



April 6, 2018<sup>1</sup>

## NIRB GUIDANCE RE PROCESS FOR SEEKING APPROVAL FOR MODIFICATIONS TO PREVIOUSLY-APPROVED PROJECTS

Where a proponent has determined that a modification to project works or activities is required due to unforeseen circumstances or as part of the phased development of a previously approved Project, the NIRB recommends the following:

### Self-Assessment

1. The proponent undertakes a self-assessment to determine whether the proposed modification constitutes a “significant modification” to the project as previously considered by the Nunavut Planning Commission (NPC) for conformity, assessed by the NIRB, and/or licenced by the Nunavut Water Board (NWB);
  - a. At a minimum, the proponent’s self-assessment should include:
    - i. a sufficiently detailed scope of project components and activities to be undertaken during the proposed modification, contrasted with the scope of the original project as previously considered by the NPC, the NIRB and/or the NWB;
    - ii. information demonstrating the proponent has considered the significance of the potential impacts associated with the proposed modification using the factors for determining significance as set out in s. 90 of the *NuPPAA* reflecting any other guidance or information requirements of the NPC, the NIRB and/or the NWB to evaluate the significance of the proposed modification;
  - b. The proponent should also identify whether any new or modified permits, licences or other approvals are anticipated to be necessary for the proposed works or activities;
  - c. For proposed modifications to approved projects with a NIRB Project Certificate, information should also be provided as to whether the grounds for a reconsideration of the existing Project Certificate terms and conditions have been met (see *Nunavut Agreement* s. 12.8.2 and *NuPPAA* s. 112).
2. If the proponent is unsure as to whether the modification is a significant modification, the proponent should provide a sufficiently detailed project proposal document with the information noted above to the NPC with a direct request for the NPC to provide guidance regarding whether, in the NPC’s view, the modification constitutes a significant modification;

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<sup>1</sup> This guidance has been re-formatted slightly from its original form when released to a Nunavut-wide distribution list on February 14, 2018; all content remains unchanged.

### Application Submission

3. **If the proponent and/or the NPC identify that the modification constitutes a significant modification**, the proponent should submit the modification project proposal to the NPC for consideration. In addition, the proponent is encouraged to:
  - a. At the time of submission of the modification project proposal to the NPC, provide the NIRB with the appropriate supporting project proposal documentation required to assess the modification request; and provide the NWB with any associated water licence amendment application materials that are required by the NWB to consider any requested amendments to the water licence.
  - b. Where an Environmental Impact Statement (EIS) had been developed for the assessment of the original project, documentation submitted to the NIRB for consideration of a proposed modification should clearly link back to the EIS predictions, identifying any changes to the significance of those predicted impacts, and further referencing new or modified mitigation plans and required changes to the existing monitoring program for the approved project as result of the proposed modification. The justification or rationale for the proposed modification must be described in sufficient detail to be understood and thoroughly assessed.
  - c. Where the original project is governed by an existing NIRB Project Certificate, proponents should include reference to the specific terms and conditions that are understood to be applicable to the scope of the proposed modification, with commentary regarding planned compliance and/or identifying the terms and conditions that may require formal reconsideration.

### Consideration of Modification Requests

4. The NIRB and the NWB are not able to commence formal processing of a proponent's modification request until the NPC's land use planning requirements have been satisfied, and in the case of the NWB, the NIRB's assessment requirements associated with the proponent's modification request have been completed. However, early engagement at this stage with the NIRB and NWB is strongly encouraged to ensure that all parties have reviewed the scope and content of the proposed modifications being considered by the NPC at the early stages of the regulatory process.
  - a. When a proponent's significant modification request has met the applicable land use planning requirements and the NPC issues a positive conformity determination where required, the NIRB will then undertake any assessment of the project that may be required.
  - b. If assessment by the NIRB is not required, or upon the NIRB issuing a positive decision that the project can proceed to the permitting stage, the NWB would then be able to consider any water licence amendments associated with the modification request.
5. **If the proponent's self-assessment and/or NPC guidance conclude that the modification request does not constitute a significant modification**, a proponent can submit the application materials supporting the modification request to the appropriate permitting agencies (such as a water licence amendment application to the NWB). A

proponent's submission to permitting agencies should also include, for the permitting agencies' consideration, the materials supporting the proponent's self-assessment or the NPC's confirmation that the modification request is not a significant modification.

- a. While non-significant modifications may not necessitate changes to the permits, licences, or a project certificate, such changes may still have implications for the monitoring responsibilities associated with the approved project. As such, proponents are encouraged to provide the NIRB with a copy of the materials provided in support of the proposed modification for information, and to support the Board's ongoing monitoring of the approved project.



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

<b>Manifestly Insignificant: No submissions to NPC/NIRB Required</b>	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.
<b>Non-significant Amendment: NIRB Assessment Not Required</b>	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.
<b>Non-significant Amendment: Screening Not Required; Implications for NIRB Monitoring Program</b>	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)
<b>Significant Amendment: Screening of Independent Project Proposal Required</b>	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.
<b>Significant Amendment: PC Reconsideration Required</b>	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)
<b>Significant Amendment: Deemed Unacceptable by NPC</b>	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