



Introduction

In December of 2018, the Nunavut Impact Review Board (NIRB) invited Nunavut Tunngavik Incorporated (NTI) to provide written comments on their draft Rules of Procedure and Standard Impact Statement (IS) Guidelines. NTI thanks the NIRB for allowing the opportunity to provide feedback on these important procedural documents. Our comments are detailed in the remainder of this document.

Draft Rules of Procedure:

#	1
Reference	PART II: GENERAL Definitions Rule 2, p. 7
Subject	"'Panel' means a panel of two or more Board Members to which the full Board has delegated specific Board powers, duties and functions (including decision-making powers), and that is constituted as required under Article 12, Section 12.2.14 of the Nunavut Agreement and s. 27 of the NuPPAA."
Comment	Could the NIRB give an indication of instances where it envisions that the formation of a Panel could be called for?

#	2
Reference	PART III: PROVIDING DOCUMENTS TO THE BOARD Filing and Distribution of Documents Rule 16, p. 12
Subject	"The Board may require any party wishing to file, or directed by the Board to file Documents during a Proceeding to provide sufficient copies (in printed or electronic form) for distribution to the Board, other parties to the Proceeding, to Community Representatives and to members of the public."
Comment	Could the requirement to provide numerous printed copies for distribution not be applicable to community-level parties, as it may place undue stress on limited resources?

#	3
Reference	PART III: PROVIDING DOCUMENTS TO THE BOARD Filing and Distribution of Documents Rule 19, pp. 12-13

Subject	"The Board may refuse to file on the public registry and/or consider during Proceedings Documents that are: (c) Where the potential for harm to the Board and its Proceedings, the parties, communities or the public associated with filing the material outweighs the public interest in the Board filing or considering the Documents."
Comment	Could the NIRB, in very broad terms, elaborate on the nature of documents that might warrant the triggering of this clause?

#	4
Reference	PART V: GENERAL CONDUCT OF BOARD PROCEEDINGS Burden of Proof Rule 34, p. 18 and Rule 35, p. 18
Subject	"Any party offering information and Documents in a Proceeding, whether provided in oral or written form, shall have the burden of introducing sufficient and appropriate information to support its position on the balance of probabilities." And "If there is conflicting evidence, the Board will weigh the evidence provided and will identify the evidence preferred by the Board, and the rationale for the Board's preference."
Comment	While the general rule of evidence entails that a party alleging something must prove it, there is also - in the context of environmental decision-making - a broadly accepted shift in the allocation of the burden of proof towards the proponent of a potentially harmful activity. NIRB's draft Standard guidelines for the preparation of an impact statement allude to this in section 2.4, by specifying that "when the precautionary principle applies, it is the Proponent who bears the burden of proof to show that despite this uncertainty, the potential for adverse environmental impacts can be mitigated or reversed" (p. 3, para. 1). Could the NIRB clarify whether this shift of the burden of proof applies to submitting parties and/or to the NIRB's weighing of conflicting evidence?

#	5
Reference	Inuit Qaujimaningit and Traditional Knowledge Rule 40, p. 19
Subject	"The Board will encourage the submission and consideration of any relevant Inuit Qaujimaningit and Traditional Knowledge, including oral history, at any stage of its Proceedings."
Comment	NIRB's 2009 Rules of procedure (Rule 12.2, p. 11) allowed - in special circumstances - for an Elder to file a submission orally, through the recording and transcribing assistance of NIRB staff. Although this clause only related to comments that effectively withdrew the commenter from the given proceedings, might the NIRB consider accommodating - in special circumstances - the standard submission of Elders in a similar fashion?

#	6
Reference	Inuit Qaujimaningit and Traditional Knowledge Rule 41, p. 19

Subject	"The Board may make arrangements to hear from any Elder or the holder of relevant Inuit Qaujimaningit or Traditional Knowledge at any time prior to, during or after a Proceeding as the Board considers appropriate."
Comment	NTI commends the NIRB for drafting this progressive rule particularly considering that rule 43.1 of NIRB's 2009 Rules of procedure only contemplated receiving oral evidence from Elders at the beginning, during or at the conclusion of proceedings

#	7
Reference	PART VI: TYPES OF BOARD PROCEEDINGS Community Roundtable Session Rule 102, p. 34
Subject	"The Board shall keep a summary of comments, questions and perspectives shared by Community Representatives during the Community Roundtable and this summary shall form part of the Record of Proceedings considered by the Board during decision-making."
Comment	Could the NIRB consider making these summaries, or some variant of them, available on the public registry?

Draft Standard guidelines for the preparation of an impact statement:

#	8
Reference	PART I : THE ASSESSMENT 1.0 Introduction: p. 1, para. 4
Subject	"It is the proponent's responsibility to provide sufficient data and analysis on potential changes to the [biophysical and socio-economic] environment."
Comment	As the previous sentence refers to adverse environmental effects, the text - without the suggested qualifiers- could imply that the provision of data and analysis likewise only relates to potential environmental changes.

#	9
Reference	2.0 Guiding Principles: 2.1 The NIRB's Impact Review Principles p. 2, bullet 1
Subject	"Socio-economic issues including economic development, health, [food security], recreation, and other aspects of well-being, must be considered in order to ensure a culturally holistic understanding of the Project's effects."
Comment	Food security is an important enough aspect of wellbeing to explicitly be considered from a culturally holistic standpoint, especially given the merging of the biophysical and socioeconomic environments through Inuit land use and harvesting.

#	10
Reference	2.2 Public Participation p. 2, bullet 2

Subject	"Acquiring [Gathering] Inuit Qaujimaningit, Inuit Qaujimajatuqangit, Traditional, and Community Knowledge;"
Comment	The use of 'acquiring' may be misleading, seeing as it evokes notions of 'taking possession' and/or 'securing ownership'.

#	11
Reference	2.3 Inuit Qaujimaningit, Inuit Qaujimajatuqangit, Traditional, and Community Knowledge p. 3, para. 1
Subject	"Inuit Qaujimaningit is rooted in the daily life of Inuit people and represents experience acquired over thousands of years of direct human contact with the environment."
Comment	The use of the word 'people' after 'Inuit' is unnecessary.

#	12
Reference	8.0 Impact Assessment Methodology: 8.1.2 Scope of Factors p. 21, 8.1.2.1 Valued Socio-Economic Components, para. 1
Subject	"The value of a component should [shall] be considered not only in relation to its role in the ecosystem as a VEC, but also the value placed on that component by humans for traditional use and cultural connection as a VSEC. This should [shall] be considered not only for components of the environment but also the land directly affected by the Project."
Comment	While it is commendable that the NIRB acknowledges and emphasizes these linkages, even more imperative wording would be in order.