

**IN THE MATTER OF THE
FINGERBOARDS MINERAL SANDS PROJECT
INQUIRY AND ADVISORY COMMITTEE**

**SUBMISSION ON THE CONSIDERATION OF CENTRIFUGES
ON BEHALF OF MINE-FREE GLENALADALE**

INTRODUCTION

1. This submission is made on behalf of Mine-free Glenaladale Inc. (**MFG**)¹ pursuant to Direction 59.

THE RESPONSE TO DIRECTION 58

2. Direction 58 required Kalbar Operations Pty Ltd (the **Proponent**) to advise the Fingerboards Mineral Sands Project Inquiry and Advisory Committee (the **IAC**) whether they propose to proceed on the basis that the IAC should consider:
 - a. both the project in its original form (i.e. as exhibited) and the project as modified by Technical Note 01 (the centrifuge); or
 - b. the project as modified by Technical Note 01.
3. By letter dated 26 February 2021, the IAC was advised that the Proponent ‘wants to proceed with the project as modified by technical note TN 01 – in other words, with centrifuges in place of the TSF’.²
4. MFG respectfully disagrees with the Proponent’s response to Direction 58. It is submitted that the IAC should consider both the project in its original form (i.e. as exhibited) and the project as modified by Technical Note 01 (the centrifuge) for the following reasons:

¹ [Submission 813](#).

² Letter from Tim Power to the IAC dated 26 February 2021 ([Document 151](#)).

- a. the Minister's decision to require an EES under section 8B(3) of the *Environment Effects Act 1978 (EE Act)* makes specific reference to the tailings storage facility;
- b. the IAC's Terms of Reference (the **Terms**) require the IAC to consider the project in its original form in the first instance; and
- c. there are practical and prudent reasons for considering both the tailings storage facility and the use of centrifuges.

The Minister's Decision to Require an EES

5. By decision dated 18 December 2016 the Minister for Planning determined that an EES was required for the proposed Fingerboards Mineral Sands Project (the **project**), as described in the referral accepted on 15 November 2016.
6. The Minister identified the tailings storage facility in his Reasons for Decision dated 18 December 2016, with the project described by the Minister as including the development of a mineral sands mine, mining unit plant, wet concentrator plant, water supply infrastructure, *tailings storage facility* and additional site facilities (emphasis added).³
7. It follows that the original decision to engage the EE Act is directly linked to the proposal for a tailings storage facility.
8. In light of the Minister's decision to require an EES and his specific reference to the tailings storage facility in making the decision to engage the EE Act, MFG submit that the IAC is required to consider the environmental effects of the tailings storage facility (i.e. the exhibited EES).

The IAC's Terms of Reference

9. The IAC is appointed to inquire into, and report on, the project and its environmental effects in accordance with its Terms of Reference.

³ Reasons for Decision Fingerboards Mineral Sands Project (R6-2016) (16 December 2018) <<https://www.planning.vic.gov.au/environment-assessment/browse-projects/projects/fingerboards-mineral-sands>>.

10. Clause 5 of the Terms sets out the purpose of the IAC in exercising its function under the *Environment Effects Act 1978 (EE Act)*. Specifically:

The IAC is appointed by the Minister for Planning under section 9(1) of the EE Act to hold an inquiry into the environmental effects of the project. The IAC is to:

- a. review and consider the environment effects statement (**EES**), public submissions received in relation to the environmental effects of the project and the reports and advice from the appointed Department of Environment, Land, Water and Planning (**DELWP**) independent peer reviewers;
- b. consider and report on the potential environmental effects of the project, their significance and acceptability, and in doing so have regard to the draft evaluation objectives in the EES scoping requirements and relevant policy and legislation;
- c. identify any measures it considers necessary and effective to avoid, mitigate or manage the environmental effects of the project within acceptable limits, including any necessary project modifications;
- d. advise on how this relates to relevant conditions, controls and requirements that could form part of the necessary approvals and consent for the project;
- e. report its findings and recommendations to the Minister for Planning to inform his assessment under the *Environment Effects Act 1978*; and
- f. review the works approval application (**WAA**) and relevant submissions and provide advice that can be used to inform the Environment Protection Authority's (**EPA**) consideration of the WAA prepared by the proponent for the project.

11. Clauses 25-33 of the Terms concern the public hearing stage of the EES process.

12. Clause 25 requires the IAC to hold a public hearing and Clause 28 sets out the matters to be reviewed and considered by the IAC during the public hearing stage of the EES process. Specifically:

The IAC may inform itself in any way it sees fit, but *must review and consider*:

- a. *the exhibited EES*, draft PSA and WAA;
- b. all public submissions, and all submissions and evidence provided to the IAC by the proponent, state agencies, local councils and the public;

- c. the reports and advice of three independent peer reviewers appointed by DELWP;
- d. any information provided by the proponent that responds to submissions; and
- e. any other relevant information that is provided to, or obtained by, the IAC

(emphasis added).

13. When read together and in full, Clauses 5 and 28 require the IAC to consider the project in its original form (i.e. the exhibited EES) in the first instance.
14. Whilst the Terms contemplate the consideration of project modifications and the provision of additional information,⁴ MFG submit that the IAC's review and consideration of any such material during the public hearing should be in addition to – rather than in place of – the IAC's review and consideration of the exhibited EES.

Practical / Prudent reasons to consider the exhibited EES

15. Further to the reasons above, MFG submit that it is prudent to consider the project in its original form and as modified by Technical Note 01 (i.e. both the tailings storage facility and the use of centrifuges) in the event that the Proponent abandons the use of centrifuges for technical and or financial reasons following the Minister's Assessment.
16. In circumstances where there is no precedent for the use of centrifuges in mineral sands applications⁵ and where 'the exact scope, detailed operating parameters that may be achieved in practice and economic implications on the Project can only be determined after detailed design and cost estimate work is completed',⁶ it is reasonable to factor in the potential abandonment of the use of centrifuges for technical and or financial reasons at a later date.
17. The *Ministerial Guidelines for assessment of environmental effects under the EE Act* (the **Ministerial Guidelines**) address circumstances where a project is varied during

⁴ See Clauses 5(c), 25(d)-(e).

⁵ Technical Note 01: Implementation of centrifuges for water recovery and tailings management (18 January 2021) 5 ([Document 43](#)).

⁶ Expert Witness Statement of Ivan Saracik (8 February 2021) 7 [4.2.4] ([Document 130](#)).

its implementation (i.e. after the Minister's Assessment). Particular circumstances that may arise include:⁷

Proponent initiated variations to enhance project viability, for example, in response to technological or commercial factors. The nature and scale of such changes, and hence appropriate responses, may vary considerably. Where a revised proposal could involve significant 'new' effects on the environment, the proponent may need to refer the revised proposal to the Minister for a decision as to whether further assessment is required under the *Environmental Effects Act 1978*.

18. Accordingly, in circumstances where:

- a. the Proponent initiates a variation to the project in response to technological or commercial factors (i.e. reverts back to the use of the tailings storage facility in circumstances where it has not been considered by the IAC); and
- b. the revised proposal could involve significant 'new' effects on the environment

the revised proposal may need to be referred to the Minister for a decision as to whether further assessment is required under the EE Act.

19. MFG submit that the potential abandonment of the use of centrifuges in circumstances where the tailings storage facility has not been assessed by the IAC would be unacceptable. Either a further EES would be required, or decision makers would be required to make decisions in circumstances where a critical part of the project was not assessed, thereby defeating the purpose of the EES process and denying natural justice to our client and other stakeholders.

20. In the interests of avoiding a situation in which a further assessment under the EE Act is required, it is submitted that the IAC should consider both the tailings storage facility and the use of centrifuges in the event that the Proponent abandons the use of centrifuges for technical and or financial reasons following the Minister's Assessment.

⁷ Ministerial Guidelines (2006) 28
<https://www.planning.vic.gov.au/_data/assets/pdf_file/0026/95237/DSE097_EES_FA.pdf>.

21. Further to the above, our client notes that the parties have already undertaken a significant amount of work to assess the potential environmental effects of the tailings storage facility. It is therefore respectfully submitted that the IAC should review and consider both the tailings storage facility and the use of centrifuges.

RESPONSE TO TABLED DOCUMENT 141

22. The IAC directed the Proponent to provide submissions on whether the introduction of the use of centrifuges raises any significant legal issues in terms of the EES process and the work of the IAC, with reference to the EE Act, the *Environment Protection and Biodiversity Act 1999*, the *Environment Protection Act 2017* and the IAC's Terms.

23. In response, the Proponent submitted that there is no legal impediment to the proposed replacement of the tailings storage facility by the centrifuge.⁸

24. MFG respectfully disagrees with the Proponent's submission. Rather, it is submitted that:

- a. the introduction of a new element (i.e. the use of centrifuges) cannot be at expense of reviewing and considering the exhibited EES (i.e. the tailings storage facility);
- b. the introduction of a new element raises legal issues in terms of the EES process, notably a failure to document relevant alternatives in the exhibited EES and the flow on consequences for the adequacy of the EES; and
- c. the deferral of providing further information on the use of centrifuges (i.e. in responding to the Section 22 Notice) may have legal ramifications for the integrated nature of the assessment of the WAA under the EES process.

The Work of the IAC under its Terms

25. The introduction of the use of centrifuges raises significant legal issues in terms of the work of the IAC.

⁸ Submissions on variations to the Project on behalf of the Kalbar Operations Pty Ltd (12 February 2021) [19] ([Document 141](#)).

26. It is acknowledged that the Terms contemplate the consideration of project modifications and the provision of additional information.⁹ However, as set out at paragraphs [9]-[14] above, it is respectfully submitted that the review and consideration of any such material during the public hearing must be in addition to – rather than in place of – the IAC’s review and consideration of the tailings storage facility.

27. Accordingly, it is submitted that there is a legal impediment to the proposed replacement of the tailings storage facility by the centrifuge if the new element (i.e. the use of centrifuges) is considered at the expense of reviewing and considering the exhibited EES.

The EES process – a failure to document relevant alternatives

28. The introduction of the use of centrifuges raises legal issues in terms of the EES process and, notably, a failure to document relevant alternatives in the exhibited EES.

29. The Minister specified the procedures and requirements applying to the Fingerboards EES process on 18 December 2016, including:¹⁰

- a. The EES is to document the investigation and avoidance of potential environmental effects of the proposed project, *including for any relevant alternatives* (such as for the mining extent, methods for mining and processing, water supply and transport of mining outputs), as well as associated environmental mitigation and management measures (emphasis added).
- b. The matters to be investigated and documented in the EES will be set out in detail in scoping requirements prepared by DELWP.

30. The Minister issued Scoping Requirements for the Fingerboards EES in March 2018, specifying:

- a. The purpose of the EES is to provide a sufficiently detailed description of the proposed Project, assess its potential effects on the environment and *assess*

⁹ See Clauses 5(c), 25(d)-(e).

¹⁰ Fingerboards EES Procedures and Requirements (18 December 2016) (i) and (ii) <https://www.planning.vic.gov.au/data/assets/pdf_file/0027/481842/Fingerboards-EES-Procedures-and-Requirements.pdf>.

alternative project layouts, designs and approaches to avoid and mitigate effects (emphasis added).¹¹

- b. The main report should include a description of *relevant alternatives* capable of substantially meeting the project's objectives that may also offer environmental or other benefits (as well as the basis for the choice where a preferred alternative is nominated) (emphasis added).¹²
- c. The EES should document the proponent's consideration of relevant alternatives and include an explanation of how specific alternatives were shortlisted for evaluation within the EES. The discussion of relevant alternatives should include the technical feasibility and environmental implications of alternative tailings management methods.¹³

31. The Proponent's introduction of the use of centrifuges in January 2021, rather than investigating and documenting their use as a 'relevant alternative' in accordance with the procedures and requirements for the EES process raises a number of unanswered questions, most notably, why was the use of centrifuges not included in the exhibited EES?

32. The Proponent's introduction of the use of centrifuges in January 2021 also raises legal issues with respect to the adequacy of the EES.

33. The Scoping Requirements specify that 'the EES is to describe the project in sufficient detail both to allow an understanding of all components, processes and development stages, and to enable assessment of their likely potential environmental effects'.¹⁴

34. Further, the Ministerial Guidelines state that a 'clear and sufficiently detailed description of the proposed project is needed to enable the effective assessment of potential environmental effects' and that the description should include 'technology and design of project components'.¹⁵

¹¹ Scoping Requirements (March 2018) 1
<https://www.planning.vic.gov.au/_data/assets/pdf_file/0024/122199/Attachment-1-Final-Fingerboards-Mine-EES-Scoping-Requirements-March-2018-Updated-figure-.pdf>.

¹² Scoping Requirements, 8.

¹³ Scoping Requirements, 10.

¹⁴ Scoping Requirements, 9.

¹⁵ Ministerial Guidelines, 15.

35. The Proponent has filed Technical Note 01, the Expert Witness Statement of Ivan Saracik, Addendum Statements from each of its existing expert witnesses, and an updated Project Description (EES Chapter 3) to address the addition of the use of centrifuges.
36. MFG has reviewed the information provided to date and is concerned that it does not enable an effective assessment of potential environmental effects. In particular:
- a. the technical information on centrifuges has not been sufficiently investigated or clearly documented to enable an informed response by submitters;
 - b. specifications for the centrifuges have not been provided; and
 - c. the addition of centrifuges may impact on aspects of the assessment which have not been addressed by the proponent, including, but not necessarily limited to greenhouse gases, air quality, and acoustics.
37. The Proponent has advised the IAC that it intends to file a cross-referenced document identifying the impacts of the use of centrifuges on all the EES study areas and a revised draft work plan by 8 March 2021. However, in circumstances where the Proponent failed to document the use centrifuges as a ‘relevant alternative’ in the EES and is yet to provide sufficient information to enable an effective assessment of the potential environmental effects of the use of centrifuges, it is respectfully submitted that the Proponent’s introduction of the use of centrifuges in January 2021 raises legal issues with respect to the adequacy of the EES.

Environment Protection Act 1970

38. By letter to the EPA dated 12 February 2021,¹⁶ the Proponent sought to defer responding to the Section 22 Notice issued by the EPA in December 2020 until ‘design matters are more fully resolved’ and until after the Minister’s Assessment.

¹⁶ Letter from Jozsef Patarica to the EPA (12 February 2021) ([Document 142](#)).

39. The deferral of responding to the Section 22 Notice until design matters are more fully resolved may have legal ramifications for the integrated nature of the assessment of the WAA under the EES process, noting that:

- a. A WAA for the project was prepared in accordance with the provisions of the *Environment Protection Act 1970*. The WAA was jointly advertised with the EES in accordance with section 20AA of the EP Act; and
- b. The Terms require the IAC to review the WAA and relevant submissions and provide advice that can be used to inform the EPA's consideration of the WAA prepared by the proponent for the project.¹⁷

Environmental Justice Australia

5 March 2021

¹⁷ Cl 5(f).