA”) recognizes and protects Kebaowek’s right to self-determination, which includes the right to grant or withhold consent on any project that may affect our lands, territories, and resources. The rights under UNDRIP include Article 29(2), which states that projects involving the storage and disposal of hazardous materials should not take place in the lands or territories of Indigenous Peoples without their Free, Prior and Informed Consent (“FPIC”). The realization of Kebaowek’s other rights under domestic and international law, including the right to cultural well-being and survival, requires the effective implementation of FPIC.

In February 2025, the Federal Court of Canada recognized Kebaowek’s right to FPIC in relation to the proposed NSDF at the Chalk River Laboratories site (“Chalk River site”).¹ This project involves the permanent disposal of radioactive waste within Kebaowek’s unceded territory and in close proximity to the sacred *Kichi Sibi* (Ottawa River). The Court found that the UNDRIP FPIC standard “requires a process that places a heightened emphasis on the need for a deep level of consultation and negotiations geared toward a mutually accepted arrangement.”² The Court directed CNL and the CNSC to “resume consultation with Kebaowek with a view to implementing the FPIC standard in a robust manner, by adapting its processes to address Indigenous laws, knowledge, and processes and to develop a process that is aimed at reaching agreement.”³

The Federal Court’s decision was the first time a Canadian court recognized the applicability of the UNDRIP FPIC standard as an interpretive lens to determine whether the Crown has satisfied the duty to consult under section 35 of the Constitution.⁴ The decision offered a unique opportunity to strengthen the relationship between Kebaowek and the CNSC and to advance reconciliation through a consultation process grounded in mutual recognition and respect, serving as an example for the Crown, Indigenous governments, and business across the country.

The purpose of this statement is to clearly set out that, despite our best efforts, Kebaowek could not complete its FPIC process due to CNL and CNSC’s unwillingness to cover known financial costs necessary for KFN to participate fully and meaningfully in the renewed consultation process, and to support the conclusion of its community-led evaluation of the proposed NSDF’s potential risks and impacts to Kebaowek’s rights and responsibilities. Just over a month before the Court-imposed deadline, CNL and CNSC have denied Kebaowek funding that both parties knew for several months was requested to complete the remaining steps of our Rights and Responsibilities Assessment Law and the court-directed consultation process by September 30, 2026. As a result of these actions, Kebaowek was forced to suspend our participation in the resumed consultation process on August 24, 2026.

The two remaining steps of our FPIC process, specifically the Rights and Responsibilities Assessment Report and Council’s Decision Statement, would have set out the nature, severity and significance of the proposed NSDF’s impacts to Kebaowek’s rights and responsibilities, considering the importance of preserving cultural sites, protecting the health and vitality of lands and waters, preventing biodiversity

¹ *Kebaowek First Nation v. Canadian Nuclear Laboratories*, [2025 FC 319](#) [Kebaowek].

² *Kebaowek*, *supra* note 1 at para [130](#).

³ *Kebaowek*, *supra* note 1 at Judgment para [2](#).

⁴ *Kebaowek*, *supra* note 1 at paras [76-81](#), [128-132](#).

loss, minimizing pollution, and ensuring current and future generations can exercise their rights and responsibilities, among other criteria listed in the Law.⁵ These two documents would have provided a foundation for Kebaowek, CNL, and the CNSC to negotiate an agreement on the Project prior to making submissions to the Canadian Nuclear Safety Commission, the administrative tribunal responsible for determining whether the duty to consult was fulfilled, considering the principles articulated in UNDRIP and in particular, the FPIC standard.⁶

Under Canadian law, deep consultation requires the Crown and private proponents to provide sufficient capacity funding to support a First Nation's review of proposed projects and to ensure that consultation processes are fair, balanced, and robust.⁷ The United Nations Human Rights Council's Expert Mechanism on the Rights of Indigenous Peoples ("UN Expert Mechanism") confirms that states and businesses must provide adequate time and resources to allow Indigenous Peoples to conduct their internal deliberations under their own FPIC protocol.⁸

Despite inadequate resources to complete the FPIC Process, Kebaowek makes this statement in an effort to honour the Federal Court's Order which directed CNL and CNSC to resume consultation with Kebaowek with a view of implementing the UNDRIP FPIC standard in a robust manner, and to develop and complete a process aimed at reaching agreement by September 30, 2026. This statement addresses the meaningfulness of the renewed consultation process to-date and evaluates whether it advanced Kebaowek's right to FPIC under UNDRIP. Specifically, the statement evaluates whether the process was truly "free", "prior" and "informed," and whether CNL and CNSC sought Kebaowek's consent.

Kebaowek is withholding its consent to the proposed NSDF as the resumed consultation process has not met the requirements that consent be "free", "prior", and "informed". The absence of consent at this time is not a conclusive or permanent decision: rather, it signals the need for further good faith engagement, including through the provision of adequate funding and meaningful dialogue aimed at addressing Kebaowek's expressed concerns relating to the proposed NSDF. The UN Expert Mechanism confirms that Indigenous Peoples may withhold consent temporarily because of deficiencies in a consultation process, including non-compliance with the requirements for the consent to be free, prior, and informed.⁸

Kebaowek is concerned about the historical radioactive waste stemming from past nuclear meltdowns at Chalk River, which is a result of nuclear activity on our territory that we were never consulted on and never consented to. We agree with the CNSC and CNL that it must be cleaned up. We are committed to collaborating with the Crown and CNL to determine the best and safest way to address this problem, in accordance with both western science and Kebaowek's Algonquin knowledge and *Ona'ken'agewin*.

Our priority in the renewed consultation process is to ensure the protection of its territory and kinship relations in accordance with *Ona'ken'age'win* (Algonquin Law), and to ensure that the contaminated lands and waters at the Chalk River site are remediated. Kebaowek has taken the evaluation of the

⁵ Kebaowek First Nation's *Rights and Responsibilities Assessment Law*, as adopted November 27, 2025 at section 10.2.

⁶ *Kebaowek*, *supra* note 1 at Judgment para 3.

⁷ "Free, prior and informed consent: a human-rights-based approach", *Study of the Expert Mechanism on the Rights of Indigenous Peoples*, UNGAOR, 39th Sess, UN Doc [A/HRC/39/62](#), (2018) [UNGA 2018], page 7 at para 22(c); "Guidance on the right of Indigenous Peoples to free, prior and informed consent in the context of business activities", *Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises*, UNGAOR 62^d Sess, UN Doc [A/HRC/62/36/Add.2](#), (2026) [UNHRC 2026] page 5 at paras 18-20; page 8 at para 40, page 14 at para 59(f), pages 17, 19.

⁸ *UNGA 2018*, *supra* note 7 at para 26(b).

proposed NSDF extremely seriously and is carefully considering the potential risks and impacts to future generations and all our kinship relations under our own laws.

KEBAOWEK’S JURISDICTION, RIGHTS, AND RESPONSIBILITIES

Kebaowek is an Algonquin Anishinabeg Nation that holds and exercises inherent and constitutionally protected rights and stewardship responsibilities to manage and govern the lands, waters, and relatives that were given by Creator for the Algonquin Anishinabeg to care for in perpetuity, as we have done since time immemorial. These governance rights and responsibilities are recognized and affirmed by section 35 of the *Constitution Act, 1982*, and by Article 26(2) of UNDRIP, which states:

Indigenous Peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

Kebaowek’s Territory includes the lands and waters spanning the length of the *Kichi Sibi* (Ottawa River) from its headwaters in north-central Quebec towards its outlet in Montreal in what is now known as the provinces of Quebec and Ontario. Our Nation’s members exercise and assert their inherent Indigenous rights and constitutionally protected s. 35 rights throughout our entire unceded territory, including rights to harvest, govern, and protect the territory and maintain a cultural and spiritual relationship with the Territory. Since time immemorial, Algonquin Anishinabeg have relied on the lands and waterways along the length of the *Kichi Sibi* to exercise our inherent rights under our own system of customary law and governance known as *Ona’ken’age’win* (Algonquin Law). Kebaowek asserts that the Algonquin Anishinabeg Nation holds Aboriginal title and rights over their territory that straddles the *Kichi Sibi* basin on both sides of the Quebec-Ontario boundary and that Kebaowek enjoys the benefits of those Aboriginal rights and title.

On’aken’age’win is based on mobility around the landscape, the freedom to harvest, and the sustainable use of lands and waterways for future generations. The *Kichi Sibi* is the foundation of Algonquin social, political and economic order, as it is associated with family land management units and continues to serve as a transportation corridor. Kebaowek sacred responsibilities to care for the *Kichi Sibi* and for *Ninga Aki* (*mother earth*) under *Ona’ken’age’win* have been codified in the Rights and Responsibilities Assessment Law, through the four assessment principles and the seven administration principles described in detail below.

The Chalk River site has particular importance for Kebaowek. Kebaowek holds and exercises inherent and constitutionally protected rights in relations to the lands and water which encompass the Chalk River site, which is directly beside the *Kichi Sibi*. The *Kichi Sibi* holds immense spiritual and cultural significance for the Nation and flows within the core of Kebaowek’s Territory. The proximity to the river and specific sacred sites, along with the importance the land holds in relation to critical habitat for species-at-risk and other animal relations, all heighten the risk of potential series impacts the proposed NSDF could have on our rights and responsibilities. Kebaowek has important stewardship responsibilities to the lands, waters, animals, fish, trees, plants, rocks and all relations at and near the site. The Chalk River site is directly adjacent to Point au Baptême (*Sigandàzowin Neyàshi*), across the river from Oiseau Rock (*Kinew Kiishkaabikang*), and upstream from Fitzpatrick Island (*Manido Namitic*)—all of which are

sacred sites of cultural and spiritual importance to Kebaowek that border the *Kichi Sibi*, the lifeblood of Algonquin territory.

Further, Kebaowek has a legal responsibility to protect our animal relations—the four-legged, the winged, the swimmers and the crawlers—and their habitats. Many of these relatives—including bears, wolves, turtles, and fish—continue to rely on the habitat at the Chalk River site, including the 33 hectares of forest within the project footprint, to sustain themselves. Kebaowek members retain a cultural and spiritual relationship with the animals on the territory, identifying them as spirits, ancestors, and teachers that must be protected. Our spiritual and cultural connections to the area remain strong.

The scale and magnitude of the project also means we have a heightened responsibility to ensure that the project is constructed in a manner that aligns with our laws, knowledge, and practices. The project's operational lifecycle is anticipated to extend over 350 years, and CNL has stated that the hazards associated with the radioactive waste to be deposited into the NSDF will have reduced to an amount that is no more than the natural environment within 500 years,⁹ meaning that its potential effects are long-term, extending across at least 20 generations. We must consider the multi-generational stewardship responsibility and governance burden that this generation assumes on behalf of future generations when assessing the project.

The storage and disposal of radioactive waste on Kebaowek's Territory requires our consent. A decision to construct the NSDF without consent undermines Kebaowek's authority over our lands, territories, and resources and is contrary to Article 26(2) of UNDRIP and diminishes our ability to manage the project's potential impacts.

KEBAOWEK'S RIGHTS & RESPONSIBILITIES ASSESSMENT LAW

In response to the Federal Court's order, our Nation developed an FPIC protocol: the Rights and Responsibilities Assessment Law. The Law is a written expression of our laws, knowledge, and practices and is an expression of our right to make decisions regarding our lands, waters, and resources according to our own processes. The Law sets out our community's framework to evaluate a project's potential risks and benefits to our Territory, engage in consultation, and determine whether consent should be granted with conditions or withheld. The Federal Court expressly acknowledged the need to tailor consultation processes to address and consider Indigenous laws, knowledge, and practices to fulfill the UNDRIP FPIC standard, and Kebaowek's expectation throughout the resumed consultation process was that CNL and the CNSC would support the completion of all required steps under our Law.¹⁰

The Law confirms that UNDRIP recognizes and affirms Kebaowek's right to use, develop, and control our territory, and to participate in decision-making in matters affecting our Rights and Responsibilities, defined in our Law at s. 1.1 (aa) as:

- i. KFN's inherent and constitutionally protected rights, title, and jurisdiction, as recognized in [UNDRIP], the [UNDA], and affirmed by section 35 of the *Constitution Act, 1982*;

⁹ CNL Presentation to Assessment Committee, January 29, 2026.

¹⁰ [Kebaowek](#), *supra* note 1 at paras [133](#), [140](#).

- ii. and the vital way of life whereby Algonquin Anishinaabeg protect and care for the lands, waters, animals, fish, trees, plants, rocks, and all relations, and in turn, the lands, waters, animals, fish, trees, plants, rocks, and all relations support the Algonquin Anishinaabeg in securing livelihoods, health, safety, and cultural and spiritual well-being from Algonquin *Aki*;

The Law speaks to our legal relationship with the Crown and our expectations and requirements regarding the Crown's consultation obligations. It is grounded in Algonquin legal principles, including "Respect for All Relations", "Water is Life", "Preserving Kebaowek Way of Life," and the "Seven Generations Perspective.":

Respect for All Relations: the lands, waters, animals, fish, trees, plants, rocks, and all relations are not "resources," but relatives gifted by the Creator that should be cared for and respected. Humans should only take what we need, and all parts of a relation's gift should be used and shared for the benefit of the collective. Where harm is contemplated, it should be as minimal as possible, and something must be given back to maintain balance and uphold reciprocity.

Water (*Nibi*) Is Life: water is a life-giver and a carrier of spirit. Lakes, rivers, and wetlands must stay clean for drinking, harvesting, ceremonial activities, swimming, and to preserve the health of the lands, animals, fish, trees, plants, and all relations. Human activities will respect water and should not damage its quality, quantity, or flow.

Preserving KFN Way of Life: fishing, hunting, trapping, and gathering activities as well as Sacred Sites should not be disturbed or destroyed in ways that undermine the ability of Members to secure a livelihood, transfer Algonquin Knowledge across generations, and exercise KFN Rights and Responsibilities.

Seven Generations Perspective: decisions made today should protect the abundance of Mother Earth and preserve the ability of the next seven generations to exercise KFN Rights and Responsibilities. Human activities should not result in permanent and irreversible damage.

In carrying out the assessment of projects and the FPIC process, Kebaowek is guided by seven administration principles which reflect sacred teachings about how to uphold its relations and respectful conduct:

Knowledge: and carries the responsibility to apply this knowledge in the planning and development of Projects.

Respect: KFN carries the responsibility to consider the Effects of Projects on all life forms and will show respect towards all relations in recognition of our interdependence.

Love: KFN recognizes the interconnectedness of all life forms and the ways that love sustains the Earth, including through water which shares its life force with all living things.

Bravery: KFN, as stewards and caretakers of *Aki*, will protect and care for the lands, waters, animals, fish, trees, plants, rocks, and all relations, including future generations, even in the face of challenges and change.

Honesty: The totality of KFN Algonquin Knowledge cannot be captured by the written word and will be learned and experienced by nurturing one's relations.

Truth: KFN's assessments of Projects are grounded in truth-seeking and will create opportunities for the lands, waters, animals, fish, trees, plants, rocks, and all relations to tell their stories.

Humility: KFN recognizes that we are dependent on *Aki* for sustenance and well-being, and, accordingly, we will show humility and gratitude for the relations that sustain KFN Rights and Responsibilities.

The Law creates an Assessment Committee responsible for administering the Law, overseeing the evaluation of projects designated for review under the FPIC Process, and making recommendations to Council about whether Kebaowek's consent should be granted.

In evaluating the Project, the Assessment Committee carries out consultation with Kebaowek's membership, meets with the Crown and proponent, directs Kebaowek-led studies, conducts site visits, organizes cultural activities, among other evaluative activities. The Assessment Committee is responsible for overseeing Rights and Responsibilities Assessment Reports under the Law, which describe a project's potential effects and impacts to Kebaowek's rights and responsibilities, evaluate the likely effectiveness or appropriateness of mitigation and accommodation measures, assess the severity of potential impacts from the perspective of Algonquin *Ona'ken'age'win*, and provide an FPIC recommendation, in accordance with the methodology laid out in the Law.

KEBAOWEK HAS BEEN DEEPLY COMMITTED TO THE RESUMED CONSULTATION PROCESS

Since February 2025, Kebaowek has worked diligently and in good faith to advance the renewed consultation process. Kebaowek has made its best efforts to make both the CNSC and CNL aware of our serious concerns about the proposed NSDF. Kebaowek has repeatedly raised concerns with CNL and the CNSC about the potential impacts of the NSDF on the *Kichi Sibi* and the surrounding environment and the ability for Kebaowek members to exercise their rights and practice their Algonquin Anishinabeg way of life.

Between May and September 2025, Kebaowek carried out extensive community engagement, including general meetings, elder and youth focus groups, and surveys, to inform the development of the Law. This engagement culminated in the drafting of the Law. In September 2025, we presented a draft Rights and Responsibilities Assessment Law to our community for additional feedback and direction from members. After additional revisions and updates, the Law was ratified by Chief and Council via Band Council Resolution on November 27, 2025. This precedent-setting Law would normally be developed through a process that would take years to complete. Kebaowek fast-tracked the development of it and poured significant resources into creating this Law in order to comply with the Federal Court's direction and timeline, and to meet Kebaowek's consultation obligations in good faith.

In December 2025, following the process outlined in the Law, Kebaowek appointed an Assessment Committee made up of six members tasked with applying and carrying out the Law in relation to the

NSDF. The Assessment Committee started meeting regularly in January 2026 and the Committee began its work by developing a detailed preliminary work plan setting out the activities it planned to carry out during its assessment of the NSDF. It would be difficult to overstate the amount of time and energy that the Assessment Committee has invested in the resumed consultation process. Since January, the Committee's work has involved:

- Attending weekly three-hour meetings, and often, additional meetings and workshops;
- Reviewing materials, studies, and technical reports, including extensive background materials from the Environmental Assessment process and CNSC licensing decision;
- Reviewing materials from technical experts and advisors hired by Kebaowek to support the resumed consultation process;
- Traveling to and participating in site visits and in-person meetings with CNL and CNSC;
- Overseeing the development of the Rights and Responsibilities Identification Report, as required by the Law;
- Coordinating and attending community engagement events; and
- Identifying key issues, concerns, and questions, and raising these in writing and at meetings and site visits with CNSC and CNL.

The Committee has completed all this work on a volunteer basis—being provided a limited honorarium for attendance—and on top of existing work and family obligations.

The FPIC assessment process described in the Law involves 13 steps and would typically be carried out over approximately two and a half years. Given the Federal Court's direction that the process be completed by September 30, 2026, Kebaowek modified the steps in the Law to fit within the timeline prescribed by the Court.

On April 7, 2026, Kebaowek held a community meeting to present a draft of the Rights and Responsibilities Identification Report (the "Identification Report"). The purpose of this report was to identify, on a preliminary basis, the potential impacts of the NSDF on Kebaowek rights through the lens of Algonquin law and knowledge, and to summarize key issues, concern, and information needed to complete the assessment. Through the Identification Report, the Assessment Committee identified five key issues that it would be focusing on during the FPIC evaluation:

- (1) Project Location,
- (2) Type of Disposal Facility,
- (3) Waste Characterization,
- (4) Cumulative Effects, and
- (5) Proponent and Crown Trust and Accountability.

Each of these issues was considered through the four legal assessment principles set out in the Law. Kebaowek also distributed a survey to membership to gather additional community feedback on the draft

report, the proposed assessment process, and the NSDF's potential impacts. The Identification Report was finalized on May 21, 2026.¹¹

Kebaowek shared and discussed the five identified areas of concern with CNL and CNSC through multiple meetings, correspondence, and supporting materials, including by providing an iterative list of questions drawn directly from the Identification Report. The Assessment Committee raised concerns to both CNL and the CNSC regarding the NSDF's potential adverse impacts to our rights, sacred sites, water, and the *Kichi Sibi* (Ottawa River), as well as to non-human relatives and species-at-risk as key impacts to our stewardship responsibilities as Algonquin Anishinabeg. The Committee also articulated Kebaowek's governance relationship to our kinship relations throughout Kebaowek Territory and desire to access and monitor the site in order to exercise stewardship responsibilities. Potential adverse impacts to our rights we have shared and discussed with the CNSC and CNL include:

- Kebaowek rights-holders' ability to exercise their Aboriginal rights in their territory and specifically near the proposed NSDF site due to both the real health and safety risks associated with it and the reasonable fear and apprehension created by those risks;
- Adverse impacts to accessing cultural sites and resources near the proposed NSDF due to both the real health and safety risks associated with the proposed NSDF and the reasonable fear and apprehension created by those risks;
- Adverse impacts to harvesting activities near the proposed NSDF due to both the real health and safety risks associated with the NSDF and the reasonable fear and apprehension created by those risks;
- The proximity of the proposed NSDF to the *Kichi Sibi*;
- Adverse impacts to the *Kichi Sibi* as a drinking water and life source;
- Adverse impacts to human health;
- Adverse impacts to animals and animal habitat, including species at risk;
- Adverse impacts to fish, fish habitat, and aquatic species;
- The cumulative impacts of these adverse impacts on Kebaowek's Aboriginal rights, title, and interests;
- Adverse impacts on our stewardship and governance rights and responsibilities over our Territory and potential violations of our Law and Algonquin *Ona'ken'age'win*;
- Adverse impacts on our ability to exercise self-government and jurisdiction over our Territory; and
- Adverse impacts on our right to provide free, prior, and informed consent to projects in our Territory, specifically those requiring the storage of nuclear waste.

Throughout the process, Kebaowek has continued to further refine and provide additional questions to CNL and CNSC regarding specific aspects of the project as they relate to potential rights impacts. Kebaowek has continued to seek out these answers in order to be properly and appropriately informed in order to make a consent decision, and because we want to understand the proposed project and why CNL and CNSC contend it is the most appropriate solution. Since the beginning, Kebaowek has maintained an

¹¹ A summary of the NSDF Rights and Responsibilities Identification Report can be found here: <https://www.kebaowek.ca/Docs/R&R/Synopsis.pdf>.

open mind, as evidenced by our ongoing and iterative engagement in an effort to better understand the project in order to meaningfully and fairly consider it through this FPIC process.

On August 4 and 5, 2026, Kebaowek held its second round of community meetings to update membership on the assessment process and to present the proposed outline for the Rights and Responsibilities Assessment Report (the “Assessment Report”). The Assessment Committee participated in a panel discussion to share about the process, outstanding questions, and the remaining work to be completed by September 30, 2026, as well as gather community feedback and gauge consensus on issues and the project. We then held a follow-up engagement session for Kebaowek membership on August 20, 2026, with small group discussions on the key assessment issues related to the NSDF.

While Kebaowek concluded several studies relating to potential risks and impacts of the Project, including with respect to aquatic and terrestrial health, Kebaowek’s Assessment Committee and advisors are not able to analyze the findings, finish discussions on potential mitigation and accommodation measures with CNL and CNSC, summarize the community’s perspectives in the Assessment Report, or share these conclusion with the general membership due to the suspension of the process as a result of the recent actions of CNL and the CNSC.

KEBAOWEK WAS PREPARED TO COMPLETE ITS FPIC PROCESS BY SEPTEMBER 30

Kebaowek was on track to complete its process and issue an FPIC Decision Statement on the NSDF by the Federal Court’s deadline of September 30, 2026.

Despite our extensive efforts, CNL and CNSC’s recent actions have left us unable to complete the final major deliverable of the FPIC process—the Rights and Responsibilities Assessment Report—and to make our consent decision by way of the FPIC Decision Statement. When the process was suspended, the Assessment Committee was in the process of reviewing and analyzing the information and answers provided by CNL and CNSC to-date with the purpose of determining the nature, severity, and significance of the project’s impacts to Kebaowek’s rights and responsibilities according to Algonquin Law. The purpose of the Assessment Report was to summarize the project’s anticipated impacts, consider and assess proposed mitigation and accommodation measures, and confirm Kebaowek’s FPIC decision in relation to the NSDF. This report would have provided the foundation of the parties to discuss necessary mitigation and accommodation measures, as detailed further below.

To inform the preparation of this Report and Kebaowek’s consent decision, during the final month of the resumed consultation process Kebaowek, CNL, and CNSC had planned to meet and discuss several important and outstanding aspects related to both the process and the NSDF project. Specifically, Kebaowek, CNL, and CNSC were intending to discuss outstanding issues and questions, proposed mitigation and accommodation measures, potential consent conditions if Kebaowek granted its consent to the project, and the process that would follow September 30, 2026. When the process was suspended, Kebaowek also had to cancel multiple scheduled meetings, including a key meeting with Environment and Climate Change Canada to discuss the Forest Management Plan, meetings between the Assessment Committee, CNL, and CNSC, and a scheduled community meeting on September 15th to present the Assessment Report.

Kebaowek's ability to issue our FPIC Decision Statement is critical to fulfilling Justice Blackhawk's order and carrying out a process that implements the UNDRIP FPIC standard. This statement would have been the mechanism through which Kebaowek exercised our right to self-determination and decision-making authority about whether to grant consent to the NSDF. The inability for Kebaowek to make a consent decision leaves an essential part of the process unfulfilled.

UNDRIP AND THE FPIC STANDARD

In 2025, the Federal Court released its decision in our case, *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319, which deals with the application of UNDRIP and UNDA in the context of federal decision-making and the Crown's duty to consult.

Kebaowek submitted, and the Court agreed, that UNDRIP and UNDA were relevant to the Commission's assessment of the duty to consult and whether it was discharged by the Crown. Article 29 of UNDRIP, which addresses the need for FPIC before storing or disposing of hazardous materials in Indigenous territories, was engaged by the proposed NSDF and the Commission is required to consider the legal effect of UNDRIP in its decision-making process and obtain Kebaowek's consent. The Court held that the Commission failed to consider UNDRIP and the FPIC standard when assessing the scope of the Crown's duties and whether the Crown fulfilled its duty to consult and accommodate us.

The Court remitted the matter back to the Commission to reassess the fulfilment of the duty to consult and accommodate, instructing the Commission to apply UNDRIP as an interpretive lens in making that reassessment. The Court directed the parties to resume consultation with a view to implementing the FPIC standard.

The right to FPIC is affirmed in UNDRIP. UNDRIP is an international human rights instrument that establishes the minimum legal standards that governments must actively respect, protect, and fulfill to guarantee the survival, dignity, and well-being of Indigenous Peoples.¹² The right to FPIC is a universal standard which affirms that consent is the objective of consultations with Indigenous Peoples.¹³ The inherent right to FPIC is codified in Articles 10, 11(2), 19, 29(2), and 32(2) of UNDRIP, which concern the forcible removal of Indigenous Peoples from their territories, the taking of their cultural and spiritual property, the imposition of state legislative or administrative measures affecting them, the storage and disposal of hazardous materials, and the approval of projects affecting their territories, respectively.

Canada formally adopted UNDRIP without qualification in 2016. In 2021, Canada passed UNDA which requires Canada to take all measures necessary to make its laws consistent with UNDRIP and implement the UNDA Action Plan 2023-2028 to achieve the objectives of UNDRIP in Canada. Decision makers in Canada rely on UNDRIP as an interpretive tool and UNDRIP has been incorporated into Canada's domestic positive law with immediate legal effect.¹⁴ UNDRIP guides statutory interpretation and both the

¹² *United Nations Declaration on the Rights of Indigenous Peoples Act*, [SC 2021, c 14](#), preamble [*UNDRIPA*]; *Kebaowek*, *supra* note 1 at para 74; *United Nations Declaration on the Rights of Indigenous Peoples*, UNGAOR, 61st Sess, UN Doc [A/RES/61/295](#) (2007) GA Res 61/295 [*UNDRIP*], Article 43.

¹³ *Kebaowek*, *supra* note 1 at paras 96, 112.

¹⁴ See: *Kebaowek*; *Reference re An Act respecting First Nations, Inuit and Metis children, youth and families*, [2024 SCC 5](#) at para 15; *Gitxaala v British Columbia (Chief Gold Commissioner)*, [2025 BCCA 430](#) at paras 7, 132.

interpretation of Crown obligations owing to us and the nature of our rights and interests protected by section 35 of the *Constitution Act, 1982*.

Given the state of the law in Canada, properly discharging the duty to consult requires the Crown to seek our FPIC with respect to the proposed NSDF. Respect for the right to FPIC is essential to protecting Kebaowek's ability to exercise our governance and stewardship rights and responsibilities, and to ensure our cultural well-being and survival for current and future generations: it serves as a safeguard against adverse impacts on our rights, such as the right to freely determine our economic, social and cultural development, including to protect, conserve and use our natural resources, and to exercise control over our territory.¹⁵ As summarized by the UN Expert Mechanism:

FPIC means that Indigenous Peoples have the right to decide, through their own institutions and decision-making systems, whether and under what conditions a project affecting their rights, including to lands, territories, resources, and cultural integrity, or future may proceed.¹⁶

International human rights bodies stress that meaningful engagement requires states and businesses to meet international standards on the right to FPIC.¹⁷ Consent is only receivable for proposals that fulfil the three threshold criteria of being free, prior and informed,¹⁸ and it cannot be achieved if one of the components is missing.¹⁹ Advancing reconciliation and upholding the Honour of the Crown requires the CNSC to ensure our consultation process supports the advancement of Indigenous Peoples' right to FPIC as the primary duty bearer under UNDRIP.²⁰

UNDRIP further affirms the right of Indigenous Peoples to *full and effective* participation in matters than concern them,²¹ pursuant to Articles 18 and 19 which provide that we have the right to participate in decision-making matters through our own institutions and procedures, and which require states to obtain our consent before adopting legislative or administrative measures affecting us. Accordingly, implementing the UNDRIP FPIC standard requires a robust consultation process as well as a right to participate meaningfully in state and business decision-making.²²

¹⁵ [UNHRC 2026](#), *supra* note 7 at para 13; see [UNGA 2018](#), *supra* note 7 at para 14 (“FPIC is a manifestation of [Indigenous Peoples’] right to self-determine their political, social, economic and cultural priorities.”); See also [UNHRC 2026](#), *supra* note 7 at para 12; and “Rights of indigenous peoples”, *Report of the Special Rapporteur on the rights of indigenous peoples*, UNGAOR, 45th Sess, UN Doc [A/HRC/45/34](#) at para 71; *Quilombola Communities of Alcântara v Brazil*, [Inter-Am Ct HR \(Ser C\) No 548](#), para 172.

¹⁶ [UNHRC 2026](#), *supra* note 7 at para I; [UNGA 2018](#), *supra* note 7 at para 14, (“The UN Working Group on the issue of human rights and transnational corporations and other business enterprises (UN Working Group) elaborates that FPIC ‘constitutes three interrelated and cumulative rights of indigenous peoples: the right to be consulted, the right to participate, and the right to their lands, territories, and resources’.”)

¹⁷ [UNHRC 2026](#), *supra* note 7 at para 26.

¹⁸ [UNGA 2018](#), *supra* note 7 at para 24.

¹⁹ [UNGA 2018](#), *supra* note 7 at para 14.

²⁰ *Kebaowek v CNL*, [2025 FC 319](#) at paras 10, 77, 81, 95, 136, 139, 221; *Gitxaala v British Columbia*, [2025 BCCA 430](#) at paras 158-163, 195-197; note that the Long-Term Relationship Agreement between Kebaowek and the CNSC explicitly requires the CNSC to respect the spirit and provisions of *UNDRIP*.

²¹ *Kebaowek*, *supra* note 1 at para 74; see also *Kichwa Indigenous People of Sarayaku v Ecuador* (2012), [Inter-Am Ct HR \(Ser C\) No 245 \[Kichwa\]](#) at para 177; *Case of the Saramaka People v Suriname* (2007), [Inter-Am Ct HR \(Ser C\) No 172 \[Saramaka People\]](#); *Maya Indigenous Communities of the Toledo District v Belize* (2004), [Inter-Am Comm HR, No 40/04, Case 12.053 \[Maya\]](#) at para 142.

²² *UNDRIP*, *supra* note 12, Arts 18, 19; [UNGA 2018](#), *supra* note 7 at paras 15-19.

The right to provide or withhold FPIC under Articles 29(2) and 32(2), and the corollary right to participate state in decision-making under Articles 18 and 19, are key to realizing all other substantive rights protected by UNDRIP. For example, Indigenous Peoples cannot protect the integrity of their cultural sites under Article 12 or conserve the productive capacity of their lands and resources under Article 29(1) without having a meaningful say over projects in their territories. In this way, FPIC is an “essential safeguard to guarantee the protection and respect of Indigenous Peoples’ rights, and to build trust between states, businesses, and rightsholders.”²³

The rights affirmed in UNDRIP extend beyond the site-specific or individual rights to hunt, fish, trap and gather, and include Indigenous Peoples’ broader governance rights to manage lands, territories, and resources. The Government of Canada recognizes that Indigenous Nations possess the right to govern and manage their lands, territories, and resources,²⁴ and that these governance rights may be adversely impact by industrial development projects.²⁵ Canada further recognizes that, “[p]roject-related decisions by a proponent or governments [...] that do not acknowledge or seek to incorporate Indigenous customs, laws, and practices may affected stewardship and nationhood. They may also contravene Indigenous laws and jurisdiction.”²⁶

The rights described above are engaged by the renewed consultation process and the proposed NSDF project. The intention of our FPIC process under our own Law is to assess the potential impacts of the NSDF to all our rights, inclusive of those recognized under UNDRIP and section 35, as well as Kebaowek’s inherent rights and responsibilities under Algonquin *Ona’ken’age’win*.²⁷ Protocols and assessment which integrate the worldviews and knowledge systems of Indigenous Peoples, and which identify the full spectrum of human and environmental rights, advance the UNDRIP FPIC standard.²⁸ In this regard, the Federal Court directed CNL and CNSC to implement the UNDRIP FPIC standard in a robust manner by adapting its processes to address Indigenous laws, knowledge, and processes, and engaging deep level of consultation and negotiations geared toward a mutually accepted arrangement.²⁹

THE REQUIREMENTS OF THE UNDRIP FPIC STANDARD ARE NOT BEING MET

The resumed consultation process has, so far, failed to meet the UNDRIP FPIC standard. The Crown has not engaged honourably nor in good faith. The below subsections discuss FPIC standards and evaluate whether the resumed consultation process to-date has met each of these standards. The issues detailed below with respect to the resumed consultation processes are illustrative and by no means exhaustive. Fundamentally, when we were forced to suspend our process on August 24, 2026, we could no longer make an informed consent decision and could not complete the implementation of our Law, as required under the UNDRIP FPIC standard.

²³ [UNHRC 2026](#), *supra* note 7 at paras 7, 12.

²⁴ Minister of Justice and Attorney General of Canada, “Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples” (2018) [Principles] online <<https://www.justice.gc.ca/eng/csj-sjc/principles.pdf>> at pages 5-6, 9, 12, 15.

²⁵ Impact Assessment Agency of Canada, “Assessment of Potential Impacts on the Rights of Indigenous Peoples” (updated 2026) [Assessment] online <<https://www.canada.ca/content/dam/iaac-acei/documents/policy-guidance/practitioners-guide/guidance-assessment-potential-impacts-rights-indigenous-peoples.pdf>> at pages 30-32.

²⁶ [Assessment](#), *supra* note 25 at page 30; [Kebaowek](#), *supra* note 1 at para 111 (The Federal Court likewise recognized the importance of consulting with Indigenous peoples in a manner that respects their interrelationships with their traditional lands and resources and their generational knowledge with respect to the conservation and protection of natural areas).

²⁷ Kebaowek Assessment Law, *supra* note 5 at Section 1.1(aa).

²⁸ [UNHRC 2026](#), *supra* note 7 at para 40.

²⁹ [Kebaowek](#), *supra* note 1 at para 130.

I. “Free”

Under Kebaowek’s Rights and Responsibilities Assessment Law, section 1.1(u)(i) defines “free” as “without coercion, intimidation, manipulation, or undue pressure, including with respect to the imposition of external timelines.”

Respect for Indigenous governance. Both CNSC and CNL must respect our processes and laws in order to meet the requirement of “free.” The imposition on us of an external process, without meaningful modification and adaptation, does not comply with this requirement. The UN Expert Mechanism emphasizes that FPIC requires respect for Indigenous knowledge and collective decision-making processes, laws, and institutions, and cannot be reduced to an externally defined process.³⁰ Indigenous Peoples should be able to guide the process and direct the course of consultation, including determining what timelines need to be followed, what information they require, how internal evaluation and deliberation takes place, and how decisions are made, including through the use of their own protocols.³¹ The relationship between the parties must include trust and good faith, and cannot include suspicion, accusation, or threats, or prejudiced views towards Indigenous Peoples.³²

Adequate funding & independent capacity. Adequate funding and independent capacity are a prerequisite to realizing FPIC. Article 4 of UNDRIP recognizes the right of Indigenous Peoples to self-government, as well as ways and means for financing their autonomous functions. This right to financing extends to FPIC processes: as made clear by the UN Expert Mechanism, access to financial assistance supports the exercise of autonomous decision-making processes.³³ The UN Expert Mechanism further confirms that sufficient funding must be available for Indigenous Peoples’ own meetings and legal, technical, and environmental advice in a way that guarantees independence from the project proponent.³⁴ State and businesses should not use funding to control or exert undue influence over Indigenous Peoples’ FPIC processes.³⁵ The need for adequate funding and capacity support, under Canadian colonial law, has been outlined in our various communications and correspondence to both the CNSC and CNL.³⁶

Time. There must be adequate time for Indigenous Peoples to absorb, understand and analyse information and to undertake their own decision-making processes.³⁷ The United Nations Expert Mechanism is clear that states and businesses should respect the time needed for Indigenous Peoples’ internal deliberations and should not impose deadlines which override Indigenous Peoples’ decision-making timeframes or otherwise interfere their processes.³⁸ Inordinate delays on the part of the Crown and proponent take away our ability to participate in this process freely, especially given the Court-imposed deadline of September 30, 2026.

³⁰ [UNHRC 2026](#), *supra* note 7 at paras 16-17.

³¹ [UNHRC 2026](#), *supra* note 7 at paras 20(d), II.A.

³² [UNHRC 2026](#), *supra* note 7 at para II.C.

³³ [UNHRC 2026](#), *supra* note 7 at paras 18-20.

³⁴ [UNHRC 2026](#), *supra* note 7 at paras 18-20,40, para 59(f), pages 17, 19.

³⁵ [UNHRC 2026](#), *supra* note 7 at para 59(f).

³⁶ See, for example, Kebaowek letters to Danielle Waldman (CNL) dated September 29, 2025, to Colin Moses (CNSC) dated December 8, 2025, to Nhan Tran (CNSC) dated August 19, 2026, to Mitch McKay (CNL) and Adam Levine (CNSC) dated September 24, 2026 (sent on September 25, 2026).

³⁷ [UNHRC 2026](#), *supra* note 7 at paras III.A.6-7, page 20.

³⁸ [UNHRC 2026](#), *supra* note 7 at para 6.

Assessment of “free” in the resumed consultation process

Decision-making and Indigenous laws, knowledge, and processes. The resumed consultation process has not been meaningfully adapted to address Indigenous laws, knowledge, and processes, or to recognize Kebaowek’s authority as a decision maker. The lack of modification or meaningful adaptation of process has taken away our ability to freely reach a consent decision. Since the outset of the process, Kebaowek has repeatedly requested that CNSC staff and the Commission Registry explore ways to meaningfully adapt its processes under the *Canadian Nuclear Safety Act*, pursuant to the Federal Court’s direction, including through the establishment of Kebaowek-led program or Kebaowek advisory committee to provide the Commission with advice, or the appointment of Kebaowek members as temporary panelists—all of which would have helped integrate Indigenous law and knowledge into the resumed consultation process.³⁹ We also shared numerous examples with the Commission Registry⁴⁰ of how Crown regulators and decision-making bodies have advanced co-governance by making space for Indigenous knowledge and consensus-building prior to the Crown exercising its statutory powers.

The CNSC staff and CNL have also refused to meaningfully engage on our proposed bilateral process agreements and have not meaningfully adapted their processes in response to our Law, our rights, and our concerns. Both the CNSC and CNL have undermined Kebaowek’s ability to guide and direct the consultation process by refusing to negotiate bilateral agreements which would have set out a structured process for reaching a mutually acceptable arrangement on the NSDF project and which included clear requirements to consider and apply Indigenous law and knowledge. While the CNSC and CNL initially indicated a willingness to agree to a written, structured process in the winter and spring of 2026, the CNSC and CNL decided the agreements were no longer desirable or necessary in late summer 2026.⁴¹ The CNSC appears to have recently reversed this position and indicated a willingness to resume negotiations,⁴² but the resulting multi-week delay late in the process and forced suspension has left this work unfinished and undermined Kebaowek’s trust. The CNSC staff and Commission Registry have refused to work with us to consider meaningful and real options to adapt their processes and refused to engage with Kebaowek in substantive discussions regarding shared decision-making entirely.⁴³ We are therefore left with no meaningful or robust mechanisms to reach mutual agreement on the process.

CNL, for its part, denied Kebaowek with site access to conduct independent monitoring on the ongoing presence of our kinship relations at the Chalk River site, including wolves and wetland birds.⁴⁴ In its response to Kebaowek’s request, CNL asserted that it did not consider Kebaowek’s studies to be warranted.⁴⁵ These denials undermined Kebaowek’s governance authority over our Territory, thwarted our ability to exercise our stewardship responsibilities, and prevented us from conducting our own

³⁹ See, for example, letter from Kebaowek to CNSC staff dated October 24, 2025; correspondence from Kebaowek to Commission Registrar, “Models of Collaborative Decision-Making” dated February 9, 2026; letter from Kebaowek to Commission Registrar dated March 2, 2026; letter from Kebaowek to Commission Registrar dated August 18, 2026.

⁴⁰ Correspondence from Kebaowek to Commission Registrar, “Models of Collaborative Decision-Making” dated February 9, 2026.

⁴¹ Letter from CNL to Kebaowek dated August 21, 2026; email from CNSC legal counsel to Kebaowek legal counsel dated July 31, 2026.

⁴² Email from CNSC legal counsel to Kebaowek dated September 14, 2026.

⁴³ Letters from Commission Registrar to Kebaowek dated January 8, 2026, and September 16, 2026; Kebaowek letter to the CNSC and CNL suspending the process dated September 24, 2026 (sent on September 25, 2026).

⁴⁴ Letter from CNL to Kebaowek dated July 27, 2026.

⁴⁵ Letter from CNL to Kebaowek dated July 27, 2026.

evaluation about the proposed NSDF's potential risks and impacts to species with cultural and spiritual significance under *Ona'ken'age'win* and the Rights and Responsibilities Assessment Law.

Both the CNSC and CNL have been inflexible in adjusting or adapting the scale and scope of the issues we want to discuss and have limited our ability to participate freely from the outset. For example, both have narrowly scoped the issues under consideration and available for discussion. Both parties have expressed comments which suggest that they view the scope of the resumed consultation process as applying strictly to the storage and disposal of hazardous radioactive in the NSDF, as opposed to examining the full spectrum of environmental, social, cultural, and human rights impacts as well as cumulative effects.⁴⁶ Both the CNSC and CNL have also refused to engage on issues relating to NSDF operation, preferring to focus on construction and have limited themselves to discussing issues within the narrow scope of the project description, despite both Canadian and Kebaowek's own Law requiring a more holistic evaluation of the potential projects and its impacts on Kebaowek's rights.⁴⁷

Issues of critical concern to Kebaowek, including impacts to species at risk and other non-human relatives, the forest management plan, cumulative effects, and the transportation and storage of low-level, intermediate, and high-level waste at the Chalk River site have been treated as secondary or outside the scope of the implementation of the Federal Court's decision, resulting in key issues to Kebaowek not being meaningfully addressed. For some issues, the CNSC and CNL have outright refused to engage or acknowledge the connection (see, for example, for months we attempt to discuss species at risk as part of this process, yet were either stonewalled, or left waiting for meaningful responses and meetings to discuss).

Ona'kne'age'win tells us that we must consider the effects of a project on all life forms and give an opportunity for the lands, waters, the four-legged, winged, crawlers, and swimmers to tell their stories. In accordance with our Algonquin Anishinabeg laws, we must assess the proposed NSDF holistically, which includes considering the cumulative effects of the project on all our relations. CNL and the CNSC's narrow scoping of resumed consultation process artificially constrains our renewed consultation process and fundamentally fails to consider and apply Indigenous law and knowledge, including the legal principle "Respect for All Relations," "Water is Life," "Preserving KFN Way of Life" and the "Seven generations perspective" contained in Kebaowek's Law. *Ona'ken'age'win* requires that Kebaowek evaluate the NSDF in a holistic matter, and international standards support the integration of worldviews and knowledge systems of Indigenous Peoples.⁴⁸

The burden to be flexible and to adapt has fallen disproportionately on Kebaowek. To be clear, this is a significant amount of work to be shouldered by Kebaowek in an incredibly condensed timeframe. We have repeatedly been willing to shift and adapt our processes, such as adjusting the steps of our Law to fit within the Court's imposed deadline. We have spent countless hours learning not only about the NSDF, but also about radionuclides, nuclear science, incredibly complex regulatory and licensing processes, and

⁴⁶ See, for example, CNL and CNSC responses to Kebaowek First Nation (KFN) Questions to Canadian Nuclear Laboratories (CNL) and the Canadian Nuclear Safety Commission (CNSC) regarding the Chalk River site and the proposed Near-Surface Disposal Facility (NSDF) dated August 14, 2026.

⁴⁷ CNL and CNSC responses to Kebaowek First Nation (KFN) Questions to Canadian Nuclear Laboratories (CNL) and the Canadian Nuclear Safety Commission (CNSC) regarding the Chalk River site and the proposed Near-Surface Disposal Facility (NSDF) dated August 14, 2026.

⁴⁸ [UNHRC 2026](#), *supra* note 7 at paras 40, 59(b), 4.

international legal principles. We did not ask for this project, but we have been willing to continually engage, and we have taken this process very seriously. The CNSC and CNL have not demonstrated reciprocity in their efforts or willingness to learn about Kebaowek's legal principles, knowledge, and history.

Adequate funding & independent capacity. The absence of adequate funding to complete the FPIC process for the NSDF, and the timing of the communication to us by CNL on funding (August 21) has directly impeded Kebaowek's ability to exercise the right to self-determination, and ultimately, to exercise our autonomous decision-making authority in relation to the project. As noted in all our correspondence after August 21, we were forced to suspend our process and could not complete our Rights and Responsibilities Assessment Report, nor our FPIC Decision Statement as a result of the funding issue.

We note that, prior to the recent communications from CNL and CNSC, the earlier stages of the resumed consultation process were adequately resourced. Critically, however, this funding was abruptly withheld at the most time and resource-intensive phase of the FPIC process and Kebaowek's assessment.⁴⁹ We note here that the total budget for the construction of the NSDF is expected to be \$475 million, which does not include the costs of operations, monitoring, or post-closure. A project of this scale with a budget of this magnitude, which is intended for the permanent disposal of nuclear waste on our territory, *must* include appropriate resourcing for consultation.

Further, recent funding offers from CNL have included unduly restrictive terms, such as a willingness to fund meetings with committee members but not with Kebaowek's legal or technical advisors.⁵⁰ Kebaowek is entitled to independent advice and support, particularly in a context characterized by power imbalances and mistrust.⁵¹

Timelines. The condensed timelines in the resumed consultation process have also reduced Kebaowek's ability to meaningfully consider the project and its impacts and to conduct our internal deliberations. Specifically, we have not been able to complete our independent community, technical, and legal reviews which would have fulsomely assessed risks to our rights and culturally significant and sacred areas, and discussed conditions for consent or reasons for refusal.⁵²

Delays in the process, many of which were caused by CNL and CNSC, have also hampered our ability to freely consent and properly evaluate the project, especially given the Court-imposed deadline. To date, there have been serious delays in responses to our information requests, questions (such as our Iterative Running List of questions),⁵³ requests to discuss both the term sheets and bilateral process agreements, initial meeting post-Federal Court decision, requests for a meeting with the Commission Registry, requests for and clarity on funding and workplans, position on substantive letters, etc. The consultation

⁴⁹ See our letter of September 24, 2026 (sent on September 25, 2026) to Mitch McKay (CNL) and Adam Levine (CNSC) on this point.

⁵⁰ Letter from CNL to KFN dated August 21, 2026; Letter from CNL to KFN dated September 9, 2026.

⁵¹ Again, see our letter of September 24, 2026 (sent on September 25, 2026) for more on this point.

⁵² See, Rights & Responsibilities Assessment Law, in particular sections 16, 18 and 19.

⁵³ For example, we only received information *yesterday*, September 29, 2026, from the CNSC responding to some of our questions. This means we have not been able to review and respond to these responses prior to issuing this statement.

record is full of these delays—delays from well-resourced parties with dedicated teams to conduct this work.

In March 2026, for example, Kebaowek requested a meeting with the Commission Registry “as soon as possible” to discuss the development of a decision-making process.⁵⁴ When the Commission responded in April, it wrote that it considered a meeting premature.⁵⁵ The Commission Registry declined to agree to arranging a meeting with Kebaowek until September 16, 2026—six-and-a-half months after our initial formal request and only two weeks before the Court-imposed deadline of September 30th.

Finally, the CNSC and CNL also actively opposed Kebaowek’s request to the CNSC Registry that the hearing by the Commission take place in Spring 2026, in order to respect Algonquin seasonal cycles in accordance with *Ona’ken’agewin*.⁵⁶ Instead, the CNSC and CNL wrote letters to the Commission requesting a hearing in January or February 2026, based on their own desired consultation timelines and process that was not agreed to by Kebaowek.⁵⁷ Neither party provided any rationale for why Kebaowek’s reasonable request, based in Indigenous knowledge and laws, was not considered. In a letter sent to the Commission Registry from the Assessment Committee on May 27, 2026,⁵⁸ we expressed that we felt like we were being rushed by the CNSC and CNL and emphasized that the timeframes must allow Kebaowek to make an informed decision and must be in accordance with our own laws and customs. We note this is not the first time that the CNSC and CNL have refused Kebaowek’s requests for additional time to meaningfully complete our work. The CNSC and CNL had a very similar response to Kebaowek’s request for additional time during the procedural direction in 2023. We were optimistic that this process would be different, especially given the Federal Court’s direction to carry out a process aimed at implementing the FPIC standard in a robust manner. Unfortunately, nothing has fundamentally changed.

The consultation process has felt very scripted. It is what I call a “cookie cutter project.” It was already designed without our input before being presented to us. – Assessment Committee Member

II. “Prior”

Under Kebaowek’s Rights and Responsibilities’ Assessment Law, section 1.1(u)(ii), “Prior” means “that consent is sought sufficiently in advance of any decision, action, authorization, or commencement of activities, and that respect is shown to time requirements of Indigenous consultation and consensus processes.”

The UN Working Group on the issue of human rights and transnational corporations and other business enterprises explains that for a process to be “prior”, it must precede *any other* decisions allowing a proposal to proceed and must begin early in the formation of the proposal,⁵⁹ before permits or licences are

⁵⁴ Letter from Kebaowek to Commission Registry dated March 2, 2026.

⁵⁵ Letter from Commission Registry to Kebaowek dated April 23, 2026.

⁵⁶ KFN letter Chief Haymond to CNSC registry dated May 15, 2026.

⁵⁷ CNL letter dated May 15, 2026; CNSC letter dated May 15, 2026.

⁵⁸ KFN Assessment Committee Letter to Commission Registry, May 27, 2026.

⁵⁹ [UNGA 2018](#), *supra* note 7 at para 21; see also [Kichwa](#), *supra* note 21 at para 177; [Saramaka People](#), *supra* note 21.

granted, before contracts are signed, land entered, or any business activities commenced.⁶⁰ As made clear by the UN Working Group, consultation and participation must occur at the proposal's conceptualization and design phases as opposed to at a late stage in a project's development, "when crucial details have already been decided."⁶¹ Further, consultations should be geared toward mutually acceptability arrangements, rather than serving as a mechanism to simply provide Indigenous Peoples with information about decisions already made or in the making, without the ability to genuinely influence outcomes.⁶²

Assessment of "Prior" in the Resumed Consultation Process

The "prior" part of the FPIC standard for the resumed consultation process has been seriously undermined by the approvals made before this process began, and the CNSC and CNL's failure to meaningfully engage with Kebaowek's concerns or consider how they might result in changes to these approvals or to the project more broadly.

To-date, the project as proposed—including its location and the type of disposal facility—has been treated as a foregone conclusion by CNL and CNSC on the basis that the Environmental Assessment ("EA") and licensing decision stands. To illustrate, at a meeting between the Assessment Committee and the CNSC on July 20, 2026, we reiterated our concerns about the proximity of the proposed NSDF to the *Kichi Sibi* (Ottawa River). In response to this concern, CNSC staff stated: it does not dictate project location; the current location is safe based on CNSC's own assessment; and the CNSC is not willing to complete a reassessment of the current location or examine alternative locations. We were left with the impression that the CNSC is not interested in genuinely engaging with Kebaowek on ways to address our concerns.

As another example, the Forest Management Plan for the proposed NSDF has been characterized as an important mitigation measure identified in the EA. The plan was developed by CNL and approved by the CNSC before the resumed consultation process began and without Kebaowek's consent.⁶³ Both the CNSC and CNL are aware of Kebaowek's significant and outstanding concerns with the Forest Management Plan. We have been told repeatedly by the CNSC that the plan is a living document and could be changed to incorporate Indigenous laws and knowledge.⁶⁴ When the Assessment Committee met with CNL to discuss the plan, however, we were left with the impression based on comments from the plan's author that our concerns would be deferred to the plan's scheduled update in 2033.⁶⁵

Neither party has appeared willing to reconsider these elements in the renewed consultation process, suggesting that the outcomes are predetermined and not open to change. Mitigation and accommodation measures proposed by CNL and the CNSC to-date have focused on Kebaowek's involvement at the post-

⁶⁰ [UNHRC 2026](#), *supra* note 7 at para I.A.2.

⁶¹ [UNGA 2018](#), *supra* note 7 at para 21(a).

⁶² [UNGA 2018](#), *supra* note 7 at para 16; see also, "Country engagement mission to Norway", *Technical Advisory Note of the Expert Mechanism on the Rights of Indigenous Peoples*, OHCHR, (March 18, 2025) online:

<<https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/emrip/countryengagement/EMRIP-Norway-country-engagement-Advisory-note-19-03-2025.pdf>>.

⁶³ See Kebaowek's September 28, 2026 letter to Mitch McKay (CNL) with respect to the Forest Management Plan (dated erroneously September 22, 2026).

⁶⁴ See, for example, CNSC Response to KFN Questions pertaining to the Forest Management Plan dated May 15, 2026; letter from Islam Wasif of the CNSC to George Dolinar of CNL dated August 6, 2024.

⁶⁵ CNL-KFN, Technical Workshop (July 14, 2026); Our further concerns relating to the Forest Management Plan are detailed in our letter of September 28, 2026 (dated erroneously September 22, 2026) to Mitch McKay (CNL).

approval and construction phase of the project,⁶⁶ foreclosing our ability to have any meaningful say about the proposed NSDF's location, design, or other substantive project elements.

Finally, during the Assessment Committee's visits to the Chalk River site and in subsequent correspondence to CNL,⁶⁷ we expressed concern about the presence of a fence that was constructed around the perimeter of the proposed NSDF to keep our animal relatives from accessing their homes, including bears, wolves, deer, moose, Blanding's turtles and other animals. We noted that that the proposed site of the NSDF is traditionally a bear nursery site and expressed concern that bears—animals of great spiritual and cultural significance to our people—are being prevented from accessing their critical habitat. This fence was installed as part of CNL's pre-construction activities, in violation of Kebaowek's consent. We submitted a formal request that the fence be removed to ensure our animal relatives can access their homes and maintain their health, well-being and survival, until such time as Kebaowek issues its FPIC decision.⁶⁸ CNL refused our request, citing its previous authorizations under the existing operating license.⁶⁹

The above concerns mean that consent is not being sought prior to project approval and this condition of FPIC cannot be meaningfully met.

The site wasn't chosen by us, by any of KFN, on unceded Algonquin territory. They just came and presented a program, and they said this is where it is going to go. – Assessment Committee Member

III. “Informed”

Under Kebaowek's Rights and Responsibilities' Assessment Law, section 1.1(u)(iii), “Informed” means “the information provided for a Project is complete, accessible, timely, and culturally appropriate.”

The UN human rights bodies explain the information made available should be both sufficiently quantitative and qualitative,⁷⁰ as well as complete, relevant, accurate, clear and in accessible formats that incorporate Indigenous knowledge to enable meaningful participation.⁷¹ According to the Inter-American Commission for Human Rights, a process of fully informed consent “requires, at a minimum, that all members of the community are fully and accurately informed of the nature and consequences of the process.”⁷² International jurisprudence confirms that states bear the burden of ensuring that affected Indigenous Peoples are aware of the potential benefits and risks of a proposed development so that it is

⁶⁶Kebaowek Assessment Committee meeting with CNSC, April 20, 2026; Kebaowek Assessment Committee site visit to Chalk River site, May 25, 2026.

⁶⁷ Kebaowek Assessment Committee site visit to Chalk River site, May 25, 2026; Letter from Assessment Committee to CNL dated July 17, 2026.

⁶⁸ Letter from Assessment Committee to CNL, July 15, 2026.

⁶⁹ Letter from CNL to Kebaowek dated August 17, 2026.

⁷⁰ [UNGA 2018](#), *supra* note 7 at para 22(a).

⁷¹ [UNHRC 2026](#), *supra* note 7 at paras 16, I.A.3, 4(c) (The substantive content of the information should include: the nature, size, pace, reversibility, and scope of any proposed project; expected impacts on land, water, forests, resources, livelihoods, sacred sites, health, and culture; the kind of compensation or benefit-sharing schemes involved; and all the potential harm and impacts that could result from the proposed activity, including cumulative effects)

⁷² [Maya](#), *supra* note 21 at para 142.

“accepted knowingly and voluntarily.”⁷³ Indigenous Peoples and their independent experts are further entitled to verify impact assessments.⁷⁴ The severity of potential impacts must be evaluated from the perspective of Indigenous Peoples concerned, and Indigenous knowledge should be treated as complimentary to scientific data in identifying, assessing, and mitigating impacts.⁷⁵

Assessment of “informed” in the resumed consultation process

Kebaowek’s ability to access information about the proposed NSDF in a timely and transparent manner has been an ongoing, major issue throughout the resumed consultation process. The implementation of our Law and the steps we have taken from January 2026 until suspension of our process on August 24, 2026, have been primarily focused on informing ourselves so that we could make a determination on whether to consent or not to the project, and if so, what our conditions of consent would be. This is and was a monumental task. Because of the suspension of the process, and because of the CNSC and CNL’s actions, including issues in the consultation process itself detailed here and elsewhere, we were not able to fully inform ourselves in order to make a decision under our Law.

Since at least August 2025, we have been requesting qualitative and quantitative data necessary to enable our community to independently evaluate the proposed NSDF’s potential impacts on land, water, forests, resources, sacred sites, and culture, including, for example, data relating to Blanding’s turtle, eastern wolves, and black bears, which remain outstanding.⁷⁶ To-date, the CNSC has not assisted us in obtaining access to this information.

On May 12, 2026, we also shared a list of 85 questions under the five identified areas of concern (Project Location, Type of Disposal Facility, Waste Characterization, Cumulative Effects, and Trust) with CNL and CNSC. This list of questions was characterized as a living document that would be updated through the life of the assessment and informed by ongoing meetings between the Committee, the CNSC, and CNL. Receiving accessible information about the NSDF that was responsive to these questions was critical to our understanding of the project and assessment of impacts.

Kebaowek asked that CNL and the CNSC provide responses to these questions ahead of scheduled technical workshops and meetings where these topics would be discussed, so that the Committee members could enter those sessions with the information required to participate. CNL and CNSC provided responses to the first three categories of questions on June 24, 2026. Responses to the final two categories of questions were not provided until August 14, 2026. Taking three months to respond to these questions in such a condensed process is not appropriate and has meant that Kebaowek has not had sufficient information to inform itself about many critical project elements prior to the Court-imposed deadline of September 30, 2026. The CNSC only provided responses to questions from the Assessment Committee made at a meeting with the CNSC on August 10, 2026, (and provided in writing on August 19, 2026), on September 29, 2026, just one day before the Court-imposed deadline.⁷⁷ Even if our process

⁷³ *Kichwa*, *supra* note 21 at para 177; *Saramaka People*, *supra* note 21 at para 133.

⁷⁴ *UNHRC 2026*, *supra* note 7 at para 4(d).

⁷⁵ *UNHRC 2026*, *supra* note 7 at para 41.

⁷⁶ Kacie McLaren, Environmental Technician, Kebaowek to Rachel Chennette, “KFN Information Request #5” (July 10, 2026).

⁷⁷ Kirsten Sellars, CNSC, to Kacie McLaren, Environmental Technician, Kebaowek, “Re: Follow-up from August 10 KFN Assessment Committee meeting with CNSC and plan for future meetings” (September 29, 2026).

was not suspended, this has left us with no time to meaningful review, assess, and respond to these answers to our questions in advance of the Court-imposed deadline.

Kebaowek has significant concerns about the information we have received from the CNSC and CNL, both in response to questions we have shared in writing and verbally during meetings and workshops. The Assessment Committee has asked multiple times, for example, whether the project would be safer if it did not contain any long-lived radionuclides.⁷⁸ We have never been provided a clear or direct answer. We also have many outstanding questions about the NSDF's ability to withstand major climate events and disasters (especially during the 50-year period before the mound has a permanent cover), given the notable and concerning increase in these types of events across our Territory in recent years.⁷⁹

The Committee has asked whether CNL's safety-related studies will be updated to address these changes, new information, and to generally address Kebaowek's concerns. This request remains outstanding. Due to the limited examples that exist of this type of facility elsewhere, CNL and the CNSC shared that much of this work had been based on models, which Kebaowek has never seen. Many of the experts and external advisor hired by Kebaowek to support this process have also had concerns about the accuracy and reliability of the information provided by CNL and the CNSC. The above examples are provided as illustration only, to emphasize that we have concerns not only with the lack of information shared and the speed of response, but also about the information that has been provided. Overall, CNL and the CNSC have never been forthcoming about the potential unknowns and uncertainties related to this project. These uncertainties and potential risks are essential for our assessment of this project in accordance with our Law.

Further, during meetings with the CNL and the CNSC, the Assessment Committee's concerns were repeatedly trivialized by the CNSC and CNL, such as by comparing the proposed NSDF to a shed for garbage and pointing to baseline levels or radioactivity in everyday items such as bananas,⁸⁰ and the CNSC and CNL failed to answer questions in an appropriate, accessible, and respectful way.

Kebaowek's leadership and the Assessment Committee can only provide informed consent to the proposed NSDF once all the community's questions are answered completely and clearly, and the project's risks and impacts are fully understood and deemed acceptable under *Ona'ken'age'win*.

We are not getting the answers we need about solutions. There are so many outstanding questions that [CNL and CNSC] are not answering. – Assessment Committee Member

It feels like they try to use a lot of technical vocabulary to confuse us, but they cannot answer the most basic questions. – Assessment Committee Member

⁷⁸ Kebaowek Assessment Committee Meeting with CNSC, August 10, 2026.

⁷⁹ This concern was raised on multiple occasions, including the February 12, 2026 Assessment Committee meeting with CNL, in Kebaowek's Iterative List of Questions dated May 12, 2026, and the August 10, 2026 Assessment Committee meeting with CNSC.

⁸⁰ Kebaowek Assessment Committee Meeting with CNL, January 29, 2026.

IV. “Consent”

Under Kebaowek’s Rights and Responsibilities’ Assessment Law, section 1.1(u)(iv), “Consent” means “a collective, explicit agreement respecting a Designated Project that can be given, withheld, amended, or withdrawn by Kebaowek.”⁸¹

The Law establishes that FPIC is not a one-time event but a continuous process throughout the implementation of a Project: Kebaowek may amend or withdraw its FPIC where a proponent fails to diligently implement FPIC conditions, a fundamental change is proposed, or new information arises with respect to the ongoing adverse effects of a project.⁸²

The UN Working Group explains that consent is a collective and independent decision made through Indigenous Peoples’ own institutions or mechanisms.⁸³ FPIC is not a ‘yes’ “to a predetermined decision,” it results from Indigenous Peoples’ own assessment of whether a proposal is in their best interests and that of future generations.⁸⁴ Further, FPIC is not a “freestanding device of legitimation,” it is not a one-off consultation or public hearing but an ongoing process that must continue through the full project lifecycle, ensuring that activities remain consistent with the conditions under which consent was granted.⁸⁵

Indigenous Peoples may withhold consent following an assessment and conclusion that a proposal is not in their best interests, or they may suspend FPIC processes and withhold consent temporarily because of deficiencies in the process, including non-compliance with the required standards for the consent to be free, prior and informed.⁸⁶ Indigenous Peoples may require more time, information, and good faith engagement before granting consent.⁸⁷

The UN Expert Mechanism further emphasizes that the right to self-determination require processes in which consent can be meaningfully granted or withheld: Indigenous Peoples must possess control over decisions affecting them and there must be mechanisms through which Indigenous Peoples’ may exercise decision-making authority in practice.⁸⁸ In other words, the right to consent is not simply about the right to be involved or to have their views heard, but to be involved meaningfully and effectively as evinced by the ability to influence substantive outcomes, including by making a different proposal.⁸⁹ The UN Expert Mechanism is clear that any limitations which override Indigenous Peoples’ right to consent or allow projects to proceed without their consent cannot be considered compatible with international human rights law and standards,⁹⁰ and that negotiations should cover what changes are required or whether the project should proceed at all.⁹¹

Consent requires attempting to reach agreement. As recognized in agreements across the country (many of which were included in our submissions to the CNSC Registry), the consent part of FPIC requires a

⁸¹ Kebaowek Assessment Law, *supra* note 5 at Section 1.1(u)(iv).

⁸² Kebaowek Assessment Law, *supra* note 5 at Section 20.

⁸³ [UNGA 2018](#), *supra* note 7 at paras 12-13.

⁸⁴ [UNGA 2018](#), *supra* note 7 at paras 24, 26.

⁸⁵ [UNGA 2018](#), *supra* note 7 at para 24; [UNHRC 2026](#), *supra* note 7 at para II.B.

⁸⁶ [UNGA 2018](#), *supra* note 7 at para 26(b).

⁸⁷ [UNHRC 2026](#), *supra* note 7 at para 9.

⁸⁸ [UNHRC 2026](#), *supra* note 7 at para 14.

⁸⁹ [UNGA 2018](#), *supra* note 7 at para 15.

⁹⁰ [UNHRC 2026](#), *supra* note 7 at paras 17, 58(p).

⁹¹ [UNHRC 2026](#), *supra* note 7 at para 8.

joint decision-making process. Our own laws also require this, and the Federal Court was clear that the Commission must make “reasonable efforts to alter their processes to build in aspects that respect Indigenous laws, knowledge, and processes.”⁹² The Government of Canada has expressly recognized collaborative decision-making as an important component of reconciliation: A nation-to-nation relationship includes “involving Indigenous peoples in the effective decision-making and governance of our shared home [and] ensuring, based on recognition of rights, the space for the operation of Indigenous jurisdictions and laws.”⁹³

Assessment of “consent” in the resumed consultation process

The CNSC and CNL appear to have treated the purpose of consultation as obtaining Kebaowek’s “yes” to the proposed NSDF, rather than working collaboratively to achieve consent and mutual agreement on the project, whether a yes or no.⁹⁴ The process was not meant to be matter of convincing us to sign off on the project: we expect meaningful, respectful dialogue, whereby our concerns and perspectives would not only heard, but thoughtfully considered and substantially addressed. We do not feel that the CNSC or CNL have engaged with Algonquin law and knowledge when responding to our concerns, or that they have meaningfully addressed our concerns, including by considering the possibility revisiting the proposal or by considering whether the project should proceed at all.

The CNSC’s own regulatory guidance indicates that accommodation may include adjusting a project, changing a proposed activity, or rejecting a project.⁹⁵ The duty to consult and the implementation of the FPIC standard is more than a mere “check box” exercise in which the parties exchange and discuss information: ⁹⁶ the Crown must substantially address First Nation’s concerns, including by testing and being prepared to amend policy proposals in light of the information received. ⁹⁷ Deep consultation requires dialogue which leads to a “demonstrably serious consideration of accommodation.”⁹⁸

It is our position that the consultation process undertaken to-date is tokenistic and we are concerned that it will be used to legitimize decisions already made. As noted, neither the CNSC or CNL appear willing to reconsider substantive elements of the project on the basis that the EA and licencing decisions remain in place, and have pursued a strategy of convincing us why the project as proposed and licenced should proceed without modification, suggesting the outcome is predetermined. Instead, the CNSC and CNL appear to be narrowly focused on mitigation and accommodation measures that involve Kebaowek after the project is constructed (such as monitoring programs), rather than ensuring that Kebaowek has a meaningful say about changes that may be required before project construction.⁹⁹ Some examples of meaningful mitigation and accommodation measures put forth by our community during the resumed consultation process included: not discharging contaminants into Perch Lake; not disposing of contaminated material whose radioactivity will outlive the 500-year life of the NSDF waste mound; full engagement with Kebaowek on species at risk concerns and the Forest Management Plan; and not

⁹² Kebaowek at para 140.

⁹³ [Principles](#), *supra* note 24 at [principle 4](#).

⁹⁴ CNSC letter dated September 24, 2026; CNL letter dated August 21, 2026.

⁹⁵ Canadian Nuclear Safety Commission, “REGDOC-3.2.2, Indigenous Engagement, Version 1.2” (February 16, 2022) online <<https://www.cnsccsn.gc.ca/eng/acts-and-regulations/regulatory-documents/published/html/regdoc3-2-2-v1-2/>> at Table 1.

⁹⁶ [Kebaowek](#), *supra* note 1 at paras [130-131](#).

⁹⁷ *Tsleil-Waututh Nation v Canada (Attorney General)*, [2018 FCA 153](#) [*Tsleil-Waututh*] at paras [496](#), [500-501](#).

⁹⁸ *Tsleil-Waututh*, *supra* note 97 at para [501](#).

⁹⁹ Meeting between KFN and CNSC; April 20, 2026; CNL site visit 1.

transporting waste from other territories and disposing of it in the NSDF until the legacy waste at the Chalk River site is properly dealt with.¹⁰⁰ Further, we have noted that the proper permits under the federal *Species at Risk Act*, SC 2002, c 29 must be obtained for the project to proceed, however, Environment and Climate Change Canada, CNL, and the CNSC have all failed to consult or even meaningfully meet with us on this topic.

We still require complete, clear, and accessible information to properly evaluate the proposed NSDF's potential impacts to our rights and responsibilities, and to meaningfully discuss potential mitigation and accommodation measures that would address our concerns, including respect for our governance rights and stewardship responsibilities. Without being properly informed, we cannot engage in meaningful discussions on potential mitigation and accommodation measures, especially considering the highly technical nature of the project and the potential adverse impacts on our rights. The CNSC appears to hold an extremely narrow understanding of consultation as focused on mitigating and accommodating impacts to the site-specific rights to hunt, fish, trap, and gather, rather than being based on our nation-to-nation relationship.¹⁰¹

Neither the CNSC nor CNL have explicitly recognized Kebaowek's right to FPIC or committed to respecting Kebaowek's decision on the proposed NSDF.¹⁰² Agreement has not been reached on the proposed NSDF or the mitigation and accommodation measures that may be required to address identified impacts to Kebaowek's rights and responsibilities. Ultimately, consent to the project at this time is not possible as we do not have the required information and were not able to complete our own process under our Law.

CONCLUSION: KEBAOWEK IS WITHHOLDING CONSENT DUE TO AN INCOMPLETE PROCESS

We write this statement with immense disappointment. We are hurt by the actions of CNL and CNSC. The resumed consultation process has not upheld the honour of the Crown. CNL and CNSC have disrespected Kebaowek's time, effort, and the knowledge we have shared throughout this process. At the most fundamental level, CNL and CNSC have never treated Kebaowek as an equal partner and have never respected our inherent decision-making authority.

Trust is essential for a process like this one. There is a long history of nuclear work on Kebaowek's territory, including at Chalk River, that has taken place without our consent. This legacy means we are starting from a place of limited trust,¹⁰³ making relationship-building even more important. Kebaowek *must* trust that CNL and CNSC will prevent harm and appropriately manage risks for the full lifecycle of the proposed NSDF. We emphasize that the 500-year lifespan of the project is significantly longer than

¹⁰⁰ Meeting between KFN and CNSC, April 20, 2026; Letter from Kebaowek to CNL, September 28, 2026

¹⁰¹ Letter from Adam Levine, Director, Indigenous Consultation & Engagement Division, CNSC, to Justin Roy, Kebaowek Councillor, "NSDF Mitigation and Accommodations" (August 28, 2026).

¹⁰² Mitch McKay, Director, Indigenous Relations, CNL, to Justin Roy, Kebaowek Councillor, "RE: Proposed Process Agreement" (August 21, 2026); Anna Mazur, legal counsel, CNSC, to Justin Roy, Kebaowek Councillor, "KFN/CNSC Draft NSDF Consultation Process Bilateral Agreement" (July 31, 2026); Anna Mazur, legal counsel, CNSC, to Justin Roy, Kebaowek Councillor, "KFN/CNSC Draft NSDF Consultation Process Bilateral Agreement" (September 14, 2026) [Collectively, the "**Bilateral Process Agreement Letters**"].

¹⁰³ In a 2023 community survey, less than 10% of Kebaowek members said they trusted CNL to protect them from radiation at the Chalk River site (KFN 2023 Community Survey).

Canada has been a country. To have been put in a position where we have had to halt all work and are unable to complete our community-led FPIC process is an enormous breach of trust.

Because Kebaowek was forced to suspend the consultation process, as outlined in our letter to CNSC and CNL of September 24, 2026,¹⁰⁴ and because of the deficiencies in the consultation process to date, Kebaowek is forced to withhold our consent for the proposed NSDF at this time. We are simply not in a position to consent to the project at this time. Before doing so, each element of FPIC must be met.

Kebaowek developed the Rights and Responsibilities Assessment Law as a mechanism by which the community can exercise its decision-making authority and uphold its stewardship responsibilities to Kebaowek territory under *Ona'ken'age'win*. Kebaowek has a sacred duty to ensure that all projects with the potential to affect our territory are acceptable under *Ona'ken'age'win* and that they respect Kebaowek's rights and responsibilities.

The resumed consultation process has not been adapted to address Indigenous laws and knowledge, or to meaningfully involve Kebaowek at both the project design level and the state decision-making level. Issues of critical importance to Kebaowek's cultural well-being and survival appear to have been scoped out of the resumed consultation process, and Kebaowek is being denied the opportunity to exercise our decision-making authority in accordance with our own laws and priorities. Impacts to our rights have been ignored.

In light of Kebaowek's decision to withhold consent and to pause consultation in light of insufficient capacity and resources, CNSC and CNL must not proceed with the project at this time as they have not fulfilled the Court's direction nor has the duty to consult and accommodate under the FPIC standard been discharged. The CNSC must not use participation of Kebaowek to-date as support for state decisions where consent has not been achieved, as this does not uphold the objective of reconciliation or the Honour of the Crown.¹⁰⁵ Likewise, CNL has an independent responsibility to respect Kebaowek's right to FPIC irrespective of Canada's willingness to fulfill its own legal obligations.¹⁰⁶

Kebaowek expects that CNSC and CNL will provide the funds required to complete the remaining steps under its Rights and Responsibilities Assessment Law and the court-directed consultation process. Kebaowek has a right to conduct our own review of the proposed NSDF with our community, experts, and advisors, without state or business control, and to complete our own deliberations and decision-making processes. Kebaowek further expects the parties will resume consultation with the intention of substantially addressing its articulated concerns, including in relation to the project location, the disposal facility type, waste characterization, cumulative effects, and Crown and proponent trust and responsibility.¹⁰⁷ The CNSC and CNL must keep an open mind to the possibility that the project should

¹⁰⁴ Note this letter is dated September 24, 2026, but sent on September 25, 2026.

¹⁰⁵ [UNGA 2018](#), *supra* note 7 at para 22(c).

¹⁰⁶ [UNHRC 2026](#), *supra* note 7, *supra* note 7 at paras 33, 35, 38, 9 (Businesses are expected to respect the absence of FPIC and should not proceed with activities where consent is absent. Businesses should accept "no" as a valid outcome and not condition respect for FPIC decisions on state actions).

¹⁰⁷ [UNHRC 2026](#), *supra* note 7 at para 11 ("[T]he absence of consent reflects Indigenous Peoples' assessment of a specific proposal at a given moment and stage of engagement. It may signal the need for further good-faith engagement, including the possibility of revisiting the proposal based on modifications that address the concerns and priorities identified by the Indigenous Peoples concerned").

proceed in a different manner, or that it should not proceed at all if the UNDRIP FPIC standard is to be upheld.

On this National Day for Truth and Reconciliation, we are thinking about the Truth and Reconciliation Commission's 94 Calls to Action¹⁰⁸ and the federal Crown's Principles respecting the Government of Canada's relationship with Indigenous Peoples.¹⁰⁹ Canada was built on the extraction of resources from Indigenous territories, and the Chalk River site is no different. Without our consent, this site has been developed, profited from, and has become a generational dump—and now we are left dealing with the impacts. We are reflecting on what it means to have to issue this statement today. We emphasize Call to Action 92(i), which says:

92. We call upon the corporate sector in Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources. This would include, but not be limited to, the following:

i. Commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects.

We also highlight principle six of the Principles respecting the Government of Canada's relationship with Indigenous Peoples:

Meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources.

Kebaowek cannot, and will not, use community resources needed for housing, health, education, infrastructure, and other essential services to carry the costs of consultation on a nuclear waste project proposed by an external party. We are owed more than this.

Are they going to respect our decision? If we say no, are they going to respect that decision or are they going to go ahead and build? – Assessment Committee Member

¹⁰⁸ Truth and Reconciliation Commission of Canada, "94 Calls to Action" (June 2, 2015) online <<https://nctr.ca/about/truth-and-reconciliation-commission-of-canada-calls-to-action/>>.

¹⁰⁹ [Principles](#), *supra* note 24.