

Comments on Draft NIRB Rules of Procedure (2023)

Comment Number:	1
Subject:	IQ
Reference:	Part I: Introduction to the Nunavut Impact Review Board
Priority:	Medium
Background/Rationale	<p>In the revised rules, NIRB has provided a definition of IQ drawn from an academic paper and QIA submissions made by NIRB within the context of a regulatory application (Phase 2 Mary River).</p> <p>In addition to advice from RIOs and DIOs, it is noted that many companies have IQ coordinators and Elders Advisory Groups that could be consulted with respect to the new IQ policy under current development by NIRB.</p>
Recommendation to Address Issues	Suggest the RIOs and DIOs should develop a common definition of this term for adoption by NIRB and the reference to the specific regulatory application removed from Rules.
Comment Number:	2
Subject:	Definitions
Reference:	Rule 2
Priority:	High
Background/Rationale	<p>Parties that are not granted full NIRB process participation rights under the Nunavut Agreement should be required to apply for intervention, and if intervener status is granted, an appropriate scope of intervention should be set by the NIRB based on the application.</p> <p>For example, if an organization is permitted intervenor status based on its expertise in the specialized topic of geothermal energy, they should be required to focus their submissions on their area of expertise and not be permitted to make general submissions (for example, submissions on project economics; groundwater; surface water; etc.) – outside of the scope of their stated expertise and basis for admission to the process (see also Rules 65- 67).</p>

Recommendation to Address Issues	<ul style="list-style-type: none"> - Definition of “Intervenor” should include reference to the specific scope of intervention status that is granted (see also Rules 65-67). - Definition of “Panel”. Consider including a preference that panels of 5 or more (and where practicable, full sitting Board) be struck where possible when decisions are to be made on major applications/review-level assessments.
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Comment Number:	3
Subject:	Power to Dispense with or vary the Board’s Procedural Guidance
Reference:	Rule 8
Priority:	Low
Background/Rationale	Concern is that exercise of flexibility in relation to the rules should also have due regard to overall timelines.
Recommendation to Address Issues	Add a reference to timelines, “However, fixing of deadlines and other timelines shall have regard to any applicable overall timelines applicable to the NIRB under NuPPAA, including any timeline recommended by the Minister under s. 112.”

Comment Number:	4
Subject:	Public Registry
Reference:	Rule 20-25
Priority:	High
Background/Rationale	Delays in posting relevant documents to the registry can prejudice the applicant.
Recommendation to Address Issues	Recommend that the NIRB make best efforts to post submissions relating to applications within 2 business days of submission to the NIRB.

Comment Number:	5
Subject:	Information Requests
Reference:	Rule 32
Priority:	High

Background/Rationale	<p>NIRB should screen information requests to ensure they are relevant and scoped to the application.</p> <p>Responses should be reviewed in substance for adequacy by NIRB and NIRB staff – their view on adequacy should be determinative, not that of the participant that requested the information. Responses are ultimately directed to the Board to support its decision making.</p> <p>If NIRB staff do not request further information, the information provided should be considered sufficient for NIRB decision making purposes (i.e. if no information request was made by NIRB staff, NIRB would not make a recommendation to the Minister that includes the finding that further information should have been provided).</p>
Recommendation to Address Issues	<p>If NIRB staff is of the view it requires further information on a particular topic after reviewing an applicant's response to an information request or technical comment, specific additional information should be explicitly requested by NIRB from the applicant.</p>

Comment Number:	6
Subject:	Burden of Proof
Reference:	Rule 34
Priority:	High
Background/Rationale	<p>Applicants can be placed in a challenging position if they provide evidence to support their assertions, and participants share a position on that evidence without filing any supporting IQ and/or scientific evidence of their own. Applicants need to know the counter evidence in order to effectively respond to such submissions.</p>
Recommendation to Address Issues	<p>If a participant does not provide supporting evidence for a position taken in a proceeding (including sharing details of IQ or western science to support their opposing view), the burden of proof should shift from the applicant to the participant on the point in issue.</p>

Comment Number:	7
Subject:	Relevance, Materiality and Weight of Information

Reference:	Rule 36-42
Priority:	High
Background/Rationale	The rule refers to considering all information “material and relevant”.
Recommendation to Address Issues	<p>We suggest adding a reference to “reliable and relevant”. NIRB should carry out a threshold evaluation about whether the information provided is reliable and relevant before considering it.</p> <p>Once a ruling has been made, the Rules should explicitly prohibit participants from referring to evidence that the Board has determined is not admissible or excluded from consideration, and provide for consequences for ignoring such direction.</p>

Comment Number:	8
Subject:	Motions
Reference:	Rule 43-51
Priority:	Low
Background/Rationale	n/a
Recommendation to Address Issues	Suggest adding a “motion form” to the Rules, to ensure the process is standardized/ more accessible by non-lawyers.

Comment Number:	9
Subject:	Transcripts
Reference:	Rule 52-54
Priority:	Medium
Background/Rationale	n/a
Recommendation to Address Issues	We request that the Board pursue an arrangement with the transcription company so that it is permitted to distribute at a reasonable time (i.e. daily at the end of business) rough transcripts to hearing participants. The rules can be clear that in the case of discrepancies, the final transcript would supersede the rough transcripts.

Comment Number:	10
Subject:	Board Retention of Experts
Reference:	Rule 71-72

Priority:	Medium
Background/Rationale	n/a
Recommendation to Address Issues	In what circumstances will the Board hire their own experts? When will the applicant be given notice? How will the applicant have an opportunity to review the advice provided and comment on any reports generated by the Board expert? Can the Board give examples in the Rules?

Comment Number:	11
Subject:	Funding of Participants in Proceedings
Reference:	Rule 83 to 85
Priority:	High
Background/Rationale	n/a
Recommendation to Address Issues	The Minister and NIRB should work together to consider how to provide more predictability and certainty to funding. Currently it is on a file by file basis and there can be delays in providing funding to participants. The Rules could help accommodate a standing fund for support in NIRB processes. Funding to Indigenous groups and individuals should be prioritized above other applicants, and funded tasks should include the work required post-Project Certificate issuance as well.

Comment Number:	12
Subject:	Scoping Sessions
Reference:	Rule 88-91
Priority:	Low
Background/Rationale	n/a
Recommendation to Address Issues	It should be clarified that scoping sessions are generally not required for reconsiderations.

Comment Number:	13
Subject:	Community Information Sessions
Reference:	Rule 92-95
Priority:	Medium
Background/Rationale	n/a

Recommendation to Address Issues	<p>Proponents should be given the opportunity to present their project and proposed mitigations at such sessions. Presenting an un-mitigated version of the project can be confusing to community participants.</p> <p>Questions that lead to yes/no answers should be avoided. Instead, the NIRB should consider open questions which support deeper engagement such as “What do you see as the potential down-side of the project?” “What do you see as the potential benefits of the project?” “How do you think the project could be improved?” “What mitigations would improve the project?”. Standard engagement questions could be included in the Rules.</p>
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Comment Number:	14
Subject:	Project Specific EIS or IS Guidelines Review
Reference:	Rule 96-99
Priority:	Medium
Background/Rationale	n/a
Recommendation to Address Issues	The Rules should recognize the standard guidelines will generally apply, and are generally considered sufficient to meet the minimum information requirements of the NIRB process.

Comment Number:	15
Subject:	Technical Meeting
Reference:	Rule 100-103
Priority:	High
Background/Rationale	<p>Participants should be explicitly encouraged by the Rules to collaborate both within the technical meeting and outside technical meeting time to reach consensus on outstanding issues where possible.</p> <p>There is often confusion that outside meetings are discouraged by NIRB, when in fact NIRB encourages such collaboration (acknowledging that where issues are resolved, NIRB asks for details of resolution to be shared for the public registry).</p> <p>Similarly, the NIRB rules should encourage that discussions about topics relevant to an application can occur within working groups established under a Project Certificate, again provided</p>

	that NIRB gets a report on how any outstanding issues have been progressed or resolved.
Recommendation to Address Issues	The rules should explicitly acknowledge that technical meetings are meant to be informal and that no transcript is kept, and outside collaboration via established means such as working groups or informal bilateral or multi party meetings is encouraged to resolve outstanding issues between parties wherever possible, provided there is a report back of any resolution to NIRB.

Comment Number:	16
Subject:	Pre-Hearing Conferences
Reference:	Rule 104-109
Priority:	Medium
Background/Rationale	n/a
Recommendation to Address Issues	The rules should be clear about what factors the Board considers in deciding whether an application is ready to be set down for a hearing date.

Comment Number:	17
Subject:	Community Roundtable
Reference:	Rule 110-112
Priority:	High
Background/Rationale	Rule 114 says that community participants are to “express their views and the views of the community they represent in respect of the project proposal or other Proceeding”. Respectfully, the individuals that participate may be representative of their community, but they are not necessarily empowered to “represent the community” formally on the matters at issue. Asking Community Representatives at the end of a Community Roundtable whether they support the project may put them in an unfair position.
Recommendation to Address Issues	It should be made clear in the Rules that Community Representatives do not necessarily speak on behalf of their home communities or organizations and instead are participating as individuals (i.e. add the phrase “for greater

	<p>clarity, Community Representatives express their views within NIRB proceedings as individuals only, and do not necessary speak on behalf of or reflect the overall position of their home communities or local groups (including hunters and trappers organizations, Elders Society, youth groups, women's organizations, etc.)”.</p> <p>The Rules could include examples of questions the Chair might ask the Community Representatives at the Roundtable (consideration should be given to including open ended questions rather than questions that elicit yes/no answers or request the Community Representatives to take an overall position on the application).</p>
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Comment Number:	18
Subject:	Questioning
Reference:	Rules 126-127
Priority:	High
Background/Rationale	n/a
Recommendation to Address Issues	<p>As noted above, the scope of any intervention should be made clear at the outset of participation.</p> <p>The rules should state that participants as of right will be prioritized above those granted intervenor status by NIRB following an application, and if time runs short at a hearing or meeting, such intervenors may be limited to asking questions in writing.</p>

Comment Number:	19
Subject:	Draft Terms and Conditions
Reference:	n/a
Priority:	Medium
Background/Rationale	n/a
Recommendation to Address Issues	<p>The current practice of not providing draft terms and conditions where the Board recommends that a project not proceed leaves the Minister without guidance on potential mitigations in the event he wishes to proceed with an approval.</p>

Comment Number:	20
Subject:	Working Groups
Reference:	n/a
Priority:	Medium
Background/Rationale	To reduce confusion regarding the role of working groups.
Recommendation to Address Issues	The rules should acknowledge that advisory working groups may be established under Project Certificates, which support collaboration on ongoing project monitoring programs and mitigations and implementation of relevant sections of the Project Certificates. In addition funding from the GOC should be considered to ensure these working groups can be established and effective, particularly given the role these groups may play in discharging Indigenous consultation obligations.