



29 January 2021

As addressed

Dear Submitter

Fingerboards Mineral Sands Project Inquiry and Advisory Committee (IAC) – Consideration of requests for changes to the IAC timetable and directions in relation to possible use of Centrifuges

The IAC has received several pieces of correspondence (see tabled documents 60 - 65) from the parties calling evidence (East Gippsland Shire Council and Mine Free Glenaladale) and Kalbar Operations Pty Ltd (the Proponent) regarding the possible use of centrifuges to potentially reduce environmental impact of the project, and how the centrifuges and their impacts (positive and/or negative) might be considered and assessed by the IAC.

Background

In correspondence dated 28 January 2021 (Document 60), East Gippsland Shire Council (Council) requested changes to the IAC's directions and timetable as follows:

1. *Kalbar's expert evidence must:*
 - a. *provide a detailed explanation regarding the use and operation of the centrifuges and how they are proposed to be incorporated into the proposal, including examples of mines where the technology has been used including their throughput and efficiency rates;*
 - b. *consider both the positive and negative impacts (discrete, combined and cumulative) of potentially including centrifuges in the proposal; and*
 - c. *include updated water modelling that considers the potential inclusion of centrifuges in the proposal.*

(White & Case's letter to Planology dated 21 January 2021 (attached) effectively adopts this approach).
2. *Kalbar must provide a cross referenced document identifying the impacts of the use of centrifuges on all the study areas of the EES by 12 noon on 11 February 2020.*
3. *The date that Council (and MFG) must file and serve any expert evidence is amended to be by 12 noon on 11 February 2020. (We acknowledge this is close to the commencement of the hearing, but Kalbar has two weeks to present its case which will provide it with sufficient time to consider Council's expert evidence. Further, a staggered circulation of expert evidence was adopted in the recent Crib Point EES hearing).*
4. *The date that Council must file and serve without prejudice mark ups to the incorporated document and environment management framework is amended to be by 12 noon on 11 February 2020.*
5. *The direction for expert witness conclaves is withdrawn.*
6. *Responses to the IAC's request for further information must be provided by 12 noon on 11 February 2020.*

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Mine Free Glenaladale (MFG) in correspondence dated 28 January 2021 (Document 62) supported Council's requests.

Council and MFG raised the prospect of adjourning the Hearing to enable the centrifuge issues to be considered.

The Proponent in their response of 29 January 2021 (Document 64) in summary:

- Objected to the removal of expert witness conclaves.
- Objected to the inclusion of detailed information about the centrifuges in evidence to be circulated and the timing of circulation of evidence in relation to cross referencing documents.
- Do not consider the inclusion of centrifuges in the project assessment a 'transformation' of the project.
- Accepted the need to accord procedural fairness for other parties to test material around centrifuges.
- Supported an adjournment within a reasonable timeframe and requested the deferral of the site inspection accordingly.

IAC Response

The IAC is acutely aware of the need to provide procedural fairness to all parties and that the consideration of a potentially significant new element in the project must not be treated lightly.

There are arguably questions around why the potential use of centrifuges has come forward so late in the process. The IAC however also accepts that major project design and development can frequently change during EES processes as economic or environmental parameters change. The Proponent has suggested that the use of centrifuges has a number of environmental benefits for the project, and the IAC considers it would be failing in its duty if it were to not allow this to be tested in putting forward its view to the Minister for Planning.

The issue that remains is whether the centrifuge issues can be explored effectively and fairly within the existing IAC Hearing timeframes, or whether an adjournment should be allowed. The IAC considers an adjournment is not necessary or desirable and that additional material and evidence around the centrifuges can be presented within a modified timeframe that provides a reasonable and fair opportunity for parties to consider the material.

The IAC is conscious that this project has been many years in development. In the IAC's view, a further adjournment is not in the community interest provided the issues can be effectively and fairly considered. From a pragmatic point of view, in the IAC's experience an adjournment will likely lead to significant issues around availability of parties and their legal counsel (and indeed the IAC) given the eight week timetable already set down. A planned adjournment of a few weeks may turn out to be significantly longer.

The consideration of the centrifuges in the Hearing will require some flexibility in the Hearing timetable on the part of the IAC and parties to ensure there is adequate time for evidence, submissions and questioning around these issues. The IAC will monitor this closely to ensure that all parties are accorded procedural fairness.

The process in summary will be:

- Evidence excluding consideration of centrifuges to be circulated by **midday (12.00pm), Tuesday 2 February 2021**
- The Proponent to circulate material and supplementary evidence on the centrifuges by **midday (12.00pm), Monday 8 February 2021**
- Council and MFG to circulate supplementary evidence on centrifuge issues **by midday (12.00pm), Wednesday 17 February 2020**; Note the questioning of Proponent witnesses on centrifuge issues will not occur before this time

- Centrifuge issues to be addressed by parties in submissions as necessary.

The IAC has provided modified/new directions below accordingly.

Conclaves

The IAC considers the use of conclaves for technical experts to meet and discuss issues in an environment without instructors is extremely important where possible. A modified direction to account for the above timing is proposed below.

Site inspection

The site inspection will occur as planned on **Monday 1 February 2021**.

Directions

For clarity, the IAC has numbered new directions following on from the Directions of 23 December 2020. Where an existing direction is modified, the existing number with (Rev#) is provided.

All other directions from the IAC remain unchanged.

Modified directions

2. **(Rev1)** Kalbar Operations Pty Ltd (the Proponent) and any Party proposing to have a witness appear for them is required to deliver their electronic Expert witness reports (excluding consideration of the potential use of centrifuges) to the IAC and all parties on the Expert Evidence Distribution List by **midday (12.00pm), Tuesday 2 February 2021**. Separate directions apply to evidence relating to the potential uses of centrifuges. All evidence will be uploaded to the Engage Victoria website within three business days to:

<https://engage.vic.gov.au/fingerboards-IAC>

5. **(Rev1)** Where more than one expert is being called in a particular field, expert witnesses are directed to meet to identify and discuss the key issues, facts and assumptions relevant to these issues in the period after circulation of statements and prior to the first expert in the relevant field being called to give their evidence in chief in the Hearing. On a preliminary view of the evidence topics, the IAC considers expert meetings may be required in the following technical areas:
 - a. Surface water – allocation and water quality
 - b. Groundwater – allocation and groundwater quality
 - c. Hydrology
 - d. Air quality and dust
 - e. Radiation
 - f. Human Health
 - g. Landform and rehabilitation
 - h. Economics
 - i. Ecology

There may be some overlap in the expert meetings between these subject areas. Expert witnesses addressing issues related to impacts (positive and/or negative) from the use of centrifuges should meet if there is time prior to the calling of evidence on this subject.

30. **(Rev1)** East Gippsland Shire Council should provide 'track change' versions of the PSA, Incorporated Document and EMF outlining its 'without prejudice' proposed amendments to these documents, excluding consideration of the potential use of centrifuges, by **midday**

(12.00pm) on Tuesday 2 February 2021 via email to Fingerboards.IAC@delwp.vic.gov.au. These will be uploaded to the Engage Victoria website within three business days at: <https://engage.vic.gov.au/fingerboards-IAC>

New directions

59. The Proponent must circulate to all the IAC and all parties calling evidence on the distribution list by **midday (12.00pm) on Monday 8 February 2021**:
 - a. Supplementary evidence addressing the use of centrifuges and any positive and/or negative environmental impacts from such use
 - b. To the maximum extent possible, any background material or technical reports as identified in Point 1 of East Gippsland Shire Council's letter of 28 January 2021
 - c. A cross reference document as outlined in Point 2 of East Gippsland Shire Council's letter of 28 January 2021, including track changes of, for example, the environmental management framework and any other environmental management and approval documentation.

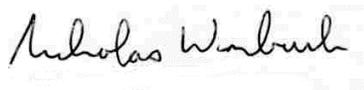
60. East Gippsland Shire Council and Mine Free Glenaladale must circulate supplementary evidence on the centrifuge issues by **midday (12.00pm) on Wednesday 17 February 2021**.

61. The supplementary evidence to be called (including the name and business address of the expert) relating to centrifuges must be advised to the IAC and those calling evidence as follows:
 - a. Proponent: by **midday (12.00pm) on Friday 5 February 2021**
 - b. Council and MFG: by **midday (12.00pm) on Friday 12 February 2021**

62. Existing submitters (whether appearing at the Hearing or not) who wish to provide a submission on the additional information provided on the use of centrifuges following circulation of the material by the Proponent on 8 February 2021 should provide it to the IAC at Fingerboards.IAC@delwp.vic.gov.au by **midday (12.00pm) on Wednesday 17 February 2021**.

If you have questions, please contact Amy Selvaraj at Planning Panels Victoria at Fingerboards.IAC@delwp.vic.gov.au.

Yours sincerely,



Nick Wimbush

Chair, Inquiry and Advisory Committee