



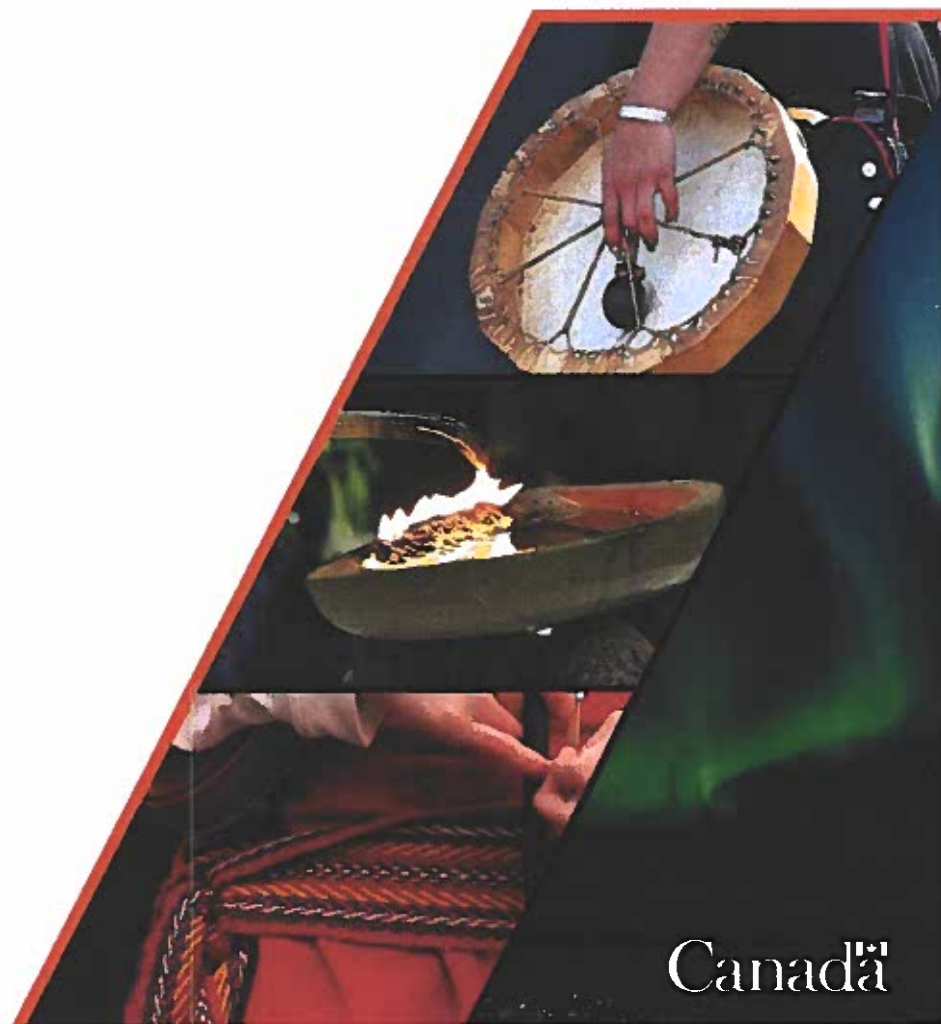
Crown-Indigenous Relations
and Northern Affairs Canada

Relations Couronne-Autochtones
et Affaires du Nord Canada

GOVERNMENT OF CANADA

COMMENTS TO NIRB

Re: Notice of Release of *Draft* Rules of Procedure
and *Draft* Standard IS Guidelines



Canada

MAR 15 2019

CIDM # 1244050 / U13672

Ryan Barry
Executive Director
Nunavut Impact Review Board
P.O. Box 1360, 29 Mitik St.
Cambridge Bay, NU, X0B 0C0

Dear Mr. Barry,

Re: Notice of Release of *Draft Rules of Procedure* and *Draft Standard IS Guidelines*

On December 6, 2018, the Nunavut Impact Review Board (NIRB) invited parties to comment on the "Draft Rules of Procedure and Draft Standard IS Guidelines". Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) and other Government of Canada agencies and departments, including Justice Canada and the Parks Canada Agency, have reviewed the "Consultation Draft NIRB Rules of Procedure" (dated November 2018) and the "Standard Guidelines for the Preparation of an Impact Statement" (dated November 2018) and provide the following comments for the Board's consideration. Environment and Climate Change Canada reviewed the documents, but had no comments.

The first section of this submission deals with the "Draft Rules of Procedure," dividing comments into those of a substantive nature and those of a more editorial nature. The second section deals with the "Draft Standard IS Guidelines", and again divides comments between the substantive and the editorial. In both sections, we have endeavored to structure the comments to mirror the layout of the NIRB's "Draft Rules of Procedure" and "Draft Standard IS Guidelines". In addition, we have provided some general comments that span several sections of both documents. CIRNAC hopes the accompanying submission will assist the NIRB to address procedural fairness concerns, and also render the finalized Rules of Procedure and IS Guidelines more comprehensible and consistent.

We appreciate the opportunity to provide comments and look forward to working with the NIRB to further improve the Nunavut environmental assessment regulatory regime. Should you have any questions, please contact Felexce Ngwa at (867) 975-4657 or by e-mail at felexce.ngwa@canada.ca.

Sincerely,



David Rochette
Regional Director General



1. NIRB DRAFT RULES OF PROCEDURE

1.1. SUBSTANTIVE COMMENTS

Comment Number:	GoC - #1
Subject:	General
Reference:	NIRB Rules of Procedure, November 2018
Priority:	Moderate
Background/Rationale:	There are no powers or processes for adjournment of proceedings.
Recommendation to Address Issues:	NIRB should consider adding a process to allow the Board to make adjournments, and to allow for other parties to request adjournments.

Comment Number:	GoC - #2
Subject:	General
Reference:	NIRB Rules of Procedure, November 2018
Priority:	Moderate
Background/Rationale:	There is no process for a Proponent to amend a Project Proposal during the course of a Screening or Review.
Recommendation to Address Issues:	NIRB should consider adding clear provision(s) regarding the process for a Proponent to amend a Project Proposal and what happens to Proceedings as a consequence.

Comment Number:	GoC - #3
Subject:	Details on proceedings found in the 2009 version of the Rules are absent from the new Rules
Reference:	NIRB Rules of Procedure, Sept, 2009; Pages 7-9
Priority:	High
Background/Rationale:	<p>The 2009 Rules contained information on certain proceedings such as screening and technical review phases that have been removed from the current draft Rules.</p> <ul style="list-style-type: none"> a. The 2009 Rules set out, for example, that a Project Proposal must comply with the applicable guidelines and that a notice of screening will only be issued once a compliant project proposal has been received. There was some value to this approach. If the draft Rules do not clearly establish that screening starts upon issuance of the notice, there could be disagreement as to whether the 45 days period established under subsection 92(3) of NuPPAA has been triggered. b. The former Rules also incorporated, by reference, some of the NIRB's guidelines. Incorporating guidelines into the Rules would provide certainty as to the consequences of non-compliance with the guidelines. c. The 2009 version of the Rules also set out that the filing of an EIS would trigger the technical review and incorporated, by reference, EIS related guidelines. There was also a specific provision for the filing of a motion by the Proponent to have the NIRB consider their Project Proposal as a Draft EIS. <p>Including the aspects highlighted above in the Rules could provide clarity on NIRB's expectations regarding screenings and Reviews.</p>
Recommendation to Address Issues:	NIRB should consider incorporating the aspects highlighted in a, b and c above into the 2018 Rules of Procedure.



Comment Number:	GoC - #4
Subject:	Filing of Commitment List
Reference:	NA
Priority:	High
Background/Rationale:	There is a need for a standard approach to filing of commitments, especially those obtained during public hearings. The NIRB should indicate the timeline for filing such commitments.
Recommendation to Address Issues:	NIRB should stipulate in the current Rules a timeline for the Proponent to file all commitments made to various parties during the Review of the project. For example, "The Proponent shall file, if applicable, a list of all commitments made to parties during the review at least "X" days prior to the start of the Final Public Hearing."

Comment Number:	GoC - #5
Subject:	Board and NIRB
Reference:	NIRB Rules of Procedure, November 2018: Page 3
Priority:	High
Background/Rationale:	It is not clear if the definition of Board and NIRB include or exclude staff and the Chair acting through procedural directions / Board Orders.
Recommendation to Address Issues:	NIRB should include language in the Rules to clarify if the definition of Board and NIRB includes or excludes staff and Chair acting through procedure directions/Board Orders

Comment Number:	GoC - #6
Subject:	Intervenor and Party Status
Reference:	NIRB Rules of Procedure, November 2018: Pages 5-7 NIRB Rules of Procedure, Sept, 2009: Page 4
Priority:	Moderate
Background/Rationale:	<p>The Rules do not clearly draw the distinction between intervenor and party status. It is not clear either if and how a party's right differs from an intervenor's rights.</p> <p>The definition of "party"/ "parties" has been significantly broadened compared to what it is in the 2009 version of the rules. A party now would be any participant involved in a NIRB proceeding and includes a very broad and non-exhaustive list of organisations and persons, including "the public". While the rules should not prevent anybody from participating in NIRB proceedings, especially in community meetings and hearings, there would be a benefit to having a narrower category of participants with a recognized status giving them rights under the rules.</p> <p>It is more intuitive to limit party status to those who have been formally given standing. Moreover, Rules 9 and 132 appear to treat the parties and the public as distinct ("<i>...the parties and the public...</i>")</p>
Recommendation to Address Issues:	NIRB should clarify the differences between "intervenor" and "party"/ "parties" status, if any

Comment Number:	GoC - #7
Subject:	Project and Project Proposal
Reference:	NIRB Rules of Procedure, November 2018: Page 8
Priority:	High
Background/Rationale:	<p>The 2018 Rules of Procedure contain both definitions of "Project Proposal" from the Nunavut Agreement (with added text) and "Project" from NuPPAA.</p> <p>There is no need to include both definitions in the Rules. Including the definition of "Project Proposal" in the Rules of Procedure brings confusion to</p>



	the interpretation of the Rules when compared with NuPPAA and should be removed. The term "project proposal" is used in the Act, as described in section 76, to mean the document which contains a description of the project. Using it differently in these rules will confuse their interpretation.
Recommendation to Address Issues:	<p>NIRB should only use the NuPPAA definition of "Project" in the 2018 Rules of Procedure.</p> <p>The rules should be reviewed to see when the term "project proposal" is used to mean the document containing the description of the project, or when it is used to mean the proposed project. For instance, in rule 88, the meaning appears to be "proposed project", as it is the project which could affect a community, not a document describing the project. In rule 79, "project proposal" likely means the document that contains a description of the project, as that is where the scope of the project, including its components and activities, would be set out.</p>

Comment Number:	GoC - #8
Subject:	Application of these Rules-Rule 4
Reference:	NIRB Rules of Procedure, November 2018: Page 9
Priority:	High
Background/Rationale:	<p>Inclusion of a, b, and c in the rules may no longer be required, unless there are still projects to which the transition rules of s. 235 still apply (noting that if ss. 235(2) applies then so does the Act and there is no need to reference the Nunavut Agreement).</p> <p>Sub-rule (c) indicates that the Rules may or may not apply to the reconsideration of a project certificate depending on the scope and scale of the modification under review. If this section absolutely must stay in (we are of the view the Rules are not the place to be outlining what proposed modifications constitute a reconsideration), then remove the phrase "dependent on the scale and scope of a modification proposal" as it introduces uncertainty as to whether the Rules apply to reconsiderations or not. If not removing that phrase, it would be beneficial for the rules to provide more specificity around when they will apply to the NIRB's reconsideration of the Terms and Conditions of an existing Project Certificate. This might be done by listing factors to take into account to determine when the scope and scale will be such that the rules should not apply.</p>
Recommendation to Address Issues:	<p>If it is necessary to leave a, b, and c, then remove the phrase in c "dependent on the scale and scope of a modification proposal" as it introduces uncertainty as to whether the Rules apply to reconsiderations or not. If they do not, then where would a proponent or any other parties find certainty as to the rules that govern the NIRB's proceedings for reconsiderations?</p> <p>At a very minimum, if keeping Rule 4(c) as is, revise it to provide more specificity around when it will apply to the NIRB's reconsideration of the Terms and Conditions of an existing Project Certificate. This might be done by listing factors to take into account to determine when the scope and scale will be such that the rules should not apply.</p>

Comment Number:	GoC - #9
Subject:	Application of These Rules-Rule 5
Reference:	NIRB Rules of Procedure, November 2018: Page 9
Priority:	Moderate
Background/Rationale:	There have been no Article 12, Part 6 federal panels
Recommendation to Address Issues:	<p>Going forward these Rules only need to refer to federal panels under NuPPAA. The reference to the Nunavut Agreement should be removed.</p>



Comment Number:	GoC - #10
Subject:	Power to Dispense With or Vary The Board's Procedural Guide-Rules 7,8, 9
Reference:	NIRB Rules of Procedure, November 2018: Page 10
Priority:	High
Background/Rationale:	The benefit of having Rules is to create a procedural framework upon which the parties can rely in navigating the NIRB's proceedings. This creates certainty for the parties. Rigid application of the Rules has the potential however to prevent the NIRB from effectively dealing with the unique circumstances of each project. There is a benefit in giving the NIRB discretion to depart from the standards set in the Rules. We would, however, recommend that the NIRB give parties notice of its intent to do so or of requests made to it to enable parties to make submissions before a decision is made. This would enable the NIRB to make a better informed decision and further support procedural fairness and transparency. Rule 9 provides for notices of changes to be provided after the change is made. This is important as well, but it would be beneficial to provide an opportunity to parties to make submissions before a change is considered and decided upon.
Recommendation to Address Issues:	The Nunavut Impact Review Board should give parties advance notice of its intent to dispense with or vary its Rules, Board Orders, or Procedural Directions or of requests made to it to enable parties to make submissions before a decision is made.

Comment Number:	GoC - #11
Subject:	Conflict-Rule 10
Reference:	NIRB Rules of Procedure, November 2018: Page 10
Priority:	High
Background/Rationale:	Rule 7 also talks about the possibility to dispense with or vary <u>other form of procedural guidance</u> [emphasis added]. It would be useful to know where such procedural guidance stands in the hierarchy established by Rule 10.
Recommendation to Address Issues:	NIRB should clarify where the <u>other form of procedural guidance</u> mentioned in Rule 7 stands in the hierarchy established by Rule 10.

Comment Number:	GoC - #12
Subject:	Content and Form of Documents Filed with Board-Rule 13
Reference:	NIRB Rules of Procedure, November 2018: Page 12
Priority:	Moderate
Background/Rationale:	Rule 13 does not identify any requirements on "Content".
Recommendation to Address Issues:	NIRB should consider moving "Content" to next section heading (i.e. "Content, Filing, and Distribution of Documents") and rename this section "Form of Documents Filed with the Board".

Comment Number:	GoC - #13
Subject:	Filing and distribution of documents - Rule 15
Reference:	NIRB Rules of Procedure, November 2018: Page 12
Priority:	High
Background/Rationale:	Rule 15 does not capture what happens when documents are filed late or are deemed incomplete.
Recommendation to Address Issues:	NIRB should consider adding process for late document filing or incomplete documents.



Comment Number:	GoC - #14
Subject:	Filing and distribution of documents - Rule 19
Reference:	NIRB Rules of Procedure, November 2018: Page 12
Priority:	High
Background/Rationale:	<ol style="list-style-type: none"> 1. To ensure transparency, Rule 19 should require the NIRB give reasons in writing for not posting a document. 2. Rule 19 does not make provision for the NIRB to refuse filing incomplete documents on the registry (e.g., incomplete EIS after conformity check).
Recommendation to Address Issues:	<p>NIRB should consider:</p> <ol style="list-style-type: none"> 1. Adding a requirement for the NIRB to post reasons for refusal to file documents in writing to ensure transparency. 2. Adding <i>(d) Documents that are deemed Incomplete by the Board.</i>

Comment Number:	GoC - #15
Subject:	Public registry – Rule 22
Reference:	NIRB Rules of Procedure, November 2018: Page 13
Priority:	Moderate
Background/Rationale:	Rule 22 does not define a timeframe for the NIRB to post information to the public registry.
Recommendation to Address Issues:	NIRB should consider adding timeframe for transparency.

Comment Number:	GoC - #16
Subject:	Public registry access and notification requests – Rule 25
Reference:	NIRB Rules of Procedure, November 2018: Page 14
Priority:	Moderate
Background/Rationale:	Rule 25 does not define a timeframe for NIRB to complete the task of providing access or issuing the notifications requested.
Recommendation to Address Issues:	NIRB should consider adding timeframe for transparency.

Comment Number:	GoC - #17
Subject:	Forms of Project - Specific Procedural Guidance – Rule 26
Reference:	NIRB Rules of Procedure, November 2018: Page 15
Priority:	Moderate
Background/Rationale:	The references to the Nunavut Agreement do not appear necessary for (a) and (b). Are there still projects described in (c) and (d) to which the transition rules of s. 235 still apply (noting that if ss. 235(2), applies, so does the Act and there is no need to reference the Nunavut Agreement)?
Recommendation to Address Issues:	References to the Nunavut Agreement could be removed.

Comment Number:	GoC - #18
Subject:	Forms of Project-Specific Procedural Guidance - Rule 30
Reference:	NIRB Rules of Procedure, November 2018: Page 15
Priority:	High
Background/Rationale:	Rule 30 states "Any Board Order or Procedural Direction shall be filed on the public registry" but it is unclear if "other form of procedural guidance" should also be posted on the public registry.
Recommendation to Address Issues:	NIRB should clarify if other form of NIRB procedural direction would also be posted on the public registry



Comment Number:	GoC - #19
Subject:	Board Orders - Rule 31
Reference:	NIRB Rules of Procedure, November 2018: Page 16
Priority:	High
Background/Rationale:	Item (d) should acknowledge Parks Canada Agency's role as the "gatekeeper" for projects in parks/marine national conservation areas/historic sites under their jurisdiction – where they replace the Nunavut Planning Commission.
Recommendation to Address Issues:	Item (d) should add the following: The process and extent of coordination of the NIRB's Proceedings with the Nunavut Planning Commission, <u>Parks Canada</u> , and/or Nunavut Water Board;

Comment Number:	GoC - #20
Subject:	Procedural Direction - Rule 32
Reference:	NIRB Rules of Procedure, November 2018: Page 17
Priority:	High
Background/Rationale:	Sub-rule 32(f) gives the Executive Director the power to issue a Procedural Direction to provide information about " <i>whether and/or how the Board may conduct a Monitoring Program, or any aspect of a Monitoring Program</i> ". We question whether the Executive Director should decide whether and/or how the Board may conduct a Monitoring Program, or any aspect of a Monitoring Program as provided by par. 32(f). This seems to be an issue better left to the Board as opposed to the Executive Director.
Recommendation to Address Issues:	NIRB should revise Rule 32 such as to grant the Board the power to decide whether and/or how a Monitoring Program or any aspect of a Monitoring Program may be conducted.

Comment Number:	GoC - #21
Subject:	Motions - Rule 47
Reference:	NIRB Rules of Procedure, November 2018: Page 21
Priority:	High
Background/Rationale:	Rule 47 gives NIRB the discretion to allow a party to bring a motion or present information during an oral component of a proceeding. One would expect that the party presenting an oral motion during the hearing would have to present justification for presenting the motion less than 28 days before the hearing. However, the wording of Rule 47 does not clearly state so.
Recommendation to Address Issues:	NIRB revise the wording of Rule 47 to stipulate the need for a party presenting an oral motion during the hearing to present justification for presenting the motion less than 28 days before the hearing.

Comment Number:	GoC - #22
Subject:	Motions - Rule 48
Reference:	NIRB Rules of Procedure, November 2018: Page 21
Priority:	High
Background/Rationale:	Rule 48 states " <i>the Board may dispose of an oral motion in accordance with the oral directions of the Board provided during the Proceeding and/or as provided by the Board subsequently in writing</i> ". It is, however, not clear what this Rule provides for. Are the "oral directions" meant to refer to the Board decision on the motion or to directions issued separately, in order to somehow guide decision-making on the motion? Does this mean that a motion can be disposed of orally during the hearing or in writing after the hearing?
Recommendation to Address Issues:	NIRB should revise Rule 48 to clarify if the "oral directions" refer to the Board decision on the motion or to directions issued separately in order to guide



	decision-making on the motion.
Comment Number:	GoC - #23
Subject:	Translations - Rule 54
Reference:	NIRB Rules of Procedure, November 2018: Page 23
Priority:	High
Background/Rationale:	<p>Rule 54 States "<i>The Board may direct a party to arrange for the translation of any information and documentation into Inuktitut or any other languages deemed necessary by the Board</i>". This Rule should be reviewed and nuanced.</p> <p>Section 37(2) of NuPPAA provides that the NIRB must conduct public hearings in Canada's both official languages in accordance with the <i>Official Languages Act</i>, as well as in Inuktitut upon demand by a member, a proponent or an intervenor.</p> <p>Section 37(4) provides that, in any proceeding, the NIRB must ensure that a witness giving evidence will be able to be heard in either official languages or in Inuktitut and that the witness will not suffer any disadvantage as a result of this choice.</p> <p>Pursuant to those provisions, people and organisations other than federal departments have a right to communicate with the NIRB, make submissions to the NIRB and testify in front of the NIRB in Inuktitut, English or French, without having to use a second language among them.</p> <p>It is our view that the ability of the NIRB to require a party to arrange for translations is limited in respect of documents and information submitted to the NIRB. The matter might be different if a proponent or another party is required by the NIRB to conduct consultations outside of the actual NIRB proceeding.</p>
Recommendation to Address Issues:	NIRB should review and nuance Rule 54 to take into account the fact that the NIRB's ability to require a party to arrange for translation may be limited in respect of documents and information submitted to the NIRB.
Comment Number:	GoC - #24
Subject:	Notice of Proceedings - Rule 55
Reference:	NIRB Rules of Procedure, November 2018: Page 23
Priority:	High
Background/Rationale:	<p>Rule 55 states "<i>As required under the Nunavut Agreement and the NuPPAA, and in accordance with the requirements of procedural fairness, the Board shall provide adequate public notice of Proceedings to the Proponent, <u>interested parties</u>, and the public in the form required by <u>regulatory requirements</u> and in a manner that encourages participation in Board Proceedings</i>"[emphasis added].</p> <p>It is not clear who the "interested parties" are, as opposed to the "parties" as defined in the definitions section. If this is not clarified, there is a risk there will always be a level of ambiguity as to who should be notified.</p> <p>Further, it is unclear what "regulatory requirements" the Board is referring to under this Rule.</p>
Recommendation to Address Issues:	Recommended revision: " <i>As required under the Nunavut Agreement and the NuPPAA, and in accordance with the requirements of procedural fairness, the Board shall provide adequate public notice of Proceedings to <u>parties</u> in a form and manner that encourages participation in Board Proceedings.</i> "



Comment Number:	GoC - #25
Subject:	Formal Intervenor - Rule 58
Reference:	NIRB Rules of Procedure, November 2018: Page 24
Priority:	High
Background/Rationale:	<p>Rule 58 states <i>"The Board shall, without request, allow full standing as formal Intervenor to all Authorizing Agencies"</i>.</p> <p>A designated Inuit organization (DIO) should also be given full standing automatically in accordance with 26(3)(b) of NuPPAA, irrespective of whether it fits the definition of "Authorizing Agency" or not, or whether it has authority to issue a permit or other approval.</p>
Recommendation to Address Issues:	Recommended revision: The Board shall, without request, allow full standing as formal Intervenor to all Authorizing Agencies and designated Inuit organization(s)

Comment Number:	GoC - #26
Subject:	Public Hearings Conducted in Communities-Rule 112
Reference:	NIRB Rules of Procedure, November 2018: Page 36
Priority:	High
Background/Rationale:	<p>Rule 112 states <i>"Parties wishing to rely on Documents not filed with the Board prior to the Public Hearing shall provide the Documents to the Board to be marked as formal Exhibits in the Public Hearing Record"</i>. There is no requirement for such parties to provide sufficient number of copies to be distributed to all parties when produced at a Public Hearing without having been filed.</p>
Recommendation to Address Issues:	NIRB should include a requirement that documents produced at a Public Hearing (and have not been filed) be provided in a sufficient number of copies to be distributed to all parties at the Public Hearing.

Comment Number:	GoC - #27
Subject:	Project Certificate Workshop - Rule 128
Reference:	NIRB Rules of Procedure, November 2018: Page 40
Priority:	High
Background/Rationale:	<p>Under the current wording of this Rule, "government departments and agencies" need to provide the NIRB with information on how "Authorizing Agencies" will implement the project certificate.</p> <p>"Authorizing agencies" as defined under the Rules include the DIOs.</p> <p>We are of the view that government departments and agencies cannot be expected to talk on behalf of the DIO.</p>
Recommendation to Address Issues:	Recommended revision: In advance of the Workshop, the NIRB may request that designated Inuit organization(s) , government departments and agencies, or any other body with authorities and jurisdictional responsibilities for the project provide the NIRB with a summary of how Authorizing Agencies intend to ensure that the permits, certificates, licences and other government approvals that the Proponent may require to carry out the project are consistent with the requirements in the Project Certificate.

Comment Number:	GoC - #28
Subject:	Project Certificate Workshop - Rule 129
Reference:	NIRB Rules of Procedure, November 2018: Page 40
Priority:	High
Background/Rationale:	<p>Rule 129 states <i>"As required by Article 12, Section 12.7.2 of the Nunavut Agreement and s. 135 of the NuPPAA, the Board or the Monitoring Officer(s) responsible to fulfill the Board's monitoring functions may issue Procedural</i></p>



	<p><i>Directions to the Proponent, Authorizing Agencies, or other party in respect of a project-specific Monitoring Program and/or implementation of a Project Certificate".</i></p> <p>We are of the view that this Rule might be outside the jurisdiction of the NIRB. In particular, Rule 129 would make authorizing agencies as well as "other parties" subject to Procedural Direction on how a monitoring program is conducted. This may remove discretion of regulators to conduct their implementation responsibilities for the project certificate, including a monitoring program, as they see appropriate and therefore interfere with regulators' statutory roles and responsibilities. Other parties likely do not have a role to play in monitoring programs.</p>
Recommendation to Address Issues:	NIRB should consider removing "Authorizing Agencies, or other parties" from the list of recipients of directions.

Comment Number:	GoC - #29
Subject:	After Closing of the Public Record - Rules 123-125
Reference:	NIRB Rules of Procedure, November 2018: Page 39
Priority:	Moderate
Background/Rationale:	Now that Project Certificate Terms & Conditions are enforceable under NuPPAA, there should be a discussion of how to incorporate a "draft PC-T&C" phase to the Rules of Procedure. In order to ensure that T&Cs are written in a manner that is legally enforceable by enforcement agents (such as CIRNAC Field Inspectors), a revision phase of the wording for Terms & Conditions between the NIRB and Authorizing Agencies could be a useful new Rule to incorporate into the Rules of Procedure.
Recommendation to Address Issues:	<p>After the Closing of the Public Record (123.), and before the Project Certificate Workshop (126.):</p> <p>NIRB should consider including an additional Rule regarding the circulation of "draft" Project Certificate Terms & Conditions for input from parties on the "enforceability" of the wording used in the Terms and Conditions.</p>

Comment Number:	GoC - #30
Subject:	Request for Ruling
Reference:	<ol style="list-style-type: none"> 1. Mackenzie Valley Review Board, Draft Rules of Procedure (November 2018), Rules 28-37 2. Mackenzie Valley Review Board "Request for Ruling" 1-pager: http://reviewboard.ca/process_information/step_by_step_information
Priority:	Moderate
Background/Rationale:	<p>The "Request for Ruling" is not currently included in the NIRB Rules of Procedure; however, its addition could prove to be useful in NIRB processes.</p> <p>For example: it could provide a platform for Proponents/Intervenors to request the NIRB to make a ruling on the expected depth of review of Management Plans as part of a Reconsideration process. Instead of formal requests through correspondence via mail or email, as is seen in current practices, the Request for Ruling would provide a structured format for the request, as well defined timelines for the responses/rulings from the NIRB, and would be included on the public record of information. The Rulings would also become part of the documentation to consider in the NIRB's decision-making.</p>
Recommendation to Address Issues:	NIRB should consider adding Rule(s) for "Request for Ruling".



1.2. EDITORIAL COMMENTS

Comment Number:	GoC - #31
Subject:	General
Reference:	NIRB Rules of Procedure, November 2018 (<i>throughout</i>)
Priority:	Moderate
Background/Rationale:	<p>There are many sentences in the Rules that are run-on, which the NIRB should consider breaking up for clarity. An example is:</p> <p>Page 3: “Board” or “NIRB” means the Nunavut Impact Review Board established as an Institution of Public Government pursuant to Article 12 of the <i>Nunavut Agreement</i> and s. 18 of <i>NuPPAA</i> and for the purposes of these Rules may also include a duly appointed Panel of the Board to which the Board has delegated its functions.</p>
Recommendation to Address Issues:	<p>NIRB should consider breaking up sentences as follows:</p> <p>“Board” or “NIRB” means the Nunavut Impact Review Board established as an Institution of Public Government pursuant to Article 12 of the <i>Nunavut Agreement</i> and s. 18 of <i>NuPPAA</i>. For the purposes of these Rules, the “Board” or “NIRB” may also include duly appointed Panel of the Board to which the Board has delegated its functions.</p>

Comment Number:	GoC - #32
Subject:	General
Reference:	NIRB Rules of Procedure, November 2018 (<i>throughout</i>)
Priority:	Moderate
Background/Rationale:	There are inconsistencies with capitalization of terms, e.g.: Board's Review, Project Description/Proposal.
Recommendation to Address Issues:	NIRB should define all terms being capitalized and ensure consistent use of capitalization to avoid confusion/different interpretations.

Comment Number:	GoC - #33
Subject:	Functions and Primary Objectives of the Board
Reference:	NIRB Rules of Procedure, November 2018: Page 1
Priority:	Moderate
Background/Rationale:	The 1 st paragraph in this section ends with “...as may be set out in legislation.”, however both section 12.2.4 of the <i>Nunavut Agreement</i> and section 22 of <i>NuPPAA</i> also provide for other functions as may be agreed to by a DIO and the federal or territorial government.
Recommendation to Address Issues:	NIRB should clarify this last sentence.

Comment Number:	GoC - #34
Subject:	Definitions - Community representatives
Reference:	NIRB Rules of Procedure, November 2018: Page 3
Priority:	Low
Background/Rationale:	The definition gets into the details of how the community representatives are chosen. Typically, definitions are not meant to set legal standards. This is better done in the actual provisions of the Rules. Here, a reference to Rule 101 would appear to be sufficient for the purpose of the definition. One risk with this approach is to create inconsistencies between the substantive aspect of the definition and the corresponding Rule.
Recommendation to Address Issues:	Recommended revision: “Community Representatives” mean the representatives of potentially affected communities agreeing to participate in the Board’s Proceedings. Typically, Community Representatives are chosen



	as stipulated in Rule 101.
Comment Number:	GoC - #35
Subject:	Definitions – "Hearing" or "Public Hearing"
Reference:	NIRB Rules of Procedure, November 2018: Page 4
Priority:	Moderate
Background/Rationale:	If a "Hearing" and a "Public Hearing" aren't used interchangeably, they should be defined separately.
Recommendation to Address Issues:	NIRB should consider breaking the types of hearings into separate definitions.
Comment Number:	GoC - #36
Subject:	Definitions- Hearing or Public Hearing
Reference:	NIRB Rules of Procedure, November 2018: Page 4
Priority:	Low
Background/Rationale:	<p>It is not clear what a "hearing" or "public hearing" is as the NIRB uses the same word to define the word being defined. For example, a <u>Hearing</u> or <u>Public Hearing</u> means any form of <u>hearing</u> associated... [emphasis added]. To enhance clarity, it would be helpful for the NIRB to define the concept. For example, is a hearing a component of a proceeding where parties are given the opportunity to provide their views?</p> <p>We are of the view that defining the concept of hearing or public hearing would help clarify the difference between a proceeding and a hearing.</p>
Recommendation to Address Issues:	To enhance understanding, the NIRB should clearly define the concept of hearing or public hearing.
Comment Number:	GoC - #37
Subject:	Definitions - Interested Corporation or Organization
Reference:	NIRB Rules of Procedure, November 2018: Page 5
Priority:	Moderate
Background/Rationale:	<p>Under NuPPAA, this definition is only relevant to NIRB proceedings in the context of the preparation of EIS Guidelines (subsection 101(4) of NuPPAA). The fact that the definition of "Party" and "Intervenor" in the draft Rules includes Interested corporations could mean that they are <i>de facto</i> considered as a party or that there is some form of presumption that they will get such status if they request it.</p> <p>NuPPAA is unlikely to have intended this result given the narrow statutory implications attached to the "Interested Corporation" status. If all that is meant is that an interested corporation can apply for party or intervenor status as any other person could do, then it is probably better to remove any reference to Interested Corporation unless it is directly relevant to the question of how Interested Corporations are to exercise their rights under section 101 (4) of NuPPAA.</p>
Recommendation to Address Issues:	NIRB should consider removing any reference to "Interested Corporation" from this definition if all that is meant is that an interested corporation can apply for party or intervenor status as any other person could do, unless it is directly relevant to the question of how Interested Corporations are to exercise their rights under section 101(4) of NuPPAA.



Comment Number:	GoC - #38
Subject:	Definitions – "Intervenor"
Reference:	NIRB Rules of Procedure, November 2018: Page 5
Priority:	Moderate
Background/Rationale:	<ol style="list-style-type: none"> 1. Use of the term "Formal Intervenor" and "Intervenor" in other places throughout the document is likely to cause confusion. 2. The definition seems to include information that would be better suited for a footnote.
Recommendation to Address Issues:	<p>The NIRB should consider:</p> <ol style="list-style-type: none"> 1. Ensuring consistent use of defined and non-defined terms to avoid confusion/different interpretations. 2. Putting the following in a footnote rather than a definition: <i>"The term may refer to [...] any member of the public who applies for and is granted Intervenor status."</i>

Comment Number:	GoC - #39
Subject:	Definitions - Inuit Qaujumaningit
Reference:	NIRB Rules of Procedure, November 2018: Pages 5-6
Priority:	Low
Background/Rationale:	The word "both" in the definition of "Inuit Qaujumaningit" appears to introduce a list of three concepts; "both" can probably be deleted
Recommendation to Address Issues:	Recommended Revision: "Inuit Qaujumaningit" means both Inuit Traditional Knowledge (and variations thereof, or Inuit Qaujimajatuqangit)...

Comment Number:	GoC - #40
Subject:	Definitions – "Inuktitut"
Reference:	NIRB Rules of Procedure, November 2018: Page 6
Priority:	moderate
Background/Rationale:	The definition presented seems to be that of "Inuktitut". NIRB should consider the Nunavut Tunngavik Incorporated AGM resolution of Oct 18-20, 2016 concerning common terminology and determine if the definition should be changed to "Inuktitut".
Recommendation to Address Issues:	NIRB should consider using the term to "Inuktitut".

Comment Number:	GoC - #41
Subject:	Definitions – "Minister"
Reference:	NIRB Rules of Procedure, November 2018: Page 6
Priority:	Moderate
Background/Rationale:	The definition contains run-on sentence, which the NIRB should consider breaking up for clarity.
Recommendation to Address Issues:	<p>NIRB should consider breaking-up the sentence to read:</p> <p><i>Unless otherwise specified, means the federal or territorial Minister having the jurisdictional responsibility for authorizing a project to proceed. Where there are multiple Ministers, the Government of Canada and Government of Nunavut may, within their respective jurisdictions, designate a single Minister to be responsible for NIRB and to perform all functions assigned to "the Minister".</i></p>



Comment Number:	GoC - #42
Subject:	Definitions – "Minister"
Reference:	NIRB Rules of Procedure, November 2018: Page 6
Priority:	Moderate
Background/Rationale:	Federal minister and territorial minister are given precision in the NuPPAA definitions and should be reflected here.
Recommendation to Address Issues:	Reflect the NuPPAA definitions in this section (section 2).

Comment Number:	GoC - #43
Subject:	Definitions - Monitoring Program
Reference:	NIRB Rules of Procedure, November 2018: Page 6
Priority:	Low
Background/Rationale:	The definition is almost, but not quite identical to the NuPPAA definition. It is not clear if the subtle difference intended. If not, it would be preferable to simply define this term as <i>"a monitoring program established under section 135 of NuPPAA, as may be amended from time to time"</i> .
Recommendation to Address Issues:	NIRB should consider reverting to the definition of a Monitoring Program under NuPPAA section 135 or simply define this term as <i>"a monitoring program established under section 135 of NuPPAA, as may be amended from time to time"</i> .

Comment Number:	GoC - #44
Subject:	Definitions – "Motion"
Reference:	NIRB Rules of Procedure, November 2018
Priority:	Moderate
Background/Rationale:	The word "Motion" is not defined in the draft Rules.
Recommendation to Address Issues:	NIRB should consider adding the definition for "Motion".

Comment Number:	GoC - #45
Subject:	Definitions – "Project Proposal"
Reference:	NIRB Rules of Procedure, November 2018: Page 8
Priority:	Moderate
Background/Rationale:	The definition contains run-on sentence, which the NIRB should consider breaking up for clarity.
Recommendation to Address Issues:	<p>NIRB should consider breaking-up the sentence to read:</p> <p>"...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 Article 12, Section 12.11.1 of the <i>Nunavut Agreement</i>. It 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."</p>



Comment Number:	GoC - #46
Subject:	Definitions – "Public Registry"
Reference:	NIRB Rules of Procedure, November 2018: Page 8
Priority:	Low
Background/Rationale:	The "Public Registry" should allow for both physical and online records.
Recommendation to Address Issues:	NIRB should consider adding wording which includes both physical and online records.

Comment Number:	GoC - #47
Subject:	Interpretation and application of rules in respect of proceedings – Rule 33
Reference:	NIRB Rules of Procedure, November 2018: Page 18
Priority:	Low
Background/Rationale:	Sub-rule 33(a) is missing the notion of also being accepted in a court of law.
Recommendation to Address Issues:	NIRB should consider adding "or in a Court of law" after "under the strict rules of evidence".

Comment Number:	GoC - #48
Subject:	Burden of Proof-Rule 34
Reference:	NIRB Rules of Procedure, November 2018: Page 18
Priority:	Low
Background/Rationale:	CIRNAC would suggest using the term evidence instead of the terms "information" and "documents".
Recommendation to Address Issues:	Recommended Revision: <i>"Any party offering evidence 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"</i>

Comment Number:	GoC - #49
Subject:	Relevance and Weight of Information - Rule 36 and 37
Reference:	NIRB Rules of Procedure, November 2018: Page 18
Priority:	Low
Background/Rationale:	<ol style="list-style-type: none"> 1. CIRNAC would suggest using the term "evidence" instead of the terms "information" and "documents" in Rule 36. 2. CIRNAC would suggest using the term "expert evidence" instead of the terms "expert information" in Rule 37.
Recommendation to Address Issues:	<p>NIRB should consider</p> <ol style="list-style-type: none"> 1. Using "evidence" instead of the terms "document and information". 2. Using "expert evidence" instead of "expert information".

Comment Number:	GoC - #50
Subject:	Relevance and weight of information-Rule 37
Reference:	NIRB Rules of Procedure, November 2018: Page 18
Priority:	Low
Background/Rationale:	Rule 37 contains run-on sentence, which the NIRB should consider breaking up for clarity.
Recommendation to Address Issues:	<p>NIRB should consider breaking-up the sentence to read:</p> <p>"If a party wishes to have the technical, scientific, ecological, cultural, Inuit Qaujimaningit, Traditional Knowledge or community knowledge expertise of a witness considered to constitute "expert" evidence, the Board requires the party to file a summary of the background of that witness, including qualifications, relevant education and/or experience with the Board. The</p>



	summary should be filed as an attachment to relevant written submissions or, if appearing at a Public Hearing, the background statement about the witness must be filed with the Board at least 15 days prior to the commencement of the Public Hearing."
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Comment Number:	GoC - #51
Subject:	Motions – Rule 43
Reference:	NIRB Rules of Procedure, November 2018: Pages 19-20
Priority:	Moderate
Background/Rationale:	<ol style="list-style-type: none"> 1. There is an apparent inconsistency between sub-rule 43(a) and 42. Rule 42 seems to allow for filing of motion during a public hearing whereas 43(a) does not. 2. Given (b) defines an exception to the rest of Rule 43, it should be separate for readability and to avoid confusion.
Recommendation to Address Issues:	<p>NIRB should consider:</p> <ol style="list-style-type: none"> 1. Clarifying that Rule 43 does not apply to Rule 42. 2. Making 43(b) a section of its own (ex: Rule 44).

Comment Number:	GoC - #52
Subject:	Transcripts – Rule 50
Reference:	NIRB Rules of Procedure, November 2018: Page 21
Priority:	Moderate
Background/Rationale:	For transparency, transcripts should be required unless technology does not allow it.
Recommendation to Address Issues:	NIRB should provide transcripts, unless unable to do so, in which case there should at least be a summary of proceedings for transparency.

Comment Number:	GoC - #53
Subject:	Record of Proceedings- Rule 52
Reference:	NIRB Rules of Procedure, November 2018: Pages 21-22
Priority:	High
Background/Rationale:	Definitions in (a) and (b) do not include "Final Written Submissions" or "Responses to Final Written Submissions".
Recommendation to Address Issues:	NIRB should consider including "Final Written Submissions" or "Responses to Final Written Submissions" in both (a) and (b)

Comment Number:	GoC - #54
Subject:	Formal Intervenors – Rule 59
Reference:	NIRB Rules of Procedure, November 2018: Page 24
Priority:	Moderate
Background/Rationale:	Redundancy: bullet (a) captures "the nature" of the applicant's intended participation, in a brief summary of the reasons for interest in the Proceeding.
Recommendation to Address Issues:	NIRB should consider including "the nature" in (a) and removing it from (b).

Comment Number:	GoC - #55
Subject:	Formal Intervenors – Rules 59 and 60
Reference:	NIRB Rules of Procedure, November 2018: Page 24
Priority:	Moderate
Background/Rationale:	There is inconsistency in terminology regarding the request for "formal Intervenor status", but then refers to "applicants" instead of requestors.
Recommendation to	NIRB should consider correcting for consistency, by either using "Request for



Address Issues:	<i>Intervenor status / Requestor", or "Application for Intervenor status / Applicant".</i>
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Comment Number:	GoC - #56
Subject:	Formal Intervenor – Rule 60
Reference:	NIRB Rules of Procedure, November 2018: Page 24
Priority:	Moderate
Background/Rationale:	There is a run-on sentence in (d), which the NIRB should consider breaking up for clarity.
Recommendation to Address Issues:	<p>NIRB should consider breaking-up the sentence to read:</p> <p>Accept the intervention request in writing, and advise the applicant and all parties that the Board has accepted the intervention request. The Board will also advise the applicant as to upcoming timelines and process requirements applicable to formal Intervenor and associated with the next steps in the Board's consideration of the project proposal.</p>

Comment Number:	GoC - #57
Subject:	Formal Intervenor - Rule 60
Reference:	NIRB Rules of Procedure, November 2018: Page 24
Priority:	Moderate
Background/Rationale:	Sub-rule 60 (b) uses the terms "proponent" and "intervenor" while 60 (d) uses "parties". It is not clear if both mean the same thing. If not, who is excluded from either of 60 (b) or 60 (d)?
Recommendation to Address Issues:	NIRB should revise Rule 60 to eliminate the ambiguity.

Comment Number:	GoC - #58
Subject:	Summons - Rule 61
Reference:	NIRB Rules of Procedure, November 2018: Page 25
Priority:	Moderate
Background/Rationale:	The Rule uses "information or documents" to describe what would normally be considered as "evidence" in proceedings. We recommend using "evidence" instead of the terms "document and information".
Recommendation to Address Issues:	NIRB should replace "documents and information" with "evidence"

Comment Number:	GoC - #59
Subject:	Summons - Rule 63
Reference:	NIRB Rules of Procedure, November 2018: Page 25
Priority:	Low
Background/Rationale:	Rule 63 states " <i>The person/party to whom a Board summons is directed shall receive a copy of the summons....</i> "[emphasis added]. It is not clear to the Department if this meant to impose an obligation on the receiving party (the summoned party "shall receive"), or if the Board is trying to say that it has to follow rules for service in serving the summons. In the latter case, the Rules should read: "the NIRB shall serve a copy of the summons in accordance..."
Recommendation to Address Issues:	Recommended revision: "the Board shall serve a copy of the summons in accordance..."



Comment Number:	GoC - #60
Subject:	Board retention of experts – Rule 65
Reference:	NIRB Rules of Procedure, November 2018: Page 26
Priority:	Moderate
Background/Rationale:	Bullet (b) is missing the notion of timelines for submissions.
Recommendation to Address Issues:	NIRB should consider adding "and timelines to do so" before the semi-colon.

Comment Number:	GoC - #61
Subject:	Participation by Teleconference/Videoconference During In-Person Proceedings - Rule 67
Reference:	NIRB Rules of Procedure, November 2018: Page 26
Priority:	Moderate
Background/Rationale:	The NIRB's use of the expression "well in advance" in Rule 67 is subjective. A more objective approach would provide better guidance to parties. Perhaps the Rules should simply provide that the NIRB will set a deadline for such requests at some point in the review process.
Recommendation to Address Issues:	NIRB should consider revising this rule by simply indicating that the NIRB will set a deadline for such requests during the review process.

Comment Number:	GoC - #62
Subject:	Continuing Proceedings in the Absence of a Party – Rule 69
Reference:	NIRB Rules of Procedure, November 2018: Page 27
Priority:	Moderate
Background/Rationale:	Given the consequences of proceeding without a party, it's important that if the NIRB excuses a party it be done in writing.
Recommendation to Address Issues:	NIRB should consider adding that the NIRB must provide the decision to "excuse a party" in writing.

Comment Number:	GoC - #63
Subject:	Questions of Law and Jurisdiction - Rule 71 & 72
Reference:	NIRB Rules of Procedure, November 2018: Page 27
Priority:	Low
Background/Rationale:	Arguably, these two Rules bring very little value as Rule 71 is already covered by NuPPAA and Rule 72 is already covered under Rule 70.
Recommendation to Address Issues:	NIRB should consider removing Rules 71 and 72

Comment Number:	GoC - #64
Subject:	Part VI: Types of Board proceedings – Rule 76
Reference:	NIRB Rules of Procedure, November 2018: Page 28
Priority:	Moderate
Background/Rationale:	NIRB should mention that what it decides to use as a proceeding will be dependent on many factors, will be at their discretion and will be in line with what will best suit the NIRB's consideration of the matter.
Recommendation to Address Issues:	NIRB should consider adding wording at the end of the section to include all of these factors.

Comment Number:	GoC - #65
Subject:	Community Information Sessions-Rule 84
Reference:	NIRB Rules of Procedure, November 2018: Page 29
Priority:	Moderate
Background/Rationale:	There appears to be an inconsistency between Rules 32 and 84. Under Rule 32, Procedural Directions are issued by the Executive Director but under Rule



	84 the NIRB is responsible for issuing Procedural Directions.
Recommendation to Address Issues:	NIRB should review and address this inconsistency.

Comment Number:	GoC - #66
Subject:	Project-Specific EIS or IS Guidelines Review – Rule 88
Reference:	NIRB Rules of Procedure, November 2018: Page 30
Priority:	Moderate
Background/Rationale:	Rule 88 stipulates that EIS or IS Guidelines Workshops would be conducted in a community potentially affected by the project. We are of the view that the NIRB should allow for a possibility of holding such workshops in a central location convenient to all (similar to Rule 91)?
Recommendation to Address Issues:	NIRB should consider adding the concept of holding EIS or IS Workshop in a central location convenient to all.

Comment Number:	GoC - #67
Subject:	Technical Meeting – Rule 91
Reference:	NIRB Rules of Procedure, November 2018: Page 30
Priority:	Moderate
Background/Rationale:	There should be an "or" between "project proposal" and "in person"
Recommendation to Address Issues:	Clarify intent by adding "or" between "project proposal" and "in person"

Comment Number:	GoC - #68
Subject:	Technical Meeting- Rules 92 and 93
Reference:	NIRB Rules of Procedure, November 2018: Page 31
Priority:	Moderate
Background/Rationale:	<p>There is inconsistency in strength of language used between Rule 92 and 93.</p> <p>Rule 92: "During the Technical Meeting, the Board's staff, in consultation with the Proponent and parties participating in the Technical Meeting, <u>may</u> record commitments made..."</p> <p>Rule 93: "At the conclusion of, or following the Technical Meeting, the Board <u>shall</u> review the commitments and timing recorded in the initial draft of the Commitments List with the Proponent and all participating parties to finalize the Commitments List. The final Commitments List associated with a Technical Meeting <u>may</u> be issued by the Board in writing either as a separate document or as an Appendix to the Board's Pre-Hearing Conference Decision Report.</p>
Recommendation to Address Issues:	NIRB should consider using consistent action verbs (e.g., must or shall) to ensure responsibilities under the Rules are clear.

Comment Number:	GoC - #69
Subject:	Pre-hearing conference – Rule 95
Reference:	NIRB Rules of Procedure, November 2018: Page 31
Priority:	Low
Background/Rationale:	Acronyms (i.e., EIS, IS) in (b) are not defined.
Recommendation to Address Issues:	NIRB should consider identifying and defining acronyms used in the Guidelines.



Comment Number:	GoC - #70
Subject:	Pre-Hearing Conference-Rule 97
Reference:	NIRB Rules of Procedure, November 2018: Page 33
Priority:	Low
Background/Rationale:	<p>Rule 97 states "Regardless of the format of the Pre-hearing Conference, other than the Board's Chairperson or delegate, the Board or Panel Members who are decision-makers for the file do not attend the Pre-Hearing Conference.</p> <p>It is unclear if this Rule is meant to convey that there is no requirement for the Board or Panel Members to attend the Pre-Hearing conference – without preventing it -, or to create a prohibition for any Board member (apart from Chair or delegate) from taking part in the public hearing if they have attended the pre-Hearing Conference. In the latter case, it may be useful to provide more clarity by stating that the Board members "shall not" take part in the Pre-Hearing Conference or that a Board member who attended the Pre-Hearing conference "shall not" be on the final decision-making panel. We would be interested in better understanding the intent of the rule.</p>
Recommendation to Address Issues:	If the intent of this Rule is to create a prohibition for any Board member (apart from Chair or delegate) from taking part in the public hearing if they have attended the pre-Hearing Conference, it may be useful to provide more clarity by stating that the Board members "shall not" take part in the Pre-Hearing Conference or that a Board member who attended the Pre-Hearing conference "shall not" be on the final decision-making panel.

Comment Number:	GoC - #71
Subject:	Community Roundtable Session - Rules 100-102
Reference:	NIRB Rules of Procedure, November 2018: Pages 33-34
Priority:	Moderate
Background/Rationale:	It is unclear whether there can be more than one community roundtable session, and whether several affected communities are to be at the same session.
Recommendation to Address Issues:	NIRB should consider rewording to allow for more than one session or clarifying that more than one community can be at the same roundtable.

Comment Number:	GoC - #72
Subject:	Community Roundtable Session – Rule 102
Reference:	NIRB Rules of Procedure, November 2018: Page 34
Priority:	Moderate
Background/Rationale:	The way Rule 102 is currently written makes it difficult to follow. We suggest this rule be revised.
Recommendation to Address Issues:	<p>Suggested rewording to read:</p> <p>The Board shall <u>gather</u> comments, questions and perspectives shared by Community Representatives during the Community Roundtable. The <u>Board's summary of the Community Roundtable</u> shall form part of the Record of Proceedings considered by the Board during decision-making.</p>

Comment Number:	GoC - #73
Subject:	Public hearings conducted in communities – Rule 104
Reference:	NIRB Rules of Procedure, November 2018: Page 34
Priority:	Moderate
Background/Rationale:	Wording: "upon reasonable notice" is too vague.
Recommendation to Address Issues:	NIRB should consider adding a timeline.



Comment Number:	GoC - #74
Subject:	Public hearings conducted in communities – Rule 107
Reference:	NIRB Rules of Procedure, November 2018: Page 35
Priority:	Moderate
Background/Rationale:	There is a run-on sentence, which the NIRB should consider breaking up for clarity.
Recommendation to Address Issues:	<p>Suggest breaking-up the sentence to read:</p> <p>The informal component of this form of Public Hearing consists of a Community Roundtable session for Community Representatives (conducted as outlined in Rules 100 - 102) and members of the public, as well as a Public Evening Session. The Public Evening Session is a public meeting designed to allow interested persons and Elders from the community who may be unable to attend the Public Hearing during regular business hours to learn about the project proposal or other Proceeding and to communicate their views about the project proposal or other Proceeding in an informal setting.</p>

Comment Number:	GoC - #75
Subject:	Order of events at the public hearing – Rule 108
Reference:	NIRB Rules of Procedure, November 2018: Pages 35-36
Priority:	Low
Background/Rationale:	The language in bullet (e), "explanation" of Elders does not seem appropriate.
Recommendation to Address Issues:	NIRB should consider revising bullet (e) to change "explanation" to "introduction". Or "explanation of Elder's role in the Hearing".

Comment Number:	GoC - #76
Subject:	Presentation of Evidence and Exhibits-Rule 110
Reference:	NIRB Rules of Procedure, November 2018: Page 36
Priority:	Low
Background/Rationale:	<p>Rule 110 states <i>"The presentation of evidence by a witness or a panel of witnesses at an in-person Public Hearing shall be limited to the scope of the project proposal or other Proceeding, the assessment of the project proposal or other Proceeding, technical comment submissions and any issues formulated by the Board for determination"</i>.</p> <p>This Rule is confusing, particularly because of the repetition of "or other Proceeding".</p>
Recommendation to Address Issues:	NIRB should review and clarify the language in this Rule.

Comment Number:	GoC - #77
Subject:	Presentation of evidence and exhibits – Rule 111
Reference:	NIRB Rules of Procedure, November 2018: Page 36
Priority:	Low
Background/Rationale:	Wording: "lead" evidence doesn't seem appropriate.
Recommendation to Address Issues:	NIRB should consider replacing "lead" with "provide".

Comment Number:	GoC - #78
Subject:	Questioning- Rules 116-117
Reference:	NIRB Rules of Procedure, November 2018: Page 37
Priority:	Low
Background/Rationale:	The role of in proceedings is to provide Inuit traditional knowledge, Inuit perspective and experience acquired over thousands of years living on and



	interacting with the environment. Rule 116 allows for questioning of witnesses during proceedings but does not specify if Elders and other Inuit knowledge holders are exempted from such questioning or not. It our view that Elders and other knowledge holders should be excluded from questioning.
Recommendation to Address Issues:	NIRB should consider adding wording to Rule 116 to stipulating the exclusion of Elders and other knowledge holders from questioning.

Comment Number:	GoC - #79
Subject:	Public Hearings Conducted in Writing – Rule 120
Reference:	NIRB Rules of Procedure, November 2018: Page 38
Priority:	Moderate
Background/Rationale:	It is unclear if there are any provisions under 103-117 which are applicable.
Recommendation to Address Issues:	NIRB should consider adding reference if any provisions under 103-117 are applicable to hearings conducted in writing.

Comment Number:	GoC - #80
Subject:	Project Certificate Workshop – Rules 127-128
Reference:	NIRB Rules of Procedure, November 2018: Pages 39-40
Priority:	High
Background/Rationale:	Wording in bullet (b) should reference "authorizing agencies", not "government departments and agencies".
Recommendation to Address Issues:	Suggest changing "government departments and agencies" to "authorizing agencies".

Comment Number:	GoC - #81
Subject:	Site visits – Rule 133
Reference:	NIRB Rules of Procedure, November 2018: Page 41
Priority:	Moderate
Background/Rationale:	It is unclear if costs are covered for community members to participate in site visits.
Recommendation to Address Issues:	NIRB should consider covering costs to allow a certain/limited number of community members/delegates to participate in site visits, and adding the wording to the Rule to reflect this.

2. NIRB STANDARD GUIDELINES FOR THE PREPARATION OF AN IMPACT STATEMENT

2.1. SUBSTANTIVE COMMENTS

Comment Number:	GoC - #82
Subject:	General Comment
Reference:	Standard Guidelines for the Preparation of an Impact Statement
Priority:	High
Background/Rationale:	As per comments on the draft Rules, use of the term "project proposal" confuses the interpretation of these guidelines because NuPPAA uses the same term in the meaning of section 76 – it is the document that contains a description of the project. When it is the document being referred to, using "project proposal" is appropriate (e.g., section 3.0, first paragraph, third use of the term – appears to be referring to the document), but when the project under assessment is being referred to, use of an alternate term like "proposed project" would be clearer (e.g., section 3.0, first paragraph, first and second use of the term – presumably what is meant is that NIRB determines the scope



	of and assesses the proposed project).
Recommendation to Address Issues:	NIRB should consider revising the Guidelines to ensure the term "project proposal" is only used to mean the document that contains a description of the project as per section 76 of NuPPAA.

Comment Number:	GoC - #83
Subject:	General Comment
Reference:	Standard Guidelines for the Preparation of an Impact Statement
Priority:	High
Background/Rationale:	Unless there is a need to specifically refer to projects that may still be subject only to the Nunavut Agreement under the s.235 transition rules of NuPPAA, it is recommended that references to the Nunavut Agreement be removed. NuPPAA is the implementing legislation for parts of the Nunavut Agreement relevant to NIRB's functions and can be relied on by proponents and other parties to fully implement these parts. A statement at the beginning of the document to this effect could provide this certainty, including saying that should there be inconsistency or conflict with the Nunavut Agreement, it would prevail. However, using duplicate references each time calls into question the authority of both the Nunavut Agreement and NuPPAA and introduces uncertainty in the reader as to which document is to be consulted. For instance, NuPPAA contains more details than the Nunavut Agreement so the reader may wonder if it is only the Nunavut Agreement requirements that need to be satisfied and not NuPPAA's.
Recommendation to Address Issues:	to Wherever possible, remove references to the Nunavut Agreement. Consider adding a statement at the beginning of the document that states that NuPPAA is the implementing legislation for parts of the Nunavut Agreement relevant to NIRB's functions and can be relied on by proponents and other parties to fully implement these parts.

Comment Number:	GoC - #84
Subject:	Part I- The Assessment
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 1
Priority:	Low
Background/Rationale:	There is no introduction to set the stage for what a party can expect in this part. We suggest the NIRB inserts brief line introducing Part I as was done in Part II.
Recommendation to Address Issues:	NIRB should add wording similar to: Part I of this document provides guidance and general instructions on the preparation of an Impact Statement.

Comment Number:	GoC - #85
Subject:	Scope of the NIRB Assessment
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 5
Priority:	Moderate
Background/Rationale:	The Guidelines should acknowledge Parks Canada Agency's role as the "gatekeeper" for projects in parks, marine national conservation areas and historic sites under its jurisdiction, where it replaces the Nunavut Planning Commission.
Recommendation to Address Issues:	The sentence "If the Board adds to the scope of the Project the Board would not proceed with the Review until the Nunavut Planning Commission and the responsible Minister(s) have had an opportunity to again exercise their powers and perform their duties or functions in relation to the Project as rescope." This sentence should read as follows: If the Board adds to the scope of the Project the Board would not proceed



	<p>with the Review until the Nunavut Planning Commission and/or Parks Canada and the responsible Minister(s) have had an opportunity to again exercise their powers and perform their duties or functions in relation to the Project as rescoped.</p> <p>The and/or is to signify that PCA and NPC must jointly perform the role when projects are transboundary to their respective jurisdictions.</p>
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Comment Number:	GoC - #86
Subject:	Study Strategy and Methodology
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 6, Section 4.2, Para 2
Priority:	High
Background/Rationale:	The proponent should include a description of how this existing environment/baseline is expected to change over the life of the project (construction, operation, and closure phases) in response to climate change so that all effect analyses and mitigations can be undertaken/proposed in respect to this changing baseline.
Recommendation to Address Issues:	Please include an additional requirement for the proponent to include a description of how this existing environment/baseline is expected to change over the life of the project (construction, operation, and closure phases) in response to climate change.

Comment Number:	GoC - #87
Subject:	Study Strategy and Methodology
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 6, Section 4.2, Para 2
Priority:	Moderate
Background/Rationale:	Proponents need to understand that it can take more than a year to conduct the field research necessary to collect adequate baseline information across all seasons.
Recommendation to Address Issues:	NIRB should consider adding something similar to the MVEIRB guidelines: "For some environmental components, it can take more than a year to conduct the field research necessary to collect adequate baseline information across all seasons. To plan for and prepare the necessary baseline data in advance of an EA, the Review Board [NIRB] strongly encourages developers of major projects to engage government departments and Aboriginal organizations, as well as the NIRB well in advance of the Review."

Comment Number:	GoC - #88
Subject:	Project Location
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 12, Section 6.2.
Priority:	High
Background/Rationale:	The second sentence in the last paragraph of section 6.2 requires the Proponent to ensure that " <i>Maps of the Project's location at an appropriate scale will accompany the text</i> " [emphasis added]. The use of the word <i>appropriate</i> introduces subjectively, hence it is suggested that NIRB specifies minimum requirements pertaining to project location map scales.
Recommendation to Address Issues:	NIRB should specify minimum requirements pertaining to project location map scales (e.g., 1:10,000, 1:50 000, 1:100 000, etc.).

Comment Number:	GoC - #89
Subject:	Detailed Project Proposal Description



Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 16, Subsection 7.3.1.
Priority:	High
Background/Rationale:	The first paragraph of Subsection 7.3.1 needs to be revised to include a reference to potential "socio-economic" effects.
Recommendation to Address Issues:	Recommended revision: <i>The Proponent shall describe the Project components and all activities associated with each in a systematic way. The description shall encompass all phases of development in sufficient detail to allow the Proponent to predict potential adverse environmental and socio-economic effects and address public concerns about the Project including:</i>

2.2. EDITORIAL COMMENTS

Comment Number:	GoC - #90
Subject:	General
Reference:	Standard Guidelines for the Preparation of an Impact Statement
Priority:	Moderate
Background/Rationale:	<ol style="list-style-type: none"> 1. Inconsistency with capitalizing terms throughout the document. 2. Undefined terms which are capitalized or use of different terms throughout the document (ie: Board's Review, Project Description/Proposal, etc.). 3. The use of non-binding wording throughout document may make it difficult to hold parties to many requirements of the IS guideline [e.g., "The IS <i>will</i> document how scientific, engineering, Inuit Qaujimaningit, Inuit Qaujimajatuqangit, traditional and community knowledge were used to reach conclusions (page 6)"; "The IS <i>will</i> describe key project components and associated activities, scheduling details, the timing of each phase of the project and other key features" (page 11); "The IS <i>will</i> contain a concise description of the geographical setting in which the project will take place"(Page 12); "The IS <i>will</i> provide a summary of key issues raised related to the Project and its potential environmental effects, as well as describe any outstanding issues and ways to the Proponent proposes to address them" (Page 24), etc.]
Recommendation to Address Issues:	<p>NIRB should:</p> <ol style="list-style-type: none"> 1. Ensure consistent use of defined and non-defined terms to avoid confusion/different interpretations. 2. Ensure consistency throughout the document and define all capitalized terms. 3. Replace non-binding wording (e.g., will) with more mandatory words (e.g., must or shall).

Comment Number:	GoC - #91
Subject:	Part 1 - Introduction
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 1
Priority:	Low
Background/Rationale:	At the end of the first paragraph of the introduction section, it would be beneficial for the reader to have an indication of the expectations of the NIRB.
Recommendation to Address Issues:	NIRB should add wording similar to: The IS as a whole must reflect and respect the intent and requirements of both Part I and II to be considered by the NIRB.



Comment Number:	GoC - #92
Subject:	Part 1 - Introduction
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 1
Priority:	Low
Background/Rationale:	In the first sentence of the 3 rd paragraph of the introduction section, there is a typo: "...he NIRB..." should be "...the NIRB..."
Recommendation to Address Issues:	NIRB should change "he" to "the"

Comment Number:	GoC - #93
Subject:	Study Strategy and Methodology
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 6, Section 4.2, Para 2
Priority:	High
Background/Rationale:	Reference to "adverse environmental effects" in the following sentence suggests a focus on environmental but not socio-economic effects. <i>"The information presented must be substantiated; in particular, the Proponent must describe how the VCs were identified and what methods were used to predict and assess the project's potential adverse environmental effects on these components"</i> [emphasis added).
Recommendation to Address Issues:	Please delete "environmental" from the sentence. Recommended revision: <i>"The information presented must be substantiated; in particular, the Proponent must describe how the VCs were identified and what methods were used to predict and assess the project's potential adverse effects on these components"</i> .

Comment Number:	GoC - #94
Subject:	Project Phases
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 17, Subsection 7.3.2.
Priority:	High
Background/Rationale:	The last sentence in this section, reproduced below, is ambiguous and needs to be revised. <i>"The Proponent should also clarify all associated monitoring and/or mitigation plans to be implemented in each of the identified phases to eliminate or minimize adverse effects that might occur at various project stages for each Project element"</i> .
Recommendation to Address Issues:	NIRB should consider replacing the "should and "clarify" with "must" and "identify" respectively, and also delete "or". Recommended revision: <i>"The Proponent must also identify all associated monitoring and mitigation plans to be implemented in each of the identified phases to eliminate or minimize adverse effects that might occur at various project stages for each Project element"</i>

Comment Number:	GoC - #95
Subject:	Project Phases
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 20, Subsection 8.1.2.1
Priority:	High
Background/Rationale:	The list of valued ecosystem components is missing "ice".
Recommendation to Address Issues:	NIRB should add "ice", perhaps best placed in the bullet that reads "Marine environment, including marine ecology, marine water and sediment quality, marine biota including fish, and marine habitat,"



Comment Number:	GoC - #96
Subject:	Assessment Boundaries-Spatial Boundaries
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 22, Subsection 8.1.2.2.
Priority:	High
Background/Rationale:	The first sentence in the second paragraph of this section states: " <i>The IS will describe the spatial boundaries, including local and regional study areas, of each VC used to assess the potential adverse environmental effects of the Project and provide a rationale for each boundary</i> "[emphasis added]. Referencing only " <i>adverse environmental effects</i> " may cause Proponents to focus on environmental effects to the detriment of socio-economic effects. The Department is of the view that both adverse and beneficial environmental and socio-economic effects should be captured here.
Recommendation to Address Issues:	Recommended revision: The IS shall describe the spatial boundaries, including local and regional study areas, of each VC used to assess the potential adverse and beneficial effects of the Project and provide a rationale for each boundary"

Comment Number:	GoC - #97
Subject:	Assessment Boundaries-Spatial Boundaries
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 23, Subsection 8.1.2.2.
Priority:	High
Background/Rationale:	The last sentence in the last paragraph reads: " <i>The Proponent is not required to provide a comprehensive baseline description of the environment at each of the above scales but must provide sufficient detail to address the relevant environmental and cumulative effects of the Project</i> " [emphasis added]. "Socio-economic effects" have been omitted. The Department is of the view that socio-economic effects be incorporated here.
Recommendation to Address Issues:	Recommended revision: The Proponent is not required to provide a comprehensive baseline description of the environment at each of the above scales but must provide sufficient detail to address the relevant environmental, socio-economic , and cumulative effects of the Project.

Comment Number:	GoC - #98
Subject:	Assessment Boundaries - Temporal Boundaries
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 24, Subsection 8.1.2.2.
Priority:	High
Background/Rationale:	The last sentence in the second paragraph reads: " <i>As is the case for the determination of spatial boundaries, the temporal boundaries must indicate the range of appropriate scales at which particular baseline descriptions and the assessment of environmental effects are presented</i> ". "Socio-economic and cumulative effects" have been omitted. The Department is of the view that socio-economic and cumulative effects be incorporated here.
Recommendation to Address Issues:	Recommended revision: As is the case for the determination of spatial boundaries, the temporal boundaries must indicate the range of appropriate scales at which particular baseline descriptions and the assessment of environmental, socio-economic , and cumulative effects are presented.



Comment Number:	GoC - #99
Subject:	Public Consultation
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 24, Section 8.2.
Priority:	High
Background/Rationale:	<p>Socio-economic and cumulative effects have been omitted from the following statements in Section 8.2, first and third paragraphs, respectively:</p> <ol style="list-style-type: none"> 1. <i>"As identified in Section 2.2 of this document, the Proponent shall provide highlights of any public consultation and/or engagement undertaken and planned for the future as part of the IS designed to address concerns of the general public regarding the anticipated or potential environmental effects of the Project"</i> [emphasis added]. 2. <i>"The IS will provide a summary of key issues raised related to the Project and its potential environmental effects, as well as describe any outstanding issues and ways to the Proponent proposes to address them"</i> [emphasis added]. <p>We are of the view that socio-economic effects should be incorporated here.</p>
Recommendation to Address Issues:	<p>Recommended revisions:</p> <ol style="list-style-type: none"> 1. As identified in Section 2.2 of this document, the Proponent shall provide highlights of any public consultation and/or engagement undertaken and planned for the future as part of the IS designed to address concerns of the general public regarding the anticipated or potential environmental, socio-economic, and cumulative effects of the Project. 2. The IS must(or shall) provide a summary of key issues raised related to the Project, including its potential environmental, socio-economic, and cumulative effects, as well as a description of any outstanding issues and ways the Proponent proposes to address them.

Comment Number:	GoC - #100
Subject:	Inuit Qaujimaningit, Inuit Qaujimajatuqangit, Traditional, and Community Knowledge
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 25, Section 8.3.
Priority:	High
Background/Rationale:	<p>The second sentence in the last paragraph, reproduced below makes mention of "popular science".</p> <p><i>"It shall explain how it integrated Inuit Qaujimaningit, Inuit Qaujimajatuqangit, traditional knowledge and community knowledge and popular science, including the manner in which it reconciled any apparent discrepancies between the two"</i> [emphasis added]. It is not entirely clear what the term "popular science" means. The Department suggests the NIRB replaces the term "popular science" with "scientific knowledge", in order to ensure the entire sentence speaks to the different knowledge systems.</p>
Recommendation to Address Issues:	<p>Recommended revision:</p> <p>It shall explain how it integrated Inuit Qaujimaningit, Inuit Qaujimajatuqangit, traditional knowledge and community knowledge and scientific knowledge, including the manner in which it reconciled any apparent discrepancies between the two"</p>



Comment Number:	GoC - #101
Subject:	Description of the Environment and Baseline Information
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 25, Section 8.4.
Priority:	High
Background/Rationale:	<p>Socio-economic effects have been omitted from the third sentence(reproduced below) in the first paragraph of Section 8.4:</p> <p><i>In characterizing the environmental effects of the project, the proponent will consider the current baseline environment and environmental trends within the project area, including Inuit Qaujimaningit, Inuit Qaujimajatuqangit, traditional knowledge and community knowledge in relation to the existing biophysical and socio-economic environments relevant to the assessment of potential impacts from the Project for all proposed phases [emphasis added].</i></p> <p>Socio-economic effects should be incorporated here.</p>
Recommendation to Address Issues:	<p>Recommended revision:</p> <p>In characterizing the effects of the project, the proponent must (or shall) consider the current baseline environment and environmental and socio-economic trends within the project area, including Inuit Qaujimaningit, Inuit Qaujimajatuqangit, traditional knowledge and community knowledge in relation to the existing biophysical and socio-economic environments relevant to the assessment of potential impacts from the Project for all proposed phases.</p>

Comment Number:	GoC - #102
Subject:	Impacts of the Environment on the Project
Reference:	Standard Guidelines for the Preparation of an Impact Statement, Page 30, Subsection 8.6.2
Priority:	High
Background/Rationale:	<p>The first sentence in the last paragraph of this section limits the proponent's discussion of long-term effects of climate change up to the closure phase. The Department notes that other effects are assessed up to the post-closure phase and as such suggests that climate change effects assessment extend to the post-closure phase</p>
Recommendation to Address Issues:	<p>Recommended revision to referenced sentence:</p> <p>"Longer-term effects of climate change must also be discussed up to the projected post-closure phase of the Project".</p>

