



## **Nunavut Impact Review Board (NIRB)**

**and**

## **Nunavut Water Board (NWB)**

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# **Detailed Coordinated Process Framework for NIRB Part 5 Reviews and NWB Licensing**

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### 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.*

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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, 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 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)<sup>1</sup>, 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'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 NWB's primary function is to license uses of water and deposits of waste.

The NIRB and NWB have developed the Detailed Coordinated Process Framework to address project specific requests from proponents to proceed in a coordinated manner commencing at the development impact review 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 to NIRB, the NWB, Proponents and other parties participating in the process. It is important to note that the Detailed Coordinated Process Framework is intended to respect the individual mandates of NIRB and the NWB, and it does not provide for a "joint" review or hearing process.

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<sup>1</sup> Assented to on April 30, 2002

## RELATIONSHIP BETWEEN NIRB AND THE NWB

Sections 12.10.1 and 13.5.4 of the NLCA prohibit 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. 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 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 period:

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 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 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.

## 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.<sup>2</sup>

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.

In light of projected estimates for major mine development projects in Nunavut, the NIRB and NWB share the view that a coordinated process is important to ensure each organization has the capacity to fulfill the respective mandates in a timely and efficient manner. **However, 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 between impact assessment and water licensing, further assessment is required prior to proposing a fully joint review process.

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<sup>2</sup> 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.

## DETAILED COORDINATED PROCESS (DCP)

The DCP is led by the NIRB and no changes to NIRB's standard process, operations and timelines are proposed. The NIRB will maintain established protocols for the promotion and solicitation for public input and participation.

Through the DCP, NWB technical staff remain employees of the NWB and will work cooperatively with the NIRB and engage in the process only in so far as their specific expertise is required on issues related the use of water and disposal of waste into water and associated activities related to NWB's mandate. The NWB Technical Advisors (TA) assigned to the project will review the Environmental Impact Statement (EIS), giving consideration to components of the EIS that overlap 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 proposed 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 Part 5 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 NIRB and NWB are highlighted in bold, as are the requirements of the proponent and other parties in the review process.

#### 1. 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.

***NIRB will develop a Draft Scope of the project and distribute it for public comment. Public scoping sessions facilitated by 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 of 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 public scoping sessions, and receipt of comments on the Draft Scope, NIRB will issue a Summary Scoping Report which details the results of each, as well as a Final Scope. The Summary Scoping Report will be used in the NIRB's creation of Draft Guidelines for the Preparation of an Environmental Impact Statement (EIS Guidelines).***

## **2. Issuing Guidelines**

Section 12.5.2 of the NLCA directs NIRB to issue project-specific guidelines to the Proponent. A Draft Environmental Impact Statement (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.

***The NIRB will release Draft EIS Guidelines for public comment. The objective of the public comment period is to allow 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 generic 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 will serve as instructions to the Proponent to aid in its development of a Draft Water Licence Application.<sup>4</sup>***

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<sup>3</sup> **Supplemental information** is required as part of the water licence application in accordance with section 48 of the NWNSRTA. “To provide guidance on fulfilling the requirements of section 48 and related requirements in the regulations, the NWB has developed a Technical Guide containing Supplemental Information Guidelines (SIG) for specific classifications of undertakings. It is anticipated that the provision of supplemental information requested by the guidelines will reduce delays that may arise from the NWB having to solicit required information after an application is submitted. Further information on SIGS 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).”

<sup>4</sup> A water licence application is a written request to the Board to exercise its powers under the *Nunavut Waters Nunavut Surface Rights Tribunal Act* (NWNSRTA or Act) and the *Northwest Territories Water Regulations* (NTWR or Regulations). A complete application consists of the specific forms and supporting documents that adequately address the NWB’s information requirements. A complete application must be submitted to the NWB to allow the Board to process the application.

The completeness of an application directly impacts the length of time to process a water licence application. Further information on the information requirements and completing the water licence application may be found in the NWB’s Guide 4 - Completing and Submitting a Water Licence Application for a New Licence.

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

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

***The Proponent, NWB and Parties will be consulted on the agenda for the GDW.***

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

### 3. DEIS

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 DEIS<sup>5</sup>.

***The DEIS shall also include all details to support consideration of exceptions in accordance with section 12.10.2 and subject to 13.5.4 and 13.5.5.***

Sections 12.10.2 and 13.5.5 of the NLCA provides for exceptions to the general prohibition that the NWB 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.

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<sup>5</sup> Nunavut Land Claims Agreement – Section 12.5.2.

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.

Accordingly, NIRB and NWB will consider requests for any pre-development activities or short term approvals to be considered. Although, any exceptions approved by NIRB and the NWB will not preclude the proponent from obtaining any other licence/permit/authorizations that may be applicable to the activities (e.g. DFO authorizations).

Furthermore, the inclusion of consideration of exceptions **does not** pre-suppose a positive EA decision by NIRB and/or the Minister.

***The NIRB will make specific determinations on exceptions as applied for by the Proponent on a case-by-case basis.***

***The Proponent will also highlight within the Draft water licence application pre-development activities or short term approval options to be considered by the NWB.<sup>6</sup> The Proponent shall provide an implementation schedule for submission of final “exceptions” application water licence information. Detailed engineering<sup>7</sup> (where applicable) for***

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<sup>6</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.

<sup>7</sup> Further to the provisions of the Regulations, the applicant must provide plans where the use of water and/or the deposit of waste is proposed, including where there is a potential impact on water through the deposition of waste. The applicant should provide measures to avoid or mitigate any adverse impact of the use of waters or the deposit of waste, as well as monitoring and management plans where appropriate. Site specific study reports must also be provided to support design and management plans.

Generally the NWB requires final plans to be submitted for review and approval. Submissions may be approved either as part of the water licence application or prior to construction as a condition of an approved water licence. Depending upon the complexity of the technical issues associated with a proposed undertaking, the NWB may request final plans to be submitted as part of the water licensing approval process.

The NWB requires plans, including design drawings and reports requiring the application of engineering principles to be developed to professional engineering standards and under the professional responsibility of individuals and firms registered with the Northwest Territories and Nunavut Association of Professional Engineers and Geoscientists (NAPEG).

When submitting engineering plans, including drawings and reports, the NWB encourages applicants to reference the NAPEG document entitled “A Guideline to the Use of Stamps”. As such, final drawings required by the NWB must be considered complete and include the statement “Issued for Construction” or other similar statement. Final drawings developed by a single engineering discipline must be signed, stamped and dated by a responsible design engineer and/or approving engineer registered with NAPEG. Final drawings developed by multiple engineering disciplines must be

***exception pre-development activities will be required at time of final submission.***

***The Parties may be asked to comment on the activities proposed for "exception" consideration.***

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

***The NIRB will review the DEIS for conformity to the NIRB Final EIS Guidelines.***

***The NWB will review the Draft water licence application for conformity<sup>8</sup> to the SIG (MM3) Mine Development Guidelines. Additional project***

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signed and stamped by a design engineer for each discipline and an approving engineer registered with NAPEG. Detailed drawings containing information from more than one discipline should be stamped by the working level professional for each discipline and the stamps should be qualified by the professionals involved. Registered firms must also include their NAPEG permit stamp on final drawings.

Final reports, including letter reports, required by the NWB, must be signed, stamped and dated by the responsible engineer and/or approving engineer and include the NAPEG permit stamp of the registered firm where appropriate.

Preliminary plans including drawings and reports are not normally stamped by a professional engineer, but should include the

Statement "Preliminary – Not for Construction" or other similar statement. The Board will not grant approval to proceed with a component of the undertaking for which only preliminary plans have been submitted.

<sup>8</sup> The water licence application must also include a concordance table that cross references the requirements of the SIG(s) with the documents that make up the water licence application. This will direct reviewers to the specific location in the water licence application package where the information required by the SIG can be found. The reference locations must

***specific guidelines related to pre-development activities may be provided to the Proponent where applicable.***

## **5. 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 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:

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be indicated by document and section number as appropriate. All documents referenced in the concordance table must be submitted as part of the overall water licence application and it is critical that information provided in all documentation is consistent.

Once the NWB receives a copy of the water licence application, it conducts a concordance assessment to determine whether the application documents address the provisions of the guidelines such that the NWB may issue a public notice of application. For clarity, the concordance assessment is an analysis of the presence or absence of the required information. It is not intended as a step to evaluate the quality of the information presented.

In conducting the assessment, the NWB may, depending upon the expected level of public concern, request comments from interested parties on application concordance. The applicant will be notified by the NWB of the results of the assessment and any deficiencies identified. Upon receiving the results, it is the responsibility of the applicant to respond accordingly, with the submission of additional information, if necessary.

- 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.

***The NWB will work cooperatively with NIRB on technical review of water and waste disposal and pre-development activities.***

***The Proponent and Parties will submit IRs, provide response to IRs, and submit technical review comments in accordance with timelines and requirements of the NIRB.***

## **6. Technical Meetings**

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. Breakout sessions are often used and each break out group (whether related to engineering, wildlife or socio-economic 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.

***The NWB will have staff in attendance at any Technical Meetings facilitated by NIRB.***

***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. In addition the NIRB and NWB will seek clarification of Parties comments on pre-development activities.***

## **7. 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 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.

***The NWB will have staff in attendance at the PHC.***

***The NWB will issue a conformity determination applicable to the Draft Water Licence and SIR's related to the water license application and pre-development activities as an Appendix to the NIRB PHC Decision. The EA process will proceed regardless of the conformity determination made by the NWB.***

## **8. FEIS**

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.



***The NWB will acknowledge receipt of the Type B and/or Type A water licence application (if applicable).***

***The Proponent will submit a FEIS which includes final water licence applications for pre-development activities to be considered as "exceptions". The FEIS shall include as appendix water licence application(s) with cross referencing to the FEIS to eliminate or reduce duplication and for ease of Parties review. The Proponent may elect to submit a stand-alone Type A water licence directly to the NWB (with no cross referencing to the FEIS). The Proponent shall submit to the NIRB and the NWB a concordance table to NIRB's PHC Decision and NWB SIG (MM3) Guidelines and subsequent project specific guidelines issued for pre-development or "exception" activities. Should the Proponent decide not to submit a Type A water licence the EA process will proceed.***

***The Parties will review the FEIS in accordance with NIRB's standard review process.***

## **9. 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.

***The NIRB will issue compliance review determination and issue Notice of Final Hearing upon acceptance of a FEIS.***

***The NWB will assist in compliance EA review as it relates to water use, waste disposal and associated activities. The NWB will issue decisions on conformity for "exception" activities and the Type A water licence application (if applicable).<sup>9</sup>***

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<sup>9</sup> Once the Board deems the application complete, a public notice is issued to the council of each municipality in the area affected by the application, and the NWB publishes the notice in a newspaper of general circulation in the area affected or, if there is no such newspaper, in such other manner as the Board considers appropriate. Typically, the NWB also gives notice via email by referring the application to a distribution list comprised of interested parties including the applicant, federal and territorial government departments, community representatives, DIOs, Hunter and Trapper Organizations (HTOs), as well as other agencies or individuals that the Board deems appropriate.

## 10. 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.

***The Parties will comment on activities to be considered as "exceptions".***

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The notice also invites persons to provide representations within a specified time period advising of the consequences of any failure to respond to the notice (i.e. the applicant may not need to compensate an existing or other user, as discussed in the NWB's *Guide 4 – Completing and Submitting a Water Licence Application for a New Licence*, part 1 section 5 Block 17, if that person fails to respond within the time period specified in the notice).

Information and correspondence related to the application is uploaded to the NWB electronic public registry in an application specific directory identified by the application number.

***The NIRB will make final decision related to “exceptions” proposed by the Proponent. The NIRB will pay particular attention to ensure that project-splitting does not occur and decisions are consistent with any previous Ministerial guidance.***

***The NWB may begin to identify a preliminary list of issues for consideration in the regulatory process. The NWB may issue Type B water licenses (dependent upon consultation feedback).<sup>10</sup>***

## **11. 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.

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<sup>10</sup> The technical review involves a more detailed review of the water licence application than the concordance assessment with the intent of analysing the quality of the information presented in the application. Interested parties must consider the following in conducting a technical review:

- a) 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;
  - Compensation measures;
  - Monitoring program; and
  - Options availableas well as any proposed alternative mitigation and/or monitoring measures which may be more appropriate, and evidence supporting the parties position;
- b) Determination of whether the conclusions in the application are supported by the analysis, and evidence supporting the parties' position;
- c) Determination of whether the appropriate methodology was used in the application to develop conclusions, any proposed alternative methodologies which may be more appropriate and evidence supporting the parties' position;
- d) Assessment of the quality of the information presented; and
- e) Any additional information that would be useful.

Throughout the technical review phase interested parties are encouraged to work cooperatively with the applicant to address minor issues in advance of the proposed technical meetings. The NWB appreciates receiving notice on issues clarified between the parties for inclusion on the public registry.

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.

***The Proponent and Parties will participate in the NIRB Final Hearing.***

***Immediately following the NIRB final hearing, the NWB will hold a preliminary technical meeting<sup>11</sup> with all interested Parties to define regulatory issues related to the Type A water licence or outstanding water licence issues related to Type B water licenses. Project Specific Guidelines (PSG) for the Type A water licence will include but may not be limited to information requirements specifically identified in the NIRB final hearing as appropriate to defer to the water licencing process. Draft PSG's will be issued shortly after the final hearing for Parties review.***

## **12. NIRB Determination – 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.*

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<sup>11</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. Given the informal nature of the meeting, the NWB Board members are not present at the TM, and the meeting is facilitated by NWB staff. Depending on time constraints and the nature and extent of technical issues to be addressed, the TM may be divided into specific break-out groups (for example water quality, geotechnical, other issues) with each group chaired by a NWB staff member. During the TM, a list of commitments made by the various parties may be compiled and carried forward to the PHC.

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.

***The NWB will issue final PSGs. Upon receipt of the supplemental information, the NWB shall confirm conformity of the information to the PSG's and MM3 guidelines. If complete, the NWB shall acknowledge receipt and issue notice of Technical Meeting (if needed) and Pre-hearing conference.***

***The Proponent is required to file a submission of supplemental information. A final revised stand alone application may be submitted if needed.***

***The Parties will undertake technical review of the supplemental information or revised stand alone Type A application.***

### 13. 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.

***The NIRB, NWB, Proponent and Parties await the Minister Decision. Once received, NIRB schedules a Regulators Meeting.***

***Timing of the NWB PHC is dependent upon receipt of Minister's Decision.***

#### **14. Regulators Meetings**

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.

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

***Regulatory Agencies will participate in NIRB regulators meeting.***

***Immediately following the Regulators Meeting, the NWB holds final Technical meeting (if needed) and the PHC meeting.***

***The Proponent will participate in the NWB PHC and Technical Meeting (if needed).***

***All interested Parties will participate in the NWB Technical Meeting and PHC meeting.<sup>12</sup>***

#### **15. 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 provides a more efficient method of accomplishing the purpose of the terms and conditions<sup>13</sup>.

***The NIRB will issue the Project Certificate.***

***The NWB will identify all terms and conditions in the Project Certificate applicable to water licensing and request confirmation from the***

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<sup>12</sup> The purpose of the PHC is to deal with administrative matters related to the public hearing including:

- a) The timetable for the exchange of information;
- b) The list of issues to be dealt with at the hearing;
- c) The identification of interested parties;
- d) The desirability of amending an application for the purpose of clarification;
- e) The procedures to be following in a hearing; and
- f) Any other matters that may aid in the simplification and disposition of the application at the Hearing, such as site visits.

The PHC is an opportunity for parties to present any issues that were unresolved during the technical meeting and for the Board (or its staff) to hear comments from the public. If appropriate, a community session is held to facilitate discussion and address concerns from the public.

<sup>13</sup> Nunavut Land Claims Agreement – Section 12.8.2.

***proponent that all terms and conditions information requirements have been fulfilled in the Type A application.***

***The Proponent will confirm terms and conditions applicable to the water licence are contemplated in the Type A application. The NWB will issue a PHC decision<sup>14</sup> and provide a minimum of sixty (60) day notice of Final NWB Hearing.<sup>15</sup>***

***The Parties will submit final interventions<sup>16</sup> to the NWB final hearing.***

***The NWB shall hold a Type A Water Licence Hearing.***

## **B. NWB Type A Water Licensing Process**

### **1. Public Hearing**

Hearings usually take place in person, but may occur via teleconference, or in writing.

The Board may consider a written hearing for applications that elicit limited public concern and issues with a relatively low level of complexity which can be dealt with in a written format. While written hearings require less travel and may be less costly than in-person hearings, they do not necessarily require less time. The principle of procedural fairness (see section 4 of *Guide 1: The Nunavut Water Board*) must be adhered to, and can cause a written hearing to take more time than an in-person hearing. Typically a written hearing will take six (6) weeks to complete. If a written hearing is contemplated, the Board will issue specific direction in its PHC decision.

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<sup>14</sup> Following the PHC, the Board issues a PHC decision containing the Board's decision on the matters discussed at the PHC and often includes the list of commitments generated during the TM. The Board's decisions as well as any documents received during the TM or PHC are posted on the NWB's electronic public registry in an application specific directory.

<sup>15</sup> Following the PHC, the Board issues a formal notice of public hearing. The notice of public hearing must be issued at least sixty (60) days before the commencement of the hearing outlining the location, date, and time of the hearing. In determining appropriate hearing locations, the Board takes into consideration the community or communities within Nunavut most affected by the application.

The notice of public hearing is issued to the council of each municipality in the area affected by the application, and published in a newspaper of general circulation in the area affected, or if there is no such newspaper, in such other manner as the Board considers appropriate. The NWB also gives notice via email to a distribution list comprised of interested parties including the applicant, federal and territorial government departments, community representatives, DIOs, HTOs, as well as other agencies or individuals that the Board deems appropriate. In some cases the formal public hearing notice is issued prior to the PHC and confirmed at the PHC.

<sup>16</sup> The PHC Decision and Notice will set out the timelines and requirements for the NWB Final Hearing. For additional information refer to the NWB's *Rules of Practice and Procedure for Public Hearing* and the NWB's *Guide 5 – Processing Water Licence Applications*.



The purpose of the public hearing is to provide an open public forum for the discussion of the application in front of the Board. Interested parties, including members of the public, are identified and introduced, the application and interventions are presented, and questions are asked and directed in an orderly fashion.

Typically, unless there are outstanding issues, at the end of the public hearing, the Board will close its record, meaning that no new evidence or information is permitted for the Board's consideration in making a decision.

Significantly, the hearing gives due regard and weight to the opinion of Elders and community members, Inuit culture and knowledge, and to the tradition of Inuit oral communication and decision making.

For complete details on the hearing proceedings and format, refer to the NWB's *Rules of Practice and Procedure for Public Hearings*.

## **2. NWB Decision to the Minister**

Following the public hearing the Board will issue its decision to the Minister of Indian and Northern Affairs Canada (INAC) for approval. The Board typically strives to issue its decision within 30-45 days following the hearing, however the length of time to issue its decision depends upon the capacity of the Board and its staff.

The Board will not issue its decision if issues respecting water rights have not been resolved. Refer to the NWB's *Guide 4: Completing and Submitting a Water Licence Application for a New Licence* part 1 section 5 Blocks 17 and 18 for more information.

## **3. Minister Approval**

The time required for approval by the Minister of INAC is 45 days. This time may be extended for a further 45 days if the Minister notifies the Board of the extension within the first 45 days. If the Minister does not respond within this time period, the Minister is deemed to have approved the Board's decision.

Once the Minister has made its decision on whether to approve the NWB decision, the Minister sends a copy of its decision and, in the case of a decision to withhold approval, the reasons for the decision, to the Board, the applicant, and if required to the DIO and any other person with a right to compensation.

The Minister's disagreement with the amount of compensation determined by the Board for Inuit Water Rights as discussed in part 1 section 5 Block 18 of the NWB's *Guide 4- Completing and Submitting a Water Licence Application for a New Licence*, is not sufficient reason for the Minister to withhold approval.

Applicants are advised to consider the timeframe associated with the Minister's decision when planning work schedules.

It is important to note that these timeframes are approximate. Actual timeframes are determined on a project specific basis and are dependent upon the nature and quality of information contained in the initial application, the responsiveness of the applicant to requests for additional information, the public notification process, the complexity of the project, as well as the number of other applications requiring the attention of the Board.

## **C. Detailed Coordinated Process Flowchart**

The DCP Flowchart is provided as a separate standalone document.

## CLOSING

The DCP allows proponents who choose to meet the NWB's detailed information requirements during the NIRB Part 5 Review an opportunity to save time in the overall impact assessment and water licensing process, as well as seek approval of pre-development activities which may allow for greater opportunities to actively mobilize or prepare a mine site. However, it should be noted that early licensing pre-development activities is a risk to proponents as impact assessment has not yet been completed and the project approved to proceed. Where a proponent has chosen to proceed on the basis of the DCP, the option remains to withdraw from the coordinated process without hampering the ongoing Part 5 review.

At the conclusion of the regulatory process, the NIRB and NWB will conduct a review of the DCP.

## **DCP PILOT PROJECT – Summary of 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 BMIC project proposal on March 20, 2008. Within the project proposal BMIC requested that the Boards consider a coordinated process. The preliminary water licence application submitted at this point and is one of the authorizations that triggered the review.

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

The NPC confirmed conformity to the North Baffin Land Use Plan on April 30, 2008. In addition NPC advised the NIRB that section 3.5.111 and 3.5.12 of Appendix C of the North Baffin Regional Land Use Plan (NBRLUP) required "...a joint [NPC and NIRB] process to address the prospective transportation corridor contemplated by those provisions."

#### **Screening**

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

The NIRB set a deadline of May 23, 2008 for the submission of comments from the various Parties. Certain parties requested an extension for the public commenting period which NIRB then extended to June 4, 2008. As a result on June 13, 2008, the NIRB applied for an extension for the screening decision to the Minister of INAC 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 issued Screening Decision to the Minister**

On June 27, 2008, the NIRB issued a Screening Decision 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 to the Minister that the Project Proposal required review under Part 5 or 6. In addition NIRB requested advice from the Minister on the dilemma posed by the NPC conformity determination given outstanding requirements of the NBRLUP.

### **Minister Final Screening Decision**

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 Part 5 review is appropriate.

In addition, the Minister encouraged the NIRB and NPC to develop an arrangement that will satisfy the outstanding requirement of the land use planning process, which would not unduly encumber the NIRB Part 5 review process. Once finalized and agreed upon by the NIRB and NPC, the Boards were encouraged to communicate the process to all parties involved in the review.

Also, the Minister identified the particular 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 NIRB to carry out a very thorough assessment of these impacts and involve the participation of adjacent jurisdictions in the review.

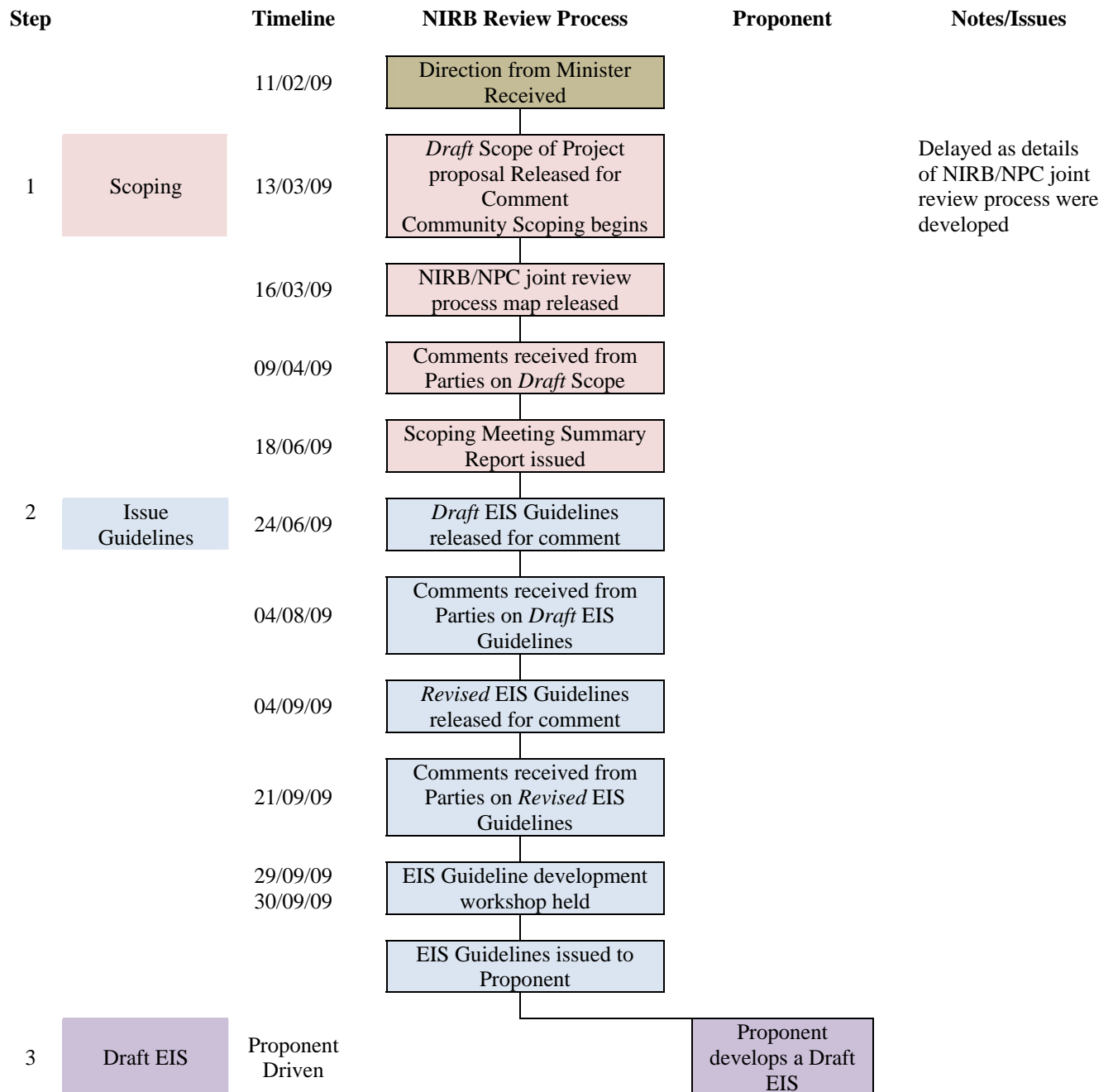
See Summary of Screening Process on next page.

### **NIRB PART 5 REVIEW PROCESS - ONGOING**

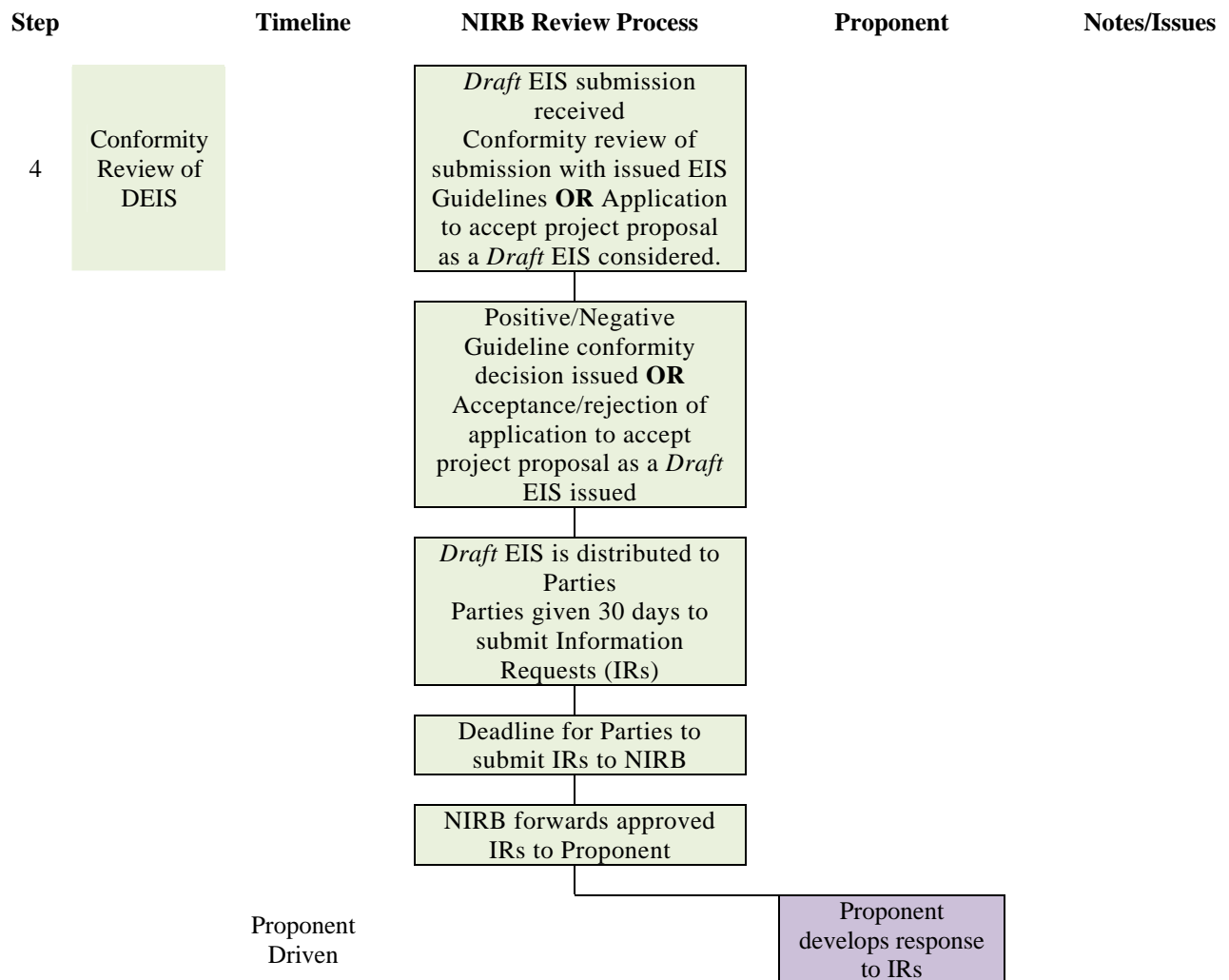
NIRB and the NWB will continue to map process as the project proceeds and update parties as needed.

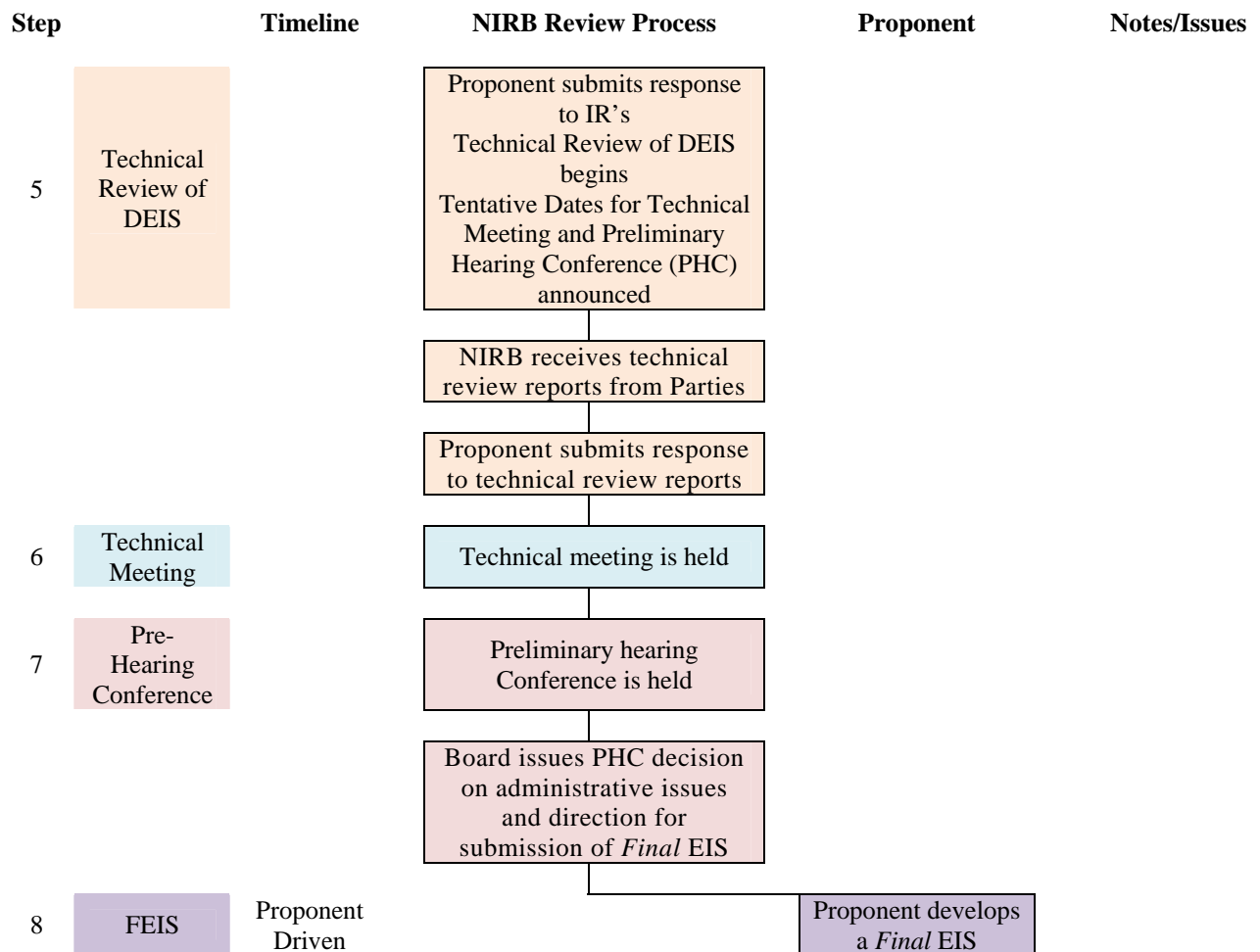
Note: \* All timelines dd/mm/yy. \*\* NIRB has the ability to request from the Minister an extension to the 45 days deadline.

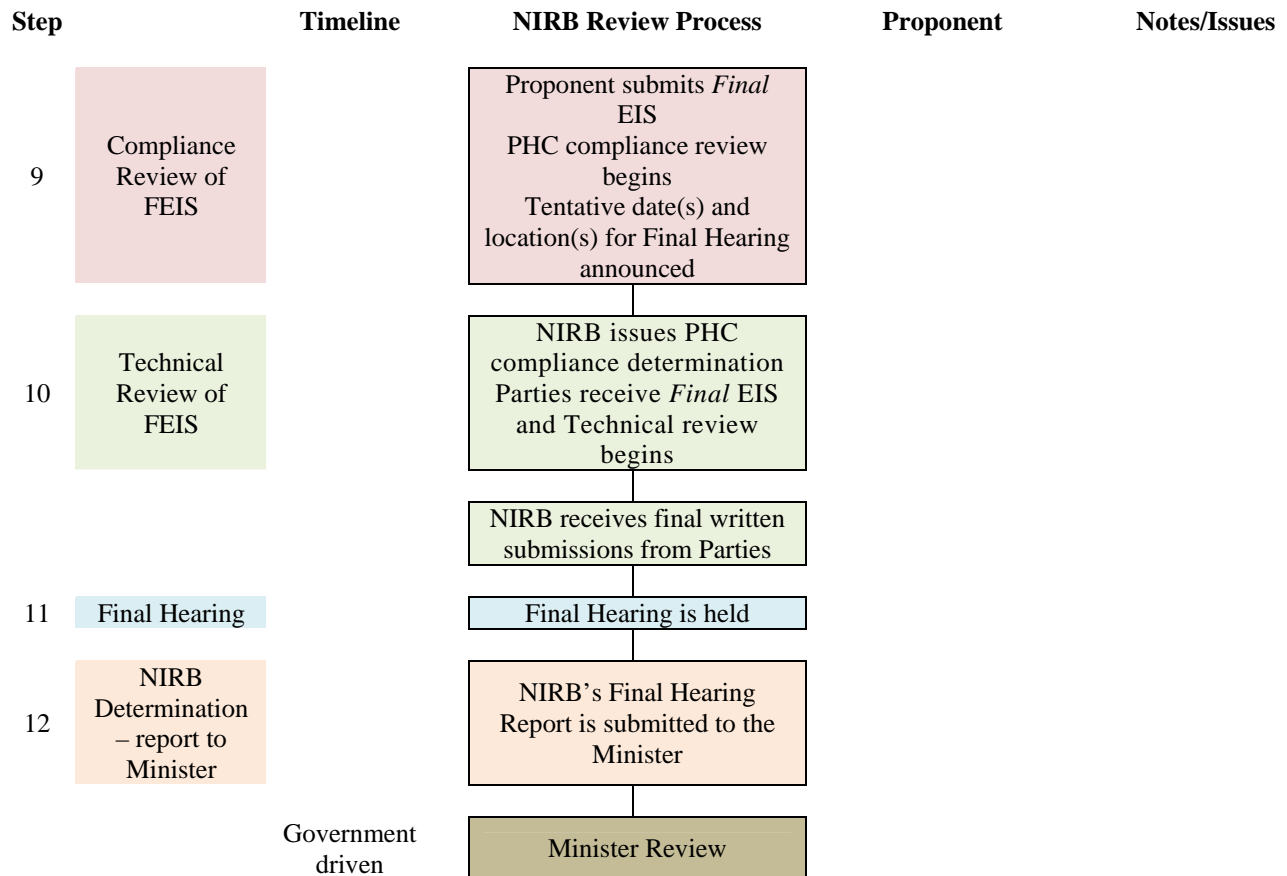
*Review*











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

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