

**PETER VAUGHAN  
ENVIRONMENTAL MEDIA FOUNDATION INC.**

**15 MAY 2021.**

**FORMAL SUBMISSION: IAC FINGERBOARDS PUBLIC INQUIRY.**

**SUBJECT: KALBAR OPERATIONS/APPIAN INTERFERENCE WITH A WITNESS STATEMENT.**

**ATTENTION MR NICK WIMBUSH. CHAIRMAN.**

Dear Mr Wimbush.  
C.C. East Gippsland Shire Council.

On 14 May 2021, I emailed the CEO of Kalbar Operations Mr Jozsef Patarica to raise questions regarding Kalbar's relationship with the mining industry, engineering consultancy AUSENCO, a company that had prepared a report into Kalbar's centrifuge option for the East Gippsland Shire Council.

My questions related to a letter written by Darren Wong (Planology PTY Ltd) dated 21 April 2021 (IAC Doc 252),. In that he reports AUSENCO had contacted him to report that a, "commercial conflict" now exists for AUSENCO, relating to the centrifuge report it had written for council. And that AUSENCO had submitted a revised report, radically altering the findings of the original report, that had found the centrifuge option may not be viable, to a new position, now supporting the use of centrifuges.

As a consequence of those changes the Shire withdrew the AUSENCO report from its EES submission, and would therefore no longer be in a position to challenge the centrifuge option with a expert reort. This is not a good outcome for an environmental assessment process, as there is now no expert report testing the claims made by the proponent, on a very consequential issue.

I made the following allegation to Mr Patarica.

"A reasonable assessment of those circumstances suggests Kalbar has made contact with AUSENCO after it produced a report casting doubt on the practicalities of using the centrifuge option, and offered it a commercial incentive to change its report, and retract certain finding to make the centrifuge option appear more viable, and those changes were coordinated along with the submission of additional Kalbar documents".

In his email response dated Friday, 14 May 2021, Mr Patarica revealed that the company referred to by Mr Wong, is actually **Appian Capital Advisory LLP**, which is one of the owners of Kalbar Operations, (owner of the Fingerboards mine project). It is clear Mr Patarica was obliged to make that declaration, when the Document No 252 was originally tabled. His failure to do so until my email, suggests Kalbar has been hiding this important information from the IAC panel.

Mr Patarica portrayed Appian's relationship to AUSENCO differently than Mr Wong, stating that Appian, "has a commercial interest with an affiliate of AUSENCO". Whereas Mr Wong, referring to the correspondence received directly from AUSENCO described the relationship as a, ""commercial conflict", **having arisen** in relation to the work it was engaged to undertake on behalf of the Council." Mr Wong's interpretation suggests a more recent conflict has "arisen".

Mr Patarica's email also appears to try and distract attention from the apparent influence of Appian over AUSENCO, by suggesting AUSENCO was unhappy with the Councils summary of its report, and that is why it submitted a revised report. However if AUSENCO was unhappy with the summary, it could simply have asked for that to be changed.

Clearly as the major investor in the Fingerboards Project, Appian has a major commercial interest in seeing Kalbar's EES approved, because that will lead directly to a Work Plan and mining approval, with a commensurate increase in the value of its investment. Therefore Appian and Kalbar together have motive for affecting a revision of AUSENCO's findings.

There are grounds to believe that Kalbar and Appian have conspired to influence AUSENCO to change its centrifuge report to benefit their commercial interests. The timing of the first centrifuge report and the communications referred to by Mr Wong, raises the question; when exactly did Appian or Kalbar contact AUSENCO ?

It is known that Mr Patarica introduced Appian to the Fingerboards project, though his past working relationships with certain Appian partners. According to Appian's website, it is a well networked player and financier of the global mining industry, while the majority of AUSENCO's work is on behalf of mining projects, and not Shire Council's that oppose mines. So there would be little incentive for AUSENCO to stand by a report that is critical of a mining project if it was put under pressure by Appian.

It appears that Mr Patarica is trying to distance Kalbar from this issue, by turning all responsibility onto a supposed unrelated and coincidental relationship between Appian and AUSENCO. But neither the IAC or stake-holders have any reason to trust Mr Patarica's claims. By transferring all responsibility to Appian in the UK, Kalbar may be attempting to place the issue beyond the reach of any IAC investigation, and also Australian law.

Interference with a witness is a serious allegation. The circumstances that are already known, suggest there is a case to be investigated. The IAC needs to determine the nature of the communication that took place between Kalbar/Limited and Kalbar Operations, Appian, and AUSENCO. And also any role played by Kalbar's legal representatives in Australia, including White & Case.

It is also important to disclose details of the claimed relationship between the, "commercial interest with an affiliate of AUSENCO", (that Mr Patarica alludes to in his email response on 14 May). Kalbar should disclose the contract(s) that it alleges exist between Appian and AUSENCO, including the dates and nature of the contract or relationship. These documents must be produced to, "clear the air" and remove all suspicion that it has acted corruptly in this matter.

This issue has damaged the ability of the East Gippsland Shire Council to properly participate in this inquiry, and the matter must be investigated to preserve the credibility of both inquiry process, and the EES process.

On the face of it, there appears to be a conspiracy in play, between Kalbar entities including the CEO of Kalbar Operations, Mr Patarica, Appian and the Australian registered consultancy, AUSENCO. Deception to extract commercial benefit, is a definition for fraud. Although the Victorian Environmental Effects Act 1978, has no penalties for deceptive conduct, state anti-fraud law, may well capture this matter.

Similarly, although the mining consultant industry, has no enforceable code of conduct, legal practitioner in Victoria do. And it should be determined if Kalbar received local legal advice to organise the reversal of the AUSENCO report.

It needs to be determined if this matter is covered under Australian Corporations Act or state law, and IAC should consider whether it is required to referral the matter to the relevant authorities for consideration, including the Victoria Director of Public Prosecution for an opinion.

(On Friday 14 May in an additional email I requested that Mr Patarica cause the release any contracts between Appian and AUSENCO, active between the Shire commissioning of AUSENCO and 29 April. Mr Patarica did not reply).

Thank you.

Peter Vaughan  
Environmental Media Foundation Inc.

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**ATTACHMENTS.**

Email correspondence: Mr Vaughan to Jozsef Patarica 14 May 2021.  
Reply Jozsef Patarica 14 May 2021.

**Jozsef Patarica**

14 May 2021, 17:43  
(2 days ago)

Dear Mr Vaughan,

Thank you for your email.

Kalbar Operations has never commissioned AUSENCO or any of its affiliates to do any work, and never paid it any money. Kalbar Operations has had no communication whatsoever with AUSENCO or any of its affiliates on Fingerboards, nor on any other matter.

We understand from Tabled Documents 252 and 253 that Appian, an investor in the Fingerboards Project, has a commercial interest with an affiliate of AUSENCO, and that AUSENCO took issue with how aspects of its report had been summarised by representatives of East Gippsland Shire Council.

I will ask Counsel to table this email exchange with the IAC.

Regards

Jozsef Patarica

Chief Executive Officer

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**From:** Environmental Media Foundation [REDACTED]

**Sent:** Friday, 14 May 2021 2:27 PM

**To:** Jozsef Patarica [REDACTED]; Environmental Media Foundation [REDACTED]; Power, Tim [REDACTED]

OFFICIAL

**Subject: AUSENCO REVIEW**

14 May 2021.

Dear Mr Patarica.

As you are aware Mr Matt Pyle (AUSENCO) wrote to Mr Darren Wong - Plantology, on 21 April 2021, ostensibly to report AUSENCO was withdrawing certain findings it made in a report prepared on behalf of the East Gippsland Shire Council raising concerns with the feasibility of centrifuges replacing a tailings dam at the future mine.

Mr Wong has since informed the IAC, that AUSENCO has identified that a commercial conflict of interest has arisen, because it has since been engaged by Kalbar to conduct commercial works on its behalf.

A reasonable assessment of those circumstances suggests Kalbar has made contact with AUSENCO after it produced a report casting doubt on the practicalities of using the centrifuge option, and offered it a commercial incentive to change its report, and retract certain finding to make the centrifuge option appear more viable, and those changes were coordinated along with the submission of additional Kalbar documents.

In the interest of due diligence we would like to offer the management of Kalbar Limited/Operations the opportunity to respond with a statement or response to the following questions.

When did Kalbar commission work from AUSENCO, how much was paid, why didn't Kalbar identify this as a clear conflict of interest in making such an approach ?

Why didn't Kalbar inform the IAC that it had begun a commercial relationship with a consultant that had already been commissioned by another party ?

Regards.

Peter Vaughan

EMF Inc.

**Last email. Unanswered. 14 May 2021. Re: AUSENCO REVIEW**

**Environmental Media Foundation**



14 May 2021, 18:32 (2 days ago)

Dear Mr Patarica.

Thank you for your response.

I have searched document 252 and 253 and can find no mention of the company Appian within those documents. What did you mean when you cited, "Appian" in the following sentence ?

" We understand from Tabled Documents 252 and 253 that Appian, an investor in the Fingerboards Project, has a commercial interest with an affiliate of AUSENCO, and that AUSENCO took issue with how aspects of its report had been summarised by representatives of East Gippsland Shire Council."

It is of note that Darren Wong (Plantology) by letter dated 29 April, (Doc252), reported correspondence with AUSENCO where he states :: "We are informed that the conflict arises in circumstances of Ausenco, through one of its wholly own subsidiaries, currently completing work for an entity which is ultimately the 100% owner of the Fingerboards Mineral Sands Project."

As Appian is the primary beneficiary of the Fingerboards project, and corporate front representing the main investors in the project, there is clearly a conflict of interest with Appian (Kalbars Owner and beneficiary) contracting AUSENCO while the inquiry process is underway. And it appears eminently reasonable to surmise that this relationship resulted in AUSENCO changing its centrifuge report. It is also unrealistic to assume, as you appear to infer in the quote cited above, that Appian was unaware that an EES process is underway, when that has a direct bearing on the performance of its cited \$144 million dollar investment in the project. Such that the outcome of the EES process including the IAC public Inquiry, will bear heavily on its investment performance.

That being the case, as Appian is the majority owner of Kalbar Operations, it is incumbent on Appian to disclose all communication and contracts conducted between itself and AUSENCO, between the original date when the East Gippsland Shire Council contracted it (AUSENCO) to conduct the review of the centrifuge proposal, and the 21 April 2021, the date at which AUSENCO signaled by letter (Doc 252), that it was retracting certain findings it had made in its' centrifuge report prepared for the East Gippsland Council.

Without the disclosure of that documentation there is no proof that Appian did not embark on efforts to induce AUSENCO to change a report which was threatening its commercial interests.

I will await your response to this correspondence before lodging this communication with the IAC panel at the open of business Monday morning.

Regards.

Peter Vaughan  
EMF Inc.