



Intervenors' Guide

NIRB Technical Guide Series

February 2020

Notes:

The abbreviations “the NIRB” and “the Board” are used interchangeably throughout this document with reference to the Nunavut Impact Review Board.

The NIRB also uses the following legislation and abbreviations throughout this document *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)* and Part 3 of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (NuPPAA).

Disclaimers:

This Guide is provided as a convenient reference for Intervenor to explain the NIRB’s impact assessment processes in a plain language format. However, parties reviewing this Guide are reminded that the legal responsibilities of all participants in the NIRB’s processes are as established under the *Nunavut Agreement* and the *Nunavut Planning and Project Assessment Act*, other applicable legislation and any relevant project-specific direction issued by any authorities with jurisdiction over that project. All parties are independently responsible for ensuring they comply with the applicable legal responsibilities imposed under these provisions. To the extent that this Guide or any steps outlined within it are inconsistent or in conflict with the applicable legal requirements, the obligations as set out in the *Nunavut Agreement* and the *Nunavut Planning and Project Assessment Act*, other relevant legislation and project-specific guidance govern.

Any descriptions of the responsibilities of the parties contained in this Guide are of a general nature only and are not offered or intended as a substitute for legal or other professional advice or the specific direction in any given case of the NIRB or relevant authorities with jurisdiction over a project. The NIRB also reserves the right to depart from the general processes outlined in this Guide if the specific circumstances of a given impact assessment process require such changes.

If you have any comments, recommendations, or suggestions for this or any other guide, please email info@nirb.ca with your suggestion as updates will be completed regularly.

Table of Contents

1	HOW TO USE THIS GUIDE	7
1.1	INTRODUCTION.....	7
1.2	FREQUENTLY ASKED QUESTIONS.....	10
2	ROLE OF INTERVENORS IN THE NIRB'S PROCESSES.....	15
2.1	NUNAVUT'S INTEGRATED REGULATORY PROCESS	15
2.2	WHAT IS THE GEOGRAPHIC EXTENT OF NIRB'S AUTHORITY?.....	16
2.3	GENERAL ROLES AND RESPONSIBILITIES OF INTERVENORS IN THE NIRB PROCESSES.....	18
2.4	THE CHOSEN LANGUAGE FOR INTERVENOR SUBMISSIONS	18
3	INTERVENORS IN THE NIRB PROCESS	20
3.1	INTRODUCTION.....	20
3.2	INTERVENOR IN A NIRB SCREENING	20
3.3	INTERVENOR IN A NIRB REVIEW/RECONSIDERATION	21
3.4	INTERVENORS IN THE MONITORING PROCESS.....	24
4	PROJECT PROPOSALS REFERRED TO THE NIRB FOR SCREENING	25
4.1	THE IMPACT ASSESSMENT PROCESS UNDER THE <i>NUNAVUT AGREEMENT</i> AND THE <i>NUPPAA</i>	25
4.2	THE PROPONENT'S PUBLIC CONSULTATION DURING PROJECT SCREENING	26
4.3	THE SCREENING PROCESS	27
4.4	PROJECT PROPOSALS EXEMPT FROM SCREENING.....	36
5	THE NIRB REVIEW PROCESS.....	37
5.1	INTRODUCTION.....	37
5.2	THE PROPONENT'S PUBLIC CONSULTATION DURING THE REVIEW PROCESS	37
5.3	INTERVENOR PARTICIPATION THROUGHOUT THE REVIEW PROCESS	39
5.4	WHAT IS THE APPROXIMATE TIMELINE OF A NIRB REVIEW?	61
6	EXCEPTIONS FROM REVIEW	66
6.1	INTRODUCTION.....	66
6.2	CIRCUMSTANCE WHERE EXPLORATION AND/OR DEVELOPMENT ACTIVITIES MAY BE EXCEPTED FROM REVIEW	68
6.3	CONSIDERATIONS RELEVANT TO THE NIRB'S ASSESSMENT OF AN EXCEPTION APPLICATION	69
6.4	ADDITIONAL FACTORS CONSIDERED BY THE NIRB'S FOR AN EXCEPTION APPLICATION.....	71
6.5	THE NIRB'S REVIEW OF AN EXCEPTION APPLICATION	71
7	PROJECT CERTIFICATE	75
7.1	INTRODUCTION.....	75
7.2	PROJECT CERTIFICATE WORKSHOP/REGULATOR'S MEETING	75
7.3	PROJECT CERTIFICATE IMPLEMENTATION AND ENFORCEMENT.....	76
7.4	CHANGES TO A PROJECT CERTIFICATE.....	77
8	PROJECT MONITORING	78
8.1	INTRODUCTION.....	78
8.2	WHAT IS THE PURPOSE OF A PROJECT-SPECIFIC MONITORING PROGRAM?	79
8.3	WHAT CAN A PROJECT-SPECIFIC MONITORING PROGRAM INCLUDE?.....	80
8.4	THE NIRB'S ROLE IN MONITORING PROGRAMS	81
8.5	THE PROPONENT'S PUBLIC CONSULTATION DURING MONITORING	83
9	RECONSIDERATION OF THE TERMS AND CONDITIONS IN A PROJECT CERTIFICATE.....	84

9.1	INTRODUCTION.....	84
9.2	RECONSIDERATION REFERRAL.....	86
9.3	NIRB RECONSIDERATION PROCESS.....	87
9.4	SUBMISSION OF THE NIRB’S PUBLIC HEARING REPORT TO THE MINISTER.....	89
9.5	MINISTER(S) DECISION.....	90
10	THE PUBLIC CONSULTATION REQUIREMENTS OF PROPONENTS DURING ALL OF THE NIRB’S PROCESSES	
	91	
10.1	INTRODUCTION.....	91
10.2	WHAT IS THE NIRB’S ROLE WITH RESPECT TO PUBLIC CONSULTATION?.....	92
10.3	WHAT IS THE PROPONENT’S ROLE WITH RESPECT TO PUBLIC CONSULTATION DURING NIRB PROCESSES?.....	95
10.4	WHAT PRINCIPLES SHOULD GUIDE THE PROPONENT IN CARRYING OUT PUBLIC CONSULTATION?.....	96
10.5	WHO SHOULD BE ENGAGED THROUGH THE CONSULTATION PROCESS?.....	96
10.6	WHAT IS THE ROLE OF FORMAL INTERVENORS AND INTERESTED PARTIES IN THE REVIEW PROCESS?.....	99

TABLE OF FIGURES

Figure 1:	Intervenors in the NIRB Process.....	8
Figure 2:	Board Composition.....	11
Figure 3:	Overview of Nunavut’s Integrated Regulatory Framework.....	16
Figure 4:	the Nunavut Settlement Area including the Outer Land Fast Ice.....	17
Figure 5:	NIRB Screening Process Overview.....	27
Figure 6:	NIRB Screening Process and Possible Determinations.....	33
Figure 7:	NIRB Review Process Overview.....	39
Figure 8:	NIRB Review Process Phase 1.....	40
Figure 9:	NIRB Review Process Phase 2.....	44
Figure 10:	NIRB Review Process Phase 3.....	51
Figure 11:	Minister’s Decision as per s. 105 of the <i>NuPPAA</i>	60
Figure 12:	Minister’s Decision as per s. 106 of the <i>NUPPAA</i>	61
Figure 13:	NIRB’s Process for the Consideration of an Exception.....	71
Figure 14:	Project Specific Monitoring Program.....	80
Figure 15:	Approaches to Assessment of Proposed Amendment to Approved Projects.....	85

LIST OF TABLES

Table 1:	Timeline for Minister Response.....	35
Table 2:	Example of format used for proposed NIRB Project Certificate terms and conditions.....	58
Table 3:	NIRB Review Process General Timelines.....	62
Table 4:	NIRB Review Timelines Phase 1.....	63
Table 5:	NIRB Review Timelines Phase 2.....	64
Table 6:	NIRB Review Timelines Phase 3.....	65

1 HOW TO USE THIS GUIDE

1.1 Introduction

This Guide has been developed for the reference and use of Intervenor who wish to participate in the assessment processes conducted by the Nunavut Impact Review Board (NIRB or Board) under the provisions of Article 12 of the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)* and Part 3 of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*), including the screening process, the environmental review process and any project monitoring that may be required.

Intervenor is not a defined term in the *Nunavut Agreement* or the *NuPPAA*, but for the purposes of this Guide, the NIRB's Rules of Procedure and the NIRB's processes, the Board has developed the following working definition (see Figure 1):

Intervenor means any party who has been granted standing under the *Nunavut Agreement* to intervene or who has applied for, and been granted, *Intervenor* status, thereby giving them the right to participate as a party in any proceedings before the NIRB. The term may refer to Regional Inuit Organizations, government agencies providing technical expertise, Regulatory Authorities, Authorizing Agencies, non-governmental organizations, local and regional hunters' and trappers' organizations, participants residing outside of Nunavut that may be affected by transboundary effects of projects subject to assessment by the NIRB and any member of the public who applies for *Intervenor* status.

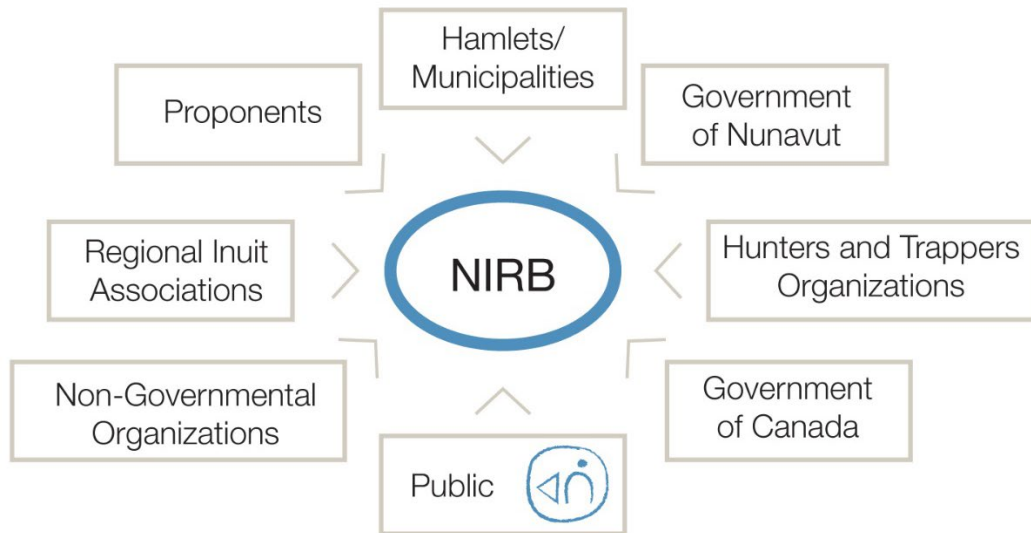


Figure 1: Intervenors in the NIRB Process

Under Article 12, Section 12.2.24 of the *Nunavut Agreement* and the NIRB's Rules of Procedure¹ some Intervenors, such as the Designated Inuit Organization, Regulatory Authorities (as defined under the *NuPPAA* as set out in the text box below) and Authorizing Agencies (as defined by the NIRB and set out below) are automatically recognized as Intervenors in the Board's processes without needing to apply to the Board to be recognized as a formal Intervenor.

Regulatory Authority means a minister — other than for the purposes of section 197 — , a department or agency, a municipality or any other public body responsible for issuing a licence, permit or other authorization required by or under any other Act of Parliament or a territorial law for a project to proceed.

It should be noted that the Board's definition of Authorizing Agency is broader than the definition of Regulatory Authority used under the *NuPPAA* and expressly recognizes the role of Designated Inuit Organizations who may exercise authority with respect to projects as landowners, permit issuers and negotiators of Inuit Impact Benefit Agreements.

¹ All references in the document to the Nunavut Impact Review Board's Rules of Procedure refer to the rules gazette on September 3, 2009. However, the NIRB is working on updated draft versions.

Authorizing Agency means any government agency, Designated Inuit Organization or any other body that has the authority to issue a permit, lease, or licence, or grant approval to a Proponent to conduct some physical work or physical activity in relation to a project proposal and includes Regulatory Authorities as defined under the NuPPAA.

In addition to these types of “automatic Intervenor”, the Board also relies on the participation of other types of Intervenor in specific cases such as:

- Government agencies and regulatory bodies that do not have direct responsibility for permitting, licensing or otherwise exercising authority over project authorizations in Nunavut, but that may be involved in and provide information and comment during the NIRB’s assessment of a project on the basis of their expertise (e.g., Health Canada);
- Local government representatives (Hamlet Councils, Hamlet Development Officers, etc.);
- Non-governmental organizations that have interest and expertise in: the region; the specific type of project proposal; community engagement; or environmental assessment;
- Groups/individuals from outside of Nunavut that may represent transboundary interests; and
- Individuals who wish to have the right to participate more formally in the NIRB process by providing written comment submissions, presenting evidence to the Board and/or questioning the evidence presented to the Board by other parties.

The Guide is directed to Intervenor or the general public who are not Authorizing Agencies. For information regarding Authorizing Agencies please see the separate Authorizing Agencies’ Guide to the NIRB.

This Guide is organized by stage in the impact assessment process from project inception through to eventual project monitoring. While the focus of this Guide is on the respective roles and responsibility of Intervenor and the NIRB, the Guide also contains some limited discussion on the role of the Proponent, Authorizing Agencies, community members, Elders, and general members of the public. However, the Board has developed additional separate Guides that provide an in-depth discussion of the specific roles of Proponents and Authorizing Agencies.

In addition, the NIRB maintains an online public registry that is accessible to the public; by registering for an account, anyone is able to sign up to follow NIRB assessments and to receive all updates and notifications as they are issued. A public commenting tool also allows for registered parties to submit an online comment form related to an assessment, or to upload their own comment submissions. Intervenors may wish to register online accounts to submit comments and formal submissions and any other relevant information (instructions on how to sign up are in [Section 1.2](#)). Further information can be found at www.nirb.ca including the other plain language public guides in this series and additional resources related to the NIRB's processes.

***Note:** *Users of this Guide are cautioned that it is intended as a general reference only, and the Board may, in any given case, diverge from the general processes described in the Guide to better reflect project-specific circumstances.²*

1.2 Frequently Asked Questions

➤ **Where does the NIRB get its mandate and its authority?**

The NIRB is a resource co-management institution of public government established in accordance with Articles 10 and 12 of the *Nunavut Agreement* with its authority defined in the *NuPPAA*. For further information see [Section 2.1](#).

➤ **How is the NIRB constituted?**

As set out in the *Nunavut Agreement*, the NIRB is a board composed of eight (8) members and one (1) chairperson. The members are appointed as follows:

- Four (4) members nominated by the Designated Inuit Organization and appointed by the federal Minister responsible for Northern Affairs;
- Two (2) members appointed by one or more Ministers of the Government of Canada;
- Two (2) members appointed by one or more Ministers of the Territorial Government; at least one of whom shall be appointed by the Minister responsible for Renewable Resources; and,

² Note that the NIRB will provide sufficient notification and justification of its course of action, should it diverge from established and published processes.

- From those appointed members, the Federal Minister responsible for Northern Affairs will, in consultation with the Territorial Government, appoint a chairperson.

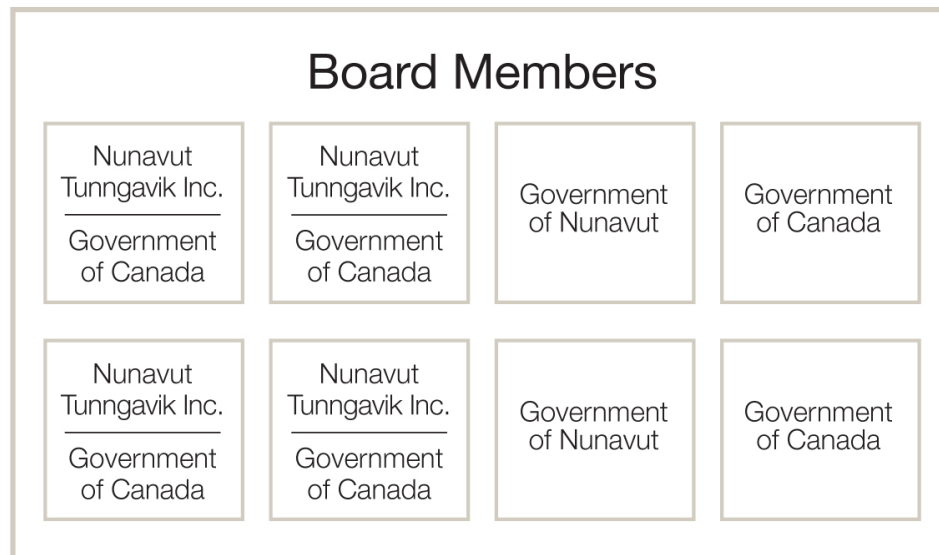


Figure 2: Board Composition

➤ **Where is the NIRB located?**

The NIRB’s main office is located in Cambridge Bay in the Kitikmeot region of Nunavut. The Board’s staff is based out of the Cambridge Bay with a small office in Arviat. Board members may be located throughout Nunavut and elsewhere in Canada.

➤ **How do I contact the NIRB?**

The NIRB is available during regular business hours (Mountain Time), via telephone at (867) 983-4600, toll-free at 1-866-233-3033, or via email at info@nirb.ca.

➤ **Can I participate in all of the NIRB’s processes, and will the NIRB consider my input in the same manner as that of other agencies and organizations?**

The NIRB’s processes are **all public by nature, with no exclusions on who or which agencies may participate**. Depending on the process, a formal application process to register as an Intervenor may be required (such as at a Hearing); in most cases, the NIRB reserves the right to grant Intervenor status

to agencies and individuals in accordance with the rules or requirements as set out by the Board.

The NIRB appreciates and values input from all parties to its assessment processes; it considers all input received in rendering its decisions. The NIRB has discretion with regard how it considers input from various organizations and intervenors.

➤ **Do I need Intervenor status to participate?**

No, Intervenor status may be granted in some of the NIRB's processes. These agencies and individuals may still participate and make submissions; however, time will be set aside during formal events such as public hearings in order to hear from those parties granted official Intervenor status.

➤ **What if I need more time for a step in the NIRB's process? Does NIRB issue extensions for Intervenor status?**

The NIRB is able to consider extension requests for most of its process steps on a case-by-case basis, provided the request is reasonable and the change to the process step does not undermine procedural fairness for other participants.

NOTE: *Procedural Fairness means acting in a clear and transparent manner while making administrative decisions or process*

➤ **How can I access intervenor or participant funding for a NIRB Review?**

The NIRB does not currently have an established participant funding program in place. However, Crown-Indigenous Relations and Northern Affairs has made funding available through the Northern participant Funding Program to assist Intervenor status holders to participate in the NIRB process. For further information, please see [Section 2.3](#) of this guide.

➤ **How do I get added to a distribution list for NIRB projects?**

The notifications issued by the NIRB are managed exclusively through our online system at www.nirb.ca, which requires Proponents and parties who would like to receive notifications for that project to register an account and sign up to follow the project of interest to them.

1. Ensure you are a registered user

2. Sign into your account
3. **UPDATE YOUR PROFILE** Once signed in your MY ACCOUNT page will show up
4. **Click the My Profile Tab and update Notification Settings** -You may choose to receive notifications by Region and/or Project Type.

Signing up for notifications **does not** add you to the distribution list. This is a **ONE TIME** notification for any NEW projects the NIRB receives and has started screening. Once you receive that notification you must manually find the projects in the PUBLIC REGISTRY and choose to follow the project in order to receive further communications regarding the file (i.e., be added to the distribution list). Projects you follow will be assigned to your user profile under the tab “Projects I Follow”.

1. Sign into your account
2. SEARCH the PUBLIC REGISTRY
 - Click “PUBLIC REGISTRY” button
 - **Search Projects** – Enter the NIRB file or application number you are searching for
 - **Open File** – Click on the File number and a project dashboard page for the file will open
 - **Click “Follow this Project”** (blue button).

You will now be added to the NIRB distribution list for this project and will be receiving NIRB generated e-mails regarding the project. If you don't see the button you are not logged into your account

You can choose to “unfollow” the project at any time by signing into your MY ACCOUNT page, search the Projects I follow tab and click the “Stop following this Project” button. This will take you off the distribution list.

For general assistance or to report a problem, please contact the NIRB at info@nirb.ca or call us toll-free at 1-866-233-3033.

➤ **Why is Monitoring important?**

Monitoring is important to assess if the project is performing as predicted and evaluate the effectiveness of the mitigation measures proposed during the environmental assessment. Monitoring involves collecting data and tracking changes over time against measurable indicators. Monitoring also assists in identifying any issues before they have an adverse effect so a response plan can be developed and/or adaptive management actions can be taken. For more information regarding monitoring, see [Part 8](#).

➤ **What is a post environmental assessment monitoring program?**

A post-environmental assessment monitoring program (PEAMP) is developed by the Proponent throughout the review stage based on commitments made within the Final Impact Statement and at the Hearing that the NIRB conducts. Once approved through the issuance of a project certificate, a PEAMP is designed to work as an instrument of the Proponent's overall monitoring efforts of the project and should provide the NIRB with information respecting the activities relating to a project, its impacts and the implementation of any mitigative measures. The PEAMP results are presented as a summary for parties in the Proponent's annual report. A PEAMP should:

- a) **measure** the ecosystemic and socio-economic environments of a project;
- b) **assess** whether the project is in compliance with the prescribed project terms and conditions;
- c) **share** information with regulatory authorities to support enforcement of land, water or resource use approvals and agreements; and
- d) **assess** the accuracy of the predictions contained in the impact statement.

The PEAMP must utilize, to the extent possible, the monitoring plans and programs as described in the FIS, during the hearing and through the project certificate as well as all monitoring plans and/or reporting required by relevant Regulatory Authorities. Where applicable, any additional monitoring programs and plans developed by the Proponent should be incorporated within the PEAMP. Further, it is the Proponent's obligation to ensure that the NIRB always has a complete up to date set of monitoring and mitigation plans for the project's entire life cycle. For more information on monitoring see [Part 8](#) of this guide.

2 ROLE OF INTERVENORS IN THE NIRB'S PROCESSES

2.1 Nunavut's Integrated Regulatory Process

The NIRB was established under Article 10 of the *Nunavut Agreement* on July 9, 1996. The NIRB is an institution of public government responsible for the impact assessment of Project Proposals in the Nunavut Settlement Area. The NIRB's specific mandate, authority, and details regarding the NIRB's impact assessment processes are set out in Article 12 of the *Nunavut Agreement* and Part 3 of the *NuPPAA*.

Nunavut is unique amongst Canadian jurisdictions in that the ***Nunavut Agreement and the NuPPAA establishes an integrated resource management system for wildlife management, land use planning, impact assessment, water licensing and dispute resolution*** overseen by five (5) independent Institutions of Public Government (IPGs) (see [Figure 3](#)). :

- Nunavut Wildlife Management Board (NWMB),
- Nunavut Planning Commission (the Commission),
- Nunavut Impact Review Board (NIRB),
- Nunavut Water Board (NWB), and
- Nunavut Surface Rights Tribunal (NSRT).

Through the *Nunavut Agreement*, the Commission and the NIRB play an important role in reviewing project proposals before the licences, permits and approvals can be granted by Authorizing Agencies. The *Nunavut Agreement* directs the IPGs to fulfill their functions in a manner that is cooperative, integrated, and avoids duplication, an approach which is further supported by the *NuPPAA* and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* which also govern these organizations. Reflecting this, the IPGs regularly work together on general and project-specific initiatives to coordinate processes and activities with the objective of fostering an integrated, effective, and timely regulatory system. In conjunction with the release of the updated technical guides, in December 2019 the NIRB and NWB released the *Guide to the Detailed Coordinated Process Framework* which outlines the process both organizations use to coordinate on projects that use water like Municipality water licences.

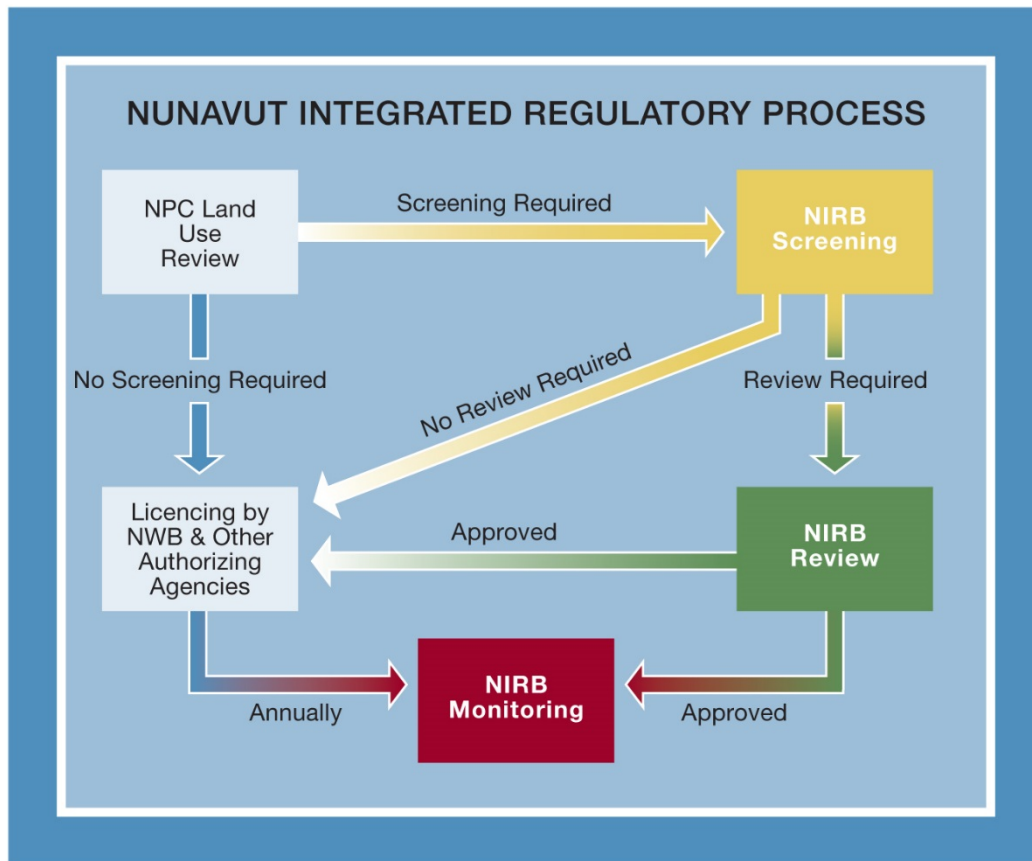


Figure 3: Overview of Nunavut’s Integrated Regulatory Framework

2.2 What is the geographic extent of NIRB’s authority?

The NIRB’s authority applies to both land and marine areas within the Nunavut Settlement Area (NSA) and to the Outer Land Fast Ice Zone (as defined in the *Nunavut Agreement*) and as described in the *NuPPAA* ([Figure 4](#)). The Board’s authority also extends to certain projects with potential transboundary impacts. The NIRB may, upon request by Government or with the consent of Government upon request by a Designated Inuit Organization, review a project proposal located outside of the NSA if that project proposal may have significant adverse ecosystemic or socio-economic effects within the NSA like the completion of the NIRB’s July 2019 Strategic Environmental Assessment of the potential for oil and gas development in Baffin Bay and Davis Strait.



Figure 4: the Nunavut Settlement Area including the Outer Land Fast Ice

2.3 General Roles and Responsibilities of Intervenors in the NIRB Processes

Intervenors assist the NIRB in fulfilling its mandate. The primary objectives of the NIRB are at all times to protect and promote the existing and future well-being of the residents and communities of the NSA, and to protect the ecosystemic integrity of the NSA. Reflecting this mandate, the NIRB relies on the contributions of Intervenors during the impact assessment process to provide their views, information, technical comments and shared experience with respect to the potential ecosystemic and socio-economic impacts of a proposed project, as well as how these impacts may affect communities and the environment.

It should be noted that although in each case, the responsible Minister may provide some support in terms of limited participant funding to select Intervenors. The Northern Participant Funding program managed by Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) is meant to support effective public participation in development impact assessment by the NIRB.

The NIRB assists CIRNAC by letting parties know the application process for funding has started, collecting completed applications and providing input on those applications to assist with understanding Intervenors applying for funds, and distributes the list of successful applicants.

Once applications are received by CIRNAC, a Funding Review Committee is established to review the applications from Intervenors and the NIRB's input and working independently determines which applicants would receive funding and how much. CIRNAC consults with the NIRB, the Government of Nunavut and Nunavut Tunngavik Incorporated to select members for the committee.

If the Minister directs otherwise, the costs incurred by an Intenor to prepare submissions, attend meetings and hearings and otherwise participate in the NIRB processes are paid by the individual Intenor.

2.4 The Chosen Language for Intenor Submissions

Written and oral submissions including Intenor's submissions or submissions made by other concerned parties may be made to the Board in English, French, Inuktitut, or Inuinnaqtun.

The Board's hearings are typically conducted in English, Inuktitut, and/or Inuinnaqtun depending on the region, with simultaneous interpretation services available throughout. Also, as may be necessary or requested by any party, the

NIRB will arrange for simultaneous interpretation services into French. Parties are also requested to provide translated copies of presentation materials, technical summaries, and other critical submissions to the Board. The Board is not responsible for providing translation of parties' submissions.

In communicating with all parties, including Intervenors, regarding the location and schedule of an oral hearing on a project proposal, the NIRB is required to encourage public awareness and participation and in order to reach as many people affected by the project proposal as possible, the NIRB communicates by providing formal notices, releases to the project distribution list and individuals signed up to follow a project, etc. To the extent practical and reasonable in the circumstances, the NIRB communicates in English, Inuktitut and, as applicable, Inuinnaqtun and French.

The central goal for the NIRB is to build public awareness and encourage public participation in our process. Therefore, the NIRB may use various methods to distribute information to potentially affected persons and organizations, having regard for the nature, location and size of the project, and communities that may be affected by a project, including radio, television and print announcements, postings in the local community, social media postings (Facebook), etc.

3 INTERVENORS IN THE NIRB PROCESS

3.1 Introduction

There are several ways for an agency or person to participate in the NIRB's impact assessment process. Status as an Intervenor in a NIRB Review/Reconsideration is not the only way to participate in the Board's assessment processes. Throughout the NIRB process (Screening, Review/Reconsideration, and Monitoring), **anyone** may participate by submitting written, or in some cases, verbal comments to the NIRB for consideration.

Concerned members of the public do not have to seek formal Intervenor status in every assessment that the NIRB does in order to be heard by the NIRB, and Intervenor may also be members of affected communities and Elders.

3.2 Intervenor in a NIRB Screening

The NIRB distributes notices of Screening and Request for comments on a regular basis and makes translations available in as timely a manner as possible. These requests for comment are an ideal time for Intervenor to provide their thoughts and comments on a project.

***Note:** *In screening a project proposal and making a decision, the NIRB uses Inuit Qaujimaningit, Inuit Qaujimajatuqangit, traditional knowledge, local knowledge, and recognized scientific methods. Accordingly, the Proponent **must** state whether Inuit Qaujimaningit, Inuit Qaujimajatuqangit, traditional knowledge, local knowledge, or by recognized scientific methods was gathered; what knowledge was gained; and how this was applied to the project proposal. This includes community concerns and what mitigation measures were incorporated into the project proposal to address those concerns. See [Section 10](#) of this guide on Public Consultation for further information.*

The NIRB's online system at www.nirb.ca contains a unique public registry for each project assessment called a "Project Dashboard" where you can submit comments for all assessments directly through our online system. You can use a pre-made comment form or upload your own document (see instructions below). While submissions will continue to be accepted by fax, email or regular mail, submitting

through the online system allows for access to the comment form, more immediate posting on the public registry, and verified receipt by the NIRB.

* IMPORTANT * to complete the following steps, you must be a registered user and be SIGNED IN to your account.

- Sign into your account
- SEARCH the PUBLIC REGISTRY
 - Click “PUBLIC REGISTRY” button
 - Search Projects – Enter the NIRB file number or application number you are searching for
 - Open File – Click on the File number and a project dashboard page for the file will open
 - Click the “Comment Form” (blue tab button near top of page).
 - Comment form will open
 - Fill out Comment Form **OR** Upload a document (click blue tab)

Anyone can sign up for an account on the NIRB’s website (www.nirb.ca) and for assistance please see [Section 1.2](#).

3.3 Intervenor in a NIRB Review/Reconsideration

During the NIRB’s meetings and hearings, time is generally set aside for community roundtable sessions so that community members in attendance may provide the NIRB with comments, information, and concerns regarding the project proposal being considered by the Board.

In order to ensure that the Board offers an opportunity to people to share and comment on the project proposal, and, the NIRB does set time aside at any pre-hearing or hearing to allow the public to speak. However, if you require additional time to present to the Board, and to ensure that it has an accurate record of these comments, the NIRB requests that on the day when they wish to speak.

3.3.1 Parties Automatically Granted Standing under the Nunavut Agreement

Although not defined within the *Nunavut Agreement* or *NuPPAA*, the NIRB has developed a working definition of **Authorizing Agencies** that is used throughout this Guide. It should be noted that the Board’s definition of Authorizing Agency is broader than the definition of *Regulatory Authority* used under the *NuPPAA* and expressly recognizes the role of Designated Inuit Organizations who may exercise

authority with respect to projects as landowners, permit issuers, and negotiators of Inuit Impact Benefit Agreements.

Authorizing Agency means any government agency, Designated Inuit Organization or any other body that has the authority to issue a permit, lease, licence or grant approval to a Proponent to conduct some physical work or physical activity in relation to a project proposal and includes Regulatory Authorities as defined under the NuPPAA.

The NuPPAA defines Regulatory Authority as follows:

Regulatory Authority means a minister — other than for the purposes of s 197 of the NuPPAA—, a department or agency, a municipality or any other public body responsible for issuing a licence, permit or other authorization required by or under any other Act of Parliament or a territorial law for a project to proceed.

This automatic right to participate as an Intervenor is also recognized by the NIRB's Rules of Procedure that allow full standing to intervene in the Board processes without application and applies to all Authorizing Agencies which consist of any government agency, DIO or any other body that has the authority to issue a permit, lease, licence, approval or other form of consent necessary to authorize a physical work or physical activity in relation to a project proposal.

3.3.2 Parties who Apply for Intervenor Status

Where Intervenor status is not granted automatically, a participant who wishes to ensure their status as an Intervenor in the Board's processes (specifically for a Review or Reconsideration) may apply to the Board to participate as a formal Intervenor.

Parties are often invited to apply for Intervenor status at the point when the NIRB confirms that a project proposal will be subject to a Final or Public Hearing. At this point in the process, the NIRB issues a formal Notice of the Public Hearing to the proponent, the project proposal distribution list and to the public, including an invitation for interested parties to apply for formal Intervenor status. The Public Notice will also often identify the time limits for filing requests for Intervenor status and any filing deadlines applicable to Intervenors to file written submissions in advance of the Public Hearing. Intervenors interested in participating at a Final

Hearing are encouraged to consult the Notice of Public Hearing for details regarding the applicable time limits in each case, as failure to file requests for Intervenor status or written submissions in accordance with the timelines set out in the Notice could result in a denial of intervention status or rejection of submissions.

In order to receive the NIRB request for Intervenor status, it is important that **individuals to sign up to follow a project** or watch the NIRB's main page for the latest correspondence the NIRB has released for all projects undergoing assessment.

Formal registration as an Intervenor also ensures time and space are available for the party to provide the Board with their intervention during technical meetings, pre-hearing conferences and public hearings.

Intervenors submitting an Application Form will be asked to provide:

- a. The applicant's name and contact information;
- b. A summary of the applicant's interest in participating; and
- c. A concise statement indicating the nature and scope of intended participation, including whether the applicant intends to make written submissions/ attend public hearings, and the language in which the applicant wishes to be heard.

***Note:** *Parties submitting an Application Form should be aware that, UNLESS the NIRB receives a specific request exempting the Application Form or parts of it from public posting, the NIRB will, without further notice, post the Application Form and any supporting information received from the party requesting Intervenor status on the NIRB's public registry.*

Upon receiving the request for Intervenor status, the NIRB may:

- a. Direct the party requesting Intervenor status serve a copy of the request to the proponent and such other persons as the NIRB specifies, and solicit the views of the proponent, other interested parties and/or the public about the request;
- b. Direct the party requesting Intervenor status to provide more information to the Board or otherwise revise the request in any manner the Board considers necessary to fully consider the request;

- c. Decide that the party requesting Intervenor status will not be granted Intervenor status on the basis that their request is frivolous, vexatious or of little merit; and/or
- d. Decide that the party requesting Intervenor status has been successful and will be formally recognized as an Intervenor and notify the party and other participants in the NIRB process regarding the recognition of a new Intervenor.

3.4 Intervenor in the Monitoring Process

Like the NIRB's screening process, the NIRB distributes notice of receipt of Annual Reports and requests comments in order to receive thoughts and comments on how a Proponent is doing after having received the project certificate or an updated project certificate. And like the screening the NIRB uses the NIRB uses Inuit Qaujimaningit, Inuit Qaujimajatuqangit, traditional knowledge, local knowledge, and recognized scientific methods. Accordingly, the Proponent **must** state whether Inuit Qaujimaningit, Inuit Qaujimajatuqangit, traditional knowledge, local knowledge, or by recognized scientific methods was gathered; what knowledge was gained; and how this was applied to the project proposal. This includes community concerns and what mitigation measures were incorporated into the project proposal to address those concerns.

The NIRB then uses this information to assess the compliance of a Proponent with the project certificate and/or amended project certificate along with whether or not the term and condition is functioning as intended.

4 PROJECT PROPOSALS REFERRED TO THE NIRB FOR SCREENING

Although there are several opportunities for intervenors to participate throughout the NIRB's assessment process, the nature and extent of participation varies depending on whether the project proposal is undergoing an initial screening or has been referred to the NIRB for a review. This part of the Guide provides an overview of the process and opportunities for intervenor involvement in the initial NIRB screening of a project proposal.

4.1 The Impact Assessment Process under the *Nunavut Agreement* and the *NuPPAA*

The impact assessment requirements under Article 12 of the *Nunavut Agreement* apply to all project proposals, defined as follows:

Project Proposal means a physical work that a proponent proposes to construct, operate, modify, decommission, abandon or otherwise carry out, or a physical activity that a proponent proposes to undertake or otherwise carry out, such work or activity being within the Nunavut Settlement Area, except as provided in Section 12.11.1 but does not include the construction, operation or maintenance of a building or the provision of a service, within a municipality, that does not have ecosystemic impacts outside the municipality and does not involve the deposit of waste by a municipality, the bulk storage of fuel, the production of nuclear or hydro-electric power or any industrial activity.

This definition applies to all project proposals, with the exception of those that relate to transboundary impacts and are dealt with under Article 12, Section 12.11.1 of the *Nunavut Agreement*.

Further, as described more fully under the *NuPPAA*, the proponent of a project intended to be carried out in whole or in part in the Nunavut Settlement Area including the outer Land Fast Ice Zone is required to submit a project proposal to the Nunavut Planning Commission (the Commission) and/or the Parks Canada Agency or any other federal or territorial authority (referred to as *Responsible Authority*).

Project means the carrying out, including the construction, operation, modification, decommissioning or abandonment, of a physical work or the undertaking or carrying out of a physical activity that involves the use of land, waters or other resources. It does not include

(a) the undertaking or carrying out of a work or activity if its adverse ecosystemic impacts are manifestly insignificant, taking into account in particular the factors set out in paragraphs 90(a) to (i) [factors to assess significance];

(b) the undertaking or carrying out of a work or activity that is part of a class of works or activities prescribed by regulation; or

(c) the construction, operation or maintenance of a building or the provision of a service, within a municipality, that does not have ecosystemic impacts outside the municipality and does not involve the deposit of waste by a municipality, the bulk storage of fuel, the production of nuclear or hydro-electric power or any industrial activities.

Project proposals are not forwarded to the NIRB by the Commission if the project is exempted from the requirement for screening under Article 12, Schedule 12-1 of the *Nunavut Agreement* or s. 78(2) or Schedule 3 of the *NuPPAA*, unless the Commission has concerns about the potential for cumulative impacts of that project proposal in relation to other development in the planning region.

The same responsibility applies to the Parks Canada or any other federal or territorial authority under s. 166(2) of the *NuPPAA* when the Responsible Authority reviews a project proposal.

***Note:** the NIRB's screening process does not commence until the project proposal has been received from the Nunavut Planning Commission and/or the Parks Canada Agency or any other federal or territorial authority (referred to as Responsible Authority).

4.2 The Proponent's Public Consultation During Project Screening

Project proposals submitted to the NIRB for screening should contain a description of the public consultation program/strategy the Proponent has conducted or

intends to conduct. For more information regarding what the NIRB considers consultation, please see [Part 10](#).

If, following screening, the NIRB recommends that a project proposal be approved to proceed without a review, the screening decision may contain various terms and conditions the NIRB recommends be attached to licences or permits necessary for the project activities to proceed. The terms and conditions may include recommendations regarding public consultation. For example, the NIRB may recommend that the Proponent continue with or begin consulting with the potentially affected communities about the project proposal or activities.

The NIRB may further recommend that the Proponent consult with potentially affected communities and key organizations for the purpose of actively soliciting community knowledge, Inuit Qaujimaningit, Inuit Qaujimajatuqangit, and other traditional knowledge to ensure that appropriate opportunities have been created to gather and document this information at the appropriate times. The NIRB may also ask for this information to be included into an annual report submitted to NIRB.

4.3 The Screening Process

Once the NIRB has received a non-exempt project proposal from the Commission and/or the Parks Canada Agency or any other federal or territorial authority the NIRB's screening process commences. The following summary of the steps involved provides a general description of the process and the opportunities for Intervenor to provide feedback throughout (see [Figure 5](#)).

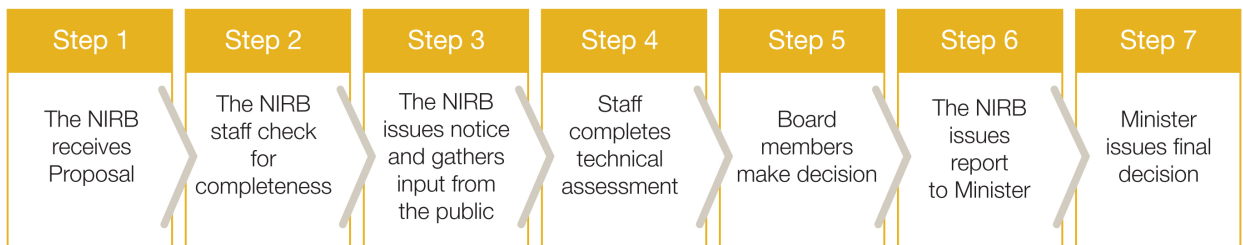


Figure 5: NIRB Screening Process Overview

4.3.1 Check for Completeness

After receipt of the project proposal, NIRB staff assess the application based on the criteria listed in the Proponent's Guide. Where deficiencies in the project proposal and associated information are present, the NIRB staff will correspond

with the Proponent and the Authorizing Agencies to resolve these deficiencies before proceeding with the screening process.

Once the NIRB has concluded that a project proposal is complete and all required information has been submitted, information and correspondence related to the project proposal will be uploaded to NIRB's registry under screenings under the file number given by the NIRB. A notice will go to the registered users notifying them that a new project proposal has been received. Registered Users must review the email and chose to follow the project to receive other correspondence from the NIRB related to that file. This is the only way to receive notices as the NIRB maintains limited distribution lists to use for communities, Hunters and Trappers Organizations, Hamlets etc. but it is the user's responsibility to have an account and maintain the individuals distribution lists to ensure receipt of information.

Anyone can sign up for an account on the NIRB's website (www.nirb.ca) and select which project types or specific projects they would like to receive notifications for the project proposal.

4.3.2 Determining the Scope of the Project

As required under the *NuPPAA*, when a project proposal is received by the Board, the NIRB must determine the scope of the project. The starting point is the project as scoped by the Proponent, but the Board must ensure that the scope includes not only the works or activities included in the project proposal, but also any other works or activities that are sufficiently related to the project to form part of it. Conversely, the scope of the project must NOT include any works or activities that are considered by the Board to be insufficiently related to the project to form part of the project proposal to be screened by the Board.

If the Board identifies that works or activities should be included or excluded in the scope, the Board must first consult with the Proponent and take into account any comments provided by the Proponent on this point when developing the appropriate scope for the project. The Board may also invite comment from Interveners regarding the scope of the Project at this point as well.

After this consultation, if the Board determines that additional works or activities should be added to the project scope, the Board cannot proceed to screen the project with the modified scope until the Commission and the relevant federal and/or territorial Ministers have reconsidered the exercise of their duties and

functions with respect to the modified scope of the project proposal (s. 86(3) of the *NuPPAA*).

**Note: this is an important step in the NIRB process and the scope may be refined through the NIRB's screening and/or review process; however, the scope included in the NIRB's decision document (Screening Decision Report or Hearing Report) is considered the final version.*

4.3.3 Distribution of Notice of Screening and Comment Request

Once the NIRB has indicated that a project proposal is complete and all required information has been submitted, the project proposal is referred to a list³ comprised of representatives from Communities, Co-Management Boards, Designated Inuit Organizations, Hunters and Trappers Organizations, Community Councils, Federal and Territorial Government Departments and other Authorizing Agencies, relevant Wildlife Management Boards as well as other agencies or individuals that the Board feels are appropriate. In addition to these lists of organizations, the NIRB will also send a notice to the registered users notifying them that a new project proposal has been received and individuals must review the email and chose to follow a project to receive other correspondence related to that file, see [Section 1.2](#) for information on how to sign up for an account. Translations of documents into Inuktitut or Inuinnaqtun are distributed as soon as they are available.

As information and correspondence regarding a given project proposal is received by the NIRB, it will be uploaded to the NIRB's registry and may be accessed by Intervenor and other concerned parties under the file number given by the NIRB to the project proposal.

Members of the list, including Intervenor and other interested parties are generally asked to comment on the project proposal from the perspective of:

- their knowledge of the area;
- respective expertise; and
- mandate.

³ The NIRB maintains a list for Intervenor; however, it encourages all participants in the NIRB process to sign-up and maintain their accounts.

The comments requested may include, but are not limited to:

- a. a general indication regarding support for, or against, the project proposal;
- b. a summary of the commenter's understanding of the project proposal;
- c. a summary of the regulatory role and/or mandate of Authorizing Agencies;
- d. identification of the commenter's jurisdiction with respect to authorizations for the project proposal;
- e. requests for additional information required by the party to complete the screening;
- f. identifying any particular areas of concern associated with potential project impacts; and
- g. any recommended terms and conditions, including monitoring and mitigation, that may be necessary if the project proceeds.

Depending on the project proposal, the NIRB may also request that additional specific comments on issues of interest be provided by particular parties. Typically, the comment period is set at three (3) weeks and represents a substantial portion of the 45-day screening timeline, though the NIRB may modify the comment period to reflect the specific circumstances of any given project proposal (e.g., commenting periods for low-impact project types may be shortened to 10 days, while commenting periods may also be extended upon the written request of one or more parties).

****Note:*** *Intervenors should be aware that due to the express requirements that the NIRB will complete its screening within the 45 day (or shorter) timeline required by the Nunavut Agreement (12.4.5) and the NuPPAA (92 (4)), requests for extensions to screening comment periods will only be considered by the NIRB if the party requesting the extension provides substantive justification to support the request. The Minister is required to provide confirmation of any such extension in writing to the NIRB and the Proponent.*

The NIRB reviews comment submissions and determines on a case-by-case basis, whether additional information is required either from commenting parties to clarify their positions or questions, or from the Proponent in response to comments received. If the NIRB determines that additional information is required, or a

response from the Proponent is warranted, it will provide notice to the distribution list and set an additional timeline for response(s).

4.3.4 Screening Assessment

Once comments have been received from the distribution list and the NIRB determines that all requested and required information has been received, the Board screens the project proposal to determine if the project has the potential to result in significant ecosystemic or socioeconomic impacts and accordingly, whether it requires review by the Board or by a federal environmental assessment panel, as the case may be [under either Part 5 or 6 of Article 12 of the *Nunavut Agreement* and ss. 99-133 of the *NuPPAA*].

In the screening assessment the NIRB gives consideration to the following:

- a. the completeness of the project proposal;
- b. further information requests from the distribution list;
- c. comments from the public commenting period;
- d. ecosystemic impacts and specific environmental impacts;
- e. socioeconomic impacts;
- f. whether impacts can be mitigated with terms and conditions; and
- g. monitoring requirements.

Further, as outlined in s. 90 of the NuPPAA, when conducting the screening of a project, the Board is required to take into account the following factors:

1. the size of the geographic area, including the size of wildlife habitats, likely to be affected by the impacts;
2. the ecosystemic sensitivity of that area;
3. the historical, cultural and archaeological significance of that area;
4. the size of the human and the animal populations likely to be affected by the impacts;
5. the nature, magnitude and complexity of the impacts;
6. the probability of the impacts occurring;
7. the frequency and duration of the impacts;
8. the reversibility or irreversibility of the impacts;

9. the cumulative impacts that could result from the impacts of the project combined with those of any other project that has been carried out, is being carried out or is likely to be carried out; and
10. any other factor that the Board considers relevant to the assessment of the significance of impacts.

4.3.5 The Possible Outcomes of Screening

Once the NIRB has completed its screening assessment, the Board must submit a written report to the responsible Minister specifying the scope of the project and the Board's determination as to whether or not a review of the project is required or whether the project should be modified or abandoned ([Figure 6](#)).

The scope of the project as decided by the Board, the summary of comments, and any other required discussion (such as identification of recommended terms and conditions or issues that will be relevant if the project proposal is recommended for review or information regarding the nature and extent of the regional impacts of a project) are included in the Board's Screening Decision Report, which is released to the responsible Government Minister(s). A copy of the Screening Decision Report is also provided to the Proponent and further, the NIRB notifies relevant Authorizing Agencies through a notice of release, and all notifications are uploaded to the NIRB's public registry in the project specific directory. Translations are made available to the public as they are completed.

As per *NuPPAA* s 92(1), the NIRB can make one (1) of three (3) determinations regarding its assessment of project proposals and those decisions are detailed as follows:

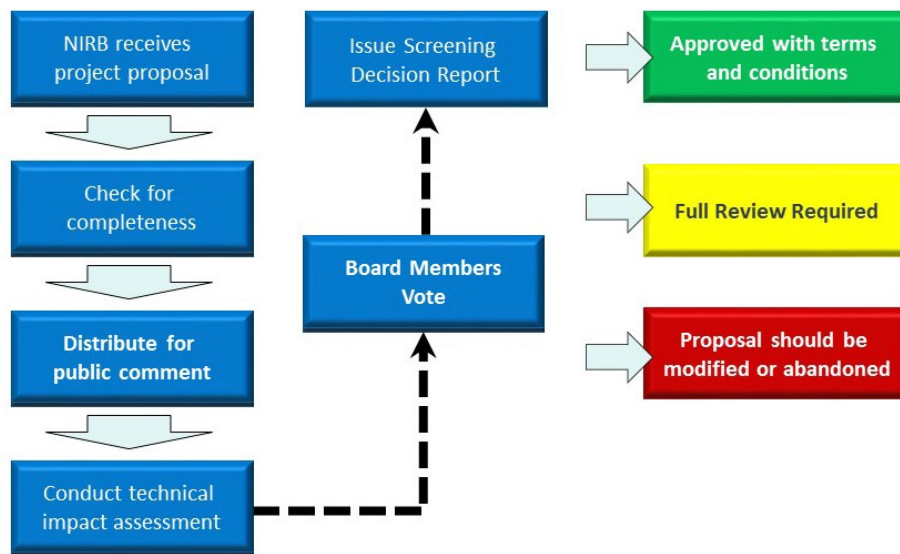


Figure 6: NIRB Screening Process and Possible Determinations

4.3.5.1 *Option One – A Review is Not Required.*

The NIRB may determine that **a review of the project proposal is not required when, in its judgment, the project is unlikely to cause significant public concern and the project’s adverse ecosystemic and socio-economic impacts are unlikely to be significant** (when assessed in accordance with the factors for determining significance as set out in s. 90 of the *NuPPAA*), or the project is of a type where the potential adverse impacts are highly predictable and can be mitigated with known technologies.

Even if the NIRB indicates that no review is required, the NIRB may still recommend that specific terms and conditions (reflecting the primary objectives set out in the *Nunavut Agreement*) be attached to any subsequent authorizations for the project. These project-specific recommended terms and conditions will be set out in detail within the Board’s Screening Decision Report. As part of the screening decision, the NIRB may include monitoring requirements (e.g., submission of annual reports, required updates to plans etc.) on a project by project basis.

Once accepted by the Minister, the NIRB will monitor for those items and any other commitments made by the Proponent on an annual basis and review submitted materials such as an annual report for completeness and ensure the items NIRB requested have been included. If a Proponent does not submit the requested

information, the NIRB could require it as part of the information needed prior to any assessment of subsequent applications.

For more information regarding the NIRB's monitoring programs see [Part 8](#).

4.3.5.2 **Option Two – A Review is Required.**

The NIRB may determine that **a review is required** when in its judgment:

- a. The project may have significant adverse ecosystemic or socio-economic impacts;
- b. The project may have significant adverse impacts on wildlife habitat or Inuit harvest activities;
- c. The project will cause significant public concern; or
- d. The project involves technological innovations, the effects of which are unknown.

Where the NIRB determines that a review is required, the NIRB will typically identify any particular issues or concerns that should, in the Board's view, be considered in the subsequent review of the project proposal. These issues will be identified in the Board's Screening Decision Report.

The NIRB could include monitoring requirements in its Screening Decision Report (e.g., submission of annual reports, update of plans etc.) on a case by case basis. Once accepted by the Minister the NIRB will monitor for those items on an annual basis and review it for completeness and ensure the items requested have been included. If a proponent does not submit the requested information, the NIRB could request it as part of the information request package prior to any assessment of subsequent applications. For more information regarding the NIRB's monitoring programs see [Part 8](#).

4.3.5.3 **Option Three – Proposal Modified or Abandoned.**

In cases where the Board is of the opinion that the project has **the potential to result in unacceptable adverse ecosystemic or socio-economic impacts**, the NIRB will recommend to the Minister that the proposal be returned to the Proponent and that the project should be modified or abandoned and provide information regarding the nature and extent of the regional impacts of a project that must be taken into account when determining whether a project is in the regional interest (*NuPPAA* s. 92,(2)(c)).

4.3.6 Minister(s) Decision

Although the NIRB makes its determination and associated recommendations in the Screening Decision Report regarding if and how a project should be allowed to proceed; the decision to accept, vary or reject the Board's recommendations rests with the Minister(s) responsible for issuing the authorizations associated with the project. The timeline the Minister(s) has to make its determination is found in Table 1.

Where multiple Federal Departments are involved, the Minister(s) may designate a single Minister to whom the NIRB makes recommendations and who will, after consultation with the other Ministers who also have decision making responsibilities, decide how to respond to the NIRB's recommendation.

In most cases, the Minister of Intergovernmental Affairs, Northern Affairs and Internal Trade will act in this capacity. In cases where the Board determines and the Minister agrees that a public review is necessary, the Minister has the authority to send project proposals either to the NIRB for a review under Article 12, Part 5 of the *Nunavut Agreement* and ss. 99-114 of the *NuPPAA* or to a Federal Environmental Assessment Panel for a review under Article 12, Part 6 of the *Nunavut Agreement* and ss. 115-133 of the *NuPPAA*.

Table 1: Timeline for Minister Response

Board Determination	Timelines for Minister Response (days)
Finds a review of the project is not required	15 days to agree or reject the Board's determination, which may be extended by up to 120 days if necessary
Finds a review of the project is required	90 days to agree or reject the Board's determination, which may be extended by up to 90 days
Finds the project should be modified or abandoned	150 days to agree or reject the determination

4.4 Project Proposals Exempt from Screening

Not all projects are required to go to the NIRB for screening, some projects are exempt under Article 12, Schedule 12-1, Items 1-6 of the *Nunavut Agreement* and s. 78(2) of the *NuPPAA*. As project proposals are to be submitted to the Commission, the Commission must before forwarding the project proposal to the NIRB, verify whether the project proposal is exempt from the requirement for NIRB screening and the same responsibility applies to the Parks Canada Agency or any other federal or territorial authority (referred to as Responsible Authority) under s. 166(2) of the *NuPPAA* when the Responsible Authority reviews a project proposal.

There are also emergency circumstances pursuant to Article 12, Sections 12.12.3 of the *Nunavut Agreement* and s. 152 of the *NuPPAA* project proposals may be exempt from screening due to emergency situations. In this case, the Proponent would inform the NIRB of its request for Ministerial approval under s. 152 (1) of *NuPPAA* and follow the steps described in the Proponent's Guide to ensure that everyone is aware of the situation and appropriate reporting occurs afterwards.

For more information regarding exceptions from reviews please refer to [Part 6](#).

5 THE NIRB REVIEW PROCESS

***Note:** *Although this Guide provides an overview of the NIRB's general approach to conducting a review, the NIRB retains flexibility in terms of its process and the NIRB always retains the jurisdiction to solicit the specific information the NIRB considers necessary to conduct a fulsome review in any given case, including the ability to add, remove or modify steps in the review process as may be necessary in order to ensure a thorough, inclusive, efficient and timely review. The review process, including opportunities for Intervenor participation may also be modified as required to co-ordinate the NIRB review with other regulatory partners such as the Nunavut Planning Commission, the Nunavut Water Board, etc.*

5.1 Introduction

There are two (2) types of environmental review contemplated in Article 12 of the *Nunavut Agreement*, a Part 5 Review that is conducted by the NIRB in accordance with ss. 99-114 of *NuPPAA* and a Part 6 Panel Review conducted by a Federal Environment Assessment Review Panel, as appointed by the Federal Minister of the Environment conducted under ss. 115-132 of the *NuPPAA*.

To date, the NIRB has yet to participate in a Federal Panel Review. As such, the focus of this part of the Guide is to provide Proponents with a general understanding of the NIRB's approach to conducting a NIRB Review under Article 12, Part 5 of the *Nunavut Agreement* and ss. 99-114 of the *NuPPAA*.

5.2 The Proponent's Public Consultation During the Review Process

Following a NIRB screening, if the NIRB indicates to the Minister that a project proposal requires review, there are additional public consultation requirements for the Proponent to meet in the impact assessment process. The requirement for the Proponent to conduct public consultation related to the project is specifically included in the Guidelines issued to the Proponent to guide the Proponent's development of the Impact Statement (IS), and public consultation requirements are also included as one of the NIRB's Minimum IS Requirements.

Recognizing that sometimes the guidelines for preparing the IS issued on a project-by-project basis may further add or modify the general public consultation

requirements, the minimum requirements of the Proponents when conducting public consultation for the preparation of an Impact Statement include but are not limited to:

1. A description of public consultations/ public consultation program undertaken to gather relevant information, including relevant documentation. This includes records of dates and location of meetings, the names of participating individuals and/or organizations (e.g., minutes);
2. A description of the results of the consultation process as it pertains to the following:
 - a. Identification of patterns of land and resource use;
 - b. Identification Valued Ecosystem Components (VECs) and Valued Socioeconomic Components (VSECs);
 - c. Determination of the criteria for evaluating the significance of potential impacts to VECs and VSECs;
 - d. Determination of mitigation measures;
 - e. Formulation of compensation packages; and
 - f. Identification and implementation of monitoring measures.
3. A demonstration of clear linkages between the results of the consultation process and how the consultation process has influenced project proposal decisions, such as project design, mitigation measures and/or monitoring;
4. A description of any issues raised during consultations and any resolutions to those issues; and
5. A description of the proposed communication program/strategy for the life of the project and/or a public involvement plan that will be implemented should the project receive approval.

***Note:** *The NIRB advises that it is important to demonstrate that any information requested in the NIRB IS Guidelines regarding public consultation has been integrated into the Impact Statement in a clear and systematic manner.*

5.3 Intervenor Participation Throughout the Review Process

After the NIRB screening process is complete and it has been recommended by the NIRB that a project requires review and the responsible Minister has determined that a project requires review under Part 5 of Article 12 of the *Nunavut Agreement* and s 99 and 101 *NuPPAA*. [Figure 7](#) generally illustrates the NIRB’s general steps for conduct a review once the Minister(s) referral has been received. The Minister(s) referral could include information regarding Intervenor funding being available for that review, see [Section 2.3](#) for information.

Notifications regarding the receipt of the Minister(s) referral to the NIRB and the commencement of a review for the project would be sent ONLY to those on the distribution list that had been established during the screening process.

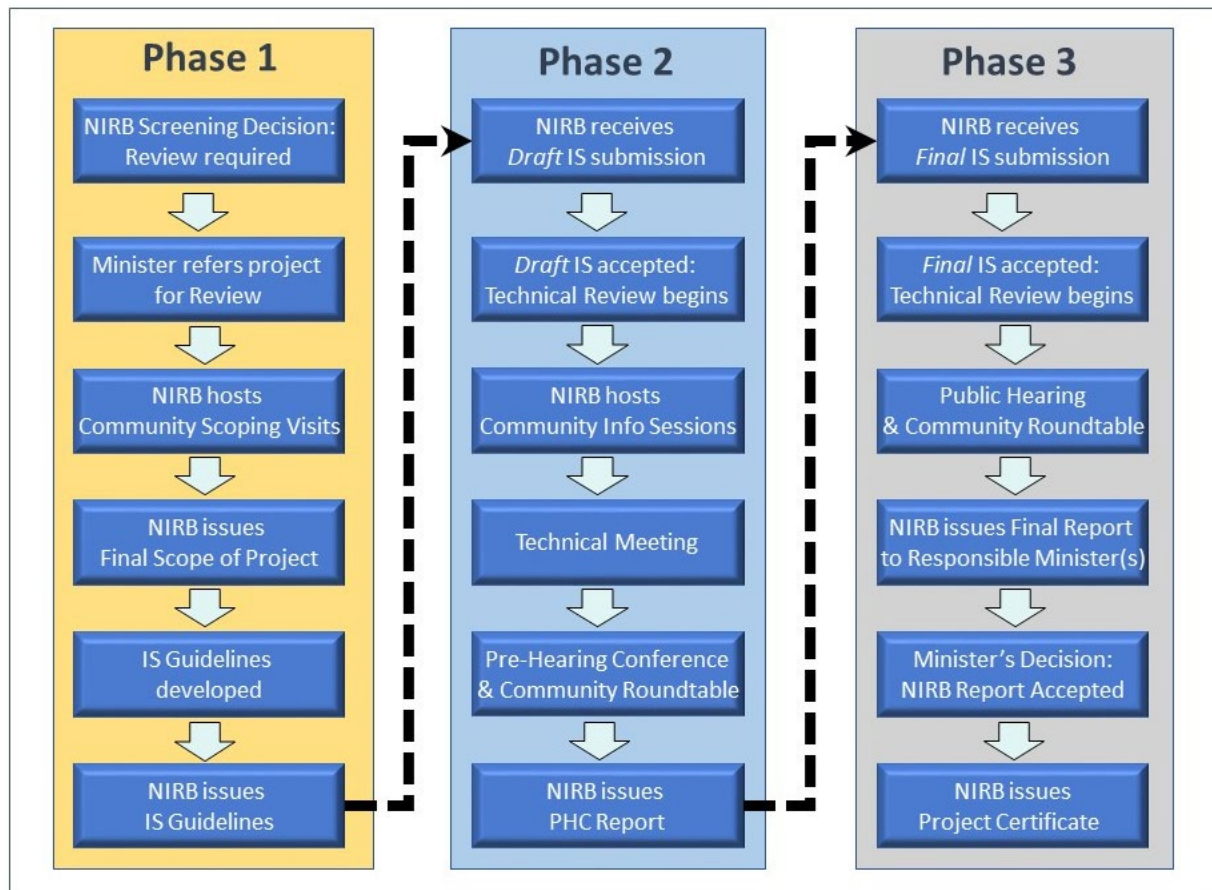


Figure 7. NIRB Review Process Overview

***Note:** The following sections outline the standard process steps in a NIRB review; however, it should be noted that the review process itself may be tailored to account for assessment-specific circumstances. For instance, when deemed appropriate, the NIRB has the ability to accept an initial project description as an IS without completing the Guideline development steps, and also has the ability to accept an IS as a Final IS without undertaking any of the steps relevant to the DIS stage. This may be the determined approach for projects with a limited scope, for amendments to existing projects and other scenarios that arise. The NIRB can also vary the degree to which there are workshops and other supplementary events (e.g., technical meetings, IS Guidelines Development Workshop) for a particular review, and finally, where there is coordination with the NWB licensing process, additional variations may also be necessary. In all cases, the NIRB typically communicates the anticipated process that will be followed at the beginning of the review.

5.3.1 Phase 1 of a NIRB Review

Phase 1 – Review Process

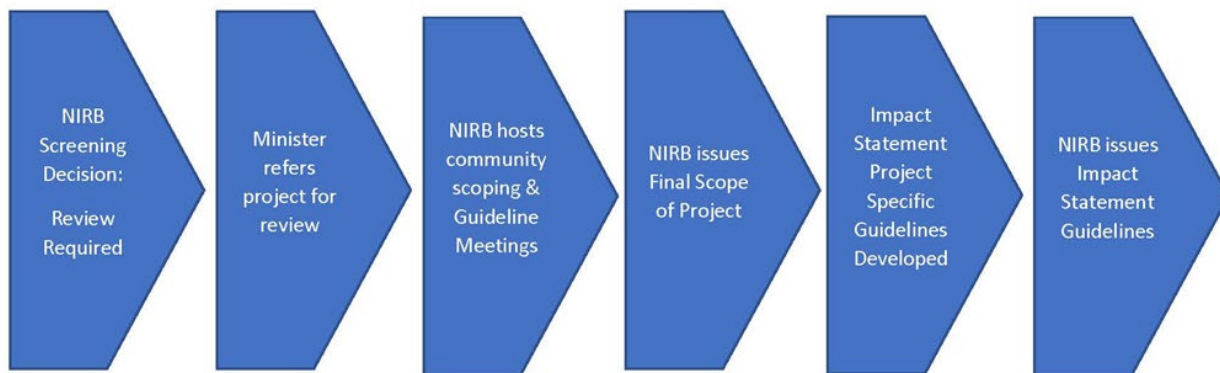


Figure 8: NIRB Review Process Phase 1

5.3.1.1 Scoping and Guideline Development

The first step in the NIRB’s review process is to establish the scope of the project proposal and the analysis of the potential impacts associated with developing the project. This step typically happens in conjunction with the development of impact

statement guidelines and further develops the scope identified during the screening step.⁴

Scoping is a process that identifies significant issues requiring study and analyze in the impact assessment process. **Scoping identifies the components of the biophysical and/or socio-economic environment that may be impacted by the project and for which there is public concern.** Scoping usually includes a meeting with the Proponent, Authorizing Agencies, members of affected communities and the public in general and is facilitated by the NIRB. The NIRB will solicit input from the Proponent and interested parties (e.g., Federal and Territorial Government departments, Designated Inuit Organizations, and members of the public) and evaluate all information it considers appropriate in order to determine:

- a. Which components of the project to include in the review;
- b. The temporal and spatial boundaries of the project;
- c. The issues and concerns to be considered in the review; and
- d. Any other requirements for the assessment of the project proposal.

During scoping the NIRB also consults with the public and interested parties to identify Valued Ecosystem Components (VECs) and Valued Socio-Economic Components (VSECs) that should be addressed by the Proponent's DIS. The NIRB also develops a public participation and awareness program in which the community's participation in the review process, among other items, is discussed and incorporated into the review planning process. During scoping, Intervenors occupy a central role in ensuring that the assessment undertaken to fulfill the requirements of the review is appropriate and adequately considers all project components and reflects ecosystemic and socio-economic components that must be considered.

As set out in s. 99 of the *NuPPAA*, when reviewing a project, the NIRB *must include in the project scope* those activities and undertakings that are considered by the Board to be sufficiently related to the project to form part of it and must exclude from the scope any work or activity that is insufficiently related to the project to form part of it.

In the event the scope of the project differs from the scope as proposed by the Proponent, the Board is required to consult with the Proponent regarding the

⁴ The NIRB is currently developing a standardized Impact Assessment Guidelines which has completed the draft stage. Once finalized the NIRB would only be developing project specific portions of the guidelines during its consultation at this time.

changes to the project scope and must consider the comments of the Proponent in making any inclusion or exclusion. If the Board adds to the project scope, the Board must NOT proceed with the review until the Nunavut Planning Commission and/or Responsible Authority and the relevant federal and territorial Ministers have had the opportunity to perform their duties and functions in relation to the revised project scope.

Although scoping and IS Guideline meetings will vary to reflect the nature of the project proposal under review, parties interested in reviewing a detailed summary of typical scoping and IS guideline meetings are invited to review the Scoping and IS Guidelines Session Summary Report included for any of the NIRB's active or completed Review files.

When developing project-specific impact statement guidelines, the NIRB is required to circulate a *draft* version of the Guidelines in French, English and Inuktitut, and/or Inuinnaqtun to the Proponent, Authorizing Agencies, and other interested parties and members of the public, requesting recommendations and guidance that reflect the parties' specific concerns and areas of knowledge and expertise (s. 101(4) of the *NuPPAA*).

Note: As per s. 12.2.23(h) of the Nunavut Agreement and s. 101(4) of NuPPAA the NIRB can establish standard guidelines for the preparation of an Impact Statement (Standard IS Guidelines). Standard IS Guidelines are currently under development by the NIRB.

The NIRB then considers the comments received and integrates any recommendations the Board considers appropriate into the Final Guidelines for the IS. The Final IS Guidelines are issued to the Proponent, released to the distribution list and are posted on the NIRB public registry.

Although scoping and IS Guideline meetings will vary to reflect the nature of the project proposal under review, parties interested in reviewing a detailed summary of typical scoping and IS guideline meetings are invited to review the Scoping and IS Guidelines Session Summary Report included for any of the NIRB's active or completed Review files.

5.3.1.2 *Preparation of an Impact Statement*

An Impact Statement (IS) is a tool used by the NIRB to evaluate the potential environmental and socio-economic impacts of a project proposal and to ensure the integrated planning of development proposals. Proponents **must** prepare this in-depth document that identifies, predicts, evaluates and communicates information about the impacts of a project proposal on human health and the well-being of the ecosystem. An IS also includes the identification and development of mitigation measures, which are measures designed to control, reduce, or eliminate potentially adverse impacts of an activity or project and enhance positive impacts. Further, an IS also contains monitoring and reporting methods to verify the accuracy of impact predictions.

Note: As per s. 12.5.2 of the Nunavut Agreement and s. 101(2) of the NuPPAA, where the project proposal submitted by a proponent for screening address the requirements of an impact statement and is deemed by the NIRB, the Board may accept the submission as an impact statement without developing project-specific guidelines. Further, the requirement for 'Draft' and 'Final' Impact Statement submissions are set at the NIRB's discretion.

Once the Proponent receives the Final IS Guidelines it is the **responsibility of the Proponent** to prepare the IS in accordance with the Guidelines. Typically, the Proponent prepares two (2) forms of IS, an initial Draft IS (DIS), and following information requests, consultation, technical review and commenting on the DIS, a Final IS (FIS).

The Proponent may choose to only prepare the IS in final form, or alternatively provide an original project proposal for screening that is *sufficiently detailed* to contain the information required for an IS (s. 101(2) of the NuPPAA). In such circumstances, the Board may modify the process and timelines to conduct a review on the basis of the Proponent's submission of the FIS only, or may accept the original project proposal as a DIS.

In any case, the NIRB requires the Proponent's IS submission to **identify, predict, evaluate, and communicate information about the ecosystemic and socio-economic impacts of a project proposal**, and also to **identify mitigation measures** which are designed to control, reduce or eliminate potentially adverse impacts of an activity or project or enhance the potentially positive impacts of an activity or project.

***Note:** For more detailed information concerning the preparation of an IS, see Part 11.0 *Preparing an Impact Statement in the Proponent’s Guide*.

For the purposes of this Guide, the process outlined in the text that follows assumes that the Proponent has chosen to prepare both a DIS and a FIS.

5.3.2 Phase 2 of a NIRB Review

Phase 2 – Review Process

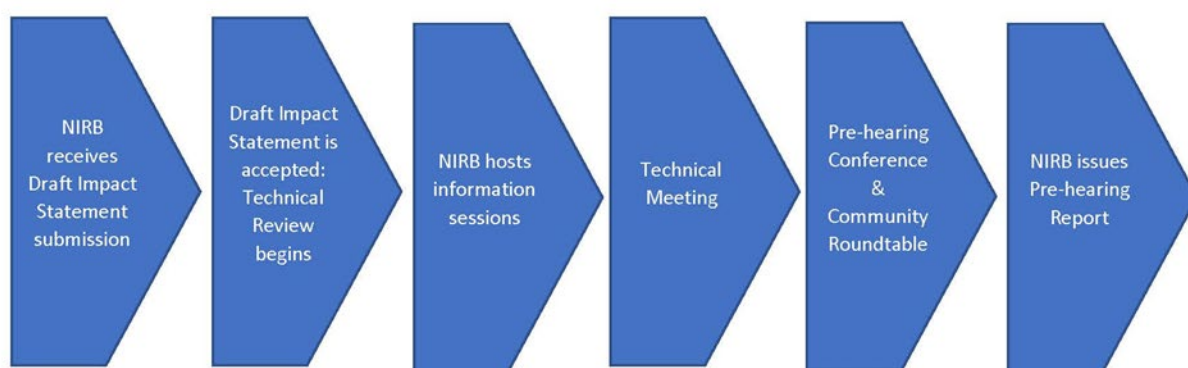


Figure 9: NIRB Review Process Phase 2

5.3.2.1 ***NIRB Guideline Conformity Review of A DIS***

Once the NIRB receives an electronic copy of the DIS the NIRB will conduct an internal conformity review of the material to determine whether the DIS conforms to the Final IS Guidelines. The NIRB’s guideline conformity review is a presence or absence analysis focused solely on identifying if any of the information requested in the Final IS Guidelines has been omitted from the DIS and whether the NIRB’s 10 Minimum IS Requirements⁵ have been met. The conformity review is NOT intended to evaluate the quality of the information presented, although the NIRB *may* point out areas of the DIS where there are significant deficiencies.

If the NIRB identifies significant information gaps, a change of scope, or otherwise determines that the DIS does not conform to the IS information requirements, the NIRB will advise the Proponent and the distribution list, including Intervenors that

⁵ For a listing of these requirements see Part 11 of the Proponents’ Guide to the NIRB.

the DIS does not conform. The Proponent is then responsible for submitting the supplementary information required to conform and the Proponent may, depending upon the nature and extent of the non-conformity, be required to revise and resubmit the DIS. Until the NIRB indicates that the DIS conforms with the IS information requirements, no formal technical review of the DIS proceeds.

When the NIRB indicates that the DIS conforms to the requirements, the Proponent will be instructed to provide electronic and/or hard copies to interested parties and to submit any additional outstanding information. Once parties have received copies of the DIS the NIRB will initiate the technical review of the DIS.

5.3.2.2 *Technical Review of the DIS*

A technical review is a more detailed review of the DIS than the guideline conformity review, and the focus is an analysis of the quality of the information presented by the Proponent.

Interested parties, including Intervenors, also provide technical review comments at this stage. The comments requested by the NIRB at this stage generally include the following:

1. Determination as to whether the party agrees/disagrees with the conclusions in the DIS regarding the alternatives assessment, environmental impacts, proposed mitigation, significance of impacts, and monitoring measures – including the reasons supporting the determination;
2. Determination of whether or not the conclusions drawn in the DIS are supported by the analysis – and reasons to support the determination;
3. Determination of whether appropriate methodology was utilised in the DIS to develop conclusions – and reasons to support the determination, along with any proposed alternative methodologies which may be more appropriate (if applicable);
4. Assessment of the quality and presentation of the information in the DIS; and
5. Any comments regarding additional information which would be useful in assessing impacts – and reasons to support any comments made.

Information Requests (IRs)

During the preliminary phase of the DIS technical review the NIRB will invite parties to submit Information Requests (IRs) to the Proponent and/or to other parties. **The purpose of IRs is to identify information gaps that prevent the requesting party from being able to complete their substantive and qualitative technical review of the DIS.** If there is information that a reviewer requires in order to be

able to embark on their technical review, it should be identified at the IR stage. At this time, the Proponent may also choose to submit IRs to the parties, including Intervenors.

Parties requesting responses to IRs are reminded that IRs generally focus on information gaps that can reasonably be expected to be provided at the preliminary stage of the review and are not technical review comments providing a qualitative assessment of information that has been supplied by the Proponent.

For example, a commenting party may note that there is a wildlife management plan provided with the DEIS but that the plan does not currently include Polar Bears, an area of the parties' jurisdiction. Before the commenting party could provide technical review comments regarding the adequacy of the plan to address their area of jurisdiction, the party would need a response to its IR regarding the extent to which Polar Bears have been included in the wildlife management plan or whether management of Polar Bear interactions are located elsewhere.

In contrast, if the DIS contained a wildlife management plan that included Polar Bears, but upon review of the plan, the commenting party felt that the mitigation measures included were inadequate, it may request or recommend that alternate measures be considered. This type of request however, to supplement the plan and to add additional measures, would not be characterized as an IR, but rather as a technical review comment that should likely be deferred to the technical review comment period.

The process for submitting and receiving IRs is generally as follows:

1. Parties submit their IRs to the NIRB;
2. The IRs must contain the following information:
 - a. To whom the IR is directed;
 - b. Identification of the issue;
 - c. The concern associated with the issue; and
 - d. A clear rationale of the issue's importance to the impact assessment of the project.
3. Depending on the IRs received, the NIRB may review the IRs to identify whether or not the information requested is appropriately categorized as an IR (more substantive technical review comments are generally deferred to discussion in the context of the parties' technical review and any resulting technical meeting) and whether or not it is reasonable to request

that this information be supplied at this stage in the review. On this basis, the NIRB may provide direction to the party to whom the IR is directed as to whether that party must respond at this stage in the review. Regardless of whether the Board directs a given party to respond to a given IR at this stage in the process, the Board does forward all IRs provided to the relevant party and they can choose to reply to the IRs received, regardless of whether the NIRB directs them to respond at this stage in the review or not;

4. The NIRB will set a timeframe for parties to respond, and may allow flexibility for the Proponent's own responses to IRs; and
5. The NIRB will post all responses received on the NIRB public registry and will notify the distribution list.

Technical Comments

Following the receipt of the Proponent's response to IRs, the NIRB commences technical review requesting Intervenors, Authorizing Agencies, members of the public and other interested parties provide technical review comments and the NIRB will provide direction on the format and timeline for submission(s). The Proponent is provided an opportunity to develop a brief response to technical review comment submissions, though the NIRB anticipates that all Parties will attend the Technical Meeting to discuss positions and develop solutions related to technical comments and issues.

In general, the NIRB expects parties to provide the following:

1. Determination as to whether the party agrees/disagrees with the conclusions in the DIS regarding the alternatives assessment, environmental impacts, proposed mitigation, significance of impacts, and monitoring measures – including the reasons supporting the determination;
2. Determination of whether or not the conclusions drawn in the DIS are supported by the analysis – and reasons to support the determination;
3. Determination of whether appropriate methodology was utilized in the DIS to develop conclusions – and reasons to support the determination, along with any proposed alternative methodologies which may be more appropriate (if applicable);
4. Assessment of the quality and presentation of the information in the DIS;
5. Any comments regarding additional information which would be useful in assessing impacts – and reasons to support any comments made; and,

6. Any recommendations for further data collection, analysis, monitoring programs, etc. that may be considered to be required to ensure that effects are minimized.

Following receipt of the technical comments, the Proponent may be provided an opportunity to prepare a brief response to the submissions in advance of a Technical Meeting. Although the NIRB anticipates that all parties will attend the Technical Meeting to discuss positions and develop solutions related to technical comments and issues, the Proponent, Authorizing Agencies, and Intervenors are generally encouraged to work together throughout the assessment to dialogue and attempt to resolve technical issues to the extent practicable outside of formal NIRB events, bringing potential resolutions and outstanding items to events such as the Technical Meeting for discussion by all parties.

****Note:** During the technical review stage of the DIS, the NIRB may, as part of the public participation program established for a particular project, facilitate community information meetings and/or open house sessions within communities potentially affected by the proposed Project. The information session meetings are designed to advise community members about the NIRB's process steps, highlight that the DIS has been accepted, and encourage continued public participation throughout the NIRB's Review process. Authorizing Agencies and the Proponent are often invited to attend the information sessions as observers and Intervenors are welcome to attend the information sessions as observers.*

5.3.2.3 **Technical Meeting**

The NIRB may hold a technical meeting involving discussions on technical matters related to the DIS. The NIRB staff facilitates the Technical Meeting, which is kept as informal as possible and the focus is to **resolve outstanding technical issues** prior to the Pre-Hearing Conference (PHC). Technical meetings are generally held in the community most likely to be affected by the proposal and are open to the public if they wish to attend and usually take place over the course of a few days, depending on the scope of the project and concerns submitted by parties.

As the focus is on open discussions leading to the resolution of technical issues, the NIRB Board Members are not present during technical meetings. Breakout sessions may be used during technical meetings and each break out group (e.g., engineering, wildlife, or socio-economics issues) and would be facilitated by the NIRB's staff should the need arise; however, the NIRB has not selected to do this option in recent history.

During the technical meeting it is the Proponent's responsibility to compile a list of commitments made by the Proponent and the parties and/or Regulatory Authorities at the meeting. The list of commitments is then carried forward to the PHC for incorporation into the Board's PHC decision.

The Technical Meeting is the primary means of:

- resolving and streamlining technical issues that could remain outstanding going into the Final IS and Final Hearing, and
- developing a meaningful list of commitments from all the parties to govern the review going forward and actively exchanging information and ideas.

***Notes:** 1) *As stated in the NIRB Rules of Procedure if, at the conclusion of the Technical Meeting, an Intervenor is not satisfied that they have all the technical information necessary to proceed to a hearing, they may file a written request with the Board to have the Proponent provide the specific outstanding information before the matter can be set down for a hearing by the NIRB.*

2) *It should also be noted that if, following technical review, the quality of the information and analyses contained in the DIS is considered to only require minor additions and modifications, the Board may elect to accept the DIS as the FIS, in which case the NIRB may exercise its discretion to eliminate or collapse some of the steps that would otherwise be associated with the preparation and submission of the FIS.*

5.3.2.4 **Pre-hearing Conference**

During the pre-hearing conference (PHC) the Proponent, parties (including Intervenors), Community Representatives and/or members of the public would assess whether, recognizing the information and documentation about the project proposal received by the Board to date, the project proposal can move forward into the Public Hearing stage. The PHC also provides an opportunity for the Proponent, Authorizing Agencies and parties to provide the Board with confirmation regarding the issues that were resolved during the technical meeting, and to identify those issues that remain outstanding as the Chairperson and/or their appointee is in attendance. The PHC may also provide an opportunity for the public to ask questions and provide comments to the Board regarding the project proposal.

Additionally, at the PHC discussions regarding procedural matters related to the next steps in the NIRB review occur such as:

- a. Final Hearing logistics - such as the form of the Final Hearing, and where possible, the date(s), time(s), venue(s) for the Final Hearing (although this may not be confirmed until the FIS has been submitted and the NIRB deems the FIS to be in compliance);
- b. Confirmation of the participation and attendance of representatives from the Proponent, Authorizing Agencies, registered intervenors, communities and other interested parties at the Final Hearing;
- c. Setting a timetable for the exchange of documents, providing outstanding information requests and filing evidence prior to the Final Hearing, including timelines for final written submissions;
- d. Identifying whether there will need to be specific deviations from the NIRB's Rules of Procedure;
- e. (if applicable) terms of reference for a site visit; and
- f. Any other matters that may aid in the simplification of the Final Hearing.

Following the PHC, the Board will issue a PHC decision which provides direction to the Proponent regarding issues that need to be addressed in the FIS, outlines for all parties the procedures for the review of the FIS, including the role of any and any specific requests by the NIRB with respect to the participation of particular Intervenors and provides all parties with information regarding the Final Hearing.

5.3.3 Phase 3 of a NIRB Review



Figure 10: NIRB Review Process Phase 3

5.3.3.1 ***PREPARATION AND SUBMISSION OF THE FINAL IMPACT STATEMENT BY THE PROPONENT***

It is the responsibility of the Proponent to prepare the FIS in accordance with the IS Guidelines, the PHC decision which includes the list of commitments formulated at the Technical Meeting and approved by the Board. The FIS is also expected to be a more fulsome report addressing issues that either the Board identified or the Proponent committed to working on during the Technical Meeting and/or PHC and provide detailed plans/programs for the monitoring and mitigation and specifically address thresholds and how the precautionary principle has been applied and would be monitored for during the project, if approved.

5.3.3.2 ***NIRB FIS COMPLIANCE REVIEW***

Following receipt of an electronic copy of the FIS submission, the NIRB will conduct an internal review of the material to determine whether the FIS complies with the IS Guidelines, the direction provided by the Board in its PHC decision and is consistent with the list of commitments. If the NIRB determines that the FIS does not comply with these requirements, the Proponent is notified and will be required to submit supplementary information. If the FIS is found to be significantly non-compliant with the PHC decision, it may be returned to the Proponent for revision and resubmission.

When the NIRB indicates that the FIS complies with the requirements and all parties, including Intervenor(s), have received their copies of the FIS (electronic or hard copy), the NIRB will initiate the technical review period for the FIS.

5.3.3.3 **TECHNICAL REVIEW OF THE FIS**

Like the DIS technical review, the FIS technical review is a detailed analysis of the FIS. The focus of the technical review of the FIS is on the quality of the new and/or revised information presented by the Proponent and also involves reconsidering the information previously submitted in the DIS and the overall project in light of any updated or additional information provided in the FIS.

Depending upon the nature and extent of information that remains outstanding at this stage, the NIRB may also facilitate a second round of IRs from the parties, including Intervenors at the beginning of the FIS technical review phase as outlined in the [Section 5.3.2.2](#) above on the Technical Review of the DIS.

Although the NIRB may advise interested parties, including Intervenors of additional requirements to be included in the technical review phase of the FIS, in general the NIRB expects technical review comments and/or final written submissions received before the hearing to consist of the following:

- a. Determination of whether parties agree/disagree with the conclusions regarding the alternatives assessment, environmental impacts, proposed mitigation, significance of impacts, and monitoring measures – and all evidence supporting the parties' position;
- b. Determination of whether or not conclusions in the FIS are supported by the analysis – and all evidence supporting the parties' position;
- c. Determination of whether appropriate methodology was utilised to develop conclusions – and all evidence supporting the parties' position;
- d. An assessment of the quality of the information presented; and
- e. Determination regarding the appropriateness of proposed monitoring measures – and evidence to support the determination, along with any proposed alternative monitoring measures which may be more appropriate (if applicable).

The NIRB typically requests the proponent to respond to the final written submissions prior to the hearing in a timely fashion in order to facilitate discussions of outstanding issues.

5.3.3.4 **FINAL HEARING**

A NIRB Final Hearing provides a public forum for the discussion of proposed projects. Interested parties, such as Intervenors, Authorizing Agencies, or other concerned parties affected by the project proposal are given the chance to provide the Board Members with their comments and concerns, as well as to present

information to the Board. The Final Hearing also allows the opinions of Elders and community members to be heard and allows for Inuit oral communication to be included in the NIRB's decision-making.

During the Hearing, the Proponent is expected to respond to issues and concerns raised by parties in final written submissions, and during parties' presentations of evidence to the Board at the Hearing. Through dialogue during the Hearing, the Proponent and parties may come to agreement on the resolution of outstanding items. These discussions may be captured and tracked by way of a listing of commitments the Proponent makes to address specific concerns or issues. The listing of commitments may later form a part of the NIRB's Project Certificate and post-environmental monitoring program, in the case that project approval is recommended and granted by the Board and Minister.

The NIRB expects Proponents and parties to be working together throughout the Review process to ensure that as many issues as possible are resolved or near resolution by the hearing. However, if parties cannot resolve outstanding items at the closing of the record for the hearing, the Board is prepared to consider motions to leave the record open, and following deliberation on the motion, will provide parties with direction on process steps and timelines to complete closing of the record.

For a detailed summary of the general procedures followed by the NIRB in respect of hearings, refer to the NIRB's Rules of Procedure. However, participants should keep in mind that the Board does have the power to modify or deviate from these general rules when the requirements of procedural fairness in any given case necessitate such changes.

***Note:** *Based on the nature of the project and range of impacts, the NIRB may choose to conduct the Final Hearing as a written hearing, oral hearing or in such other form as the NIRB deems appropriate. The Board generally communicates its choice of the type and location of the Final Hearing in the Board's Public Notice of Hearing which is issued at least 60 days prior to the Final Hearing.*

It is the Board's view that the full participation of Intervenors, and members of the public along with Authorizing Agencies in the Final Hearing phase of a NIRB review is essential to conducting a thorough and inclusive impact assessment. Highlighting the importance of the contributions of Intervenors, Authorizing Agencies or other parties with potentially relevant information to the NIRB's impact assessment process, the NIRB has the power to subpoena those witnesses,

documents and things considered necessary to carry out its responsibilities as set out in Article 12, Section 12.2.25 of the *Nunavut Agreement*, and as such can compel the attendance of representatives from relevant Authorizing Agencies and other interested parties at a NIRB Final Hearing as set out in s. 102 of the *NuPPAA*:

NuPPAA s. 102(3): The Board has, in respect of public hearings, the power to summon any person to appear as a witness before the Board and to order the witness to

- (a) give evidence, orally or in writing; and*
- (b) produce any documents or other things that the Board considers necessary to conduct its review of the project.*

5.3.4 Factors Taken into Account During the Board’s Review of a Project

As outlined in Article 12, Section 12.5.5 of the *Nunavut Agreement* and s. 103 of the *NuPPAA*, when conducting the review of a project, the Board is required to take into account the following factors, which include any traditional or community knowledge provided to the NIRB:

- (a) the purpose of the project and the need for the project;
- (b) whether, and to what extent, the project would protect and enhance the existing and future well-being of the residents and communities of the designated area, taking into account the interests of other Canadians;
- (c) whether the project reflects the priorities and values of the residents of the designated area;
- (d) the anticipated effects of the environment on the project, including effects associated with natural phenomena, such as meteorological and seismological activity, and climate change;
- (e) the anticipated ecosystemic and socioeconomic impacts of the project, including those arising from the effects referred to in paragraph (d);
- (f) the cumulative ecosystemic and socioeconomic impacts that could result from the impacts of the project combined with those of any other project that has been carried out, is being carried out or is likely to be carried out;
- (g) whether the impacts referred to in paragraphs (e) and (f) would unduly prejudice the ecosystemic integrity of the designated area;

(h) the measures, including those proposed by the proponent, that should be taken to:

(i) avoid and mitigate adverse ecosystemic and socio-economic impacts, including contingency plans,

(ii) optimize the benefits of the project, with specific consideration given to expressed community and regional preferences in regard to benefits,

(iii) compensate persons whose interests are adversely affected by the project, and

(iv) restore ecosystemic integrity after the permanent closure of the project;

(i) the significance of the impacts referred to in paragraphs (e) and (f), taking into account the measures referred to in paragraph (h);

(j) the capacity of renewable resources that are likely to be significantly affected by the project to meet the existing and future needs of the residents of the designated area;

(k) any monitoring program of the project's ecosystemic and socio-economic impacts that should be established, including one proposed by the proponent;

(l) the interests in land and waters that the proponent has acquired or seeks to acquire;

(m) the options for carrying out the project that are technically and economically feasible and the anticipated ecosystemic and socio-economic impacts of such options;

(n) the posting of performance bonds;

(o) the particular issues or concerns identified under s. 96(1) of the *NuPPAA* [issues identified by the Minister when sending the proposal to the Board for review]; and

(p) any other matter within the Board's jurisdiction that, in its opinion, should be considered.

In addition, the Board is required to take into account any traditional or community knowledge provided to the NIRB.

5.3.5 Submission of the NIRB's Final Hearing Report to the Minister(s)

Within 45 days after the Final Hearing and/or the close of the Final Hearing record, the NIRB must issue a report on the project proposal to the relevant and responsible Minister(s) (in all cases, this includes copy to the Minister of Intergovernmental Affairs, Northern Affairs and Internal Trade). The report is also provided to the Proponent, parties, project distribution list, and the public as it contains a description of the project with the finalized scope, the Board's assessment of the project and its impacts and, based on this assessment, the Board's recommendation regarding whether or not the project should proceed.

Where the NIRB concludes that the project should proceed, the Board's report also contains recommended terms and conditions considered by the NIRB to be required to protect and promote the existing and future well-being of the residents and communities of the Nunavut Settlement Area, specifically and Canada, in general and to protect the ecosystemic integrity of the Nunavut Settlement Area and commitments made by the Proponent.

In developing project certificate terms and conditions, **the goals of the NIRB are to:**

- provide the **basis for inspection and surveillance** to ensure that the project is implemented as it was proposed, reflecting both the project scope as assessed in the NIRB's impact assessment, and the specific mitigation measures as may be proposed in the Impact Statement, as may be included in any listing of the Proponent's commitments, and as ultimately, would be contained in the project certificate;
- provide a **mechanism for overall compliance and effects monitoring** to ensure impacts remain within predicted levels;
- support **adaptive management** by requiring that unanticipated effects or changes to the magnitude of predicted impacts be identified and that mitigation measures and regulatory instruments be adapted to address unanticipated effects or changes to predicted impacts; and
- adopt **audit and process evaluation measures** to examine and transparently report on the accuracy of predictions, the success or failure of mitigation measures and overall levels of environmental and socio-economic performance of the project and effectiveness of the impact assessment and regulatory processes in supporting environmental performance.

Wherever possible, the NIRB has used the following format for the proposed project-specific terms and conditions to provide clear direction on the intended application, objectives, and reporting requirements:

Category: Identifies the relevant environmental component or project activity to which the term and condition applies. Wherever possible categories have been labelled to directly associate back to the Final Impact Statement/Final Impact Statement Addendum and Impact Statement Guidelines prepared for the Project.

Responsible Parties: Identifies the proposed parties responsible for implementation of the term and condition. While this is generally the Proponent, at times other agencies have been implicated as appropriate.

Project Phase: Identifies the phase(s) of Project development to which the term and condition is applicable. Project phase may include any one (1) or more of the following:

- Pre-Construction - includes site preparation and staging of materials and equipment in advance of construction
- Construction
- Operations
- Temporary Closure /Care and Maintenance
- Closure and Post-Closure - includes abandonment, decommissioning, and reclamation

Objective: Provides a short description of the impact or effect being mitigated, or issue the term and conditions is meant to address. Where relevant, expectations have been provided regarding the timing for when terms and conditions will be deemed to be satisfied (i.e., sunset clause), and who has discretion for determining they are satisfied.

Term or Condition: Provides specific direction on the required action or follow up. In most instances the NIRB has endeavoured to use generalized wording to allow for maximum flexibility in achieving the stated objective, however, more explicit direction has been provided where deemed necessary.

Reporting Requirements: Sets out any specific reporting parameters required to measure achievement of objectives or to demonstrate compliance, as

well as the required frequency of reporting. Consideration will be given to coordination of Project Certificate reporting requirements with reporting requirements as established by other regulatory instruments associated with the Project.

Table 2: Example of format used for proposed NIRB Project Certificate terms and conditions

Term and Condition No.	1.
Category:	
Responsible Parties:	
Project Phase:	
Objective:	
Term or Condition:	
Reporting Requirements:	

5.3.6 Minister(s) Decision

Although the NIRB makes recommendations in its report on the Final Hearing as to whether or not a project should proceed, the responsible Minister(s) makes the final decision. Where the Minister determines that the report is deficient with respect to ecosystemic and socio-economic issues, the Minister may within 90 days after receiving the Board’s report advise the Board of the deficiency and may refer the report back to the NIRB for further review or public hearings. Within 45 days after additional review or hearings are conducted, the NIRB is required to submit another report to the Minister, which shall be accepted or rejected in keeping with the same options as set out below.

Under **s. 105 of the NuPPAA**, if the Board determines that a project should proceed, the Minister must, within 150 days after receiving the Board’s report take one of the following courses of action:

Option One: Accept the Board’s determination that the project should proceed, including accepting all of the recommended terms and conditions.

Option Two: Reject the Board’s determination that a project should proceed on the basis that the proposal is not in the national or regional interest.

Option Three: Accept the Board’s determination that a project should proceed but reject the recommended terms and conditions on the grounds that:

- a. one or more of the terms and conditions are more onerous than necessary or conversely that one or more of the terms and conditions are insufficient to mitigate to an acceptable level the ecosystemic and socio-economic impacts; or
- b. the terms and conditions are so onerous that they would undermine the viability of a project that is in the national or regional interest.

In the situation with respect to **Option Three** above, the NIRB must, within 30 days after the Minister’s decision, reconsider the terms and conditions in light of reasons put forth by the Minister for rejecting the recommended terms and conditions and must make any changes the Board considers appropriate and submit a revised report to the Minister containing the recommended terms and conditions applicable to the Project.

In the cases of option one and option three, once the project is determined to proceed, the NIRB would continue to issuing a project certificate ([Part 7](#)) and monitoring ([Part 8](#)) for the project.

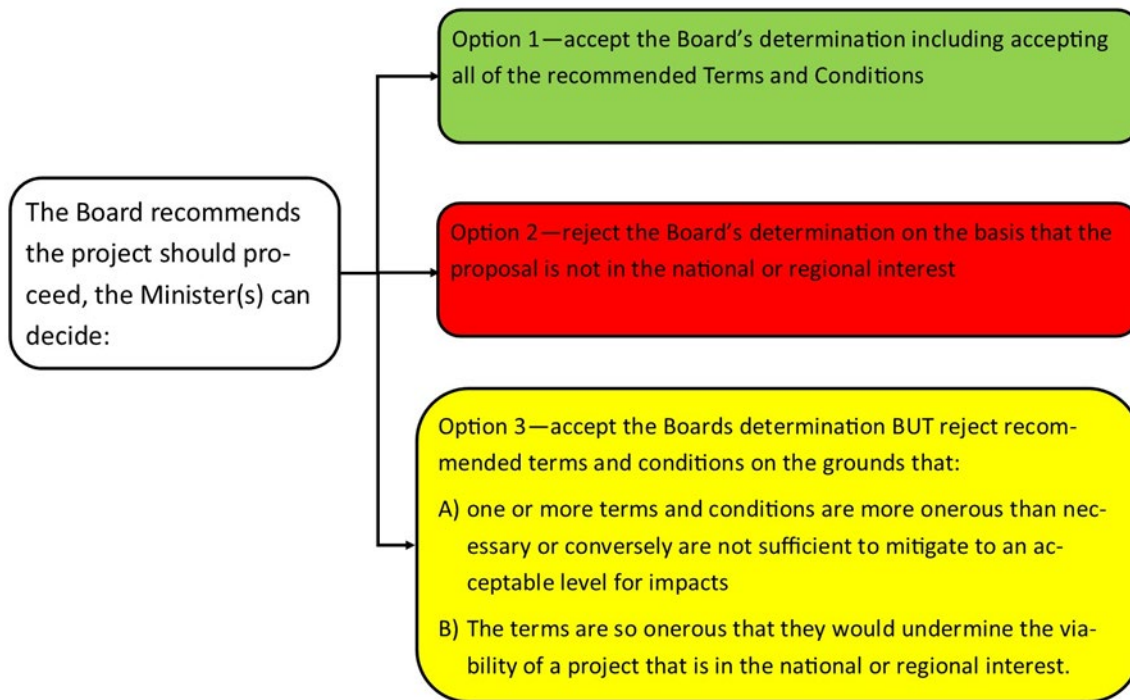


Figure 11: Minister’s Decision as per s. 105 of the NuPPAA

Under **s. 106 of the NuPPAA**, if the Board determines that a project should NOT proceed, the Minister must, within 150 days after receiving the Board’s report take one of the following courses of action:

Option One: Accept the Board’s determination that the project should not proceed.

Option Two: Reject the determination that a project should not proceed on the grounds that the project should have been approved due to its importance to the national or regional interest. In this situation, the Minister will refer the report back to the NIRB to determine appropriate terms and conditions.

In the situation with respect to **Option Two** above, the NIRB must, within 30 days after the Minister’s decision, submit a revised report to the Minister containing terms and conditions that it recommends should apply to the Project.

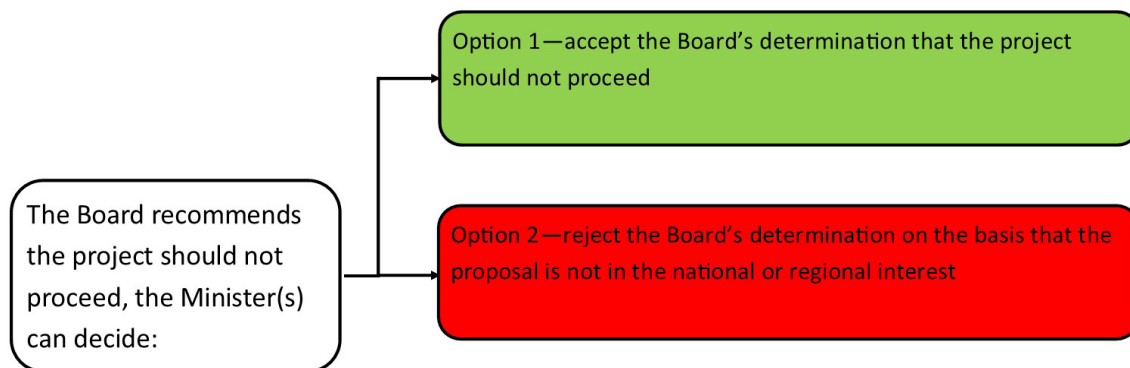


Figure 12: Minister’s Decision as per s. 106 of the NUPPAA

5.4 What is the approximate timeline of a NIRB review?

The timelines as described below do not include additional time that may be added to the timeline to reflect deadlines occurring on weekends, statutory holidays or holiday breaks such as Christmas and Easter, nor do these timelines include the periods required by the Proponent for the preparation and submission of the DIS, preparation of formal responses and the preparation and submission of the FIS and the other projects being considered by the NIRB.

***Note:** *The timelines associated with any given review may change based on project-specific circumstances and are subject to modification by the NIRB.*

The processes set out within the NIRB’s guides should not be inferred to be applicable to reviews by federal environmental assessment panels under the Nunavut Agreement/NuPPAA, as such panels have authority to establish the respective process requirements under the Nunavut Agreement/NuPPAA.

In general, the NIRB review timeline is as follows:

Table 3: NIRB Review Process General Timelines

1. Scoping completed and IS Guidelines issued to Proponent	90 days
2. Draft IS conformity review, acceptance, and IRs forwarded to Proponent	48 days
3. Draft IS technical review, Technical Meeting and PHC, and PHC decision issued	110 days
4. Final IS compliance review, technical review, Final Hearing, and Final Hearing report issued	125 days
5. Total time for NIRB Review:	283 - 400 days

Each of the numbered items above coincides with a Phase of the NIRB’s Review and the timeline for each phase is described below. However, if the Proponent applies to have its project proposal accepted as a *Draft* IS, the timelines could be modified by the NIRB as the need for the IS guidelines would not be required if the Board is of the opinion that the information contained in the description.

A conformity review of that submission may result in a negative decision, and the Proponent may be required to complete extensive revisions to the submission and a second conformity review are required before continuing with the technical review period.

Likewise, Authorizing Agencies should be aware that an application to accept a project proposal as a *Draft* IS may be rejected, making scoping and guideline development mandatory. The time required for submission of an adequate IR response is primarily Proponent-driven. However, under some circumstances, the NIRB may exercise its discretion and establish an acceptable timeline for the Proponent’s response.

Once the NIRB has completed its portion of each of the phases as outlined in Tables 4, and 5, the Proponent would be developing either the draft or final IS based on NIRB’s materials on its own timetable, making the time between sections of the Review completely Proponent-driven.

Table 4: NIRB Review Timelines Phase 1

	Approx. time to complete (days)
Direction received from Minister to review the project proposal NIRB Review commences, notice issued to distribution list.	
Procedures for scoping and impact statement (IS) guideline development outlined	
<i>Draft</i> scope and <i>Draft</i> IS guidelines released for comment.	21 days
Dates for community scoping and IS Guidelines sessions announced	
Community sessions to collect oral and written comments for scoping and IS Guidelines	14-21 days
Comments received from parties on <i>Draft</i> Scope and <i>Draft</i> IS guidelines	21-45 days
Final Scope released, and <i>revised Draft</i> IS Guidelines released for comment	7-10 days
Comments received from Parties on <i>revised Draft</i> IS Guidelines	21 days
IS Guidelines Workshop	1-2 days
Final IS Guidelines released	10-14 days

Table 5: NIRB Review Timelines Phase 2

	Approx. time to complete (days)
Proponent submits a Draft IS to the NIRB	
NIRB determines if the document conforms to the IS Guidelines. If yes, the NIRB requests information requests (IRs) from parties	15 days
Parties prepares IRs and submits them to the NIRB who then review them and send IRs to the proponent	14-30 days
Proponent submits IR Response Package and technical review of the Draft IS begins.	14-21 days
Technical Comments Requested Tentative dates for Technical Meeting and Pre-Hearing Conference (PHC) and Community Round Table announced	2-5 days
The NIRB receives Technical Review comments from Parties and forwards them to the Proponent	60 days
The Proponent responds to Technical Comments	14-21 days
Technical Meeting is held	1-2 days
PHC and Community Round Table is held	2-4 days
Board issues PHC decision on direction for submission of <i>Final</i> IS which includes any administrative matters.	30 days

Table 6: NIRB Review Timelines Phase 3

	Approx. time to complete (days)
Proponent submits a Final IS submission Concordance review is conducted with the PHC decision	
The NIRB issues concordance determination and announces the Final Hearing and Community Round Table Requests Final Written Submissions	15 days
The NIRB receives Final Written Submissions from parties and forwards to the Proponent	60 days
The Proponent submits the Response to Final Written Submissions	10 days
Final Hearing and Community Round Table	5-14 days
Final Hearing Report Issued	45 days

6 EXCEPTIONS FROM REVIEW

6.1 Introduction

A Note about Exemptions from Screening versus Exceptions from Review:

While some types of project proposals are exempt from the *Nunavut Agreement* requirement for screening by the NIRB (and as a result the NIRB does not consider or conduct any impact assessment of such activities), this Part of the Guide discusses activities that may be excepted from the NIRB review process; however the NIRB cannot process the exception until after the Minister(s) referral for a Review has been received.

***Note:** *There are no exceptions from project certificate reconsiderations and/or Amendments, ONLY from NIRB Reviews.*

Under the exceptions from review provisions of the *Nunavut Agreement*, **the NIRB still assesses the potential ecosystemic and socio-economic impacts that may be associated with these activities and may provide recommendations regarding appropriate mitigation measures and other factors to the Authorizing Agencies** (this is similar to the NIRB's screening decisions). In addition, for those exploration and development activities the NIRB excepts from review, the Board may also prescribe mitigation measures and other recommendations that need to be incorporated into any subsequent approvals (e.g., NIRB project certificate) for the related project under review.

The *Nunavut Agreement* and the *NuPPAA* establishes that for projects undergoing a NIRB review, until the NIRB review process has concluded and a NIRB project certificate has been issued for the project, no licence or approval that would be required in order to allow a proposed project to proceed (e.g., water licences, authorizations under the Federal Fisheries Act, land lease agreements with land owners, etc.) shall be issued by an Authorizing Agency in respect of the project.

However, this general prohibition is modified by Article 12, Section 12.10.2 and Article 13, Section 13.5.5 of the *Nunavut Agreement* and ss. 154 and 155 of the *NuPPAA*. These sections allow for approvals or licences to be issued prior to the completion of a review under very specific circumstances:

Exceptions

Nunavut Agreement, Article 12, Section 12.10.2: Notwithstanding section 12.10.1, where a project proposal has been referred for review pursuant to Part 5 or 6, approvals or licences for exploration or development activities related to that project may be issued if:

- (a) the activity falls within Schedule 12-1; or*
- (b) the activity can, in the judgement of NIRB, proceed without such a review.*

Nunavut Agreement, Article 13, Section 13.5.5: Notwithstanding Section 12.10.1, the NWB [Nunavut Water Board] shall not be precluded from issuing interim, short-term approvals for water uses related to exploration or developmental work for a proposal under development impact review.

Under these sections of the *Nunavut Agreement* and ss. 154 and 155 of the *NuPPAA*, when a project proposal is undergoing a NIRB review, approvals or licences for exploration or development activities related to that project may be issued if:

- a. The activity falls within a list of project types normally exempt from the requirement for screening (*Nunavut Agreement* Schedule 12-1) or Schedule 3 of *NuPPAA*;⁶ or
- b. If in the judgement of the NIRB the activity may proceed without such a review.

***Note:** *The NIRB has the sole discretion to determine whether, in the circumstances of a given review and exception application, the proposed activities fit within the criteria of Article 12, Section 12.10.2(b) of the Nunavut Agreement and s. 155(1) of the NuPPAA can be assessed separately from the NIRB review as a result. However, when the NIRB receives an application from the proponent to except exploration or development activities from review, the Board typically solicits comments on the application from all participants, including Intervenor and members of the public.*

⁶ Exemptions from screening under Schedule 12-1 are discussed in [Section 4.4](#) of this Guide.

6.2 Circumstance where Exploration and/or Development Activities May Be Excepted from Review

There are limited circumstances where the NIRB may determine that exploration and/or development activities can be allowed to proceed while a related project is undergoing review. Although the NIRB will consider each application on its merits, in general, the following circumstances may be considered by the NIRB to be appropriate exceptions from review:

- a. Permits, licences or approvals are required to facilitate **scientific research** and/or the collection of data to support the review of a project proposal;
- b. Permits, licences or approvals are required to allow for continued **exploration and/or bulk sampling programs** while a related project is undergoing review; and/or
- c. Permits, licences or approvals are required to **facilitate the limited transport and storage of equipment and materials** related to a project undergoing review, in recognition of the seasonal constraints imposed by the arctic conditions of the Nunavut Settlement Area.

In general, the following types of activities *may* be considered by the NIRB as appropriate to be considered as exceptions from review:

- a. Research carried out within the defined project area and/or research with the primary purpose of supporting the ongoing review of the related project;
- b. The extension, renewal or minor amendment of previously approved exploration and/or activities associated with the project undergoing review;
- c. Transport of fuel, equipment and materials associated with the related project undergoing review, including the related construction and operation of winter roads/trails, temporary airstrips and temporary onshore offloading facilities; and/or
- d. Short term storage of fuel, equipment and materials associated with the related project undergoing review, including establishment of storage facilities and related use of existing or new quarry and borrow sources.

The types of activities captured under this part of the Nunavut Agreement and the NuPPAA are activities which can be described as exploration or development activities in connection with project proposals which are undergoing review under Article 12, Part 5 or Part 6 of the Nunavut Agreement or ss. 99-132 of the NuPPAA. Any activity which is included as a significant component of the related project under review should not be included in an exception application. In addition, the Board does not consider it appropriate to include activities involving the construction of significant project components of the related project undergoing review in an application for exception from review and these construction activities should not be included in an exception application.

Examples of exceptions from NIRB reviews include:

- Baffinland Iron Mines Corporation's Mary River Review (NIRB File No. 08MN053);
- Agnico Eagle Mines Ltd.'s Meliadine Gold Mine (NIRB File No. 11MN034);
- TMAC Resources Inc.'s original Phase 2 Hope Bay Belt Review (NIRB File No. 12MN001);
- Sabina Gold and Silver Corp.'s Back River Review (NIRB File No. 12MN036); and
- Agnico Eagle Mines Limited's Whale Tail Pit Review (NIRB File No. 16MN056).

6.3 Considerations Relevant to the NIRB'S Assessment of an Exception Application

Although the NIRB considers each application under Article 12, Section 12.10.2(b) of the *Nunavut Agreement* and ss. 154 or 155 of the *NuPPAA* on its own merits, in general, the NIRB considers the following:

1. Exceptions from review **cannot** be granted where the exception would impede the NIRB from carrying out its broader environmental assessment functions to:
 - a. **review** the ecosystemic and socio-economic impacts of proposed projects;
 - b. **gauge and define** the extent of the regional impacts of a project; and
 - c. **determine**, on the basis of its review, whether project proposals should proceed, and if so, under what terms and conditions.

2. Exploration and/or development activities which have been **explicitly included within the scope** of a Minister's referral for review may not be allowed to proceed as exceptions to a review by the NIRB.
3. The final determination of whether a project can proceed after a NIRB Review is within the discretion of the responsible Government Minister(s). Consequently, the ability of the NIRB to consider certain activities independently of a related review through Article 12, Section 12.10.2(b) of the *Nunavut Agreement* and ss. 154 or 155 of the *NuPPAA* **cannot fetter, or be seen to fetter, the Minister's ultimate decision-making authority** with respect to whether the related project undergoing review may proceed after the NIRB review is completed.
4. A determination by the NIRB to allow specific exploration and/or development activities to proceed **independently of the review** of a related project under Article 12, Section 12.10.2(b) of the *Nunavut Agreement* and ss. 154 or 155 of the *NuPPAA* does NOT affect the requirement for the Proponent to obtain any licences, permits or approvals from Authorizing Agencies required to undertake the activities.
5. The NIRB's consideration of an application for exception and resulting determination is in no way an indication of the likely outcome of the review process associated with the related project undergoing review. The NIRB's consideration of an application for exception does not affect the Board or Federal Panel's ultimate determination regarding whether the project under review should proceed, nor the issuance of a NIRB project certificate following the final decision of the Minister.
6. If the NIRB grants an exception under the *Nunavut Agreement* and the *NuPPAA*, and a project Proponent undertakes activities in advance of the completion of the review of the related project, in the event that the related project does not proceed, the Proponent may be required to take the steps reasonably necessary to remove all materials, infrastructure, etc. associated with the exploration and/or development activities that proceeded in advance of the review of the related project, and may also be required to restore the environment to a pre-disturbed state.

6.4 Additional factors considered by the NIRB's for an exception application

In assessing whether the activities included within the scope of an application for an exception should be authorized **independently** of the related project undergoing review, the NIRB may also consider the following factors:

1. Rationale, objective and implications of the proposed activities on the feasibility of the related project undergoing review;
2. The permanence of proposed structures;
3. Alternative uses of proposed structures or materials if the related project under review was not to be approved;
4. Significance of potential ecosystemic and socio-economic impacts;
5. Public concern; and
6. Posting of security/performance bonds.

6.5 THE NIRB'S Review of an Exception Application

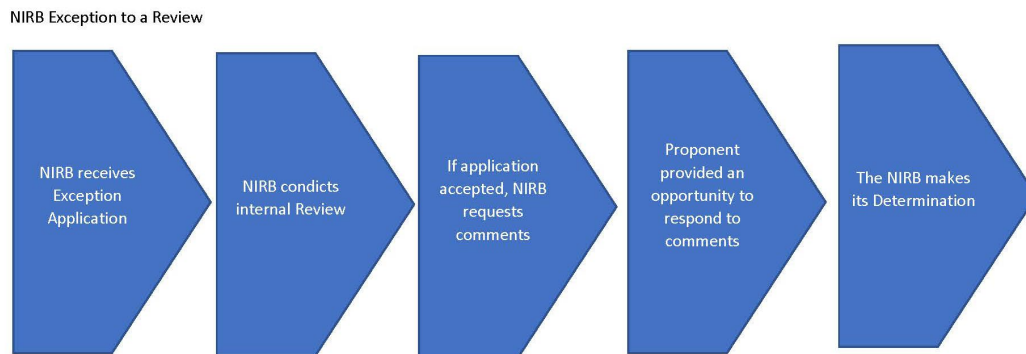


Figure 13: NIRB's Process for the Consideration of an Exception

6.5.1 Referral of an Application, Initial Review and Dissemination

Generally, an application for exception is submitted by the Proponent to the Nunavut Planning Commission (the Commission) and includes the NIRB and the Nunavut Water Board as appropriate depending on the significance of the modification. The Commission must determine confirmation that the activities included in the application for exception under Article 12, Section 12.10.2(b) of the

Nunavut Agreement and ss. 154 or 155 of the *NuPPAA* are included in the Commission conformity determination of the related project under review, or alternatively identifying that a new conformity determination is required to be conducted for the proposed activities.

Assuming that no additional conformity review is required or that the Commission has provided the NIRB with an additional positive conformity decision, the NIRB will process the exception application by conducting a concordance review against the information requirements identified in Part 11 of the Proponents' Guide. If deficiencies are noted or additional clarification is required, the NIRB will advise the Proponent and await the receipt of the required information.

If based on activities described in the exception application the NIRB determines it is inappropriate to consider the type of activities as exceptions, the Board will reject the application and advise the Proponent accordingly.

If the exception application is accepted by the NIRB and is considered to be complete, the Board will post notice of the application and invite Authorizing Agencies, other relevant federal and territorial government departments, Designated Inuit Organizations, community organizations, individuals following the project, and members of the public potentially affected by the proposed exploration and/or development activities, to provide comments in respect of the application within a specified time.

6.5.2 Comments Provided

Upon receipt of comments regarding the application from Authorizing Agencies, Designated Inuit Organizations, other interested parties and members of the public potentially affected by the proposed exploration and/or development activities, the NIRB will review the comments received and determine whether a further response from the Proponent is warranted or whether the comments are such that the project Proponent should be given the opportunity to consider amending the exception application.

If the NIRB determines that no further response from the project Proponent is required, the Board will then make a determination on the application.

6.5.3 Opportunity to Respond to Comments and/or Amend the Application

If, however, the NIRB determines the Proponent should provide a response to comments, the NIRB advises the Proponent and establishes a time period for receipt of the Proponent's response. At this time, the NIRB may also invite the

project Proponent to amend its application in response to comments received (including but not limited to amendments required to address significant public concern relating to specific exploration and/or development activities).

6.5.4 The NIRB's Determination

Following the receipt and review of all necessary information, including: the application; any comments received; and any response or amendments to the application by the project Proponent, the NIRB will make its determination. The NIRB may make **one** of the following decisions:

6.5.4.1 Grant the Exception

If the NIRB determines that it is appropriate, all exploration and/or development activities proposed in the application may be granted an exception from review under Article 12, Section 12.10.2(b) of the *Nunavut Agreement* and s. 155(1)(b) of the *NuPPAA*, and the activities excepted from review may proceed independently of the ongoing NIRB review of the related project.

In the NIRB's determination, the Board may offer recommendations to Authorizing Agencies regarding terms and conditions that the NIRB considers appropriate to mitigate the effects of these activities and may also suggest monitoring in addition to what the Proponent has already committed too. Once the activities have been determined to be acceptable exceptions from the NIRB Review, the Proponent may engage with the Authorizing Agencies to seek the authorization(s) required to carry out the excepted activities.

6.5.4.2 Reject the Application in its Entirety

If the NIRB determines that the exploration and/or development activities included in the exception application cannot be permitted to proceed independently of the ongoing review of the related project, the proposed activities included in the application can *only* be approved by Authorizing Agencies *after* the NIRB review process has been completed and a project certificate has been issued.

6.5.4.3 Partially Grant the Exception

The NIRB may identify that **only specified exploration and/or development activities** included in the exception application may proceed independently of the ongoing NIRB review of the related project and the Board may make recommendations to Authorizing Agencies regarding terms and conditions that the NIRB considers appropriate to mitigate the effects of these activities and may also suggest monitoring in addition to what the Proponent has already committed too. For activities the NIRB has determined are validly excepted from review under

Article 12, Section 12.10.2(b) of the *Nunavut Agreement* and s. 155(1)(b) of the *NuPPAA*, the applicable Authorizing Agencies may proceed to process the applications for those specified exploration and/or development activities.

For activities that the NIRB determines should not be exceptions from Review, those activities **cannot** be approved by the responsible Authorizing Agencies until *after* the NIRB review process has been completed and a project certificate has been issued.

7 PROJECT CERTIFICATE

7.1 Introduction

If, following the completion of a review, a project is recommended to be allowed to proceed through either a review or a reconsideration by the NIRB and the **responsible Minister(s) accept the NIRB's report and the recommended terms and conditions (as they may be amended by the Minister)**, the NIRB must issue a project certificate to the Proponent. Essentially, the project certificate allows the NIRB and the Authorizing Agencies to revisit the impact predictions and proposed mitigation measures provided by a project Proponent in the Impact Statement produced during a NIRB review and/or reconsideration to assess, whether, the project as actually implemented, accords with the impact predictions and whether the proposed mitigation measures are in fact effective.

Note: *The Minister(s) may also vary (s. 112(6)(b)) or add terms and conditions (s. 112(7) of the NuPPAA) to a Project Certificate.*

In general, while there may be some overlap between the terms and conditions in a project certificate and the terms and conditions contained in the specific authorizations issued by Authorizing Agencies to carry out specific project activities, the focus of the project certificate terms and conditions are generally more global than is the case for the specific licences and permits issued by Authorizing Agencies.

7.2 Project Certificate Workshop/Regulator's Meeting

Where it has been determined that a project should proceed, and the Minister accepts the Final and/or Public Hearing Report, the NIRB must within **30 days of the Minister's decision** (*NuPPAA* s.111.(1)), finalize and/or amend the project certificate to contain the terms and conditions recommended by the Board which have been accepted or varied by the Minister(s) unless the Minister(s) is of the opinion that more time is required and up to 45 additional days could be granted (*NuPPAA* s. 111.(5)). Therefore, the exact wording of any of the terms and condition **cannot** be modified during the workshop and will not be discussed. The NIRB may make modifications to all other components of the table surrounding the

term and condition (Category, Responsible Parties, Project Phase, Objective, and Reporting Requirements) and will discuss that modification at the workshop.

Within those 30 days, the NIRB circulates a draft project certificate and facilitates a Project Certificate Workshop to discuss how project-specific terms and conditions can be implemented by providing clarification and commentary to the Proponent and Authorizing Agencies for those terms and conditions that may be ambiguous or are otherwise unclear.

It should be noted that, for some of the recommended terms and conditions, a non-binding **Commentary** section may be added following the specific term and condition as an aid to interpretation during the workshop to record the common understanding and interpretation. Any commentary included by the Board is **non-binding and is intended as an aid to interpretation**.

The Board also provides guidance on general regulatory and administrative responsibilities for both the NIRB and the Proponent. This guidance is in relation to include NIRB Monitoring Responsibilities; General Regulatory Requirements; Monitoring Records and their handling; and on-going engagement in project monitoring, modelling, management. For the specific details, please see the Proponent's Guide Part 7.2.

7.3 Project Certificate Implementation and Enforcement

Even if the NIRB has issued a project certificate that contains terms and conditions that are to be subsequently implemented by an Authorizing Agency, the issuance of a project certificate does not preclude an Authorizing Agency from subsequently reviewing a project and imposing additional or more stringent terms and conditions, or from refusing to issue a licence or approval that would be required in order to allow a proposed project to proceed.

Under Article 12, Section 12.10.3 of the *Nunavut Agreement*, where the terms and conditions of a project certificate are implemented or incorporated by reference into permits, certificates, licences or other governmental approvals, the enforcement of the terms and conditions included in that authorization remains with the Authorizing Agency.

It should also be noted that under Article 26, Part 3, Section 26.3.2 of the *Nunavut Agreement* and s. 140 of the *NuPPAA*, any Inuit Impact and Benefit Agreement entered into by a proponent and the applicable Designated Inuit Organization

under Article 26 of the *Nunavut Agreement* must be consistent with the terms and conditions set out in a project certificate.

Under s. 74(g) of the *NuPPAA*, a Proponent is required to carry out the project in accordance with the terms and conditions set out in the original or amended project certificate.

7.4 Changes to a Project Certificate

Under Article 12, Section 12.8.2 of the *Nunavut Agreement* and s. 112 of the *NuPPAA*, any time after the issuance of a project certificate, the NIRB may reconsider the terms and conditions contained in the NIRB project certificate. The reconsideration of a project certificate may be initiated independently by the Board on its own initiative, upon application by a Designated Inuit Organization, the Proponent, or other interested parties or by the Minister under Article 12, Section 12.8.3 of the *Nunavut Agreement* and s. 112(2) of the *NuPPAA*.

In order to proceed with a review of the project certificate it must be established that:

- a. The terms and conditions contained in the project certificate are **not achieving their purpose**;
- b. The circumstances relating to the project or the effect of the terms and conditions are **significantly different** from those anticipated at the time the project certificate was issued; or
- c. There are technological developments or new information which provide a **more efficient method** of accomplishing the purpose of the terms and conditions.

For further details on the NIRB's reconsideration process of a project certificate, please see [Section 9](#).

8 PROJECT MONITORING

8.1 Introduction

The NIRB has the authority to establish project-specific monitoring programs as the result of a screening, review, or reconsideration of a project proposal. Terms and conditions contained in the NIRB's screening decision report or a project certificate (as well as Nunavut Water Licences) may provide for the establishment of a monitoring program for that project which may specify responsibilities for the Proponent, the NIRB, or Government.

Project monitoring under Article 12, Part 7 *Nunavut Agreement* and s. 135 of the *NuPPAA* are an important tool for **checking the accuracy of predictions** made during an impact assessment and **determining the effectiveness of measures taken to mitigate** any potential adverse environmental or socio-economic effects, for either an original project or an amended project.

There are two (2) types of monitoring activities facilitated through the establishment of NIRB monitoring programs:

- **Effects monitoring:** the process of measuring and interpreting changes to environmental and socio-economic parameters to identify relevant project effects, the NIRB utilizes results from the effects monitoring undertaken by proponents and authorizing agencies to assess the accuracy of impact predictions contained in the project impact statements; and
- **Compliance monitoring:** the process of determining whether and to what extent the land or resource use in question is carried out according to regulatory requirements, including the terms and conditions contained in the NIRB project certificates and/or screening decisions.

While the Proponent has developed the initial project specific monitoring programs through draft programs and plans as well as commitments made throughout the screening or review process, the NIRB assists to build upon these commitments for project specific monitoring programs. **The actual monitoring for project effects and the demonstration of compliance with regulatory requirements** (which includes the NIRB Project Certificate) **is primarily the Proponent's responsibility**, though both effects and compliance monitoring may be considered shared responsibilities between the Proponent and various Authorizing Agencies with specific jurisdiction or expertise in areas relevant to a particular project. The

relationship between the Proponent and various Regulatory Authorities is initially established through the Project Certificate Workshop and refined throughout the life of the approved project.

Note: *The NIRB's monitoring efforts and programs are designed to be coordinated with those of other regulators and must be non-duplicative, while ensuring pertinent information is provided on the public record and that interested parties are provided with opportunity to comment and provide advice accordingly.*

8.2 What is the purpose of a project-specific monitoring program?

The goal of the monitoring program is to also provide the NIRB with feedback through annual reporting in order to ensure that the predictions made in the Impact Statement related to cumulative and residual effects were correct and that proposed mitigation and monitoring strategy was enough. If predictions were not correct, or mitigation and monitoring is not enough that identification of issues is made early enough that actions can be taken to correct or adjust items so impacts to both the ecosystemic or socio-economic environments are limited.

As set out in Article 12, Sections 12.7.1 and 12.7.2 of the *Nunavut Agreement* and s. 135 of the *NuPPAA*, **the purpose of a monitoring program** is to:

- a. **measure** the ecosystemic and socio-economic environments of a project;
- b. **assess** whether the project is in compliance with the prescribed project terms and conditions;
- c. **share** information with regulatory authorities to support enforcement of land, water or resource use approvals and agreements; and
- d. **assess** the accuracy of the predictions contained in the impact statement.

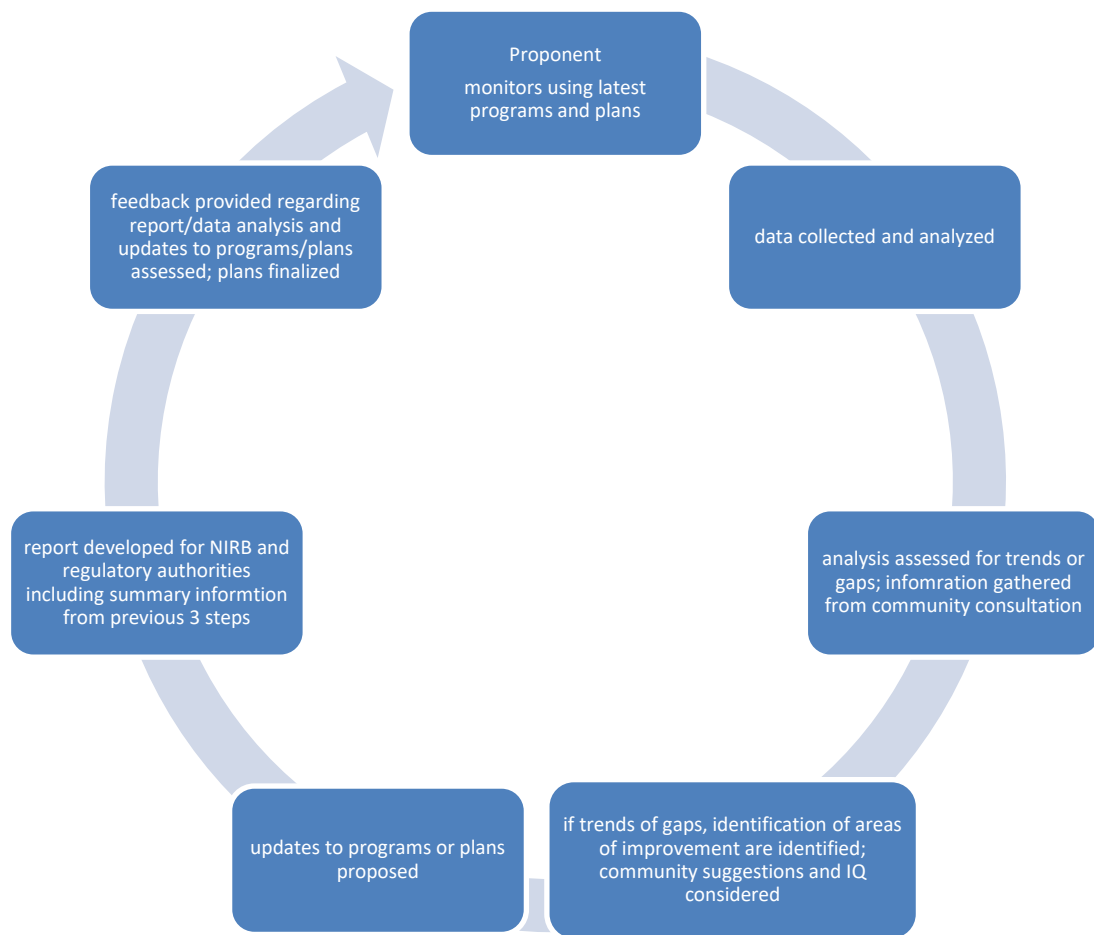


Figure 14: Project Specific Monitoring Program

8.3 What can a project-specific monitoring program include?

Article 12, Section 12.7.3 of the *Nunavut Agreement* and s. 135(4) of the *NuPPAA* states that a project-specific monitoring program may include the requirement that:

- a. Regulatory Authorities and the Proponent provide the Board with information respecting the activities relating to a Project, its impacts, and the implementation of any mitigative measures (Proponent's annual report and parties comment submissions);
- b. the Board carries out periodic evaluations of the program (site visit and analysis of Proponent's annual reports and parties comment submissions); and

- c. the Board produce a report of the adequacy of the program, based on the information obtained under paragraph (b), and on the ecosystemic and socio-economic impacts of the project (the Board's annual report).

However, Article 12 Sections 12.7.4 and 12.7.5 of the *Nunavut Agreement* and s. 135(6) of the *NuPPAA* prohibit the NIRB from undertaking monitoring and data collection responsibilities already assigned to government agencies and departments. Consequently, the NIRB is required to design project-specific monitoring programs so that projected monitoring activities are coordinated but are not duplicated and this is taken into consideration as terms and conditions are being developed in the hearing report and the NIRB provides further clarification on monitoring activities in a project certificate's Appendix A (or Appendix D in older project certificates) depending on the timing of when the project certificate was developed and/or amended.

For projects where there is a high degree of uncertainty regarding potential effects and where the precautionary approach is applied, project-specific monitoring also plays a **crucial role** in addressing uncertainty regarding project effects and enabling all parties to adapt mitigation measures on an ongoing basis to ensure negative project effects are prevented or limited to the extent possible.

8.4 The NIRB's Role in Monitoring Programs

The role of the NIRB with respect to the establishment of monitoring programs is to focus the NIRB's terms and conditions on monitoring of project effects. With respect to existing or future general regional and territorial monitoring programs that may include some of the same monitoring parameters/indicators as the project-specific monitoring program, the NIRB is bound to observe that the *Nunavut Agreement* and the *NuPPAA* direct the NIRB to avoid duplication but also to facilitate co-ordination and integration between the project-specific monitoring programs required by the NIRB and more general programs and initiatives such as the Nunavut General Monitoring Plan. Where the requirements of regional or territorial programs are more extensive or substantively different than those established through a project certificate, compliance with the relevant project certificate terms and conditions is required.

In order to co-ordinate, integrate and avoid duplication with other monitoring programs and the terms and conditions in the regulatory authorizations issued by Authorizing Agencies, while ensuring that the NIRB's project-specific monitoring program yields the information required to measure effects and adequately assess compliance with terms, conditions, regulatory instruments and agreements, the

NIRB's monitoring program is typically developed some time after the project certificate is issued or once permitting is complete. The project-specific monitoring program continues to be developed through consultation with Authorizing Agencies, the resource and land owners and the Proponent over time as the remaining regulatory instruments are developed.

Following the issuance of the project certificate by the NIRB, the framework for a project-specific monitoring program is developed and is then provided in draft form as an appendix to the project certificate. The framework is typically not issued in final form until all key regulatory authorizations, including land use permits, water licences, mineral leases, etc. are issued so that the monitoring program supplements and supports but does not duplicate the monitoring requirements in regulatory and land use instruments. The NIRB also recognizes that those Intervenor participants participating in regulatory processes taking place after the NIRB has issued the project certificate may also contribute to and shape the monitoring requirements ultimately adopted by Authorizing Agencies under the regulatory authorizations issued for the project. The NIRB circulates the draft framework once all authorizations have been issued and provides an opportunity for the Proponent, Authorizing Agencies, Intervenor participants, and members of the public to comment on the framework. It may incorporate any comments or advice it finds appropriate before finalizing and issuing the framework to the Proponent for full implementation. It should be noted that prior to finalization, the Proponent will be required to comply with all aspects of the *draft* framework and monitoring requirements as directed by the NIRB.

The actual monitoring for project effects and the demonstration of compliance with regulatory requirements (including the NIRB project certificate) is primarily the Proponent's responsibility, though both effects and compliance monitoring may be considered shared responsibilities between the Proponent and various regulators with specific jurisdiction or expertise in areas relevant to a particular project. The NIRB's monitoring efforts and programs are designed to be coordinated with other regulators, while ensuring pertinent information is provided on the public record and that interested parties are provided with opportunity to comment and provide advice accordingly.

8.5 The Proponent's Public Consultation During Monitoring

It is also important to conduct public consultations during Monitoring as communities want to hear regularly about how the project is proceeding. The screening and review of a project are actually the shorter processes of developing projects than the life of a project. The Public may want to discuss items such as potential changes that would assist in a Proponent working for the betterment of the project and the community(ies) impacted or assist in identifying change to the environment like climate change or education programs and opportunities.

The NIRB regularly conducts community consultation for projects with Project Certificates and uses the opportunity to discuss with communities the successes or challenges of the project as it progresses through the life cycle.

9 Reconsideration of the Terms and Conditions in a Project Certificate

9.1 Introduction

Under Article 12, Section 12.8.2 of the *Nunavut Agreement* and s. 112 of the *NuPPAA*, any time after the issuance of a project certificate, the NIRB may reconsider the terms and conditions contained in the NIRB project certificate. The reconsideration of a project certificate may be initiated independently by the Board on its own initiative, upon application by a Designated Inuit Organization, the Proponent, or other interested parties or by the Minister under Article 12, Section 12.8.3 of the *Nunavut Agreement* and s. 112(2) of the *NuPPAA*.

In order to proceed with a reconsideration of the project certificate it must be established that:

- a. The terms and conditions contained in the project certificate are **not achieving their purpose**;
- b. The circumstances relating to the project or the effect of the terms and conditions are **significantly different** from those anticipated at the time the project certificate was issued; or
- c. There are technological developments or new information which provide a **more efficient method** of accomplishing the purpose of the terms and conditions.

As illustrated in *Approaches to Assessment of Proposed Amendments to Approved Projects* ([Figure 15](#)), when the NIRB receives notification of proposed amendments to a previously-assessed project, there are a number of factors to be considered by the Board in order to determine whether the requested modification constitutes a significant modification that requires a NIRB assessment.



April 6, 2018

Nunavut Impact Review Board Guidance: Approaches to Assessment of Proposed Amendments to Approved Projects

Manifestly Insignificant: No submissions to NPC/NIRB Required	Proposed amendment does not meet the definition of project under the <i>Nunavut Planning and Project Assessment Act (NuPPAA)</i> and is not required to be submitted to the NPC or NIRB.	E.g. Routine maintenance or replacement of storage buildings at an approved mine site.
Non-significant Amendment: NIRB Assessment Not Required	Minor project amendment proposed and additional authorizations or amendments to authorizations are below the threshold for NIRB Screening and/or reconsideration of Project Certificate terms and conditions. Submission to NPC only required.	E.g. Archaeological field program for an approved mining development.
Non-significant Amendment: Screening Not Required; Implications for NIRB Monitoring Program	Proposed amendment not a significant modification to original project, however, changes may have implications for the NIRB's monitoring program and required reporting. NIRB may invite comments to confirm whether reconsideration of Project Certificate terms and conditions necessary	E.g. Crown Pillar Recovery amendment to the Doris North Project (NIRB File No. 05MN047)
Significant Amendment: Screening of Independent Project Proposal Required	Proposed amendment is a significant modification to the original project <u>but</u> the proposed modification is not integrally linked to the original project as assessed by the NIRB, and should be assessed as an independent project proposal.	E.g. Whale Tail Pit Project Proposal (NIRB File No. 16MN056). Many screening files annually.
Significant Amendment: PC Reconsideration Required	Proposed project amendment is significant <u>and</u> is integrally linked to original project as assessed by the NIRB; assessment of the proposed modification as an independent project proposal is inappropriate; modification assessed via a reconsideration of the Project Certificate.	E.g. Mary River Phase 2 Proposal (NIRB File No. 08MN053)
Significant Amendment: Deemed Unacceptable by NPC	Proposed amendment is a significant modification to the original project and the NPC determines that the modification is <u>not</u> in conformity with an approved land use plan. Proposal will not be forwarded to the NIRB for further assessment until land use planning requirements are met.	E.g. amendment to Mary River Phase 2 Proposal (NIRB File No. 08MN053) proposing winter shipping and ice-breaking

Figure 15: Approaches to Assessment of Proposed Amendment to Approved Projects

9.2 Reconsideration Referral

If the NIRB decides an assessment is required, it also determines the scope and process of the subsequent assessment. The NIRB notes that in most cases, by the time a modification proposal is reviewed by the NIRB, the Commission will have already made the determination that the modification proposal constitutes a significant modification and will have referred the modification proposal to the NIRB for assessment on that basis. In some cases, the NIRB may also have been consulted by the Commission leading up to the Commission's significance determination.

In general, although the NIRB has the jurisdiction under s. 146 of the *NuPPAA* to consider, on its own, whether a modification proposal constitutes a significant modification, recognizing the "one window approach" and the integrated regulatory process established under Articles 10-13 of the *Nunavut Agreement* and under the *NuPPAA*, the Board expects that generally the NIRB will rely on the Commission's finding that a modification proposal constitutes a significant modification.

The Board expects it will only be in very rare instances when the NIRB, upon consideration of the potential impacts of a modification proposal would differ from the Commission's view that the modification proposal constitutes a significant modification.

9.3 NIRB Reconsideration Process

In the Board's view, conducting the assessment of a proposed modification as a separate screening or review may be appropriate in circumstances where the modification proposal is sufficiently separate and distinct from the original previously-assessed project and may be considered as a separate but related project.

In contrast, where a modification proposal is considered to be within the scope of the assessment of the original project, is integrally-linked to the original project, and is not sufficient in scope to be assessed as a stand alone project, the NIRB has clearly rejected the notion that the only mechanism for assessing such modification proposals is for the Board to conduct a separate screening.⁷ As illustrated in several reconsiderations of Project Certificate terms and conditions conducted by the NIRB to date under Article 12, Section 12.8.2 of the *Nunavut Agreement*,⁸ the Board's reconsideration must necessarily include an assessment of the potential for the proposed modification to result in changes to the ecosystemic and socioeconomic effects previously assessed for the original project, and the assessment required by the NIRB during a reconsideration is no less rigorous than a screening (and in some cases, even a full environmental review).

While the NIRB does have considerable discretion as to the precise process for conducting a reconsideration of Project Certificate terms and conditions under Section 12.8.2 of the *Nunavut Agreement* and s. 112 of *NuPPAA*, the NIRB's primary objectives apply to reconsiderations and generally dictate that the NIRB conduct an assessment of the modification proposal with as much rigor as a NIRB

⁷ See for example the NIRB's correspondence to the Nunavut Planning Commission issued February 12, 2013 in relation to the NIRB's reconsideration of the Baffinland Iron Mines Corp.'s Mary River Project triggered by the submission of a modification request described as the Mary River Early Revenue Phase Project, NIRB File: 08MN053.

⁸ See for example the NIRB's February 11, 2013 correspondence to the Minister outlining this approach to Section 12.8.2 in advance of the Board's reconsideration of the Mary River Project Certificate No. 005, NIRB File: 08MN053, which stated:

The changes in the initial stages of project development to the project schedule and to specific activities under the Early Revenue Phase are integrally linked to the Mary River Project as approved under Project Certificate No. 005. Reflecting this linkage, the Board has determined that any potential ecosystemic and socioeconomic effects associated with the changes to the project as proposed in the Early Revenue Phase are best addressed under the existing Project Certificate No. 005. In making this determination, the Board has decided that the Early Revenue Phase does not constitute a distinct, stand alone project that should be subject to a screening and review process separately from the Project as approved under Project Certificate No. 005.

screening and sometimes even a review. The flexibility and discretion granted to the NIRB to determine the appropriate process for the assessment of modification proposals through reconsideration of Project Certificate terms and conditions reflects that the scale and scope of the changes requested may vary considerably as previously approved projects are developed, operated, decommissioned, and reclaimed.

However, if the request for initiation of a reconsideration is received from a party other than the Minister(s) or by the NIRB, and if, in the Board's opinion, the reconsideration requires additional assessment of the potential ecosystemic and socio-economic effects beyond the impact assessment completed during the original review, the Board may adapt the steps the Board considers necessary from the NIRB's existing review processes to yield sufficient information to complete the additional impact assessment and support an appropriate level of public engagement, including the solicitation of public comment and potentially the coordination of community consultations.

For example, when the Board receives such a reconsideration request, the Board may provide notice of the request to the Authorizing Agencies, other interested parties and the public and may invite these parties to provide comment regarding the request on topics such as the following:

1. Whether the request meets the requirement for reconsideration set out in Article 12, Section 12.8.2 (a), (b), or (c) and s. 112(1)(a)-(c) of the *NuPPAA*;
2. Whether, reflecting the scope of the request to reconsider, the parties have identified any specific terms and conditions within the existing project certificate that should be reconsidered;
3. Whether any such reconsideration is likely to arouse significant public concern, and if so, describing the basis for that concern; and
4. Identifying any matter of importance to the commenting parties related to the request to reconsider the terms and conditions of the existing project certificate.

If the Board invites comment on the reconsideration request, the Board may then consider the request and the comments received in order to determine whether to grant the reconsideration request.

Given Authorizing Agencies' roles to incorporate relevant terms and conditions from existing project certificates into regulatory instruments and, where relevant, their subsequent enforcement, the NIRB will typically seek specific input from

relevant Authorizing Agencies on the potential for the reconsideration and modifications to existing project certificate terms and conditions to affect this aspect of the Authorizing Agencies' roles and responsibilities. In addition, the NIRB will often also seek an indication from the Authorizing Agency as to whether any changes to the project associated with the reconsideration request are likely to trigger changes to the existing regulatory instruments within its jurisdiction.

Until the NIRB has completed its reconsideration of the terms and conditions of the existing NIRB project certificate and issued a decision report regarding the outcome of the reconsideration process and/or an amended project certificate, any amendments to existing regulatory instruments linked to the reconsideration request should NOT be issued by the Authorizing Agency because the impacts of the amendment have not been assessed by the NIRB.

If the Board invites comment on the reconsideration request, the Board may then consider the request and the comments received in order to determine whether to grant the reconsideration request.

Once it is established that the NIRB will conduct a reconsideration, the NIRB may choose a reconsideration through written assessment like Agnico Eagle Mines Limited's "In-Pit Tailings Disposal Modification" and Baffinland Iron Mines Corp.'s "Production Increase".

1. Requesting parties opinion on the significance of the modification
2. The NIRB notifies the Minister(s) of the reconsideration if determined to be significant and accepted;
3. Request for comments of the Impact Statement addendum;
4. Conduct a technical meeting via teleconference;
5. Intervenor file final written submissions;
6. Proponent response to final written submissions; and
7. The NIRB issues a reconsideration report and recommendations under s. 112(5) of the NuPPAA.

9.4 Submission of the NIRB's Public Hearing Report to the Minister

Within 45 days of completing the required steps for reconsideration, the Board submits a report for the Minister's consideration summarizing the outcome of the NIRB's reconsideration, and if applicable, any recommendations in relation to

amendments and additions to the terms and conditions of the existing project certificate.

For Authorizing Agencies, if the NIRB issues amendments to the terms and conditions of the existing project certificate, the Authorizing Agencies need to revisit existing regulatory instruments and may identify amendments to the existing regulatory instruments necessary to incorporate the revised or added terms and conditions issued by the NIRB under the amended project certificate.

9.5 Minister(s) Decision

The Minister(s) has the same options for making a decision during a review as for a reconsideration (see [Section 5.3.6](#)) and has 90 days and can take an additional 90 days if more time is required.

10 THE PUBLIC CONSULTATION REQUIREMENTS OF PROPONENTS DURING ALL OF THE NIRB'S PROCESSES

10.1 Introduction

The NIRB operates under the principle that public participation is an important element of an open and balanced impact assessment process. Effective public participation strengthens the quality of the NIRB's processes and helps to avoid potential misunderstandings and conflict. The NIRB has an obligation to create opportunities for the active and informed participation of the public at every stage of the impact assessment process.

Article 12, Section 12.2.27 of the *Nunavut Agreement* and s. 102(2) of *NuPPAA*, outline the NIRB's specific obligation to inform the public for the specific purpose of encouraging participation in NIRB hearings:

Nunavut Agreement, Article 12, Section 12.2.7: All necessary steps shall be taken by way of notice, dissemination of information, and scheduling and location of hearings to provide and promote public awareness of and participation at hearings.

NuPPAA s. 102(2): The Board must take all necessary steps to promote public awareness of and participation in any public hearing to be held in respect of a project, including through the choice of the date, time and place of the hearing, notice given in relation to them and measures taken to disseminate any relevant information.

Beyond fostering involvement in NIRB hearings, the NIRB's awareness program is **designed to enable the public to become knowledgeable** about the NIRB's impact assessment processes and specific project proposals, and **to provide opportunities and forums for the public to participate** in the NIRB's processes.

Informed awareness of and active participation by the public in the NIRB's impact assessment processes is one means of ensuring that local knowledge, traditional knowledge, Inuit Qaujimagatugangit, and Inuit Qaujimaningit are taken into account when the NIRB assesses the impacts of a project. For these reasons, the NIRB encourages the public to provide local knowledge, traditional knowledge, Inuit Qaujimagatugangit, and Inuit Qaujimaningit at all relevant stages of the NIRB's processes (screenings, reviews and reconsiderations, as well as monitoring).

Well-planned and appropriate consultation and/or engagement should create an open, honest, and transparent process that includes the public in decisions about project activities. It is intended to assist both the communities and the Proponent to understand what effects a project will have on potentially-affected communities. It also helps to avoid potential misunderstandings and conflict with the public, which could potentially affect the timeframe for the development of the project.

***Note:** *The participation of community organizations and members, including Elders, in all stages of project activities can ensure that local knowledge, Inuit Qaujimajatuqangit and Inuit Qaujimaningit are considered by a Proponent. However, it is important to note that public consultation efforts do not replace the design of appropriate studies and information-gathering sessions geared towards local knowledge Inuit Qaujimajatuqangit and Inuit Qaujimaningit, nor does it replace the input gathered by the NIRB during public hearings.*

10.2 What is the NIRB's role with respect to public consultation?

10.2.1 Public Registry

The NIRB ensures transparent, timely, and relevant information is made available to the public through its public registry system, which can be accessed at the Cambridge Bay office or online via the NIRB's website www.nirb.ca. Information available through the public registry includes:

- general public guides providing an overview of the NIRB and explaining the NIRB's impact assessment processes;
- information about all project proposals actively undergoing screening, review, and monitoring;
- archival information regarding completed screenings and reviews and past monitoring information;
- all project certificates issued by the NIRB;
- relevant correspondence or documentation associated with these projects/processes;
- all Board determinations, including screening decision reports, pre-hearing conference decision reports, final and public hearing reports and project certificate reconsideration decisions; and

- a calendar of events that provides the schedule for active comment periods, meetings, hearings and other Board events.

***Note:** *Proponents and all participants providing documentation to the NIRB are advised that unless the Board receives and grants a request for confidentiality for information supplied, all information provided to the NIRB will be posted to the NIRB's public registry and may be circulated to the relevant distribution lists.*

10.2.2 Information Dissemination

The first step towards active participation in the NIRB's processes is effective public awareness of the projects undergoing screening and review and/or reconsideration. In order to meet its obligation under the *Nunavut Agreement* and the *NuPPAA*, the NIRB circulates information, holds information sessions, and encourages the public to provide their comments and actively participate at the various points in its process. This includes inviting public comment, in-person meetings associated with NIRB reviews which include scoping and guideline meetings, technical meetings, pre-hearing conferences, and of course public hearings. Throughout the NIRB processes, information is made available to the public through various media forms, such as newsletters, posters, Facebook, and radio announcements.

When a project is undergoing a NIRB review or reconsideration, the NIRB staff facilitate information sessions for the public in the affected communities to ensure they are aware of the NIRB review process, the project undergoing the review, and any relevant documentation relating to the project. The NIRB also encourages the public to access the NIRB's internet-based public registry page for the proposed project, contact local organizations, or contact the NIRB office should they have further questions arising from the information sessions.

Following the information sessions, the NIRB will prepare a report that summarizes the comments and/or themes discussed by the public at the sessions. In addition, the report will outline the dates, times and locations of the information sessions, and the methods of advertising, and the circulation of information.

***Note:** *Public engagement can be encouraged by ensuring the public has continued access to information about the review using project-specific or regional distribution lists. Interested parties and any member of the public can create an account with the NIRB's online registry and sign up for notifications for projects of*

interest. Anyone wishing to provide comments relating to a project can provide their comments in oral, electronic, or hard copy formats to the NIRB office, and all comments received are considered as part of the review process.

It is the NIRB's goal to encourage public participation in all stages of the screening and review process and typically, public comment is specifically invited at the following points during the review:

- a. Scoping process;
- b. Guideline development;
- c. Review of the Impact Statement (IS) and Supplementary Information;
- d. Preparation of information requests and technical review comments;
- e. Pre-hearing Conferences; and
- f. Public Hearings.

10.2.3 NIRB Hearings

In order to encourage participation at the Final or Public Hearing, the NIRB publishes notice of the hearing details in regional newspapers at least 60 days prior to the hearing date. In addition, the NIRB typically requests the posting of notices and posters in the communities affected by the project at local companies, Designated Inuit Organizations and Hamlet offices. The NIRB also issues local television and radio announcements as well as Facebook notifications in the two (2) weeks leading up to the Hearing. Hearings provide a forum for parties, intervenors, and the public to make comments and present information to the NIRB regarding the project. They also provide a critical opportunity for the Board to give due regard and weight to the tradition of Inuit oral communication and decision making through the active participation of Elders and community members.

The NIRB will make every effort to ensure that all affected communities are represented at the hearings, including respecting, within reasonable limits, the timing of community events, and times when community members traditionally travel on the land, conduct harvesting activities, or participate in celebrations. The NIRB will also ensure that simultaneous interpretation of hearing proceedings is available for Inuktitut, Inuinnaqtun, and French (if requested).

10.3 What is the Proponent's role with respect to public consultation during NIRB processes?

The NIRB requires that the Proponent engage affected communities about projects and activities in a way that informs them, consults with them, and enables them to participate to some degree in the development of the project. **Effective consultation is not simply one-way communication of a Proponent's plans for the project, and should demonstrate that the Proponent has not only asked for input from the communities but also links the input received with tangible effects on the project,** the Proponent's Impact Statement (IS), approach to mitigation, etc. The NIRB encourages Proponents to consider the following features in the development of effective public consultation associated with impact assessment processes that will be discussed in whatever application that is submitted to the NIRB for a screening or a review and/or reconsideration:

- a. Identify all affected communities;
- b. Identify and consult with the appropriate individuals within these communities;
- c. Facilitate general public meetings;
- d. Incorporate appropriate timing and notice for consultations;
- e. Establish the frequency of consultations;
- f. Recognize the importance of the cross-cultural setting and local languages;
- g. Ensure appropriate information dissemination during consultations;
- h. Develop appropriate methods to inform consultation participants regarding how information was collected or will be used;
- i. Ensure that collection and use of information from consultation participants is appropriate;
- j. Develop mechanisms and strategies to effectively manage consultation results and incorporate this information into the project; and
- k. Outline the proposed communication program/strategies.

Proper consideration of these features should assist the Proponent with developing an effective public consultation program to meet the NIRB requirements.

***Note:** The NIRB recognizes that the nature and extent of consultations conducted by the Proponent will be dependent upon the scope, size, and location of the project proposal.

10.4 What principles should guide the Proponent in carrying out public consultation?

In the NIRB's view, the following principles underlie the concept of effective and appropriate consultation in the Board's processes:

1. **Consultation should be part of an ongoing relationship** between the Proponent of a project proposal and the communities that will be potentially-affected by the proposed project, where mutual trust and understanding builds over time through a continuing process of discussions, decisions, and follow-through. Importantly, consultation generally takes place before a project proposal is developed and decisions are made regarding the project.
2. **Consultation is a two-way communication process**, in which all parties listen and contribute views, information and ideas. The Proponent should communicate back to participants to confirm understanding of the information and to indicate any resulting effects of shared views, information and ideas.
3. **Consultation leads to action.** It is an opportunity for genuine and respectful listening. This does not necessarily mean that every suggestion made in a consultation is implemented, but that input will always be taken into account.

10.5 Who should be engaged through the consultation process?

10.5.1 The General Public

The NIRB places a considerable amount of importance on the involvement of the general public and potentially affected communities. The term "public" which is used by the NIRB is an inclusive term that consists of interested parties, and the general public. For the NIRB's review purposes, the *general* public consists of:

- Citizens of Nunavut, either individuals or organized community interest groups; and
- Citizens of Canada, living outside of Nunavut, concerned about a project.

The NIRB involves different interested parties in the review process on a project-by-project basis. Parties can include: Authorizing Agencies and other local, territorial and federal Government agencies and departments, Designated Inuit Organizations, community organizations, and public interest groups.

In addition, members of the public may request to be formally recognized as an Intervenor, bringing forth any comments through submissions to the Board, being able to ask questions of the Proponent, the Authorizing Agencies, and other Intervenor and making themselves available to answer questions following their submissions. If any member of the public wishes to be recognized as a formal Intervenor at a hearing, they are expected to make a request to the Board for Intervenor status as set out in the NIRB's Notice of Public Hearing. To receive notification regarding Hearings and request for Intervenor status, please follow the instructions found within [Section 5.3](#).

10.5.2 Affected Communities

The general parameters the NIRB uses to determine which communities could potentially be affected by a project proposal include, but are not limited, to those within:

- Ecosystemic boundaries; and
- Socio-economic influenced areas.

Ecosystemic boundaries can include watersheds, airsheds, and wildlife migration routes within the project area. Socio-economic influenced areas can include any areas that may be drawn upon for employment initiatives, business opportunities, project supplies, or harvesting areas.

The Proponent may be required to consult with any potentially affected person in potentially affected communities, which includes individual members of an affected community, as well as organized community groups or public interest groups in that community. In each community there are a number of individuals, community groups or public interest groups who may have relevant community knowledge related to the proposed project and, as such, may be contribute to the Proponent's knowledge in their respective area(s) of expertise.

The following non-exhaustive list is provided to give Proponents some initial direction regarding the types of common Nunavut community groups and affiliates that should typically be considered in a consultation program. However, Proponents are cautioned that each community varies and the individuals and groups that should be consulted in a given community must adequately reflect the circumstances of each community. Typically, Proponents conducting consultation in Nunavut communities consult with:

- a. Regional Inuit Association (RIA) Community Liaison Officer
- b. Regional Inuit Association Community Lands and Resource Committee (CLARC) or equivalent group in the relevant region
- c. Community Beneficiary Committees (CBC)
- d. Hamlet Council
- e. Hunters and Trappers Organization (HTO) or Hunters and Trappers Associations (HTA)
- f. Wildlife Officer
- g. Women's Group
- h. Youth Group
- i. Elders Committee
- j. Elementary School Principal
- k. High School Principal
- l. Arctic College Dean
- m. Hamlet Economic Development Officer (EDO)
- n. Local Development Corporation
- o. Hamlet Senior Administrative Officer (SAO)
- p. Interagency Committee
- q. Housing Association
- r. Royal Canadian Mounted Police (RCMP)
- s. Member of the Legislative Assembly (MLA)
- t. Health Centre

***Note:** *When it comes to consultation there is no “one size fits all” solution and there are many different techniques and strategies to ensure maximum participation in the public consultation process. In the NIRB’s experience, most Proponents have found the key to be taking a proactive approach to the consultation process to facilitate early identification of the individuals and groups affected by the project, identification of any potential conflicts and working with individuals and groups to resolve conflicts in a timely fashion.*

Proponents have also found that it is important to present information in an acceptable manner with a focus on the recognition of the cross-cultural setting in Nunavut. Proponents are well advised to recognize the history and economy of the community, as well as past community knowledge related to development and the NIRB process.

10.6 What is the role of formal Intervenor and interested parties in the review process?

As noted previously, if any member of the public wishes to be granted formal Intervenor status at a NIRB hearing, the requirements to apply for this status are typically set out by the Board in its Public Notice of the Hearing, but anyone interested in applying to be granted intervenor status is encouraged to contact the Board to discuss the roles, responsibilities and timelines that may be associated with such an intervention. Interested parties and formal intervenors have the opportunity to actively participate in the review process in the following ways:

- a. Monitoring the public registry and accessing project-specific information;
- b. Providing project-specific comments or correspondence to the NIRB;
- c. Preparing and presenting formal submissions at a hearing; and
- d. Questioning other participants and being questioned at a hearing.

Further details regarding the roles, opportunities for participation and responsibilities of Intervenor in the NIRB process are outlined in a separate Intervenor Guide to the NIRB.