



NUNAVUT IMPACT REVIEW BOARD

Guide to the NIRB Review Process

September 2008

Note: The abbreviations ‘NIRB’ and ‘the Board’ are used interchangeably throughout this document in reference to the Nunavut Impact Review Board.

1. What is NIRB’s review process?

Article 12 of the Nunavut Land Claims Agreement (NLCA), establishes two types of review processes for the environmental assessment of proposed projects: one under Part 5 and the other under Part 6 of the Article. A Part 5 review is conducted by NIRB, whereas a Part 6 review is conducted by a Federal Environmental Assessment Panel. **This guide deals with NIRB’s review process under Article 12, Part 5 of the NLCA.**

2. What is the purpose of NIRB’s review process?

NIRB’s review process is designed to carry out the functions assigned to the Board by the NLCA, as they relate to environmental assessment. These functions are:

- to review the ecosystemic and socio-economic impacts of proposed projects;
- to gauge and define the extent the impacts will have on regions and communities; and
- to determine, on the basis of its review, whether Project Proposals should proceed, and if so, under what terms and conditions, and then report its determination to the Minister.

3. What does the review process involve?

After the screening process (please see Guide 3: Filing Project Proposals and the Screening Process) is complete, and it has been determined by NIRB and the Minister that a project requires review under Part 5 of Article 12 of the NLCA, the following steps are generally followed:

1. Project Scoping and Guideline creation;
2. Issuance of Guidelines for the preparation of a Draft Environmental Impact Statement (DEIS);
3. Preparation and submission of the DEIS by the Project Proponent;
4. NIRB – Guideline Conformity review of DEIS;
5. Technical review of the DEIS;

6. Technical Meeting;
7. Pre-Hearing Conference (PHC);
8. Preparation and submission of the Final Environmental Impact Statement (FEIS) by the Project Proponent;
9. NIRB – FEIS compliance review;
10. Technical review of the FEIS;
11. Final Hearing;
12. NIRB’s Determination: Delivery of the Final Hearing Report to the Minister;

An approximate timeline for this review process is provided in **Appendix A**. The steps of the Part 5 review process are described below in greater detail, including the following:

13. Minister’s Decision;
14. Regulators Meeting (if the project is approved);
15. Issuance of Project Certificate (if the project is approved); and
16. Monitoring and Enforcement (if the project is approved).

SCOPING

The first step in NIRB’s Part 5 review process is to **scope** the Project Proposal and the potential impacts associated with developing the project. Scoping is a process that pinpoints significant issues requiring study and analysis. This process aims to identify those components of the biophysical and/or socio-economic environment that may be impacted by the project and for which there is public concern. NIRB will solicit input from the Proponent, and interested Parties comprising of Federal and Territorial Government departments, Regional Inuit Associations and members of the public, and evaluate what it considers appropriate in order to determine:

- Which components of the project to include in the review;
- The temporal and spatial boundaries of the project;
- The issues and concerns to be considered in the review; and
- Any other requirements for the assessment of the Project Proposal.

NIRB will also consult 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 DEIS. NIRB develops a public participation and awareness program, in which the community’s participation in the review process, among other items, is discussed (See Guide 6a – NIRB’s Public Awareness and Participation Programs: The Review Process). Scoping usually includes a meeting with the Proponent and interested Parties and is facilitated by NIRB.

ISSUING GUIDELINES FOR THE PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS)

Section 12.5.2 of the NLCA directs NIRB to issue project-specific guidelines to the Proponent. A DEIS is a detailed document prepared by the Proponent, in accordance with the guidelines issued by NIRB, that identifies, predicts, evaluates and communicates information about the ecosystemic and socio-economic impacts of a Project Proposal. A DEIS includes the identification and development of mitigation measures, measures designed to control, reduce or eliminate potentially adverse impacts of an activity or project. In the development of guidelines, NIRB will draw on information obtained from the scoping stage and circulate draft guidelines to interested Parties, offering an opportunity for comment. NIRB will integrate those recommendations it considers appropriate and will then finalize the guidelines and issue them to the Proponent for the preparation of a DEIS.

For more information on the preparation of Environmental Impact Statements (EIS) and a list of requirements that Proponents must comply with, please see Guide 7 – The Preparation of Environmental Impact Statements.

PREPARATION AND SUBMISSION OF THE DEIS BY THE PROJECT PROPONENT

It is the responsibility of the Proponent to prepare the DEIS in accordance with the guidelines and requirements established by NIRB. The Proponent is responsible for circulating electronic and hardcopies of the DEIS to all Parties involved in the review. In some cases, where the original Project Proposal submitted by the Proponent for screening contains the information required for a DEIS, NIRB may accept the original Project Proposal document as a DEIS¹.

NIRB GUIDELINE CONFORMITY REVIEW OF DEIS

Once NIRB receives the hardcopy of the DEIS, NIRB will conduct an internal review of the material to determine whether the DEIS addresses the provisions of guidelines. The guideline conformity review is focused on identifying any if information requested in NIRB's project-specific guidelines and NIRB's 10 Minimum EIS Requirements has been omitted from the DEIS.

Guideline conformity review is a presence or absence analysis; it is not intended to evaluate the quality of the information presented – although NIRB may point out significant deficiencies encountered. Should any omissions be identified, the Proponent is responsible for submitting supplementary information or may be required to revise and resubmit the DEIS.

If the DEIS is deemed by NIRB to be satisfactory, the Proponent will be instructed to provide copies to interested Parties and to submit any outstanding information. Once

¹ Nunavut Land Claims Agreement – Section 12.5.2.

Parties have received their DEIS copies NIRB will proceed to the next step in the process and give public notice.

TECHNICAL REVIEW OF THE DEIS

A technical review is a more detailed review of the DEIS than the guideline conformity review. Its intent is to analyze the quality of the information presented by the Proponent. A technical review of a DEIS by interested Parties comprises the following:

- Determination of whether Parties agree/disagree with the conclusions in the DEIS regarding the alternatives assessment, environmental impacts, proposed mitigation, significance of impacts, and monitoring measures – and reasons to support the determination;
- Determination of whether or not conclusions in the DEIS are supported by the analysis – and reasons to support the determination;
- Determination of whether appropriate methodology was utilised in the DEIS to develop conclusions – and reasons to support the determination, along with any proposed alternative methodologies which may be more appropriate (if applicable);
- Assessment of the quality and presentation of the information in the DEIS; and
- Any comments regarding additional information which would be useful in assessing impacts – and reasons to support any comments made.

Both project-specific and cumulative environmental assessments are included in the technical review. All technical reviews are project-specific, and NIRB may advise interested Parties of additional requirements to be included in the technical review phase of the DEIS.

During the preliminary phase of the DEIS technical review phase NIRB will invite Parties to submit Information Requests (IRs) to the Proponent and/or to other Parties. At the same time the Proponent may submit IRs to the Parties as well. The process for submitting and receiving IRs is generally as follows:

- Parties submit their IRs to NIRB;
- The IRs must contain the following information:
 - To whom the IR is directed;
 - Identification of the issue;
 - The concern associated with the issue; and
 - A clear rationale of the issue's importance to the environmental assessment of the project.
- NIRB may make a decision on whether or not the Party to whom the IR is directed to must respond. In most cases, however, the IRs will be forwarded to the relevant Party;
- NIRB will set a timeframe for Parties to respond; and

- NIRB will post all responses on the ftp-site (<http://ftp.nirb.ca>) and notify the distribution list.

At the end of the DEIS technical review period, written submissions are solicited from the Parties prior to holding a technical meeting. NIRB will provide direction on the format of written submissions.

TECHNICAL MEETINGS AND PRE-HEARING CONFERENCE (PHC)

NIRB may decide to hold a technical meeting involving discussions on technical matters related to the DEIS. The technical meeting is kept as informal as possible in an effort to resolve technical issues prior to the Pre-Hearing Conference (PHC). As such the Board is not present and the meeting is facilitated by NIRB staff. Break out sessions are often used and each break out group (whether related to engineering, wildlife or socio-economics issues) is facilitated by NIRB staff.

The Proponent and interested Parties are invited to attend the Technical Meeting which usually takes place over the course of a few days, depending on the scope of the project and concerns submitted by Parties.

During the technical meeting, NIRB staff will compile a list of commitments made by the Proponent. The list of commitments is then carried forward to the PHC for incorporation into the Board's PHC decision.

PRE-HEARING CONFERENCE (PHC)

NIRB may, immediately following the technical meeting, hold a PHC in order to discuss such matters as: timelines for submissions and the Final Hearing, future meetings, evidence, document exchange, Final Hearing venue(s), Final Hearing format and any other matters related to the logistics of the Final Hearing.

The PHC provides an opportunity for Parties to present to the Board the issues that were resolved during the technical meeting, and those issues which remain outstanding. It is also an opportunity for the Board to hear from the public regarding the information contained in the DEIS.

Following the PHC, the Board will issue a PHC decision which provides direction to the Proponent regarding what is required in the FEIS and the procedures for the review of the FEIS and Final Hearing. In some instances, if the DEIS is determined to contain quality information and analyses which requires only minor additions and modifications, the Board may elect to accept the DEIS as the FEIS.

PREPARATION AND SUBMISSION OF THE FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS) BY THE PROJECT PROPONENT

It is the responsibility of the Proponent to prepare the FEIS in accordance with the PHC decision and list of commitments formulated at the technical meeting and

approved by the Board. Once complete, the Proponent is responsible for circulating electronic and hardcopies of the FEIS to all Parties involved in the review.

NIRB FEIS COMPLIANCE REVIEW

Following receipt of a hardcopy FEIS submission, NIRB will conduct an internal review of the material to determine whether the FEIS addresses the direction provided by the Board in its PHC decision, including the list of commitments. The PHC compliance review is a presence or absence analysis; it is not intended to evaluate the quality of the information presented – although NIRB may point out significant deficiencies encountered. Should any omissions be identified, the Proponent is responsible for submitting supplementary information, and if the FEIS is found to be significantly non-compliant with the PHC decision it may be returned to the Proponent.

TECHNICAL REVIEW OF THE FEIS

Like the DEIS technical review, the FEIS technical review is a detailed analysis of the FEIS. Its intent is to review the quality of the new and/or revised information presented by the Proponent and to reconsider the pre-existing information and the overall project in light of the information contained in the FEIS. A technical review of a FEIS by interested Parties comprises the following:

- 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;
- Determination of whether or not conclusions are supported by the analysis – and all **evidence** supporting the Parties' position;
- Determination of whether appropriate methodology was utilised to develop conclusions – and all **evidence** supporting the Parties' position;
- An assessment of the quality of the information presented; and
- 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 prepare a written submission in advance of the Final Hearing in which the above are addressed. All technical reviews are project-specific, and NIRB may advise interested Parties of additional requirements to be included in the technical review phase of the FEIS.

NIRB will also facilitate a second round of IRs at the beginning of the FEIS technical review phase as per the process outlined in the section, above.

FINAL HEARING

A NIRB Final Hearing provides a public forum for the discussion of proposed projects. Interested Parties, including members of the public affected by a Project Proposal, are

given the chance to voice their comments and present information to the Board. Significantly, the Final Hearing gives due regard and weight to the opinions of Elders and community members, and to the tradition of Inuit oral communication and decision-making. With respect to Parties, Designated Inuit Organizations (DIOs) are allowed full standing, which means they have the right to participate as a party in any proceedings before NIRB.

Please refer to the document “NIRB: Rules of Procedure” for complete details on the hearing process.

Note: NIRB may conduct its review by means of correspondence, public hearings or such other procedures as it deems appropriate to the nature of the project and range of impacts, as outlined in Section 12.5.3 of the NLCA. The venue(s) for the Final Hearing are decided upon by the Board through its PHC decision.

NIRB’S DETERMINATION: DELIVERY OF THE FINAL HEARING REPORT TO THE MINISTER

Following the Final Hearing, NIRB will issue a report on the Project Proposal to the Minister of Indian and Northern Affairs Canada. The report contains the Board’s assessment of the project and its impacts, and based on this assessment, a determination of whether or not the project should proceed.

Where NIRB concludes that the project should proceed, terms and conditions will be included to ensure the integrity of the development process. Any terms and conditions added by NIRB will reflect the primary objectives set out in Section 12.2.5 of the NLCA – *to protect and promote the existing and future well-being of the residents and communities of the NSA, and to protect the ecosystemic integrity of the NSA, taking into account the well-being of residents of Canada outside the NSA.*

The Board’s determination will be forwarded to the Minister, the Proponent and the Parties and is usually issued within 30 days following the closing of the Final Hearing record.

MINISTER’S DECISION

Although NIRB makes a determination on projects under review, it is the Minister who makes the final decision. Upon receipt of the NIRB report, Section 12.5.7 of the NLCA directs the Minister to take one of the five following courses of action:

- | | |
|---------------------|--|
| Option One | Accept the report of NIRB as to whether or not the project should proceed, including any attached terms and conditions. |
| Option Two | Reject the determination that a project should proceed on the basis that the proposal is not in the national or regional interest. |
| Option Three | Reject the determination that a project should proceed on the grounds that: |

- a) any of the terms and conditions are more onerous than necessary or 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 this situation NIRB must reconsider the terms and conditions in light of reasons put forth by the Minister.

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

Option Five Refer the report back to NIRB for further review or public hearings where the Minister determines that the report is deficient with respect to ecosystemic and socio-economic issues. After additional review or hearings, NIRB will submit another report to the Minister, which shall be accepted or rejected in accordance with the above reasons.

REGULATORS MEETING

If the project is approved by NIRB and the Minister, NIRB will convene a meeting with project regulators. This meeting facilitates the discussion of how project-specific terms and conditions will be implemented.

All government departments and agencies in accordance with their authorities and jurisdictional responsibilities are required to implement the terms and conditions of NIRB project certificates. This general requirement is subject to NLCA Section 12.9.3, which deals with situations where an independent decision of a regulatory board contains terms and conditions at variance with the terms and conditions of a NIRB project certificate. NIRB terms and conditions are to be incorporated in relevant permits, certificates, licenses or other government approvals that the Proponent may require. This, however, does not preclude any regulatory or government agency from reviewing a project and imposing additional or more stringent terms and conditions, or from refusing to issue a license or approval that would be required in order to allow a proposed project to proceed.

ISSUANCE OF PROJECT CERTIFICATE

In situations where it has been determined that a project should proceed, NIRB will issue a Project Certificate to the Proponent, including any terms and conditions which have been accepted or varied by the Minister.

At any time after the issuance of a Project Certificate, NIRB may, on its own account, or upon application by a Designated Inuit Organization, the Proponent, or other

interests, reconsider the terms and conditions contained in the NIRB Project Certificate if it is established that:

- a) The terms and conditions 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 conditions².

MONITORING AND ENFORCEMENT

Monitoring is the systematic observation or tracking of an activity to determine whether it is proceeding or functioning as expected or required. Through monitoring, the accuracy of environmental impact predictions is assessed and a feedback loop for future decisions is established. Monitoring activities include:

- 1) Effects monitoring is the process of measuring and interpreting changes to environmental and socio-economic parameters to identify relevant project effects, and may involve assessing the accuracy of impact predictions contained in the project impact statements; and
- 2) Compliance monitoring is the process of determining whether, and to what extent, the land or resource use in question is carried out according to regulatory requirements, including terms and conditions contained in NIRB Project Certificates.

Terms and conditions contained in a NIRB Project Certificate may require the establishment of a monitoring program for a project which may specify responsibilities for the Proponent, NIRB or government agencies. As set out in Section 12.7.2 of the NLCA, the purpose of a monitoring program is:

- a) to measure the relevant effects of projects on the ecosystemic and socio-economic environments of the NSA;
- b) to determine whether and to what extent the land or resource use in question is carried out within the predetermined terms and conditions;
- c) to provide the information base necessary for agencies to enforce terms and conditions of land or resource use approvals; and
- d) to assess the accuracy of the predictions contained in the project environmental impact statements.

Permits, certificates, licenses or other government approvals which implement or incorporate the terms and conditions of a NIRB Project Certificate should be enforced

² Nunavut Land Claims Agreement – Section 12.8.2.

by the responsible government department or agency. Please see NIRB's "Guide 8: Project Monitoring" for more information regarding project-specific monitoring.

4. What matters does NIRB take into account in the review of a project?

Section 12.5.5 of the NLCA directs NIRB to take into account all matters relevant to its mandate, including the following:

- a) Whether the project would enhance and protect the existing and future well-being of the residents and communities of the NSA, taking into account the interests of other Canadians;
- b) Whether the project would unduly prejudice the ecosystemic integrity of the NSA;
- c) Whether the Project Proposal reflects the priorities and values of the residents of the NSA;
- d) Steps which the Proponent proposes to avoid and mitigate adverse impacts;
- e) Steps the Proponent proposes to take, or that should be taken to compensate interests adversely affected by the project;
- f) Posting of performance bonds;
- g) The monitoring program that the Proponent proposes to establish, or that should be established, for ecosystemic and socio-economic impacts; and
- h) Steps the Proponent proposes to take, or that should be taken, to restore ecosystemic integrity following project abandonment.

In addition, the Minister may identify particular issues or concerns that NIRB must consider. This authority does not limit NIRB from reviewing any matter within its mandate.

5. What additional information regarding the NIRB EA process is available?

A series of guides have been produced to provide information about NIRB and the NIRB process. They are all available at <http://ftp.nirb.ca>

- Guide 1 – The Nunavut Impact Review Board
- Guide 2 – Terminology and Definitions
- Guide 3 – Filing Project Proposals and the Screening Process
- Guide 4 – Projects Exempt from Screening
- [Guide 5 – The NIRB Review Process](#)
- Guide 6a – NIRB's Public Awareness and Participation Programs: The Review Process
- Guide 6b – A Proponent's Guide to Conducting Public Consultation for the NIRB Environmental Assessment Process

- Guide 7 – Preparation of Environmental Impact Statements
- Guide 8 – Project Monitoring
- NIRB Rules of Procedure

6. How can I contact NIRB?

NIRB's contact information:

Nunavut Impact Review Board
c/o Executive Director
P.O. Box 1360
Cambridge Bay, NU X0B 0C0

Toll Free Telephone: 1-866-233-3033

Fax: (867) 983-2594/2574

Email: info@nirb.ca

Website: <http://www.nirb.ca>

FTP Site: <http://ftp.nirb.ca>

APPENDIX A: APPROXIMATE TIMELINE FOR A NIRB REVIEW

Note: Timeline may change based on project-specific circumstances and subject to NIRB's discretion.

Day 1	Direction received from Minister to review the project proposal Part 5 Review commences, notice issued to distribution list Procedures for scoping and guideline development outlined
Day 7	<i>Draft</i> Scope of project proposal released for comment Dates for community scoping sessions announced
Day 23	Comments received from Parties on <i>Draft</i> Scope Community scoping sessions begin
Day 37	Scope of project proposal finalized <i>Draft</i> EIS Guidelines released for comment
Day 58	Comments received from Parties on <i>Draft</i> EIS Guidelines
Day 65	EIS Guideline development workshop held
Day 70	<i>Revised</i> EIS Guidelines released for comment
Day 80	Comments received from Parties on <i>Revised</i> EIS Guidelines
Day 90	EIS Guidelines issued to Proponent

The Proponent will develop a *Draft* EIS with the issued EIS Guidelines based on its own timetable, making this section of the review completely Proponent-driven. Pursuant to Section 12.5.2 of the Nunavut Land Claims Agreement, a Proponent may apply to the NIRB to have the scoping and guideline development steps above omitted, and its project proposal accepted as a *Draft* EIS.

A conformity review of the submission may result in a negative decision, where extensive revisions to the submission and a second conformity review are required before continuing with the technical review period. Likewise, an application to accept a project proposal as a *Draft* EIS may be rejected, making scoping and guideline development mandatory.

Day 1	<i>Draft</i> EIS submission received Conformity review of submission with issued EIS Guidelines OR Application to accept project proposal as a <i>Draft</i> EIS considered.
Day 15	Positive/Negative Guideline conformity decision issued OR Acceptance/rejection of application to accept project proposal as a <i>Draft</i> EIS issued <i>Draft</i> EIS is distributed to Parties Parties given 30 days to submit Information Requests (IRs)
Day 45	Deadline for Parties to submit IRs to NIRB
Day 48	NIRB forwards approved IRs to Proponent

The time required for submission of an adequate IR response is primarily Proponent-driven. Under some circumstances, the NIRB may exercise its discretion and establish an acceptable timeline for the Proponent's response if necessary.

Day 49	Proponent submits IR response package Technical review of <i>Draft</i> EIS begins Tentative dates for Technical Meeting and Preliminary Hearing Conference (PHC) announced
Day 109	NIRB receives technical review reports from Parties
Day 119	Proponent submits response to technical review reports
Day 124	Technical meeting is held.
Day 129	Preliminary Hearing Conference (PHC) is held
Day 159	Board issues PHC decision on administrative issues and direction for submission of <i>Final</i> EIS

The Proponent will develop a *Final* EIS with the issued PHC compliance report based on its own timetable, making this section of the review Proponent-driven. NIRB's PHC compliance review may result in a negative decision, where extensive revisions to the submission and a second compliance review are required.

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Day 1	Final EIS submission received PHC compliance review begins Tentative date(s) and location(s) for Final Hearing announced
Day 15	NIRB issues PHC compliance determination Parties receive <i>Final</i> EIS and technical review begins
Day 75	NIRB receives final written submissions from Parties
Day 90	Final Hearing is held
Day 125	NIRB's Final Hearing Report submitted to the Minister

1. Scoping completed and EIS Guidelines issued to Proponent in approx. **90 days**
2. *Draft* EIS conformity review, acceptance and IRs forwarded in approx: **48 days**
3. Draft EIS technical review, Technical Meeting and PHC, and PHC decision issued in approx: **110 days**
4. Final EIS compliance review, technical review, Final Hearing, and Final Hearing report issued in approx: **125 days**

Total time for Part 5 Review: 283 - 373 days