

**Further response to amended documents**

**on behalf of East Gippsland Shire Council**

**27 July 2021**

This document responds to:

1. Tabled Document (TD) 691 – Letter from Kalbar to IAC (19 July 2021)
2. TD692 – Revised Draft Incorporated Document (Version 3, 19 July 2021)
3. TD695 – Consolidated Mitigation Register (19 July 2021)
4. Environmental Management Framework (26 July 2021) (not tabled at time of writing)

It supplants the Council's comments in TD641, noting the additional written and oral submissions made in reply (TD748) which should be read together with this document.

It also includes comments in respect of draft risk treatment plans, which are generally per the Council's comments provided in TD641.

**TD691 – Revised Draft Incorporated document**

<b>Clause reference</b>	<b>Comment</b>
5.2.8	If the Bairnsdale siding option is rejected or not pursued, reference to “(one of two options)” should be removed.
5.3	Add “whether or not ancillary to another use of land”.  This would reflect the proponent’s stated intention not to include accommodation or food and drink premises. If the stated benefits are to be delivered it is important, and consistent with the proponent’s case, that no accommodation or food outlets are provided so that workers are required to live in and contribute to the community. Wide interpretations of permissible ancillary uses cannot be excluded without clear wording. <sup>1</sup>
6.2.1	The Council should be the decision-making body in relation to these plans as it will be required to enforce them and has the local knowledge and knowledge accumulated through this process which will assist in assessing these plans. The identified plans should be required to be prepared to its satisfaction.  Alternatively, it should be involved in the decision-making process in a meaningful consultative role.
6.2.5	Reference to the “Project objectives” and what may be the “most pertinent business case document” are unclear and should be clarified by the Proponent.
6.3	The requirement for a masterplan should be reinstated in accordance with the Council’s previous of the Incorporated Document.
6.4.5(c)	Any existing conditions survey should be conducted in accordance with an identified standard.
6.7	This drafting is dependent upon whether the proposed off-sets should be staged.
6.7.5 and 6.7.7	Specifying numbers is inappropriate with no basis to identify the numbers and amounts to approval of vegetation loss not considered in this process.  Specifying numbers is also inappropriate in advance of certainty that avoidance has been achieved.  The clauses should (at least) identify these numbers as absolute maximums not permitted to be exceeded and subject to avoidance and minimisation of native vegetation loss.
6.7.7 – 6.7.8	The schema for staging is uncertain and unworkable.
6.9	A separate bond is required for rehabilitation in this area as it is not within the mine area covered by the bond administered by ERR.
8	The project has been advertised as a 15 and/or 20 year project. There is no justification for extension to 25 years.

<sup>1</sup> See for example *Swan Hill RCC v Obetz Holdings Pty Ltd [2019] VCAT 1579 (9 October 2019)*

8.3	The 2 year period should include care and maintenance periods as these indicate appropriate junctures to reconsider whether the mine should be permitted to continue so as to avoid mines remaining inoperative and without rehabilitation.
8.4	<p>This is opposed.</p> <p>Clause 8.5 providing for a maximum period of care and maintenance of five years gives rise to uncertain timelines. There is residual uncertainty in the need for determination of whether the Project is in “care and maintenance”.</p> <p>Clause 8.7 exacerbates those issues by giving rise to an indeterminate period.</p>
8.7	<p>Amend to:</p> <p>“The control expires upon completion of the development required to implement the Decommissioning Plan”</p>
Map	<p>Map should not include extended mining licence area.</p> <p>Map should not include Bairnsdale option.</p>

**Additional matters:**

As indicated in the Council’s TD641, the permit trigger relating to vegetation removal should not be included in this approval. The extent of vegetation removal in this area has not been properly considered and should remain the subject of this permit trigger to ensure a proper assessment is made. The approval of vegetation removal within this area which did not form part of the detailed vegetation assessment for the project is not appropriate.

### TD692 – Consolidated Mitigation Register

In many cases the mitigations are in fact no more than acknowledgements of the need to comply with existing law or standards. The role of these statements should be clarified and a general statement made at the commencement of the document that the mitigation standards do not derogate from the requirement to comply with any and all legislative requirements and requirements of other approvals.

Proposed measure	EGSC Comments 27 July 2021
<b>AQ, GW, NV, SW</b>	The Council generally defers to the expertise of the EPA in respect of the drafting of mitigation measures in respect of air quality, noise and vibration, and water, save as noted herein.
<b>AQ13</b>	Clarify – Proponent appears to accept word “key” should be deleted
<b>AQ21</b>	Council supports EPA drafting as adopted by the Proponent
<b>CH09</b>	<p>Consultation is not a mitigation measure. As the Proponent’s comment in TD696 suggests it is by implementing the outcomes of this consultation that mitigation of (unspecified) environmental effects will be achieved, that should be reflected in the mitigation measure as follows (or similar):</p> <p style="text-align: center;">Kalbar will consult with GLaWAC on the cultural heritage values of the waterbodies in the region and how these values could <u>be relevant to impacts of the Project on cultural heritage and or</u> inform the definition of water quality objectives to protect Traditional Owner cultural and spiritual values. <u>The outcomes of such consultation will be reflected in management and risk treatment plans including particularly in respect of cultural heritage and water.</u></p>
<b>GW19</b>	This mitigation measure should positively oblige the Proponent to consult with bore users in respect of potential compensation and to do all things reasonably practicable to enable bore users to access compensation.
<b>GW22</b>	The change proposed by the EPA is appropriate.
<b>NV09</b>	These noise-related subplans should be required to be consistent with the complaints management system per SE22.
<b>NV17</b>	The Council remains of the view that noise generating night time activities ought be prohibited except with the specific permission of the EPA and a minimum of 48 hours written notice is provided to potentially affected properties.

Proposed measure	EGSC Comments 27 July 2021
<b>NV37</b>	Agreed that NV32/33 as amended overtake NV37. Council maintains that records relating to all decision making consistent with NV32/33 must be made available to any person on request.
<b>RD1 – RD11</b>	The Council is content to leave the implementation of Dr Joyner’s further comments to the IAC.
<b>Rehabilitation</b>	A mitigation measure should be included to provide for the achievement of the milestones for delivery of the ‘Woodland Restoration Project’ per TD534 (TN036), including that restored areas will be subject to maintenance and management as a reserve from the date restoration commences (TD534, p 4).
<b>SE1 – 64</b>	<p>1. The Proponent’s changes now proposed are noted, as is agreement that SE04 must be corrected to delete the ten years’ limitation. Second last proposed paragraph should be amended as follows:</p> <p style="text-align: center;">The operation of the fund should commence as soon as all relevant permissions are finalised to commence construction of the Project and should conclude <del>within ten years from commencement</del> <u>at the conclusion of rehabilitation.</u></p> <p>2. As noted in TD641, a requirement to report annually as to how these mitigation measures have produced measurable benefits to the community and a procedure for updating these measures in the absence of a benefit being demonstrated should be included. Suggested drafting:</p> <p style="text-align: center;">Within two months of the conclusion of each 12 month period following the commencement of the Project, a report must be prepared which details:</p> <ul style="list-style-type: none"> <li>(a) All actions taken during the reporting period pursuant to mitigation measures SE01 to SE64 inclusive;</li> <li>(b) Any benefits to the community delivered as a result of or in compliance with mitigation measures SE01 to SE64 inclusive;</li> <li>(c) Any negative social impact associated with the Project, both as observed and as projected having regard to the progress of the mine;</li> </ul>

Proposed measure	EGSC Comments 27 July 2021
	<p>(d) the potential for actions pursuant to or in addition to the mitigation measures or any other sub-plan associated with the mine to avoid or mitigate any impact observed or projected pursuant to paragraph (c) above; and</p> <p>(e) proposed implementation strategies in respect of mitigation measures SE01 to SE64 inclusive and any additional actions identified pursuant to paragraph (d) above.</p> <p>The report must be prepared in consultation with the Community Reference Group established pursuant to mitigation measure SE20 and to the satisfaction of the East Gippsland Shire Council.</p> <p>Once finalised, the report must be made available to the public, and the implementation strategies it identifies must be implemented.</p> <p><b>Note: This requirement should also be included in the Incorporated Document.</b></p>
<p><b>SE20</b></p>	<p>This mitigation measure should provide for a Community Reference Group which is consistent with the Socioeconomic Impact Assessment Report or the Draft Community Engagement Plan as exhibited – noting that as neither was able to be tested and it is therefore unclear which is preferable, the Council considers that:</p> <ol style="list-style-type: none"> <li>1. the CRG should have an independent chair;</li> <li>2. the membership of the CRG should reflect both the SEIA and the Draft CEP;</li> <li>3. the CRG should be required to review and seek community and stakeholder feedback on the operation of the CRG (per the SEIA), including through a continuous improvement process by which any such feedback is taken into account and implemented by the CRG independently of the Proponent.</li> </ol>
<p><b>SW45</b></p>	<p>The Council defers to EPA on this issue.</p>
<p><b>Traffic and transport</b></p>	<p>The clarification that no pre-Avon route is now pursued is welcome and noted. Options 1 and 2 should be clearly defined within the Mitigation Register so at that the scope of the project is understood, particularly given mitigation measures refer to “Option 1” and “Option 2”</p>

EGSC comments on TD692 – Consolidated Mitigation Register

Proposed measure	EGSC Comments 27 July 2021
<b>TT03</b>	As acknowledged by the Proponent, this drafting would require amendment if the underpass option were preferred.
<b>TT10</b>	The Council prefers its drafting; the mitigation register ought not refer to “the Proponent” but to parties whose identity will not change (i.e. so the document ‘runs with the land’). Alternatively, the second paragraph of the mitigation measure could refer to the “mine operator” or similar.
<b>TT32</b>	As acknowledged by the Proponent, this drafting would require amendment if the underpass option were preferred.
<b>VL14</b>	<p>Redraft as follows:</p> <p style="text-align: center;">A program of voluntary landscape mitigation works must be offered, and if accepted, made available, to the owners of dwellings <del>within 1km of the mine</del> <u>with views to any works carried out in association with the mine and related infrastructure at any stage over the life of the Project.</u> The offered mitigation works must include planting and/or other works on the owner’s land to reduce direct views of mining activity from dwellings.</p>

**Environmental Management Framework (26 July 2021; not yet tabled)**

Proposed measure	EGSC Comments 27 July 2021
<p><b>12.1.2 Baseline data (PDF p 3)</b></p>	<p>The Council takes no issue with the proposition that baseline environmental conditions are adequately “described” in the EMF if it refers to specific sources.</p> <p>However the Proponent’s change does not update the section to ensure all baseline data only produced during the hearing and/or committed to during the hearing are added to or used to update the baseline data which were gathered. Rather it suggests that the baseline data which have been presented and which have formed the basis of the assessment of environmental effects through this process will be entirely supplanted by new data “determine[d] by appropriate means”.</p> <p>The Proponent’s proposed amended paragraph should be amended as follows:</p> <p><i>Each of the Project’s management plans (as identified in section 12.4.5) must <del>determine by appropriate means and then</del> document the baseline environmental conditions to be used to monitor and evaluate the residual environmental effects of the project. <del>In determining and then documenting the baseline data, regard must be given to the following sources forming part of the Fingerboards Mineral Sands EES: Baseline data are summarised in the EES Chapter 8: Environmental and social economic context, and additionally detailed in specialist study reports appended to the EES, including: ... [citations from exhibited EES, at PDF pp 4-5]</del></i></p> <p><i><u>In the course of the EES process, a need to supplement those data was identified. The Project’s management plans must, where necessary, determine and document baseline environmental conditions including having regard to:</u></i></p> <p><i><u>[Proponent’s proposed additional citations from TD###, at PDF pp 5-6]</u></i></p> <p><i><u>[add all other missing data and sources, e.g.:]</u></i></p> <ul style="list-style-type: none"> <li><i><u>• Data produced in the course of a pump test or tests carried out in the actual proposed location of the bores associated with the Project;</u></i></li> </ul>



Proposed measure	EGSC Comments 27 July 2021
	<ul style="list-style-type: none"> <li>• <u>The outcomes of works and investigations in association with a demonstration pit conducted generally in accordance with Work Plan Application PLN001521 submitted on 16 November 2020 and re-submitted on 1 June 2021 (subject to requirements or modifications required by Earth Resources Regulation);</u></li> <li>• <u>The outcomes of a “P2 decanter centrifuge” pilot trial, or trial of alternate centrifuge providing a direct analogue to the centrifuges proposed to be used in the Project, producing a minimum solids concentration of 73%;</u></li> <li>• <u>[other matters per the IAC’s assessment]</u></li> <li>• <u>Data gathered in the course of implementation of any mitigation measures or other work carried out in advance of commencement of the Project.</u></li> </ul>
12.3 (PDF p 10)	<p>Paragraph starting “Table 12.3 describes the roles...”</p> <p>Delete proposed addition of word “application”. The EES should not proceed on the basis of the gross uncertainty associated with the Proponent’s application to extend the mining licence area so late in the process but should reflect the extent of land upon which all assessments are premised and parties have engaged.</p>
Table 12.6 (PDF p 15)	<p>“Mitigation measures” description should be amended as follows:</p> <p style="text-align: center;"><u>Performance based m Measures to avoid and, where avoidance is not possible, to reduce environmental risks and environmental effects</u> associated with the Project.</p>
Figure 12.1 (PDF p 17)	<p>Map should not include extended mining licence area.</p> <p>Map should not include Bairnsdale option.</p>
Table 12.7 (PDF p 22)	<p>“Social, health and wellbeing outcomes and community engagement” should include additional indicator providing for the regular review of measures implemented and their success in reducing social impacts.</p>
PDF p 29	<p>Council considers the Incorporated Document should be given a certain form at the conclusion of this process (i.e. on the Minister’s assessment). While the Incorporated Document clearly should comply with the <i>Ministerial Direction on the Form and Content of Planning Schemes</i> prior to the draft PSA being adopted and approved, it is not necessary to refer to that fact in this document.</p>

Proposed measure	EGSC Comments 27 July 2021
<p><b>PDF p 34</b>  <b>“Surface water and groundwater”</b></p>	<p>Council would be responsible for approval of the Construction Management Plan in the SCO area; currently identified as referral authority (as it is in respect of the Water Quality and Hydrology RTP).</p>
<p><b>12.4.10.2 (PDF p 58)</b></p>	<p>Amend final sentence of first paragraph:</p> <p style="padding-left: 40px;"> <del>An updated schedule for ongoing</del> <u>Community engagement would be prepared at the completion of the EES process, will be conducted on an ongoing basis, in accordance with the mitigation measures and the Community Engagement Plan. The Community Engagement Plan will be reviewed at least annually and updated as necessary (per section 12.4.11.4) over the course of the life of the Project to ensure engagement remains timely, effective and targeted at all relevant people.</u> </p>

## RISK TREATMENT PLANS (COMMENTED ON IN TD641)

Having regard to TD691, the Council’s comments in respect of the draft risk treatment plans (per TD641) are reproduced below, generally without change save for an additional proposed requirement in respect of the **Risk Treatment Plan: Water quality and hydrology**.

### Water quality and hydrology RTP (TD508)

Proposed measure	EGSC Comments (new in this document)
<p><b>New comment – Additional clause</b> The total water use proposed to be permitted under licences to be obtained must be limited to 2800ML to be obtained from other licence holders or water available to the market.</p>	<p>This accords with information provided in part (e) of TN 039. It is noted that while matters such as the water balance appear under headings including the term “agreed” it is not clear who is purported to have agreed to any descriptions provided.</p>

Proposed measure	EGSC Comments (per TD641)
<p><b>Page 20</b></p> <p>9. Monitoring The purpose of environmental monitoring for the project is to verify impact predictions made in this report and to demonstrate regulatory and licensing compliance. Where necessary, corrective action will be taken should monitoring indicate that management measures are not effective. Monitoring will also inform day-to-day operation of the mine and will enable periodic updating of this risk treatment plan and the hydrological models upon which it is based</p>	<p>The qualification “where necessary” should be removed from this section. Many or most of the requirements are to achieve minimum requirements and corrective action should be made at any time monitoring indicates that management measures are not effective – without the need for an additional qualification. The paragraph should be amended to:</p> <p style="padding-left: 40px;">9. Monitoring The purpose of environmental monitoring for the project is to verify impact predictions made in this report and to demonstrate regulatory and licensing compliance. <del>Where necessary,</del> <u>Corrective</u> action will be taken should monitoring indicate that management measures are not effective. Monitoring will also inform day-to-day operation of the mine and will enable periodic updating of this risk treatment plan and the hydrological models upon which it is based.</p>
<p><b>Page 24 – Groundwater levels – preconstruction.</b></p>	<p>Consistent with the evidence of Dr Webb the location and extent of monitoring bores at least indicatively should be specified.</p> <p>Council notes that the proposed change and that at 4 removes any commitment to a</p>

EGSC comments on RTPs

Proposed measure	EGSC Comments (per TD641)
	specified level of pre-commencement monitoring.
<p><b>Page 29 New element 22</b></p> <p>Quantity and quality of water intercepted by in-pit seepage collection system.</p>	Information gathered should be made publicly available.

**Noise RTP (TD507)**

Proposed measure	EGSC Comments (new in this document)
<p><b>Page 6</b></p> <p>NV11 Activities such as overburden movement will be restricted to day and evening periods during Year 1 to avoid noise propagation during the night. Mine schedule; haulage records</p>	Refer Council comments in respect of Mitigation Register measure NV17.

Proposed measure	EGSC Comments (per TD641)
<p><b>Page 5</b></p> <p><del>Noise Control Guidelines—EPA Publication 480 Night—Monday to Sunday (10:00 p.m. to 7:00 a.m.) noise should not be above the background sound inside any adjacent residence.</del></p>	<p>This should not be removed. This requirement indicates that noise should not be above background noise levels. The EPA Publication 1834, Civil construction, building and demolition guide imposes a higher standard that noise is inaudible at night but allows the permission for ‘unavoidable works’ and ‘low-noise or managed impact works’.</p> <p>Working together this allows some flexibility for works to be approved up to background noise levels in adjacent rooms. There is no demonstrated need for additional night-time noise levels to be exceeded.</p>

**Air Quality RTP (TD506)**

Proposed measure	EGSC Comments (per TD641)
PDF – 15	It is undesirable to have this referring to a draft AQMP in an expert evidence statement. This should be repeated in the document.