

14 February 2021

Dear Amy,

Re: Fingerboards Mineral Sands Project Inquiry and Advisory Committee – Directions Hearing 15 February 2021

Further to my email last week regarding the process by which all 910 submitters, including those like myself who did not request to be heard, will be provided the opportunity to comment on the project modifications to use centrifuges, I refer to the letter to the IAC (Tabled Document 141) from White & Case, acting for Kalbar:

Notwithstanding that a decision regarding the nature of the proposed modifications is yet to be made, I agree with their statement, at 5, that the “IAC would not be discharging its Terms if it were to exclude or refuse to receive information relevant to its task, even if that information relates to a potential change to the Project” especially their reference, at 5 (c) (ii), to Clause 28 (Terms of Reference) that the IAC “must consider ‘[A]ny other relevant information that is provided to, or obtained by, the IAC.’”

White and Case, at 7, state: “The Terms invite consideration of the effects of the Project. If a modification to the Project would diminish the environmental effects, the modification is clearly relevant and must be considered.”

Likewise, if a modification to the Project would **increase** the environmental effects, the modification is also relevant and must be considered. In other words, the Terms invite consideration of the modification’s environmental effects *in toto* and how those new effects compare to the original proposal.

However, I cannot agree with their opinion, at 10, that: “The Acts referred to by the IAC specifically contemplate that a proponent may be given the opportunity to provide additional information to the decision-maker **without necessarily attracting an obligation to undertake further public consultation.**”

In response: the Mineral Resources (Sustainable Development) Act 1990 (MRSD Act) specifically requires contemplation of the Principles of Sustainable Development Section as set out in Section 2A; in particular, Section, 2A (2) (h) (i) states:

“decisions and actions should provide for community involvement in issues that affect them”

The MRSD Act does not define “community” but it is reasonable to interpret its meaning as referring to the community affected. According to the proponent’s own Socioeconomic Assessment Appendix A018, p34/302, the affected community includes not only that within the East Gippsland Shire, e.g. Bairnsdale, Paynesville, Bruthen, but also community beyond, e.g. Dargo, Briagolong and Stratford (Wellington Shire). That being the case, the affected community extends beyond the original 910 EES submitters to the wider community.

Furthermore, the Charter of Human Rights and Responsibilities Act 2006, Section 32 (1) Interpretation requires that: “So far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights”.

Therefore, regarding the Permissibility of Variations, at 2, it is consistent with the Terms and lawful for the IAC to invite further public consultation, not only from the 910 EES submitters but also from the wider community which the proponent admits will be affected.

Please accept this letter as a submission to the Directions Hearing on 15 February 2021.

Yours sincerely

Jane Hildebrant