WHITE & CASE

19 July 2021

Mr Nick Wimbush
Chair of the Fingerboards Mineral Sands Project Inquiry and Advisory Committee
Planning Panels Victoria
1 Spring Street
Melbourne Victoria 3000

By email: Fingerboards.IAC@delwp.vic.gov.au

White & Case
Level 32, 525 Collins Street
Melbourne VIC 3000
Australia

GPO Box 2756
Melbourne VIC 3001
Australia

T +61 3 8486 8000

ABN 17 847 592 731

whitecase.com

Dear Mr Wimbush,

Fingerboards Mineral Sands Project – updated environmental management and planning documents

We continue to act for Kalbar Operations Pty Ltd (**Kalbar**).

We refer to the letter from the IAC dated 18 June 2021 (Tabled Document 521) and the IAC's revised timetable for providing comments on the papers confirmed in its letter from earlier today.

Incorporated Document

Please find enclosed:

- a 'track change' version of the draft Incorporated Document that Kalbar has prepared in response to the comments from other parties;
- a table that briefly explains Kalbar's responses to the comments from other parties; and
- a 'clean' (and easier to read) version of the draft Incorporated Document that presents Kalbar's proposal.

Mitigation Register

Please also find enclosed Kalbar's consolidated Mitigation Register, together with a table that describes the changes it has made to the mitigations, including in response to comments from other parties.

As flagged in Kalbar's letter dated 15 June 2021 (Tabled Document 503), Kalbar intends for the mitigations in the consolidated Mitigation Register to supersede the mitigations listed in the draft Work Plan. In preparing the consolidated Mitigation Register, Kalbar has referred to the tables it prepared for the EPA comparing the mitigations with those set out in Table 7-1 of each of the draft risk treatment plans (Tabled Documents 596-600), and has included any changes required to reconcile different versions of the mitigations.

EMF and draft risk treatment plans

Some of the other parties have provided comments on the EMF and draft risk treatment plans. Many of the comments relate back to the mitigation measures and, as such, have been addressed in the enclosed table that describes the changes made to the consolidated Mitigation Register.

We acknowledge the additional comments made by the other parties in relation to the EMF and draft risk treatment plans that do not relate to mitigation

measures. We are finalising our detailed review of them and will respond tomorrow as necessary, but can advise that Kalbar generally has few concerns or issues with the submissions from EPA, MFG and Council. Kalbar's response to the key issues raised by these submissions on the EMF are set out below:

- **Baseline studies – section 12.1.2**: Council and MFG suggested that the description of the baseline information needs to reflect the evidence and submissions that have been provided to, and accepted by, the IAC. Kalbar agrees with these submissions;

- **Addressing the Environment Protection Act 2017**: EPA has made various suggestions to update the EMF to address the implications of the new legislation, and suggested that the description of its roles and responsibilities in Tables 12.1, 12.3, 12.4 and 12.8 need to be updated. Kalbar has no concern with these proposed revisions;

- **Key Approvals – section 12.2**: EPA has updated the descriptions of the Key Approvals to include development and operating licences where appropriate, and Kalbar agrees with those suggestions. MFG has also proposed including the licensing requirements under the *Water Act 1989*, which Kalbar also agrees with. We note that MFG has proposed this discussion include the need for approvals under the *Customs (Prohibited Export) Regulations 1958 (Cth)*. It is contestable whether these constitute an 'environmental' approval that belongs in the EMF, but Kalbar does not take strong issue with this and will abide the IAC's advice;

- **MFG submissions on the roles of government – Tables 12.3 and 12.4, and proposed new table**: MFG has proposed that Tables 12.3 and 12.4 be updated to acknowledge DELWP's role in issuing and enforcing approvals under the *Wildlife Act 1975*, and in monitoring and enforcing native vegetation offsets. These are really a matter for DELWP, but Kalbar has no objection to these suggestions. MFG has also suggested a new table that describes the roles of government agencies outside the mining licence and SCO areas, encompassing the roles of Australian Border Force and the Port of Geelong. Kalbar has no strong aversion to this, provided it is understood that the Port of Geelong is in private ownership, and assuming the IAC accepts MFG's submission to include the *Customs (Prohibited Export) Regulations 1958 (Cth)*; and

- **Environmental objectives and indicators – section 12.4.4 and Table 12.6:** EPA and MFG have proposed that these need to be updated to address evidence and matters that have arisen during the hearing, while EPA has suggested Table 12.6 be updated to reflect the general environmental duty and Environmental Reference Standard. Kalbar accepts these submissions, but is still considering the detailed amendments requested by MFG in Tables 12.6 and 12.8.

Yours sincerely,

[redacted]

Tim Power
Partner

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