

Fingerboards Mineral Sands Project – Infrastructure Area

Incorporated Document

This Table is intended to be read with the 'track changes' version of the draft Incorporated Document dated 28 April 2021 (IAC v1).

Item	Clause	Version	Party proposing the change	Summary of Kalbar's position
General Changes				
1.	All	IAC v1	Kalbar	Changes to formatting and insertion of numbers to enhance usability / facilitate review.
2.	5.2.1, 5.3.2, 5.5.1.	IAC v1	Council	<p>Several of Council's insertions seek to prohibit the use and development of the Project Area (i.e., the land subject to the proposed mining licence and outside the Special Controls Overlay) until plans are approved under the Incorporated Document.</p> <p>Kalbar opposes these insertions. Planning controls under the Victorian system are spatial controls. In this context, it is inappropriate and likely unlawful to try to use the SCO to regulate the use and development of land to which it does not apply. This is particularly so given that clause 52.08 specifically exempts the use and development of land for mining from the need to obtain a planning permit where an EES process is used.</p>
3.	5.3.10, 5.5.7, 5.6.5, 5.6.6, 5.6.7, 5.8.2.	IAC v1	Council / Kalbar	<p>Council has inserted individual provisions requiring adherence to individual plans required under the Incorporated Document.</p> <p>Kalbar agrees that there should be a requirement to comply with the individual plans required under the Incorporated Document but has sought to give effect to this requirement through a single clause requiring compliance with the Environmental Management Framework (previously, the Environmental Management Plan) (EMF) at clause 5.3.8.</p>
4.	5.3.5, 5.4.2, 5.5.5.	IAC v1	Council / Kalbar	<p>Kalbar has inserted and Council has deleted provisions allowing certain plans (the EMF, the Development Plan, and the Traffic and Transport Management Plan) to be prepared and approved in stages.</p> <p>Kalbar considers that, given the Project is expected to operate over 15 – 20 years and there is potential for operating conditions to change in a variety of ways, it is appropriate to allow staging so that each stage of the plan can take into account the circumstances prevailing at the time it is to be relied upon.</p>
5.	5.4.4, 5.5.2,	IAC v1	Kalbar	Kalbar has added provisions to allow individual plans other than the Native Vegetation Management Plan, to be amended to the reasonable satisfaction of the relevant decision-maker.

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	5.6.2, 5.8.3, 5.10.2, 5.11.3.			Kalbar considers that, given the operating life of the Project, it is appropriate to allow for the plans to be varied to reflect any changes in circumstances. Any proposed change would need to be approved by the original decision-maker.
6.	5.6.4, 5.9.2, 5.10.4, 5.11.5.	IAC v1	Council	Council inserts clauses requiring the subplans to address the requirements of the EMF. Kalbar agrees with the intent of these clauses but has sought to achieve the same result through a single clause at 5.3.9 requiring subplans to be consistent with the EMF.
7.	5.5.6(a) , 5.6.3(a) , 5.8.4(a) , 5.9.1(a) , 5.10.3(a), 5.11.2(a)	IAC v1	Council	Council inserts clauses requiring each plan to include mitigation measures as required by the Minister. Kalbar agrees with the intent of these clauses but has sought to achieve the same result through a single clause at 5.3.9 requiring subplans to be consistent with the EMF.
Specific Changes				
8.	1.1	IAC v1	N/A	No change
9.	1.2-1.3	IAC v1	Council	Kalbar does not support the insertion of these clauses as it does not regard them as necessary and they are not consistent with the drafting of other recent Incorporated Documents for large projects assessed through an EES process. However, Kalbar does not actively oppose their inclusion if the IAC considers them acceptable.
10.	1.4	IAC v1	Kalbar	Amended to clarify the application and effect of the Incorporated Document in the context of the Project as a whole.
11.	1.5-1.6	IAC v1	Council	Kalbar accepts/does not oppose the proposed change to clause 1.6, but this clause renders clause 1.5 redundant
12.	1.7-1.8	IAC v1	Kalbar	Kalbar proposes the deletion of these clauses on the basis that their substance is reflected in new clauses 4.2 and 4.3. Given that clause 4 contains the control, this is considered the more appropriate location.

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13.	2.1	IAC v1	Kalbar	Kalbar proposes the insertion of this clause for consistency with drafting of other recent Incorporated Documents.
14.	3.1, 3.3	IAC v1	Kalbar	Kalbar proposes this amendment to make the drafting of this clause consistent with the drafting of equivalent clauses in other recent Incorporated Documents.
15.	3.2	IAC v1	Council	Kalbar supports the intent of clause 3.2, but considers it not required in light of Kalbar's amendment to clause 3.1.
16.	4.1	IAC v1	Kalbar	Kalbar proposes this amendment to make the drafting of this clause to be consistent with drafting of equivalent clauses in other recent Incorporated Documents.
17.	4.2	IAC v1	Council	Kalbar considers the substance of this proposed clause is reflected in new clauses 2.1, 4.7 and 4.9 of the Incorporated Document.
18.	4.3	IAC v1	Council	<p>In terms of the exemption provided by this clause, Kalbar considers this is already dealt with by clause 4.1.</p> <p>In terms of the exemptions to clause 4.3 proposed by the Council:</p> <ol style="list-style-type: none"> 1. Kalbar does not support the continuing application of Clauses 42.02 and 52.17. The Incorporated Document already provides for a Native Vegetation Management Plan and an Offset Management Plan to address impacts on native vegetation, and there is no obvious justification for requiring permits in addition to the NVMP and OMP. Maintaining these controls would also undermine the purpose of the Incorporated Document as providing a single control for all aspects of the use and development of the Infrastructure Area. 2. In respect of the PAO, Kalbar acknowledges this was in its initial draft, but no PAO applies to any land to which SCO1 would apply. To the extent there is concern about potential compulsory acquisition by Kalbar, this is not an issue the PAO addresses (it requires permits to develop land subject to a PAO), and this is addressed by the express provisions of clause 4.9. 3. In respect of Clause 52.02, the Incorporated Document expressly contemplates the acquisition of easements and therefore applying Clause 52.02 generally would be inconsistent with the express terms of the Incorporated Document. More broadly, clause 4.9 provides that apart from those easements, an acquisition of an interest in land (including an easement) must be in accordance with the Planning Scheme).
19.	4.4	IAC v1	Kalbar	Kalbar proposes the deletion of the preamble to clause 4.4 that set out the list of permissible activities. The exemption is now provided for in clause 4.1, while clause 4.5 now defines the permissible use and development.
20.	4.5	IAC v1	Kalbar	Kalbar proposes to amend this clause to clearly define Project Infrastructure to avoid disputes.

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21.	4.5.1, 4.5.2, 4.5.3	IAC v1	Kalbar	<p>Kalbar proposes the deletion of clause 4.5.1 as this option for the surface water supply is no longer being pursued.</p> <p>Kalbar also proposes a consequential change to clause 4.5.2 (deletion of 'Option 2') and general amendments and clarifications.</p>
22.	4.5.4	IAC v1	Council	<p>Kalbar does not support this insertion given that bore pumps are already covered by clause 4.5.3. Kalbar considers that the Development Plan is the appropriate tool for determining the final location of any Project Infrastructure, noting that this approach provides an appropriate level of flexibility while also requiring approval from Council before any action can be taken.</p> <p>In respect of the specification of a maximum level of extraction rate, Kalbar considers this restriction is inappropriate as the matter will be dealt with through water licencing requirements. The Court of Appeal has expressly stated that a planning scheme cannot lawfully limit rights conferred by a licence: see <i>Stanley Rural Community Inc. v Stanley Pastoral Pty Ltd</i> [2017] VSCA 385, [54].</p>
23.	4.5.5	IAC v1	Council	<p>Kalbar supports the inclusion of a clause to this effect, save for the exclusion in relation to the removal of native vegetation. Again, any removal of native vegetation will need to be accounted for under the NVMP and requiring permits will undermine the efficacy of the Incorporated Document.</p>
24.	4.5.6; 4.5.8	IAC v1	Council	<p>Kalbar considers that the Development Plan is the appropriate tool for determining the final location of Project Infrastructure, noting that it is subject to Council approval.</p>
25.	4.5.7; 4.5.10; 4.5.13	IAC v1	Council	<p>Kalbar supports Council's amendments</p>
26.	4.5.9	IAC v1	Council	<p>Council appears to seek deletion of this clause relating to the creation of easements. Kalbar does not support this deletion in the absence of an explanation for the rationale.</p>
27.	4.5.11	IAC v1	Council	<p>Council appears to seek the deletion of this clause authorising the construction of a railway siding.</p> <p>Kalbar opposes this deletion. Council's traffic expert has expressed a clear preference for the rail siding option at Fernbank as the preferred option for transporting product from the Project. In the absence of this clause, separate permission would need to be sought for the development of a railway siding. That in turn would require the development of an interim solution while further permission was sought. Again, this outcome is not supported by Council's traffic expert's preferred option.</p>

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28.	4.5.12	IAC v1	Council	This clause authorised, among other things, the use of land for a road. The Council has sought the removal of this requirement. Kalbar does not understand the rationale for its removal and therefore opposes this proposed change.
29.	4.5.14	IAC v1	Council	Kalbar does not support this proposed change. While Kalbar will seek to avoid creating lots less than the minimum size in the Farming Zone, this outcome cannot be guaranteed and should not be required.
30.	4.5.15	IAC v1	Council	Council seeks the deletion of this clause authorising the removal of native vegetation. Kalbar opposes it on the basis that the removal of vegetation under the Incorporated Document will be regulated through the NVMP and requiring permit applications for the removal of individual patches of vegetation is antithetical to the purpose of an Incorporated Document for a major project.
31.	4.5.16	IAC v1	Kalbar	Kalbar proposes this change to capture the possibility of incidental or ancillary infrastructure.
32.	4.6	IAC v1	Council / Kalbar	Subject to the deletion of the phrase 'whether or not ancillary to another use of land', Kalbar does not oppose this insertion. Kalbar opposes the insertion of the phrase 'whether or not ancillary to another use of land' on the basis that an ancillary use is not a 'use' properly so-called. The result is that the proposed clause would have the effect of prohibiting other unspecified dominant uses notwithstanding that as a matter of law they are not correctly characterised as Accommodation or Food and Drink Premises.
33.	4.7-4.9	IAC v1	Kalbar / Council	These changes seek to clarify the scope of the control and, in particular, what is not covered. Council's proposed clause 4.8 is substantially identical to Kalbar's proposed clause 4.7. Kalbar would accept either formulation.
34.	5.1	IAC v1	Kalbar	Kalbar proposes this amendment to be consistent with drafting of equivalent clauses in other recent IDs.
35.	5.2	IAC v1	Council	Kalbar does not support the inclusion of a requirement for a master plan as it does not appear to add anything other than another layer of plans.
36.	5.3; 5.3.3- 5.3.9	IAC v1	Kalbar	EMP clause moved, expanded, and renamed. Drafting consistent with equivalent clauses in other recent Incorporated Documents requiring EMFs. It is Kalbar's expectation that a single EMF will be prepared for the Project, including the Project Area and the Infrastructure Area.
37.	5.3.1	IAC v1	Kalbar	Given the significance of the EMF and the fact that it is likely that the preparation of, and compliance with, an EMF will be required by both the Work Plan and the Incorporated Document, it is appropriate that the Minister for Planning be the approving body (or alternatively DELWP). This is consistent with major

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				transport Incorporated Documents (Minister) and also the Stockman Base Metals Incorporated Document (DELWP) which forms part of the Planning Scheme. The proposed clause would still require consultation with both Council and the DJPR.
38.	5.3.2	IAC v1	Council	Kalbar prefers its clause 5.3.1 to the formulation proposed by Council in clause 5.3.2.
39.	5.3.4 (b)	IAC v1	Council	Kalbar does not oppose Council's insertion. Kalbar does not believe that the Project Infrastructure will require any Works Approvals.
40.	5.3.7	IAC v1	Kalbar	Kalbar proposes this change to be consistent with NELP Incorporated Document, and substantively addresses some of the matters raised by the EPA submission about aligning the Incorporated Document with the new EP Act.
41.	5.4.1-5.4.2	IAC v1	Kalbar	The language of 'use and development' is consistent with Council's proposed change to this clause.
42.	5.4.3	IAC v1	Council	Kalbar opposes this insertion on the basis that it opposes the insertion of the requirement for a Master Plan under clause 5.2. If the IAC is satisfied the Master Plan is appropriate, then this clause may be appropriate.
43.	5.4.4-5.4.6	IAC v1	Kalbar	Minor amendments
44.	5.4.5(a)	IAC v1	Council	Kalbar does not support this insertion. Kalbar does not understand the rationale for this insertion. The Development Plan will apply all of the Infrastructure Area by default.
45.	5.4.5(d)	IAC v1	Council	Kalbar agrees with this insertion.
46.	5.5.1-5.5.3	IAC v1	Kalbar	Minor amendments. Kalbar accepts the insertion of 'Country Fire Authority, Rural Ambulance Victoria, and Victoria Police' in clause 5.5.1.
47.	5.5.3	IAC v1	Kalbar	Kalbar proposes this amendment to clarify that the TTMP must address all elements of the Project Infrastructure but must also have regard to the effects of operations in the Project Area so as to ensure the traffic impacts of the Project as a whole are properly accounted for.
48.	5.5.4	IAC v1	Council	Kalbar does not agree with this clause and prefers its drafting at 5.5.3.
49.	5.5.6(b)	IAC v1	Council	Subject to the deletion of the word 'detailed', Kalbar does not oppose this insertion. The inclusion of the word 'detailed' is opposed on the basis that it is only likely to lead to debate over whether a particular audit is detailed or not.
50.	5.5.6(c)	IAC v1	Council	Kalbar does not oppose this amendment but has made minor drafting edits to clarify its scope.

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51.	5.5.6(d)-(e)	IAC v1	Council	Kalbar accepts these changes in principle, but the requirements of the clauses proposed by Council are now substantively dealt with in clause 5.5.6(c). Kalbar has sought to amend clause 5.5.5(c) to address each stage of the Project, rather than providing individual sub-clauses. If the IAC accepts clause 5.5.6(c), then (d) and (e) can be removed.
52.	5.5.6(f)	IAC v1	Kalbar / Council	Kalbar accepts Council's amendment but proposes a further amendment to clarify that there must be a nexus between the obligation to rehabilitate roads and the Project.
53.	5.5.6(g)	IAC v1	Council	<p>Kalbar partially accepts Council's amendments.</p> <p>Kalbar considers that some of the requirements are overly prescriptive in a context where usage patterns may well change over the life of the Project. Kalbar notes that, under the MRSD Act, it will be required to routinely consult with the local community.</p> <p>Kalbar would accept a specific reference to reducing traffic impacts on agricultural users.</p>
54.	5.5.6(i), (j), (l) – (n)	IAC v1	Council	Kalbar substantively accepts Council's insertions, subject to minor amendments to remove uncertainty or unnecessary scope for dispute.
55.	5.5.6(k)	IAC v1	Council	Kalbar opposes this insertion on the basis that its scope and purpose is unclear. On its face, it would appear to require designs and approvals for all works across the life of the Project.
56.	5.5.6(o)	IAC v1	Council	Kalbar opposes this insertion on the basis that Kalbar will already have to pay a rehabilitation bond as part of the MRSD Act approval process, and because rehabilitation bonds for decommissioning of large projects (eg. wind farms) are atypical and unnecessary.
57.	5.5.6(p)	IAC v1	Council	Kalbar opposes Council's insertion for the same reasons as clause 5.4.5(a).
58.	5.5.7	IAC v1	Kalbar	Kalbar would delete for redundancy
59.	5.5.8	IAC v1	Council	Kalbar opposes this insertion on the basis that this is already required by clause 5.5.5(p)
60.	5.6.1(a)-(b); 5.6.3	IAC v1	Council	<p>Kalbar opposes Council's drafting. The SCO does not apply to the Project as a whole.</p> <p>Kalbar prefers its phrasing. Not all of the elements of the Project are subject to the SCO, but Kalbar recognises that where both the Project and the Project Infrastructure contribute to the overall noise level, that should be taken into account.</p>
61.	5.6.1(a)-(b)	IAC v1	Council	Kalbar opposes the inclusion of the Council as a decision-maker for the noise management plans. EPA is the specialist body with expertise in this area.

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62.	5.6.3(b)	IAC v1	Council	Kalbar considers the intent of this provision is the same as 5.6.1(b) and could accept it, but anticipates NIRV may be overtaken by the end of the hearing (given the new EP Act comes into force in July 2021).
63.	5.6.7, 5.7, 5.7.1-5.7.3	IAC v1	Kalbar	The requirement to have an Environmental Management Plan has been moved and the Plan has been renamed to be a Framework consistent with other major project Incorporated Documents. Responses to Council amendments incorporated above.
64.	5.8.4(s)	IAC v1	Council	Kalbar opposes this on the basis that the scope and intent needs to be clarified.
65.	5.9.1	IAC v1	Council	Kalbar opposes Council's insertions. Tying the trigger to the removal, etc. of native vegetation is consistent with the Stockman Incorporated Document and standard permit conditions for other large projects. Reliance on DELWP as decision-maker is consistent with specialised role and expertise of DELWP and is consistent with Stockman Incorporated Document.
66.	5.9.1(d)	IAC v1	Council	Kalbar accepts Council's insertion.
67.	5.9.3	IAC v1	Council	Kalbar prefers its drafting for the same reasons as in relation to 5.9.1
68.	5.10.1	IAC v1	Council / Kalbar	Amended to be consistent with Stockman Incorporated Document, which require Fire and Emergency Plan to be to the satisfaction of the CFA and DELWP.
69.	5.10.3	IAC v1	Council	Kalbar prefers its drafting. 'As appropriate' should be retained in case any element of the plan is inapplicable. If this phrase is retained, then Kalbar would accept the majority of the Council's additional insertions (except for (a) which is redundant).
70.	5.10.3(c), (e)-(o).	IAC v1	Council	Kalbar accepts Council's insertions.
71.	5.10.4	IAC v1	Council	Kalbar opposes this on the basis it is redundant.
72.	5.11, 5.11.1, 5.11.3	IAC v1	Kalbar / Council	Kalbar accepts Council's insertions but would prefer 'Decommissioning' over 'Rehabilitation'. The rehabilitation of the Project Area will be a matter for Kalbar under the Mining Licence and Work Plan. Council has no role in that process, particularly in light of the express exclusion of any permit requirement. Kalbar would accept a decommissioning plan focused on the Project Infrastructure.
73.	5.11.2(e)	IAC v1	Council	Kalbar opposes this on the basis it will already have to pay a rehabilitation bond, and that bonds of this type are not typical, even for much larger projects, and was not required for Stockman. In particular, if the

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				Rehabilitation Plan is extended to the Project Area as Council proposes, then it will have to pay two bonds in respect of the same land.
74.	5.11.2(b)-(d), (f)-(v)	IAC v1	Council	Kalbar accepts Council's insertions except that in 5.11.2(b), Kalbar does not accept 'or greater' given the purpose of this clause is to set a minimum standard.
75.	5.11.4	IAC v1	Kalbar	It is the experience of Kalbar's representatives that landowners in other matters have sometimes requested that infrastructure not be removed. This clause permits such requests and excuses Kalbar from removing infrastructure where such a request is made and approved.
76.	7, 7.1, 7.2	IAC v1	Kalbar	Kalbar proposes this insertion in response to recommendations by expert witnesses regarding the availability of approved plans. Drafting based on NELP Incorporated Document.
77.	8.3-8.4	IAC v1	Council	Kalbar opposes this insertion on the basis that these replicate 8.1(a) and (b).
78.	8.5, 8.5.1-8.5.3	IAC v1	Council	Kalbar opposes this drafting as it considers that it does not allow for the fact that mining operations may periodically enter care and maintenance without the use of the land ceasing in planning terms and that the effect of this provision might lead to use being deemed to have ceased.
79.	8.6	IAC v1	Council	Kalbar opposes on the basis that the extension, or not, of any other approval is properly a matter for the relevant decision-maker. Should the issue arise, it would be a matter for Kalbar to secure all the necessary extensions to any other approval before it could lawfully carry out works.