

22 July 2021

The Chair
Fingerboards Inquiry and Advisory Committee
C/- Planning Panels Victoria

By email only: Fingerboards.IAC@delwp.vic.gov.au

Dear Mr Wimbush

Fingerboards Project Inquiry and Advisory Committee – Status of Land acquisition by Kalbar

1. We continue to act for Mine-Free Glenaladale (**MFG**).
2. We refer to Tabled Document 437, tabled on behalf of the Proponent on 27 May 2021. Document 437 purports to represent the status of land purchase and access agreements between Kalbar and landholders within the project area. Document 437 is confidential.
3. For the reasons stated below, it is our submission that Document 437 has not been objectively verified and:
 - a. Should be disregarded by the IAC; or
 - b. Before being considered by the IAC, should be objectively verified as proposed by MFG; or
 - c. Before being considered by the IAC, should be verified by provision of the documents referred to in paragraph 15 below.

Background

4. MFG first agitated for the independent verification of the status of discussions between the Proponent and directly impacted landholders on 14 May 2021. At that hearing, Ms Porter submitted that impacted landholders should be provided with an opportunity to confirm the accuracy of how the status of their discussions with Kalbar were represented to the IAC (to ensure they are not misunderstood or misrepresented). The IAC confirmed that it was a reasonable request, and requested that the parties seek to resolve this issue between themselves.
5. Through communications between counsel, Kalbar provided MFG with proposed wording relating to the purported position of landholders identified by Kalbar as being opposed to the project, and sought MFG's comments on that wording.

6. By email dated 19 May 2021, we wrote to White and Case and requested that they provide verification of the contents of the document by writing to each landholder to seek the following information:
 - a. verification of the accuracy of the proposed representation of the status of land access negotiations; and
 - b. authorisation from the impacted landholders to disclose the verification (or otherwise) to the IAC and legal representatives;
7. We further advised White and Case that our request for verification was made on the basis that this was likely to be the most efficient way for Kalbar to obtain the necessary verification and authorisations to provide the IAC with the confidential document confirming the status of their client's land access negotiations, and to satisfy our client's need for verification.
8. By return email dated 19 May 2021, White and Case advised that they had concerns with the above approach because it would take time and that they were conscious that the IAC has been asking Kalbar to provide a confidential summary of its negotiations with the project landowners for some time now.
9. On 25 May 2021 Ms Trescowthick of our office telephoned Ms Campbell of White and Case. Ms Campbell advised that the landholder verification was nearly complete and that a 2 page summary of the verification would be provided to the IAC. Ms Campbell advised that not all verification had been undertaken in writing. Some purported verifications had been undertaken by telephone call by Mr Jozsef Patarica, but all telephone calls had been file noted.
10. Ms Trescowthick advised that this approach was not consistent with our request for written verification. Ms Campbell responded that the document was almost done and that they had proceeded due to their experience of delays in the past.
11. On 31 May 2021, Mr Wimbush noted that the IAC had received Tabled Document 437. Ms Porter advised the IAC that we had not been copied into the final correspondence to the IAC, and had therefore been unable to satisfy ourselves that the Proponent had provided evidence of written correspondence between themselves and each of the directly impacted landholders. Mr Morris QC indicated that Kalbar would consider the matter and come back to us.
12. By further email dated 3 June 2021, we requested an update on the landholder verification from White and Case, reiterating the issues previously raised in the communications referred to above. White and Case responded the same day, advising that subject to a personal undertaking provided by Ms Trescowthick, they were now in a position to provide Document 437.
13. Following lengthy negotiations over the terms of the undertaking, we received Document 437 on 28 June 2021 (9:44PM)

Landholder verification

14. The Landholder verification purportedly undertaken by Kalbar is no more than an assertion of the status of negotiations by Kalbar. The status of negotiations are unable to be objectively verified.

15. MFG proposed a methodology for verification which would have enabled objective verification. However, putting that aside, we note that adopting the process followed by Kalbar (which MFG do not accept as satisfactory) the following documents which could be provided as annexures to Document 437 are not provided:
- a. Copies of caveats and title searches;
 - b. Copies of email chains which disclose the status and nature of any ongoing negotiations and or agreements;
 - c. Copies of contemporaneous file notes of telephone conversations between Kalbar representatives and landholder.
16. As stated above, we consider that all representations should have been reported to and verified in writing with individual landholders. We do not accept that this process would have been overly onerous in the context of the work that has already been undertaken in the process of landholder verification.
17. In these circumstances, it is MFG's position that Document 437 has not been objectively verified and:
- a. Should be disregarded by the IAC; or
 - b. Before being considered by the IAC, should be objectively verified as proposed by MFG; or
 - c. Before being considered by the IAC, should be verified by provision of the documents referred to in paragraph 15 above.
18. Please contact Nick Witherow [REDACTED] and Virginia Trescowthick [REDACTED] should you have any questions.

Yours sincerely

[REDACTED]

Nick Witherow
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Environmental Justice Australia

[REDACTED]

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