

DELWP Planning presentation to inquiry and advisory committee for Fingerboards EES

Introduction

1. The process of preparing and considering the Fingerboards Mineral Sands Project Environment Effects Statement formally commenced in December 2016, following the Minister for Planning's decision, under the *Environment Effects Act 1978*, that an environment effects statement (EES) was required for the project.
2. The Department of Environment, Land, Water and Planning (DELWP) administers the EES process under the Environment Effects Act on behalf of the Minister for Planning. DELWP relies on the *Ministerial guidelines for the assessment of environmental effects under the Environment Effects Act 1978* to assist the Minister when deciding on the need for an EES, in setting the scope of an EES, managing the EES process, including public review, and ultimately in making the final assessment of the environmental effects of a project.
3. It is not the purpose of this presentation to comment on the merits of the proposal, its predicted effects or on the substance of the submissions made by any party to the inquiry and advisory committee (IAC).
4. The focus of this submission is to provide background on the EES process we have administered for this project to date and set out relevant context for the IAC and submitters.

Key stages in the EES process

5. The Minister for Planning issued procedures and requirements for the EES together with the EES decision, published on the department's website in December 2016. The published reasons for the decision outlined the project's potential for significant environmental effects, specifically:
 - *The project has the potential for a range of significant environmental effects. In particular the project as proposed is likely to have significant effects on:*
 - *a very large extent of native vegetation and associated biodiversity values, including listed threatened species and communities;*
 - *surface water and groundwater (i.e. hydrology, quality, availability) and protected beneficial uses;*
 - *existing land uses, amenity and landscape values of the project area and those associated with the broader area, including the Mitchell River National Park; and*
 - *Aboriginal cultural heritage values.*
 - *An integrated assessment is necessary to ensure the range of likely adverse effects and related uncertainties are sufficiently investigated, in terms of both their extent and significance, and how significant effects can be avoided and minimised to acceptable levels.*
 - *An EES would enable a transparent and rigorous process for consideration of potentially significant adverse effects of the project, prior to any relevant statutory decision-making, including under the Mineral Resources (Sustainable Development) Act 1990, Aboriginal Heritage Act 2006 and Water Act 1989.*
6. The Minister for Planning issued scoping requirements for the EES in April 2018, after consideration of 72 submissions on draft scoping requirements. The scoping requirements set out the matters to be investigated and documented by Kalbar Operations Pty Ltd, (referred to as "the proponent") within the EES.
7. In addition to Victorian legislation, the project requires approval under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) because of the potential to significantly impact on matters of national environmental significance (MNES). Those matters include Ramsar wetlands (sections 16 and 17B), listed threatened species and communities (sections 18 and 18A), listed migratory species (sections 20 and 20A), and nuclear actions (sections 21 and 22A).

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8. Under the bilateral assessment agreement between the Commonwealth and Victoria, the EES process is accredited as an assessment able to inform the Commonwealth decision under the EPBC Act. This means that the proponent's EES and the Minister for Planning's assessment must address certain requirements stipulated in the bilateral agreement. DELWP consulted the Commonwealth Department of Agriculture, Water and Environment on the scoping requirements for the EES, the draft EES and supporting technical reports covering MNES.
9. DELWP convened a technical reference group (TRG) to provide advice on the scope of issues to be addressed and the adequacy of EES documentation. The TRG commented on the draft scoping requirements and reviewed the draft EES and technical reports supporting the EES. The TRG included representatives of:
 - DELWP Environment (Gippsland Region);
 - DELWP Planning;
 - Department of Jobs, Precincts and Regions (Earth Resources Regulation);
 - Department of Health and Human Services;
 - Aboriginal Victoria;
 - Environment Protection Authority;
 - Heritage Victoria;
 - East Gippsland Water;
 - Southern Rural Water;
 - Parks Victoria;
 - VicRoads;
 - East Gippsland Catchment Management Authority;
 - West Gippsland Catchment Management Authority;
 - East Gippsland Shire Council; and
 - Wellington Shire Council.
10. In accordance with normal EES practice, the proponent was not a member of the TRG but attended TRG meetings and assisted with TRG logistics. It is important to note that the TRG is an advisory group and not a decision-making body; the EES remains the proponent's document, prepared in light of advice from the TRG.
11. The TRG met on 13 occasions between March 2017 and March 2019.
12. Following discussions with the TRG and the proponent, DELWP engaged independent experts to provide peer reviews of the proponent's technical studies for water, air quality and rehabilitation. The three independent peer reviewers were appointed for this EES to advise on whether these draft technical studies adequately investigated and documented the assessment of the potential impacts and risk mitigation in the context of the EES scoping requirements. DELWP sought to engage the independent peer reviewers given the potential significance of some environmental impacts, as well as some complexities and uncertainties that were raised by the TRG and the community. These peer reviews and the proponent's response to the reviews form Attachments I to K of the EES.
13. DELWP set the scope of the independent peer reviews in consultation with the TRG and DELWP managed the independent peer review process.
14. During the EES process, the following issues emerged as key matters for the EES to investigate, based on submissions DELWP received on the draft scoping requirements, the proponent's community consultation and development of their technical studies, as well as advice from the TRG:
 - The potential extent of impact of the project on biodiversity values including clearance of native vegetation and habitat, potential impacts on listed threatened species and potential impacts on listed migratory species.
 - Potential impacts to the downstream Gippsland Lakes Ramsar site.
 - Potential water supply and quality impacts for surface water and groundwater.
 - Rehabilitation of the mine site, considering landscape, particularly steep slopes and highly erodible soils.
 - Potential amenity impacts for nearby residents, including air quality and noise.
 - Potential impacts on adjacent or nearby land-use such as agriculture, horticulture (including the Lindenow Flats Horticulture District), forestry and tourism.

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- Potential impacts related to contamination and radiation.
- Potential impacts to Aboriginal cultural heritage.
- Landscape and visual impacts.
- Direct and indirect employment opportunities.

Exhibition arrangements

15. With the onset of COVID-19 and the public health state of emergency declared in March 2020, it became apparent that some elements of traditional exhibition might not be permissible or practicable. Display of hard copies of documents for examination at public locations such as municipal offices and libraries was not possible.
16. As a result, the Minister issued amended procedures and requirements on 19 July 2020, under which the proponent was required to give additional advance notice of its intention to exhibit the EES by publishing it on the internet, and to invite anyone wishing for their own copy of the EES when available to register a request. Copies were to be provided on USB media unless specifically requested in hard copy.
17. The proponent has advised DELWP that over one hundred requests were received including some for hard copies and that the requested information packages were dispatched.
18. The Minister's amended procedures and requirements confirmed a previous decision that the exhibition period should be extended to 40 business days, instead of 30 as originally required. They also made provision for hearings of the IAC to be conducted in the most practicable manner available in the prevailing circumstances, including the use of video conferencing or other comparable technology.
19. As has been customary for several years, the EES was published online on the proponent's website.
20. Exhibition commenced on 3 September and concluded on 29 October 2020.

Submissions

21. Prior to and during the exhibition period, in response to high COVID-19 case numbers Stage 4 restriction were imposed in metropolitan Melbourne and Stage 3 restrictions were imposed in regional Victoria, including East Gippsland Shire where the project is proposed to be located. COVID-19 restrictions were eased progressively in regional Victoria and Melbourne during the public exhibition period.
22. The Minister considered written requests from several parties to delay the start of exhibition and to pause or extend exhibition due to the COVID-19 restrictions and ongoing recovery from the bushfires in East Gippsland in late 2019/ early 2020. The amended procedures and requirements were issued to respond to issues around accessibility of the EES while allowing the assessment process to continue.
23. The Minister considered a request and granted an extension to East Gippsland Shire Council to submit a final submission, endorsed by the newly elected council members, on 11 December 2020 as long as an initial submission was lodged by the close of public submissions.
24. DELWP also advised the IAC to accept submissions received by 5pm on 2 November 2020 from Mine Free Glenaladale, Victorian Farmers Federation and a limited number of associated community members in response to requests from these parties.
25. DELWP notes Planning Panels Victoria has registered 910 public submissions in response to the EES, with supplementary submissions on proposed project changes after the conclusion of public exhibition of the EES also lodged by a number of parties.

Regulatory framework

26. The Inquiry and Advisory Committee's terms of reference and the EES outline the main approvals that are required for the project to proceed:
 - approval to undertake a controlled action under the EPBC Act;
 - an approved cultural heritage management plan under the *Aboriginal Heritage Act 2006*;

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- a mining licence and approved work plan under the *Mineral Resources (Sustainable Development) Act 1990* (MRSD Act);
 - a works approval from the Environment Protection Authority;
 - an amendment to the East Gippsland Shire Planning Scheme, in accordance with the *Planning and Environment Act 1987*;
 - approvals under the *Water Act 1989* for extraction of surface and/or groundwater and works on waterways; and
 - approvals under the *Radiation Act 2005*.
27. A draft planning scheme amendment was published in the exhibited EES (Attachment C). The amendment would introduce an incorporated document into the planning scheme, which would allow the project components located outside of the mining licence area of the project to proceed without the need for planning permits. The planning scheme amendment introducing the incorporated document would first require approval and gazettal to come into effect.
28. When an EES is undertaken, the components of a mining project within the mining licence area do not need a planning permit/ approval, if the provisions of the MRSD Act are met, specifically if an EES has been prepared to assess the impacts of the works proposed to be done under the mining licence and the Minister's Assessment under the *Environment Effects Act 1978* has been submitted to the Minister for Resources to inform the approval decision on the mine work plan.
29. The Minister's assessment of environmental effects will be informed by:
- the EES;
 - public submissions;
 - the proponent's response to submissions;
 - the IAC's report; and
 - the objectives and principles of ecologically sustainable development.
30. Relevant decision-makers are required to consider the Minister's assessment. However, its recommendations are not binding on statutory decision-makers.
31. Noting the complex array of statutory approvals required if the project is to proceed, I ask that the IAC in presenting its recommendations specify those approvals, management plans or other controlling measures which may be subject to its respective recommendations, should the project be considered to have acceptable environmental effects.

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