

**Fingerboards Mineral Sands Project Inquiry and Advisory Committee  
Technical note**

**TN No:** TN 003

**Date:** 8 February 2021

**Subject:** Response to IAC Request for Information – Part 2.3, questions 4-6

**INTRODUCTION**

The IAC's request relevantly provides:

**2.3 Implementation and enforcement**

**(i) Reference**

The regulatory framework for the Project is outlined in Chapter 5 of the EES.

**(ii) Request**

The Proponent should:

4. Outline how the EMF will work in concert with the Planning Scheme Amendment (PSA), Mining Licence and Work Plan to ensure the environmental management outcomes sought can be achieved and enforced.
5. Provide specific examples of how this would work in practice including outlining the responsibilities of the Proponent, regulatory authorities and East Gippsland Shire Council as relevant for scenarios including:
  - a. Alleged exceedances of night-time construction noise at nearby residences
  - b. Alleged exceedances of evening and night-time truck movements at nearby residences
  - c. Alleged release of tailings or other pollutants into the Mitchell River
  - d. Alleged over-extraction of water and/or groundwater
  - e. Alleged exceedances of dust deposition criteria at nearby properties
  - f. Failure of rehabilitation post-closure.
6. Explain how the bond process (if relevant) under the *Mineral Resources (Sustainable Development) Act* 1990 will operate for the project and in what circumstances would it be accessed by the regulator

## RESPONSE

### Questions 4 and 5

The key (but not only)<sup>1</sup> legal instruments that will regulate the Project are:

- for works within the mine licence area, the mining licence and work plan approved under the *Mineral Resources (Sustainable Development) Act 1990 (MRSD Act)*; and
- for works outside the mine licence area, the Incorporated Document proposed via Amendment C156 to the East Gippsland Planning Scheme.

The key legislative provisions concerning mining licences and work plans are outlined in the Proponent's Part A submission. These will not be repeated at length here, other than to note some key aspects that are relevant to the IAC's questions.

A 'mining licence' may impose conditions covering a broad range of matters including in relation to rehabilitation, minimisation of risks, protection of groundwater and the manner of carrying out works.<sup>2</sup>

A 'work plan' must cover a range of matters, including specifying what a licensee will do to eliminate or minimise risks as far as reasonably practicable.<sup>3</sup>

Part 2 of the *Mineral Resources (Sustainable Development) (Extractive Industries) Regulations 2019 (Regulations)* further prescribe the content of work plans. Prescribed content includes the identification of hazards and risks (r 9) and the inclusion of a 'risk management plan'.

Under r 10 of the Regulations, a risk management plan must, in relation to the identified risks, set:

- (a) measures to be applied to eliminate or minimise the risks as far as reasonably practicable;
- (b) the performance standards to be achieved by either individual measures or some combination of measures;
- (c) management systems, practices and procedures that are to be applied to monitor and manage risks and compliance with performance standards;
- (d) an outline of the roles and responsibilities of personnel accountable for the implementation, management and review of the risk management plan."

A draft risk management plan is included at Appendix B of the Draft Work Plan (EES Appendix B). It includes three 'risk treatment plans' (being the relevant terminology used in the templates contained in the work plan guidelines).<sup>4</sup> Risk Treatment Plans are provided for:

- Airborne and deposited dust
- Environmental noise
- Water quality and hydrogeology

The operation of these plans can be illustrated using the Noise plan as an example.

Section 6 of the Risk Treatment Plan for noise (**RTP Noise**) specifies 'acceptance criteria' for noise and vibration levels as follows:<sup>5</sup>

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<sup>1</sup> Noting additional requirements, e.g., under the Water Act 1958, Radiation Act 2005 and Environment Protection Act 1970 / 2017.

<sup>2</sup> MRSD Act, s 26.

<sup>3</sup> MRSD Act, s40(3)(c).

<sup>4</sup> *Preparation of Work Plans and Work Plan Variations: Guidelines for Mining Projects*, December 2020 (version 1.3), available from: <https://earthresources.vic.gov.au/legislation-and-regulations/guidelines-and-codes-of-practice/work-plan-guidelines-for-mining-licences>

<sup>5</sup> Draft Work Plan pf p 294.

Table 6-1: Acceptance criteria – noise and vibration

Standard	Acceptance criteria
<b>Construction and demolition (closure) phase</b>	
Noise Control Guidelines – EPA Publication 1254	<ul style="list-style-type: none"> <li>Day – Monday to Friday (7:00 a.m. to 6:00 p.m.) and Saturday (7:00 a.m. to 1:00 p.m.) there are no construction noise limits.</li> <li>Evening – Monday to Friday (6:00 p.m. to 10:00 p.m.), Saturday (1:00 p.m. to 10:00 p.m.) and Sunday / Public Holidays (7:00 a.m. to 10:00 p.m.) noise limit is to be no greater than 10 dB above background noise and outside a residential dwelling for the first 18 months, and no greater than 5 dB above background noise and outside a residential dwelling after 18 months.</li> <li>Night – Monday to Sunday (10:00 p.m. to 7:00 a.m.) noise must be inaudible inside a habitable room with windows open.</li> </ul> <p>Construction noise that is audible inside a habitable room of a residence is permissible in respect of ‘unavoidable works’ and ‘low-noise or managed impact works’.</p>
Noise Control Guidelines – EPA Publication 480	<ul style="list-style-type: none"> <li>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.</li> </ul>
<b>Operations phase</b>	
Noise from Industry in Regional Victoria – EPA Publication 1411	<ul style="list-style-type: none"> <li>Day – 46 dB Leff (Monday to Friday (7:00 a.m. to 6:00 p.m.) and Saturday (7:00 a.m. to 1:00 p.m.)).</li> <li>Evening – 41 dB Leff § (Monday to Friday (6:00 p.m. to 10:00 p.m.), Saturday (1:00 p.m. to 10:00 p.m.) and Sunday (7:00 a.m. to 10:00 p.m.)).</li> <li>Night – 36 dB Leff (Monday to Sunday (10:00 p.m. to 7:00 a.m.)).</li> </ul>

Section 9 of the RTP Noise sets monitoring requirements.

Section 10 sets reporting requirements. An extract, by way of illustration, is provided below.

## 10. Reporting

Table 10-1: Noise performance and compliance reporting

#	Aspect being reported	To whom will the information be reported? At what frequency?	How will the information be used?
...			
5	Ambient noise – attended monitoring (mining operations)	Monthly reporting to Fingerboards management team; quarterly reporting to Community Reference Group; annual environmental compliance reporting to ERR, EPA and EGSC.	To demonstrate compliance with NIRV; input to review and update predictive noise modelling; input to updates of this risk treatment plan; to inform mine planning and
6	Ambient noise – unattended monitoring (project commencement)	Monthly reporting to Fingerboards management team; quarterly reporting to Community Reference Group; annual environmental compliance reporting to ERR, EPA and EGSC.	To check compliance with EPA Publications 480 and 1254; input to contractor performance assessment.
7	Ambient noise – unattended monitoring (ongoing monitoring).	Monthly reporting to Fingerboards management team; quarterly reporting to Community Reference Group; annual environmental compliance reporting to ERR, EPA and EGSC.	To demonstrate compliance with NIRV; input to updates of this risk treatment plan; input to review and update predictive noise modelling; to inform mine planning and maintenance schedules.
8	Complaints	Weekly reporting to Fingerboards management team; complaints statistics reported quarterly to Community Reference Group; annual reporting to ERR and EPA.	To check effectiveness of noise control; to inform ongoing mine planning, maintenance and monitoring strategies

Enforcement mechanisms under the MRSD Act are contained in Part 12 (Enforcement). For example, the Minister has the power to issue a notice requiring a licensee to stop work or take remedial action if, inter alia, work was undertaken otherwise than in accordance with a work plan.<sup>6</sup> In addition, it is an offence to carry out work under a licence other than in accordance with the licence or an approved work plan.<sup>7</sup>

Thus, in addition to a mining licence, a work plan is an enforceable instrument capable of incorporating a range of environmental performance, monitoring and reporting requirements that are tailored to a specific mining project. This can be seen in the three proposed 'risk treatment plans' included in the Draft Work Plan, however these plans could be expanded following the EES process, if necessary.

For works outside the mining licence area, an Incorporated Document is proposed which requires compliance with a number of plans and reports to be approved by the Responsible Authority.

As noted in the Part A submission, the Environment Management Framework (Chapter 12 of the EES) is primarily a descriptive document, rather than one that has legal effect. The requirements and commitments described in the Incorporated Document, and the measures in the Mitigation Register at Appendix H, will need to be incorporated, either by reference or directly, in the work plan and documents approved under the Incorporated Document.

### Question 6

Under section 42(1) of the MRSD Act, the Proponent would not be able to commence work on land covered by the mining licence (if granted), until it has, among other things:

- an approved work plan (which must include a rehabilitation plan); and
- entered into a rehabilitation bond.

The amount of the rehabilitation bond is determined by the Minister for Resources, having reference to the works required to rehabilitate the land, and after consultation with East Gippsland Shire Council and the owners of the land covered by the mining licence (see section 80 of the MRSD Act).

The Minister for Resources may, at any time after a rehabilitation bond is entered into, require the Proponent to provide a further rehabilitation bond if he or she is of the opinion that the rehabilitation bond is insufficient.

The rehabilitation bond would only be returned to the Proponent once the Minister for Resources is satisfied that the land has been rehabilitated and the rehabilitation is likely to be successful. The [Department of Jobs, Precincts and Regions] can access the bond if the Proponent fails to rehabilitate the land in accordance with its approved rehabilitation plan (which forms part of the approved work plan).

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<sup>6</sup> MRSD Act, s110(1)(v).

<sup>7</sup> MRSD Act, 39.