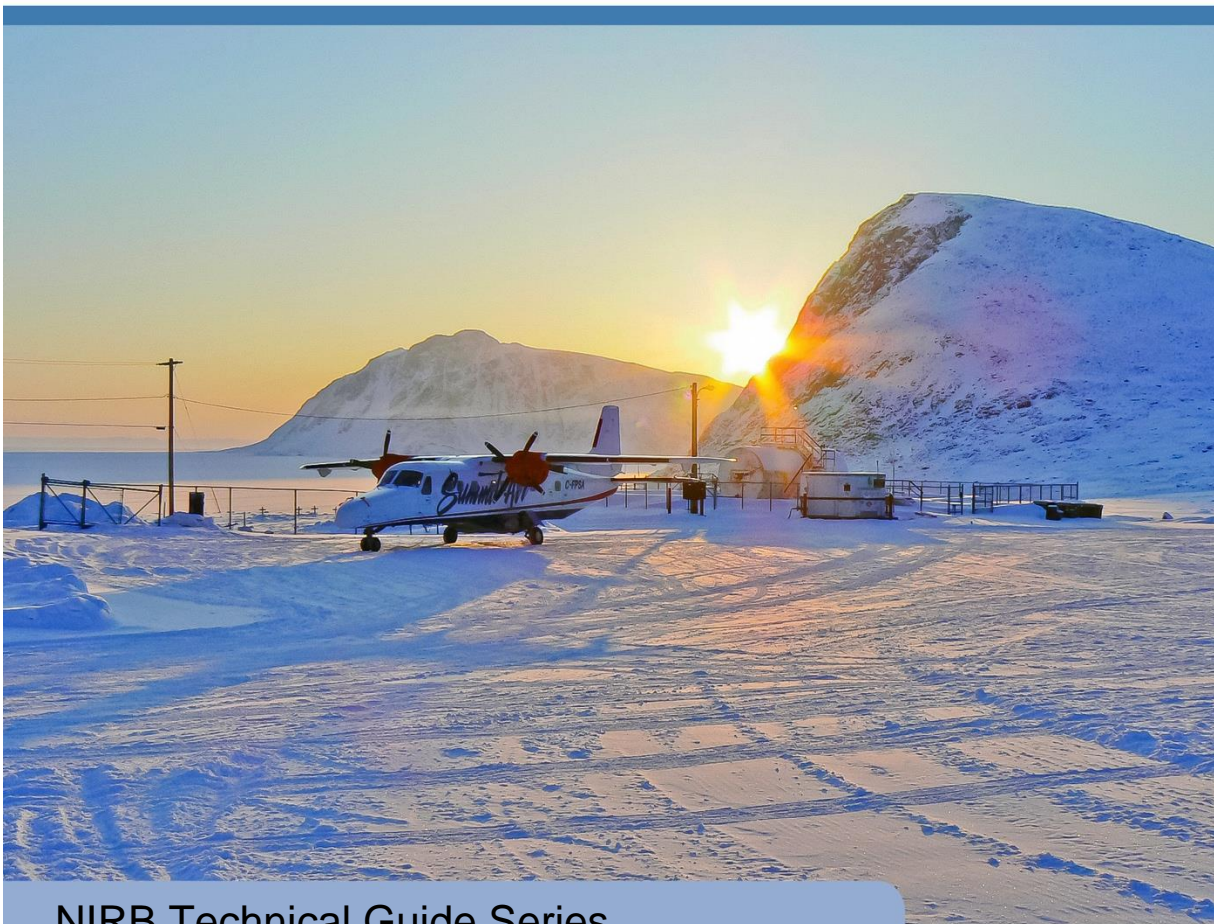




Authorizing Agency Guide



NIRB Technical Guide Series

December 2018



Nunavut Impact Review Board Mission:

To protect and promote the well-being of the environment and Nunavummiut through the impact assessment process.

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Email: info@nirb.ca or call toll-free 1-866-233-3033.



Notes:

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

Disclaimers:

This Guide is provided as a convenient reference for Authorizing Agencies to explain the NIRB’s impact assessment processes in a plain language format. However, parties reviewing this Guide are reminded that the legal responsibilities of all participants in the NIRB’s processes are as established under the *Nunavut Agreement* and the *Nunavut Planning and Project Assessment Act*, other applicable legislation and any relevant project-specific direction issued by any authorities with jurisdiction over that project. All parties 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* and the *Nunavut Planning and Project Assessment Act*, other 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 or relevant authorities with jurisdiction over a project. The NIRB also reserves the right to depart from the general processes outlined in this Guide if the specific circumstances of a given impact assessment process require such changes.

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1.0 HOW TO USE THIS GUIDE

This Guide is intended to be used by Authorizing Agencies, as a general reference to the regulatory requirements and processes associated with project assessments conducted by the Nunavut Impact Review Board (NIRB or Board) under the provisions of Article 12 of the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)* and Part 3 of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*), including the screening process, the environmental review process, and any project monitoring that may be required.

Although not defined within the *Nunavut Agreement* or *NuPPAA*, the NIRB has developed a working definition of **Authorizing Agencies** that is used throughout this Guide. It should be noted that the Board's definition of Authorizing Agency is broader than the definition of **Regulatory Authority** used under the *NuPPAA* and expressly recognizes the role of Designated Inuit Organizations who may exercise authority with respect to projects as landowners, permit issuers, and negotiators of Inuit Impact Benefit Agreements.

Authorizing Agency means any government agency, Designated Inuit Organization or any other body that has the authority to issue a permit, lease, licence or grant approval to a Proponent to conduct some physical work or physical activity in relation to a project proposal and includes Regulatory Authorities as defined under the *NuPPAA*.

The *NuPPAA* defines “Regulatory Authority” as follows:

Regulatory Authority means a minister — other than for the purposes of s 197 of the *NuPPAA*—, a department or agency, a municipality or any other public body responsible for issuing a licence, permit or other authorization required by or under any other Act of Parliament or a territorial law for a project to proceed.

It should be noted that government agencies and regulatory bodies that do not have direct responsibility for permitting, licensing or otherwise exercising authority over project authorizations may also be involved in and provide information and comments during the NIRB's assessment of a project on the basis of their

expertise. This type of involvement in the NIRB processes is discussed in more detail in the NIRB's Technical Guide for Intervenor; the focus of this Guide is on **the specific role of Authorizing Agencies**.

This Guide is intended to be a general reference for Authorizing Agencies to understand their **vital** role and responsibilities throughout the project assessment process. The Guide is organized by stage in the impact assessment process from project inception through project monitoring. While the focus of this Guide is on the respective **roles and responsibility of Authorizing Agencies** and the NIRB, the Guide also contains some discussion on the role of the Proponent, Intervenor, community members, Elders, and general members of the public. However, the Board has developed additional separate Guides that provide an in-depth discussion of the specific roles of Proponents, Intervenor, and/or members of the public.

The NIRB maintains an online public registry that is accessible to the public; by registering for an account, anyone is able to sign up to follow the NIRB's assessments and to receive updates and notifications as they are issued. A public commenting tool also allows for registered parties to submit an online comment form related to an assessment, or to upload their own comment submissions. Proponents are required to register online accounts to submit their applications for screening and to upload various submissions, annual reports and other required information. Further information can be found at www.nirb.ca including the other plain language public guides in this series and additional resources related to the NIRB's processes.

This Guide does NOT apply to projects that are carried out partly or in whole within a park (National Parks, National Marine Conservation Areas and Territorial Parks) that has been established and administered by the Parks Canada Agency or the Government of Nunavut; or a historic place that is designated under the *Historic Sites and Monuments Act* and administered by the Parks Canada Agency.

***Note:** *Users of this Guide are cautioned that it is intended as a general reference only, and the Board may, in any given case, diverge from the general processes described in the Guide to better reflect project-specific circumstances.¹*

¹ Note that the NIRB will provide sufficient notification and justification of its course of action, should it diverge from established and published processes.

1.1 Frequently Asked Questions

- What is the difference between a **Regulatory Authority** and an **Authorizing Agency**?

The *NuPPAA* defines **Regulatory Authorities** as a minister, a department or agency, a municipality or any other public body responsible for issuing a licence, permit or other authorization required for a project to proceed. The NIRB refers to **Authorizing Agencies** within its guidance documents and other materials, and notes that the term includes Regulatory Authorities, but also includes government agencies, Designated Inuit Organizations or any other bodies that have the authority to issue a permit, lease, licence or to grant approval to a Proponent for a project proposal. Please refer to the section above for a complete definition on both.

- Are all Authorizing Agencies *treated the same* by the NIRB?

Yes, the NIRB's processes are well established, and transparent, and all parties involved in the NIRB's assessments receive the same public information and equal opportunities to participate, including all authorizing agencies identified for a particular project proposal.

- Are Regulatory Authorities and Authorizing Agencies *required* to participate in the NIRB's processes?

Regulatory Authorities and Authorizing Agencies possess invaluable expertise and information critical to the NIRB maintaining a meaningful and rigorous environmental assessment process for proposed projects within Nunavut. The *Nunavut Agreement* and the *NuPPAA* provides a power of subpoena that the NIRB may exercise if a Regulatory Authority with critical information to the process appears unwilling to participate.² As representatives of the public interest in Nunavut and Canada, the territorial and federal governments have a large role to play in providing input to the NIRB's processes. Likewise, as private landowners and representatives of Inuit through the *Nunavut Agreement* settled with the Crown, the Designated Inuit Organization³ (and Regional Inuit Associations) have an equally important role to play in representing Inuit interests and considerations during the NIRB's assessments.

² The *Nunavut Agreement* Section 12.2.25 and the *NuPPAA* s.102(3)

³ Nunavut Tunngavik Incorporated as defined under the *Nunavut Agreement*

- Do Authorizing Agencies *have to* apply for Intervenor Status to participate in NIRB Hearings?

If the agency or department is responsible for the issuance of a licence, permit, or other regulatory approval required for the project to proceed, that body need not apply for Intervenor Status, as standing will be granted. Likewise, the Designated Inuit Organization and Territorial Government are granted automatic standing at NIRB Hearings.

2.0 AUTHORIZING AGENCIES AND IMPACT ASSESSEMENT OF PROJECT PROPOSALS UNDER THE *NUNAVUT AGREEMENT* AND THE *NUPPAA*

2.1 Nunavut's Integrated Regulatory Process

The Nunavut Impact Review Board (NIRB or Board) was established under Article 10 of the *Nunavut Agreement* on July 9, 1996. The NIRB is an institution of public government responsible for the impact assessment of Project Proposals in the Nunavut Settlement Area. The NIRB's specific mandate, authority, and details regarding the NIRB's impact assessment processes are set out in Article 12 of the *Nunavut Agreement* and Part 3 of the *NuPPAA*.

Nunavut is unique amongst Canadian jurisdictions in that the ***Nunavut Agreement* and the *NuPPAA* establishes an integrated resource management system for wildlife management, land use planning, impact assessment, water licensing and dispute resolution** overseen by five (5) independent Institutions of Public Government (IPGs) (see [Figure 1](#)):

- Nunavut Wildlife Management Board (NWMB),
- Nunavut Planning Commission (NPC),
- NIRB,
- Nunavut Water Board (NWB), and
- Nunavut Surface Rights Tribunal (NSRT).

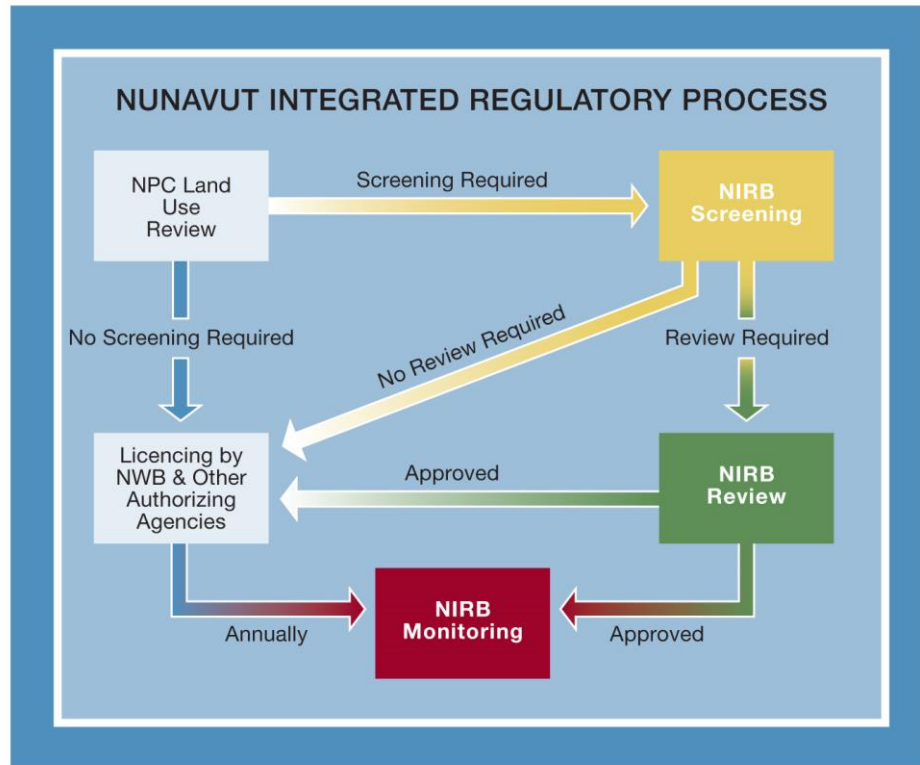


Figure 1 Overview of Nunavut’s Integrated Regulatory Framework

Through the *Nunavut Agreement*, the NPC and the NIRB play an important role in reviewing project proposals before the licences, permits and approvals can be granted by Authorizing Agencies. The *Nunavut Agreement* directs the IPGs to fulfill their functions in a manner that is cooperative, integrated, and avoids duplication, an approach which is further supported by the *NuPPAA* and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* which also govern these organizations. Reflecting this, the IPGs regularly work together on general and project-specific initiatives to coordinate processes and activities with the objective of fostering an integrated, effective, and timely regulatory system.

In addition to the unique cooperative and integrated system for development planning, assessment and licensing established under the *Nunavut Agreement* and *NuPPAA*, the role of the NIRB is also unique relative to other impact assessment authorities in Canada. In 2008, when Article 12 of the *Nunavut Agreement* was amended, the *Nunavut Agreement* expressly stated that the *Canadian Environmental Assessment Act*, and any successor legislation replacing the Act, shall not apply within the Nunavut Settlement Area. Consequently, the

NIRB's jurisdiction as the *sole* permanent body in Nunavut charged with conducting impact assessment in the Nunavut Settlement Area was clearly established.

In accordance with Article 12 of the *Nunavut Agreement* and Part 1 of the *NuPPAA*, the primary functions of the NIRB are to protect the ecosystemic integrity of the Nunavut Settlement Area (NSA), and to protect and promote the existing and future well-being of residents and communities of the NSA while also taking into account the well-being of residents of Canada outside the NSA. The NIRB assesses project proposals to determine whether they have potential to adversely impact the ecosystem, communities, or residents of the NSA, and determines whether or not they should be approved to proceed. The NIRB's impact assessment processes are designed to:

- a) *Screen* project proposals in order to determine whether or not a review is required;
- b) *Gauge* and define the extent the regional impacts of a project;
- c) *Review* the ecosystemic and socio-economic impacts of project proposals;
- d) *Determine*, on the basis of its review, whether proposed projects should proceed and, if so, under what terms and conditions, and then report its determination to the Minister; and,
- e) *Monitor* projects in accordance with the provisions of Article 12, Part 7 of the *Nunavut Agreement*.

In carrying out its functions, the NIRB is directed to act fairly and in a manner that protects and promotes the existing and future well-being of the residents of Nunavut specifically, and Canada in general, and also in a manner that protects the ecosystemic integrity of the NSA. The NIRB's impact assessment processes are designed to create opportunities for meaningful public engagement, and to allow for consideration of Inuit Qaujimaningit, Inuit Qaujimajatuqangit, traditional and local knowledge.

***Note:** *The participation of community organizations and members, including Elders, in all stages of project activities can ensure that local knowledge, Inuit Qaujimajatuqangit and Inuit Qaujimaningit are considered by a Proponent. However, it is important to note that public consultation efforts do not replace the design of appropriate studies and information-gathering sessions geared towards local knowledge Inuit Qaujimajatuqangit and Inuit Qaujimaningit, nor does it replace the input gathered by the NIRB during public hearings.*

The NIRB realizes that Authorizing Agencies that do not normally have a presence in Nunavut and/or are only rarely called upon to exercise their jurisdiction in Nunavut may be unfamiliar with the specific regime established under the *Nunavut Agreement* and the *NuPPAA*. In particular, the NIRB recognizes that the unique roles, responsibilities, and expectations that this system imposes on Authorizing Agencies differs from other jurisdictions. This Guide is intended to provide Authorizing Agencies with a general orientation to these roles, responsibilities, and expectations as they arise in the context of the NIRB's impact assessment processes.

2.2 The geographic extent of NIRB's authority

The NIRB's authority applies to both land and marine areas within the Nunavut Settlement Area and to the Outer Land Fast Ice Zone, as defined in the *Nunavut Agreement*, and as described in the *NuPPAA* (Figure 2). The Board's authority also extends to certain projects with potential transboundary impacts. The NIRB may, upon request by Government or with the consent of Government upon request by a Designated Inuit Organization, review a project proposal located outside of the Nunavut Settlement Area if that project proposal may have significant adverse ecosystemic or socio-economic effects within the Nunavut Settlement Area.



Figure 2: the Nunavut Settlement Area including the outer Land Fast Ice

2.3 What types of works, undertakings or activities are subject to the impact assessment process?

The impact assessment requirements under Article 12 of the *Nunavut Agreement* apply to all “project proposals” as defined below:

Project Proposal 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 Section 12.11.1 but 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.

This definition applies to all project proposals, with the exception of those that relate to transboundary impacts and are dealt with under Section 12.11.1 of the *Nunavut Agreement*.

Further, as described more fully under Part 3 of the *NuPPAA*, the proponent of a “project” (as defined below) intended to be carried out in whole or in part in the Nunavut Settlement Area including the Outer Land Fast Ice Zone is required to submit a project proposal to the Nunavut Planning Commission.

Project means the carrying out, including the construction, operation, modification, decommissioning or abandonment, of a physical work or the undertaking or carrying out of a physical activity that involves the use of land, waters or other resources. It does not include

(a) the undertaking or carrying out of a work or activity if its adverse ecosystemic impacts are manifestly insignificant, taking into account in particular the factors set out in paragraphs 90(a) to (i) [factors to assess significance];

(b) the undertaking or carrying out of a work or activity that is part of a class of works or activities prescribed by regulation; or

(c) 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 activities.

The *NuPPAA* prohibits the carrying out of a project unless various requirements have been met, including that the NIRB’s assessment of the project has been completed.

If a project appears to not meet the definition of a project under the *NuPPAA* but meets the definition of project proposal under the *Nunavut Agreement*, the proponent shall consult with the Nunavut Planning Commission (NPC or Commission) to determine if an assessment of the project proposal would be required.

**Note: Although prior to the coming into force of the NuPPAA, in regions without an approved land use plan project proponents could trigger the NIRB assessment process by submitting applications to Authorizing Agencies, under s. 76 of the NuPPAA, all project proposal must be submitted to the Nunavut Planning Commission directly and only project proposals forwarded to the NIRB from the Nunavut Planning Commission will be screened by the Board.*

2.4 General Roles and Responsibilities of Authorizing Agencies in the NIRB Processes

Under the one window approach to Nunavut's regulatory process confirmed by the NuPPAA (Figure 3), Authorizing Agencies are no longer initiating the NIRB project assessment process for projects in regions without an approved land use plan; however, Authorizing Agencies continue to play an important role in contributing to the NIRB's assessment of the project proposal at all stages. Specifically, the NIRB continues to expect and rely on Authorizing Agencies providing the Board and other participants in the assessment process with **background and understanding regarding the Authorizing Agencies' jurisdiction** for the project activities and undertakings, technical expertise, information regarding the Authorizing Agencies' regulatory process, approval requirements, timelines and the Authorizing Agencies' role in on-going project monitoring activities after the initial licensing/permitting stages.

**Note: As established under the NuPPAA, the NIRB screening commences only when the NIRB receives the project proposal from the Nunavut Planning Commission and/or the Parks Canada Agency or any other federal or territorial authority (referred to as Responsible Authority).*

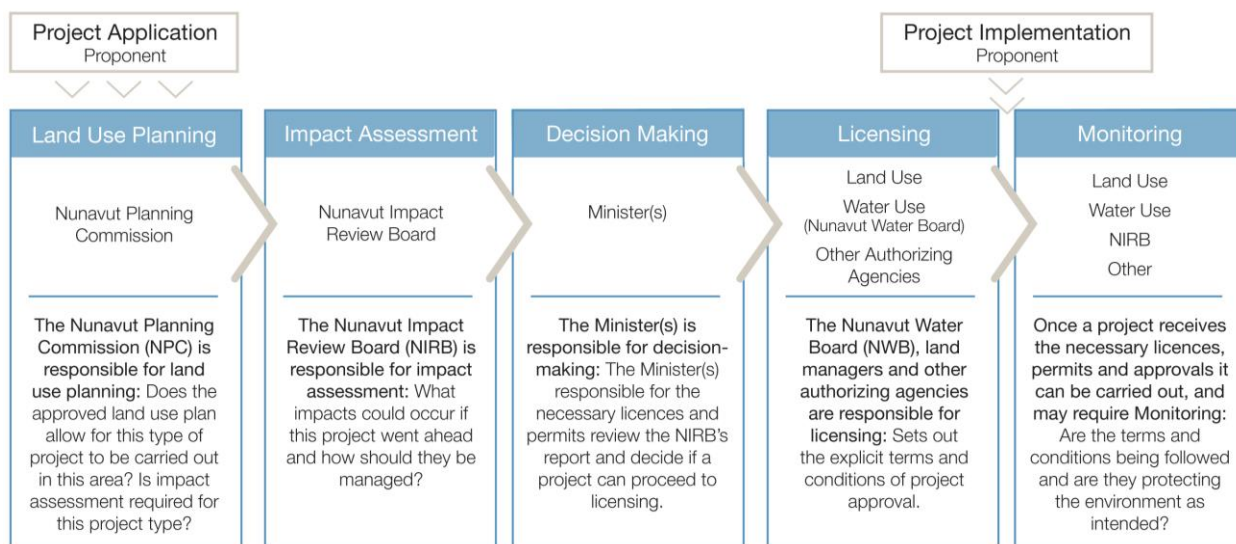


Figure 3: Project Application Process in Nunavut

Role under Nunavut Planning Commission

Under the *NuPPAA*, once the Nunavut Planning Commission (NPC) receives a project proposal, the NPC determines, within 45 days of receipt of the project proposal, whether the project conforms with the applicable land use plan (i.e., conformity determination) and must verify whether the project is exempt from the requirement for screening. At present, there are two (2) approved land use plans in Nunavut, the North Baffin Regional Land Use Plan and the Keewatin Regional Land Use Plan.

If the NPC determines that the project proposal is in conformity with the approved land use plan, or a variance has been approved, or there is currently no approved land use plan in place, the NPC must verify whether the project is exempt from the requirement for screening, as outlined in detail in [Part 3.0](#) of this Guide. If the project is **NOT** exempt from the requirement for screening, or, if the NPC verifies that the project is exempt from the requirement for screening **BUT** the NPC has concerns in respect of any cumulative ecosystemic or socio-economic impacts that could result from that project when viewed in relation to other projects that have been carried out, are being or will be carried out in the future, the NPC will forward the project proposal and the NPC's positive conformity determination to the NIRB for screening.

If NPC determines that a project proposal does not require screening, NPC will notify the Proponent within its decision that the assessment of the project has been completed and that the Proponent may carry out the project and obtain any licence, permit or other authorization that it may require to conduct the project. Authorizing Agencies are also informed by NPC on its decision regarding the assessment of the project.

***Notes:** 1) *The Board is not authorized to screen a project if the Nunavut Planning Commission has determined that a project is not in conformity with the applicable land use plan and no minor variance or ministerial exemption has been granted.*

2 *As established under the NuPPAA, if the project is to be carried **out wholly outside** of a park or historic place designated under the Historic Sites and Monuments Act, the NIRB's screening commences only when the NIRB receives a referral from the Nunavut Planning Commission, the project proposal and associated conformity determination (if applicable).*

Role of Parks and Conservation Areas in the impact assessment process

Under the *NuPPAA*, the only time that the Nunavut Planning Commission (NPC) is not involved in the assessment process is when a project is to be carried out wholly within a park (National Parks, National Marine Conservation Areas and Territorial Parks) that has been established and administered by the Parks Canada Agency or the Government of Nunavut; or a historic place that is designated under the *Historic Sites and Monuments Act* and administered by the Parks Canada Agency. Once the Parks Canada Agency or any other federal or territorial authority (referred to as Responsible Authority) having management and control of the park receives a project proposal, the Responsible Authority must determine, within 45 days of receipt of the project proposal, whether the project conforms with the requirements set out by or under any law for which it has responsibility and must verify whether the project is exempt from the requirement for screening.

If the Responsible Authority determines that the project proposal is in conformity with the requirements, the Responsible Authority must verify whether the project is exempt from the requirement for screening, as outlined in detail in 3.0 of this Guide. If the project is **NOT** exempt from the requirement for screening, or, if the Responsible Authority verifies that the project is exempt from the requirement for screening **BUT** has concerns in respect of any cumulative ecosystemic or socio-economic impacts that could result from that project when viewed in relation to other projects that have been carried out, are being or will be carried out in the

future, the Responsible Authority will forward the project proposal to the NIRB for screening.

***Notes:** 1) *The Board is not authorized to screen a project if the Responsible Authority has determined that the project is not in conformity with any applicable requirements set out by or under any law for which it has responsibility.*

2) *As established under the NuPPAA, if the project is to be carried **out completely outside** of a park or historic place designated under the Historic Sites and Monuments Act, the NIRB's screening commences only when the NIRB receives a referral from the Nunavut Planning Commission, the project proposal and associated conformity determination (if applicable).*

3) *As established under the NuPPAA, if the project is to be carried out partly outside of a park or historic place designated under the Historic Sites and Monuments Act, the NIRB's screening commences only when the NIRB receives a referral from the Nunavut Planning Commission, the project proposal and associated conformity determination (if applicable) **AND** when the NIRB receives a referral from the Responsible Authority.*

4) *As established under the NuPPAA, if the project is to be carried in whole within of a park or historic place designated under the Historic Sites and Monuments Act, the NIRB's screening commences only when the NIRB receives a referral from the Responsible Authority.*

Role under Nunavut Impact Review Board

As outlined in Article 12, Part 10, Section 12.10.1 of the *Nunavut Agreement* and s. 75 of the *NuPPAA*, once a project proposal has been forwarded to the NIRB for assessment, Regulatory Authorities are NOT authorized to issue a licence, permit or other authorization in respect of a project until the assessment of the project has been completed (screened, and if a review is required the completion of the review and issuance of a NIRB Project Certificate).

This requirement highlights the importance of integrating impact assessment at the earliest stages of project development and is stated in Article 12, Section 12.10.1 of the *Nunavut Agreement* and s. 75 of the *NuPPAA* which establishes that:

Nunavut Agreement, Article 12, Section 12.10.1: No licence or approval that would be required in order to allow a proposed project to proceed shall be issued in respect of a project that is to be screened by NIRB until the screening has been completed and, if a review pursuant to Part 5 or 6 is to be conducted, until after that review has been completed and a NIRB project certificate has been issued by NIRB pursuant to these provisions.

NuPPAA s. 75(1): A regulatory authority is not authorized to issue a licence, permit or other authorization in respect of a project if...

(b) the assessment of the project under this Part has not been completed;

Although there are activities that may be exempted from the requirement for NIRB screening (see the discussion at [Part 3.0](#) of this Guide) or may be excepted from the requirement to be assessed in a review (see the discussion at Section 5.3 of this Guide), in general, development proposals that are not exempt from screening or excepted from review, must complete the required NIRB impact assessment before an Authorizing Agency can issue valid authorizations.

As further outlined in [Part 4.0](#) of this Guide, during the NIRB's screening and potential review of project proposals, Authorizing Agencies play a **key role** in the impact assessment process by actively participating during the NIRB's assessment to provide technical support, comment, information and expertise on issues within the Authorizing Agencies' jurisdiction and mandate.

Authorizing Agencies issuing project licences and approvals at the conclusion of the NIRB's impact assessment process have a central role under the Nunavut's integrated regulatory structure as follows:

- When a project proposal has undergone a NIRB Review and the project is approved to proceed subject to the terms and conditions of a NIRB project certificate, **any project certificate terms and conditions that are within an Authorizing Agencies' jurisdiction and mandate are required to be implemented by the Authorizing Agency** and incorporated into the project approvals, licences, permits or other authorizations subsequently issued by that Authorizing Agency.⁴
- For terms and conditions from a NIRB project certificate that are incorporated into the project approvals, licences, permits or other

⁴ As outlined in Article 12, Section 12.9.2 of the *Nunavut Agreement* and s. 137(1) of the *NuPPAA*

authorizations issued by an Authorizing Agency, that Authorizing Agency is also **responsible for enforcing the terms and conditions of the project authorizations they issue**, including enforcing the terms and conditions from a NIRB project certificate that have been incorporated into the Authorizing Agencies' project authorizations.

- If a project has been screened by the NIRB and is recommended to proceed without a review and the NIRB has issued terms and conditions relating to project-specific monitoring, or a project has undergone review and the NIRB has issued a project certificate, the NIRB **may set out in the terms and conditions establishing a project-specific monitoring program** and it would be the responsibility of Authorizing Agencies to supply reports and information to the NIRB regarding project operations, impacts and mitigation measures.
- The NIRB and Authorizing Agencies are also required to **coordinate** their respective monitoring responsibilities in order to avoid duplication.
- For all projects where the NIRB has issued a project certificate, Authorizing Agencies are **required to provide copies** of all project authorizations issued to the Proponent to the NIRB and the Nunavut Planning Commission.

Therefore, Authorizing Agencies issuing project licences and approvals after the NIRB's impact assessment process is complete with a positive determination may also have the following on-going responsibilities as per the *Nunavut Agreement* and relevant legislation which:

- highlights the need for consultation between the NIRB and Authorizing Agencies in terms of how best to implement applicable terms and conditions;
- outlines how to resolve situations where the authorizations issued by an Authorizing Agency vary from the terms and conditions in a NIRB project certificate;
- states that an Authorizing Agency will not be considered to have fettered its discretion or otherwise limited its jurisdiction by implementing or incorporating the relevant terms and conditions from a NIRB project certificate into the project-specific regulatory authorizations issued by that Authorizing Agency;

- affirms that nothing in the *Nunavut Agreement* and the *NuPPAA* precludes or stops an Authorizing Agency from imposing in any regulatory authorizations related to the project additional or more stringent terms and conditions than were recommended by the NIRB; and
- affirms that notwithstanding that the outcome of the NIRB impact assessment process is to recommend that a project be allowed to proceed, nothing in the *Nunavut Agreement* or *Act* precludes the Authorizing Agency from ultimately refusing to issue specific regulatory authorizations related to the project.

The regulatory system's focus on cooperation and coordination also allows for secondment to the NIRB of experts or persons having technical knowledge, including government staff (which could include technical experts from Authorizing Agencies) in order to assist the Board in the fulfillment of its role.

Authorizing Agencies also occupy a central role in the integrated regulatory system in Nunavut in terms of **actively participating** in the public consultation processes associated with project assessment carried out by the NIRB. It is important that Authorizing Agencies are in attendance at NIRB technical meetings, community roundtable sessions, pre-hearing conferences, public hearings and project certificate workshops to explain their jurisdictional responsibilities to the public, the NIRB and other interested parties. The participation of Authorizing Agencies at these stages in the NIRB process is also important to ensure they hear the concerns of interested parties and are able to discuss the appropriate terms and conditions that would govern projects if granted approval. Authorizing Agencies make an enormous contribution to establishing a functional and integrated regulatory system that is transparent and accessible to Nunavummiut affected by project development.

2.5 General Roles and Responsibilities of the NIRB in the Regulatory Processes of Authorizing Agencies

As noted, the NIRB is the sole permanent body in Nunavut charged with conducting impact assessment in the Nunavut Settlement Area, with the following primary functions to:

- *screen* project proposals in order to determine whether or not a review is required;
- *gauge* and define the extent of the regional impacts of a project;

- *review* the ecosystemic and socio-economic impacts of project proposals;
- *determine*, on the basis of its review, whether project proposals should proceed, and if so, under what terms and conditions, and then to report its determination to the relevant Minister;
- *monitor* projects in accordance with the provisions of the *Nunavut Agreement*.

As previously noted, the NIRB is not only responsible for fulfilling this specific role but is also encouraged to coordinate its functions with the Nunavut Planning Commission and the Nunavut Water Board.

For Authorizing Agencies responsible for issuing approvals and licences that will be required for a project to proceed, the NIRB's primary functions as a reporting and recommending body, conducting screening and, if required, a NIRB review and then reporting to the relevant Minister(s) regarding a recommended course of action and any applicable recommended terms and conditions if the NIRB has determined that a project be allowed to proceed. In conducting timely and thorough impact assessment, the NIRB is responsible for ensuring that issues and impacts identified in the impact assessment process that may subsequently be relevant to Authorizing Agencies are addressed by the NIRB in the Board's report to the relevant Minister(s) and in the recommended terms and conditions.

In fulfilling this role, the NIRB must ensure that the terms and conditions recommended by the Board do not contravene any standards established by any federal or territorial environmental or socio-economic laws of general application. In addition, the NIRB in designing any project specific monitoring program must ensure that the program avoids duplication and facilitates coordination of monitoring activities.

The NIRB recognizes that with many significant recent changes to legislation governing the jurisdiction and regulatory processes of key Authorizing Agencies with responsibility for projects in Nunavut, *unless* Authorizing Agencies are able to provide up to date guidance to the Board regarding these changes and implications for subsequent project licensing and permitting, the Board's ability to develop appropriate terms and conditions to govern assessed projects is severely compromised.

3.0 PROJECT PROPOSALS EXEMPT FROM SCREENING

3.1 Introduction

As noted in the discussion of roles and responsibilities in [Part 2.0](#) of the Guide, under Article 12, Schedule 12-1 of the *Nunavut Agreement* and s. 78(2) of the *NuPPAA*, when the Nunavut Planning Commission (NPC) reviews a project proposal, the NPC must, before forwarding the project proposal to the Nunavut Impact Review Board (NIRB or Board), verify whether the project proposal is exempt from the requirement for NIRB screening.

The same responsibility applies to the Parks Canada Agency or any other federal or territorial authority (referred to as *Responsible Authority*) under s. 166(2) of the *NuPPAA* when the Responsible Authority reviews a project proposal.

3.2 Exemptions under Schedule 12-1 (Items 1-6) of the *Nunavut Agreement* and s. 78(2) of the *NuPPAA*

Under Article 12, Schedule 12-1 of the *Nunavut Agreement* and s. 78(2) of the *NuPPAA*, when the Nunavut Planning Commission (NPC) reviews a project proposal, the NPC must, before forwarding the project proposal to the NIRB, verify whether the project proposal is exempt from the requirement for NIRB screening.

The same responsibility applies to the Parks Canada Agency or any other federal or territorial authority (referred to as *Responsible Authority*) under s. 166(2) of the *NuPPAA* when the Responsible Authority reviews a project proposal.

Under Schedule 12-1 of the *Nunavut Agreement*, the following categories of activities are exempt; however, it is important to note that as exemptions are generally interpreted strictly, the NIRB considers that the items set out in points 1 through 7 under Schedule 12-1 **should be read and interpreted together, not as stand-alone items**. This means that a project proposal needs to be included under the exemption in each Item of Schedule 12-1 before the project proposal should be considered to be exempted from the NIRB screening process.

1. Land use activities not requiring a permit or authorization from the Government of Canada or Territorial Government.
2. Land use activities requiring **only** a Class B permit under the Territorial Land Use Regulations, C.R.C., c. 1524.⁵
3. All construction, operation and maintenance of all buildings and services within an established municipality, except for the bulk storage of fuel, power generation with nuclear fuels, or hydro power and any industrial activity (**see Note below for further details on these types of activities**).
4. All hotels, motels or tourist facilities of **20 beds or less** outside the boundaries of a municipality.
5. Water uses that **do not** require a public hearing under Article 13, Section 13.7.3 of the *Nunavut Agreement*, (the Water Application Approval section).⁶
6. Prospecting, staking or locating a mineral claim **unless** it requires more than a Class B permit mentioned in item 2.

***Note:** The following term are as defined by the NIRB and the Government of Nunavut, solely in the context of determining whether these activities within a municipality are exempted from the requirement for screening:

Bulk Fuel Storage means the storage of fuel for resupply or resale but does not include individual residential or commercial users storing less than 80,000 litres.

Industrial Activity means activities whose aim is the manufacture, assembly or processing of goods or commodities or the exploitation of natural resources.

This definition includes the following activities:

- land farms;
- manufacturing plants (steel, metal or chemical); recycling depots;
- hazardous waste or chemical storage or use;
- quarries (where the initial development or the expansion of an existing quarry and the closure, abandonment or reclamation of the quarry were not included as part of the initial screening);
- explosives storage;

⁵ The full text of the Regulations is available from the Department of Justice website: <http://laws-lois.justice.gc.ca/eng/regulations/>.

⁶ Under the *Nunavut Waters and Surface Rights Tribunal Act*, S.C. 2002, c. 10 and relevant regulations, certain classes or types of water applications may not require a public hearing. The full text of the Act and any applicable regulations is available from the Department of Justice website: <http://laws-lois.justice.gc.ca/eng/>.

- *tanneries;*
- *meat and fish production facilities (establishment or change in operation); and*
- *exploration, bulk sampling, mining and all associated mining activities.*

This definition excludes the following activities:

- *all institutional activities;*
- *the following commercial activities:*
 - *building supply centre;*
 - *animal hospital;*
 - *custom workshop;*
 - *construction equipment yard;*
 - *heavy equipment sales and rentals;*
 - *automotive commercial garage;*
 - *extraction from existing quarries; and*
 - *home occupations (any occupation, trade, profession, personal service, day care or craft carried on by an occupant of a residential building as a use secondary to the residential use of the building).*

For example, if a project proposal involves a land use activity that does not require a permit or authorization from the Government of Canada or Territorial Government under Item 1 of Schedule 12-1, but the project proposal requires a water licence that necessitates a public hearing the project proposal would not be exempt from screening because the activity **does not** fit within the category of exemptions set out in Item 5 of Schedule 12-1.

3.3 Activities Exempt Under Article 12, Schedule 12-1, Item 7 of the Nunavut Agreement

Under Article 12, Schedule 12-1(7) of the *Nunavut Agreement*, the NIRB has the authority to enter into agreements with the Minister responsible for issuing regulatory authorizations to define categories of activities or projects that may be exempted from the requirement to undergo screening by the NIRB. Such additional exemption agreements have been developed to address activities requiring government approvals which typically have potential adverse impacts that would be well understood, short and may be of low magnitude, reversible and mitigable with due care.

***Note:** Recognizing the significant role of the Nunavut Planning Commission in verifying exemptions and referring project proposals to the NIRB for screening, the NIRB consults with the NPC throughout the steps outlined below. The same applies to Responsible Authorities.

If an Authorizing Agency requests the NIRB consider entering into this type of exemption agreement, the following steps outline the process of entering into an agreement, which is then submitted to the Minister of Intergovernmental Affairs, Northern Affairs and Internal Trade to amend Schedule 3 of the *NuPPAA*:⁷

1. The NIRB and the Authorizing Agency scope the categories of activities or projects for consideration for exemption;
2. The NIRB reviews the categories of activities or projects proposed by the Authorizing Agency to be considered for exemption from NIRB screening. The NIRB compares the categories to specific criteria and develops a preliminary listing of those activities or project types that the NIRB may agree to exempt from the requirement for screening;
3. Based on the NIRB's analysis of the category of activities or projects proposed for exemption and the criteria, the NIRB produces a preliminary exemption list that is provided to the Authorizing Agency for consideration;
4. The NIRB and the Authorizing Agency jointly develop an agreed upon *draft* exemption list of the categories of activities or projects that may be exempted from screening;
5. The *draft* exemption list may then be distributed by the NIRB to interested parties for comment prior to being finalized. Parties are given 120 days to provide comments as per s. 230(2) of the *NuPPAA*;
6. Following consultation, the NIRB works collaboratively with the relevant Authorizing Agency to finalize the exemption list and produce it in final form;
7. The final exemption list is brought before the Board for consideration and approval;
8. If the exemption list is approved by the NIRB it is forwarded to the appropriate Minister for their consideration and approval, as the *Nunavut Agreement*

⁷ For more detail regarding each step, consult Part 3, Section 3.3 of the Authorizing Agencies' Guide to the NIRB.

- requires that both the Minister and the NIRB agree before an exemption can be granted under Article 12, Schedule 12-1 (7) of the *Nunavut Agreement*.
9. Once the relevant Minister and the Board have approved the Exemption List and notice of the agreement has been given to the Designated Inuit Organization a copy of the Exemption List and any associated terms and conditions will be forwarded to the federal Minister of Intergovernmental Affairs, Northern Affairs and Internal Trade to make the amendments to Schedule 3 of the *NuPPAA*.
 10. Upon receipt from the Board, the Minister must add the activities and undertakings from the Exemption List to Schedule 3 to identify that the classes of works and activities under the Exemption List have been expressly designated as exempt from NIRB screening.

SCOPING THE CATEGORIES OF ACTIVITIES OR PROJECTS FOR CONSIDERATION FOR EXEMPTION

The NIRB and applicable Authorizing Agency develop a list of all categories of activities or projects that require authorizations from the Authorizing Agencies and that trigger the requirement for screening by the NIRB under the *Nunavut Agreement* and the *NuPPAA*, including descriptions or definitions of such activities or projects.

DEVELOPMENT OF A PRELIMINARY EXEMPTION LIST

The NIRB reviews the categories of activities or projects proposed by the Authorizing Agency to be considered for exemption from the NIRB screening. In developing a preliminary listing of those activities or projects that the NIRB may agree to exempt from screening, the NIRB requires that the category of activities or projects proposed for exemption:

1. Will not result in land disturbances that exceed the nature and extent of land disturbances that are acceptable under a Class B land use permit.
2. Will not result in any disturbance to the land such that the land cannot be remediated and returned to its original state or its original function.
3. Will not require water uses that trigger the requirement for a public hearing under Article 13, Section 13.7.3 of the *Nunavut Agreement*.

4. Will not involve the bulk storage of hazardous materials, the bulk storage of fuel, power generation with nuclear fuels, or hydro power and any industrial activity.
5. Will not take place in an area that is habitat for any rare, threatened, or endangered, plant, aquatic or animal species,⁸ including bird nesting sites and other critical habitats.
6. Will not result in any substance entering into surface or ground water.
7. Will not occur on land that has cultural or historical significance.
8. Will not interfere with Inuit harvesting activities, including travel routes or traditional camp locations.
9. Will not have the potential to cause any negative socio-economic effects on northerners, including the movement of peoples.
10. Will not involve the use of technological innovations for which the effects may be unknown.
11. Is not likely to be the cause of significant public concern.
12. Will not involve any harvesting of wildlife, unless such harvesting is approved by the Nunavut Wildlife Management Board pursuant to Article 5 of the *Nunavut Agreement*.
13. Will not have the potential to cause any negative effects on human health.
14. Is the type of activity or project where the effects are highly predictable and any adverse effects will be insignificant and mitigated.

DEVELOPMENT OF A *DRAFT* EXEMPTION LIST

Based on the NIRB's analysis of the category of activities or projects proposed for exemption and the criteria listed above, the NIRB initiates discussions with the Authorizing Agency about the NIRB's Preliminary Exemption List, with the objective of developing a *Draft* Exemption List.

⁸ As defined under the *Species At Risk Act*, S.C. 2002, c. 29.

CONSULTATION

Once a *Draft* Exemption List has been developed jointly by the NIRB and the appropriate Authorizing Agency, the *Draft* Exemption List must be distributed by the NIRB to the Designated Inuit Organization, the relevant federal or territorial Minister and interested parties for a minimum of 120 days for comments.

***Note:** *120 days is the minimum comment period prescribed under s. 230(2) of the NuPPAA, but depending upon the circumstances, the NIRB may set a more extensive comment period if the Board considers it necessary.*

EXEMPTION LIST

Once comments have been received from interested parties and considered by the Board, the NIRB works collaboratively with the Authorizing Agency to develop a finalized Exemption List that lists the category or categories of activities or projects that the NIRB and the Authorizing Agency agree to exempt from the requirement for NIRB screening.

RECOMMENDATION TO THE MINISTER

When the Exemption List is in final form, it is brought to the Board for consideration and approval. If approved by the Board, the Exemption List is submitted to the appropriate Minister for his/her consideration and approval. The *Nunavut Agreement* requires that both the Minister and the NIRB agree before an exemption can be granted under Article 12, Schedule 12-1 (7) of the *Nunavut Agreement*. As required by s. 230(3) of the *NuPPAA*, the Board then notifies the Designated Inuit Organization of the agreement that has been entered into by the Board and the relevant Minister.

IMPLEMENTATION

Once the relevant Minister and the Board have approved the Exemption List, and notice of the agreement has been given to the Designated Inuit Organization a copy of the Exemption List and any associated terms and conditions will be forwarded to the federal Minister of Crown-Indigenous Relations and Northern Affairs to make the amendments to Schedule 3 of the *NuPPAA* to give effect to the

agreement and to exempt the class of works or activities described under the agreement from the requirement for screening by the NIRB.

Classes of Works and Activities Exempt from Screening under Schedule 3 of the *NuPPAA*

Under s. 230 of the *NuPPAA* once the Board has provided the prescribed notifications and consultation regarding an agreement under Schedule 12-1 Item 7 of the *Nunavut Agreement*, the Board submits the Exemption List to the Minister of Intergovernmental Affairs, Northern Affairs and Internal Trade for inclusion on Schedule 3 of the *NuPPAA*. Upon receipt from the Board, the Minister must add to Schedule 3 to identify that the classes of works and activities under the *Nunavut Agreement* have been expressly designated as exempt from NIRB screening.

Currently the NIRB has agreements with the Government of Nunavut (GN) – Department of Culture and Heritage, GN – Department of Environment, and Parks Canada. Copies of the exemption agreements can be found at www.nirb.ca.

3.4 Components or Activities Exempt from Screening as Part of a Previously Screened Project Proposal

For some project proposals screened by the NIRB, Proponents may file applications with the Authorizing Agencies for new authorizations, extensions, and renewals to existing authorizations after the NIRB has concluded its screening of the initial project proposal. When this happens, Authorizing Agencies are often unclear about whether Proponents' applications to Authorizing Agencies requesting subsequent authorizations, extensions or renewals of an existing project authorization should be referred to the NIRB for a new assessment.

It is the responsibility of the Proponent and the Authorizing Agency(ies) to consider whether their new application constitutes a significant modification to the previously screened project and guidance is provided below on determining significance. If it is determined that there is a significant modification, then a new project proposal will need to be submitted to the Nunavut Planning Commission and to the NIRB for a new assessment.

For project proposals that have previously been screened by the NIRB, if the new application involves the following, the application is likely exempt from the requirement for a NIRB screening; however, it is advisable that the Proponent confirm with the Nunavut Planning Commission (NPC) whether an assessment would be required under the *NuPPAA*:

- a. the **same project activities** as proposed in the original project proposal previously screened by the NIRB;
- b. the activities will be taking place in the **same area** as specified in the original project proposal previously screened by the NIRB;
- c. there have been **no substantial changes** to the environment or cumulative effects in the area of the project activities since the project proposal was screened by the NIRB;
- d. **no new or updated** approved Land Use Plans have become applicable to the area of the project activities since the original project proposal was screened by the NIRB; and
- e. there are **no significant changes** to the components, activities or project proposed in the application from those included in the original project proposal previously screened by the NIRB.

Note: *if a new screening is required, the NIRB assessment process must be completed before Authorizing Agencies can issue the subsequent authorizations, extensions or renewals of an existing project authorization.*

In making the assessment as to whether a new project proposal must be submitted, if the entire project scope was known and described in the original project proposal and the activities proposed in a subsequent application have already been assessed by the NIRB during the original screening, the subsequent application likely does not require a new NIRB screening.

As set out in Article 12, Section 12.4.3 of the *Nunavut Agreement* and s. 145 of the *NuPPAA*:

Nunavut Agreement, Article 12, Section 12.4.3: Any application for a component or activity of a project proposal that has been permitted to proceed in accordance with these provisions shall be exempt from the requirement for screening by NIRB unless:

- (a) *such component or activity was not part of the original proposal; or*
- (b) *its inclusion would significantly modify the project.*

NuPPAA s. 145: *If the carrying out of a work or activity is a project within the meaning of subsection 2(1) and modifies a project that has been approved under this Part, that work or activity is, despite paragraphs 74(a) and (b), not subject to an assessment under this Part unless that work or activity is a significant modification to the original project.*

4.0 NON-EXEMPT PROJECT PROPOSALS REFERRED TO THE NIRB FOR SCREENING

4.1 Screening Steps

When the NIRB receives a project proposal for screening from the Nunavut Planning Commission as described under Section 3.0 of this Guide, the NIRB will acknowledge receipt of the project proposal, and will issue a NIRB file number. This marks the start of the NIRB's screening process and [Figure 4](#) provides an overview of the NIRB's screening process for a project proposal that has been submitted by a Proponent for assessment.

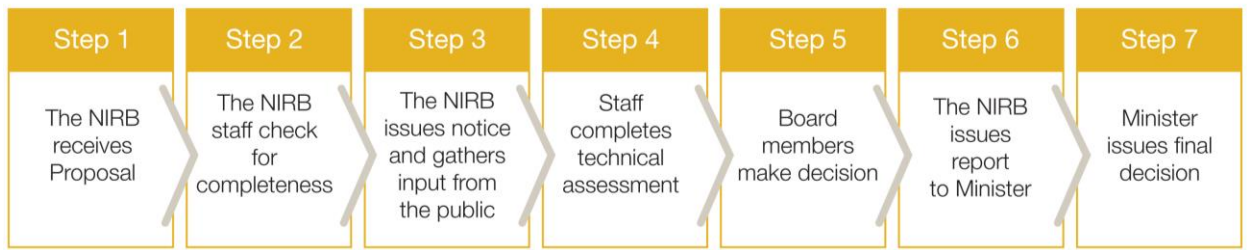


Figure 4: Steps the NIRB uses to process a Screening

As specified under the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*), the NIRB will issue its determination in relation to the screening within 45 days of the commencement of screening unless:

- The NIRB makes a written request (on the basis of issues such as deficiencies with the project proposal, valid extensions to comment periods, complexity or extent of comments received, etc.) and the relevant Minister approves an extension to the 45 day period; or
- There is a legal requirement for a Regulatory Authorities to make a decision within a certain time period that is less than 45 days so that the NIRB needs to complete the screening within a shorter time period in order for the Authorizing Agency to make a decision within the applicable time period.

Once the NIRB has acknowledged receipt of a project proposal the screening process and applicable timeline for the NIRB's completion of the screening begin. If the NIRB requests that the Proponent provide additional information considered to be necessary by the Board to carry out its screening or determine the scope of

the project at the commencement of screening, the Board's timeline to complete the screening is suspended and the timeline is reset and commences anew on the day on which the Board receives the requested information from the Proponent. The following summary of the steps involved provides a general description of the process, with a focus on the role of Authorizing Agencies throughout.

CHECK FOR COMPLETENESS

The NIRB staff review the project proposal as received, including applications for authorizations submitted to the Authorizing Agencies. Where deficiencies in the project proposal and application forms are present, the NIRB staff will correspond with the Proponent and the Authorizing Agencies to resolve these deficiencies before proceeding with the screening process and prior to seeking comments from Authorizing Agencies, other Intervenor or members of the public.

DETERMINING THE SCOPE OF THE PROJECT

As required under the *NuPPAA*, when a project proposal is received by the Board, the NIRB must determine the scope of the project. The starting point is the project as scoped by the Proponent, but the Board must ensure that the scope includes not only the works or activities included in the project proposal, but also any other works or activities that are sufficiently related to the project to form part of it. Conversely, the scope of the project must NOT include any works or activities that are considered by the Board to be insufficiently related to the project to form part of the project proposal to be screened by the Board.

If, when reviewing the project scope as set out in the project proposal the Board identifies that works or activities should be included or excluded in the scope, the Board must first consult with the Proponent and take into account any comments provided by the Proponent on this point when developing the appropriate scope for the project. If the Board determines that additional works or activities should be added to the project scope, the Board cannot proceed to screen the project with the modified scope until the Nunavut Planning Commission and the relevant federal and/or territorial Ministers have reconsidered the exercise of their duties and functions with respect to the modified scope of the project proposal (s. 86(3) of the *NuPPAA*).

**Note: this is an important step in the NIRB process and the scope may be refined through the NIRB's screening and/or review process; however, the scope included in the NIRB's decision document (Screening Decision Report or Hearing Report) is considered the final version.*

NOTICE OF SCREENING AND COMMENT DISTRIBUTION REQUEST

Once the NIRB has indicated that a project proposal is complete and all required information has been submitted, information and correspondence related to the project proposal will be uploaded to NIRB's registry (www.nirb.ca), under screenings and in a project specific directory under the file number given by the NIRB to the project proposal along with a notice to the registered users notifying them that a new project proposal has been received and individuals must review the email and chose to follow a project to receive other correspondence related to that file see the website for more information.

The NIRB also ensures that the notice is received by representatives from Communities, Co-Management Boards, Designated Inuit Organizations, Hunters and Trappers Organizations, Community Councils, Federal and Territorial Government Departments and other Authorizing Agencies, relevant Wildlife Management Boards as well as other agencies or individuals that the Board feels are appropriate and those that have indicated a desire to be kept informed on this and/or similar proposals (Figure 5).

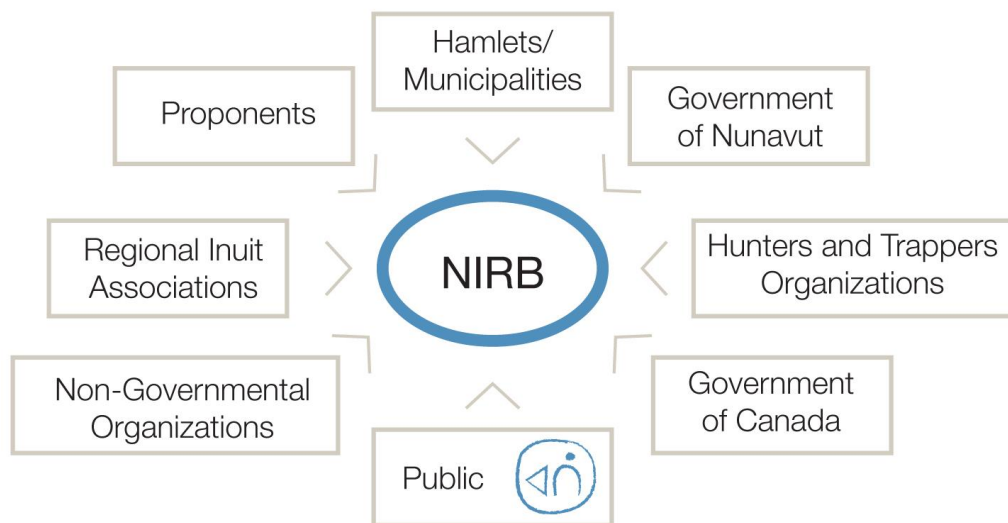


Figure 5: Organizations comments are requested from

Authorizing Agencies are generally asked to comment on the project proposal from the perspective of:

- their knowledge of the area;
- respective expertise; and
- mandate.

The comments requested may include, but are not limited to:

- a. a general indication regarding support for, or against, the project proposal;
- b. a summary of the commenter's understanding of the project proposal;
- c. a summary of the regulatory role and/or mandate of Authorizing Agencies;
- d. identification of the commenter's jurisdiction with respect to authorizations for the project proposal;
- e. requests for additional information required by the party to complete the screening;
- f. identifying any particular areas of concern associated with potential project impacts; and

- g. any recommended terms and conditions, including monitoring and mitigation, that may be necessary if the project proceeds.

Depending on the project proposal, the NIRB may also request that additional specific comments on issues of interest be provided by particular parties. Typically, the comment period is set at three (3) weeks and represents a substantial portion of the 45-day screening timeline, though the NIRB may modify the comment period to reflect the specific circumstances of any given project proposal (e.g., commenting periods for low-impact project types may be shortened to 10 days, while commenting periods may also be extended upon the written request of one or more parties).

***Note:** *Authorizing Agencies should be aware that due to the express requirement that the NIRB will complete its screening within the 45 day (or shorter) timeline required by the Nunavut Agreement (12.4.5) and the NuPPAA (92 (4)), the NIRB considers extension requests to screening comment periods only if substantive justification is provided to support the request prior to the end of the comment period. The responsible Minister is required to provide confirmation of any such extension in writing to the NIRB and Proponent.*

The NIRB reviews comment submissions and determines on a case-by-case basis, whether additional information is required either from commenting parties to clarify their positions or questions, or from the Proponent in response to comments received. If additional information is required, or a response from the Proponent warranted, the NIRB will request as much, providing an additional timeline for response(s).

SCREENING ASSESSMENT

Once the public commenting period has closed and the NIRB determines that all requested and required information has been received in order to make a fair and informed decision, the Board determines if the project has the potential to result in significant ecosystemic or socioeconomic impacts and accordingly, whether it requires review by the Board or by a federal environmental assessment panel, as the case may be [under either Part 5 or 6 of Article 12 of the *Nunavut Agreement* and ss. 99-133 of the *NuPPAA*].

In the screening assessment the NIRB gives consideration to the following:

- a. the completeness of the project proposal;
- b. further information requests from the distribution list;
- c. comments from the public commenting period;
- d. ecosystemic impacts and specific environmental impacts;
- e. socioeconomic impacts;
- f. whether impacts can be mitigated with terms and conditions; and
- g. monitoring requirements.

Further, as outlined in s. 90 of the *NuPPAA*, when conducting the screening of a project, the Board is required to take into account the following factors:

- a. the size of the geographic area, including the size of wildlife habitats, likely to be affected by the impacts;
- b. the ecosystemic sensitivity of that area;
- c. the historical, cultural and archaeological significance of that area;
- d. the size of the human and the animal populations likely to be affected by the impacts;
- e. the nature, magnitude and complexity of the impacts;
- f. the probability of the impacts occurring;
- g. the frequency and duration of the impacts;
- h. the reversibility or irreversibility of the impacts;
- i. the cumulative impacts that could result from the impacts of the project combined with those of any other project that has been carried out, is being carried out or is likely to be carried out; and
- j. any other factor that the Board considers relevant to the assessment of the significance of impacts.

DETERMINATION AND RECOMMENDATION

Once the NIRB has completed its screening assessment, the Board must submit a written report to the responsible Minister specifying the scope of the project and the Board's determination as to whether or not a review of the project is required or whether the project should be modified or abandoned (Figure 6).

The scope of the project as decided by the Board, the summary of comments, and any other required discussion (such as identification of recommended terms and conditions or issues that will be relevant if the project proposal is recommended for review or information regarding the nature and extent of the regional impacts of a project) are included in the Board's Screening Decision Report, which is released to the responsible Government Minister(s). A copy of the Screening Decision Report is also provided to the Proponent and further, the NIRB notifies relevant Authorizing Agencies through a notice of release, and all notifications are uploaded to the NIRB's public registry in the project specific directory.

As per *NuPPAA* s 92(1), the NIRB can make one (1) of three (3) determinations regarding its assessment of project proposals and those decisions are detailed as follows:

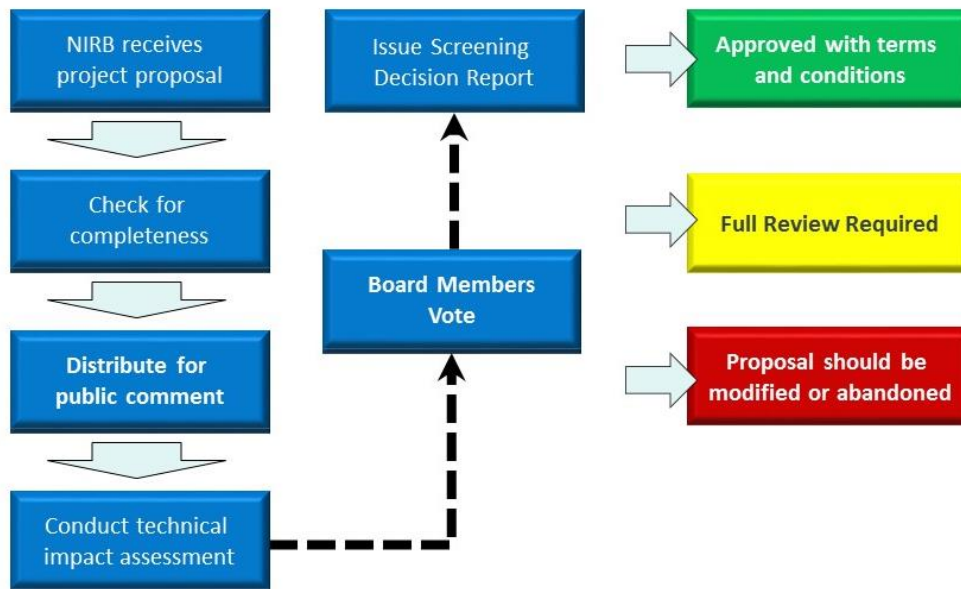


Figure 6: NIRB Screening Process and Possible Determinations

Option One – A Review is Not Required.

The NIRB may determine that **a review of the project proposal is not required when**, in its judgment, **the project is unlikely to cause significant public concern and the project’s adverse ecosystemic and socio-economic impacts are unlikely to be significant** (when assessed in accordance with the factors for determining significance as set out in s. 90 of the *NuPPAA*), or the project is of a type where the potential adverse impacts are highly predictable and can be mitigated with known technologies.

Even if the NIRB indicates that no review is required, the NIRB may still recommend that specific terms and conditions (reflecting the primary objectives set out in the *Nunavut Agreement*) be attached to any subsequent authorizations for the project. These project-specific recommended terms and conditions will be set out in detail within the Board’s Screening Decision Report.

Option Two – A Review is Required.

The NIRB may determine that **a review is required** when in its judgment:

- a. The project may have significant adverse ecosystemic or socio-economic impacts;
- b. The project may have significant adverse impacts on wildlife habitat or Inuit harvest activities;
- c. The project will cause significant public concern; or
- d. The project involves technological innovations, the effects of which are unknown.

Where the NIRB determines that a review is required, the NIRB will typically identify any particular issues or concerns that should, in the Board’s view, be considered in the subsequent review of the project proposal. These issues will be identified in the Board’s Screening Decision Report.

The NIRB could include monitoring requirements in its Screening Decision Report (e.g., submission of annual reports, update of plans etc.) on a case by case basis. Once accepted by the Minister the NIRB will monitor for those items on an annual basis and review it for completeness and ensure the items requested have been included. If a proponent does not submit the requested information, the NIRB could request it as part of the information request package prior to any assessment of subsequent applications. For more information regarding the NIRB’s monitoring programs see [Section 7.0](#) .

Option Three – Proposal Modified or Abandoned.

In cases where the Board is of the opinion that the project has **the potential to result in unacceptable adverse ecosystemic or socio-economic impacts**, the NIRB will recommend to the Minister that the proposal be returned to the Proponent and that the project should be modified or abandoned and provide information regarding the nature and extent of the regional impacts of a project that must be taken into account when determining whether a project is in the regional interest (*NuPPAA* s. 92,(2)(c)).

MINISTER(S) DECISION

Although the NIRB makes its determination and associated recommendations in the Screening Decision Report regarding if and how a project should be allowed to proceed; the decision to accept, vary or reject the Board's recommendations rests with the Minister(s) responsible for issuing the authorizations associated with the project.

Where multiple Federal Departments are involved, the Ministers may designate a single Minister to whom the NIRB makes recommendations and who will, after consultation with the other Ministers who also have decision making responsibilities, decide how to respond to the NIRB's recommendation.

In most cases, the Minister of Intergovernmental Affairs, Northern Affairs and Internal Trade⁹ will act in this capacity. In cases where the Board determines and the Minister agrees that a public review is necessary, the Minister has the authority to send project proposals either to the NIRB for a review under Article 12, Part 5 of the *Nunavut Agreement* and ss. 99-114 of the *NuPPAA* or to a Federal Environmental Assessment Panel for a review under Article 12, Part 6 of the *Nunavut Agreement* and ss. 115-133 of the *NuPPAA*.

⁹ Formerly the Minister of Crown – Indigenous Relations and Northern Affairs

The timeline the Minister(s) has to make its determination is found in Table 1.

Table 1: Timeline for Minister Response

Board Determination	Timelines for Minister Response (days)
Finds a review of the project is not required	15 days to agree or reject the Board's determination, which may be extended by up to 120 days if necessary
Finds a review of the project is required	90 days to agree or reject the Board's determination, which may be extended by up to 90 days
Finds the project should be modified or abandoned	150 days to agree or reject the determination

5.0 THE NIRB REVIEW PROCESS

**Note: Although this Guide provides an overview of the NIRB’s general approach to conducting a review, the NIRB retains flexibility in terms of its process and soliciting the information the NIRB considers necessary to conduct a fulsome review in any given case, including the ability to add, remove or modify steps in the review process as may be required to ensure a thorough, inclusive, efficient and timely review. The review process may also be modified as required to co-ordinate the NIRB review with other regulatory partners such as the Nunavut Planning Commission, the Nunavut Water Board, etc.*

5.1 Introduction

As stated at the beginning of this Guide, there are two (2) types of environmental review contemplated in Article 12 of the *Nunavut Agreement*, a Part 5 Review that is conducted by the NIRB in accordance with ss. 99-114 of *NuPPAA* and a Part 6 Panel Review conducted by a Federal Environment Assessment Review Panel, as appointed by the Federal Minister of the Environment conducted under ss. 115-132 of the *NuPPAA*.

To date, the NIRB has yet to participate in a Federal Panel Review. As such, the focus of this part of the Guide is to provide Proponents with a general understanding of the NIRB’s approach to conducting a NIRB Review under Article 12, Part 5 of the *Nunavut Agreement* and ss. 99-114 of the *NuPPAA*.

5.2 Authorizing Agencies’ Participation Throughout the Review Process

After the screening process is complete and it has been determined by the NIRB that a project requires review and the responsible Minister has determined that a project requires review under Part 5 of Article 12 of the *Nunavut Agreement* and the Board review provisions of the *NuPPAA*, the following steps are generally followed (see outlined in [Figure 7](#) for further details):

- a. Project scoping to ensure that any works or activities that are sufficiently related to the project are included in the scope and conversely that the

scope excludes any works or activities that are insufficiently related to the project to form part of the project (s. 99(1) of the *NuPPAA*);

- b. Guideline creation by the NIRB and issuance of a draft of the guidelines in both official languages and in Inuktitut and/or Inuinnaqtun (ss. 101(1) to 101(4) of the *NuPPAA*);
- c. Soliciting input on the draft guidelines from Authorizing Agencies, affected municipalities, interested corporation and organizations, Inuit, other residents of the Nunavut Settlement Area and the public (s. 101(4) of the *NuPPAA*);
- d. After considering the comments received from parties and making required changes, the issuance of Final Guidelines for the preparation of a Draft Impact Statement (DIS) to the Proponent by the NIRB based on project scoping;
- e. Preparation and submission of the DIS by the project Proponent (s. 101(6) of the *NuPPAA*);
- f. Guideline conformity review of DIS by the NIRB;
- g. Information requests (IRs) and technical review of the DIS by the NIRB and other interested parties, including Authorizing Agencies and Intervenors;
- h. Technical meeting led by the NIRB with the participation of the Proponent, Authorizing Agencies, Intervenors and interested parties;
- i. Pre-hearing conference (PHC) and community session led by the NIRB with the participation of the Proponent, Authorizing Agencies, Intervenors, interested parties and members of the public;
- j. NIRB issues a Pre-hearing Conference Decision Report;
- k. Preparation and submission of the Final Impact Statement (FIS) by the project Proponent;
- l. FIS compliance review by the NIRB;
- m. Technical review of the FIS by the NIRB with input from the public (may include a round of Information Requests prior to commencing technical review and submission of technical review comments);

- n. Final Hearing led by the NIRB, with submissions by the Proponent, Authorizing Agencies, Intervenors, other interested parties and members of the public;
- o. The NIRB's issuance of a Final Hearing Report to the relevant Minister(s);
- p. Decision from the Minister(s);
- q. If the Minister approves that the project be allowed to proceed to licensing:
 - Regulators' meeting/project certificate workshop;
 - Issuance of a project certificate by the NIRB; and
 - Monitoring and enforcement.

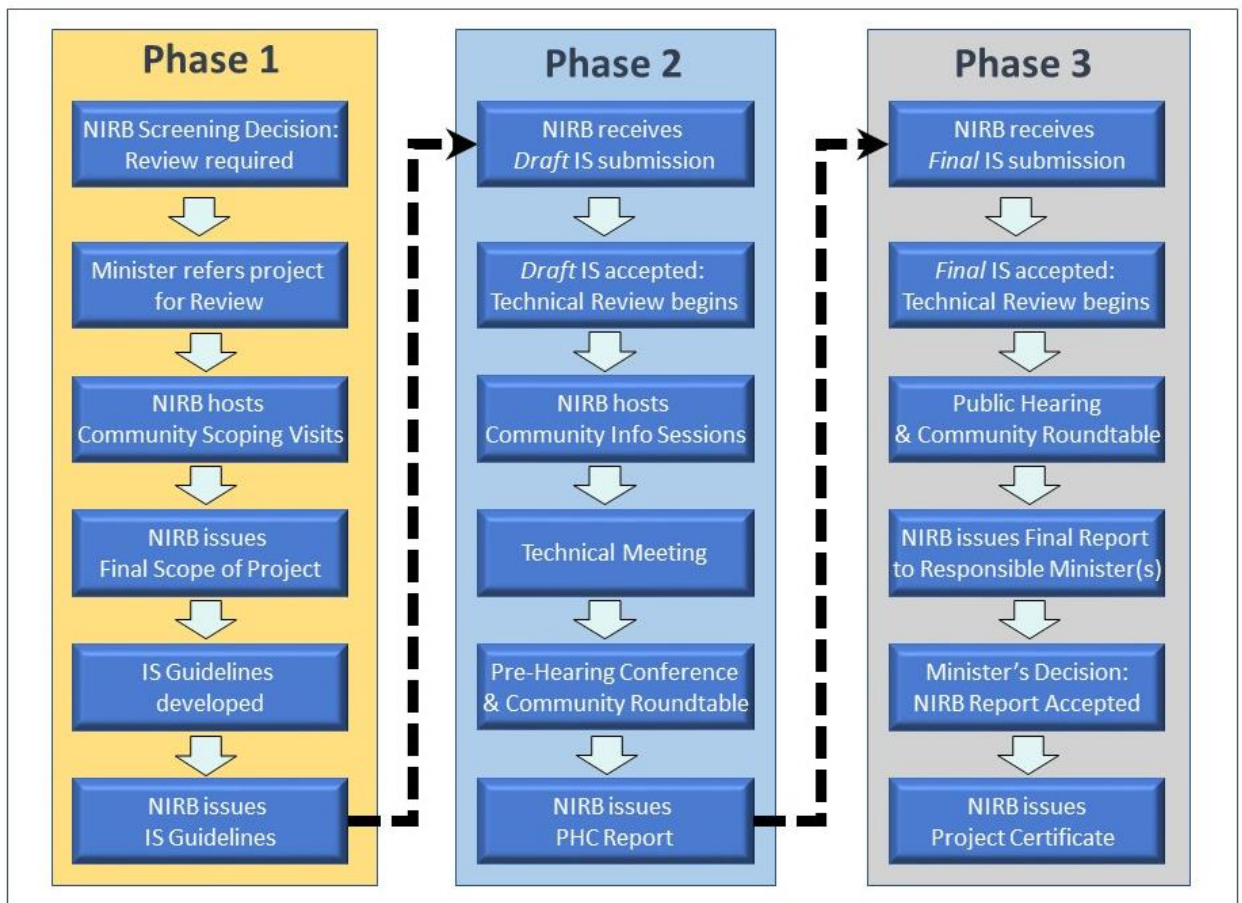


Figure 7. NIRB Review Process Overview

SCOPING

The first step in the NIRB's review process is to establish the scope of the project proposal and the analysis of the potential impacts associated with developing the project. This step typically happens in conjunction with the development of impact statement guidelines.

Scoping is a process that identifies significant issues requiring study and analyses in the impact assessment process. **Scoping identifies the components of the biophysical and/or socio-economic environment that may be impacted by the project and for which there is public concern.** Scoping usually includes a meeting with the Proponent, Authorizing Agencies, members of affected communities and the public in general and is facilitated by the NIRB. The NIRB will solicit input from the Proponent and interested parties (e.g., Federal and Territorial Government departments, Designated Inuit Organizations, and members of the public) and evaluate all information it considers appropriate in order to determine:

- a. Which components of the project to include in the review;
- b. The temporal and spatial boundaries of the project;
- c. The issues and concerns to be considered in the review; and
- d. Any other requirements for the assessment of the project proposal.

During scoping the NIRB also consults with the public and interested parties to identify Valued Ecosystem Components (VECs) and Valued Socio-Economic Components (VSECs) that should be addressed by the Proponent's Impact Statement (IS). The NIRB also develops a public participation and awareness program in which the community's participation in the review process, among other items, is discussed and incorporated into the review planning process.

As set out in s. 99 of the *NuPPAA*, when reviewing a project, the NIRB *must include in the project scope* those activities and undertakings that are considered by the Board to be sufficiently related to the project to form part of it and must exclude from the scope any work or activity that is insufficiently related to the project to form part of it.

In the event the scope of the project differs from the scope as proposed by the Proponent, the Board is required to consult with the Proponent regarding the changes to the project scope and must consider the comments of the Proponent in making any inclusion or exclusion. If the Board adds to the project scope, the

Board must NOT proceed with the review until the Nunavut Planning Commission and/or Responsible Authority and the relevant federal and territorial Ministers have had the opportunity to perform their duties and functions in relation to the revised project scope.

Although scoping and IS Guideline meetings will vary to reflect the nature of the project proposal under review, parties interested in reviewing a detailed summary of typical scoping and IS guideline meetings are invited to review the Scoping and IS Guidelines Session Summary Report included for any of the NIRB's active or completed Review files.

PREPARATION OF AN IMPACT STATEMENT

An Impact Statement (IS) is a tool used by the NIRB to evaluate the potential environmental and socio-economic impacts of a project proposal and to ensure the integrated planning of development proposals. Proponents **must** prepare this in-depth document that identifies, predicts, evaluates, and communicates information about the impacts of a project proposal on human health and the well-being of the ecosystem. An IS also includes the identification and development of mitigation measures, which are measures designed to control, reduce, or eliminate potentially adverse impacts of an activity or project and enhance positive impacts. Further, an IS also contains monitoring and reporting methods to verify the accuracy of impact predictions.

Note: As per s. 12.5.2 of the Nunavut Agreement and s. 101(2) of the NuPPAA, where the project proposal submitted by a proponent for screening address the requirements of an impact statement and is deemed by the NIRB, the Board may accept the submission as an impact statement without developing project-specific guidelines. Further, the requirement for 'Draft' and 'Final' Impact Statement submissions are set at the NIRB's discretion.

As required under the *Nunavut Agreement* and the *NuPPAA*, the Proponent typically prepares the IS in accordance with a set of Guidelines provided by the NIRB which combine the NIRB's standardized approach to conducting impact assessment and adds any unique project-specific requirements drawn from the scoping stage of the review process. When developing project-specific impact statement guidelines, the NIRB is required to circulate a *draft* version of the Guidelines in French, English and Inuktitut, and/or Inuinnaqtun to the Proponent,

Authorizing Agencies, and other interested parties and members of the public, requesting recommendations and guidance that reflect the parties' specific concerns and areas of knowledge and expertise (s. 101(4) of the *NuPPAA*).

Note: As per s. 12.2.23(h) of the Nunavut Agreement and s. 101(4) of NuPPAA the NIRB can establish standard guidelines for the preparation of an Impact Statement (Standard IS Guidelines). Standard IS Guidelines are currently under development by the NIRB.

The NIRB then considers the comments received and integrates any recommendations the Board considers appropriate into the Final Guidelines for the IS. The Final IS Guidelines are issued to the Proponent, released to the distribution list and are posted on the NIRB public registry.

Once the Proponent receives the Final IS Guidelines it is the **responsibility of the Proponent** to prepare the IS in accordance with the Guidelines. Typically, the Proponent prepares two (2) forms of IS, an initial Draft IS (DIS), and following information requests, consultation, technical review and commenting on the DIS, a Final IS (FIS).

The Proponent may choose to only prepare the IS in final form, or alternatively provide an original project proposal for screening that is *sufficiently detailed* to contain the information required for an IS (s. 101(2) of the *NuPPAA*). In such circumstances, the Board may modify the process and timelines to conduct a review on the basis of the Proponent's submission of the FIS only, or may accept the original project proposal as a DIS.

In any case, the NIRB requires the Proponent's IS submission to **identify, predict, evaluate, and communicate information about the ecosystemic and socio-economic impacts of a project proposal**, and also to **identify mitigation measures** which are designed to control, reduce or eliminate potentially adverse impacts of an activity or project or enhance the potentially positive impacts of an activity or project.

**Note: For more detailed information concerning the preparation of an IS, see Part 8.0 Preparing an Impact Statement in the Proponent's Guide.*

For the purposes of this Guide, the process outlined in the text that follows assumes that the Proponent has chosen to prepare both a DIS and a FIS.

NIRB GUIDELINE CONFORMITY REVIEW OF DIS

Once the NIRB receives the hard copy of the DIS the NIRB will conduct an internal conformity review of the material to determine whether the DIS conforms to the Final IS Guidelines. The NIRB's guideline conformity review is a presence or absence analysis focused solely on identifying if any of the information requested in the Final IS Guidelines has been omitted from the DIS and whether the NIRB's Minimum IS Requirements¹⁰ have been met. The conformity review is NOT intended to evaluate the quality of the information presented, although the NIRB may point out areas of the DIS where there are significant deficiencies.

If the NIRB identifies significant information gaps or otherwise determines that the DIS does not conform to the IS information requirements, the NIRB will advise the Proponent and the distribution list, including Authorizing Agencies. The Proponent is then responsible for submitting the supplementary information required to conform and the Proponent may, depending upon the nature and extent of the non-conformity, be required to revise and resubmit the DIS. Until the NIRB indicates that the DIS conforms with the EIS information requirements, no formal technical review of the DIS will proceed.

When the NIRB indicates that the DIS conforms to the requirements, the Proponent will be instructed to provide electronic and hard copies to interested parties and to submit any additional outstanding information. Once all parties, including Authorizing Agencies have received copies of the DIS (electronic or hard copy), the NIRB will initiate the technical review period of the DIS.

TECHNICAL REVIEW OF THE DIS

A technical review is a more detailed review of the DIS than the guideline conformity review, and the focus is an analysis of the quality of the information presented by the Proponent which starts with an Information Request stage where Authorizing Agencies, members of the public, and other interested parties comment and then moves to Technical Comments.

¹⁰ For a listing of these requirements see Part 8.0 of the Proponents' Guide to the NIRB.

Information Requests (IRs)

During the preliminary phase of the DIS technical review the NIRB will invite parties to submit Information Requests (IRs) to the Proponent and/or to other parties. **The purpose of IRs is to identify information gaps that prevent the requesting party from being able to complete their substantive and qualitative technical review of the DIS.** If there is information that a reviewer requires in order to be able to embark on their technical review, it should be identified at the IR stage. At this time, the Proponent may also choose to submit IRs to the parties. The process for submitting and receiving IRs is generally as follows:

1. Parties submit their IRs to the NIRB within the time period specified;
2. The IRs must contain the following information:
 - a. To whom the IR is directed;
 - b. Identification of the issue;
 - c. The concern associated with the issue; and
 - d. A clear rationale of the issue's importance to the environmental assessment of the project.
3. Depending on the IRs received, the NIRB may review the IRs to identify whether or not the information requested is appropriately categorized as an IR (more substantive technical review comments are generally deferred to discussion in the context of the parties' technical review and any resulting technical meeting) and whether or not it is reasonable to request that this information be supplied at this stage in the review. On this basis, the NIRB may provide direction to the party to whom the IR is directed as to whether that party must respond at this stage in the review. Regardless of whether the Board directs a given party to respond to a given IR at this stage in the process, the Board does forward all IRs provided to the relevant party and they can choose to reply to the IRs received, regardless of whether the NIRB directs them to respond at this stage in the review or not;
4. The NIRB may set a timeframe for parties to respond, and allows flexibility for the Proponent's own responses to IRs; and

The NIRB will post all responses received on the NIRB public registry and will notify the distribution list.

Parties requesting responses to IRs are reminded that IRs generally focus on information gaps that can reasonably be expected to be provided at the preliminary stage of the review and are not technical review comments providing a qualitative assessment of information that has been supplied by the Proponent.

For example, a requesting party may note that there is a wildlife management plan provided with the DIS but that the plan does not currently include Polar Bears which is an area of the commenting parties' jurisdiction. Before the commenting party could provide technical review comments regarding the adequacy of the plan to address their area of jurisdiction, the party will need to have a response to their IR asking for information regarding the extent to which Polar Bears have been included in the wildlife management plan or whether management of Polar Bear interactions are located elsewhere.

In contrast, if the DIS contains a wildlife management plan that included Polar Bears but the commenting party upon review of the plan determines that the measures applicable to Polar Bears in the plan are inadequate and alternate measures need to be added the request to supplement the plan and to add additional measures is not best characterized as an IR, but rather a technical review comment that should likely be deferred to the technical review comment period.

Technical Review

Following the receipt of the Proponent's response to IRs, the NIRB requests Authorizing Agencies, members of the public, and other interested parties to provide technical comments in a specific format and provides a timeline for their submission.

In general, the NIRB expects parties to provide the following:

1. Determination as to whether the party agrees/disagrees with the conclusions in the DIS regarding the alternatives assessment, environmental impacts, proposed mitigation, significance of impacts, and monitoring measures – including the reasons supporting the determination;
2. Determination of whether or not the conclusions drawn in the DIS are supported by the analysis – and reasons to support the determination;
3. Determination of whether appropriate methodology was utilised in the DIS to develop conclusions – and reasons to support the determination, along with

- any proposed alternative methodologies which may be more appropriate (if applicable);
4. Assessment of the quality and presentation of the information in the DIS;
 5. Any comments regarding additional information which would be useful in assessing impacts – and reasons to support any comments made; and,
- Any recommendations for further data collection, analysis, monitoring programs, etc. that may be considered to be required to ensure that effects are minimized.

Following receipt of the technical comments, the Proponent may be provided an opportunity to prepare a brief response to the submissions in advance of a Technical Meeting. Although the NIRB anticipates that all Parties will attend the Technical Meeting to discuss positions and develop solutions related to technical comments and issues, parties are generally encouraged to work together throughout the assessment to dialogue and attempt to resolve technical issues to the extent practicable outside of formal NIRB events, bringing potential resolutions and outstanding items to events such as the Technical Meeting for discussion by all parties.

****Note:** During the technical review stage of the DIS, the NIRB may, as part of the public participation program established for a particular project, facilitate community information meetings and/or open house sessions within communities potentially affected by the proposed Project. The information session meetings are designed to advise community members about the NIRB's process steps, highlight that the DIS has been accepted, and encourage continued public participation throughout the NIRB's Review process. Authorizing Agencies and the Proponent are often invited to attend the information sessions as observers.*

TECHNICAL MEETING

The NIRB may hold a technical meeting involving discussions on technical matters related to the DIS. The NIRB staff facilitates the Technical Meeting, which is kept as informal as possible and the focus is to **resolve outstanding technical issues** prior to the Pre-Hearing Conference (PHC). Technical meetings are generally held in the community most likely to be affected by the proposal and are open to the public if they wish to attend and usually take place over the course of a few days, depending on the scope of the project and concerns submitted by parties. As the focus is on open discussions leading to the resolution of technical issues, the NIRB

Board Members are not present during technical meetings. Breakout sessions may be used during technical meetings and each break out group (e.g., engineering, wildlife, or socio-economics issues) and would be facilitated by the NIRB's staff. During the technical meeting it is the Proponent's responsibility to compile a list of commitments made by the Proponent and the parties. The list of commitments is then carried forward to the PHC for incorporation into the Board's PHC decision.

The Technical Meeting is the primary means of:

- resolving and streamlining technical issues that could remain outstanding going into the Final IS and Final Hearing, and
- developing a meaningful list of commitments from all the parties to govern the review going forward and actively exchanging information and ideas.

Authorizing Agencies, in their capacity as public authorities and future regulators of the activities and undertakings being reviewed, play an essential and critical role at this stage of the Review. As a great deal of facilitated discussion takes place during these meetings there is truly **no substitute for in person attendance** by the relevant technical personnel of an Authorizing Agency. While the Board recognizes that various financial and human resource constraints may limit the ability of Authorizing Agencies to participate fully in this way, the NIRB strongly encourages Authorizing Agencies to take the necessary steps to ensure that their preparation, attendance, and full participation in the NIRB's Technical Meetings yields the benefits of streamlined technical review of the FIS and informed licensing in the event the project is approved to proceed to the licensing stage following the completion of the NIRB's assessment.

****Note:** If, following technical review, the quality of the information and analyses contained in the DIS is considered to only require minor additions and modifications, the Board may elect to accept the DIS as the FIS, in which case the NIRB may exercise its discretion to eliminate or collapse some of the steps that would otherwise be associated with the preparation and submission of the FIS.*

PRE-HEARING CONFERENCE (PHC)

Defined as a hearing held following the technical review of the draft Impact Statement to discuss procedural matters related to the next steps in the NIRB's review process. During the conference the Proponent, parties, Community

Representatives and/or members of the public would assess whether, recognizing the information and documentation about the project proposal received by the Board to date, the project proposal can move forward into the Public Hearing stage. The PHC also provides an opportunity for the Proponent, Authorizing Agencies and parties to provide the Board with confirmation regarding the issues that were resolved during the technical meeting, and to identify those issues that remain outstanding. The PHC may also provide an opportunity for the public to ask questions and provide comments to the Board regarding the project proposal.

Additionally, at the PHC discussions regarding procedural matters related to the next steps in the NIRB review occur such as:

- a. 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 FIS has been submitted and the NIRB deems the FIS to be in compliance);
- b. Confirmation of the participation and attendance of representatives from the Proponent, Authorizing Agencies, registered intervenors, communities and other interested parties at the Final Hearing;
- c. 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;
- d. Identifying whether there will need to be specific deviations from the NIRB's Rules of Procedure;
- e. (if applicable) terms of reference for a site visit; and
- f. Any other matters that may aid in the simplification of the Final Hearing.

Following the PHC, the Board issues a PHC decision which may: provide direction to the Proponent regarding issues that need to be addressed going forward, outline the procedures for the review of the FIS, and provide procedural information regarding the Final Hearing.

PREPARATION AND SUBMISSION OF THE FINAL IMPACT STATEMENT BY THE PROPONENT

It is the responsibility of the Proponent to prepare the FIS in accordance with the IS Guidelines, the PHC decision which includes the list of commitments formulated at the Technical Meeting and approved by the Board. The FIS is also expected to be a more fulsome report addressing issues that either the Board identified or the

Proponent committed to working on during the Technical Meeting and/or PHC and provide detailed plans/programs for the monitoring and mitigation and specifically address thresholds and how the precautionary principle has been applied and would be monitored for during the project, if approved.

NIRB FIS CONCORDANCE REVIEW

Following receipt of a hard copy of the FIS submission, the NIRB will conduct an internal review of the material to determine whether the FIS complies with the IS Guidelines, the direction provided by the Board in its PHC decision and is consistent with the list of commitments. Similar to the DIS conformity review, the FIS compliance review is a presence or absence analysis and is not intended to evaluate the quality of the information presented (although the NIRB may point out any significant deficiencies that are encountered). If the NIRB determines that the FIS does not comply with the requirements, the Proponent is notified and will be required to submit supplementary information. If the FIS is found to be significantly non-compliant with the PHC decision, it may be returned to the Proponent for revision and resubmission.

When the NIRB indicates that the FIS complies with the requirements and the parties have received their copies of the FIS (electronic or hard copy), the NIRB will initiate the technical review of the FIS.

TECHNICAL REVIEW OF THE FIS

Like the DIS technical review, the FIS technical review is a detailed analysis of the FIS. The focus of the technical review of the FIS is on the quality of the new and/or revised information presented by the Proponent and also involves reconsidering the information previously submitted in the DIS and the overall project in light of any updated or additional information provided in the FIS.

Depending upon the nature and extent of information that remains outstanding at this stage, the NIRB may also facilitate a second round of IRs at the beginning of the FIS technical review phase as outlined in the section above on the Technical Review of the DIS.

Although the NIRB may advise interested parties, including Authorizing Agencies, of additional requirements to be included in the technical review phase of the FIS, in general the NIRB expects technical review comments to consist of the following items. Further, Authorizing Agencies are typically requested to include these technical review comments in the final written submissions they file with the Board

in advance of the Final Hearing.

- a. Determination of whether parties agree/disagree with the conclusions regarding the alternatives assessment, environmental impacts, proposed mitigation, significance of impacts, and monitoring measures – and all evidence supporting the parties’ position;
- b. Determination of whether or not conclusions in the FIS are supported by the analysis – and all evidence supporting the parties’ position;
- c. Determination of whether appropriate methodology was utilised to develop conclusions – and all evidence supporting the parties’ position;
- d. An assessment of the quality of the information presented; and
- e. Determination regarding the appropriateness of proposed monitoring measures – and evidence to support the determination, along with any proposed alternative monitoring measures which may be more appropriate (if applicable).

Interested parties are typically requested to include these technical review comments in the Final Written Submissions filed with the Board in advance of the Final Hearing.

FINAL HEARING

A Final Hearing provides a public forum for the discussion of proposed projects. Interested parties, such as Authorizing Agencies, registered Intervenors, and members of the public affected by a project proposal are given the chance to provide the Board Members with their comments and concerns, as well as to present information directly to the Board. The Final Hearing also gives significant weight to the opinions of Elders and community members, and to the tradition of Inuit oral communication and decision-making. Designated Inuit Organizations are allowed full standing in any proceedings before the NIRB.

For a detailed summary of the general procedures followed by the NIRB in respect of hearings, refer to the separate document entitled *NIRB: Rules of Procedure* (Sept 2009). However, participants should keep in mind that the Board does have the power to modify or deviate from these general rules when the requirements of procedural fairness in any given case necessitate such changes.

***Note:** *Based on the nature of the project and range of impacts, the NIRB may choose to conduct the Final Hearing as a written hearing, oral hearing or in such other form as the NIRB deems appropriate. The Board generally communicates its choice of the type and location of the Final Hearing in the Board's Public Notice of Hearing which is issued at least 60 days prior to the Final Hearing.*

The full participation of Authorizing Agencies in the Final Hearing phase of a NIRB review is viewed by the Board as **essential** to conducting a thorough and inclusive impact assessment. The NIRB also considers the contributions of Authorizing Agencies as central to ensuring that the Board's report and any recommended terms and conditions adequately reflect the jurisdiction, issues, concerns, evidence and perspective of the Authorizing Agencies who may subsequently be responsible for implementing the NIRB's recommended terms and conditions (if the project under review is approved to proceed and a NIRB project certificate is issued as a result).

In addition, where the Final Hearing is an oral hearing, all Authorizing Agencies are expected by the Board to be available throughout the Final Hearing to not only offer evidence but to be questioned by the Proponent, other interested parties, and the public. Participation by Authorizing Agencies is viewed by the Board as a key factor in maintaining the integrity of Nunavut's integrated regulatory process. Authorizing Agencies' full participation in the NIRB review process in general and in **Final Hearings specifically contributes to a community's understanding of the potential for significant impacts, the opportunities for mitigation, the terms and conditions of eventual project approvals, and requirements for ongoing monitoring.**

In contrast, the failure of Authorizing Agencies to contribute to the NIRB review process can **seriously compromise** the effectiveness of the impact assessment process in the overall regulatory scheme. Highlighting the importance of the contributions of Authorizing Agencies or other parties with potentially relevant information to the NIRB's impact assessment process, the NIRB has the power to subpoena those witnesses, documents and things considered necessary to carry out its responsibilities as set out in Article 12, Section 12.2.25 of the *Nunavut Agreement*, and as such can compel the attendance of representatives from relevant Authorizing Agencies and other interested parties at a NIRB Final Hearing as set out in s. 102 of the *NuPPAA*:

NuPPAA s. 102(3): The Board has, in respect of public hearings, the power to summon any person to appear as a witness before the Board and to order the witness to

(a) give evidence, orally or in writing; and

(b) produce any documents or other things that the Board considers necessary to conduct its review of the project.

FACTORS TAKEN INTO ACCOUNT DURING THE BOARD'S REVIEW OF A PROJECT

As outlined in Article 12, Section 12.5.5 of the *Nunavut Agreement* and s. 103 of the *NuPPAA*, when conducting the review of a project, the Board is required to take into account the following factors:

- (a) the purpose of the project and the need for the project;
- (b) whether, and to what extent, the project would protect and enhance the existing and future well-being of the residents and communities of the designated area, taking into account the interests of other Canadians;
- (c) whether the project reflects the priorities and values of the residents of the designated area;
- (d) the anticipated effects of the environment on the project, including effects associated with natural phenomena, such as meteorological and seismological activity, and climate change;
- (e) the anticipated ecosystemic and socioeconomic impacts of the project, including those arising from the effects referred to in paragraph (d);
- (f) the cumulative ecosystemic and socioeconomic impacts that could result from the impacts of the project combined with those of any other project that has been carried out, is being carried out or is likely to be carried out;
- (g) whether the impacts referred to in paragraphs (e) and (f) would unduly prejudice the ecosystemic integrity of the designated area;
- (h) the measures, including those proposed by the proponent, that should be taken to:
 - (i) avoid and mitigate adverse ecosystemic and socio-economic impacts, including contingency plans,

(ii) optimize the benefits of the project, with specific consideration given to expressed community and regional preferences in regard to benefits,

(iii) compensate persons whose interests are adversely affected by the project, and

(iv) restore ecosystemic integrity after the permanent closure of the project;

(i) the significance of the impacts referred to in paragraphs (e) and (f), taking into account the measures referred to in paragraph (h);

(j) the capacity of renewable resources that are likely to be significantly affected by the project to meet the existing and future needs of the residents of the designated area;

(k) any monitoring program of the project's ecosystemic and socio-economic impacts that should be established, including one proposed by the proponent;

(l) the interests in land and waters that the proponent has acquired or seeks to acquire;

(m) the options for carrying out the project that are technically and economically feasible and the anticipated ecosystemic and socio-economic impacts of such options;

(n) the posting of performance bonds;

(o) the particular issues or concerns identified under subsection 96(1) of the *NuPPAA* [issues identified by the Minister when sending the proposal to the Board for review]; and

(p) any other matter within the Board's jurisdiction that, in its opinion, should be considered.

In addition, the Board is required to take into account any traditional or community knowledge provided to the NIRB.

SUBMISSION OF THE NIRB's FINAL HEARING REPORT TO THE MINISTER

Within 45 days after the Final Hearing and/or the close of the Final Hearing record, the NIRB must issue a report on the project proposal to the relevant and responsible Minister(s) (in all cases, this includes copy to the Minister of

Intergovernmental Affairs, Northern Affairs and Internal Trade). The report is also provided to the Proponent, parties, project distribution list, and the public as it contains a description of the project with the finalized scope, the Board's assessment of the project and its impacts and, based on this assessment, the Board's recommendation regarding whether or not the project should proceed.

Where the NIRB concludes that the project should proceed, the Board's report also contains recommended terms and conditions considered by the NIRB to be required to protect and promote the existing and future well-being of the residents and communities of the Nunavut Settlement Area, specifically and Canada, in general and to protect the ecosystemic integrity of the Nunavut Settlement Area.

Wherever possible, the NIRB has used the following format for the proposed project-specific terms and conditions to provide clear direction on the intended application, objectives, and reporting requirements:

Category: Identifies the relevant environmental component or project activity to which the term and condition applies. Wherever possible categories have been labelled to directly associate back to the Final Impact Statement/Final Impact Statement Addendum and Impact Statement Guidelines prepared for the Project.

Responsible Parties: Identifies the proposed parties responsible for implementation of the term and condition. While this is generally the Proponent, at times other agencies have been implicated as appropriate.

Project Phase: Identifies the phase(s) of Project development to which the term and condition is applicable. Project phase may include any one (1) or more of the following:

- Pre-Construction - includes site preparation and staging of materials and equipment in advance of construction
- Construction
- Operations
- Temporary Closure /Care and Maintenance
- Closure and Post-Closure - includes abandonment, decommissioning, and reclamation

Objective: Provides a short description of the impact or effect being mitigated, or issue the term and conditions is meant to address. Where relevant, expectations have been provided regarding the timing for when terms and conditions will be

deemed to be satisfied (i.e., sunset clause), and who has discretion for determining they are satisfied.

Term or Condition: Provides specific direction on the required action or follow up. In most instances the NIRB has endeavoured to use generalized wording to allow for maximum flexibility in achieving the stated objective, however, more explicit direction has been provided where deemed necessary.

Reporting Requirements: Sets out any specific reporting parameters required to measure achievement of objectives or to demonstrate compliance, as well as the required frequency of reporting. Consideration will be given to coordination of Project Certificate reporting requirements with reporting requirements as established by other regulatory instruments associated with the Project.

Table 2: Example of format used for proposed NIRB Project Certificate terms and conditions

Term and Condition No.	1.
Category:	
Responsible Parties:	
Project Phase:	
Objective:	
Term or Condition:	
Reporting Requirements:	

MINISTER(S) DECISION

Although the NIRB makes recommendations in its report on the Final Hearing, the responsible Minister(s) makes the final decision. Where the Minister(s) determines that the report is deficient with respect to ecosystemic and socio-economic issues,

the Minister may within 90 days after receiving the Board's report advise the Board of the deficiency and may refer the report back to the NIRB for further review or public hearings. Within 45 days after additional review or hearings are conducted, the NIRB is required to submit another report to the Minister, which shall be accepted or rejected in keeping with the same options as set out below.

Under s. 105 of the *NuPPAA*, if the Board determines that a project should proceed, the Minister must, within 150 days after receiving the Board's report take one of the following courses of action:

Option One: Accept the Board's determination that the project should proceed, including accepting all of the recommended terms and conditions.

Option Two: Reject the Board's determination that a project should proceed on the basis that the proposal is not in the national or regional interest.

Option Three: Accept the Board's determination that a project should proceed but reject the recommended terms and conditions on the grounds that:

- a. one or more of the terms and conditions are more onerous than necessary or conversely that one or more of the terms and conditions are insufficient to mitigate to an acceptable level the ecosystemic and socio-economic impacts; or
- b. the terms and conditions are so onerous that they would undermine the viability of a project that is in the national or regional interest.

In the situation with respect to **Option Three** above, the NIRB must, within 30 days after the Minister's decision, reconsider the terms and conditions in light of reasons put forth by the Minister for rejecting the recommended terms and conditions and must make any changes the Board considers appropriate and submit a revised report to the Minister containing the recommended terms and conditions applicable to the Project.

Under s. 106 of the *NuPPAA*, if the Board determines that a project should NOT proceed, the Minister must, within 150 days after receiving the Board's report take one of the following courses of action:

Option One: Reject the determination that a project should not proceed on the grounds that the project should have been approved due to its importance to the national or regional interest. In this situation, the Minister will refer the report back to the NIRB to determine appropriate terms and conditions.

Option Two: Accept the Board’s determination that the project should not proceed.

In the situation with respect to **Option One** above, the NIRB must, within 30 days after the Minister’s decision, submit a revised report to the Minister containing terms and conditions that it recommends should apply to the Project.

5.3 What is the approximate timeline of a NIRB review?

The timelines as described below do not include additional time that may be added to the timeline to reflect deadlines occurring on weekends, statutory holidays or holiday breaks such as Christmas and Easter, nor do these timelines include the periods required by the Proponent for the preparation and submission of the DIS, preparation of formal responses and the preparation and submission of the FIS and the other projects being considered by the NIRB.

***Note:** *The timelines associated with any given review may change based on project-specific circumstances and are subject to modification by the NIRB.*

The processes set out within the NIRB’s guides should not be inferred to be applicable to reviews by federal environmental assessment panels under the Nunavut Agreement/NuPPAA, as such panels have authority to establish the respective process requirements under the Nunavut Agreement/NuPPAA.

In general the NIRB review timeline is as follows:

Table 3: NIRB Review Process General Timelines

1. Scoping completed and IS Guidelines issued to Proponent	90 days
2. Draft IS conformity review, acceptance, and IRs forwarded to Proponent	48 days
3. Draft IS technical review, Technical Meeting and PHC, and PHC decision issued	110 days
4. Final IS compliance review, technical review, Final Hearing, and Final Hearing report issued	125 days
5. Total time for NIRB Review:	283 - 400 days

A NIRB Review is broken down into three (3) phases and the timeline for each phase is described below.

Table 4: NIRB Timelines for a Review – Phase 1: IS Guidelines

Approx. time to complete (days)	
	Direction received from Minister to review the project proposal NIRB Review commences, notice issued to distribution list. Procedures for scoping and impact statement (IS) guideline development outlined
21 days	<i>Draft</i> scope and <i>Draft</i> IS guidelines released for comment. Dates for community scoping and IS Guidelines sessions announced
14-21 days	Community scoping sessions to collect oral and written comments
21-45 days	Comments received from parties on <i>Draft</i> Scope and <i>Draft</i> IS guidelines
7-10 days	Final Scope released, and <i>revised Draft</i> IS Guidelines released for comment
21 days	Comments received from Parties on <i>revised Draft</i> IS Guidelines
1-2 days	IS Guidelines Workshop
10-14 days	Final IS Guidelines released

The Proponent will develop a *Draft* IS with the issued IS Guidelines based on its own timetable, making this section of the Review completely Proponent-driven.

If however, the Proponent applies to have its project proposal accepted as a *Draft* IS, the aforementioned timelines could be modified by the NIRB as the need for the IS guidelines would not be required if the Board is of the opinion that the information contained in the description.

As noted above, a conformity review of the submission may result in a negative decision, and the Proponent may be required to complete extensive revisions to the submission and a second conformity review are required before continuing with the technical review period.

Likewise, Authorizing Agencies should be aware that an application to accept a project proposal as a *Draft IS* may be rejected, making scoping and guideline development mandatory. The time required for submission of an adequate IR response is primarily Proponent-driven. However, under some circumstances, the NIRB may exercise its discretion and establish an acceptable timeline for the Proponent's response.

Table 5: NIRB Timelines for a Review – Phase 2: Draft IS

Approx. time to complete (days)	
	Proponent submits a Draft IS to the NIRB
15 days	NIRB determines if the document conforms to the IS Guidelines. If yes, the NIRB requests information requests (IRs) from parties
14-30 days	Parties prepares IRs and submits them to the NIRB who then review them and send IRs to the proponent
14-21 days	Proponent submits IR Response Package and technical review of the Draft IS begins.
2-5 days	Technical Comments Requested Tentative dates for Technical Meeting and Pre-Hearing Conference (PHC) and Community Round Table announced
60 days	The NIRB receives Technical Review comments from Parties and forwards them to the Proponent
14-21 days	The Proponent responds to Technical Comments
1-2 days	Technical Meeting is held
2-4 days	PHC and Community Round Table is held

30 days	Board issues PHC decision on direction for submission of <i>Final</i> IS which includes any administrative matters.
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The Proponent develops a *Final* IS in compliance with the NIRB’s direction in the PHC decision report based on its own timetable, making this section of the review Proponent-driven.

Table 6: NIRB Timelines for a Review – Phase 3: Final IS

Approx. time to complete (days)	
	Proponent submits a Final IS submission Concordance review is conducted with the PHC decision
15 days	The NIRB issues concordance determination and announces the Final Hearing and Community Round Table Requests Final Written Submissions
60 days	The NIRB receives Final Written Submissions from parties and forwards to the Proponent
10 days	The Proponent submits the Response to Final Written Submissions
5-14 days	Final Hearing and Community Round Table
45 days	Final Hearing Report Issued

5.4 Exceptions from Review

A Note about Exemptions from Screening versus Exceptions from Review:

As set out in [Part 3.0](#) of this Guide some types of project proposals are *exempt* from the *Nunavut Agreement* requirement for screening by the NIRB and as a result the NIRB does not consider or conduct any impact

assessment of such activities. In contrast, this Part of the Guide discusses activities that may be excepted from the NIRB review process.

Under the exceptions from review provisions of the *Nunavut Agreement*, the NIRB still assesses the potential ecosystemic and socio-economic impacts that may be associated with these activities and may provide recommendations regarding appropriate mitigation measures and other factors to the Authorizing Agencies (this is similar to the NIRB's screening decisions). In addition, for those exploration and development activities the NIRB excepts from review, the Board may also prescribe mitigation measures and other recommendations that need to be incorporated into any subsequent approvals (e.g., NIRB project certificate) for the related project under review.

As outlined below, Article 12, Section 12.10.1 of the *Nunavut Agreement* and s. 75 of the *NuPPAA* establish that during the review process, no licence or approval that would be required in order to allow a proposed project to proceed (e.g., water licences, authorizations under the Federal Fisheries Act, land lease agreements with land owners, etc.) shall be issued by a Regulatory Authority in respect of the project until after the required review has been completed and a NIRB project certificate has been issued.

Nunavut Agreement, Article 12, Section 12.10.1: No licence or approval that would be required in order to allow a proposed project to proceed shall be issued in respect of a project that is to be screened by NIRB until the screening has been completed and, if a review pursuant to Part 5 or 6 is to be conducted, until after that review has been completed and a NIRB project certificate has been issued by NIRB pursuant to these provisions.

NuPPAA s. 75(1): A regulatory authority is not authorized to issue a licence, permit or other authorization in respect of a project if...

(b) the assessment of the project under this Part has not been completed;

This general prohibition is modified, however, by Article 12, Section 12.10.2 and Article 13, Section 13.5.5 of the *Nunavut Agreement* and ss. 154 and 155 of the *NuPPAA*. These sections allow for approvals or licences to be issued prior to the completion of a review under specific circumstances:

Exceptions

Nunavut Agreement, Article 12, Section 12.10.2: Notwithstanding section 12.10.1, where a project proposal has been referred for review pursuant to Part 5 or 6, approvals or licences for exploration or development activities related to that project may be issued if:

- (a) the activity falls within Schedule 12-1; or*
- (b) the activity can, in the judgement of NIRB, proceed without such a review.*

Nunavut Agreement, Article 13, Section 13.5.5: Notwithstanding Section 12.10.1, the NWB [Nunavut Water Board] shall not be precluded from issuing interim, short-term approvals for water uses related to exploration or developmental work for a proposal under development impact review.

Under these sections of the *Nunavut Agreement* and ss. 154 and 155 of the *NuPPAA*, when a project proposal is undergoing a NIRB review approvals or licences for exploration or development activities related to that project may be issued if:

- a. The activity falls within a list of project types normally exempt from the requirement for screening (*Nunavut Agreement* Schedule 12-1);¹¹ or
- b. If in the judgement of the NIRB the activity may proceed without such a review.

***Note:** *The NIRB has the sole discretion to determine whether, in the circumstances of a given review and exception application, the proposed activities fit within the criteria of Article 12, Section 12.10.2(b) of the Nunavut Agreement and s. 155(1) of NuPPAA and can be assessed separately from the NIRB review as a result. However, when the NIRB receives an application from the proponent to except exploration or development activities from review, the Board typically solicits comments on the application from all participants, including Intervenors and members of the public.*

¹¹ As noted above, the exemptions from screening under Schedule 12-1 are discussed in [Part 3.0](#) of this Guide.

CIRCUMSTANCES WHERE EXPLORATION AND/OR DEVELOPMENT ACTIVITIES MAY BE EXCEPTED FROM REVIEW

There are limited circumstances where the NIRB may determine that exploration and/or development activities can be allowed to proceed while a related project is undergoing review. Although the NIRB will consider each application on its merits, in general, the following circumstances may be considered by the NIRB to be appropriate exceptions from review:

- a. Permits, licences or approvals are required to facilitate **scientific research** and/or the collection of data to support the review of a project proposal;
- b. Permits, licences or approvals are required to allow for continued **exploration and/or bulk sampling programs** while a related project is undergoing review; and/or
- c. Permits, licences or approvals are required to **facilitate the limited transport and storage of equipment and materials** related to a project undergoing review, in recognition of the seasonal constraints imposed by the arctic conditions of the Nunavut Settlement Area.

In general, the following types of activities *may be* considered by the NIRB as appropriate to be considered as exceptions from review:

- a. Research carried out within the defined project area and/or research with the primary purpose of supporting the ongoing review of the related project;
- b. The extension, renewal or minor amendment of previously approved exploration and/or activities associated with the project undergoing review;
- c. Transport of fuel, equipment and materials associated with the related project undergoing review, including the related construction and operation of winter roads/trails, temporary airstrips and temporary onshore offloading facilities; and/or
- d. Short term storage of fuel, equipment and materials associated with the related project undergoing review, including establishment of storage facilities and related use of existing or new quarry and borrow sources.

The types of activities captured under this part of the *Nunavut Agreement* and the *NuPPAA* are activities which can be described as exploration or development activities in connection with project proposals which are undergoing review under Article 12, Part 5 or Part 6 of the *Nunavut Agreement* or ss. 99-132 of the *NuPPAA*. Any activity which is included as a **significant component** of the related project under review should not be included in an exception application. In addition, the Board does not consider it appropriate to include activities involving the construction of significant project components of the related project undergoing review in an application for exception from review and these construction activities should not be included in an exception application.

CONSIDERATIONS RELEVANT TO THE NIRB'S ASSESSMENT OF AN EXCEPTION APPLICATION

Although the NIRB considers each application under Article 12, Section 12.10.2(b) of the *Nunavut Agreement* and ss. 154 or 155 of the *NuPPAA* on its own merits, in general, the NIRB considers the following:

1. Exceptions from review **cannot** be granted where the exception would impede the NIRB from carrying out its broader environmental assessment functions to:
 - a. review the ecosystemic and socio-economic impacts of proposed projects;
 - b. gauge and define the extent of the regional impacts of proposed projects; and
 - c. determine, on the basis of its review, whether project proposals should proceed, and if so, under what terms and conditions.
2. Exploration and/or development activities which have been **explicitly included within the scope of a Minister's referral** for review may not be allowed to proceed as exceptions to a review by the NIRB.
3. The final determination of whether a project can proceed after a NIRB Review is within the discretion of the responsible Government Minister(s). Consequently, the ability of the NIRB to consider certain activities independently of a related review through Article 12, Section 12.10.2(b) of the *Nunavut Agreement* and ss. 154 or 155 of the *NuPPAA* **cannot fetter, or be seen to fetter, the Minister's ultimate decision-making authority** with respect to whether the related project undergoing review may proceed after the NIRB review is completed.

4. A determination by the NIRB to allow specific exploration and/or development activities to proceed **independently of the review** of a related project under Article 12, Section 12.10.2(b) of the *Nunavut Agreement* and ss. 154 or 155 of the *NuPPAA* does NOT affect the requirement for the Proponent to obtain any licences, permits or approvals from Authorizing Agencies required to undertake the activities.
5. The NIRB's consideration of an application for exception and resulting determination is in no way an indication of the likely outcome of the review process associated with the related project undergoing review. The NIRB's consideration of an application for exception does not affect the Board or Federal Panel's ultimate determination regarding whether the project under review should proceed, nor the issuance of a NIRB project certificate following the final decision of the Minister.
6. If the NIRB grants an exception under these provisions of the *Nunavut Agreement* and the *NuPPAA*, and a project Proponent undertakes activities in advance of the completion of the Review of the related project, in the event that the related project does not proceed, the Proponent may be required to take the steps reasonably necessary to remove all materials, infrastructure, etc. associated with the exploration and/or development activities that proceeded in advance of the review of the related project, and may also be required to restore the environment to a pre-disturbed state.

In assessing whether the activities included within the scope of an application for an exception should be authorized **independently** of the related project undergoing review, the NIRB may also consider the following factors:

1. Rationale, objective and implications of the proposed activities on the feasibility of the related project undergoing review;
2. The permanence of proposed structures;
3. Alternative uses of proposed structures or materials if the related project under review was not to be approved;
4. Significance of potential ecosystemic and socio-economic impacts;
5. Public concern; and
6. Posting of security/performance bonds.

THE NIRB'S REVIEW OF AN EXCEPTION APPLICATION

Referral of an Application, Initial Review, and Dissemination

Generally, an application for exception is submitted by the Proponent to the Nunavut Planning Commission (NPC) and includes the NIRB and the Nunavut Water Board as appropriate depending on the significance of the modification. The NPC must determine confirmation that the activities included in the application for exception under Article 12, Section 12.10.2(b) of the *Nunavut Agreement* and ss. 154 or 155 of the *NuPPAA* are included in the NPC conformity determination of the related project under review, or alternatively identifying that a new conformity determination is required to be conducted for the proposed activities.

Assuming that no additional conformity review is required or that the NPC has provided the NIRB with an additional positive conformity decision, the NIRB will process the exception application by conducting a concordance review against the information requirements identified in Part 9 of the Proponents' Guide to the NIRB. If deficiencies are noted or additional clarification is required, the NIRB will advise the Proponent and await the receipt of the required information.

If, based on activities described in the exception application, the NIRB determines it is inappropriate to consider the type of activities as exceptions, the Board will reject the application and advise the Proponent accordingly.

If the exception application is accepted by the NIRB and is considered to be complete, the Board will post notice of the application and invite Authorizing Agencies, other relevant federal and territorial government departments, Designated Inuit Organizations, community organizations, and members of the public potentially affected by the proposed exploration and/or development activities, to provide comments in respect of the application within a specified time.

Comments Provided

Upon receipt of comments regarding the application from Authorizing Agencies, Designated Inuit Organizations, other interested parties and members of the public potentially affected by the proposed exploration and/or development activities, the NIRB will review the comments received and determine whether a further response from the Proponent is warranted or whether the comments are such that the project Proponent should be given the opportunity to consider amending the exception application.

If the NIRB determines that no further response from the project Proponent is required, the Board will then make a determination on the application.

Opportunity to Respond to Comments and/or Amend the Application

If, however, the NIRB determines the Proponent should provide a response to comments, the NIRB advises the Proponent and establishes a time period for receipt of the Proponent's response. At this time, the NIRB may also invite the project Proponent to amend its application in response to comments received (including but not limited to amendments required to address significant public concern relating to specific exploration and/or development activities).

The NIRB's Determination

Following the receipt and review of all necessary information, including: the application; any comments received; and any response or amendments to the application by the project Proponent, the NIRB will make its determination. The NIRB may make **one** of the following decisions:

Grant the Exception

If the NIRB determines that it is appropriate, all exploration and/or development activities proposed in the application may be granted an exception from review under Article 12, Section 12.10.2(b) of the *Nunavut Agreement* and s. 155(1)(b) of the *NuPPAA*, and the activities excepted from review may proceed independently of the ongoing NIRB review of the related project.

In the NIRB's determination, the Board may offer recommendations to Authorizing Agencies regarding terms and conditions that the NIRB considers appropriate to mitigate the effects of these activities. Once the activities have been determined to be acceptable exceptions from the NIRB Review, the Proponent may engage with the Authorizing Agencies to seek the authorization(s) required to carry out the excepted activities.

Reject the Application in its Entirety

If the NIRB determines that the exploration and/or development activities included in the exception application cannot be permitted to proceed independently of the ongoing review of the related project, the proposed activities included in the application can *only* be approved by Authorizing Agencies *after* the NIRB review process has been completed and a project certificate has been issued.

Partially Grant the Exception

The NIRB may identify that **only specified exploration and/or development activities** included in the exception application may proceed independently of the ongoing NIRB review of the related project and the Board may make recommendations to Authorizing Agencies regarding terms and conditions that the NIRB considers appropriate to mitigate the effects of these activities. For activities

the NIRB has determined are validly excepted from review under Article 12, Section 12.10.2(b) of the *Nunavut Agreement* and s. 155(1)(b) of the *NuPPAA*, the applicable Authorizing Agencies may proceed to process the applications.

For activities that the NIRB determines should not be exceptions from Review, those activities *cannot* be approved by the responsible Authorizing Agencies until *after* the NIRB review process has been completed and a project certificate has been issued.

6.0 PROJECT CERTIFICATE

6.1 Introduction

If, following the completion of a review, a project is recommended to be allowed to proceed by the Nunavut Impact Review Board (NIRB or Board) and the **responsible Minister(s) accept the NIRB's report and the recommended terms and conditions (as they may be amended by the Minister)**, the NIRB must issue a project certificate to the Proponent. Essentially, the project certificate allows the NIRB and the Authorizing Agencies to revisit the impact predictions and proposed mitigation measures provided by a project Proponent in the Environmental Impact Statement produced during a NIRB review to assess, whether, the project as actually implemented, accords with the impact predictions and whether the proposed mitigation measures are in fact effective.

Note: *The Minister(s) may also vary (s. 112(6)(b)) or add terms and conditions (s. 112(7) of the NuPPAA) to a Project Certificate.*

In general, while there may be some overlap between the terms and conditions in a project certificate and the terms and conditions contained in the specific authorizations issued by Authorizing Agencies pursuant to licences or permits required to carry out specific project activities, the focus of the project certificate terms and conditions is generally more global than is typical of the specific licences and permits issued by Authorizing Agencies.

In developing project certificate terms and conditions, **the goals of the NIRB are to:**

- provide the **basis for inspection and surveillance** to ensure that the project is implemented as it was proposed, reflecting both the project scope as assessed in the NIRB's impact assessment, and the specific mitigation measures as may be proposed in the Impact Statement, as may be included in any listing of the Proponent's commitments, and as ultimately, would be contained in the project certificate;
- provide a **mechanism for overall compliance and effects monitoring** to ensure impacts remain within predicted levels;

- support **adaptive management** by requiring that unanticipated effects or changes to the magnitude of predicted impacts be identified and that mitigation measures and regulatory instruments be adapted to address unanticipated effects or changes to predicted impacts; and
- adopt **audit and process evaluation measures** to examine and transparently report on the accuracy of predictions, the success or failure of mitigation measures and overall levels of environmental and socio-economic performance of the project and effectiveness of the impact assessment and regulatory processes in supporting environmental performance.

6.2 Issuance of a Project Certificate

In situations where it has been determined that a project should proceed, and the Minister accepts the Final Hearing Report, the NIRB must within **30 days of the Minister's decision** (*NuPPAA* s.111.(1)), finalize the Project Certificate to contain the terms and conditions recommended by the Board which have been accepted or varied by the Minister(s) unless the Minister(s) is of the opinion that more time is required and up to 45 additional days could be granted (*NuPPAA* s. 111.(5)).

Within those 30 days, the NIRB facilitates a Project Certificate Workshop to discuss how project-specific terms and conditions can be implemented by Authorizing Agencies, as well as providing clarification and commentary to the Proponent and Authorizing Agencies for those terms and conditions that may be ambiguous or are otherwise unclear.

It should be noted that, for some of the recommended terms and conditions, a non-binding **Commentary** section may be added following the specific term and condition as an aid to interpretation during the workshop to record the common understanding and interpretation. Any commentary included by the Board is **non-binding and is intended as an aid to interpretation**.

The Board also provides guidance on general regulatory and administrative responsibilities for both the NIRB and the Proponent. This guidance is in relation to include NIRB Monitoring Responsibilities; General Regulatory Requirements; Monitoring Records and their handling; and on-going engagement in project monitoring, modelling, management.

6.3 Project Certificate Implementation and Enforcement

Also as noted in [Part 2.0](#) of this Guide, even if the NIRB has issued a project certificate that contains terms and conditions that are to be subsequently implemented by an Authorizing Agency, the issuance of a project certificate does *not* preclude an Authorizing Agency from subsequently reviewing a project and imposing additional or more stringent terms and conditions, or from refusing to issue a licence or approval that would be required in order to allow a proposed project to proceed.

Under Article 12, Section 12.10.3 of the *Nunavut Agreement*, where the terms and conditions of a project certificate are implemented or incorporated by reference into permits, certificates, licences or other governmental approvals, the enforcement of the terms and conditions included in that authorization remains with the Authorizing Agency.

It should also be noted that under Article 26, Part 3, Section 26.3.2 of the *Nunavut Agreement* and s. 140 of the *NuPPAA*, any Inuit Impact and Benefit Agreement (or IIBA) entered into by a proponent and the applicable Regional Inuit Association under Article 26 of the *Nunavut Agreement* must be consistent with the terms and conditions set out in a project certificate.

Under s. 74(g) of the *NuPPAA*, a Proponent is required to carry out the project in accordance with the terms and conditions set out in the original or amended project certificate.

6.4 Changes to a Project Certificate

Under Article 12, Section 12.8.2 of the *Nunavut Agreement* and s. 112 of the *NuPPAA*, any time after the issuance of a project certificate, the NIRB may reconsider the terms and conditions contained in the NIRB project certificate. The review of a project certificate may be initiated independently by the Board on its own initiative, upon application by a Designated Inuit Organization, the Proponent, or other interested parties or by the Minister under Article 12, Section 12.8.3 of the *Nunavut Agreement* and s. 112(2) of the *NuPPAA*.

In order to proceed with a reconsideration of the project certificate it must be established that:

- a. The terms and conditions contained in the project certificate are **not achieving their purpose**

- b. The circumstances relating to the project or the effect of the terms and conditions are **significantly different** from those anticipated at the time the project certificate was issued; or
- c. There are technological developments or new information which provide a **more efficient method** of accomplishing the purpose of the terms and conditions.

As illustrated in *Approaches to Assessment of Proposed Amendments to Approved Projects* ([Figure 8](#)), when the NIRB receives notification of proposed amendments to a previously-assessed project, there are a number of factors to be considered by the Board in order to determine whether the requested modification constitutes a significant modification that requires a NIRB assessment. If the NIRB decides an assessment is required, it also determines the scope and process of the subsequent assessment. The NIRB notes that in most cases, by the time a modification proposal is reviewed by the NIRB, the Nunavut Planning Commission (NPC or the Commission) will have already made the determination that the modification proposal constitutes a significant modification and will have referred the modification proposal to the NIRB for assessment on that basis. In some cases, the NIRB may also have been consulted by the Commission leading up to the Commission's significance determination.

In general, although the NIRB has the jurisdiction under s. 146 of the *NuPPAA* to consider, on its own, whether a modification proposal constitutes a significant modification, recognizing the "one window approach" and the integrated regulatory process established under Articles 10-13 of the *Nunavut Agreement* and under the *NuPPAA*, the Board expects that generally the NIRB will rely on the Commission's finding that a modification proposal constitutes a significant modification. The Board expects it will only be in very rare instances when the NIRB, upon consideration of the potential impacts of a modification proposal would differ from the Commission's view that the modification proposal constitutes a significant modification.



April 6, 2018

Nunavut Impact Review Board Guidance: Approaches to Assessment of Proposed Amendments to Approved Projects

Manifestly Insignificant: No submissions to NPC/NIRB Required	Proposed amendment does not meet the definition of project under the <i>Nunavut Planning and Project Assessment Act (NuPPAA)</i> and is not required to be submitted to the NPC or NIRB.	E.g. Routine maintenance or replacement of storage buildings at an approved mine site.
Non-significant Amendment: NIRB Assessment Not Required	Minor project amendment proposed and additional authorizations or amendments to authorizations are below the threshold for NIRB Screening and/or reconsideration of Project Certificate terms and conditions. Submission to NPC only required.	E.g. Archaeological field program for an approved mining development.
Non-significant Amendment: Screening Not Required; Implications for NIRB Monitoring Program	Proposed amendment not a significant modification to original project, however, changes may have implications for the NIRB's monitoring program and required reporting. NIRB may invite comments to confirm whether reconsideration of Project Certificate terms and conditions necessary	E.g. Crown Pillar Recovery amendment to the Doris North Project (NIRB File No. 05MN047)
Significant Amendment: Screening of Independent Project Proposal Required	Proposed amendment is a significant modification to the original project <u>but</u> the proposed modification is not integrally linked to the original project as assessed by the NIRB, and should be assessed as an independent project proposal.	E.g. Whale Tail Pit Project Proposal (NIRB File No. 16MN056). Many screening files annually.
Significant Amendment: PC Reconsideration Required	Proposed project amendment is significant <u>and</u> is integrally linked to original project as assessed by the NIRB; assessment of the proposed modification as an independent project proposal is inappropriate; modification assessed via a reconsideration of the Project Certificate.	E.g. Mary River Phase 2 Proposal (NIRB File No. 08MN053)
Significant Amendment: Deemed Unacceptable by NPC	Proposed amendment is a significant modification to the original project and the NPC determines that the modification is <u>not</u> in conformity with an approved land use plan. Proposal will not be forwarded to the NIRB for further assessment until land use planning requirements are met.	E.g. amendment to Mary River Phase 2 Proposal (NIRB File No. 08MN053) proposing winter shipping and ice-breaking

Figure 8: Approaches to Assessment of Proposed Amendment to Approved Projects

In the Board's view, conducting the assessment of a proposed modification as a separate screening may be appropriate in circumstances where the modification proposal is sufficiently separate and distinct from the original previously-assessed project and may be considered as a separate but related project. Examples of this approach include the NIRB's assessment of the mining of a new deposit proposed in Agnico Eagle's Whale Tail Pit Project (NIRB File No.: 16MN056) and also the proposed mining of a new deposit proposed in TMAC's Phase 2 Hope Bay Belt Project (NIRB File No.: 12MN001).

In contrast, where a modification proposal is considered to be within the scope of the assessment of the original project, is integrally-linked to the original project, and is not sufficient in scope to be assessed as a stand alone project, the NIRB has clearly rejected the notion that the only mechanism for assessing such modification proposals is for the Board to conduct a separate screening.¹² As illustrated in several reconsiderations of Project Certificate terms and conditions conducted by the NIRB to date under Article 12, Section 12.8.2 of the *Nunavut Agreement*,¹³ the Board's reconsideration must necessarily include an assessment of the potential for the proposed modification to result in changes to the ecosystemic and socioeconomic effects previously assessed for the original project, and the assessment required by the NIRB during a reconsideration is no less rigorous than a screening (and in some cases, even a full environmental review).

While the NIRB does have considerable discretion as to the precise process for conducting a reconsideration of Project Certificate terms and conditions under Section 12.8.2 of the *Nunavut Agreement* and s. 112 of *NuPPAA*, the NIRB's primary objectives apply to reconsiderations and generally dictate that the NIRB

¹² See for example the NIRB's correspondence to the Nunavut Planning Commission issued February 12, 2013 in relation to the NIRB's reconsideration of the Baffinland Iron Mines Corp.'s Mary River Project triggered by the submission of a modification request described as the Mary River Early Revenue Phase Project, NIRB File: 08MN053.

¹³ See for example the NIRB's February 11, 2013 correspondence to the Minister outlining this approach to Section 12.8.2 in advance of the Board's reconsideration of the Mary River Project Certificate No. 005, NIRB File: 08MN053, which stated:

The changes in the initial stages of project development to the project schedule and to specific activities under the Early Revenue Phase are integrally linked to the Mary River Project as approved under Project Certificate No. 005. Reflecting this linkage, the Board has determined that any potential ecosystemic and socioeconomic effects associated with the changes to the project as proposed in the Early Revenue Phase are best addressed under the existing Project Certificate No. 005. In making this determination, the Board has decided that the Early Revenue Phase does not constitute a distinct, stand alone project that should be subject to a screening and review process separately from the Project as approved under Project Certificate No. 005.

conduct an assessment of the modification proposal with as much rigor as a NIRB screening and sometimes even a review. The flexibility and discretion granted to the NIRB to determine the appropriate process for the assessment of modification proposals through reconsideration of Project Certificate terms and conditions reflects that the scale and scope of the changes requested may vary considerably as previously approved projects are developed, operated, decommissioned, and reclaimed.

However, if the request for initiation of a reconsideration is received from a party other than the Minister(s) or by the NIRB, and if, in the Board's opinion, the reconsideration requires additional assessment of the potential ecosystemic and socio-economic effects beyond the impact assessment completed during the original review, the Board may adapt the steps the Board considers necessary from the NIRB's existing review processes to yield sufficient information to complete the additional impact assessment and support an appropriate level of public engagement, including the solicitation of public comment and potentially the coordination of community consultations.

For example, when the Board receives such a reconsideration request, the Board may provide notice of the request to the Authorizing Agencies, other interested parties and the public and may invite these parties to provide comment regarding the request on topics such as the following:

1. Whether the request meets the requirement for reconsideration set out in Article 12, Section 12.8.2 (a), (b), or (c) and s. 112(1)(a)-(c) of the *NuPPAA*;
2. Whether, reflecting the scope of the request to reconsider, the parties have identified any specific terms and conditions within the existing project certificate that should be reconsidered;
3. Whether any such reconsideration is likely to arouse significant public concern, and if so, describing the basis for that concern; and
4. Identifying any matter of importance to the commenting parties related to the request to reconsider the terms and conditions of the existing project certificate.

If the Board invites comment on the reconsideration request, the Board may then consider the request and the comments received in order to determine whether to grant the reconsideration request.

Given Authorizing Agencies' roles to incorporate relevant terms and conditions from existing project certificates into regulatory instruments and, where relevant, their subsequent enforcement, the NIRB will typically seek specific input from

relevant Authorizing Agencies on the potential for the reconsideration and modifications to existing project certificate terms and conditions to affect this aspect of the Authorizing Agencies' roles and responsibilities. In addition, the NIRB will often also seek an indication from the Authorizing Agency as to whether any changes to the project associated with the reconsideration request are likely to trigger changes to the existing regulatory instruments within its jurisdiction.

Until the NIRB has completed its reconsideration of the terms and conditions of the existing NIRB project certificate and issued a decision report regarding the outcome of the reconsideration process and/or an amended project certificate, any amendments to existing regulatory instruments linked to the reconsideration request should NOT be issued by the Authorizing Agency because the impacts of the amendment have not been assessed by the NIRB.

If the Board invites comment on the reconsideration request, the Board may then consider the request and the comments received in order to determine whether to grant the reconsideration request.

Within 45 days of completing the required steps for reconsideration, the Board submits a report for the Minister's consideration summarizing the outcome of the NIRB's reconsideration, and if applicable, any recommendations in relation to amendments and additions to the terms and conditions of the existing project certificate.

For Authorizing Agencies, if the NIRB issues amendments to the terms and conditions of the existing project certificate, the Authorizing Agencies need to revisit existing regulatory instruments and may identify amendments to the existing regulatory instruments necessary to incorporate the revised or added terms and conditions issued by the NIRB under the amended project certificate.

7.0 PROJECT MONITORING

7.1 Coordinating Project Monitoring between Authorizing Agencies and the NIRB

The NIRB has the authority to establish project-specific monitoring programs as the result of a screening review of a project proposal. Terms and conditions contained in the NIRB's screening decision report or a project certificate (as well as Nunavut Water Licences) may provide for the establishment of a monitoring program for that project which may specify responsibilities for the Proponent, the NIRB, or Government.

Project monitoring under Article 12, Part 7 *Nunavut Agreement* and s. 135 of the *NuPPAA* are an important tool for checking the accuracy of predictions made during an environmental assessment and determining the effectiveness of measures taken to mitigate any potential adverse environmental effects, for either an original project or an amended project.

There are two (2) types of monitoring activities facilitated through the establishment of NIRB monitoring programs:

- **Effects monitoring:** the process of measuring and interpreting changes to environmental and socio-economic parameters to identify relevant project effects, the NIRB utilizes results from the effects monitoring undertaken by proponents and authorizing agencies to assess the accuracy of impact predictions contained in the project impact statements; and
- **Compliance monitoring:** the process of determining whether and to what extent the land or resource use in question is carried out according to regulatory requirements, including the terms and conditions contained in the NIRB project certificates and/or screening decisions.

While the NIRB establishes the initial requirements for project specific monitoring programs, **the actual monitoring for project effects and the demonstration of compliance with regulatory requirements** (which also the NIRB Project Certificate) **is primarily the Proponent's responsibility**, though *both* effects and compliance monitoring may be considered shared responsibilities between the Proponent and various Authorizing Agencies with specific jurisdiction or expertise in areas relevant to a particular project.

Note: *The NIRB's monitoring efforts and programs are designed to be coordinated with those of other regulators and must be non-duplicative, while ensuring pertinent information is provided on the public record and that interested parties are provided with opportunity to comment and provide advice accordingly.*

7.2 What is the purpose of a project-specific monitoring program?

As set out in Article 12, Section 12.7.2 of the *Nunavut Agreement* and also described in s. 135(3) of the *NuPPAA*, **the purpose of a monitoring program** is to:

- a. measure the ecosystemic and socio-economic environments of a project;
- b. assess whether the project is in compliance with the prescribed project terms and conditions;
- c. share information with regulatory authorities to support enforcement of land, water or resource use approvals and agreements; and
- d. assess the accuracy of the predictions contained in the impact statement.

7.3 What can a project-specific monitoring program include?

Article 12, Section 12.7.3 of the *Nunavut Agreement* and s. 135(4) of the *NuPPAA* states that a project-specific monitoring program may include the requirement that:

- a. Regulatory Authorities and the Proponent provide the Board with information respecting the activities relating to a Project, its impacts, and the implementation of any mitigative measures;
- b. the Board carry out periodic evaluations of the program; and
- c. the Board produce a report of the adequacy of the program, based on the information obtained under paragraph (b), and on the ecosystemic and socio-economic impacts of the project.

However, Article 12 Sections 12.7.4 and 12.7.5 of the *Nunavut Agreement* and s. 135(6) of the *NuPPAA* prohibit the NIRB from undertaking monitoring and data collection responsibilities already assigned to government agencies and departments. Consequently, the NIRB is required to design project-specific monitoring programs so that projected monitoring activities are coordinated but are not duplicated and this is taken into consideration as terms and conditions are

being developed and the NIRB provides further clarification on monitoring activities in a project certificate's Appendix A (or Appendix D in older project certificates) depending on the timing of when the project certificate was developed and/or amended.

For projects where there is a high degree of uncertainty regarding potential effects and where the precautionary approach is applied, project-specific monitoring also plays a **crucial role** in addressing uncertainty regarding project effects and enabling all parties to adapt mitigation measures on an ongoing basis to ensure negative project effects are prevented or limited to the extent possible.

The role of the NIRB with respect to the establishment of monitoring programs is to focus the NIRB's terms and conditions on monitoring of project effects. With respect to existing or future general regional and territorial monitoring programs that may include some of the same monitoring parameters/indicators as the project-specific monitoring program, the NIRB is bound to observe that the *Nunavut Agreement* and the *NuPPAA* direct the NIRB to avoid duplication but also to facilitate co-ordination and integration between the project-specific monitoring programs required by the NIRB and more general programs and initiatives such as the Nunavut General Monitoring Plan. Where the requirements of regional or territorial programs are more extensive or substantively different than those established through a project certificate, compliance with the relevant project certificate terms and conditions is required.

In order to co-ordinate, integrate and avoid duplication with other monitoring programs and the terms and conditions in the regulatory authorizations issued by Authorizing Agencies, while ensuring that the NIRB's project-specific monitoring program yields the information required to measure effects and adequately assess compliance with terms, conditions, regulatory instruments and agreements, **the NIRB's monitoring program is typically developed some time after the project certificate is issued** or once permitting is complete. The project-specific monitoring program continues to be developed through consultation with Authorizing Agencies, the resource and land owners and the Proponent over time as the remaining regulatory instruments are developed.

Following the issuance of the project certificate by the NIRB, the framework for a project-specific monitoring program is developed and is circulated in draft form, with an opportunity for the Proponent, Authorizing Agencies, Intervenors, and members of the public to comment on the framework. The NIRB may incorporate any comments or advice it finds appropriate before finalizing and issuing the framework to the Proponent for full implementation. The framework is typically not

issued in final form until all key regulatory authorizations, including land use permits, water licences, mineral leases, etc. are issued so that the monitoring program supplements and supports but does not duplicate the monitoring requirements in regulatory and land use instruments. Prior to finalization, the Proponent will be required to comply with all aspects of the draft framework as directed by the NIRB.

The Responsibility of Authorizing Agencies Related to the Monitoring Program

1. Provide the NIRB with copies of all licences, permits, or authorizations issued for the project which incorporate terms and conditions specific to the Authorizing Agencies mandate.
2. Provide any compliance monitoring reports to the NIRB's Monitoring Officer by a specified date each year. Any compliance monitoring report must contain, but is not limited to, the following information:
 - a. Whether any inspections have been conducted and the results of those inspections; and
 - b. Whether the Proponent is in compliance with any authorizations that have been issued.
3. Any other project certificate-specific requirements.