

Appendix

GN-01 – Clarity of Language	
Department	Justice
Organization	Government of Nunavut
Directed to	Nunavut Impact Review Board
Subject	Clarity of Language
References	<ul style="list-style-type: none"> • Nunavut Impact Review Board (November, 2018) Draft Rules of Procedure, Part II, s 2; Part VI.
BACKGROUND	
<p>The Nunavut Impact Review Board’s (NIRB) 2018 draft Rules of Procedure (the Draft Rules) are an important update to the current Rules of Procedure (the Former Rules). The Former Rules were drafted prior to the promulgation of the <i>Nunavut Planning and Project Assessment Act</i>. The Draft Rules are thus an appropriate step forward. The Draft Rules set out a list of well-drafted definitions (see Draft Rules, s. 2). Section 2 should insure completeness of definitions, clarity of language, and avoid language redundancies.</p>	
COMMENT & RATIONALE	
<p>Definitions should be fulsomely drafted, incorporating all defined terms found throughout a document. Various terms that appear to be defined terms are found in Part VI: Types of Board Proceedings. These terms should be included in the definition list to ensure parties using the Draft Rules have an accurate understanding of the term. The Government of Nunavut notes that marginal notes and headings do not typically form part of such a directive document but rather are for convenience alone. Definitions should not be created in marginal notes or headings (i.e. ss. 78-81 regarding scoping sessions).</p> <p>Definitions should avoid using multiple terms where a single term may suffice for the purpose of the Draft Rules. While both “Impact Statement” and “Environmental Impact Statement” are frequently used, the NIRB should use its discretion to select one of these terms for the Draft Rules. The GN suggests this will create simpler language throughout the Draft Rules. (See s. 2, “<i>Impact Statement (IS)</i>” or “<i>Environmental Impact Statement (EIS)</i>”.)</p> <p>Definitions should not employ the definition within their own defining clause. (See s. 2, “<i>Hearing</i>” or “<i>Public Hearing</i>”.)</p>	
RECOMMENDATION	
<p>The GN recommends that:</p> <ul style="list-style-type: none"> • The NIRB revise the Draft Rules to ensure a fulsome definition section. The definition 	

section should avoid multiplicity of terms where possible. Definitions should not employ the definition within their own defining clause.

GN-02 – Public Registry	
Department	Justice
Organization	Government of Nunavut
Directed to	Nunavut Impact Review Board
Subject	Public Registry
References	<ul style="list-style-type: none"> Nunavut Impact Review Board (November, 2018) Draft Rules of Procedure, Part III, ss. 19, 23, 24 and 25.
BACKGROUND	
<p>The Nunavut Impact Review Board’s (NIRB) 2018 draft Rules of Procedure (the Draft Rules) are an important update to the current Rules of Procedure (the Former Rules). The Former Rules were drafted prior to the promulgation of the <i>Nunavut Planning and Project Assessment Act</i>. The Draft Rules are thus an appropriate step forward. When deciding whether to post documents to the Public Registry, the NIRB should ensure all parties enjoy sufficient procedural fairness.</p>	
COMMENT & RATIONALE	
<p><u>NIRB’s Discretion to Refuse to File Documents</u></p> <p>Section 19 sets out the criteria pursuant to which the NIRB may refuse to file a Document to the Public Registry. The Government of Nunavut (GN) agrees that the grounds provided are reasonable grounds upon which to refuse to file Documents. However, the GN states that s. 19 is insufficiently detailed as drafted. The section does not set out how a party may satisfy the NIRB that a Document does not fall into one of the specified categories. When the NIRB exercises its discretion to refuse to post a Document for one of the stated grounds, the NIRB is making a decision. The NIRB should accordingly put its decision in writing and provide that decision to the affected party. The GN suggests the affected party ought to have an opportunity to make a submission to the NIRB respecting why the Document in question ought to be filed. The NIRB would of course retain its discretion to decide to file or not file the Document.</p> <p><u>Parties Asserting Confidentiality or Privacy Concerns</u></p> <p>Sections 23 and 24 set out the procedure for a party seeking to have a filed Document either not posted in its entirety or redacted before the NIRB posts it to the Public Registry. Section 23 provides that a party must make a motion requesting this relief. These sections do not make reference to ss. 42-48 of the Draft Rules which set out the framework for parties making motions. The GN states that the s. 23 motion ought to be carried out pursuant to ss. 42-48. A cross-reference to ss. 42-48 would be appropriate to ensure motioning parties are made aware of their obligations. If the NIRB is of the opinion that ss. 42-48 do not apply to the motion in s. 23, the GN states that a similar set of motion rules ought to be drafted for s. 23 motions.</p>	

Namely, other parties ought to be notified and have an opportunity to respond to the motioning party's motion. The NIRB should ensure clear timelines are set out for both the motioning and responding parties.

Access to Public Registry

Section 25 provides that parties wishing to access Documents from the Public Registry must either make an account or make a Document access request to the NIRB. This is a departure from the current framework where documents are listed on the registry and are searchable and retrievable without an account or making an access request to the NIRB. There is no timeline set out for how long an access request may take to be granted or denied. Parties should have a right of reply in the event the NIRB denies its request. The GN states that it is unclear why this change in format and access was undertaken.

RECOMMENDATION

The GN recommends that:

- The NIRB should amend the procedure contained in s. 19 to ensure parties receive a written decision regarding any document the NIRB does not post to the Public Registry. Affected parties should have an opportunity to reply to the NIRB's decision.
- The NIRB should amend s. 23 to cross reference ss. 42-48, setting out the procedure for making a motion to the NIRB. In the alternative, the NIRB should draft s. 23 motion rules that are substantially similar to those found at ss. 42-48.
- The NIRB should provide reasons for the change to accessing the Public Registry as set out in s. 25 of the Draft Rules.
- The NIRB should include a timeline for how long an access request may take to be granted or denied.

GN-03 – Questions of Law or Jurisdiction	
Department	Justice
Organization	Government of Nunavut
Directed to	Nunavut Impact Review Board
Subject	Questions of Law or Jurisdiction
References	<ul style="list-style-type: none"> Nunavut Impact Review Board (November, 2018) Draft Rules of Procedure, Part V, ss. 71-72.
BACKGROUND	
<p>The Nunavut Impact Review Board’s (NIRB) 2018 draft Rules of Procedure (the Draft Rules) are an important update to the current Rules of Procedure (the Former Rules). The Former Rules were drafted prior to the promulgation of the <i>Nunavut Planning and Project Assessment Act</i>. The Draft Rules are thus an appropriate step forward. Section 72 provides that, upon referring a question of law or jurisdiction to the Nunavut Court of Justice, the NIRB may suspend or continue a Proceeding in the NIRB’s discretion.</p>	
COMMENT & RATIONALE	
<p>Section 71 empowers the NIRB to refer a question or law or jurisdiction regarding its powers, duties and functions to the Nunavut Court of Justice. Where this occurs, the NIRB may, in its direction, decide to suspend or continue a Proceeding. The decision to suspend or continue a Proceeding may impact on parties’ rights and interests. The Government of Nunavut (GN) suggests it may be most procedurally fair to provide affected parties with an opportunity to make submissions regarding the decision to suspend or continue a Proceeding where a reference takes place. The NIRB’s decision should be provided in writing.</p>	
RECOMMENDATION	
<p>The GN recommends that:</p> <ul style="list-style-type: none"> The NIRB revise s. 72 to set out the procedure for affected parties where a reference is made pursuant to s. 71. Namely, additional clauses should include (i) providing affected parties with a right to make submissions regarding the decision to suspend or continue a proceeding; and (ii) the obligation for NIRB to set out its decision in writing. 	

GN-04 – Accessibility and Organization of Impact Statement	
Department	Environment
Organization	Government of Nunavut
Directed to	Nunavut Impact Review Board
Subject	Accessibility and Organization of Impact Statements
References	<ul style="list-style-type: none"> • Nunavut Impact Review Board (November, 2018) Draft Standard Guidelines for the Preparation of an Impact Statement
BACKGROUND	
<p>The Nunavut Impact Review Board (NIRB) promotes and facilitates public engagement of impact assessments in Nunavut. The review of NIRB's updated Impact Statement (IS) Guidelines provides an excellent opportunity for all interested parties to consider the utility of IS documents as a tool in public engagement, and technical reviews. IS documents could be improved if they:</p> <ul style="list-style-type: none"> • Included more accessible Popular Summaries; • Were organized and internally cross-referenced in a manner that balances the document's overall size with ease of review. 	
COMMENT & RATIONALE	
<p><u>Popular Summaries:</u></p> <p>Historically Proponents have been required to include a Popular Summary in their ISs. These summaries are important tools for public review. However these are commonly written for a more technical audience. Visual aids are not always included in the Popular Summary to support the reader's understanding of what the proposed Project entails.</p> <p>The NIRB could potentially improve IS popular summaries by requiring Proponent's to supplement their summaries with figures and maps (as proposed in the NIRB Draft IS Guidelines. p.11). Cross sections and aerial plans for key Project components would also support the reader's understanding of the proposed Project. Other media sources (Digital 3D models, infographics, etc.) could be encouraged to further supplement popular summaries, and improve public awareness of a given Project proposal. Popular summaries should be easily located at the forefront of the NIRB's website when an IS is being actively reviewed.</p> <p><u>IS Organization:</u></p> <p>The NIRB recommends cross referencing within an IS (NIRB Draft IS Guidelines, p. 9). Cross referencing within an IS may make the document more manageable by decreasing the documents size and preventing repetition. However excessive cross referencing in an IS increases the work loads of primary reviewers. Excessive cross referencing within an IS also complicates coordinating specialist review of IS topics because standalone volumes, chapters,</p>	

and management plans cannot be dedicated to specialist reviewers when integral Project details are presented throughout the document. Although cross-referencing within an IS may produce a smaller, more manageable document, the NIRB's guidelines should recommend that each major technical supporting document of an IS include all key information to enable a relevant specialist's review. For example each technical supporting document should at least include a summarized Project description, outlining all components and Project phases. Likewise, the NIRB's revised IS guidelines requires that Proponent's disclose various facts regarding its compliance within a certain 'Proponent Information' section of its Project IS (NIRB Draft IS Guidelines, Section 6.3, page 13). The Proponent's record of compliance, record of safety, and record in honouring commitments should be referenced throughout relevant sections of the IS, not just in a standalone 'Proponent Information' section.

RECOMMENDATION

The GN recommends:

- The NIRB should encourage the creation of more engaging Proponent produced IS Popular Summaries.
- The NIRB should encourage balanced cross referencing of information within an IS. Facilitating reviewer understanding of the Project should be the main consideration in organizing an IS.

GN-05 – Impact Statement Adequacy	
Department	Environment
Organization	GN
Directed to	Nunavut Impact Review Board
Subject	Impact Statement Adequacy
References	Nunavut Impact Review Board (November, 2018) Draft Standard Guidelines for the Preparation of an Impact Statement,
BACKGROUND	
<p>The Nunavut Impact Review Board’s (NIRB) Impact Statement (IS) guidelines are an important resource to inform Proponent prepared ISs and ensure that these documents meet all necessary information requirements.</p>	
COMMENT & RATIONALE	
<p><u>IS Adequacy for Project Certificate Reconsideration Timelines:</u></p> <p>Increasingly the NIRB is seeing a number of Project Certificate reconsiderations guided by NuPPAA s. 112-114. Pursuant to NuPPAA s 112 (4), the NIRB has discretion regarding developing appropriate review timelines for Project Certificate reconsiderations. The NIRB should consider developing reconsideration timelines that incorporate a review of a Proponent’s draft IS, in order to fully determine whether an IS may be considered complete and ready to become a final IS.</p> <p>The Draft IS guidelines provide a distinction between a Draft and Final IS (on page 6) that hinges on adequacy versus process. The Draft IS Guidelines also state that:</p> <p style="padding-left: 40px;">“[O]missions in the Standard IS Guidelines and any Project-specific guidelines issued by the NIRB cannot be used to justify any inadequacies in the IS”.</p> <p>The NIRB’s IS guidelines inform its IS adequacy conformity determinations. An information request stage for a draft IS is therefore needed in order to identify additional information requirements necessary to consider an IS final or complete.</p> <p>For example, Proponents may omit specifications for particular components of their Project. These IS data deficiencies should be identified through an information request stage for a draft IS, so that a final IS can be developed. The NIRB requires the Inclusion of Component Drawings (NIRB Draft IS Guidelines, p. 9). This requirement could potentially be strengthened if ‘engineering specifications’ were required as well.</p> <p>Similarly updated management plans should be included in the final IS. The NIRB’s Draft IS</p>	

Guidelines state that:

“The Proponent shall, based on its impact predictions for identified VECs and VSECs, prepare an Environmental Protection Plan (EPP) in accordance with its EMP prior to commencement of all phases of the Project (site preparation, construction, operation, maintenance, any potential modifications, temporary closure, final closure (decommission and reclamation) and post-closure).”(NIRB Draft IS Guidelines, Section 10.2, p. 36)

The listed Project phases occur after a positive determination during the NIRB review process. In order to ensure adequate review and consistent timeline, an EPP should be updated and subject further informed during in the Project review process.

Finally, IS adequacy would be easier to determine if the IS Guidelines provided a more detailed definition of ‘reasonable foreseeable Project’, integral to Proponent’s cumulative effects assessments. Neither the Assessment Boundaries Section, 8.1.2.2, nor the Cumulative Effects Assessment Section, 8.6.3, of the draft IS Guidelines contain a clear definition of what is considered a reasonably foreseeable, or a likely future Project. In order to ensure accuracy of predictions and consistency across reviews a ‘reasonably foreseeable Project’ should be clearly defined. The definition should include any Projects or activities that have the potential to be carried out over the entire timeline of the Project.

IS Baselines, Monitoring, and Evaluation:

The NIRB’s revised IS guidelines provide an excellent amount of detail outlining information requirements in Proponent prepared ISs. In particular the following statements are aligned with environmental assessment best practice:

“It is the sole responsibility of the Proponent to prepare an IS that includes sufficient baseline data and analysis for a complete assessment of the anticipated impacts of the Project.” (NIRB Draft IS Guidelines, p. 6)

And:

“In its monitoring and mitigation plans, the Proponent should specify proposed criteria or thresholds to trigger mitigation measures if monitoring results warrant. These plans should also identify the position of the person responsible for the implementation of mitigation measures, the system of accountability and the phase and component of the Project to which the mitigation measure applies.” (NIRB Draft IS Guidelines, p. 38)

These statements echo past GN comments relating to baseline data requirements for impact assessments, as well as the necessity of evaluating mitigation and monitoring plans to inform adaptive management. The monitoring and mitigation management requirements listed on page 37-38 of the NIRB’s revised IS guidelines likewise require appropriate evaluation of IS conclusions and resultant mitigation:

- “Evaluation of the efficiency of mitigation measures, and the compliance with Project authorizations;
- ...Plans for integration of monitoring results with other aspects of the Project, including

- adjustments for operating procedures and refinement of mitigation measures; and
- Procedures/mechanism to assess the effectiveness of monitoring programs, mitigation measures, and adaptive programs for areas disturbed by the Project.” (NIRB Draft IS Guidelines, p. 37-38)

However, Section 10.7 only identifies the Proponent as being able to identify unusual and unforeseen adverse environmental effects during Project monitoring stages. Other stakeholders should be referenced as additional resources to identify the presence of adverse Project related effects as well.

RECOMMENDATION

The GN recommends:

- The NIRB should consider developing Project Certificate reconsideration timelines that incorporate the review of a draft IS in order to fully determine whether an IS may be considered complete and final.
- The definition of “reasonably foreseeable Projects” within the NIRB’s IS Guidelines should be clearly defined with additional detail. The definition should include any Projects or activities that have the potential to be carried out over the entire timeline of the Project.
- The NIRB should require management plans be updated in conjunction with IS submissions.