Fingerboards EES Hearings Monday 7 June 2021

Mine Free Glenaladale – Tracey Anton

To the IAC:
The presentation will not be read in full only to give context on the day.

My work with MFG started in 2016 discussing landowner rights, regulatory processes in the application of relevant acts and policy.
I have also been invited and supplied input into MRSDA regulatory reform and community engagement processes. I continue to work for mining reform and rational decision making.

Recent policy/guideline interactions:

- Regional Inequality in Australia[i] Inquiry attendance[ii] Final report and relevance[iii]
- Inquiry into Nuclear Prohibition in Victoria[iv] with comment on Kalbar project
- Latrobe Valley Coal Rehabilitation Strategy
- Coal Licence Review
- Central and Gippsland Sustainable Water Strategy
- Gippsland Lake Joint Statement for Legal Standing
- EPA Waste Determinations
- Review on the use of Recycled Water
- Productivity Commission National Water Reform[v]
- Victorian Air Pollution

Overview –

I would like to thank Mr Morris, representing Kalbar, for his short description of the Fingerboards' mining process as emphasised to Associate Professor Ruff on June 2 explaining just how simple the mining project really is, albeit different to what Kalbar have originally presented in the EES and somewhat misleading to potential human health impacts.

A bulldozer will push the ore into a hopper.
<u>Water will then</u> be added and make a slurry and that slurry will be pumped to the plant where the processing will take place and <u>at all stages</u> during that process <u>it will be wet</u>.
Then Heavy Mineral Concentrate (HMC) is put by pipe into silos and the HMC will be put into trucks which will park within the silos and, in particular, will be put into containers on the back of those trucks.
If it is the case that HMC will be discharged from the silo into a container on the back of a truck and the container will have a lid put on it and it will be a 20 ft shipping container, half full or half height, and then that container will be taken to a rail terminal, put on a train and taken to Geelong. It will be in that container from the time the concentrate is put in from the silo till it gets to Geelong. It [HMC] will be <u>discharged into a warehouse</u> and then <u>put in bulk into the ship</u> or again by pipe or auger.

Truth or fallacy!

De-Mystifying terms

Adaptive management – Reactive approach caused by lack of data and necessitated by failure to plan for eventualities
Uncertainty - A depleted premium income pool
In-pit tailings pit - Registered inground waste facility on Private Land.

Principles, Policies and Risks

Despite the considerable risks that mining poses, mining is accorded preferential treatment under Victoria's planning provisions like no other activity. Through exemptions, other land uses are reduced to a lower order of priority with related departments, particularly water, being subservient to mining. This is to the exclusion of other externalities of economic modelling as there is currently no capacity to monetarise the value of the environment to those dependent on water quality, quantity and ecosystem services. More importantly is the introduction of toxic contaminants via water, land and air that impacts human and environmental health with the State primarily bearing the cost burdens.

Julia Jasonsmith noted in her cross examination by Mr Watters on June 1, *'if you don't monitor for particular toxic impacts and prove a pathway of exposure for concentrations and the media for that pathway then the impacts would not be known*.' This goes to my point further about presumptive liability and reportable incidents. The simplistic proviso that 'compensation can right a wrong or injustice' is predicated on a hierarchy of an assumed state significant resource over the rights of existing users.

In the case of East Gippsland, there is no dependency on a new industry to provide economic contribution to regional gross product as agricultural and recreational tourism already have that mantle, not only through good management but because the essential vital elements needed already exist. As such, there is a dependency on protecting these natural assets from all threats that could impact East Gippsland's viable agricultural businesses and recreational tourism assets. It is essential to maintain waterway quantity and quality as well as environmental health of identified natural assets for those industries to continue their high economic value to the regional economy including the state of Victoria.

Financial risks to the state and landowner

The MRSDA legal framework, as noted by Mr Hurst from ERR in #11, cannot protect the landowner and the State from bearing liability costs from mining impacts as the regulatory process and regime condones uncertainty. If the Panel is to consider environmental and human health effects from the Fingerboards project, it would need to consider the mechanisms that allow uncertainty to be acceptable and defensible.

The greater the uncertainty the greater the risks.
The greater the risk, the greater the liability.
The greater the liability the greater the cost.

The main disadvantage to landowners is in the creation of new risks of environmental harm created by any mining operation. It is clear that impacts will occur, but it is the size, type, depth and duration of mining that determines the severity of the impacts which is why the term 'minimising the impacts' is found throughout all government documentation in extracting a resource.

Worst is Kalbar's legal team constant citing of outdated qualifications/standards in regulatory documents as a reason why risks from the Fingerboards mining project can be justified. Questioning of Mr Ruff on June 2 was an example where the proponent's argument appears to be that they are entitled to ignore science - both current and evolving – regardless of the detriment to community and worker health, rather than risk the project proceeding.

I bring the Panels attention to the term **'state of knowledge'** which I used on the first day of the hearing in questioning ERR's non-attendance. State of knowledge is an essential element for any decision-making process and relevant to the Chair's question posed to Associate Professor Ruff on June 2 regarding the *'issue of public and agreed standards vs what might be a better standard in regulatory standards for radiation exposure… and how we [Panel] put advice back to the Minister.'*

It is human and environmental health that needs protecting and only through the application of rational decision-making to what is known can the duty of the IAC Panel inform their advice to the Minister.

State of Knowledge is now the basis for the new EPA Act.

> *What is the GED?*
> *Definition: A person who is engaging in an activity that may give rise to risks of harm to human health or the environment from pollution or waste must minimise those risks, so far as reasonably practicable.*
> *Reasonably practicable means putting in controls that are proportionate to the risk. It relates to the chance of harm occurring and potential impacts on the environment. It also relates to what controls are available, their cost, and considers what an industry generally knows about the risk and control options. This is termed the 'state of knowledge'.*
> *The expression, 'state of knowledge', describes the body of accepted knowledge that is known or **ought to be reasonably known** about the harm or risks of harm to human health and the environment and the controls for eliminating or reducing those risks.*[vi]

Mr Morris states in paragraph 20 and 21 of his submission (#358), *'the objectives generally call for the avoidance or minimisation of adverse impacts. They do not require that there be no impacts' citing Rozen v Macedon Range Shire Council regarding 'acceptability' while also noting clause 34(b) and (c) of the IAC's Terms.*

While the proponents' barristers try to sway influence over the Panel to accept that the many uncertainties raised in this hearing are a normal part of the mining process, the real issue of significant risks remain. But what gives rise to risk, who provides the oversight to ensure risks are reduced and what mechanisms exist in the MRSDA to 'incentivise' compliance?

The following snip from Kalbar FAQ's[vii] notes 'Kalbar is undertaking extensive baseline monitoring…' This would be right if it were in fact true. Baseline monitoring - Kalbar haven't even got the baseline data right. What exactly are they monitoring and how are they doing it?

Question	Whilst many risks noted in the EES state 'unlikely' this does not equate to 'impossible'. I'm interested to know the type of response (not mitigation) program from Kalbar if the 'unlikely' does happen. A specific example is if surface water and/or surface water run-off (and dust) has a major impact to the horticulture growers in the area which negatively impacts the strong clean, green, trusted provenance image. How will Kalbar respond to this and what actions will they take (noting again not prior mitigation actions to reduce risk, but response should the risk actually occur).
Answer	Risk is a combination of likelihood and consequence. Management is designed to reduce either or both of those in order to reduce the risk. Risk is never completely removed and a risk event can occur. This question is alluding to what is Kalbar going to do if there is a contamination event. As part of the EES and ongoing operations, Kalbar is undertaking extensive baseline monitoring. We are monitoring water quality, air quality and dust deposition, eg around the site. We are also monitoring soils, so we will have a fairly extensive database which describes the pre-mining conditions. During mining we will continue to monitor so we can determine what changes are occurring, whether to water quality, air quality etc. In the event that there is a contamination event of the horticultural industry the first thing that needs to be established is where has that contamination event occurred or where has it come from – to determine whether it's a direct result of something that Kalbar has done or is that something that is a result of more general event. In the Glenaladale area you do get days of extensive dust storms and therefore dust landing on vegetables, so having that baseline data gives the ability to determine whether Kalbar is responsible or not. If Kalbar is responsible for contamination, we will be doing continuous air and noise modelling so any excursion that we have, regardless of a contamination event, we will have to investigate and determine why it may have occurred. If there is a contamination event and it's determined that Kalbar is responsible, then we will have to deal with the landowner whose land is contaminated for whatever reason and ensure that there is adequate compensation. We will ensure that we are monitoring changes so we can ascertain whether we are responsible and if we are, then we will obviously make good.

Yet, Mr McArdle questioning of Dr Gavin Mudd June 2 regarding radiation has an entirely different interpretation of why baseline data is essential stating, *'Relevance of the comprehensive baseline data is needed to be able to undertake a before and after comparison during operations and after operations to assess compliance for rehabilitation targets.*

And that is as good as it gets to self-report compliance. In the absence of appropriate baseline data this project is potentially undermining environmental and human health by prioritising regulatory processes over scientific methodology.

Currently, no presumptive liability exists in the MRSDA.

One of the major problems identified with the current legislation is that the licensee is only liable when an event is obvious or reported; that is, a reportable incident under section 41AC of the MRSDA[viii]. If an incident goes under the radar there is no point of entry, date or incident record that can prove that the licensee is liable and therefore no proof of incident event, assessment, or details of type of contamination.

Additionally, potential for contamination relates to what are real or perceived impacts which can only be proven via evidence from pre-mining baseline data. Dr Mudd expressed this significance in his presentation *'when baseline data is absence or completely insufficient'*. In Victoria, the issue has always been that the landowner has to prove, at considerable expense, that an incident and impact has occurred; however, it should be that the licensee has to prove that they did not cause the incident and if impacts have occurred required to remunerate the aggrieved. If contamination is obvious, state acts are applicable. If contamination or other incidents cannot be proved, no insurance company will compensate.

LOCAL VEGETABLE GROWERS NOT PROTECTED

As stated by Coffey at earlier community meetings, if vegetable crops are contaminated, it will be up to the vegetable growers to 'sue' the miner.[ix] In Victoria bonds only apply to the actual land mined. No allowance is made for 'off-site' effects. The Minister will not take dust and other contamination to neighbouring vegetable crops when determining bonds. The miners' insurance is unlikely to cover contamination of crops. The only redress is for the vegetable farmers to try to sue the miner. This issue was highlighted on 7th May when Mr Morris noted to Mr Roderick Campbell that compensation is also open to affected landowners under the MRSDA Sect 85[x]. Mr Campbell rightly replied, *'it only gives them the right to take court action and pay all the associated costs.'* However, compensation[xi] is only claimable 3 years after the loss or damage or the licence expires. What adds insult is that compensation paid by the proponent is a tax deduction.

The following are individual cost burdens that can impact a landowner. While some would be covered under compensation it is up to the landowner to negotiate an acceptable amount in advance of mining, to what might be expected but with many unforeseen, unanticipated (or potentially hidden) impacts from mining. This is relevant when the landowner has no access to essential information, specifically radiation management plan. To note, only a Tier 1 screening criteria has been evaluated on topsoils not a more qualitative Tier 2 assessment.[xii]

For a landowner, compensation is '*a complicated area of tax law and failing to consider tax consequences or even considering them later on in negotiations can result in the land owner paying large amounts of tax on any payment*.'[xiii]

Wealth Sacrifice	**Direct Costs**	**Cumulative Cost**	**Exposure**
Real Estate	Human Health	Property Insurance	Litigation
Debt to Equity	Medical Costs	Health Insurance	Product Liability
Compound Capital Gains Loss	Animal Health	Life Insurance	Service Liability
Environmental Stigma	Veterinarian Costs	Income Protection Insurance	Employer / Employee
Commercial Standing	Impaired Income	Livestock Insurance	Legal Responsibilities

Wealth Sacrifice	Direct Costs	Cumulative Cost	Exposure
	Reputation	Vehicle Insurance	Contamination Liability
	Contravention Existing License	Business Insurance	
	Contravention Mortgage/ Business		
Exploitation	Discrimination	Priced for Risk	Healthy Lifestyle Choice?

Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019
S.R. No. 48/2019
Schedule 15—Landowner's consent under section 45

- *I/*we cannot withdraw this consent; and
- this consent binds all subsequent owners and occupiers of the land.

Signature of landowner:

Name of landowner:

Witnessed by:

Signature of witness:

Name of witness:

Date:

*Delete if not applicable.

Part snip of *MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) (MINERAL INDUSTRIES) REGULATIONS 2019 - SCHEDULE 15*[xiv]

It is this point that we need to fully comprehend the extent of the VAGO report how past mismanagement has led to negative human and environmental impacts at other mining sites. The areas of concern specifically noted by Dr Gavin Mudd and Dr Ruff is the issue of transparency. It has been the total lack of accountability and transparency and access to documentation that has led to the community not trusting ERR. Indeed, ability to scrutinise the level of compliance and enforcement should be essential. If the risks are as low as the proponent suggests and ERR approve mining applications, then the release of these documents should be of no concern. This is important and should be a requirement of fiduciary responsibility by ERR given the VAGO report and the current liability to the State from abandoned and legacy mine sites.

Of concern now it the new information offered up by Mr Morris on June 2 as noted in my opening. The sheer disregard for apparent inconsequential effects of radioactive dust in how the HMC will be transported and stored in the silo on mine site which can only occur in a dry state to multiple handling storage changes to what is proposed and presented to experts in the EES process is irresponsible and dangerous. There is no explanation in any of the

documentation about how the HMC will be dried to the 5% or so after processing that it needs to be in prior to transporting. The widespread risk posed from the transport of the radioactive HMC across a large portion of Victoria puts the State at significant financial risk let alone the potential for health impact exposures. How could this even be monitored?

Dr Mudd raised Magellan Mining as an example of concern with port handling and storage in 2007 INQUIRY INTO THE CAUSE AND EXTENT OF LEAD POLLUTION IN THE ESPERANCE AREA[xv] with the Chair noting:

> *Firstly, it amazes me that, in this day and age of modern methods of mining, transport, monitoring and assessment, it takes the death of native birds, like the canaries of old, to alert the people of the Town of Esperance to the poisoning of their community.*
> *Secondly, it amazes me that a Government department, the local prize winning port and a mining company could so badly let down the families, and especially the children, of Esperance who had placed their trust in those who should have ensured their protection*

In this case it may be beneficial for the Panel to put a request to WorkSafe Victoria for input given the MOU agreement between ERR and Worksafe, below.

MOUs

The potential misuse of MOUS between regulators is a concern.[xvi] Firstly, they are out of date and give context to the lack of public access in regard to FoI's and discretions especially when one party hasn't been made aware of all the implications and costs - as evidenced in the appalling MOU between EGSC and the Stockman mine.

Interestingly, the MOU between DPI [ERR] and DSE[xvii] [DELWP] does not apply for the Environmental Effects Process with this particular document more directed to a 'tick and flick' approval.

Is the MOU with WorkSafe Victoria acceptable and has the application of the OCCUPATIONAL HEALTH AND SAFETY ACT 2004[xviii] been undermined?

With normal workplaces, compliance with occupational health and safety legislation is strongly influenced by inspection, prosecution, conviction and meaningful penalties with the duty of employers to employees and other persons, 'other' being neighbours.

Division 2--Main duties of employers

21. Duties of employers to employees
22. Duties of employers to monitor health and conditions etc.
23. Duties of employers to other persons

My concerns relate to certain agreed statements in the MOU.

> ***4.1*** *The parties share the following objectives:*
> *(d) to assist persons regulated by both of the parties and other persons affected by the matters set out in the MoU, to meet the requirements of the parties without any unnecessary duplication of effort.*

This objective has ERR taking the lead role which reduces the normal transparency that is seen with WorkSafe's enforcement activity for other industry sectors. Evidence lies with the VAGO report as are the examples supplied by BDEC with Woodvale arsenic dispersion, antimony contamination of the Costerfield community, Latrobe Valley mine batter collapses to name a few. There has been a distinct lack of oversight by ERR and any other regulatory agencies to prevent material harm or human health impacts to the worker or neighbours. Would a different outcome have been achieved if WorkSafe Victoria were able to act independently of this MOU?

Another concern in the MOU is paragraph ***8- RESTRICTIONS ON THE SHARING OF INFORMATION***

> *Notwithstanding anything in this MoU, which may be amended or varied from time-to-time under paragraph 11 of this MOU, nothing permits either party to share or disclose information or documents in circumstances where such information sharing or disclosure would:*
>
> *(b) waive legal privilege over such information;*
>
> ***MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) ACT 1990 - SECT 95S***
>
> ***Protection against self-incrimination***
>
> *(1) A natural person may refuse or fail to give information or do any other thing that the person is required to do by or under this Part if giving the information or doing the other thing would tend to incriminate the person.*

If point (b) relates to Sect 95S of the MRSDA about protection against self-incrimination then this waiver goes to the concept of the proponents push that uncertainty is entirely acceptable. Any get out clauses could put the State and landowner at significant economic and legal risk implications.

This issue is relevant as noted in a 2006 article, *THE LIABILITY OF DIRECTORS AND OFFICERS UNDER MINING AND PETROLEUM SAFETY LEGISLATION – WHAT ARE THEIR DUTIES, THE POTENTIAL PENALTIES AND WHAT CAN THEY DO TO PROTECT THEMSELVES?* [xix]

While it notes how to mount a defence, it also shows the exact point of how proponents can be absolved from guilt.

> *This paper examines what risks directors and officers now face under mines safety and petroleum safety legislation and considers what protections are available to them for those risks. It does so by examining the possible privilege against self incrimination, the defences to charges and insurance and company indemnities.*
>
> *This paper shows that the best defence to a charge is to show that the company exercised due diligence to protect against the incident…*
>
> *Should the uncertainty of the risks or a detailed state of* ***unknown knowledge*** *associated with this project be found acceptable to the Panel and those risks become fully realised in the future, could this then allow the proponent and associated entities to use that information enabling a defensible case to evade their responsibilities in a future matter of law?*

Likewise, the issue of due diligence in this article goes to Mr Morris's points on the principle of proportionality in paragraph 25 and specifically 26, *"risks posed to the environment, to members of the public, or to land, property or infrastructure by work being done under a licence or extractive industry work authority are identified and are eliminated or minimised as far as reasonably practicable."*

> *5.1 Due diligence. In each Australian State there is the defence of due diligence. This stems from the fact that the provisions only require that the duty be maintained to a l evel that is "reasonably practicable"* …[xx]**Conclusions -** If the MRSDA retains the business as usual model could the Panel be condoning the lack of protections afforded to the community and put the State at significant financial risk.

Policy

Tension within the planning scheme, use of minister's discretion, conflict between departmental directives and outdated regulatory standards all contribute to enabling poor decision-making for appropriate land use and development. The reduction in red and green tape has facilitated and maintained the undeserved dominance of mining as a land use. The 'One Stop Shop' concept for Bilateral agreement is an example allowing a conflict of interest with the ERR as the promoter, regulator and enforcer.

The Planning Policy Framework should be dynamic and evolving as the needs of the community change. Do the Panel make their decisions based on old state policy or new and evolving, how much is influenced by region and local factors and will cumulative impacts be factored?

What we do know for Gippsland is the legacy contamination impacts to our waterways from upstream mining and heavy industry. They are well acknowledged and publicly documented. The Panel have been made aware of the Latrobe Group aquifer depletion from both Latrobe Valley dewatering of open cut coal mines to decades of offshore oil and gas in Bass Strait. As a basis for these stresses, how will allowing a new mining project upstream of a degraded catchment system provide security of water quality, quantity and waterway health?

Water use competition (eg agriculture), increased water scarcity and depletion are recurrent issues affecting local communities and experienced through Gippsland as our waterway systems are all interconnected. Water use competition (eg agriculture), increased water scarcity and depletion are recurrent issues affecting local communities.

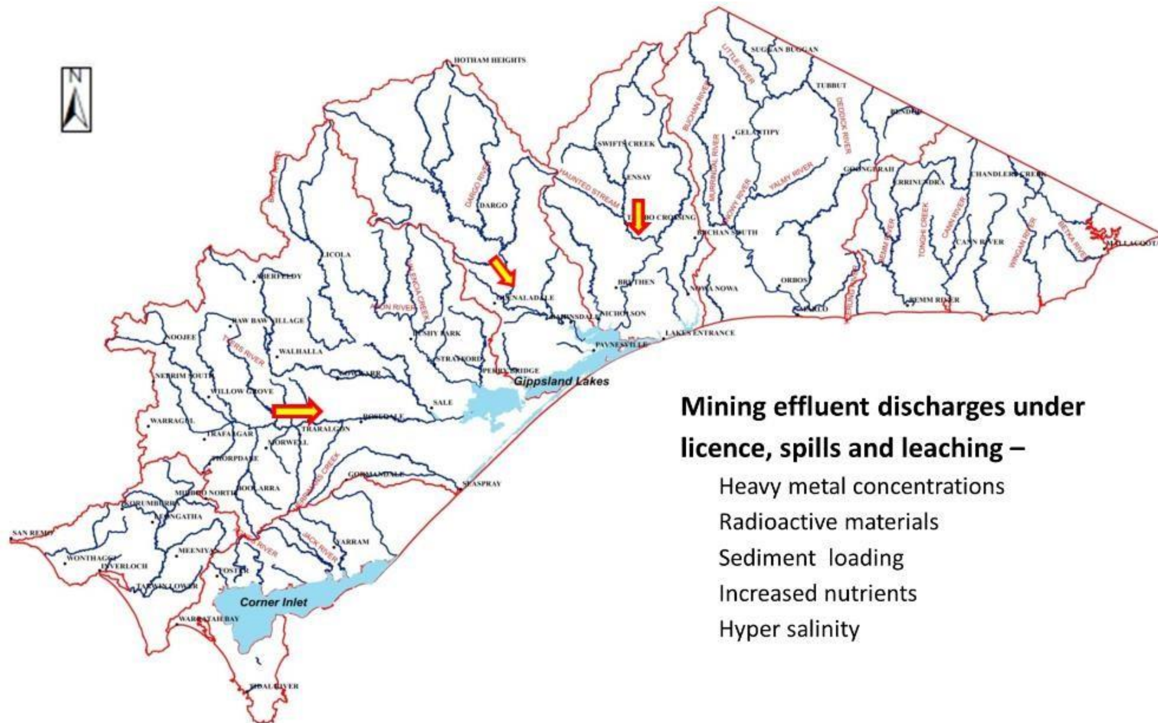
Water

Without a healthy environment you cannot have a healthy economy.

There are currently 3 active Victorian Government water plans:

- Water for Victoria[xxi]
- Latrobe Valley Regional Rehabilitation Strategy[xxii]
- The broader Central and Gippsland Sustainable Water Strategies

All are to become the new policy directives with an overall objective '*to identified threats to water availability in each region and proposed policies and actions to help water users, water corporations and catchment management authorities (CMAs) manage and respond to those threats over the next 50 years.'*[xxiii]



Ironically, wastewater discharges and lack of appropriate monitoring, as sanctioned by EPA, are two of the biggest contributors to surface water degradation for Gippsland. A drying climate has EPA attaching licence conditions for offsets into poor flowing waterways. The Fingerboards mine project is no different where EPA, with their conflicting objectives, condones further degradation.

Mine contact runoff (that is not exempt from surface water licencing) will be offset by the release of water from the fresh water dam, into the same catchment that the runoff was intercepted from. Whether it can all be treated via the bulk water DAF treatment plant with a maximum capacity of 24 ML/day before it needs to be discharged due to high rain events is the big question.

Meanwhile DELWP are facing an uphill battle to secure water for Latrobe Valley Coal rehabilitation[xxiv], juggle urban water security, secure more water for irrigators and clean up our waterways. My input into the draft Sustainable Water Strategy[xxv] questions whether it is viable to open up more mining in the catchments upstream of Gippsland lakes and agricultural areas when mining's water take is significant, and their wastewater discharges will only further degrade out many waterways. In a drying climate and water dependent agricultural sector what sustains life – water or mineral?

The Panel put a question to ERR TD #8,

> *5. Whether other projects proposed in Gippsland have any implications for the consideration of Fingerboards including the following projects referenced in the EES Socioeconomic Impact Assessment at page 70:*
> *• Stockman Base Metals Project*
> *• Nowa Nowa iron ore mine*
> *• Oroya Mining's copper project*

ERR response in TD #11

> *Earth Resources Regulation considers applications for licences and work plans for minerals exploration and mining projects on their merit, in accordance with the MRSDA provisions.*

Therefore, there is no mechanism in the MRSDA to have consideration to the cumulative weight that a mining project may add to an already stressed and degraded environment nor do ERR take a strategic approach to the permitting and regulation of mines across Victoria.

With the changing face of catchment management, a working group have completed a *Draft Gippsland Lakes and Catchment Act Proposals Paper* to give the Ramsar listed Gippsland Lakes legal standing as a result of past poor planning decisions upstream and fragmented governance.

> *We need to develop a proposal which specifically guards against reductions in over-allocation of water (and subsequently reduced environmental flows). One option is through setting a compulsorily minimum baseflow. This proposal would replace PCVs with a reserve based on the environmental sustainability of each water resource that establishes the minimum amount of water that must remain in each system. There is a proposed two part test: environmental considerations (a flow assessment) and social and economic considerations.*

Without intervention, these accumulating pressures are pushing parts of the Lakes ecosystem toward collapse. The ecological integrity and biological diversity of the Lakes is being seriously compromised.

ERR fiduciary responsibility

I bring to the Panel's attention a 2020 webinar comment made by Laura Cronin as manager for Policy and Legislation at the Department of Jobs Precincts and Regions and involved in the development of the Mine Land Rehabilitation authority's statute. To be noted the webinar transcript URL is no longer available but I have provided the PDF that had been previously downloaded.

> *The role of the authority is to coordinate rehabilitation and inform the decisions of the minister and to help in making those decisions. This is partly because the inquiry said*

that without a coordinating body such as the Commissioner and prior to recent legislation changes and the inquiring different decision on makers, water catchment authorities, planners. The Earth Resources regulator might make decisions which were inconsistent and the inquiry [Hazelwood Mine Fire] was particularly concerned about decisions being inconsistent, for example decisions about using water when water hadn't been approved or wasn't available.

I had put questions to the Minister in 2020 with Mr Hurst, ERR responding,[xxvi]

- Could a new proposed mine be approved prior to new declared regulations are in place?
  A mining licence could be granted before the new declared mine regulations being in place.
  A declaration under s7C could take place at any time after the registration of the licence.
  If a mine was declared, the licensee would be subject to the declared mine rehabilitation obligations under the MRSD Act, including the obligation to prepare a declared mine rehabilitation plan.
  The declared mine rehabilitation plan would be required to be submitted within the timeframe set by the regulations, once the regulations are issued.
  It is intended that the regulations will be in place in the first half of 2021.
- Could Kalbar mine be approved before the new bond calculator is implemented meaning it is less robust and less accurate?
  Mining licence holders are required to lodge a rehabilitation bond, in the form of a bank guarantee issued by an Australian bank, for 100 per cent of the estimated cost to rehabilitate a site.
  The bond calculator provides a useful and consistent tool that is suitable for many quarries and some mines to estimate their rehabilitation liabilities. We use the calculations, subject to verification, to set bonds. Earth Resources Regulation is well progressed in revising the rates within the bond calculator.
  A more detailed assessment of rehabilitation liabilities is typically required for complex mines sites. Section 79A of the Act provides a power to require a licence holder to prepare and submit a rehabilitation liability assessment. An independent assessment would be required.
  Please note that a work plan can only be assessed following the completion of the Environmental Effects Statement process for the Kalbar project.

There is a high likelihood that this mine could become a declared mine in the future which the MLRA will have a consultation role with new declared mine regulations to be in place, still to be presented to the public in draft form.

Laura Cronin continues,

…Some kinds of mining for metals such as gold can lead to the gathering of contaminated tailings in dams on sites that contain heavy metals s and potentially those kinds of sites might be declared. So the minister for resources has the power to declare other mine if they present significant risk to public safety, infrastructure or the environment and this could happen if other mines present significant and ongoing risks.

As a significant amount of Kalbar's case centres on the premise that uncertainties are acceptable and justified, can the Panel be assured a workplan assessment by ERR can enable a detailed assessment of rehabilitation liabilities, required for complex mines sites under Section 79A MRSDA[xxvii] including an independent assessment. This also has relevance for

cessation of mining – how can the ERR bond structure apply or to enforce maintenance of an active site to prevent human and environmental health.

We all eagerly await ERR insurance/liability response to the IAC Panel's questions in TD #439.

Question	What insurance do you have against the possibility of dams failing and what consequences are you covered for?
Answer	We interpret this question to mean insurance cover. At present, Kalbar has insurance policies in place for its current business activities. On the basis that construction and operations commence, Kalbar will obtain all the necessary insurance cover related to these activities. This will include process risk, which would include infrastructure or plant failure.

[xxviii]

Cessation of mining

In 2013 the National Harmonised Regulatory Framework for Coal Seam Gas proposed a national framework for multiple & sequential land use. Fortunately, the Multiple Land Use Framework (MLUF) what not adopted. Cessation of mining is based on the same principle. To promote a development with a basis of underpinning cessation as a reactive response to lack of water availability is encouraging uncertainty. This can only lead to strategies or reactive methods that cannot deal with the risks. Policy is to manage risk via impact assessments. Can mitigation process be precise enough to counter the risk

Trends in Current Australian Agricultural Policy and Land Resource Management
Abstract:[xxix] *Food security and the human right to food, as recognised under Article 25 of the Universal Declaration of Human Rights and Article 11 of the International Covenant of Economic, Social and Cultural Rights, are intrinsically linked. Both Articles recognize that access to agricultural land and security of tenure is essential to achieving food security.*

…Primarily, however, the right to food requires that: States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves (the obligation to respect); that they protect such access from encroachment by other private parties (the obligation to protect); and that they seek to strengthen people's access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfil).

The idea that cessation in mining (for whatever reason) is acceptable over the rights of existing industry is a totally flawed concept. Co-existence between mining and agriculture cannot operate as a switch on and off mode as land productivity would have already been impacted and reduced water availability would already be apparent.

Dissolved Air Flotation water treatment plant (DAF)

Kalbar's request to EPA (TD#142) for an exemption of time, and subsequent granting, (TD#225) to provide answers to EPA's request for further information was particularly worrying given the numerous points raised by the EPA Authority.

This is another case of the public and panel being denied specific information essential for a greater understanding of potential environmental effects, therefore a risk to the State and public. How can the Panel make informed decisions on the centrifuge's use of flocculants if we haven't even received answers to its use and waste categorisation with the DAF plant. At no point have EPA been held accountable to enabling this total lack of clarity and critical information that the public and Panel should have been made aware of in light of Kalbar's responsibility under the new General Environmental Duty.

EPA's own submission (#514 pdf p37) notes many issues but specifically related to solids,

> *In considering whether the works the subject of the WAA are a "radiation source within the meaning of the Radiation Act 2005", EPA will need to consider whether:*
>
> – *potential for radionuclides to be present in the above discharges, as well as in any solid wastes settling out within the DAF and the appropriate consideration of radiation.*

If this is a concern for the DAF plant, it is also a concern for the solid cake from the centrifuges. P8 highlights how more MRSDA exemptions enable poor environmental protection to land and water allowing wastes to be discharge to land.

> **3.3 Assessment of a Works Approval Application**
> Under the EP Act 1970 and the *Environment Protection (Scheduled Premises and Exemptions) Regulations 2017*, the Project is a scheduled premises C01 (Extractive Industry and Mining). However, the following exemption applies:
> *"Premises, with solely land discharges or deposits, used only for the discharge or deposit of mining or extractive industry wastes and that are in accordance with the Mineral Resources (Sustainable Development) Act 1990 are exempt from works approval under section 19A of the Act and licensing under section 20(1) of the Act."*

EPA are none the wiser what this actually means given the following comment, (PDF p8)

> **4 EPA Legislation and Approvals** (PDF p8)
> …Section 2(2) of the EP Act 19701 states that "*This Act does not apply to a radiation source within the meaning of the Radiation Act 2005 unless a condition of pollution or an environmental hazard has arisen or is likely to arise*." EPA is still considering this provision as part of the WAA and it is discussed in further detail in section 7 below.

Basically, EPA have handballed it to DHHS essentially creating a loophole to its scrutiny yet still need to consider under section 7, '*the effectiveness of the DAF plant to remove any potential radionuclides present in the suspended solids within the mine contact water;…including,*

> – *whether the infrastructure of the DAF treatment plant could become irradiated such that when it comes to the decommissioning of the DAF and mine the concrete, steel etc would need to be buried within the mine voids.*

If EPA do not know the potential presence for radionuclides in solids from the DAF, then the public and the panel are also not made aware. Consequently no one has a clue to its impact for a greater mass volume mixed into the mine void from both the DAF and centrifuge solid

cake. And it is this mass volume of tailings waste that Kalbar plan to provide as the appropriate subsoil fill for the eventual and supposed successful rehabilitation that will be non-polluting. This EPA granted exemption means there is no determination to the classification or categorisation of the tailings waste nor to whether solid waste can be part of a mixing zone or should be removed offsite.

Has the Panel actually considered that with all this tailings waste and the potential for decommissioning of and retaining leftover infrastructure as well as eight bulk concrete foundations, rehabilitation will not result in a productive and stable landform?
The end landform could potentially have an Environmental Audit Overlay (EAO) applied which would be devastating for the whole community.

The panel also needs to be made aware about manufactured subsoil especially the adding of organics, potentially biosolids, as this is soil conditioner generated form sewerage waste containing emerging contaminants of PFAS[xxx], pharmaceuticals, nano particles and micro plastics.

Groundwater Impacts

The groundwater experts have been able to provide valuable insight into the complexities and uncertainties that exist for Kalbar to access enough groundwater to supply mine operations. It has been clearly demonstrated that the main pumping test for the Latrobe Group aquifer was insufficient and has provided more unknowns rather than clarity for the Panel to make an assessment on in regard to environmental effects. It has also been agreed by all in the conclave that more testing is required. Yet, *section 3.2 General content and style of the EES* notes,

> *Ultimately it is the proponent's responsibility to ensure that adequate studies are undertaken and reported to support the assessment of environmental effects and that the EES has effective internal quality assurance in place.*

Simply put, Kalbar have not done enough baseline studies.
Mr Watters has consistently reinforced that Kalbar would not be extracting any more groundwater above the Permissable Consumptive Volume (PCV) being the total volume of groundwater which may be taken. Rather, temporary trading or purchasing water allocations would be required. SRW clearly stated in their submission #291 that cannot be relied upon.

However, the options from where the trading comes from (which aquifer, zone) and then concentrated to a new bore field from only one aquifer gives rise for concern with a greater more localised depressurisation to other existing users.

Appendix 006 Groundwater and Surface Water Impact Assessment notes, pdf p29

> *The water resource for the Latrobe Group Aquifer is associated with the Stratford Groundwater Management Area (GMA), which has a total PCV of 27,645 ML per annum and falls within the Lindenow Trading Zone. Licence trading is allowed under*

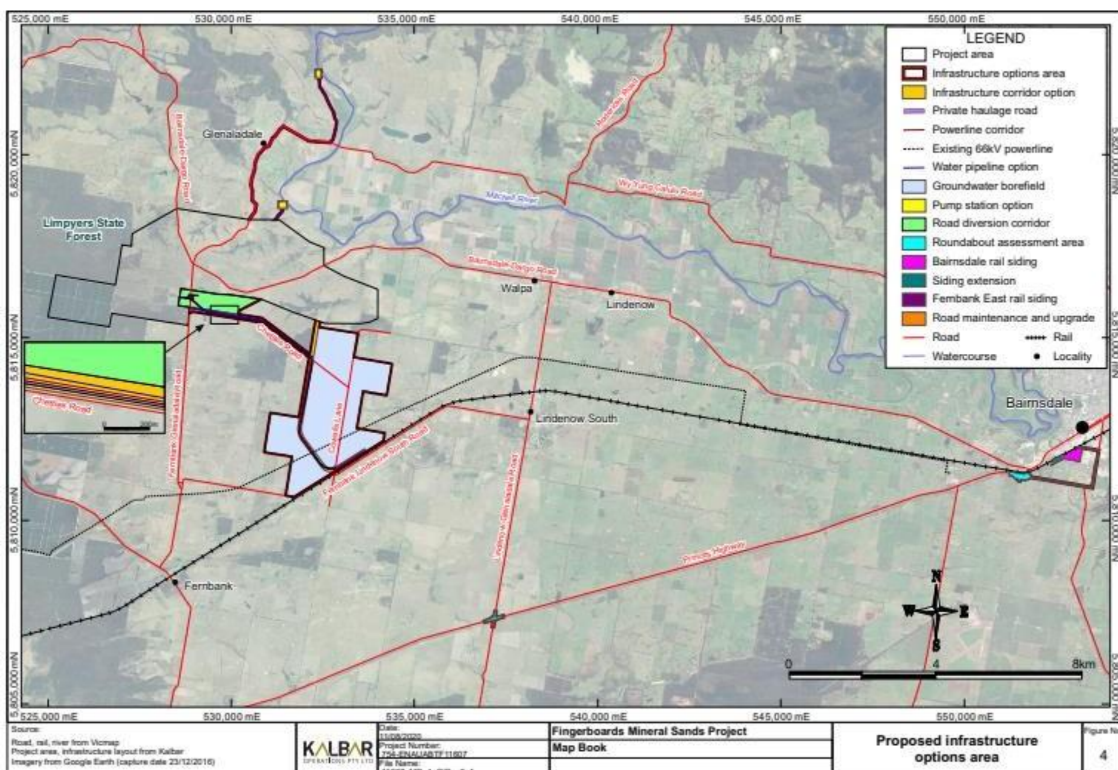
rules dictating that an assessment by SRW must be undertaken in accordance with Section 40 of the Water Act (1989) which assesses the impacts to groundwater availability, quality, existing users and the environment.

Zones 1 and 2 [Wy Yung] have permissible consumptive volumes of 691 ML/yr, and 5,342 ML/year, respectively. There are 60 groundwater licences in the WY Yung WSPA that authorise a total of 7,463 ML/year, for irrigation purposes, however it is understood that most of these allocations are not realised each year. Licence transfers are permitted within zones, and between zones within the permissible consumptive volumes.

Groundwater from the Latrobe Group aquifer south of the mine area has been identified as a possible alternative source of make-up water (subject to water allocations being temporarily or permanently traded, and receipt of a licence from SRW).

The concerns are,

- the creation of a new concentrated bore field away from where groundwater was originally extracted from potentially leading to increased localised drawdown pressures
- trading from upper and middle aquifers but then extracting from the Latrobe group
- will the use of 'sleeper well' allocations also add to extra localised drawdown pressures



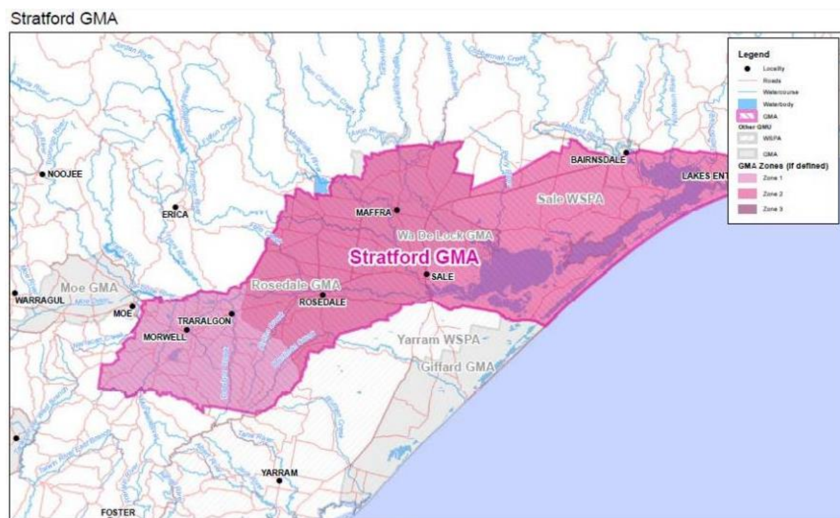
The expert presentations identified that the original planned groundwater borefield may need to be located further south [of existing rail line] into the Stratford GMA.

As SRW have noted in their submission, in order for Kalbar to obtain a groundwater transfer the Water Act requires them to demonstrate there will not be an adverse impact on existing and potential uses.

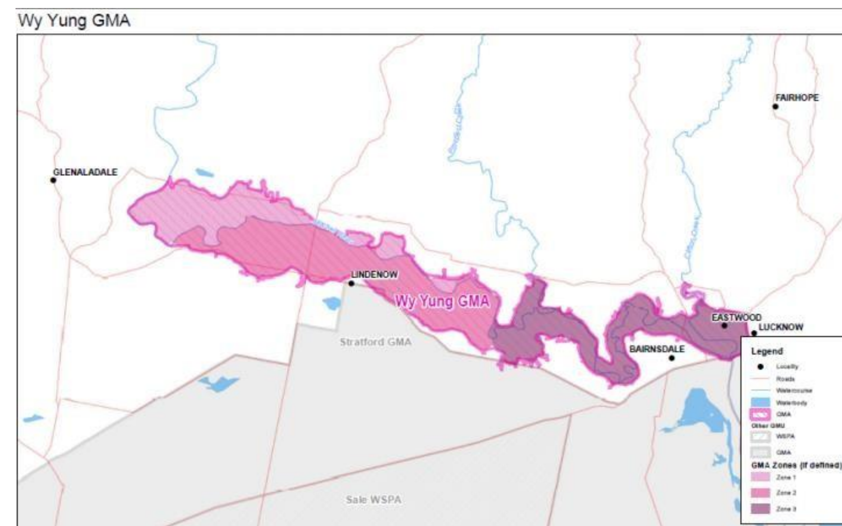
- Kalbar have not been able to establish this from their limited pumping studies and modelling particularly as the project is on the edge of the basin and is hard to interpret which aquifer they are in to.
- Kalbar have not been able to demonstrate there is a confining layer separating the Latrobe group from where massive local bores are, nor even if there is a confined layer that it is laterally extensive enough that extensive continuous pumping out of Latrobe Group aquifer will not impact the shallower bores
- If there is too much uncertainty SRW will have to make a decision at some point on what is the consequence of that uncertainty.

Can the Panel make an assessment on what is unknown.
Can the panel say the unknown consequences can be managed with monitoring and the project can be shut down or adjust the project to manage the consequences if the consequences are on the bad side.
What conditions do you put on a licence to shut it down to then safeguard those existing entitlements?

Zone 1 (Latrobe Valley) and Zone 2 (Rosedale to Bairnsdale)



The north-eastern boundary of the project area borders Zones 1 and 2 of the Wy Yung WSPA



Map of Lindenow Trading Zone and groundwater transfer rules

- *Transfers from the Rosedale GMA, Sale WSPA and Stratford GMA are permitted into the Lindenow Trading Zone*
- *Transfers within the Lindenow Trading Zone are permitted*
- *Transfers from the Lindenow Trading Zone to capped GMAs and WSPAs are not permitted*
- *A limit of 1,900ML of entitlement applies to the Lindenow Trading Zone within the surface boundary of the Wy Yung WSPA.*
- *Transfers from the Wy Yung WSPA into Lindenow Trading Zone are not permitted*
- *Transfers from Sale WSPA into the Munro area immediately to the north, shallower than the Stratford GMA and south of Wy Yung WSPA, are permitted*
- *Transfers from the Munro area are permitted to the Lindenow trading zone*
- *Transfers from the Munro area into capped GMAs and WSPAs are not permitted*
- *All areas are effectively capped either formally by PCVs or informally to manage the concentration of licences*

http://www.srw.com.au/wp-content/uploads/2016/05/Central-Gippsland-Moe-GCS_August-2016.pdf

Conclusion:

I believe the absence of comprehensive data and the lack of secure groundwater supply exposes the landowners, the East Gippsland Region and State of Victoria to significant environmental, economic, legal and social risks. There are also many examples demonstrating the apparent inability of the regulators to hold mining companies accountable for damage they have caused that lead to the community having very little confidence that they - their environment and local economies - will be protected from the adverse consequences of the project. The Fingerboards project should not proceed.

ENDNOTES

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[i] https://www.aph.gov.au/DocumentStore.ashx?id=f40c0040-da59-40f8-a909-0b7950f30c7a&subId=673445

[ii] https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2Fceee768d-147f-4c45-be2c-225bbb5c37e2%2F0006;query=Id%3A%22committees%2Fcommsen%2Fceee768d-147f-4c45-be2c-225bbb5c37e2%2F0000%22

[iii] https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/RegionalInequality46th/Report

Recommendation 1 starts on page 41

2.116 The Commonwealth Government has available to it a vast pool of knowledge and expertise through relevant government departments and agencies. In addition, universities around the country as well as state and local government and community organisations have further additional knowledge and skills to bring to the table.

2.117 And they will be needed. The point has been made previously that there is no such thing as 'regional Australia'. Indeed: Regional Australia is a cultural imagery: in practice every region is different.108

2.118 Those local governments, regional associations and community organisations on the ground right throughout the country will need to be the main drivers and sources of information on what is needed for their region. For the needs of Geraldton in Western Australia, will be very different from the needs of the La Trobe Valley in Victoria, or the Iron Triangle in South Australia. …

2.127 It must be remembered that it is the regions that provide much of Australia's wealth—particularly mining and agricultural exports—but nowhere near as much has been invested back into them. This is particularly true as 'Fly-In, Fly-Out' working routines have become more prevalent. Rather than people moving to the regions and building communities, they come to work only and then leave. This leaves the regions at a disadvantage.

2.128 For the regions to prosper, and for businesses to feel confident about establishing themselves in the regions or expanding into them, there needs to be people. Major infrastructure investment is needed, but a population base for those businesses to have enough workers and a sustainable population base for them to be profitable is also needed. My submission is relevant to mining exploration over existing enterprises when you only own the surface rights. Mining vs water vs land conflict.

2.129 And for people to stay in the regions, or indeed, move into them from the major cities, then those people must be confident that they will have all the services and amenities that are expected in modern life. Not only schools for the children and hospitals for the old and sick, but also galleries, cafes, restaurants, cinemas, sporting complexes and the like must be at hand so that people can be confident that they will have a pleasant and fulfilled life wherever they choose to live. These amenities too must be facilitated through investment into the regions.
2.130 This committee and others have long heard from those in the regions about what is required to assist them prosper. There exists now the opportunity to finally tend to the long-standing wishes of regions to have the investment needed to assist their communities to thrive and fulfil their potential.

[iv] https://www.parliament.vic.gov.au/images/stories/committees/SCEP/Inquiry_into_Nuclear_Prohibition_Inquiry_/Submissions/S66_-_Tracey_Anton_Redacted.pdf

> *Noted in committee report https://www.parliament.vic.gov.au/epc-lc/article/4350 - Anti-nuclear stakeholders also contended that exploration and mining of Victorian thorium deposits would have detrimental impacts on farming and agriculture. Ms Tracey Anton, in her submission, expressed concern that a consequence of mining thorium in Victoria would be 'strip mining viable farmland in areas deemed important for Victoria's future food security'.*

[v] submission 76 https://www.pc.gov.au/__data/assets/pdf_file/0017/256400/sub076-water-reform-2020.pdf

[vi] https://www.epa.vic.gov.au/about-epa/laws/new-laws/state-of-knowledge-and-industry-guidance

[vii] https://www.fingerboardsproject.com.au/assets/files/2020/webinar/qas-key-findings-webinar-25-june-2020-final.pdf

[viii] 41AC. Chief Inspector to be notified of reportable events in relation to exploration or mining

[ix] At the same meeting the Coffey representative stated that if environmental damage was thought to have resulted from mining activities, it would be up to the EPA to prove the link between mining operations and damage.

[x] http://classic.austlii.edu.au/au/legis/vic/consol_act/mrda1990432/s85.html

[xi] http://classic.austlii.edu.au/au/legis/vic/consol_act/mrda1990432/s86.html

[xii] PDF p20 Appendix A019 Human Health Risk Assessment

[xiii] https://www.cgw.com.au/publication/tax-implications-of-compensation-payments-on-grant-of-mining-leases-traps-for-primary-producers/

[xiv] See full Landowner consent http://classic.austlii.edu.au/au/legis/vic/consol_reg/mrdir2019734/sch15.html

[xv] https://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/28F900665F5C386048257831003E970C/$file/COMPLETE%20REPORT.FINAL.PT1.pdf

[xvi] https://earthresources.vic.gov.au/about-us/our-role/earth-resources-regulation/memoranda-of-understanding

[xvii] https://earthresources.vic.gov.au/__data/assets/pdf_file/0004/454225/DPI-DSE-_MoU_web-version-final_18Oct12.pdf

[xviii] http://www5.austlii.edu.au/au/legis/vic/consol_act/ohasa2004273/

[xix] http://classic.austlii.edu.au/au/journals/AURELawJl/2006/19.pdf

[xx] *…Deciding what is "reasonably practicable" is a matter of balancing costs and consequences. Justice Steytler of the West Australian Supreme Court when considering what was reasonably practicable under the WA MSI Act said in Hamersley Iron Pty Ltd v Robertson that the Court will look at: …*
the facts of each case as practical people would look, not with the benefit of hindsight, nor the wisdom of Solomon, remembering one of the chief responsibilities of all employers is the safety of those who work for them. Such a responsibility can only be discharged by taking an active, imaginative and flexible approach to potential dangers in the knowledge that human frailty is an ever present reality.

[xxi] https://www.water.vic.gov.au/water-for-victoria

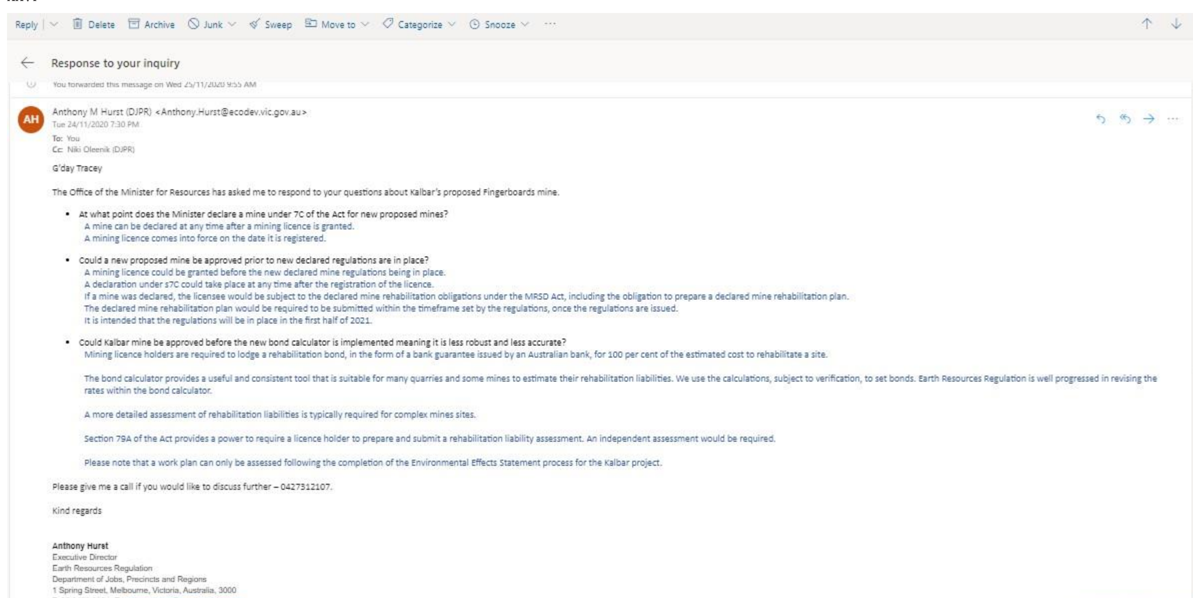
[xxii] https://www.water.vic.gov.au/planning/LVRRS

[xxiii] https://www.water.vic.gov.au/planning-and-entitlements/long-term-assessments-and-strategies/sustainable-water-strategies

[xxiv] https://www.water.vic.gov.au/planning/LVRRS

[xxv] https://engage.vic.gov.au/central-and-gippsland-region-sustainable-water-strategy

[xxvi]



Reply | Delete | Archive | Junk | Sweep | Move to | Categorize | Snooze | …

Response to your inquiry

You forwarded this message on Wed 25/11/2020 9:55 AM

Anthony M Hurst (DJPR) <Anthony.Hurst@ecodev.vic.gov.au>
Tue 24/11/2020 7:30 PM
To: You
Cc: Niki Oleenik (DJPR)

G'day Tracey

The Office of the Minister for Resources has asked me to respond to your questions about Kalbar's proposed Fingerboards mine.

- At what point does the Minister declare a mine under 7C of the Act for new proposed mines?
  A mine can be declared at any time after a mining licence is granted.
  A mining licence comes into force on the date it is registered.
- Could a new proposed mine be approved prior to new declared regulations are in place?
  A mining licence could be granted before the new declared mine regulations being in place.
  A declaration under s7C could take place at any time after the registration of the licence.
  If a mine was declared, the licensee would be subject to the declared mine rehabilitation obligations under the MRSD Act, including the obligation to prepare a declared mine rehabilitation plan.
  The declared mine rehabilitation plan would be required to be submitted within the timeframe set by the regulations, once the regulations are issued.
  It is intended that the regulations will be in place in the first half of 2021.
- Could Kalbar mine be approved before the new bond calculator is implemented meaning it is less robust and less accurate?
  Mining licence holders are required to lodge a rehabilitation bond, in the form of a bank guarantee issued by an Australian bank, for 100 per cent of the estimated cost to rehabilitate a site.

  The bond calculator provides a useful and consistent tool that is suitable for many quarries and some mines to estimate their rehabilitation liabilities. We use the calculations, subject to verification, to set bonds. Earth Resources Regulation is well progressed in revising the rates within the bond calculator.

  A more detailed assessment of rehabilitation liabilities is typically required for complex mines sites.

  Section 79A of the Act provides a power to require a licence holder to prepare and submit a rehabilitation liability assessment. An independent assessment would be required.

  Please note that a work plan can only be assessed following the completion of the Environmental Effects Statement process for the Kalbar project.

Please give me a call if you would like to discuss further – 0427312107.

Kind regards

Anthony Hurst
Executive Director
Earth Resources Regulation
Department of Jobs, Precincts and Regions
1 Spring Street, Melbourne, Victoria, Australia, 3000
T: 03 9452 8904. E: anthony.hurst@ecodev.vic.gov.au

[xxvii] http://classic.austlii.edu.au/au/legis/vic/consol_act/mrda1990432/s79a.html

[xxviii] https://www.fingerboardsproject.com.au/assets/files/2020/webinar/qas-key-findings-webinar-25-june-2020-final.pdf

[xxix] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2997776

[xxx] https://www.publish.csiro.au/EN/pdf/EN20008 We have demonstrated, through improvements to the analytical method, that levels of PFAS in biosolids are significantly higher than historically understood. The land application of biosolids could result in sensitive environments being exposed to PFAS at levels higher than previously anticipated