

# Summary of Proposed Amendments to the Mackenzie Valley Review Board's Rules of Procedure

## Introduction

This document summarizes the proposed amendments to the Mackenzie Valley Environmental Impact Review Board's (the Review Board) Rules of Procedure (the Rules). The Review Board is seeking feedback from the public before updating the Rules.

## Background

Under section 30 of the Mackenzie Valley Resource Management Act (MVRMA), the Review Board has the authority to make rules about its practice and procedures. The Rules of Procedure deal primarily with the requirements of procedural fairness during environmental assessment (EA) proceedings, including public hearings.

The Review Board's existing Rules of Procedure were revised on May 1, 2005. A lot has changed since then, including technology such as the online registry and online review system for written comments and information requests. The EA process and the way people participate in it has also changed over time, in part due to the maturity of the Review Board and people's familiarity with the Board and the resource management system overall.

## Key principles for proposed amendments

We are proposing amendments to:

- bring our Rules up to date and in line with current Review Board process and practices
- make our Rules easier to use and understand
- more clearly define the roles of participants in various stages of the EA process
- incorporate some newer practices that will continue to ensure that Review Board proceedings are inclusive, transparent, and fair.

## Summary of proposed amendments

In addition to editorial changes to make the Rules clearer, more concise, and more user friendly, specific changes are summarized below. (Rule numbers refer to the Draft November 2018 Rules).

- **Update overall structure, format, and wording to be consistent with the Mackenzie Valley Land and Water Board (MVLWB), where practical, including organizing the rules into two main categories.**
  - General rules that apply to proceedings as a whole, including scoping, technical review, information requests, and public hearings (parts 1 and 2).
  - Additional rules that apply specifically to the Public Hearing Phase (part 3).
- **Update rules for information requests (IRs) to match current practice and Review Board direction to parties in recent EAs (rules 73-77).**
  - Allows free exchange of information between parties and the developer.
  - Increases transparency by using the Online Review System to make information publicly available as soon as it is submitted.
  - Maintains Review Board authority to reject IRs that are outside the scope of assessment and rule on disputes about the adequacy of IR responses.
- **Update rules about how to participate in EAs generally, and in public hearings specifically (rules 22-26 & 86-87).**
  - The 2005 Rules required people to *apply* to participate in general and then be *granted standing* to participate in a hearing.
  - The proposed amendments would:
    - Allow people to simply *register* as parties by filling out a basic information form, rather than needing to apply for party status. Parties can participate fully in an EA proceeding leading up to the Public Hearing Phase.
    - Require that people *apply* for intervener status to fully participate in the Public Hearing Phase. “Intervener” is a standard term used in EA proceedings and is consistent with the MVLWB rules about participation in hearings.
    - Allow members of the public to, without becoming a party, provide comments to the Review Board in writing or via the Online Review System, or participate in a public session or hearing organized by the Board.
  - These changes are intended to keep Review Board proceedings open and inclusive, while maintaining Board control, especially during the hearing phase, to ensure hearings focus on substantive issues and are effective, efficient, and fair. The Review Board would maintain the authority to limit participation at any time if a party is not following the Rules or is participating in an irrelevant, frivolous, or vexatious way.
- **Add new rules for automatic party and intervener status for potentially-affected Aboriginal organizations (rules 27 & 88).**
  - The Review Board is looking at ongoing improvements to ensure the EA process is

- accessible to and inclusive of Aboriginal organizations.
- Under the proposed rules, potentially-affected Aboriginal organizations would not need to fill out forms or “apply” to intervene. An Aboriginal organization automatically has the right to participate in an EA for a project in an area with a settled land claim agreement or an area of cultural importance or traditional land use.
  - The proposed rules are intended to encourage participation by Aboriginal organizations, lessen administrative rigidity, and help ensure the Review Board meets its statutory consultation responsibilities. Aboriginal organizations would still need to notify the Review Board and follow the Rules.
- **Ensure rules are clear about the Review Board’s authority to stop the proceeding at any time if information on the record is not adequate to move forward, or additional information is needed (rules 73 & 80).**
- The Review Board has this authority already, and a general rule about the Board’s ability to require information from anyone at any time exists in the 2005 Rules. The proposed amendments add a rule specifically about the need for adequate information before entering the Public Hearing Phase. Information on the Public Record is the evidentiary basis for the hearing; adequate information is necessary for hearings to be efficient, focussed, and fair.
- **Add new rules about the consult to modify process (rules 115-117).**
- The Review Board’s current process is well-established and fair. The proposed rules help formalize this process to provide certainty about how the Review Board will participate in consult to modify processes. These rules are about how the Review Board handles its own role; the rules do not attempt to tell the Minister or final decision-makers what to do.
- **Add new rule to address registry management during after the report of EA is issued (rules 51-52).**
- To provide clarity on how the registry (or “Public Register”) will be managed after the Review Board releases its report of EA.
- **Remove specific timelines (e.g. for requests for ruling or other process steps)**
- To give flexibility to the Review Board to give direction to parties and set fair and reasonable timelines that work for each proceeding. In the past, these were almost always changed to fit specific circumstances.
- **Remove the rules about dispute resolution.**
- These rules are not standard in Rules of Procedure for other Boards in the Mackenzie Valley. The Review Board already has a way to resolve disputes through the Request for Ruling process. Review Board directives can be used to customize the Request for Ruling process based on the situation.