

5 February 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 Environment Effects Statement – response to extra expert evidence

1. We continue to act for Mine-Free Glenaladale Inc. (MFG).
2. We refer to the Inquiry and Advisory Committee's (IAC) directions dated 31 January 2021 (6.16pm), and to the correspondence sent to the IAC by the legal representatives of the East Gippsland Shire Council (EGSC) this morning.
3. We note that Kalbar was required to file and serve further evidence by noon on 2 February 2021. The evidence filed late by Kalbar included material that goes beyond the issue of the introduction of the centrifuges and is complex and highly technical in its nature.
4. We further note that this evidence appears to have been adduced in a very short time frame. For example at page 7 of his report, Mr Sweeney states that:

"I note that the requirement to address the increased water supply in my statement was communicated to me on 29th January 2021, which has provided limited time to consider the full range of potential impacts that might exist. Furthermore, I have not received any updated advice on the implications of the increased water supply volume from the other water specialists whose work I relied upon when writing the GSWIA."

5. Notwithstanding that Mr Sweeney considers that the work in the GSWIA is sufficiently conservative for him to form an opinion, other water specialists on whose work he relied ought properly to be given the opportunity for input. Moreover, it is apparent from the further expert material that Kalbar's own experts consider that they have been unable to conduct a proper assessment of the impacts of the increased water supply due to a lack of time and information.
6. The addition of the centrifuges to the project may also impact on additional aspects of the assessment which have not been addressed by the proponent, including, but not necessarily limited to:
 - a. Greenhouse gases;
 - b. Air Quality; and
 - c. Acoustics.

7. Further, the expert witness statement of John Glossop, introduces a new field of evidence not previously adduced or foreshadowed by Kalbar.
8. In view of the above, we are instructed to advise that:
 - a. Our client considers the addition of the centrifuge and the extra expert statements filed by the proponent on 2 February 2021 to be significant and material to the proposal.
 - b. Our client is not in a position to properly understand the nature and gravity of the material change to the proposal or to adduce further evidence to respond to the proponent's extra expert witness statements at this time (particularly given that the filing of these witness statements was not foreshadowed and our client's experts are not in a position to respond at short notice and in the absence of all relevant information).
9. Our client considers that the orderly and equitable manner in which the public hearings are to be conducted is undermined by the late filing and highly technical nature of the extra expert statements. Such matters only compound the concerns about procedural fairness arising from the late addition of the potential use of centrifuges.
10. In circumstances where significant changes to the project (and its attendant potential environmental effects) continue to be proposed, our client considers that both the IAC's terms of reference and the fair and efficient conduct of the hearing require the hearing to be adjourned. Community organisations like our client should be given a proper and fair opportunity to understand and respond to these material changes. This is especially so given the potentially significant consequences of the project for our client.
11. We acknowledge that, in considering our client's request, the IAC will need to consider whether other parties and members of the community will have sufficient time, notice and information to consider and properly engage with the late addition of the centrifuge and the new evidence adduced by the proponent. We anticipate that the interests of these parties will also support an adjournment of the public hearing.
12. Accordingly, our client respectfully requests that the public hearing be adjourned in order to allow:
 - a. Kalbar to finalise its project proposal and properly assess the impacts of the project;
 - b. Our client and the community time to properly assess the new information;
 - c. Any further public submissions on the subject matter of the new information; and
 - d. The preparation of additional and or supplementary witness statements in order to respond to the new information.

A copy of this letter will be circulated to the evidence distribution list.

Please contact Nick Witherow [REDACTED] and/ or Virginia Trescowthick
[REDACTED] should you have any questions.

Yours faithfully

[REDACTED]

Nick Witherow
Principal Lawyer
Environmental Justice Australia