

Fingerboards Mineral Sands Project – Infrastructure Area

Incorporated Document

This Table is intended to be read with the ‘track changes’ version of the draft Incorporated Document dated 2 August 2021 (IAC v4). It responds to changes requested by other parties as set out in the following documents:

- Council (Tabled Document 763)
- Department of Transport (Tabled Document 756)
- MFG (Tabled Document 759)

Item	Clause	Party proposing the change	Summary of Kalbar’s position
1.	5.2.8	Council	Council says the words “(one of two options)” should be removed if the Bairnsdale siding option is rejected or not pursued. Kalbar agrees, but notes that it is premature to remove the reference to the two options now given both have been assessed in the EES and will be the subject of findings and recommendations from the IAC.
2.	5.3	Council	Insertion added at Council’s request.
3.	6.2.1	Council	Council says that it wants to be the approval body for the EMF as it will be required to enforce it. Kalbar notes that the EMF is a guidance document only, not a statutory approval to be enforced. It is the Mitigation Measures, and the plans required under the Incorporated Document that that will be enforceable (see clause 6.2.5 (previously 6.2.6)). Council has requested a consultative role in the alternative – this is already provided in clause 6.2.1.
4.	6.2.1	MFG	MFG requests that Southern Rural Water and/or the Catchment Management Authority be given a consultation role. Kalbar queries the need for this but has included Southern Rural Water in any event.
5.	6.2.2	MFG	MFG requests that the word “generally” be deleted. Kalbar does not support this deletion as the Minister’s Assessment is not itself a decision-making document and it is possible future decision-makers will require changes to the Mitigation Measures.
6.	previous 6.2.4 (now deleted)	MFG/ Kalbar	MFG oppose the EMF being prepared in stages. Kalbar agrees that the EMF should be approved as a whole-of-project governance document from the outset and has deleted the staging provision.

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7.	previous 6.2.5 (now 6.2.4)	Council/Kalbar	Council say that the reference to "Project objectives" and what may be the "most pertinent business case document" is unclear. This wording was inserted at MFG's request in the previous version but looking at it again, Kalbar agrees with Council and has suggested alternative wording.
8.	previous 6.2.5 (b) & (c) (now 6.2.4 (b) & (c))	MFG	Insertions added at MFG's request.
9.	6.3.1	Council	Council has requested that its proposed masterplan clause be reinstated. Kalbar does not accept that a masterplan is required given the (relatively) limited extent of Project Infrastructure and the requirement for a Development Plan.
10.	6.3.1-6.3.3, 6.3.5	DoT	Changes made at DoT's request.
11.	6.4.5(c)	Council	Kalbar does not support Council's proposal to identify the standard for an existing conditions survey. Kalbar submits that the standard should be determined by the independent engineer, pre-qualified by TfV. Council is an approval authority for the TTMP so will need to be satisfied with any existing condition survey that is included in it.
12.	6.4.5(f) and (i)	MFG/Kalbar	Changes made to address MFG's request.
13.	6.4.5(h)	MFG	MFG has requested that this clause be amended to consider 'other road users' more broadly, including agricultural, public transport, emergency services, mail delivery. Kalbar does not agree with this change. Kalbar submits that (h) already requires the management of traffic impacts (including their reduction) on users, with agricultural users and public transport singled out for particular attention. In Kalbar's view, adding reference to other road users dilutes this focus and does not add to the substantive obligation imposed by (h) as a whole.
14.	6.4.5(n)	Kalbar	Kalbar has deleted the reference to 'Project Area' following further discussion with ERR and DoT where it was agreed that traffic and transport issues within the mining licence will be dealt with under the MRSD Act, either as a condition of the mining licence or the work plan approval.
15.	6.5.3(e)	MFG	Kalbar does not support MFG's request to delete the word "generally".

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16.	6.7.6	Kalbar	<p>Kalbar has inserted reference to the 'mining licence' given that ERR may include the clauses requiring offsets for clearance of native vegetation on the Project Area in either the mining licence or as a work plan condition (or both).</p> <p>Kalbar has made other the amendment to the wording of clause 6.7.6 for clarification.</p>
17.	6.7.6, 6.7.7	MFG	<p>MFG oppose the staging of offsets and request deletion of this clause. Kalbar does not support deletion given this clause reflects DELWP's standard wording and has been agreed by DELWP. Offsets will need to be in place before the relevant stage of native vegetation can be removed.</p> <p>MFG also makes the point that the offsets required are not yet known as a detailed survey of the entire project area has not been undertaken and offsets for the GBF are to be included. Kalbar acknowledges that a detailed survey is yet to be undertaken for the property at 2705 Bairnsdale – Dargo Rd and that additional targeted species surveys are required, including for the GBF, which may change the required number of offsets. This is the reason for including the note at the end of clause 6.7.7 which reads "Subject to confirmation once all known impacts and offsets have been verified by DELWP, before gazettal of the Incorporated Document".</p>
18.	6.7.7, 6.7.8	Council	<p>Council says it is inappropriate to specify numbers for offsets as there is no basis to do so and it is uncertain that there are no other opportunities for avoidance.</p> <p>Kalbar notes that these clauses reflect DELWP's standard wording and have been agreed by DELWP. The offset numbers previously provided were taken from DELWP's native vegetation removal report (Tabled Document 385). These numbers have been updated to reflect the amount of native vegetation clearance and the corresponding offsets required just for the Infrastructure Area (see item 19 below). As noted in response to item 17 above, Kalbar acknowledges that the required number of offsets is subject to confirmation.</p>
19.	6.7.7	Kalbar	<p>DELWP has provided a native vegetation removal report dated 29 July 2021 and accompanying excel spreadsheet, which splits the offsets required for the Project Infrastructure and the various Project stages.</p> <p>Kalbar had originally planned to set out the split between the offsets required for the Project Infrastructure and each stage of the Project in the Incorporated Document. However, on reflection, this approach seemed overcomplicated as it would make clause 6.7.7 very long and would potentially be quite confusing given the Incorporated Document only regulates clearance required for the Project Infrastructure.</p> <p>In light of this, Kalbar has amended clause 6.7.7 so that it sets out only the amount of native vegetation clearance and offsets required for the <u>Project Infrastructure</u>. Kalbar proposes that the amount of native</p>

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			vegetation clearance and offsets required for <u>each stage</u> of the Project will be set out in a corresponding condition in the mining licence or work plan conditions (or both).
20.	6.7.12	Kalbar	Insertion made to allow for reconciliation of both native vegetation removal and offsets.
21.	new clause 6.8.3(i)	MFG	Insertion made at MFG's request.
22.	6.9.1, 6.9.3-6.9.4	DoT	Changes made at DoT's request.
23.	6.9.2	Council	Kalbar does not support Council's request for a rehabilitation bond. Kalbar has agreed to provide a bond for works to public roads under the TTMP. It is not usual that a bond would be provided to Council for works not on Council land.
24.	6.9.2(a)	Kalbar/MFG	Kalbar has made a minor correction to refer to 'existed' rather than 'existing'. Kalbar does not support MFG's request for a baseline to be specified. The requirement to restore the land to a standard suitable for previous use is sufficiently certain.
25.	8.1	MFG	Kalbar does not support MFG's request to require the development and use to start within 2 years instead of 4 years. 4 years has been nominated to allow time for approvals to be obtained prior to commencement of construction.
26.	8.2	MFG/Council	Kalbar does not support the request from Council and MFG to change the period for use and development from 25 years to 20 years. The 25 year period includes additional time that may be required to obtain all individual statutory approvals required for construction and commissioning the Project.
27.	8.3	Council	Kalbar does not support Council's proposal to include care and maintenance periods within the 2 year period. As a matter of law, care and maintenance is still a 'use' for the purposes of the Project/Project Infrastructure.
28.	8.4-8.5	MFG/Council	MFG/Council oppose these clauses and/or the periods specified. Kalbar disagrees that there is uncertainty as to what constitutes 'care and maintenance' and submits that a project in care and maintenance is still being 'used' as a matter of law. Kalbar notes that it is ordinarily not possible for a responsible authority to require a person lawfully using land to stop doing so (at least without payment of compensation).
29.	8.5	MFG	Kalbar does not agree to change the word "may" to "must". Service of a notice should be at the responsible authority's discretion.

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30.	8.7/8.8	Council	Council has requested that clause 8.7 be replaced – Kalbar assumes this amendment was intended to apply to clause 8.8. Kalbar does not agree to Council's proposed new wording of this clause - the references to the 'Fire and Emergency Management Plan' and the 'Native Vegetation Management Plan' were included for consistency with clauses 8.2 and 8.6.1 (which were amended to refer to those plans at Council's request in the previous version).
31.	Appendix 1	MFG/Council	<p>Kalbar does not support MFG's request to reinstate the original map or Council's request not to include the extended mining licence application area. As explained in TN 032 (Tabled Document 518), no mining is proposed in the mining licence area that extends beyond the Project area shown in the EES and further approvals/assessment would be required to do so.</p> <p>As to Council's request to remove the Bairnsdale siding option, Kalbar agrees this should be removed if this option is rejected or not pursued but it is premature to remove it at this stage</p>