

[REDACTED]

From: Anthony M Hurst (DJPR) [REDACTED]
Sent: Thursday, 10 December 2020 10:14 AM
To: Amy Selvaraj (DELWP)
Subject: Fingerboards IAC - Correspondence from the Fingerboards Mineral Sands Project Inquiry and Advisory Committee seeking written advice from Earth Resources Regulation

Attention: Nick Wimbush
Inquiry and Advisory Committee Chair

Dear Mr Wimbush

Thank you for your letter of 3 December 2020 regarding the Fingerboards Mineral Sands Project Inquiry.

I also refer to your secretariat's email of 30 November 2020 to Mr Tony Robinson requesting Earth Resources Regulation's attendance in the inquiry's directions hearing on 14 December 2020, including to request our view on the project.

As per my letter to you of 20 November 2020, I am mindful that I may need to make decisions on applications for licence and work plan under the *Mineral Resources (Sustainable Development) Act 1990* (MRSDA) subsequent to the EES process. As such, it would be premature for myself or my team to attend the hearings to express a view on the proposed project or take related directions in the interim.

I appreciate your committee's recognition of my role in making licensing and workplan decisions subsequent to the EES process, as noted in your letter.

I reaffirm that I would be pleased to consider any written requests from your committee within this context.

The following responses are provided to your initial questions.

1. Regulatory framework for the Fingerboards Mineral Sands Project and the role of Earth Resources Regulation.

Overview

The MRSDA establishes the legal framework for mining in Victoria, including (but not limited to):

- Objectives to enable exploration and development Crown-owned mineral resources and protecting public safety, land, property, infrastructure and the environment.
- Grant licences to access to Crown-owned mineral resources, subject to a person being fit and proper, land access requirements and other specified requirements
- Assess applications for mine work plans and work plan variations, including powers to approve, refuse or require changes
- Require licensees to rehabilitate land that has been mined, including provisions to require rehabilitation bonds and to rehabilitate land if a licence holder defaults on their obligation
- Conduct compliance activities
- Set and collect royalties and fees
- Require licence applicants and licence holders to consult.

Section 2A of the MRSDA lists the principles of sustainable development and requires that regard be given to them in the administration of the Act.

Relationship to an Environment Effects Statement

The EES process occurs before any decisions on work plans (or rehabilitation bonds) under the MRSDA.

The following MRSDA steps must be followed before any mining can begin, if the Minister's Assessment results in favourable assessment and the applicant decides to proceed.

Note that under s42(7) of the MRSDA, planning permits under planning schemes are not required where an EES has been prepared and an assessment of the EES by the Minister for Planning has been submitted to the Minister for Resources.

Licences

Before any mining can occur a proponent requires a Mining Licence as detailed in Part 2 of the MRSDA including:

- s14 Mining Licences
- s15 Application for a licence
- s16 Application for licence fit and proper person
- s16B Application for mining licence where retention licence covers the same land
- s24 Objections to licence
- s24A Comments on licence
- s25 Grant or refusal of licence
- s26 Grant of licence
- s26A-E Requirements if agricultural land covered by mining licence

Work Plan

Before any mining can occur, the proponent will also require a Work Plan, as detailed in Part 3 of the MRSDA.

Application for a Work Plan can only occur after a Mining Licence for that area is granted.

Sections of the MRSDA covering work under a mining licence include:

- s39 Work must be approved
- s39A Licensees duty to consult with the community
- s40 Work Plan
- s40A Work Plan – approval (note that s40A(3) has provisions relating to the Environment Effects Act 1978)

The information requirements for work plans are set out in the *Mineral Resources (Sustainable Development)(Minerals Industries) Regulations 2019*.

The draft work plan exhibited in the EES is not an application for work plan and has not been assessed by Earth Resources Regulation. The assessment of any work plan follows the EES process, as detailed above.

Earth Resources Regulation expects that any application for a work plan following this EES process would demonstrate how any recommendations in the Minister for Planning's Assessment (that are applicable under the MRSDA) have been addressed; including evidence of consultation with relevant agencies. Section 40A(3) requires a copy of the work plan to be provided to the Minister for Planning at least 10 days prior to approving the plan.

Rehabilitation and Bonds

Before mining can begin, the licence holder must have a rehabilitation bond in place to cover 100 per of the estimated cost of rehabilitation.

Part 7 of the MRSDA covers rehabilitation, including:

- 78 Licensee must rehabilitate land
- S79 Rehabilitation plan
- S79A Rehabilitation liability assessment
- S80 Rehabilitation bond
- S81 Rehabilitation

- S81A Certification that land has been rehabilitated
- S82 Return of bond if rehabilitation satisfactory
- S83 Minister may carry out rehabilitation

Since 2018, Earth Resources Regulation has been taking action to improve the regulation of site rehabilitation, as described in our *Regulatory Practice Strategy for the Rehabilitation of Earth Resources Sites*.

https://earthresources.vic.gov.au/_data/assets/pdf_file/0018/511920/Earth-Resources-Regulation-Regulatory-Rehabilitation-Strategy.pdf

Commencement of work under a mining licence

Before the holder of a mining licence can start work on the land, they require the items listed in s42 of the MRSDA including:

- (a) an approved work plan,
- (b) a rehabilitation bond under section 80,
- (c) all necessary consents and other authorities under the MRSDA and any other Acts,
- (d) complying with any condition to provide an environmental offset,
- (e) insurance required under s39(5),
- (f) obtaining any consents or authorisations required under s45 and 46 (for work within 100 metres of dwelling houses)
- (g) giving 7 days notice to owners and occupiers of the land affected and to the Chief Inspector at Earth Resources Regulation; and
- (h) obtained written consent from the owners and occupiers of the land affected, or had compensation determined.

Further information about the MRSDA requires and related materials are available on our website:

<https://earthresources.vic.gov.au/>

2. Whether ERR has a preliminary view on the proposal within its regulatory sphere and the adequacy of background studies undertaken to date.

It would be premature for me to form a preliminary view on the project before the EES process is complete, particularly given that considering the EES outcome is a requirement under the MRSDA.

3. What involvement ERR has had to date with the project, if any, including information requests and responses.

Earth Resources Regulation has exercised several roles with respect to the MRSDA, including (but not limited to):

- Granting and administering Retention Licences RL2023 and RL2026 that cover the area of the Fingerboards EES, including transfer of the licences to reflect company restructuring,
- Contributing information in the Technical Reference Group convened by DELWP with respect to the requirements under the MRSDA,
- Conducting inspections
- Responding to inquiries and meeting with members of the local community.

4. Whether there are any known proposals for mineral sands mining in the vicinity or broader East Gippsland.

The surface geology in some other parts of Gippsland might be prospective for mineral sands, but the commercial potential is largely unknown.

The holders of some Exploration Licences in the region may explore for a range of minerals, including mineral sands.

5. Whether other projects proposed in Gippsland have any implications for the consideration of Fingerboards including the following projects referenced in the EES Socioeconomic Impact Assessment at page 70:

- Stockman Base Metals Project

- **Nowa Nowa iron ore mine**
- **Oroya Mining's copper project.**

Earth Resources Regulation considers applications for licences and work plans for minerals exploration and mining projects on their merit, in accordance with the MRSDA provisions.

There are a number of minerals exploration and some retention and mining licences in East Gippsland, as shown on our *Mining Licences Near Me* website: <https://earthresources.vic.gov.au/licensing-approvals/location-of-mining-petroleum-licences/mining-licences-near-me>

You may wish to direct inquiries about any specific project to the relevant companies, as listed on *Mining Licences Near Me* website.

6. ERR announced by press release in July 2019 the protection of the Mitchell River Floodplain from mining; how has this protection been implemented, and does it have any implications for the Fingerboards Project?

I exempted an area of the Mitchell River floodplain from applications for any type of minerals licence as the Minister's delegate under Section 7 of the MRSDA.

In brief, I made this decision having regard to the area's relatively low prospectivity for commercial minerals exploration and development and its high value for horticulture production.

I trust that the above information assists your deliberations.

Yours sincerely

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From: Amy Selvaraj (DELWP) [REDACTED] on behalf of Fingerboards Inquiry and Advisory Committee (DELWP) <Fingerboards.IAC@delwp.vic.gov.au>
Sent: Thursday, December 3, 2020 7:27:16 PM
To: Anthony M Hurst (DJPR) [REDACTED]
Cc: Tony C Robinson (DJPR) [REDACTED]
Subject: Fingerboards IAC - Correspondence from the Fingerboards Mineral Sands Project Inquiry and Advisory Committee seeking written advice from Earth Resources Regulation

Dear Mr Hurst

Please find attached correspondence from the Chair of the Fingerboards Mineral Sands Project Inquiry and Advisory Committee seeking written advice from Earth Resources Regulation.

Regards

Amy

**Amy Selvaraj | Senior Project Officer | Planning Panels Victoria
Planning | Department of Environment, Land, Water and Planning**

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I am currently working remotely. Please contact me by email at the above email address or planning.panels@delwp.vic.gov.au

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