

Terms of Reference

Fingerboards Mineral Sands Project Inquiry and Advisory Committee

Version: June 2020

The Fingerboards Mineral Sands Project Inquiry and Advisory Committee (the IAC) is appointed to inquire into, and report on, the proposed Fingerboards Mineral Sands Project (the project) and its environmental effects in accordance with these Terms of Reference.

The IAC is appointed pursuant to:

- section 9(1) of the *Environment Effects Act 1978* (EE Act) as an inquiry; and
- part 7, section 151 of the *Planning and Environment Act 1987* (P&E Act) as an advisory committee.

The IAC will provide advice that can be used to inform the Environment Protection Authority's (EPA) consideration of the works approval application (WAA) prepared by the proponent for the project.

Name

1. The IAC is to be known as the 'Fingerboards Mineral Sands Project Inquiry and Advisory Committee'.

Skills

2. The IAC members should have following expertise:
 - a. groundwater and surface water;
 - b. biodiversity and ecology;
 - c. rehabilitation of mineral sands mines, soils and erosion;
 - d. air quality; and
 - e. statutory planning.
3. Where it considers it necessary, the IAC may seek additional specialist expert advice¹ to assist it in undertaking its role, in particular with respect to:
 - a. noise and related impacts on amenity;
 - b. agriculture and rural land use;
 - c. landscape and visual impacts; and
 - d. social impact assessment.
4. The IAC will comprise an appointed Chair (IAC Chair), a Deputy Chair and other members.

Purpose of the IAC

5. The IAC is appointed by the Minister for Planning under section 9(1) of the EE Act to hold an inquiry into the environmental effects of the project. The IAC is to:
 - a. review and consider the environment effects statement (EES), public submissions received in relation to the environmental effects of the project and the reports and advice from the appointed Department of Environment, Land, Water and Planning (DELWP) independent peer reviewers;
 - b. consider and report on the potential environmental effects of the project, their significance and acceptability, and in doing so have regard to the draft evaluation objectives in the EES scoping requirements and relevant policy and legislation;
 - c. identify any measures it considers necessary and effective to avoid, mitigate or manage the environmental effects of the project within acceptable limits, including any necessary project modifications;

¹ The IAC may also direct questions to the independent peer reviewers appointed by the Department, Environment, Land, Water and Planning (DELWP) for the water, air quality and rehabilitation technical studies.

- d. advise on how this relates to relevant conditions, controls and requirements that could form part of the necessary approvals and consent for the project;
 - e. report its findings and recommendations to the Minister for Planning to inform his assessment under the EE Act; and
 - f. review the works approval application and relevant submissions and provide advice that can be used to inform the EPA's consideration of the WAA prepared by the proponent for the project.
6. The IAC is appointed as an advisory committee under section 151 of the P&E Act to:
- a. review draft planning scheme amendment (PSA) C156EGIP, which have been prepared to facilitate the project, along with any public submissions received in relation to the draft PSA;
 - b. provide a report to the Minister for Planning as to whether the draft PSA contains provisions and controls that are appropriate for the project; and
 - c. recommend any changes to the draft PSA that it considers necessary.

Background

Project outline

7. The project proposes to develop the Fingerboards Mineral Sands Project which has an approximate area of 1,675 hectares and is located approximately 20 kilometres north-west of Bairnsdale in East Gippsland, Victoria. The proposed mining methods involve open pit mining to extract approximately 170 million tonnes (Mt) of ore over a projected mine life of 20 years to produce approximately 8 Mt of mineral concentrate. Mine products are proposed to be transported via road or by rail for export overseas. The project includes the following elements:
- a. the development of a mineral sands mine;
 - b. two mining unit plants;
 - c. wet concentrator plant (comprising mineral separation processing and tailings thickening and disposal plant);
 - d. water supply infrastructure;
 - e. tailings storage facility;
 - f. additional site facilities, such as a site office, warehouse, workshop, loading facilities and fuel storage.
8. The project's proponent is Kalbar Operations Pty. Ltd, who is responsible for preparing technical studies, consulting with the public and stakeholders and preparing an EES.

EES assessment process

9. In response to a referral under the EE Act from the proponent, the Minister for Planning determined on 18 December 2016 that an EES is required for the project and issued his decision with procedures and requirements for the preparation of the EES as specified in **Attachment 1**.
10. The EES has been prepared by the proponent in response to the EES scoping requirements issued by the Minister for Planning in April 2018.
11. The EES will be placed on public exhibition for forty (40) business days, together with the WAA and draft PSA. DELWP will be responsible for giving notice.
12. DELWP must liaise with the office of Planning Panels Victoria (PPV) to agree on the Directions Hearing and Hearing dates, which are to be included on all notices.

Commonwealth assessment process

13. Because of its potential impacts on matters of national environmental significance, the project was determined to be a controlled action for the purposes of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) on 6 July 2017. The relevant controlling provisions under the EPBC Act relate to Ramsar wetlands (sections 16 and 17B); listed threatened species and communities

(sections 18 and 18A); listed migratory species (sections 20 and 20A); and nuclear actions (section 21 and 22A).

14. Under the bilateral agreement between the Australian and Victorian Governments, the Victorian EES process is serving as the accredited process for the assessment purposes of the EPBC Act. The assessment of environmental effects to be made by the Victorian Minister for Planning will be provided to the Commonwealth Minister for the Environment to inform the approvals decision under the EPBC Act. To assist the Minister in making his assessment, the IAC should specifically identify its advice relevant to matters of national environmental significance that may be affected respectively by the project.

Planning approval process

15. The IAC is to consider and provide advice on draft PSA C156egip that proposes planning controls and provisions for the various works and activities outside of the mining licence area. The PSA, in conjunction with other required approvals will regulate the use and development of the project in accordance with an incorporated document which is proposed to be included in the East Gippsland Planning Scheme.

Works approval process

16. A WAA for the project has been prepared in accordance with the provisions of the *Environment Protection Act 1970* (EP Act). The works approval application will be jointly advertised with the EES, in accordance with section 20AA of the EP Act.
17. Section 19B(3)(b) of the EP Act provides that: *if an application for a works approval is to be jointly advertised under section 20AA with a notice relating to the same proposal under the Environment Effects Act 1978... comments by any person or body interested in the application must be made as a submission on the environment effects statement or be included in any submission on the environment effects statement.* In addition, the EPA can no longer decide under section 19B(6) to hold a section 20B conference.
18. The IAC is to provide advice that can be used to inform the EPA's consideration of the WAA prepared by the proponent. The IAC may request any further information from the proponent that it considers necessary to assist it to provide that advice. The advice should recommend avoidance, mitigation or management measures that the IAC considers are necessary to ensure compliance with any relevant legislation and/or policy.

Other approvals

19. The project may require several other statutory approvals and/or consents, as outlined in the EES, including:
 - a. a mining licence and approved work plan under the *Mineral Resources (Sustainable Development) Act 1990* (MRSD Act);
 - b. approval under the EPBC Act;
 - c. approved Cultural Heritage Management Plans under the *Aboriginal Heritage Act 2006* to manage works in areas of cultural heritage sensitivity;
 - d. approvals under the *Water Act 1989* for extraction of surface and/or groundwater;
 - e. approvals under the *Radiation Act 2005*
 - f. a permit to remove listed flora and fauna under the *Flora and Fauna Guarantee Act 1988*;
 - g. an authority to take or disturb wildlife under the *Wildlife Act 1975*; and
 - h. consents for works on, over or under waterways under the *Water Act 1989*.

Process

Stage 1 – Submissions

20. Submissions on the EES, draft PSA and WAA will be collected by PPV in accordance with the 'Guide to Privacy at PPV through the Engage Victoria Website. All written submissions or other supporting documentation should be published on-line, unless submitters request that their submission not be publicly available, or where the IAC specifically directs that the submission or part of it is to remain confidential.
21. Electronic copies of submissions on the EES, draft PSA and WAA should be provided to the proponent, East Gippsland Shire Council, Wellington Shire Council, the DELWP and EPA.
22. Petitions will be treated as a single submission, and only the first name to appear on the first page of the submission should receive correspondence in relation to the IAC.
23. Any written material or evidence provided to the IAC during the public hearing should be published on-line, unless the IAC specifically directs that the material is to remain confidential.
24. PPV will retain any written submissions and other documentation provided to the IAC for a period of five years after the time of the appointment of the IAC.

Stage 2 – Public hearing

25. The IAC must hold a public hearing and may make other such enquiries as are relevant to undertaking its role.
26. When it conducts a public hearing, the IAC has all the powers of an advisory committee that are specified in section 152(2) of the P&E Act.
27. Prior to the commencement of the public hearing, the IAC must hold a directions hearing in order to make any directions it considers necessary or appropriate as to the conduct, scope or scheduling of the public hearing.
28. The IAC may inform itself in any way it sees fit, but must review and consider:
 - a. the exhibited EES, draft PSA and WAA;
 - b. all public submissions, and all submissions and evidence provided to the IAC by the proponent, state agencies, local councils and the public;
 - c. the reports and advice of three independent peer reviewers appointed by DELWP;
 - d. any information provided by the proponent that responds to submissions; and
 - e. any other relevant information that is provided to, or obtained by, the IAC.
29. The IAC must conduct its public hearing in accordance with the following principles:
 - a. the public hearing will be conducted in an open, orderly and equitable manner, in accordance with the principles of natural justice, with a minimum of formality and without legal representation being necessary for parties to be effective participants; and
 - b. the IAC process is to be exploratory and constructive with adversarial behaviour minimised and with cross-examination controlled by the IAC Chair.
30. The IAC may limit the time of parties appearing before it.
31. The IAC may conduct a public hearing when there is a quorum of at least two of its members present or participating through electronic means in line with Attachment 2, one of whom must be the IAC Chair or Deputy Chair. If the IAC is made up of four members then a quorum of at least three of its members is required.
32. Recording of the hearing must be undertaken by the proponent if as directed by the IAC Chair. If the hearing is recorded, the audio recording will be provided to PPV as a weblink and would be made

publicly available as soon as practicable after the conclusion of each day of the hearing, or otherwise as directed by the IAC Chair.

33. Any other audio or video recording of the hearing by any other person or organisation may only occur with the prior consent of, and strictly in accordance with, the directions of the IAC Chair.

Stage 3 – Report

34. The IAC must produce a written report for the Minister for Planning containing the IAC's:
- a. conclusions with respect to the environmental effects of the project and their significance and acceptability;
 - b. findings on whether acceptable environmental outcomes can be achieved, having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
 - c. recommendations and/or specific measures that it considers necessary and appropriate to prevent, mitigate or offset adverse environmental effects to acceptable environmental outcomes, having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
 - d. recommendations as to any feasible modifications to the project (e.g. extent, design, alternative configurations, or environmental management) that would enable more appropriate environmental outcomes;
 - e. recommendations for any appropriate conditions that may be lawfully imposed on any approval for the project, including with respect to the content of the draft work plan or conditions that might appropriately be attached to approval of a work plan if issued under the MRSD Act;
 - f. recommendation on changes, including to the structure and content, that should be made to the draft PSA in order to ensure that the environmental effects of the project are acceptable having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
 - g. recommendations as to the structure and content of the proposed environmental management framework, including with respect to monitoring of environmental effects, contingency plans and site rehabilitation;
 - h. recommendations with respect to the WAA, including recommendations about conditions that might appropriately be attached to a works approval if issued; and
 - i. specific findings and recommendations about the predicted impacts and residual risks for matters of national environmental significance and their acceptability, including appropriate controls and environmental management.
35. The report should include:
- a. information and analysis in support of the IAC's findings and recommendations;
 - b. a list of all recommendations, including cross-references to relevant discussions in the report;
 - c. a description of the public hearing conducted by the IAC, and a list of those persons consulted with or heard by the IAC;
 - d. a list of all submitters in response to the exhibited EES; and
 - e. a list of the documents tabled during the public hearing.

Timing

36. The IAC should commence its main public hearing no later than 40 business days from the final date of the exhibition period, or as otherwise agreed by the Minister for Planning.
37. The IAC must submit its report in writing to the Minister for Planning within 40 business days from its last hearing date.

Minister's assessment

- 38. The Minister for Planning will make his assessment of the environmental effects of the project after considering the IAC's report as well as the EES, submissions and any other relevant matters.
- 39. PPV will notify submitters of the release of the Minister for Planning's assessment and IAC report.

Fee

- 40. The fees for the members of the IAC will be set at the current rate for a panel appointed under part 8 of the P&E Act.
- 41. All costs of the IAC, including the costs of obtaining any expert advice, technical administration and legal support, venue hire, accommodation, recording proceedings and other costs must be met by the proponent.

Miscellaneous

- 42. The IAC may apply to the Minister for Planning to vary these terms of reference in writing, at any time prior to submission of its report.
- 43. The IAC may retain legal counsel to assist it in undertaking its role.
- 44. PPV is to provide any necessary administrative support to the IAC.
- 45. The IAC may engage additional technical and administrative support or as required direct questions to the independent peer reviewers appointed by DELWP.



Richard Wynne MP
Minister for Planning

Date: 19 / 07 / 2020

The following information does not form part the Terms of Reference.

Project Management

1. For matters regarding the IAC process, please contact Amy Selvaraj, Senior Project Officer, of Planning Panels Victoria, by phone (03) 8392 5120 or email Planning.Panels@delwp.vic.gov.au.
2. For matters regarding the EES process please contact the Impact Assessment Unit in DELWP by phone (03) 8392 5503 or email environment.assessment@delwp.vic.gov.au.

Attachment 1**DECISION ON PROJECT: Fingerboards Mineral Sands Project****Decision under section 8B(3)(a) of the *Environment Effects Act 1978***

Assessment through an Environment Effects Statement (EES) under the *Environment Effects Act 1978* **is required** for the reasons set out in the attached Reasons for Decision.

Procedures and requirements under section 8B(5) of the *Environment Effects Act 1978*

The procedures and requirements applying to the EES process, in accordance with both section 8B(5) and the *Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978* (Ministerial Guidelines), are as follows:

- (i) The EES is to document the investigation and avoidance of potential environmental effects of the proposed project, including for any relevant alternatives (such as for the mining extent, methods for mining and processing, water supply and transport of mining outputs), as well as associated environmental mitigation and management measures. In particular the EES should address:
 - a. Effects on biodiversity and ecological values within and near the site, and associated with adjacent road reserves and riparian areas, including: native vegetation; listed threatened ecological communities and species of flora and fauna; and other habitats values;
 - b. Effects on surface water environments, including downstream wetlands, and groundwater resources (hydrology, quality, uses and dependent ecosystems);
 - c. Effects on the land uses and landscape values of the site and surrounding areas, including the implications for agricultural productivity and nearby Crown land, such as the Mitchell River National Park;
 - d. Effects on land stability, erosion and soil productivity associated with the construction and operation of the project, including rehabilitation works;
 - e. Effects on Aboriginal and non-Aboriginal cultural heritage values;
 - f. Effects of project construction and operation on air quality and noise on nearby sensitive receptors (in particular residences);
 - g. Both positive and adverse socio-economic effects, at local and regional scales, potentially generated by the project, including indirect effects of the project construction workforce on the capacity of local community infrastructure; and
 - h. Solid and liquid waste that might be generated by the project during construction and operation.
- (ii) The matters to be investigated and documented in the EES will be set out in detail in scoping requirements prepared by the Department of Environment, Land, Water and Planning (the department). Draft scoping requirements will be exhibited for 15 business days for public comment, before being finalised and then issued by the Minister for Planning.
- (iii) The level of detail of investigation for the EES studies should be consistent with the scoping requirements issued for this project and be adequate to inform an assessment of the potential environmental effects (and their acceptability) of the project and any relevant alternatives, in the context of the Ministerial Guidelines.
- (iv) The proponent is to prepare and submit to the department a draft EES study program to inform the preparation of scoping requirements.
- (v) The department is to convene an inter-agency Technical Reference Group (TRG) to advise the proponent and the department, as appropriate, on scoping and adequacy of the EES studies during the preparation of the EES, as well as coordination with statutory approval processes.
- (vi) The proponent is to prepare and submit to the department its' proposed EES Consultation Plan for consulting the public and engaging with stakeholders during the preparation of the EES.

Once completed to the satisfaction of the department, the EES Consultation Plan is to be implemented by the proponent, having regard to advice from the department and the TRG.

- (vii) The proponent is also to prepare and submit to the department its proposed schedule for the studies, preparation and exhibition of the EES, following confirmation of draft scoping requirements. This is to enable effective management of the EES process on the basis of an agreed alignment of the proponent's and department's schedules, including for TRG review of technical investigations and the EES documentation.
- (viii) The proponent is to apply appropriate peer review and quality management procedures to enable the completion of EES studies and documentation to a acceptable standard.
- (ix) The EES is to be exhibited for a period of 30 business days for public comment, unless the exhibition period spans the Christmas–New Year period, in which case 40 business days will apply.
- (x) An inquiry will be appointed under the *Environment Effects Act 1978* to consider and report on the environmental effects of the proposal.

Notification

The following parties (proponent and relevant decision-makers) are to be notified of this decision in accordance with sections 8A and 8B(4)(a)(i) of the *Environment Effects Act 1978*:

- Kalbar Resources Ltd (proponent)
- Minister for Resources
- Minister for Environment, Climate Change and Energy
- Gunaikurnai Land and Water Aboriginal Corporation (the Registered Aboriginal Party)
- Executive Director of Aboriginal Victoria
- Executive Director of Heritage Victoria
- East Gippsland Shire
- Wellington Shire
- East Gippsland Water
- Southern Rural Water
- East Gippsland Catchment Management Authority



HON RICHARD WYNNE MP
Minister for Planning

Date:

18/12/16

Attachment 2

PROJECT NAME: FINGERBOARDS MINERAL SANDS PROJECT

Amended procedures and requirements under section 8B(5) of the *Environment Effects Act 1978*.

Under the declared state of emergency in response to the coronavirus pandemic, conventional exhibition of environment effects statements (EES) is not possible. Physical display of printed copies of the EES in public places cannot occur. Similarly, arrangements with respect to formal hearings of inquiries under the Environment Effects Act will also differ, if restrictions are still in force at the time of an inquiry.

Accordingly, the procedures and requirements applying to the EES, issued on 18 December 2016 in accordance with section 8B(5) of the Act and the *Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978*, are amended as follows.

- (a) The EES is to be exhibited for a period of 40 business days for public comment, or such other period as the Minister may subsequently direct in writing.
- (b) No less than two weeks before the first day of the public exhibition period, the proponent must place notices in newspapers and on-line, as well as communicate with known interested parties, to:
 - 1. foreshadow the intention to commence formal exhibition;
 - 2. note the impossibility of providing exhibition copies for physical inspection at public exhibition places;
 - 3. describe intended on-line availability of the EES and related documentation for exhibition purposes; and
 - 4. invite any potential submitters to register to receive EES documents on USB, or other electronic media, and for those who may have accessibility issues or, where electronic options are impracticable, in hard copy.
- (c) Where hard copy documents are reasonably requested, the proponent must provide hard copies of:
 - 1. the EES summary document and mapbook free of charge, and the EES Main Report for a modest charge aligned with postage costs, unless instructed otherwise by the Department of Environment, Land, Water and Planning's (DELWP) Director Impact Assessment;
 - 2. other EES attachments or EES technical appendices, subject to payment of an appropriate fee, having regard to costs of printing and postage and the circumstances of the request, unless instructed otherwise by DELWP's Director Impact Assessment; and
 - 3. the *Environment Protection Act 1970* works approval application, unless instructed otherwise by the Environment Protection Authority.

- (d) The proponent must dispatch requested electronic media and hard copies to registered addresses within a week of receipt of each registration (and payment, where relevant) or in time for the commencement of the exhibition period, whichever is the later.
- (e) The inquiry that I will appoint under the Environment Effects Act, subject to the approval of the Governor in Council, to consider the environmental effects of the proposal is to be conducted by formal hearing in the most practicable manner available under the prevailing circumstances. That might, if necessary, include the use of video conferencing or other comparable technology.
- (f) The proponent must arrange for recordings to be made of formal hearings of the inquiry, whether held conventionally or remotely, subject to any directions from the inquiry chair, and must cause recordings to be posted on-line as quickly as practicable. The proponent must post links to the recordings on its project website as soon as practicable after each day of hearings. DELWP must post links to the recordings on its relevant web pages as soon as practicable after each day of hearings.

Notification

The following parties (proponent and relevant decision-makers) are to be notified of these amended procedures and requirements in accordance with section 8B(4)(a)(i) and 8B(5) of the Environment Effects Act:

- Kalbar Operations Pty Ltd (proponent);
- Minister for Resources;
- Minister for Environment, Climate Change and Energy;
- Gunaikurnai Land and Water Aboriginal Corporation;
- Secretary of Department of Health and Human Services;
- Executive Director of Aboriginal Victoria;
- Executive Director of Heritage Victoria;
- East Gippsland Shire;
- Wellington Shire;
- East Gippsland Water;
- Southern Rural Water; and
- East Gippsland Catchment Management Authority.



HON RICHARD WYNNE MP
Minister for Planning

Date: 19 / 07 / 2020