

29 January 2021

Mr Nick Wimbush
Chair of the Fingerboards Mineral Sands Project Inquiry and Advisory
Committee
Planning Panels Victoria
1 Spring Street
Melbourne Victoria 3000

By email: Fingerboards.IAC@delwp.vic.gov.au;

Dear Mr Wimbush

Fingerboards Mineral Sands Project Environment Effects Statement (EES) Centrifuge

We continue to act for Kalbar Operations Pty Ltd, and refer to the correspondence sent by the legal representatives of East Gippsland Shire Council (**Council**) and Mine Free Glenaladale (**MFG**) to IAC yesterday.

In response to the technical note provided to IAC on 18 January regarding the potential use of a centrifuge, the Council and MFG have put two proposals to IAC to afford procedural fairness to them and other EES submitters.

The first (and their preferred) option is for the IAC hearing to be adjourned. The second option is for the 15 February hearing date to remain in place, with revised orders as set out in their correspondence regarding the distribution of expert evidence and other materials concerning the centrifuge, and dispensing with the expert witness conclaves.

Our client appreciates the attempt by Council and MFG to try and achieve a balance between retaining the scheduled hearing dates and giving them time to review information and expert advice on the centrifuge. However, we submit there are three aspects of their proposal that are problematic.

The first is that it dispenses with the expert witness conclaves. While we understand why this has been proposed, the matters that are disputed by Kalbar, Council and MFG are highly technical in nature. Our client views the conclaves as an important opportunity for the expert witnesses to clarify the matters that are clearly in dispute, thereby leading to an efficient and issues-focused hearing. This is why our client supported the IAC's proposal to direct expert witness conclaves at the directions hearing.

The second is that the proposed orders mandate that our client's expert evidence, to be filed by midday today, must include the matters listed in numbered paragraph 1 in the letter from Planology (on behalf of Council), including water modelling, cumulative and discrete impact assessments, and

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examples of other projects in which centrifuges are used. We can advise that any expert evidence filed today will not include all of this information that is likely to meet their expectations, and in the case of water modelling will not be included at all.

The third problem is that the proposed orders “put the cart before the horse” by requiring us to file and exchange expert evidence before the cross-referenced document referred to in paragraph 2 of the Planology letter is filed and exchanged with the parties. If a synthesised document, with plans and information about the centrifuge and its integration with the rest of the project is seen as desirable, it would make logical sense for this to be provided before anyone, including our client, prepares and files its expert evidence.

For these reasons, our client does not support the orders proposed by Council and MFG yesterday.

We do not agree with MFG’s contention that the inclusion of centrifuges in the Fingerboards project constitutes a “transformation” of the Fingerboards project as assessed in the EES. Projects are typically improved and enhanced following the EES exhibition stage of the process established under the *Environment Effects Act 1978*. Moreover, our client is of the very strong belief that the use of centrifuges in the Fingerboards project will reduce the overall environmental impacts of the project. However, our client also acknowledges that it needs to substantiate this, and enable other parties involved in the IAC hearing to be afforded procedural fairness to review and test, through expert advice and inquiry, a description of the proposed use of centrifuges.

Accordingly, we are instructed to advise the IAC that our client would support the adjournment of the IAC hearing within a reasonable timeframe, and recommend that a further directions hearing be convened as soon as practicable for directions on the future conduct of this matter.

In regard to IAC’s email of yesterday regarding the exchange of expert evidence by midday today, our client will be in a position to comply with this direction if the submissions outlined in this letter are not accepted by IAC. However, if the IAC is minded to adjourn the hearing, then in our respectful submission it would make sense if the preparation and filing of expert evidence be undertaken in accordance with a timetable set down by IAC at a further directions hearing, as submitted above. Similarly, if the matter is adjourned then our client submits that the site inspection should be rescheduled to a date that is closer to a future hearing date.

Yours sincerely,
[REDACTED]

Tim Power
Partner

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Cc Planology and Environmental Justice Australia