



**Nunavut Impact Review Board (NIRB)**

and

**Nunavut Water Board (NWB)**

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**Detailed Coordinated Process Framework**

**for NIRB Reviews and NWB Licensing**

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#### AMENDMENTS

	Description	Date
(1)	NIRB/NWB Update to guide	April, 2012
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		
(8)		
(9)		
(10)		

#### IMPORTANT NOTES

1. *This Guide presents information about the NIRB and NWB and their process in a plain language format for the purpose of public education and assistance to parties involved in the process. For a more comprehensive understanding of the legal requirements of the process consult the Nunavut Land Claims Agreement, the Nunavut Waters and Nunavut Surface Rights Tribunal Act, and the Northwest Territories Waters Regulations.*
2. *The abbreviations 'NWB' and 'NIRB' are used throughout this document to refer to the Nunavut Water Board and Nunavut Impact Review Board, respectively.*
3. *The following public guides published by the NIRB and NWB provide additional detailed guidance with respect to particular aspects of the Coordinated Process and are cross-referenced when relevant throughout this Guide:*

*NIRB Guides:*

- *Guide 5: The NIRB Review Process*
- *Guide 6a: NIRB's Public Awareness and Participation Programs: The Review Process*
- *Guide 7: The Preparation of Environmental Impact Statements*
- *Guide 8: Project Monitoring*
- *Guide 9: Guide to Exceptions from the Review Process*
- *The NIRB's Rules of Procedure*

*NWB Guides:*

- *Guide 4: Completing and Submitting a Water Licence Application for a New Licence*
- *Guide 5: Processing Water Licence Applications*
- *Supplemental Information Guide (SIG) for Mine Development (MM3)*

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## INTRODUCTION

The Nunavut Impact Review Board (NIRB) and Nunavut Water Board (NWB) are Institutions of Public Government (IPGs) created under the *Nunavut Land Claims Agreement (NLCA)*, responsible for development impact assessment and the use, regulation and management of freshwater respectively.

The NIRB has responsibilities for the environmental assessment of project proposals in the Nunavut Settlement Area (NSA) as defined in Article 12 of the NLCA. In carrying out its functions, the NIRB is directed to act fairly and in such a way that at all times, it protects and promotes the existing and future well being of residents of Nunavut, and protects the ecosystemic integrity of the NSA. The NLCA also instructs the NIRB to take into account the well being of residents of Canada outside the NSA.

Pursuant to Article 13 of the NLCA and the Federal *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSRTA or the Act), the NWB has responsibilities and powers over the regulation, use, and management of fresh water in Nunavut, with some exceptions, such as the use of water in National Parks, and for navigational and domestic purposes set out in the NWNSRTA. The NWB exercises these responsibilities through licensing the use of water and deposits of waste. The NWB's objective is to provide a means for the conservation and utilization of waters in Nunavut, except in a National Park, in a manner that will provide the optimum benefit from those waters for the residents of Nunavut in particular and Canadians in general.

The NIRB and NWB have developed the Detailed Coordinated Process Framework to meet legislated requirements for coordination and to address project specific requests from proponents to proceed in a coordinated manner commencing at the development impact assessment phase. The Detailed Coordinated Process Framework has been developed to provide clarity, transparency, and timelines for a coordinated approach to impact assessment and water licencing for the NIRB, the NWB, Proponents and other parties participating in these processes. By allowing for the initial steps in the NWB's water licencing process to run concurrently with the NIRB's Review process for major developments, the Detailed Coordinated Process Framework is expected to reduce the overall timeline for impact assessment and water licencing and also limit duplication and overlap, resulting in more timely, coordinated and efficient assessment and licencing.

It is important to note that the Detailed Coordinated Process Framework is intended to respect the individual mandates of the NIRB and the NWB, and it does not currently provide for a "joint" Review or hearing process. As such, the independent requirements of each Board for technical review, public comment, technical meetings, pre-hearing conferences and hearings are not altered by the coordinated approach. The coordinated approach is intended to coordinate the NIRB/NWB timelines and information requirements wherever practical to increase efficiencies for reviewers and the public while continuing to respect the full requirements of both processes.

## **RELATIONSHIP BETWEEN THE NIRB AND THE NWB PROCESSES**

The NLCA prohibits the NWB from issuing a licence to use waters or deposit waste until the NIRB has completed screening the project in accordance with Part 4 of Article 12 of the NLCA<sup>1</sup>. Furthermore, if the project requires a review under Part 5 or Part 6 of Article 12 of the NLCA, the NWB may not issue a licence until the NIRB has completed the review in accordance with Article 12 of the NLCA.

Sections 12.10.2 and 13.5.5 of the NLCA provide an exception to this prohibition during a review:

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 [Types of Project Proposals Exempt From Screening]; or
- b) the activity can, in the judgement of NIRB, proceed without such a review.

13.5.5 Notwithstanding Section 12.10.1, the NWB 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.

The NWB also has a duty to implement the terms and conditions of a NIRB Project Certificate in accordance with its authority and jurisdictional responsibility.

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<sup>1</sup> NLCA Sections 12.10.1 and 13.5.4

## LEGISLATIVE BASIS FOR COORDINATION

The NLCA specifically provides for coordination between NIRB and the NWB:

13.5.2 Where the water application is referred for review under Article 12, the NWB and the review body shall coordinate their efforts to avoid unnecessary duplication in the review and processing of the application. Legislation may provide for joint hearings or authorize the NWB to forego public hearings on any water application where it has participated in a public review of the relevant water application pursuant to Article 12.

13.6.1 The NPC, NIRB and the NWB shall co-operate and co-ordinate their efforts in the review, screening and processing of water applications to ensure they are dealt with in a timely fashion.

Related relevant sections of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* are:

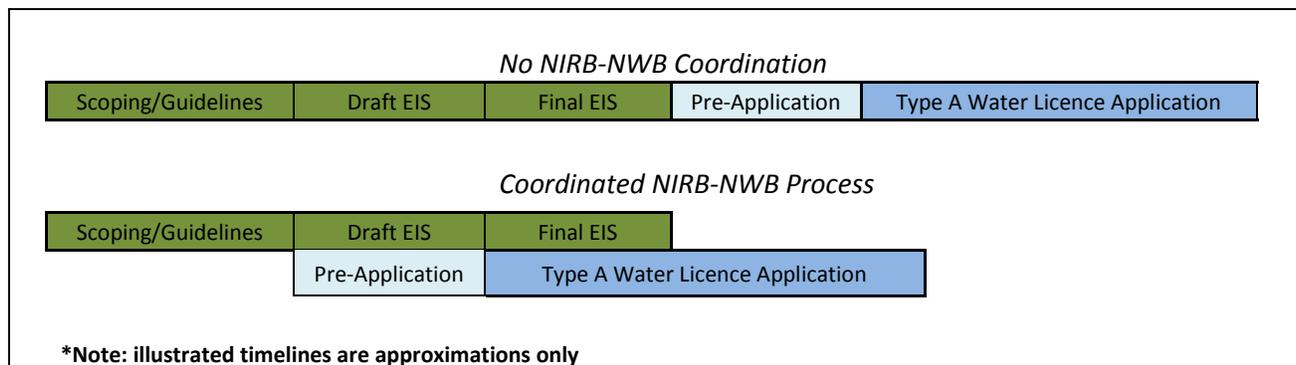
37. (1) In order to avoid unnecessary duplication and to ensure that projects are dealt with in a timely manner, the Board shall cooperate and coordinate its consideration of applications with the Nunavut Impact Review Board or any federal environmental assessment panel referred to in section 12.4.7 of the Agreement in relation to the screening of projects by that Board and the review of projects by that Board or panel.

(2) The Board may, in lieu of conducting a separate public hearing in respect of a licence in connection with a project for which a public hearing is to be held by the Nunavut Impact Review Board or the panel referred to in subsection (1), as the case may be, conduct, in relation to the project, a joint hearing with that Board or panel or participate in the hearing of that Board or panel.

The NIRB and NWB share the view that a coordinated process is an important means for ensuring that each organization has the capacity to fulfill its respective mandates in a timely and efficient manner. **However, as noted in this Guide's introduction, at this time the Detailed Coordinated Process Framework does not provide for a fully joint review regulatory process or joint hearing process.** Given the nature of the information and the different levels of detail required during impact assessment and water licensing, the revisions to the NIRB and NWB's existing processes necessary to support a fully joint review process, including joint hearings, have not been addressed by this Guide. If, in future the NIRB and NWB determine that significant changes to existing processes are required to accommodate a fully joint review, such changes would be subject to further consideration and consultation prior to the development of a fully joint review process.

## DETAILED COORDINATED PROCESS (DCP)

The objective of the DCP is to reduce the overall time required for the regulatory consideration of major development proposals by allowing elements of the NWB water licensing process to run concurrently with the NIRB's environmental impact assessment process, specifically for the consideration of Type A Water Licence applications during an ongoing NIRB Review. The DCP is not intended to reduce or increase the individual timelines established for a NIRB Review or the NWB's consideration of a Type A Water Licence Application, nor is it designed to reduce the level of information required by each respective process. Instead, recognizing that both processes rely upon the provision of related information and participation by the same affected parties and government agencies, efficiencies of time and effort can be realized if a proponent requests the DCP and chooses to satisfy water licensing information requirements earlier than might otherwise be required.



The coordinated process provides added benefit to the NWB by facilitating an earlier review of water license application materials, which continues to allow for a thorough overall review of the application by the NWB and by all parties involved in the NIRB's assessment and NWB water licensing processes. The NIRB benefits from coordination with the NWB as the water licensing requirements for more detailed information at an earlier phase in the NIRB Review can lead to the proponent providing greater clarity and more advanced planning than might otherwise be required at the impact assessment stage. Other reviewing parties or agencies involved in the environmental assessment (EA) and water licensing processes gain efficiencies in being able to conduct concurrent reviews of the EA materials and water licence application, potentially lessening the overall time spent reviewing documents and preparing related comment submissions.

The DCP is led jointly by the NIRB and the NWB, and does not propose significant changes to the standard processes, operations or timelines of either Board. The NIRB and the NWB will maintain their respective protocols for the promotion and solicitation for public input and participation, as established.

Through the DCP, NWB technical staff remain employees of the NWB and work cooperatively with the NIRB and engage in the process only insofar as their specific expertise is required on issues related to the use of water and disposal of waste into water and associated activities related to the NWB's mandate. The NWB technical staff assigned to the project will review the Environmental Impact Statement (EIS), giving consideration to components of the EIS that overlap with the following NWB requirements:

- a) The description of the use of waters, deposit of waste or appurtenant undertaking, as the case may be;

- b) The qualitative and quantitative effects of the use of waters or the deposit of waste on the drainage basin where the use is to be undertaken or the deposit is to be made, and the anticipated impact of the use or deposit on other users;
- c) The measures the applicant proposes to take to avoid or mitigate any adverse impact of the use of waters or the deposit of waste;
- d) The measures the applicant proposes to take to compensate persons, including the Designated Inuit Organization, who are adversely affected by the use of waters or deposit of waste;
- e) The program the applicant proposes to undertake to monitor the impact of the use of waters or the deposit of waste;
- f) The interests in and rights to lands and waters that the applicant has obtained or seeks to obtain;
- g) The options available for the use of waters or the deposit of waste; and
- h) Any other matters the NWB considers relevant.

## A. NIRB Review Process

The following description of the NIRB's Review process is reproduced from NIRB's *Guide 5: The NIRB Review Process*, available on NIRB's ftp site at <http://ftp.nirb.ca/GUIDES/>. Areas of coordination between the NIRB and the NWB are highlighted in bold, as are the requirements of the Proponent and other parties in the Review process.

### 1. Exceptions from the NIRB Review

Sections 12.10.2 and 13.5.5 of the NLCA provide for exceptions to the general prohibition that the NWB and other licensing bodies cannot issue a licence prior to the completed of a review pursuant to Part 5 or 6 of the NLCA:

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 [Types of Project Proposals Exempt From Screening]; or
- b) the activity can, in the judgement of NIRB, proceed without such a review.

13.5.5 Notwithstanding Section 12.10.1, the NWB shall not be precluded from issuing interim, short-term approvals for water uses related to exploration or development work for a proposal under development impact review.

In accordance with its *Guide 9: Guide to Exceptions from the Review Process*, the NIRB may consider requests for assessing specific exploration or development activities outside the overall NIRB Review process and, if these activities are granted an exception and recommended for approval by the NIRB, the NWB (and other relevant licensing or permitting agencies) can then consider issuing licences or short term approvals related to these activities prior to completion of the NIRB Review. Any exceptions granted by the NIRB and licensed by the NWB shall not preclude the Proponent from being required to obtain any other licences/permits/authorizations that may be necessary to authorize the Proponent to undertake the activities (e.g. DFO authorizations).

A positive decision from the NIRB indicating that certain exploration and development activities can proceed as exceptions in advance of the conclusion of the related NIRB Review **does not** have the effect of predetermining the ultimate outcome of the NIRB's Review and **does not** obligate the NIRB and/or the Minister to issue a positive EA decision.

***The NIRB will make determinations on exceptions as applied for by the Proponent on a case-by-case basis. The Proponent is encouraged to identify any such applications as early as possible in the Review process. Parties may be asked to comment on whether the NIRB***

***should accept that the exploration and development activities proposed are “exceptions” that can validly be excluded from the Review.***

***If the activities included within a Proponent’s application for an exception to the NIRB’s Review will require obtaining a water licence from the NWB, within its Draft Type A Water Licence application the Proponent shall highlight its schedule for submissions of any associated water licence applications or requests for short term approvals to the NWB.<sup>2</sup> This information shall also be included within the Draft Type A Water Licence application which accompanies the Draft Environmental Impact Statement. Where applicable, detailed engineering for activities granted an exception by the NIRB will be required before the NWB will consider an application to be complete.***

***Should the NIRB grant an exception from the Review for certain activities, the NWB may proceed with its consideration of any associated Type B Water Licence applications. If the NIRB determines that it is not appropriate for certain activities to be granted an exception from the Review as applied for by the Proponent, the applications may be withdrawn completely or the activities may continue to be included within the scope of the NIRB’s Review process.***

## **2. Project Scoping and EIS Guideline Development**

The first step in NIRB’s 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. The NIRB will solicit input from the Proponent and interested Parties including Federal and Territorial Government departments, Designated Inuit Organizations 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.

The 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 Draft Environmental Impact Statement (DEIS). For each Review it conducts, the 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*). Project

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<sup>2</sup> Note that generally public hearings are not required for Type B Water Licence applications. However, the Board may decide to hold a public hearing in connection to any matter relating to its objects where it is satisfied that it is in the public interest to do so.

scoping usually includes meeting with potentially-affected communities and groups facilitated by the NIRB.

***The NIRB will develop a Draft Scope for the project and distribute it for public comment. Public scoping sessions facilitated by the NIRB may be scheduled in potentially affected communities as part of the public participation and awareness program.***

***The Proponent, the NWB and Parties may choose to attend scoping sessions as observers, and to speak to their role in the regulatory process if necessary.***

***The NWB will participate in scoping sessions for the communities most affected by the project as it relates to water use and waste disposal activities or where issues pertaining to water use and waste disposal activities are anticipated to arise.***

***Following the NIRB-facilitated public scoping sessions and receipt of comments on the Draft Scope, the NIRB will issue a Summary Scoping Report which details the results of each public scoping session, as well as a Final Scope for the Review.***

Section 12.5.2 of the NLCA directs the NIRB to issue project-specific guidelines to the Proponent for its preparation of a project-specific Draft Environmental Impact Statement (EIS Guidelines). A Draft Environmental Impact Statement (DEIS) is a detailed document prepared by the Proponent, in accordance with the EIS Guidelines issued by the NIRB, which 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 EIS guidelines, the NIRB will draw on information obtained from the scoping stage and circulate draft guidelines to interested Parties, offering an opportunity for comment. The NIRB will integrate those recommendations it considers appropriate and will then finalize the EIS Guidelines and issue them to the Proponent for its preparation of a DEIS.

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

***The NIRB's Summary Scoping Report will be used in the development of Guidelines for the Preparation of an Environmental Impact Statement. The NIRB will distribute Draft EIS Guidelines requesting public comment and advice from interested parties, government and Inuit organizations. The objective of the public comment period is to allow the NIRB to solicit expertise and advice from parties in accordance with NLCA Section 12.5.2., in the most transparent way possible.***

***The NWB will provide the Supplemental Information Guide (SIG)<sup>3</sup> for Mine Development (MM3) to the NIRB for incorporation into the Draft EIS Guidelines as an appendix. This appendix***

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<sup>3</sup> Further information on SIG may be found in the NWB's Guide 4 - *Completing and Submitting a Water Licence Application for a New Licence* and the *Mining and Milling Undertaking Supplemental Information Guideline (SIG) for Mine Development (MM3)*.

***will serve as instructions to the Proponent to aid in its development of a Draft Water Licence Application.***

***If the NIRB has received a request by the Proponent to grant an exception from the Review for specific exploration and/or development activities and has not yet completed its consideration of a Proponent's applications, the EIS Guidelines issued by the NIRB may be inclusive of any such activities. Should the NIRB ultimately determine that some or all of the exploration and development activities cannot be granted exceptions from the Review and must either be included in the Review or withdrawn from consideration, the Proponent would be required to meet the relevant information requirements within its DEIS.***

***The Proponent, NWB and Parties are expected to provide comments on the Draft EIS Guidelines and appendices, as relevant to their mandates.***

***Following receipt of comments on the Draft EIS Guidelines, the NIRB will revise the document and may release a Revised Draft for a second round of public comment if necessary. The NIRB may also schedule a Guidelines Development Workshop to resolve any substantive issues when warranted.***

***The NWB may participate in the Guidelines Development Workshop to provide clarification of its needs and the level of information required for the subsequent water licensing (i.e. SIG) early in the process and will work toward further identifying information needs and expectations.***

***Following the Guidelines Development Workshop the NIRB will make final revisions to the EIS Guidelines and will issue them to the Proponent for its preparation of a DEIS. The NIRB will also provide the Proponent with a list and contact information for all parties requesting hard copies of its future DEIS submission, and will request that the Proponent provide an anticipated date for submission as soon as practicable.***

### **3. Receipt of DEIS and Guideline Conformity Review**

It is the responsibility of the Proponent to prepare the DEIS in accordance with the EIS Guidelines and requirements established by the 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, the NIRB may accept the original Project Proposal document as a DEIS.<sup>4</sup>

Once the NIRB receives a hardcopy of the DEIS, it 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 if any information requested in NIRB's project-specific guidelines and NIRB's 10 Minimum EIS Requirements has been omitted from the DEIS.

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<sup>4</sup> Nunavut Land Claims Agreement – Section 12.5.2.

The NIRB's guideline conformity review is a presence or absence analysis; it is not intended to evaluate the quality of the information presented – although the 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 the NIRB to be satisfactory, the Proponent will be instructed to provide copies to interested Parties and to submit any outstanding information.

***The Draft Water Licence application shall be included as an appendix to the DEIS and must include a concordance table which cross references the requirements of the SIG with the documents that make up the application, citing document and section numbers as appropriate.***

***Once a hardcopy Draft EIS submission has been received by both Boards, the NIRB and NWB may coordinate the release of a public notice acknowledging receipt and/or acceptance of the Draft EIS submission and Draft Type A Water Licence application, and advising parties where the submission can be accessed on their respective public registries.***

***The NIRB will undertake its internal guideline conformity review and report its findings within 15 calendar days. The NWB may also assist the NIRB for those sections which relate to water use, waste disposal and associated activities. Should the NIRB determine that the submission conforms to the EIS Guidelines it will accept the DEIS and will issue a notice advising of the commencement of a technical review period.***

#### **4. Technical Review of 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 utilized 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 effects assessments are included in the technical review. All technical reviews are project-specific, and the NIRB may advise interested Parties of additional requirements to be included in the technical review phase of a specific DEIS.

During the preliminary phase of the DEIS technical review the 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, if necessary. 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 identifying the importance of the issue and its connection to the environmental assessment of the project.
- NIRB may provide specific direction regarding whether or not the Party to whom the IR is directed must respond. However, unless otherwise specified by NIRB all IRs directed to a given Party will be forwarded to that Party with the expectation that they will provide a response;
- NIRB will set a timeframe for Parties to respond; and
- NIRB will post all responses on its public registry (<http://ftp.nirb.ca>) and notify the distribution list.

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

***The NWB will use the DEIS technical review period to conduct a completeness assessment on the Draft Type A Water Licence application and will determine whether it addresses the provisions of the SIG such that the NWB may accept the application as “complete” and issue a public notice of application. The completeness assessment is an analysis of the presence or absence of the required information only and is not intended to evaluate the quality of the information presented. In conducting its assessment, the NWB may, depending upon the expected level of public concern and the information provided by the Proponent, request comments from interested parties on the application’s completeness. The NWB will coordinate any such request for comments with the NIRB’s request for information requests and/or technical review comments.***

***In its notice of commencement of the technical review period, the NIRB will provide direction to parties regarding the process for developing and submitting IRs and technical review comments, as well as the associated submission deadlines. The NWB may request comments from parties regarding the completeness of the draft water licence application in coordination with the NIRB’s public notice. The NIRB will also provide tentative dates for a Technical Meeting and Pre-Hearing Conference at this time.***

***The Proponent and Parties will submit IRs, provide responses to IRs where necessary, and submit technical review comments in accordance with the timelines and requirements outlined by the NIRB. Comments regarding the completeness of the draft water licence application may be included within technical review comment submissions to the NIRB. The NIRB will forward all relevant comment submissions to the NWB for its consideration.***

## 5. Technical Meetings

The NIRB may decide to hold a Technical Meeting to facilitate discussions on technical matters related to the DEIS prior to the Pre-Hearing Conference (PHC). The Technical Meeting is facilitated by the NIRB staff and is kept as informal as possible, with participation by the Proponent and interested Parties and the use of breakout groups or sessions organized specific to topics or areas of common interest (e.g. engineering, wildlife or socio-economic issues).

During the Technical Meeting, the NIRB staff will compile a list of commitments made by the Proponent regarding the required content of its Final Environmental Impact Statement (FEIS). The list of commitments is then carried forward to the PHC for incorporation into the Board's PHC Decision.

***Tentative dates for the scheduling of a Technical Meeting may be provided by the NIRB in its public notice of commencement of the technical review period, with formal notice provided in accordance with the NIRB's Rules of Procedure.***

***The NWB staff will act as Technical Advisors to the NIRB at any Technical Meetings, and will not participate as interveners. Time on the Technical Meeting agenda may be devoted to technical issues specific to the draft water licence application.***

***The NIRB and NWB will work cooperatively with Parties to delineate EA issues to be addressed in the FEIS and regulatory issues to be addressed in the Type A Water Licence application.***

## 6. Pre-Hearing Conference (PHC)

The NIRB may, 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 Final Environmental Impact Statement (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.

***Tentative dates for the scheduling of a PHC may be provided by the NIRB in its public notice of commencement of the technical review period, with formal notice provided in accordance with the NIRB's Rules of Procedure.***

***The NWB staff will act as Technical Advisors to the NIRB at any PHC facilitated by NIRB and will not participate as interveners. Time on the PHC agenda may be devoted to issues specific to the Draft Type A Water Licence application or NWB water licencing process.***

***In coordination with the NIRB's PHC Decision, the NWB will report on the results of its completeness check of the Draft Type A Water Licence application. At this time the NWB may also issue direction to the Proponent regarding any additional information which may need to be provided in the complete Type A Water Licence application which corresponds with the FEIS submission.***

## **7. FEIS Submission and Compliance Review**

It is the responsibility of the Proponent to prepare the FEIS in accordance with the NIRB's PHC Decision, including the list of commitments formulated at the Technical Meeting and approved by the NIRB. Once complete, the Proponent is responsible for circulating electronic and hardcopies of the FEIS to all Parties involved in the Review.

Following receipt of a hardcopy FEIS submission, the NIRB will conduct an internal review of the material to determine whether the FEIS complies with the direction provided by the Board in its PHC decision, including the list of commitments. The FEIS 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 may be required to submit supplementary information; if the FEIS is found to be significantly non-compliant with the NIRB's PHC Decision it may be returned to the Proponent.

***The Proponent will submit its hardcopy FEIS to both the NIRB and NWB. The Type A Water Licence application shall be included as an appendix to the FEIS, with cross referencing to relevant FEIS sections in order to eliminate or reduce duplication and provide for the ease of Parties' review. The Type A Water Licence application will be required to address the deficiencies noted previously by the NWB in the Draft application. The FEIS shall contain a table which demonstrates its concordance with NIRB's PHC Decision and the NWB's SIG (i.e. a concordance table).***

***Should the Proponent decide not to submit its complete Type A Water Licence application at this point, the EA process will proceed and the NWB's water licencing process will be suspended until the NIRB's Review has concluded.***

***Once a hardcopy FEIS submission has been received by both the NIRB and NWB, the Boards will coordinate the release of a public notice acknowledging receipt of the FEIS submission and Type A Water Licence application.***

***The NIRB will undertake its internal FEIS compliance review and will report its findings within 15 days. The NWB may also assist the NIRB for those sections which relate to water use, waste disposal and associated activities. Should the NIRB determine that the FEIS submission complies with the PHC Decision, it will accept the FEIS and will issue a notice advising of the commencement of a technical review period.***

***The NWB will undertake its internal concordance assessment of the Type A Water Licence application with the SIG and will report its findings within 15 days. Should the NWB determine that the Type A Water Licence application is in concordance with the SIG, it will accept the application and issue a public notice of application in accordance with NWNSRTA.***

## **8. 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 will prepare a written submission in advance of the Final Hearing in which the above are addressed. All technical reviews are project-specific, and the NIRB may advise interested Parties of additional requirements to be included in the technical review phase of the FEIS.

If deemed necessary, the NIRB may also facilitate submission of IRs, a Technical Meeting, and/or a Pre-Hearing Conference during the FEIS technical review phase as per the process outlined in the above sections.

***The technical review of the Type A Water Licence application involves a more detailed review than that for the concordance assessment, and has the objective of analyzing the quality of the information presented in the application. Interested parties must consider the following in conducting a technical review:***

- ***Determination of whether Parties agree/disagree with the conclusions in the application regarding the following as they relate to the use of water or the deposit of waste on the drainage basin where the use is to be undertaken or the deposit is to be made:***
  - ***Qualitative and quantitative effects;***
  - ***Anticipated impact of the use or deposit on other users;***
  - ***Mitigation measures; and,***
  - ***Compensation measures.***

***In its notice of commencement of the technical review period, the NIRB will provide direction to parties regarding the process for developing and submitting IRs and technical review comments, as well as the associated submission deadlines. The NWB will request technical review comments from parties regarding the Type A Water Licence application in coordination with the NIRB's public notice. The NIRB will also provide tentative dates for a Final Hearing at this time.***

***The NIRB and NWB will coordinate their respective technical review periods for the FEIS and Type A Water Licence application to the extent possible, including the scheduling of dates for the submission of IRs, comments and/or final written submissions.***

## **9. 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 concerns, provide 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 the NIRB.

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

Tentative dates for the scheduling of a Final Hearing may be provided by the NIRB in its public notice of commencement of the technical review period, with formal notice provided in accordance with the NIRB’s Rules of Procedure. At the conclusion of the technical review period for the FEIS, parties will provide final written submissions to the NIRB in accordance with deadlines set out by the NIRB.

***The Proponent and Parties will participate in the NIRB Final Hearing. The NWB staff may serve as Technical Advisors to the NIRB, but will not participate as interveners in the Final Hearing.***

***Following the NIRB Final Hearing, the NWB may hold a preliminary technical meeting<sup>5</sup> with all interested Parties to define regulatory issues related to the Type A Water Licence application.***

## **10. NIRB Determination – Final Hearing Report**

Following the Final Hearing, the NIRB will issue a report on the Project Proposal to the relevant Government Minister(s) and the Project Proponent. The Final Hearing Report will contain the NIRB’s assessment of the project and its impacts, and based on this assessment, a determination of whether or not the project should proceed.

If the NIRB determines that the project should proceed, terms and conditions which reflect the primary objectives set out in Section 12.2.5 of the NLCA will be included in the Final Hearing Report.

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

## **11. Minister’s Decision**

Although the NIRB makes a determination on projects under Review, it is the Minister(s) who makes the final decision regarding whether or not a project can be allowed to proceed. Upon receipt of the NIRB’s Final Hearing Report, the Minister may accept or reject the NIRB’s recommendations, or may refer the project proposal back to the NIRB for further review pursuant to NLCA Section 12.5.7.

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<sup>5</sup> The purpose of the TM is to informally resolve technical matters between interested parties and the applicant, prior to the PHC, particularly those matters that could affect the Board’s determination on any PHC issues.

***Following issuance of the NIRB's Final Hearing Report, the NIRB, NWB, Proponent and Parties await the Minister's Decision. Following receipt of a Minister's Decision which allows the project to proceed, the NIRB must develop and issue a Project Certificate for the Project.***

## **12. Issuance of a NIRB Project Certificate**

If the Minister(s) allows the project to proceed, the NIRB will be required to issue a Project Certificate which includes all terms and conditions set out in the NIRB's Final Hearing Report that have been accepted or varied by the Minister. All government departments and agencies are required to implement the terms and conditions of the NIRB issued Project Certificates in accordance with their respective authorities and jurisdictional responsibilities. The NIRB terms and conditions are to be incorporated into relevant permits, certificates, licences or other government approvals that the Proponent may require. This, however, does not preclude any regulatory or government agency from 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.

Following receipt of a Minister's decision which allows a project to proceed, the NIRB will convene a meeting with relevant regulatory authorities to assist with the development of a Project Certificate and by discussing how project-specific terms and conditions will be implemented.

***The NWB will participate in the NIRB's Regulators' Meeting to assist with the development of the Project Certificate as necessary.***

***Following the Regulator's Meeting, the NIRB will finalize and issue the Project Certificate to the Proponent, and will conduct ongoing project monitoring in accordance with NIRB Guide 8: Project Monitoring.***

***Following issuance of a NIRB Project Certificate, the NWB will schedule a final Technical meeting (if needed) and a Pre-Hearing Conference for the Type A Water Licence application in accordance with NWB Guide 5: Processing Water Licence Applications.***

## B. NWB Type A Water Licensing Process

After the Project Certificate has been issued, the remaining steps in the water licensing process including the conduct of any additional technical meeting(s), pre-hearing conference, NWB final hearing and recommendation to reject or issue a water licence, are governed by the general requirements applicable to all Type A Water Licence applications processed by the NWB. There are no differences with respect to the remaining water licensing steps between a project proceeding under the DCP and a Type A Water Licence application processed outside the DCP. Consequently, this Guide does not outline the remaining steps in the water licensing process and Parties are referred to the complete description of the remaining steps found in the description of the NWB's general water licensing process in the NWB's *Guide 5: Processing Water Licence Applications*, available on the NWB's ftp site at <http://nunavutwaterboard.org/NWB%20GUIDES/>.

## CLOSING

The DCP allows proponents who choose to meet the NWB's detailed information requirements during the NIRB Review an opportunity to save time in the overall impact assessment and water licensing process, while increasing efficiencies for the NIRB, NWB and parties through coordination of technical review and commenting periods. However, it should be noted that coordinating aspects of water licensing with the environmental assessment process requires the provision of more advanced engineering details and more in-depth operating and technical information than is generally required in the EA process alone. Where a proponent has chosen to proceed on the basis of the DCP, the Proponent or the NWB may determine it is necessary to withdraw from the coordinated process and such withdrawal will not hamper the ongoing NIRB review. If the project is withdrawn from the coordinated process, the NWB licensing process will be suspended during the NIRB Review and will recommence after the EA process has concluded.

At the conclusion of the regulatory process associated with the DCP Pilot Project (Appendix A), the NIRB and NWB commit to reviewing the effectiveness of the DCP and may make any revisions to this Guide and to existing processes the NIRB and NWB consider necessary to ensure the fulfillment of their mandates and on-going enhancement of the DCP.

## **APPENDIX A: DCP PILOT PROJECT TIMELINE**

### **BAFFINLAND IRON MINES CORPORATION (BIMC) MARY RIVER PROJECT MINE DEVELOPMENT**

**NIRB FILE NO: 08MN053**  
**NWB FILE NO: 2AM-MRY----**

#### **Receipt of Project Proposal**

The NIRB acknowledged receipt of BIMC's Mary River project proposal (the Project) on March 20, 2008. Within the project proposal BIMC requested that the NIRB and NWB consider a coordinated process. The preliminary water licence application was submitted at this point and is one of the authorizations which triggered the NIRB's Screening and subsequent Review.

#### **Nunavut Planning Commission Conformity Determination**

The Nunavut Planning Commission (NPC) determined that the Project positively conformed to the North Baffin Regional Land Use Plan (NBRLUP) on April 30, 2008. Additionally the NPC advised the NIRB that sections 3.5.11 and 3.5.12 of NBRLUP Appendix C required "...a joint [NPC and NIRB] process to address the prospective transportation corridor contemplated by those provisions."

#### **NIRB Screening**

Following receipt of the NPC's conformity determination, on April 30, 2008 the NIRB commenced Screening the Project. On May 2, 2008 the NIRB distributed the project proposal to various Federal and Territorial agencies, Inuit Organizations and those communities and organizations potentially affected by the development.

The NIRB set a deadline of May 23, 2008 for the submission of comments from the various Parties. Following receipt of several requests for an extension to the public commenting period, the NIRB extended the comment deadline to June 4, 2008. As a result on June 13, 2008, the NIRB applied to the Minister of Indian and Northern Affairs Canada (the Minister) for an extension to the Screening in accordance with Section 12.4.5(b) of the NLCA.

On or before June 4, 2008 the NIRB received comments on the project proposal from various Parties. All comments were attached as Appendix B to the NIRB June 27, 2008 Screening Decision report to the Minister.

#### **NIRB Screening Decision Report**

On June 27, 2008, the NIRB issued a Screening Decision Report for BIMC's Mary River Project Proposal to the Minister of Indian Affairs and Northern Development. Pursuant to Section 12.4.4(b) of the NLCA, the NIRB indicated that the Project Proposal required Review under Part 5 or 6 of NLCA Article 12. The NIRB

also requested advice from the Minister on challenges posed by the NPC conformity determination and outstanding requirements of the NBRLUP.

### **Ministerial Decision and Referral for Review**

On February 11, 2009 the NIRB received the Minister's final decision pursuant to section 12.4.7(b) to refer the Project Proposal to the Board for a review under Part 5 of Article 12 of the NLCA. The Minister advised NIRB that the federal departments of Fisheries and Oceans Canada, Natural Resources Canada and Transport Canada also have jurisdictional responsibility for authorizing the Project Proposal to proceed and concur that a NIRB Review was appropriate.

The Minister further encouraged the NIRB and NPC to develop an arrangement that would satisfy the outstanding requirements of the land use planning process, and which would not unduly encumber the NIRB's Review process. Both the NIRB and NPC were encouraged to communicate the process to all parties involved in the Review once finalized and agreed upon.

Finally, the Minister also identified the issue of year-round shipping, specifically the rate, route and impacts of this component to adjacent jurisdictions potentially affected by the project. The Minister encouraged the NIRB to carry out a very thorough assessment of these impacts and involve the participation of adjacent jurisdictions in the Review.

### **NIRB Review and NWB Water Licencing Processes - ONGOING**

The NIRB and the NWB will continue to map processes as the project proceeds with updates to parties as needed.

*Project Proposal / Screening*

Step		Timeline*	NIRB Screening Process	Notes/Issues
1	NPC		Proponent develops a Project Proposal	Proponent requests NIRB/NWB coordination
		20/03/08	Project Proposal submitted to NPC for Land Use Plan conformity determination (if applicable)	Portion of project located in an area covered by the North Baffin Regional Land Use Plan
		30/04/08	NPC conformity determination issued	Joint NPC/NIRB review of transportation corridor required
2	NIRB Screening	20/03/08	NIRB acknowledges receipt of Project Proposal	NIRB must await NPC conformity determination before Screening
		30/04/08	NIRB Screening Begins	
		02/05/08	Project Proposal released for public comment	
		23/05/08 13/06/08	Comments received from Parties on Project Proposal	Parties request extension to comment deadline
		27/06/08**	NIRB Screening Decision Report submitted to the Minister	NIRB requests extension to Screening deadline
		11/02/09	Minister's Decision and Referral for Review	

Note: \* All timelines dd/mm/yy. \*\* NIRB has the ability to request from the Minister an extension to the 45 day Screening deadline.

*Review*

Step	Timeline	NIRB Review Process	Notes/Issues
1	Scoping	11/02/09 Minister Decision and Direction Received	Referred to NIRB for Review under NLCA Article 12 Part 5
		13/03/09 Draft Scope of Project proposal released for public comment Community Scoping begins	Delayed as details of NIRB/NPC joint review process were developed
		16/03/09 NIRB/NPC joint review process map released	
		09/04/09 Comments received from Parties on Draft Scope	
		18/06/09 Scoping Meeting Summary Report issued	
2	Guidelines Development	24/06/09 Draft EIS Guidelines released for comment	
		04/08/09 Comments received from Parties on Draft EIS Guidelines	
		04/09/09 Revised Draft EIS Guidelines released for comment	NIRB undertakes additional scoping meetings in 7 Nunavik communities
		21/09/09 Comments received from Parties on Revised EIS Guidelines	
		29/09/09 30/09/09 EIS Guidelines Development workshop is held	Held in Iqaluit
		16/11/09 EIS Guidelines issued to Proponent	Appendix includes NWB SIG (MM3) and NPC NBRLUP requirements
		10/11/10 Addendum to EIS Guidelines issued to Proponent	Issued at request of Proponent for "Road Haulage Option" alternative
3	Draft EIS (DEIS) Proponent Driven	Proponent develops a DEIS	

Step	Timeline	NIRB Review Process	Notes/Issues
4 Conformity Review of DEIS	21/11/01	DEIS submission received Conformity review of submission with EIS Guidelines <b>OR</b> Application to accept project proposal as a DEIS considered.	EIS Guidelines were issued for this project. DEIS contains Draft Type A Water Licence application
	15/02/11	Positive/Negative Guideline conformity decision issued <b>OR</b> Acceptance/rejection of application to accept project proposal as a DEIS issued	Positive guideline conformity decision; Draft EIS accepted
	15/02/11	DEIS is distributed and technical review period commences Parties given 30 days to submit Information Requests (IRs)	Parties asked to consider completeness of Draft Type A Water Licence application
	17/03/11	Deadline for Parties to submit IRs to NIRB	
	24/03/11	NIRB forwards approved IRs to Proponent	IRs also forwarded to additional parties with a request for response.
	Proponent Driven	Proponent develops response to IRs	

Step		Timeline	NIRB Review Process	Notes/Issues
5	Technical Review of DEIS	05/07/11	Proponent response to IRs received by NIRB	
		05/10/11	NIRB receives technical review comments from Parties	Deadline extended upon request. Comments regarding Water Licence forwarded to NWB
		14/10/11	Proponent response to technical review comments received by NIRB	Response used to help facilitate Technical Meeting
6	Technical Meeting	18-20/10/11	Technical meeting is held	Held in Iqaluit. Participation by NWB
7	Pre-Hearing Conference	06-10/11/11	Pre-Hearing Conference (PHC) is held	Held in Pond Inlet & Igloolik. Participation by NPC and NWB
		09/12/11	NIRB issues PHC Decision	90 day technical review period with IR period and Technical Meeting determined to be necessary for FEIS. NWB includes Appendix to NIRB PHC Decision.
8	Final EIS (FEIS)	Proponent Driven	Proponent develops FEIS	

Step	Timeline	NIRB Review Process	Notes/Issues
9	14/02/12	NIRB receives FEIS PHC compliance review begins	FEIS contains Type A Water Licence application
10	29/02/12	NIRB issues Positive or Negative PHC Decision compliance determination	Positive compliance determination; FEIS accepted by NIRB.
	29/02/12	FEIS is distributed and technical review period commences Parties given 30 days to submit Information Requests (IRs)	90 day technical review period with IR period and Technical Meeting determined to be necessary for FEIS technical review.
	02/04/12	Deadline for Parties to submit IRs to NIRB	
	05/04/12	NIRB forwards approved IRs to Proponent	Additional IRs also forwarded to other parties
	Proponent Driven	Proponent develops response to IRs	
	19/04/12	NIRB receives Proponent response to IRs	
	01-03/05/12	Technical Meeting is held	
	30/05/12	NIRB receives final written submissions from Parties	
11	July 2012	Final Hearing is held	Final Hearing to be held in Iqaluit, Pond Inlet and Igloolik.
12	August 2012	NIRB's Final Hearing Report is submitted to the Minister	
	Government driven	Minister Review	

Step	Timeline	NIRB Review Process	Notes/Issues
13	Minister's Decision	Minister's Final Decision (1) Accept NIRB report (2) Reject positive determination by NIRB (project not in national or regional interest) (3) Reject positive determination by NIRB with direction to reconsider onerous terms and conditions (4) Reject negative determination by NIRB (project important to national or regional interest) (5) Refer deficient report back to NIRB for additional Hearings	
		NIRB acknowledges receipt of Minister's Decision and announces date(s) and location(s) for Regulators Meeting	
14	Regulators' Meeting	Regulators' Meeting held	NWB will participate at Regulators' Meeting
15	Project Certificate Issuance	Issuance of the NIRB Project Certificate	

Note: \* additional time will be required if Ministers decision (3), (4) or (5).