

# Legal Decision Making Framework for proposed New Nuclear at Wesleyville

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# Canadian Environmental Law Association (CELA)



*Photo: Kelly Mathews*

- Specialty legal aid clinic dedicated to environmental equity, justice, and health
- Founded in 1970, funded by Legal Aid Ontario since 1978
- CELA provides free legal services relating to environmental justice in Ontario, including representing qualifying low-income and vulnerable communities in the courts and before tribunals. CELA also provides free summary advice to the public and engages in legal education and law reform initiatives.



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# Canadian Environmental Law Foundation



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- Key initiatives include:
  - Canadian Environmental Law Archives
  - Annual fellowship for one aspiring environmental lawyer,
  - Access to Justice for Northern Communities Initiative.
- The Foundation also supports ongoing education and outreach efforts to promote public participation in environmental decision-making.

# Who is proposing new nuclear at Wesleyville

- Ontario Power Generation Inc wholly owned by the province of Ontario
- January 2025, Ontario asked OPG to “explore opportunities” for new nuclear at Wesleyville and to determine support in local communities and First Nations <https://news.ontario.ca/en/release/1005585/ontario-exploring-new-nuclear-energy-generation-in-port-hope>
- OPG maintains the site which had been planned for electrical generation decades ago but never proceeded; OPG posited it could support up to 10,000 MW of new generation



# What is Proposed

- “...construction of a new nuclear power plant in the Municipality of Port Hope, Ontario. As proposed, the project would provide up to 10,000 megawatts of new nuclear generating capacity and operate for at least 78 years. Several nuclear reactor technologies will be considered for the project.” (From the draft Cooperation Plan published April 7 2026)
- “Additionally, the construction and operation of a new facility for the storage and management of irradiated nuclear fuel or nuclear waste on an unlicensed site is also a designated project listed on the Physical Activities Regulations (under item 28 of the Schedule) under the IAA.” (From the OPG Initial Project Description)



# Who is deciding on whether to allow the new nuclear project

- Government of Canada (cabinet) will decide following an Impact Assessment (IA) conducted by an appointed panel, whether to grant approval to proceed (the matter was referred to an Independent Review Panel on April 2, 2026 but the members of that panel are not yet named)
- Canadian Nuclear Safety Commission (whose role is integrated with the impact assessment process), will decide whether to grant the first license in a phased process, the first being “a license to prepare a site”



# Who can participate and influence the decision

- Members of the public and Indigenous First Nations, municipalities impacted by the project, any person, those with expert knowledge
- Public participation is a key hallmark of IA in Canada
- The preamble of the Impact Assessment Act includes public participation, transparency, scientific integrity and Indigenous reconciliation among its principles



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# Where is the project

- The project is proposed for a site in Wesleyville (Port Hope ON) on land OPG currently owns
- As Faye has described earlier this evening, Port Hope has a history of coping with extensive and significant radioactive contamination from historic radium refining and there is a clean up currently underway under license from the regulator
- Additionally there are current large scale nuclear power plants operating nearby at Darlington and Pickering in Durham Region



# The specific type of nuclear technology is not yet proposed

- OPG stated “A specific reactor technology has yet to be chosen for the NNW Project and site licensing will follow a Plant Parameter Envelope (PPE) approach.” (Initial Project Description)
- OPG stated that certain reactor technologies are “examples” of technologies to be used that the PPE would “encompass”
- OPG plans to develop a “conceptual design” that encompasses the most conservative / largest impact aspect of each parameter



# What is to be decided (1)

- Impact Assessment Act of Canada decision by Minister (or Cabinet) is to decide under section 60:
- (a) determine, after taking into account the implementation of any mitigation measures that the Minister considers appropriate, whether the adverse effects within federal jurisdiction – and the direct or incidental adverse effects – that are indicated in the report are likely to be, to some extent, significant and, if so, the extent to which those effects are significant; and
- (b) if the Minister determines that any of the effects referred to in paragraph (a) are likely to be, to some extent, significant, determine whether the effects so determined are, in light of the extent to which the Minister determined them to be significant and the factors referred to in section 63, justified in the public interest.



# What is to be decided (2)

Nuclear Safety Control Act decision by the Panel\* under section (24):

(4) No licence shall be issued, renewed, amended or replaced – and no authorization to transfer one given – unless, in the opinion of the Commission, the applicant or, in the case of an application for an authorization to transfer the licence, the transferee

(a) is qualified to carry on the activity that the licence will authorize the licensee to carry on; and

(b) will, in carrying on that activity, make adequate provision for the protection of the environment, the health and safety of persons and the maintenance of national security and measures required to implement international obligations to which Canada has agreed.

- \*Same panel appointed to conduct the Impact Assessment is cross-appointed to make the CNSC licensing decision if the matter is found to be in the public interest under the IAAC.



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# What issues and considerations affect the decisions

- Under the Impact Assessment Act a list of factors are provided - section 22
- They include items like the need for the project, its purpose, whether there are alternatives to the project or alternative means of carrying out the project, what accidents and malfunctions may occur, what adverse effects may be caused by the project
- Under the CNSC licensing decision, the factors outlined by the CNSC in its licensing program for siting new nuclear are relevant, and these include for example the ability to protect the public in case of an accident. International guidance is also provided by the International Atomic Energy Agency, the IAEA, on siting new nuclear plants



# Other matters relevant to the Impact Assessment

- The Impact Assessment Act should be read in full including its preamble, purpose statement, definitions, and operational and decision making provisions
- For example, the purposes include application of the precautionary principle, fostering sustainability, considering cumulative effects and respecting rights of Indigenous peoples among other principles



# Importance of Sustainability Principle

- “Sustainability” is a defined term: *sustainability* means the ability to protect the environment, contribute to the social and economic well-being of the people of Canada and preserve their health in a manner that benefits present and future generations.
- As members of the public, your participation in the IA process can include all aspects of sustainability outlined in that definition, and these considerations are also echoed in the “factors” list I referred to earlier



# When is the project planned to be built and operated

OPG New Nuclear at Wesleyville in Port Hope  
Summary of the Initial Project Description

Table 1: Preliminary NNW Project Timeline

Project Phase	Estimated Start for First Unit	Estimated Finish for Last Unit	Estimated Phase Duration for All Units (Years)	Estimated Phase Duration for One Unit (Years)
Site Preparation	2030	2037	7	3 <sup>1</sup>
Construction	2033	2048	15	7
Operation and Maintenance	2040	2118	78	70
Decommissioning	2110	2160	50	42
Site Closure and Release from Regulatory Control	2160 and beyond		Not Applicable	

1. Site preparation for the NNW Project is site based and not unit based, and the duration refers to the estimated time to prepare the east and west sides of the property.



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# When are the decisions made

- The timelines are moving quickly; for example only a few days passed between the OPG response to the Agency's summary of issues and the decision to refer the matter to a review panel
- OPG estimates they will be in a position to apply for a license to construct by “early 2030s” following receipt of the regulatory approvals by “late 2020s”.



# Why is the project proposed

- Stated rationale by OPG in the Initial Project Description includes the link to a report published by the Ontario agency the Independent Electricity System Operator (*Pathways to Decarbonization, 2022*):  
“The NNW Project is tied to provincial initiatives for decarbonizing Ontario’s electricity system by 2050 as outlined in the provincial Independent Electricity System Operator (IESO) *Pathways to Decarbonization* (Independent Electricity System Operator, 2022) and supported by Ontario’s Integrated Energy Plan.”
- In the description of purpose and need for this project, in the IPD, OPG stated that the Wesleyville proposal is one component among several of various low-carbon options.



# How to participate - Where are we in the review process?

- On April 2, 2026, the proposed new nuclear at Wesleyville project was referred to a [Review Panel](#) (s.16 of *IAA*)
- The reasons concluded:
  - “IAAC is satisfied that the carrying out of the designated project may cause adverse effects within federal jurisdiction or direct or incidental adverse effects, including effects on the environment or to health, social or economic conditions.
  - As a result, IAAC has decided that further assessment is required for the project.”
- The review panel will have terms of reference and three members (s.44(1) of the *IAA*)
- One member of Canadian Nuclear Safety Commission (s.44(3) of the *IAA*); the other two will be cross-appointed
- The review panel will make the impact assessment report and later if the IA is approved they will also issue the licence to prepare a site under the *Nuclear Safety and Control Act*



# Impact Assessment Act - Planning Phase

- [Draft Integrated Tailored Impact Statement Guidelines](#) (“Draft Guidelines”) issued on April 7, 2026 and comments due May 7, 2026
- [Technical Considerations and References for the Preparation of an Impact Statement](#)
- Draft [Public Participation Plan](#) issued April 7, 2026 and comments due May 7, 2026



# Draft Tailored Impact Statement Guidelines

- Comments due May 7, 2026
- Some key issues
  - What nuclear technology? Choice should be specified
  - “Alternatives to” analysis is excluded but should be included such as renewables, storage and conservation
  - Accident analysis
  - Cumulative impacts with other projects near by
  - Discuss what matters to you
  - Full and adequate information is essential for the decision makers to carry out their responsibilities



# Lack of specific reactor technology in the Impact Assessment

- CELA objected to the use of the PPE approach in our comments on the IPD advocating that OPG needs to name the type of nuclear plant they plan to construct
- In the Draft Tailored Impact Guidelines, OPG would be instructed to “determine the preferred means” of carrying out the project
- Specifically on the PPE, the draft Guidelines provide that “Furthermore, to the extent possible:
  - the proponent is encouraged to narrow the envelope to the most plausible choices of technology to reduce the quantity and complexity of information that will need to be reviewed; and
  - the proponent is encouraged to engage with the public on the use of the bounding approach during their outreach, and to report the results of this engagement in the Impact Statement.”



# Alternatives to the project

- In the IPD OPG stated that “no alternatives to the project are being considered.”
- The Draft tailored impact statement guidelines say that (despite the mandatory requirement to consider alternatives to under the Act),
  - “IAAC will rely on the proponent’s Initial Project Description demonstrating that there are no alternatives to the project that are technically and economically feasible to meet the need for the project and achieve its purpose. The selection of electricity generation technologies and the broader energy supply mix in Ontario are matters determined through provincial energy planning and policy processes, including Ontario’s Integrated Energy Plan.”
- Members of the public should probably respond to this and provide your views as to alternatives to the project that should be considered



# Other issues related to the draft guidelines

- Adequacy of the guidelines on the potential for accidents and malfunctions including from natural hazards, and malfeasance throughout the life cycle of the project
- We are reviewing the accident analysis guidelines, but this should be reinforced - assess for a worst case scenario in terms of population evacuation and emergency planning and ecosystem impacts

# Draft Public Participation Plan

- Draft [Public Participation Plan](#) (comments due May 7)
  - Mandatory for Agency to consider “comments received from the public” (s.22(1)(n) of *IAA*)
  - Includes participation in public hearings (p. 3)
- What else should be included?
  - Request ability to test evidence in cross-examination, including studies requested in Guidelines
  - Ensure sufficient participant funding for public to hire experts to review technical information



# How can you participate throughout the process

- The Draft “public participation plan” outlines in more detail the phases of the process where the public can engage
- You will be able to review and comment on the Impact Statement that OPG will prepare, and participate in the Impact Assessment including seeking to Intervene in a panel hearing in writing and/or in person, and commenting on proposed draft terms and conditions if any
- Normally there will be participation funding opportunities for these stages as well



# Participation Tips

- The process is moving fast and there will be hundreds or thousands of pages of documents
- Choose issue/s you want to focus on
- Participate as much as you can, but you can come back into the process if you cannot respond to every step
- You do not have to be an expert; pose the questions that concern you and make the points you want the decision makers to take into account



# Impact Assessment - Where does this process lead?

- The conclusion of the impact assessment is two steps.
- The review panel makes a report to Cabinet outlining significant adverse effects (s.59 of *IAA*)
- The Cabinet decides, after taking into account the report (s. 60(1) of *IAA*):
  - There are no significant adverse effects;
  - There are significant adverse effects, but they can be mitigated;
  - There are significant adverse effects that cannot be mitigated, but the Cabinet considers that they are justified in the public interest.



# Nuclear Safety and Control Act

- Review panel will also make a decision on a licence to prepare site under the *Nuclear Safety and Control Act*
- As noted earlier, the Panel members will all be cross-appointed as Commissioners of the Canadian Nuclear Safety Commission so that information and evidence provided during the integrated process is available for the licensing decision
- The license will normally include some terms and conditions that reflect the Impact Assessment approval if granted



# What other approvals are needed

- See the Draft [permitting plan](#) and the draft Cooperation plan between agencies as posted on the IAAC Registry for Wesleyville
- Examples of other approvals include Fisheries Act, Species at Risk Act, Migratory Birds Regulations, Canadian Navigable Waters Act, Transportation of Dangerous Goods Act, Explosives Act



# What happens if all required approvals are granted

- The current application will be for a license to prepare a site
- OPG would decide at some point whether and when to commence site preparation
- The OPG Board and the province of Ontario would need to make decisions confirming the expenditure of funds to proceed
- Future licences would still be needed from the CNSC to construct, operate, and eventually decommission



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