

5 February 2021

**By Email**

**To**

Mr Nick Wimbush  
Chair, Fingerboards Mineral Sands Project Inquiry  
and Advisory Committee  
Planning Panels Victoria  
Fingerboards.IAC@delwp.vic.gov.au

**FOR THE URGENT ATTENTION OF NICK WIMBUSH, CHAIR**

Dear Mr Wimbush

**Inquiry and Advisory Committee (IAC)  
Fingerboards Mineral Sands Project (Project)**

We refer to the letter from Environmental Justice Australia, on behalf of Mine-Free Glenaladale Inc. (MFG) to the IAC dated 5 February 2021 and the email from the IAC dated 4 February 2021 asking Council to advise whether it intends to call further evidence in response to the four new evidence statements that the proponent now seeks to rely.

**Response to IAC's Direction**

We are instructed that Council presently intends to file a further statement from Associate Professor John Webb to address matters arising out of the new evidence statements circulated by the proponent. We expect to be in a position to file Mr Webb's further evidence statement by 12 February 2021, subject to the resolution of MFG's adjournment request.

Council's assessment of the new information contained in the new evidence statements is continuing. Associate Professor Webb's further statement will not address it all. Council reserves its position in respect of that information.

**Response to MFG's adjournment request**

Even though Council can be in a position to respond to the new evidence, albeit not without considerable difficulties and inconvenience, Council supports MFG's adjournment request.

Council is acutely aware that the Project has been causing significant angst in the local community for almost four years and the community has invested significant time, money and effort in

responding to the Project, preparing submissions and engaging legal representation and expert witnesses.

Council considers that the hearing is a critical step in the process where all parties can present their concerns. In this context, it is essential that all parties, including the community and those who had not indicated an intention to call evidence on the basis of the Project in the form reflected in the exhibited EES, have had and believe they have had a fair opportunity to prepare and present their respective cases.

In considering MFG's request, Council considers that it is relevant that two of the new witnesses that the proponent now intends to call (Mr Jarrah Muller in relation to water balance and Mr John Sweeney in relation to water impacts) were briefed over 4.5 months ago on 15 September 2020, but proponent only disclosed to the parties (and the IAC) its intention to call these witnesses was last Sunday evening. Further, both Mr John Glossop and Mr Hugh Middlemis, were briefed on 15 January 2021 and again Council (and the other parties calling evidence) only became aware that the proponent was intending to rely on their evidence some two weeks later.

We note that no party was given any opportunity to respond to the proposed filing of additional evidence before the decision to allow it to be filed was made (no doubt influenced by the disclosure of this intention on Sunday afternoon). The request for and decision to allow the Proponent to file evidence which iteratively and cumulatively fundamentally changes the advertised EES and to permit it to call evidence not notified on 7 January 2021 from witnesses engaged prior to that date surprised the Council and its representatives. It remains unclear why this was done so close the hearing date in view of the obvious inconvenience and disadvantage this causes to other parties and people not notified at all of the changes.

MFG's request for an adjournment also needs to be considered in the context that the parties are yet to receive the proponent's response to the IAC's further information request and the further evidence that the proponent intends to call with respect to the centrifuge issue. We note the advice from the proponent to the IAC, by its email of 2:10pm today, indicates an intention to circulate a further 17 witness statements on Monday, five business days prior to the hearing, and four business days prior to the last day conclaves are required to be convened.

Further, and while our review of witness statements circulated to date continues, it is evident that Kalbar's own witnesses are seeking time to consider changes which will likely lead to further changes of position (as evidenced for example by the witness statement of Ms Teague and Dr Loch).

In this respect we note the proponent's historical support for the adjournment of the hearing, as set out in its letter to the IAC dated 29 January 2021 (tabled document 64), which is unsurprising.

We note that the proponent has not responded to the IAC's request for an order of witnesses and that real issues now arise as to whether:

- (a) the number of witnesses proposed to be called can be accommodated in the time provided with sufficient time for cross examination;
- (b) conclaves can realistically occur in a situation where each witness is furnished with the same information and no witness is disadvantaged; and
- (c) the responding parties will be in a position to understand the apparent amendments the proponent seeks to make the EES.

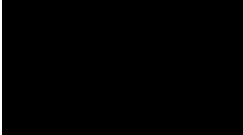
For these reasons, and despite the significant inconvenience and continuing questions as to the conduct of the hearing, Council considers that MFG's request is reasonable in the circumstances. Recognising the importance of observing the rules of natural justice, it is essential that the community, including MFG, are given a fair and reasonable opportunity to consider the voluminous and complex new material now filed and foreshadowed by the proponent.

An adjournment will not remedy all of the prejudice suffered by other parties as a result of the filing of that new material. It will not account for the substantial cost and time to which parties, including the Council, will be put.

We consider that a directions hearing is required to identify an adjourned start date for the hearing as appropriate having regard to the obligations of the IAC and the parties and to set a realistic timetable which does not result in any further disadvantage to parties to the hearing.

If you have any questions, please do not hesitate to contact me.

Yours sincerely



Darren Wong  
**Principal**

