

Full Report Title: Nunavut Impact Review Board and Nunavut Water Board Guide to the Detailed Coordinated Process Framework

Date Issued: December 12, 2019

Cover photo: Tools on the Tundra, Kelli Gillard

Available online at: www.nirb.ca or www.nwb-oen.ca

Notes:

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

Disclaimers:

This Guide is provided as a convenient reference for proponents and other interested parties to explain the coordination between the NIRB’s impact assessment processes and the NWB’s licensing process in a plain language format, and provide clarity on where coordination may occur between assessment and water licensing, including responsibilities of the Proponent. Parties reviewing this Guide are reminded that the legal responsibilities of all participants in the NIRB and NWB’s processes are as established under the *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)*, applicable legislation and any relevant project-specific direction issued by any authorities with jurisdiction over that project and are independently responsible for ensuring they comply with the applicable legal responsibilities imposed under these provisions. To the extent that this Guide, or any steps outlined within it, are inconsistent or in conflict with the applicable legal requirements, the obligations as set out in the *Nunavut Agreement*, relevant legislation, and project-specific guidance govern.

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

**NOTE:
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CASE, DIVERGE
FROM THE GENERAL
PROCESSES
DESCRIBED IN THE
GUIDE TO BETTER
REFLECT PROJECT-
SPECIFIC
CIRCUMSTANCES.*

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1 HOW TO USE THIS GUIDE

The Guide to the Detailed Coordinated Process Framework (the Guide) has been developed for the reference and use of proponents and interested parties that may participate in an assessment processes conducted by the NIRB where coordination opportunities exist to begin the permitting process by the NWB prior to completion of the impact assessment process. Both agencies are governed under the provisions of the *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)* [NIRB-Article 12; NWB-Article 13], each Board's respective legislation, and as outlined in the NIRB-NWB Memorandum of Understanding (MOU) signed February 23, 2018.

MEMORANDUM OF UNDERSTANDING FOR A FRAMEWORK TO CO-OPERATE AND COORDINATE EFFORTS IN THE REVIEW AND PROCESSING OF WATER APPLICATIONS IN THE NUNAVUT SETTLEMENT AREA BETWEEN: THE NIRB AND THE NWB

The **Nunavut Impact Review Board (NIRB)** was established on July 9, 1996 by the *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)*, pursuant to Articles 10 and 12, as an institution of public government responsible for the impact assessment of project proposals in the Nunavut Settlement Area. Further, the NIRB has statutory responsibilities pursuant to the *Nunavut Planning and Project Assessment Act (NuPPAA)*.

The **Nunavut Water Board (NWB)** was also established on July 9, 1996 by the Nunavut Agreement, pursuant to Article 10 and 13, as an institution of public government with responsibilities and powers over the regulation, use and management of fresh water in the Nunavut Settlement Area. In addition, the NWB has statutory responsibilities pursuant to the *Nunavut Waters and Nunavut Surface Rights Tribunal Act (NWNSRTA)*...

WHEREAS Sections 13.5.2 and 13.6.1 of the Nunavut Agreement, section 193 of the NuPPAA and section 37 of the NWNSRTA require the NWB and a review body pursuant to Article 12 to cooperate and coordinate their efforts in order to avoid unnecessary duplication and ensure the timely review and processing of an application; and

- 3.1 *In designing any DCP the NIRB and NWB shall respect the authority and decision powers of the Minister set out in Articles 12 and 13 of the Nunavut Agreement, sections 92-96 and sections 105-108 of NuPPAA and section 56 of the NWNSRTA, as well as the requirements set out in Sections 12.10.1 and 13.5.4 of the Nunavut Agreement, and section 75 of NuPPAA, prohibiting the NWB from issuing a licence to use water or dispose of waste in the NSA (with the exception of short-term approvals for water uses related to exploration or developmental work for a proposal under NIRB review) where a project requires assessment by the NIRB until the NIRB has completed the assessment.¹*
- 3.6 *To aid in ensuring the process is fair and respects the rules of natural justice, the NIRB and the NWB shall design any [detailed coordinated process frameworks] DCP under this MOU to be consistent with the parties' obligations to give due regard and weight to Inuit customs and knowledge, the applicable NIRB and NWB by-laws and rules and the parties' roles in ensuring that affected communities are aware of the project and its potential environmental and socio-economic impacts.*

It should be noted that it is the responsibility of the Proponent to clearly request a coordinated process (timing of such a request is dependent on the type of coordinated process and is addressed in more detail throughout the rest of this Guide), and indicate the level of coordination sought. It is also the responsibility of the Proponent to satisfy the information requirements necessary to proceed through a coordinated process, and this Guide will outline where parties' and the Boards' responsibilities rest in ensuring each Board is able to satisfy its obligations to the *Nunavut Agreement* and respective legislation.

¹ DCP: Detailed Coordinated Process; NSA: Nunavut Settlement Area

1.1 Frequently Asked Questions for parties

Question	Answer
<p>Does the quality or quantity of submissions change when a coordinated NIRB/NWB processes proceeds?</p>	<p>The level of detail and content required to satisfy each process remains the same regardless of coordination; however, where information to satisfy each process is similar, Proponents may coordinate the timing or contents of submissions as best suits the information being provided. In situations where submissions are meant to satisfy both processes, it is up to the Proponent to not only ensure that all required information is available at the required times, but that the information is sent directly to the agency requiring that information.</p> <p>Also note, submissions to one (1) agency will not be considered to satisfy submission requirements of the other agency. Section 3.1 provides further discussion on this topic.</p>
<p>Can a proponent discontinue the process at any time, or would a proponent have to follow the process all the way through even if they do not have the ability to provide the required information?</p>	<p>A Proponent can discontinue the process at any time and does not have to wait until a specific point in the process to discontinue a coordinated assessment. It is important to identify early and to both the NIRB and the NWB if a Proponent is unable to meet the informational requirements of either organization to ensure that all parties are aware and focus can then be directed to where the project is in the assessment or reconsideration. Both Boards have the same duty to report to Proponents and participating parties if a lack of information is identified. See Section 3.2 for more details.</p>
<p>Does the NWB have to wait for the Minister's decision on a NIRB file before it can finish its process</p>	<p>The NWB is unable to issue a licence decision until the NIRB report recommendations have been accepted by the Responsible Ministers. See Section 2.3.1 for more details.</p>

2 OPTIONS FOR COORDINATION BETWEEN PROCESSES

The NIRB is directed to undertake screening level assessments and review level processes, and each level of assessment may be coordinated with the NWB water licensing process depending on the type of water licence required (Type “A” or Type “B”) Water Licence.

For additional information on the NIRB’s assessment processes refer to the following additional guides:

- *NIRB Guide 2 – Screening*
- *NIRB Guide 3 – Review*
- *NIRB Technical Guide – Proponent’s Guide (Sections 3, 5, and 6.3)*

For additional information on the NWB’s licensing process, refer to the following resources:

- *NWB Guide 3 - Activities that Require a Water Licence and Types of Water Licences*
- *NWB Guide 4 - Completing and Submitting a Water Licence Application for a New Licence*
- *NWB Guide 5 - Processing Water Licence Applications*
- *NWB Guide 9 - Guide to the Approval for the Use of Water or Deposit of Waste Without a Licence s. 1-9*

Opportunities exist to coordinate the NIRB assessment and NWB permitting process in several ways depending on the types of assessments and permits required for a project:

1. NIRB screening assessment only – NWB new Type “B” Water Licence OR Water Use Without a Licence,
2. NIRB screening assessment only – NWB Type “A” Water Licence (e.g. Municipalities),
3. NIRB screening and review process required – NWB Type “A” Water Licence,
4. NIRB project certificate reconsideration – NWB Amendment to Type “A” Water Licence.

For each of the types of coordinated processes, the opportunities to coordinate processes and comment periods differ greatly due to the steps each Board undertakes to complete each type of assessment. The following sections discuss coordination opportunities for each of the four (4) options listed above with more detail on the latter two (2) as a result of the time required to complete the processes.

2.1 NIRB screening assessment only - NWB new Type “B” Water Licence OR Water Use Without a Licence

Since the *Nunavut Planning and Project Assessment Act (NuPPAA)* came into force, all applications for project proposals are required to be submitted to the Nunavut Planning Commission (the Commission), which would undertake a conformity check of the activity and provide its conformity decision (only IF the project conforms to the appropriate Regional Land Use Plan) and referral to the NIRB to screen the project. *NuPPAA* s. 83(1) provides the Commission 45 days to complete its conformity determination and s. 92(3) provides the NIRB 45 days to complete its screening decision. If a positive conformity determination and referral by the Commission is followed by the NIRB recommending that the project proceed subject to terms and conditions, the responsible Minister² has fifteen (15) days³ to respond to the NIRB’s recommendation.⁴

Due to the relatively short timeline of this process, most of the coordination occurs between agencies during the NIRB public comment period and by including the NWB on all of its outgoing correspondence so that the NWB can track the progress and decisions of the NIRB.

2.2 NIRB screening assessment only – NWB Type “A” Water Licence (e.g., Municipalities)

Most types of projects that would fit for this category of coordination are related to municipal undertakings where the amount of water drawn for such a long-term undertaking would require a Type “A” Water Licence, but not fulfill the NIRB’s criteria to refer the project to Review.⁵ These projects typically require only a NIRB screening assessment but use or store enough water or deposit enough waste

² NuPPAA ss. 73(1).

³ NuPPAA ss. 93(1).

⁴ NuPPAA ss. 39(3) - the responsible Minister is deemed to have made a decision in agreement with the Board’s determination if they do not make another decision or extend the timeline.

⁵ Nunavut Agreement, Article 12, s.12.4.2(a); and NuPPAA, paragraph 89(1)(a).

(and of a type) that the project requires a Type “A” Water Licence. As such, they are provided with options for coordination between the NIRB’s 45 day screening assessment as the NWB’s longer process, approx. one (1) year, can begin during the impact assessment process. As described in the previous section, the Commission is still required to receive and review the application and refer it to the NIRB and/or NWB before an assessment could commence by either Board.

Due to the NIRB’s short assessment timeframe, opportunities to coordinate processes may be limited; however, the NIRB public comment period can line up with the NWB’s preliminary completeness check. Figure 1 outlines the NIRB and NWB process steps and where coordination or communication would occur in respect of the NuPPAA process requirements.

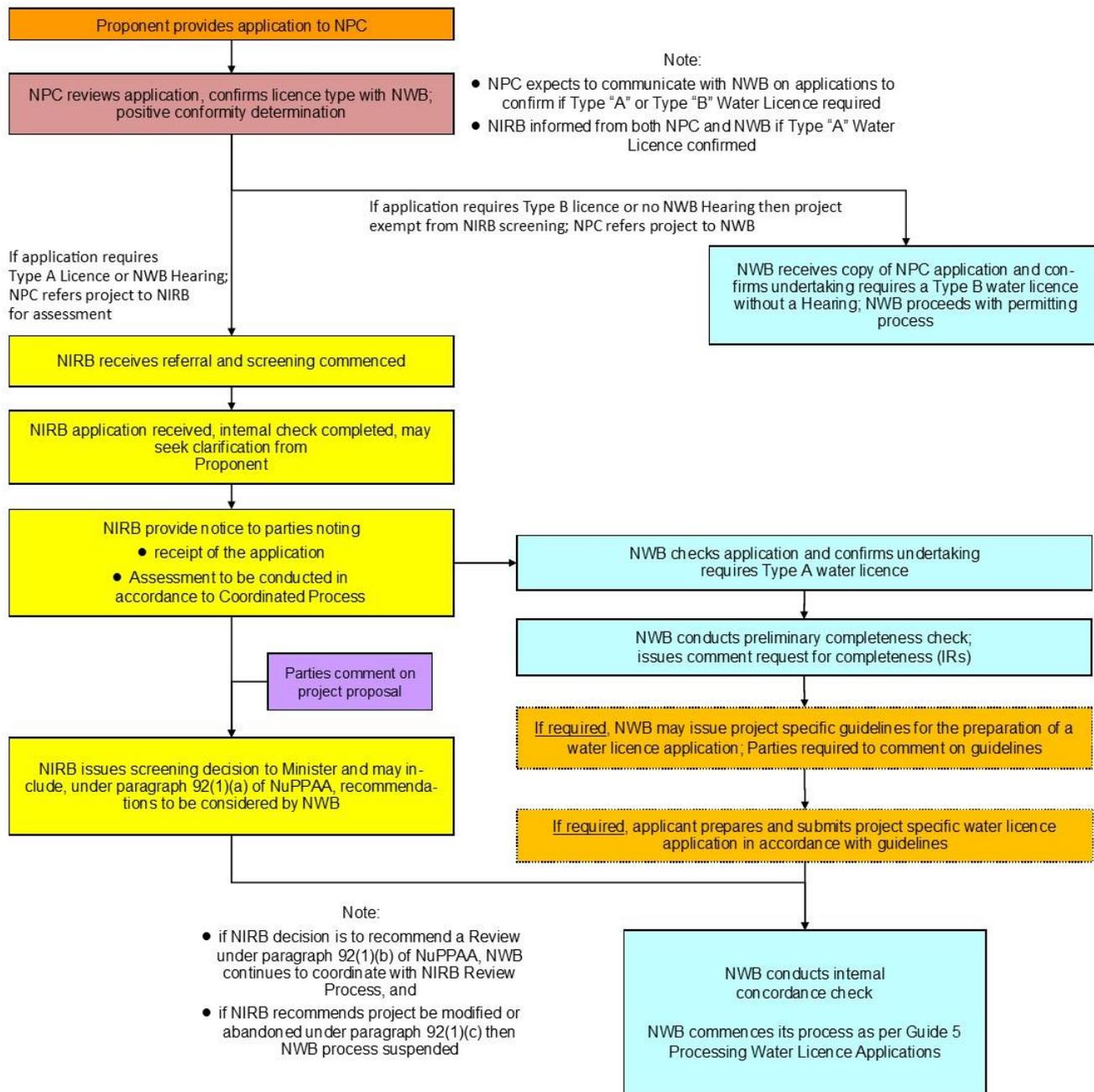


Figure 1: Diagram for coordination for projects requiring a NIRB screening level assessment only, and Type 'A' Water Licence

2.3 NIRB screening and review process required – NWB Type “A” Water Licence

Due to the length of both the NIRB impact assessment processes (Screening and Review) and the NWB’s licensing process for Type “A” Water Licence, multiple opportunities exist to coordinate projects undergoing this type of assessment. In considering appropriate options for the coordination, the following criteria from the NIRB and NWB must be satisfied:

- The *Nunavut Agreement* and applicable legislation prescribes that regardless of the Pre-hearing timing, the NWB cannot issue a licence or issue amendments to a Type “A” Licence that is subject to a NIRB Review, until the NIRB Review has been completed.
- The current Rules of Procedure for the NIRB and the NWB do not include process and procedure requirements for a joint NIRB/NWB Public Hearing; however, these documents may be updated as required to allow for a joint hearing should the requirement arise though it may be a lengthy process.
- The Boards’ jurisdiction and decision making power must be preserved through the process, and not compromise or fetter each Board’s decision making process.
- Where a Proponent indicates that a coordinated process is being sought, the Proponent may opt out of the process, or it may be determined by either Board that the coordination process is no longer possible due to specific issues arising with the assessment and end the coordinated process. Should a change be considered to the assessment process for a project proposal, the change would not be associated with the description of the process and would not result in termination of the assessment for modification of project scope.⁶

The opportunities and level of coordination depend on how the proponent expects to proceed through the NIRB’s Review process, specifically:

1. The initial screening application and project description submitted to the NIRB be noted by the Proponent to be intended as either a Draft or Final Impact Statement, or
2. Once the project is referred to a Review:
 - a. Proponent expects to submit a Draft Impact Statement, and after receiving direction in the NIRB’s Pre-hearing Conference Decision

⁶ NuPPAA s. 141-144.

would submit a Final Impact Statement before proceeding to a Final Hearing, or

- b. Proponent expects to submit an Impact Statement requesting it be considered as a Final version to proceed through Review process.

Opportunities for the Proponent to enter into a coordinated process:

During the NIRB's screening process the Proponent may indicate in the application that, should the project be referred to a Review under Part 5 or 6 of the Nunavut Agreement, the proponent would be interested in pursuing a coordinated process. During the NIRB screening, the NWB would be included on all correspondence for the assessment. The benefit of indicating this during the NIRB screening stage is that the decision to the Minister may seek additional direction on coordination options or issues affecting coordination depending on the type of project being referred to Review.

Once the Minister refers the project back to the NIRB for Review, the Proponent may indicate its request for coordination and provide details on the levels of coordination being sought. The NIRB would ensure that the NWB was aware of the request and participates in the development of the scope and project-specific guidelines.

2.3.1 Options for Final Hearing



Figure 2: Options for coordination of final hearings, in order of increasing coordination between processes

Public Hearing Option 1 Separate Public Hearings

The NIRB conducts Public Hearing as usual/The NWB conducts Public Hearing as usual:

- Normal Timing, Form, and Rules;
- The NWB holds Public Hearing ONLY if and when the NIRB issues recommendation that the project be allowed to proceed and is accepted by the Responsible Minister(s); and
- At least 60 days advance notice of Public Hearings.

Public Hearing Option 2 Consecutive but separate Public Hearings

The NIRB conducts Public Hearing as usual/The NWB conducts Public Hearing immediately after the NIRB Hearing closes, but:

- Timing Modified;
- The NWB keeps Public Hearing Record Open, does not remit matter to Panel for decision-making unless and until the NIRB issues recommendation that the project be allowed to proceed and is accepted by the Responsible Minister(s).

Public Hearing Option 3 The NIRB in Person Public Hearings followed by the NWB Public Hearing in Writing

The NIRB conducts Public Hearing as usual/The NWB Panel attends Community Roundtable portion of the NIRB Public Hearing and conducts technical aspects of Public Hearing in writing after the NIRB decision Issued:

- The NWB does not close Public Hearing record and does not remit matter to Panel for decision-making unless and until the NIRB's recommendation

that the project be allowed to proceed and is accepted by the Responsible Minister(s).

Public Hearing Option 4 Fully Joint Public Hearing

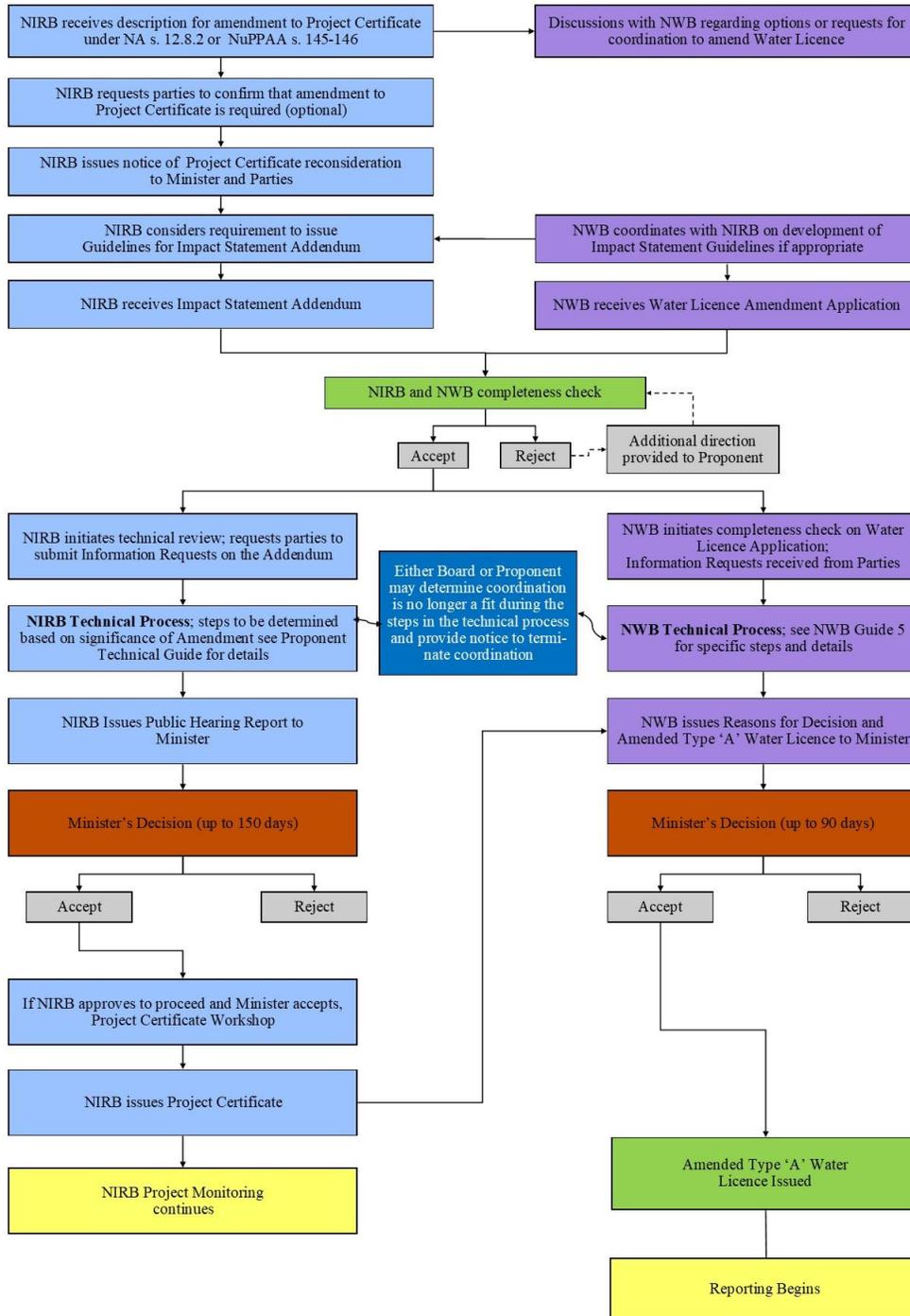
Both Boards are present for entire Public Hearing.

- Board Chairs share responsibilities for Chairing Public Hearing,
- BUT NOTE that the NWB Public Hearing Record would remain open and the NWB decision-making Panel would not convene to render a decision until the NIRB review is completed, and
- The NWB would issue a licensing decision only when and if the NIRB Report recommends the Project be allowed to proceed and is accepted by the Responsible Ministers.

2.4 NIRB project certificate reconsideration – NWB Amendment to Type ‘A’ Water Licence

Opportunities for coordination through these processes largely can be determined by the type of processes required by each the NIRB and the NWB. It should also be considered that some amendments to a site’s water licence would not necessitate amendments to the NIRB’s Project Certificate, and some Project Certificate amendments may not involve changes to the site’s water use or waste disposal needs, so some processes may just involve one Board but not both.

Proponents should consult with both the NIRB on requirements of Section 12.8.2 of the Nunavut Agreement and s. 112 of the *NuPPAA*, and the NWB on the project’s Water Licence details and regulatory responsibilities to determine which or both may need to be amended depending on the proposed changes being considered, and the possible options for coordination.



Disclaimer: This figure is meant to illustrate the *general* coordination process between the NIRB and NWB *if* both Board's recommended the Amendments be approved. The Figure is *not* meant to be an assessment process map as project specific process maps will be developed on a project by project basis with input from the NIRB, NWB, and Regulatory Authorities.

Figure 3: Coordinated Process for a NIRB Reconsideration and NWB Type "A" Water Licence Amendment

3 RESPONSIBILITIES OF PARTIES IN REQUESTING A NIRB/NWB COORDINATED PROCESS

3.1 Introduction

In order to proceed through a coordinated process, proponents must be able to satisfy the information requirements of both processes. The project specific information requirements at the impact assessment stage and project details are usually more generalized than the information required for the permitting process; however as noted in the NIRB/NWB MOU:

“To aid the NIRB and the NWB in operating within the parameters of the Nunavut Agreement, NuPPAA and NWNSRTA, any DCP developed under this MOU shall respect the distinct objects and mandates of each Board”.⁷

Therefore, proponents expecting to start the water licensing process prior to completion of the impact assessment process may find that the timeline for completing both processes are shorter than taking each process separately. However, unexpected delays have been experienced as a result of the level of detail required to have both processes run concurrently. As a result, it may become clear at various stages to either the Proponent or the Board’s staff, that coordination may no longer be a fit.

3.2 Responsibility of the Boards and Proponent to inform parties

As the coordinated process is a voluntary option, it is up to the Proponent to notify the NIRB and the NWB as soon as it is determined that the coordinated process is no longer a fit and submit a notice of withdrawal to the coordination.

In cases when either or both Boards determine that coordination is no longer a fit, it will be up to the Boards to provide the notice to the proponent and parties as well as provide the reasons for the determination. Discussion and justification of this are presented in further detail in the following section.

⁷ Section 3.2 from the Memorandum of Understanding for a Framework to co-operate and coordinate efforts in the Review and Processing of water application in the Nunavut Settlement Area between the Nunavut Impact Review Board and the Nunavut Water Board, February 23, 2018.

3.3 Responsibility of the Boards to confirm continuation of coordinated process

During several key decision-making steps in the NIRB and the NWB process, but prior to planning a Public Hearing, the NIRB and the NWB may determine that the coordinated process is no longer an option. The following outlines the decision points when both or either board may determine that the coordinated approach is no longer a fit and why:

1. Initial referral of the project to a NIRB Review when a Type “A” Water Licence is also required. In cases where a project is referred to a NIRB Review, it may be determined that a coordinated process is not ideal (e.g., a project is referred to a panel Review under Part 6 of the Nunavut Agreement or NuPPAA s. 160-162).
2. Initial determination that a Project Certificate Amendment and a Water Licence Amendment are required. As noted in [Section 2.4](#) of this document, an amendment to a project may warrant amendments to both the Project Certificate and the Water Licence, but may only require modifications to one of these regulatory tools. As such, dependent on the significance of these amendments, which regulatory tool must be modified, and the resulting process requirements, options for coordination may be limited. It would be up to the NIRB and the NWB to determine each Board’s process requirements, then consider options for coordination should the proponent express interest in undergoing a coordinated process.
3. Technical Meeting and Pre-hearing Conference decision. These sessions would be undertaken during a NIRB Review/NWB Water Licence Application process and would occur during a NIRB Project Certificate Reconsideration (optional technical meeting)/NWB Water Licence Amendment (mandatory technical meeting and Pre-hearing Conference) depending on the significance of the amendment being considered. It would be up to the NIRB and the NWB to provide clarity following the meetings, especially within the Pre-hearing Conference decision whether sufficient information has been provided to proceed to a coordinated Public Hearing, or identify what barriers warrant discontinuation of a coordinated process.

Notice and justification would be provided to the proponent and parties either at or following the technical meetings, or through the pre-hearing

conference decision (additional details provided on the next page regarding the Pre-hearing Conference and decision).

3.3.1 PRE-HEARING CONFERENCE

Both the NIRB and the NWB may hold Pre-hearing Conferences and these processes may be held separately or combined under the following considerations:

3.3.1.1 NIRB Pre-hearing Conference

Following technical meetings, the NIRB generally holds a Pre-hearing Conference in order to discuss procedural matters related to the next steps in the NIRB's Review process, including the following:

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

During the NIRB Pre-hearing Conference the proponent, regulators, participants, and community representatives would assess whether, the project proposal could move forward to the Final Hearing stage. A Pre-hearing Conference also offers an opportunity for the proponent and participants, to provide the Board with confirmation regarding the issues that were resolved during the technical meeting, and to identify those issues that remain outstanding. Further, the Pre-hearing Conference is an opportunity for concerned members of the public to give their comments to the Board regarding the information contained in the DIS.

Following the Pre-hearing Conference, the Board will issue a Pre-hearing Conference decision which provides direction to the Proponent regarding issues

that need to be addressed in the Final Impact Statement, outlines for all parties the procedures for the review of the Final Impact Statement, specific requests by the NIRB with respect to participation of parties and information on timing and logistics of the Final Hearing.

If the NIRB is processing an Amendment, the aforementioned information would be discussed either at the outset of the reconsideration, or during the Technical Meeting if it is determined that one will be held.

3.3.1.2 NWB Pre-hearing Conference

As per the NWB's Rules of Practice and Procedure for Public Hearing and Guide 5 Processing Water Licence Applications:

In order to facilitate the hearing process, the Board may, through its staff or in conjunction with staff, hold a pre-hearing conference with the parties, either in writing, by teleconference, or in person, in order to deal with any of the following matters:

- (a) To set a timetable for the pre-hearing exchange of information;
- (b) To finalize the list of issues to be dealt with at the hearing;
- (c) To identify interested parties;
- (d) To consider the desirability of amending an application for the purposes of clarification;
- (e) To finalize procedures to be followed in a hearing; and
- (f) To consider any other matters that may aid in the simplification and disposition of the application at the Hearing.

The Pre-hearing Conference is an opportunity for parties to present any issues that were unresolved during the technical meeting and to hear comments from the public.

Following the Pre-hearing Conference, the NWB issues a Pre-hearing Conference decision containing the Board's decision on the matters discussed at the Pre-hearing Conference and often includes the list of commitments generated during the technical meeting.

4 CONCLUSIONS AND OTHER TOPICS FOR CONSIDERATION

It should be noted that this Guide presents options and details of coordination of the NIRB Final or Public Hearing and the NWB Public Hearing, while Process Maps included in the Guide present the potential areas of coordination during the entire process. Parties should be aware that coordination of the entire process will be project-specific and on case-by-case basis and more options for the coordination of entire process may be available related to the potential coordination of commenting periods, technical meetings and/or pre-hearing conferences, in addition to Hearings.

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