

FINGERBOARDS MINERAL SAND MINE PROPOSAL

ENVIRONMENT EFFECTS STATEMENT

REPLY SUBMISSIONS

ON BEHALF OF EAST GIPPSLAND SHIRE COUNCIL

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A INTRODUCTION¹

- 1 These submissions seek to respond to the final position put forward by the Proponent, so far as the Council can respond to the material which has been provided following the conclusion of its case including the Proponent's 205-page Part C submission presented on 20 July 2021,² which addressed several categories of environmental effects for the first time in the context of this proceeding.³
- 2 These submissions also seek to recognise the extensive effort contributed by submitters to the EES process, including the submissions, information and material they have now provided to the IAC. Those submissions have been for the most part extensive, well-articulated and carefully directed towards matters critical to the IAC's task.
- 3 In doing so, these submissions also seek to summarise the product of the Council's efforts to test for itself and the IAC the extent to which the environmental effects of the Project can be assessed.
- 4 It is not intended to now restate the Council's case, as it has transparently put through its submissions⁴ and the evidence it called, the material it provided to the IAC, and in its testing of other witnesses' evidence.
- 5 The Proponent's Part C submission makes various remarks about the Council's submissions and role in pejorative terms. As most of those remarks are irrelevant to the IAC's task, there is no purpose in responding to them. But they do make it necessary to first reflect on the role the Council has sought to play and why.

¹ These submissions adopt definitions used in previous submissions tabled by the Council, being Tabled Document (TD) 251 and TD407.

² TD698.

³ Compare TD243 (Proponent's Part A submission) and TD358 (Proponent's Part B submission) – the latter of which addressed evidence called by the Proponent – but which each only acknowledge matters such as social, landscape and visual amenity impacts to the extent the Draft Evaluation Objectives and the MRSD Act require them to be considered.

⁴ TD251 and TD407.

B THE COUNCIL’S APPROACH TO THE EES PROCESS AND THE IAC PROCEEDING

- 6 As the Council’s opening submissions made plain, the assessment of an EES is important and of significant consequence. It is an assessment which will provide authoritative advice to decisions makers about the environmental effects of the Project and the parameters of their acceptability.
- 7 The current Inquiry proceeding is of central importance to that assessment. It facilitates the assessment of those effects in a *transparent, integrated and timely* way.⁵
- 8 In its consideration of the EES and its participation in this proceeding, the Council has unabashedly and without hesitation pursued a “partisan approach”⁶ – in the sense it is an *adherent or supporter of a particular cause*.⁷
- 9 The cause to which the Council adheres, and the cause it supports, is that of transparent, integrated and timely assessment. It supports an assessment which allows the determination as to whether the environmental effects of the Project are acceptable and what controls may ensure the avoidance and minimisation of the environmental effects that would (or would but for those controls) actually be experienced.
- 10 It considers that its adherence to and support of that cause is demanded by both:
- (a) the context and import of the assessment of the EES; and
 - (b) the extent of potential impacts associated with the Project – in terms of environmental effects and downstream regulatory burden.
- 11 The Second Reading Speech which introduced the EE Act explains how the EES process was intended to work:

⁵ Ministerial Guidelines, p 3.

⁶ TD698, [712].

⁷ Macquarie Dictionary (8th ed., 2020) (definition 1).

One aim of this proposed legislation is to enable and encourage those responsible for designing works and proposal to seek advice and take environmental matters into account when preparing these designs. An even more direct aim is to ensure that those making decisions about works and proposals do so in the full knowledge of their significant environmental effects.⁸

- 12 It is through ensuring the transparency and integration of assessment that the full knowledge can be brought to decisions about works and proposals.
- 13 In order for those making decisions to possess the full knowledge required to see the aims of the EE Act achieved, it is necessary that there is sufficient certainty regarding what is proposed, what environmental effects that proposal may have, and how those environmental effects will be managed to acceptable levels.
- 14 As the Proponent noted, if the IAC cannot be sufficiently certain that a risk can be managed, it ought to recommend refusal.⁹
- 15 The Council has sought to test the information and evidence before the IAC in the interests of sufficient certainty being achieved.
- 16 The Council has sought to work towards sufficient certainty in circumstances of having identified gaps in information in its submission in respect of the EES on exhibition,¹⁰ by seeking and requesting information that might fill those gaps through its testing and adduction of evidence, and by identifying where gaps appear to have been addressed in evidence or by appropriate conditions/mitigation measures as would result in better environmental outcomes.¹¹

⁸ Victoria, *Parliamentary Debates*, Legislative Council, 17 May 1978, 3141 (W. Vasey Houghton, Minister for Health)
<https://www.parliament.vic.gov.au/images/stories/historical_hansard/VicHansard_19780516_19780517.pdf>.

⁹ TD358, [45].

¹⁰ Including by engaging SLR Consulting, per TD14, and then Ausenco, per TD252/TD253.

¹¹ By reference to the Council's closing submission at TD407, see [170], in respect of minimum requirements for centrifuges; [173] and [176], in respect of some issues related to groundwater; [195], in respect of perching/acid sulfate soils; [223], in respect of flooding and hydraulic factors;

- 17 Where the work associated with the EES was or has proven to be satisfactory, the Council has sought to engage with relevant issues in respect of the important question of management of risks and environmental effects. Indeed, the Council sought to engage with the Proponent's witnesses in respect of the question of management of environmental effects to explore possibilities for managing risks and effects to acceptable levels even where the Proponent itself did not.¹²
- 18 The extent to which this approach results in opposition of the Project is attributable to those deficiencies in the EES (both as reviewed by SLR and the Council on its exhibition, and in the form now before the IAC), which preclude the transparent, integrated and timely assessment of its environmental effects. In this case, the assessment of environmental effects is hampered by an absence of satisfactory information regarding the effects themselves and, importantly, regarding what is required by way of management to ensure those effects could be managed to be acceptable.
- 19 In certain respects, gaps have not been addressed, and there is insufficient certainty regarding effects and risks of effects, and how those effects and risks will be managed.

C THE PROPONENT'S APPROACH TO THE EES PROCESS AND THE IAC PROCEEDING

- 20 The Council notes three matters of concern in respect of the Proponent's approach to the EES process and to the IAC proceeding.

[227], [235]-[237], [239] and [243], in respect of air quality and GHG emissions; [265]-[270], in respect of noise; [273]-[274] in respect of radiation.

¹² For example, Dr Loch who had simply assumed his work had been translated into the Draft Mine Rehabilitation Plan, was of assistance in cross-examination in respect of the need for contingency planning, and Mr Welchman identified the appropriateness of applying best practice in respect of air quality and dust management.

C.1 Whether the Proponent has brought the necessary information to bear

- 21 In response to the Proponent’s characterisation of the Council’s submission as seeking to impose a “legal onus” of some description,¹³ the Council notes the following in partial reprisal of its earlier submissions.
- 22 The party responsible for ensuring the information required to assess the environmental effects associated with the Project is the Proponent – and not the Council, or any other submitter or agency – and certainly not the IAC. In order that the environmental effects of the Project (and their existence, significance and acceptability) can be assessed, and in order that those impacts can be assessed to be, or to be capable of being managed to be, acceptable, it is necessary that:
- (a) the Proponent provide sufficient information to enable those effects to be identified;¹⁴ and
 - (b) the Proponent establish that those effects are acceptable¹⁵ and can be acceptably managed.¹⁶
- 23 The need for the Proponent to ensure the necessary information is available is reflected in the Scoping Requirements and sounds in logic (given the Proponent’s ability to understand the Project and assess its effects) and fairness (given the relative resource and information disadvantage of submitter parties).
- 24 It is particularly perverse to suggest the Council or any other party should (or even could) have produced information in respect of the Project given the extent to which the Project has changed since the EES was produced.
- 25 Indeed, the Council has in fact been criticised for departing even in seemingly minor respects from the findings of the SLR Technical Review, where that Technical Review proceeded on the basis of a Project of a different form and of an EES which has required

¹³ TD698, [41].

¹⁴ TD407, [11]-[12].

¹⁵ Ibid, [13].

¹⁶ Ibid, [66].

substantial supplementation in order that the IAC and parties may understand what is proposed.

26 In addition to the question of *whether* the necessary information has been brought before the IAC, it is also relevant to reflect on *when* information has been brought forward.

27 The Proponent has been given every opportunity to put its case.

28 That opportunity was afforded it over the first 12 days of the hearing.

29 It then tabled:

(a) material constituting expert evidence¹⁷, produced by its expert witnesses after their evidence was given:

(i) in TD464, from Mr Billingsley;

(ii) in TD467 and TD591, from Mr Organ;

(iii) in TD501, from Ms Teague;

(iv) in TD532, from Mr Welchman;

(v) in TD535, from Mr McAlister;

(b) untested technical material including expressions of opinion regarding matters which could and should be the subject of expert evidence properly tested in the course of the hearing. In addition to the material identified by MFG in its submissions, the Proponent has tabled:

(i) TD534, which contains material in the nature of expert evidence which ought be expected from Dr Gibson-Roy or a similarly qualified expert;

¹⁷ Not in the form of a witness statement complying with the *Guide to the Expert Evidence*.

- (ii) TD592, the 'Fauna Impact Mitigation and Landscape Plan' prepared by Ecological Australia "with support from Paul Gibson-Roy"¹⁸ dated 19 May 2021, which was provided to DELWP on 18 June 2021 despite being inconsistent with current understanding of both the extent of direct ecological impact¹⁹ and the proposed extent of the mining licence area.

30 This information is in addition to that which remains untested – for example, in TN010, which contains recommendations concerning landscape and visual impact which have been included in mitigation measures,²⁰ and otherwise amongst the 50 or more documents which the Proponent has tabled since "closing its case".²¹

31 It is no answer to say parties had the opportunity to seek to recall witnesses. Parties are not unbounded in resources and the process is not unbounded in time. The reality is that the Proponent's approach to the EES and the hearing has adversely affected the ability of the parties to the Inquiry to assess what is proposed and to make their cases and to assist the IAC.

32 In accordance with clause 29(a) of the IAC's Terms of Reference, it is appropriate for the IAC to report on extent to which the Proponent's failure to articulate the proposal has hindered the IAC.

C.2 Degree of reliance on adaptive management is inappropriate

33 The Proponent's answer to the requirement that sufficient certainty be achieved is to posit that absolute certainty may never be achieved. The Council accepts that proposition, but notes it does not extend to obviate the need for:

- (a) certainty to be achieved if and when it can;

¹⁸ See page i.

¹⁹ Compare, for example, TD592 page 14 and TD537 page 9.

²⁰ See particularly VL02 and VL14.

²¹ In addition to redrafted EES documents, documents produced in cross-examination, and publicly available documents produced to the IAC.

(b) the scope of uncertainty to be understood.

34 The Council has otherwise made submissions in respect of the proper role of adaptive management, which the Proponent has not attempted to refute.

C.3 Degree of reliance on later approvals process is inappropriate

35 It is not appropriate to submit that there can be sufficient certainty that environmental effects will be acceptable or will be acceptably managed because a later approvals process exists.

36 As the Scoping Requirements put it:

To facilitate decisions on required approvals, the EES should address statutory requirements associated with approvals that will be informed by the Minister's Assessment, including relevant decision-making under the EPBC Act.²²

37 It is appropriate to expect that this process informs later statutory approvals, and not the other way around.

D THE FAILURE TO PROPERLY ARTICULATE THE PROJECT IN THE EXHIBITED EES AND THROUGH THIS PROCEEDING

38 That an EES process should commence with a fully articulated statement of a project, the environmental effects it may have, and the manner in which those environmental effects will be managed to be acceptable, should be self-evident.

D.1 What is clear and what is not

39 At the commencement of the hearing the Council observed that the EES process must be clear, transparent and based on a rigorously considered and documented proposal

²² Scoping Requirements, p 8, [3.2].

backed up by clearly defined and enforceable measures for the avoidance and mitigation of environmental impacts.²³ As was observed in opening submissions:

[63] *The proposal remains ill-defined in many important respects such that the large number of important matters are not decided, or in flux, or subject to mitigation measure which lack certainty and enforceability. For example, it is unclear where the water proposed to be used for the project will be sourced from or which entities stand to lose from any proposed allocation.*

[64] *It is unclear what is proposed in terms of traffic and transport 'options', or what works will be carried out by way of mitigation.*

[65] *It is important that the adequacy of the EES is judged not by reference to the amount of work done by time or dollar value, but by the certainty achieved and the level of faith the community can place in the certainty of the outcome of placing a mine in the proposed location for 20 years.*

40 This analysis is, of course, of particular importance in this sensitive location.

41 The Council's opening submission otherwise noted:

On first blush, one might think that a mine located as this one would be – surrounded by a Heritage River and national park, wetlands and water courses historically supporting critically endangered species, a rare example of a largely intact Chain or Ponds system, cheek by jowl with a food bowl, on top of a complex aquifer system and with a complicated soil profile and involving the loss of a very significant amount of native vegetation – would always be a difficult proposition.²⁴

42 The evidence heard by the IAC over the course of over 7 weeks (in total) has made it clear that this is the case.

²³ TD251, [59].

²⁴ TD251, [22].

- 43 It is clear that the Project is remarkable for its:
- (a) Scale – noting that the mining licence area, which commenced this process at 1,675 ha, now appears to have grown to 2,143.8 ha,²⁵ – a 28 per cent increase – and that the extent land which would be used outside of the mining licence area is unclear;
 - (b) Complexity of proposed processes – the Proponent’s witnesses and all parties have had notable difficulty in defining and describing the various components of and processes involved in the Project,²⁶ and the IAC in fact called for a description of the Project to be provided during the hearing;²⁷
 - (c) Extent of vegetation and habitat proposed to be destroyed – which has increased substantially over the course of the Inquiry process²⁸ (but which remains unclear given the proposed changes to both the mining licence and borefield areas); and
 - (d) Extent of water proposed to be used – although this has changed repeatedly since exhibition and remains uncertain in view of the absence of clarity as to how and whether the proposed centrifuges will work in practice.
- 44 It is also clear that the Proponent, its shareholders and related entities, and State and Commonwealth governments, stand to experience financial gain. This is a case in which the IAC will be required to consider whether the proposed financial gain can realistically tip the balance of those factors which tell against this as an appropriate location for a mine.

²⁵ Per TD345.

²⁶ For example, Mr Gibson-Roy, who was called to give what could only be regarded as expert evidence other than in accordance with the IAC’s directions and practice note and who provided further evidence to those on the site inspection to the nursery, was seemingly unaware of the proposed minepath and staging and its relationship with the restoration reserve.

²⁷ IAC’s request for information dated 26 May 2021 (TD401), made one day before the conclusion of the Council’s case. Remarkably, the request took almost one month to answer: TN039 (TD537) was tabled on 25 June 2021.

²⁸ In the context of native vegetation only, compare Appendix A005, which identified 160.30 Ha of native vegetation and 704 large trees as likely to be removed (p 9), and TD299/TD537, which identify 223.58 Ha of native vegetation and 814 large trees to be “impacted” – i.e. destroyed.

45 But, despite volumes of documents and weeks of hearing, fundamental matters remain unclear.

D.2 Changes to the Project

46 The Proponent's failure to properly articulate the Project at the commencement of this hearing has several material effects. As noted, the Council's initial technical advice in the form the SLR Technical Review did not address the Project as now proposed. It commenced on the basis of:

- (a) a project carried out within a mining licence area now is proposed to be changed;
- (b) information such as the water balance estimates which have changed materially on multiple occasions;
- (c) a different form of tailings storage to that now proposed (noting that the deposit of material into Perry Gully is now sought to be reviewed);
- (d) a different proposed road network layout; and
- (e) a now uncertain bore field location.

47 The Proponent has made submissions in respect of the above changes. They have been described, variously, as not relevant to the process,²⁹ or as "clarifications" or responses to matters raised in submissions.

48 While the EES and in turn the IAC are permitted to consider alternatives,³⁰ consideration of the environmental effects of defined alternatives is different to using the IAC process to define a project design to which the Proponent chooses to commit. The process which has been undertaken before the IAC is just that – an iterative bringing forth of a proposal, rather than an analysis of the environmental effects of a known project.

²⁹ Particularly in the context of the expansion of the mining licence area.

³⁰ Scoping Guidelines, p 10 [3.4]; IAC's Terms of Reference, cl 34(d).

49 The extent of the Project remains unknowable at this stage because even the extent of the mining licence area remains to be defined by a process commenced in the middle of this hearing and the extent of land to be used and developed for the project infrastructure (and therefore, according to the Proponent's planning witness, suitable for the application of the SCO) appears certain to be different.

- (a) While it is open to the Proponent to pursue changes to the mining licence area, that does not mean that the change escapes the inevitable consequence brought about by the timing of this application in relation to this hearing – that is that it changes the goal posts for the community and the IAC mid-hearing. On the information presently available it is impossible to address whether what difference this application if approved would make, beyond understanding that the Proponent does intend the extended area to comprise part of the Project.³¹ It appears most likely to include other properties within the proposed mining licence area – which appears to include that of at least one submitter³² and potentially others. It also includes Council roads. What is clear is that this is not the area advertised in the EES. It is beyond impolite that this application is made in the middle of the hearing and without notice and in particular detailed without explanation as to why it is made. It is not for the IAC to make a decision about this application but it is for the IAC to assess the EES and whether it is acceptable to introduce an additional area in the manner sought to be done in this instance.
- (b) While the Council remains unclear as to precisely what the Proponent proposes in this respect, the Proponent's apparent intention to move the borefield gives rise to a need to either further change the extent of land to which the SCO applies (to remove the land no longer required for the relevant purpose, and to include

³¹ Per TD518, p 2.

³² It appears that the opportunity for response in that approval process was communicated to one submitter on the day on which he presented his submissions.

the moved borefield)³³ – or a necessity to conduct a piecemeal assessment³⁴ and to excise consideration of direct and indirect impacts associated with a borefield outside the area assessed.

- 50 These changes represent substantial differences from what could reasonably be understood to have been proposed on a review of the exhibited EES.
- 51 It is unclear how the Proponent says either change is consistent with procedural fairness being afforded to submitters to the EES or in this proceeding.
- 52 Given the scant information provided and the length of time this proposal has been on the table it is submitted that such a change at this stage is inappropriate.
- 53 For its part the Council accepts, and considers the IAC should accept, that the community are entitled to be regarded as having expertise worthy of being given significant weight in these proceedings. Some of those who have submitted have specialised knowledge built on years to decades of experience and observation to contribute to the IAC's consideration. It is important that this is respectfully and comprehensively considered particularly in view of the clarity and cogency of very many of the submissions.

D.3 Ongoing regulatory burden

- 54 The extent to which this Project would create an ongoing regulatory burden to be borne by the Council and other authorities and agencies has been brought into stark relief during the course of this hearing.

³³ In addition to altering the extent of the SCO to remove the extended mining licence area, if the relevant application is granted, as the Proponent has proposed should be done by TN032 dated 16 June 2021 (TD518).

³⁴ Noting the Proponent now appears to suggest this process should simply proceed with the SCO area as exhibited (save as noted immediately above), because it would later elect to obtain planning permission for a utility installation: TD698, [31]. That course which would mean the proposed Incorporated Document would have no application over the relevant area of land, noting that while impacts of extraction of water may not be a relevant planning consideration, the extent of that borefield including all associated infrastructure clearly are.

- 55 The Council is of the view that the lack of clarity would give rise to substantial and meaningful regulatory burden which is both undesirable and inconsistent with the proposition that the IAC, the Minister, and all stakeholders should have certainty as to acceptability of environmental effects.
- 56 It is not realistically possible for the Council to assess the precise extent of the burden because it is not clear where that burden will fall and what it would entail. What is clear from this process is that it will be significant and likely to fall heavily on local government whether or not it is the official decision maker in respect of each approval.
- 57 The impact that the proposed planning provisions will have on the administrative costs of the responsible authority is one of the matters required to be taken into account by the Minister in addressing the Strategic Assessment Guidelines set out in planning practice note 46.³⁵
- 58 Further lack of specificity as to important matters such as the extent of vegetation removal within the SCO area and proposed revegetation increases this burden. The more uncertainty at this stage of the process the greater the regulatory burden created for decision makers going forward.
- 59 The lack of specificity of the proposed road network (although the revised project description nominates the January plans as the preferred road option) together with the amount of work agreed by the traffic experts to be outstanding is just one area in which there will be a substantial regulatory burden imposed on the Council.
- 60 The proposed change to the mine area also exacerbates the uncertainty as to how the Proponent proposes to move state and local roads without acquisition, to update planning scheme maps as roads move around, and to guarantee an ongoing functional road system for the community.

³⁵ PPN46 *Strategic Assessment Guidelines*, part 10 (available at https://www.planning.vic.gov.au/_data/assets/pdf_file/0023/12992/46-Strategic-Assessment-Guidelines_May-2017.pdf).

- 61 The Council should be the decision maker in respect of all matters in relation to the incorporated document. This is not because it wishes to take on the extra burden; rather, it is because it is well aware that it will bear the ongoing burden of answering questions and administering any approval. In addition it has superior knowledge of the local area which, as is clear, is important in making decisions in this area. In those circumstances the better course is for it to be involved in the decision making for decisions that it will be required to administer in any event. The exception to this is the approval of noise management plans, being an area in which the EPA has specialist expertise and ought take the lead in respect of approvals.
- 62 As will be apparent to the IAC, the burden on the Council of engaging with this process has been great. Over the last 12 months, officers have spent very significant time responding to matters arising from the Proponent's proposal, including many which have now been abandoned; the Council has committed substantial costs and effort to obtain technical reviews in respect of the Project (even as it changed); and it has financially resourced both legal and technical costs of witnesses up until the time of their evidence (nothing that the resources have not been available for technical reviews of documents presented incrementally after the Council's case or the further changes occurring since then).
- 63 While the resource implication has been great, it has been invested because of the extent of impact and change this proposal represents. It has been invested with the expectation that this process could produce a real level of certainty as to what could be expected in terms of the environmental effects of the Project and their management, if it were to be approved.
- 64 It is axiomatic that the less clear the Proponent is about what is proposed, and what they will do, the greater resources will be required to administer the Project.
- 65 The IAC should recommend that, if the Project is approved, the State government provide ample resourcing for implementation in particular to the Council for its role. The Incorporated Document can include some costs recovery measures but that will not

meet the burden imposed. Further the inclusion of bonds for performance of all obligations would be critical to any ongoing approval.

E NET COMMUNITY BENEFIT AND THE PLANNING FRAMEWORK

66 The decision in relation to the planning scheme amendment which must ultimately be made by the Minister will require the Minister to take account of the objectives of the *Planning and Environment Act 1987* including, amongst others:

(b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;

(c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria; ...

(f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e); ...

(g) to balance the present and future interests of all Victorians.³⁶

67 Further the Minister will have regard to the objectives of the planning framework established under the Act, including:

(c) to enable land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels;

(d) to ensure that the effects on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land;³⁷

³⁶ *Planning and Environment Act 1987*, s 4(1).

³⁷ *Ibid*, s 4(2).

- 68 The purpose of the planning policy framework is set out at Clause 71.02 of the Planning Scheme, and includes:

The Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in section 4 of the Act) are fostered through appropriate land use and development planning policies and practices that integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

- 69 The Minister will be required by to engage in Integrated decision making by Clause 71-02-3:

Planningauthorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

- 70 This balance involves a careful accounting of what will be lost against what will be gained taking account of mitigations which may, in some instances, decrease extent of loss. It is important that this balance takes into account the need to achieve sustainable development for the benefit or present and future generations.

- 71 In fairness to him, Mr Glossop was not in the position to conduct this assessment at the beginning of this case and fairly conceded that he had not had detailed regard to the technical evidence. Nor had he heard the evidence that IAC now has. At this point, his cursory approach to his task does not assist the IAC which is in a position to carefully conduct this analysis on the basis of what it has heard and to assess the significance of the remaining outstanding and unresolved issues in making this analysis.

- 72 The IAC's task now involves assessing all elements of this Project and resolving planning policies aimed at environmental protection and potential benefits and disbenefits to the community with the locationally specific support for mining found in the planning scheme.

- 73 The extent of risk, and the certainty of impact on the community, weigh heavily in that decision making framework.
- 74 Mr Glossop's view was that the net community benefit is to be assessed according to the benefit (other disbenefit) associated with the Project as a whole albeit on other land. The Proponent has not sought to dissuade the IAC from this view.
- 75 It follows then that the many and varied policy directions of the Planning Scheme invoked by this proposal ought be brought to bear on this decision. Even taken at its highest as the Proponent would put it, the encouragement in the Planning Scheme for mining is not complete and is not expressed to override the need for mining to take place in the right environment or, of course, to achieve net community benefit.
- 76 The resolution of net community benefit in respect of the planning scheme amendment and the assessment of impact on the community is now an issue for the IAC to consider.

F COMMUNITY ATTITUDE TO THE PROJECT

- 77 The draft evaluation guidelines include the following:

4.5 Social, land use and infrastructure

Draft evaluation objective

To minimise potential adverse social and land use effects, including on agriculture, dairy, irrigated horticulture, tourism industries and transport infrastructure.³⁸

Key issues

- *The potential for dislocation due to severance causing reduced access to farm land, businesses, social networks, community facilities and the Mitchell River National Park.*

³⁸ Social impact is addressed further in section G of these submissions, which deals with mitigation measures.

- *Potential for adverse effects on the existing and future land and beneficial uses, including agricultural, dairy, irrigated horticulture, forestry, tourism and local businesses.*
- *The potential for changes to the existing infrastructure in the project area and in its vicinity, particularly the proposed changes to water supply and irrigation network, power transmission lines and local and regional roads or rail.*
- *Potential damage to local and regional road surfaces along transport routes and increased risk to road safety on transport routes*

78 The draft evaluation objective does not refer to a “social licence” and the Council has not used this term in submission to the IAC. What is important is that the Committee is required to consider evaluate this objective which involves “minimis[ing] potential adverse social and land use effects, including on agriculture, dairy, irrigated horticulture, tourism industries and transport infrastructure”.

79 In doing so, the IAC will have to consider the submissions made by the submitters to establish the effects identified by this objective which it is required to consider by its Terms of Reference at cl 5(b). The term “social licence” ought not distract or detract from consideration of this issue.

80 Two other matters have arisen in relation to community attitude. The first is whether any weight can be given to TD653, which purports to show the location of persons who have submitted positively or negatively in respect of the EES. The Council has not reviewed the accuracy of the document. It is not clear that there is a direct link between all submitters and the land they own such that it is not easy to identify any such link with accuracy in the absence of a “ground truthing” exercise by the relevant people. The document on its face also reveals a number of problems:

- (a) The fact that title boundaries are shown but land holdings are not delineated suggests a larger number of properties in each group than is meaningful. The landholdings shown on TD262 gives some indication of this.

- (b) The reason for the absence of a submission is unknown. Where the land is owned by Kalbar it is unsurprising. Where a satisfactory agreement has been reached, such as with the property marked in green on TD653, it is also understandable and these submissions made should of course be considered in this context.
 - (c) As to the value to the IAC of indications of land where it is asserted that no submission has been made, there is little if any value to be derived from this information except the stated purpose to disprove an apparent proposition that 99% of landowners are against the proposal. The Council has not made this point and does not support it as – self-evidently – with the inclusion of the Kalbar properties this cannot be correct.
 - (d) The figures within the document are described to identify “the land in, and within two kilometres of, the Kalbar Project Area and the Incorporated Document Area”, but do not appear to account for the late proposal to move the borefield to the south-west and outside the SCO area.
- 81 It is unclear why, if there were to be reliance on such an analysis it was not produced in map form prior the commencement of the hearing.
- 82 In Council’s submission, the better focus for the IAC is to be found in the IAC’s Terms of Reference, which require it to review and consider “all public submissions, and all submissions and evidence provided to the IAC by the Proponent, state agencies, local councils and the public”. This focus on the submissions made is appropriate. Directing the IAC’s attention towards submissions not made to it is of no assistance to the IAC in its task.
- 83 It is beyond doubt that the issue of social impact is important to the IAC’s consideration. This must be so because the IAC’s terms of reference specifically indicate that it may seek specialist expert advice in relation to 4 areas one of which is “social impact assessment”. The IAC has not sought such advice and will make its own assessment of this issue on the basis of the information before it. Given the Proponent’s curious decision to not call any evidence in respect of social impact, the IAC is left with the extensive information provided to it particularly by community members. While the IAC

has the ability to recommend that this be supplemented prior to the Minister making a decision, the extensive material provided in submissions provides a clear picture of the submitters views – it an overwhelmingly negative one.³⁹

84 The submissions have provided a clear picture of their concerns about the area. The submissions reveal a fractured, vulnerable and stressed community and one that was in need of healing – which was acknowledged on behalf of the Proponent – although the analogy with an apartment development was not apt. The IAC has heard this evidence and it would not be appropriate to repeat or summarise the submissions made but the issues raised include:

- (a) the creation and exacerbation of health and particularly mental health issues within the community caused by the proposal and the uncertainty surrounding information provided;
- (b) the apparent misunderstanding of vegetable farming practices by the Proponent and it horticultural witness Dr Blaesing;
- (c) the absence of value in proposed mitigation measures including those relating to CFA volunteers⁴⁰; proposed tourism initiatives; and “education” about how to grow crops and participate in industry schemes;
- (d) the use to which additional water could be put by farmers and the critical need for water;
- (e) the importance and reliance of the surrounding area on tourism;
- (f) the recreation values of the area;

³⁹ See para 3(d) of the Terms of Reference. The other specific areas of expertise identified are: noise and related impacts on amenity; agriculture and rural land use; landscape and visual impacts; and social impact assessment.

⁴⁰ Noting the significant disruption paid “volunteers” can create in an environment in which the incentives to contribute are altered by payment.

- (g) the importance to the indigenous population of the cultural heritage to be lost if the Project proceeds;
- (h) the importance of the hundreds of large old trees to be lost to the community in terms of their scenic and landscape value and their contribution to biodiversity particularly in view of the loss of vulnerable EVCs;
- (i) the loss of wildlife;
- (j) the loss of community which has already occurred and which will occur if the proposal goes ahead as landowners who have been in the area for generations leave at least for a generation and it would appear in many cases forever;'
- (k) the effect of the loss of the land to which memories are tied which will not be replaced by a manufactured landscape;
- (l) the sophisticated farming practices currently employed in the area;
- (m) detailed information about local road networks and the impact of traffic through towns and the countryside;
- (n) the extensive evidence of the importance and financial contribution of the farming community to the economy and the detailed explanations given of the supply process for vegetables and serious implications if contaminants were to be detected.

85 The Committee is now in a position to make its assessment informed by significant local input to which the Council considers significant weight should attach.

G MITIGATION MEASURES AND REQUIREMENTS AND SAFEGUARDS

86 In respect of mitigation measures, the Council does not accept the submissions made by the Proponent that the Project has very detailed, substantial or "extensive" mitigation measures associated with it.

- 87 The Proponent now appears to criticise the Council for identifying that the Proponent’s reliance upon mitigation measures to establish that the Project will have acceptable outcomes, pointing to those mitigation measures as being uncertain or unpredictable, and identifying the extent to which this has made this process difficult for the Council and the community.⁴¹
- 88 Recalling that, at the time the Council made that submission, the Council could only continue to work with the August 2020 mitigation register (Attachment H to the EES):⁴²
- (a) How could the Council or community understand what sort of issues were contemplated to be within the scope of measures such as AG02, and what solutions would be contemplated for implementation, particularly given inconsistency within the EES regarding community and stakeholder engagement mechanisms?
 - (b) How could the Council or community engage with air quality trigger levels by reference to AQ13 without referencing the source of air quality trigger levels?
 - (c) What stock could the Council or community put in SE03, which simply provided for discussion of any issues or concerns held by adjacent residents?
- 89 In respect of measures proposed more recently:⁴³
- (a) How can the community understand what will result from the implementation of CH09?
 - (b) How can the Council understand what “appropriate protection measures reflective of the risks to surface water and groundwater” are referred to in GW22?
- 90 The Council has in no circumstance disavowed the appropriateness of performance-based measures, subject always to the relevant documents being sufficiently specific as

⁴¹ TD698, [66], noting the Council’s relevant criticism came at TD407, [12].

⁴² Given the Proponent did not provide a marked up copy of the mitigation register in response to evidence or submissions to the EES or the IAC before 15 June 2021: TD503 and enclosures.

⁴³ Per TD505.

to provide certainty regarding the outcome which will be achieved. For example, the Council's submissions contrasting Mr Delaire with the Proponent's other witnesses⁴⁴ specifically identified that his work gave rise to "precise and firm mitigation measures and requirements"⁴⁵ – where, as the IAC and the Proponent are aware, Mr Delaire specifically preferred performance-based measures to set (numerical) criteria.

91 The problem arises where the Proponent seeks to rely on performance-based measures in a vein similar to its reliance on adaptive management. Like adaptive management, performance-based measures represent a valuable and appropriately employed tool. But in order for any comfort to be taken from their employment, it is necessary to understand the parameters within which they are to operate.⁴⁶

G.1 Welcome changes

92 In addition to changes made in response to evidence and recommendations of authorities,⁴⁷ the Council welcomes:

- (a) the concept of investigation of alternatives for the filling of Perry Gully, while noting these alternatives should have been explored in the EES itself or at least sufficiently in advance of expert evidence as to allow them (or the concept) to be tested;
- (b) improvements to the public availability of compliance information;
- (c) traffic-related matters, noting intersection layouts should have been more resolved before today;

⁴⁴ TD407, [265].

⁴⁵ Ibid.

⁴⁶ A good example of this is the North East Link EPR (GW1) extracted at [68] of the Proponent's Part C submission, the drafting of which stands in contrast to the performance-based measures contained in the mitigation register in this case.

⁴⁷ For example, the process to prove up the use of centrifuges, further flora and fauna surveys, the requirement for best practice conceded by Mr Welchman, traffic counts, investigations in respect of the haul road underpass, etc.

- (d) greater specificity in respect of the proposed community fund, while noting:
- (i) the Council would support the operation of the \$250,000 per annum fund from the date all relevant permissions are finalised as SE04 proposes,⁴⁸ rather than from the date of commencement of operation as the Proponent's Part C submission would suggest;⁴⁹
 - (ii) the 'pre-approval' commitments expressed by the Proponent⁵⁰ can be given no weight in the assessment of the environmental effects of the Project unless they are reflected in conditions; and
 - (iii) there is a discrepancy between the amount of the fund identified in the Proponent's Part C submissions, being \$3.75 million, and the most recent mitigation register, which limits the fund to a maximum of \$2.5 million over 10 years;⁵¹
- (e) certain targets in respect of the timing of delivery of the restored grassland reserve⁵², while noting it is impossible to quantify the degree to which those targets are reflective of restoration taking place as soon as possible;
- (f) the inclusion of an Independent Technical Reviewer, which offers benefits – but confined ones. As the Stockman Work Plan Conditions⁵³ record:

The function of the Independent Technical Review (ITR) Panel is to provide independent review of critical project documents. ...⁵⁴

⁴⁸ Per TD695, p 17.

⁴⁹ TD698, [3(b)].

⁵⁰ I.e. the \$40,000 per year expressed to be committed to community grants until the Project would commence operation: TD698, [3(b)] and [723].

⁵¹ Compare TD698 [3(b)] and SE04 in TD695, p 17.

⁵² See TN36.

⁵³ TD374.

⁵⁴ The Stockman Work Plan conditions go on to identify the relevant Terms of Reference set out the scope of the ITR's role: TD374, p 1.

Contrary to the Proponent's suggestions in TN040,⁵⁵ a proper reading of the Stockman IAC report and the Minister's assessment establish that the valuable role of an ITR is not in serving as an alternative to the process of integrated assessment with which the IAC is engaged – rather, it provides oversight of and input into key technical matters to supplement the ability of authorities to analyse those matters in regulating approvals.

- 93 While TN040 suggests “the EMF... would be updated to include references to the ITR and to define its responsibilities”,⁵⁶ the IAC and the parties are left without a concrete indication of how that is proposed⁵⁷ or how mitigation measures may be altered to incorporate the use of an ITR.

G.2 Concerns

- 94 If any approval were to be recommended, there must clear recording of the extent of commitments put forward by the Proponent.
- 95 The project description does not include, as it should, reference to the greatest amount of water required (whether surface or groundwater) which appears to be 2.804 GL on the new figures. It should also be clearly recorded in the description and mitigation measures that all water will be purchased in the market and that groundwater will be used only where surface water cannot be. It should also clearly articulate the maximum extent of vegetation proposed to be cleared, in exact terms. It should identify, with particularity and consistently with cultural practices, the extent of matters of cultural heritage significance permitted to be removed, destroyed, or altered.
- 96 Further, while it is not clear that the social impacts proposed will have a beneficial effect, a clear and enforceable requirement to actually create the proposed number of jobs and for those to be taken by local people (where this is feasible) is critical to

⁵⁵ TD542.

⁵⁶ Ibid, 5 [16].

⁵⁷ Noting the concept of an ITR for this Project appears to have only been conceived by the Proponent after it filed its “updated EMF” and mitigation register on 15 June 2021 (TD504 and TD505 respectively) and is not reflected in the further updated mitigation register (TD695)

realising any benefit to the municipality. This and other benefits must be audited and enforced and adjusted so as to ensure benefits are actually delivered to the extent possible.

- 97 In a similar vein, it is critical to ensure socioeconomic impacts are fully identified, with negative impacts avoided and benefits ensured.
- 98 It cannot be concluded that social impacts have been adequately taken into account and can, at the conclusion of this process.
- 99 It is not the Council's position that the Proponent stands to be criticised for failing to call social impact evidence "on the basis of some established practice of doing so".⁵⁸
- 100 And it is not the case that the Council has in some way departed from its original submission in the course of making submissions to the IAC.
- 101 Rather, the Council's submissions proceed on the core basis that:
- (a) The Minister has required social impacts to be assessed and minimised;
 - (b) Consistently with principles of transparent and integrated assessment, and with the Minister's requirement that social effects be assessed and minimised, key stakeholders and the broader community, including traditional owners, should have the opportunity to review and comment on the proposed mitigations and/or compensations for the impacts of the Project, and those strategies that will provide future community and regional benefits;⁵⁹
 - (c) The absence of an implementation strategy/framework makes it difficult for key stakeholders and the broader community, including traditional owners, to quantify the impacts and expected benefits of the Project.⁶⁰

⁵⁸ C.f. Part C submission, [702].

⁵⁹ To paraphrase the SLR Technical Review at TD14, PDF p 16.

⁶⁰ Ibid.

102 In those circumstances, the absence of a witness capable of giving evidence in respect of social impact means that that difficulty remains in several important respects instantiated by the Proponent’s own submission.

103 The Proponent seeks to criticise the Council for expressing concern regarding detail of the Community Reference Group, given the absence of any information in the mitigation register despite the SEIA identifying certain characteristics and membership.⁶¹ The Proponent contends the Draft Community Engagement Plan (**Draft CEP**)⁶² provides that detail.

104 The Council does not consider the content of the Draft CEP to be either:

- (a) reflected in the mitigation register, as the Council considers it should be; or
- (b) reflective of the matters identified by the SEIA, as it must be if it is to be said to reflect any of its findings.

105 In the latter respect, it must be noted that:

- (a) while the SEIA identifies that the CRG “will be chaired by an independent stakeholder”, the Draft CEP identifies that the Chair may be “an independent external person” – or “a Kalbar employee”;⁶³
- (b) while the SEIA identifies that the CRG will be made up of certain stakeholders, its focus on the community, community groups, Indigenous groups and immediate neighbours, while anticipating membership may also include others, is not necessarily reflected in the proposed composition of the CRG as set out in the Draft CEP;⁶⁴ and
- (c) while the SEIA identifies that Kalbar will “regularly review and seek community and stakeholder feedback on the operation of” the CRG, the Draft CEP provides

⁶¹ Appendix A018, PDF p 107.

⁶² Appendix D to the Draft Work Plan, PDF p 530.

⁶³ Ibid.

⁶⁴ PDF p 529-530.

only for annual review of the Terms of Reference.⁶⁵ How any feedback would be taken into account is unclear, where the draft Terms of Reference provide only that they can be amended “to meet the current needs of all committee members by consensus”.⁶⁶

- 106 The core proposition for which the Council’s criticised footnote stands is that the relationship between the potential social impacts identified in the SEIA have not been tested against the mitigation register. The Proponent’s criticism of that proposition serves to highlight that its Draft CEP is not consistent with its SEIA either.
- 107 The most recent iteration of the mitigation register⁶⁷ does not alter SE20 to better reflect the SEIA or the Draft CEP (whichever is to be preferred).
- 108 Second, the Council notes the Proponent’s efforts at [707] to ‘declarify’ the Council’s submissions regarding the ability to draw a bright line between the processes of research for the purposes of the SEIA consultation for the broader purposes of the EES process and given what is and what is not expressed within the SEIA and the EES, and to understand what was done in what context to engage with those who might be impacted upon.
- 109 Clarification of the distinction between the “engagement” and “consultation” referred to in the SEIA and in Attachment G (Consultation and Stakeholder Engagement Report) would indeed be helpful – but on its reading of those documents, the Council is in no position to proffer it.

⁶⁵ PDF p 531.

⁶⁶ Ibid.

⁶⁷ TD695.

- 110 All it can identify is that the ‘activities’ set out in 2.1.1 of the SEIA are, at best, questionable in their relevance to or suitability as the research basis for a social impact assessment.⁶⁸
- 111 Third, the IAC has heard many submissions regarding the question of “social licence”. Without the benefit of expert evidence in respect of social impact, and relevant mitigation measures, it ultimately cannot be said that the existence or otherwise of social licence is critical.
- 112 It could be said that the existence or absence of a social licence may not itself determine whether a mine can make money from the exploitation of minerals.⁶⁹ But the Proponent relies upon mitigation measures which depend upon consultation and cooperation to “mitigate” social impacts. Even if it is accepted that, whatever the social impacts may be, they could be acceptably mitigated by the proposed mitigation

⁶⁸ In its Part C submission (TD698), at [709], the Proponent suggests that the following four ‘activities’ represent the research basis for the SEIA:

- a) a community values workshop in March 2018 – which was attended by approximately 50 people, whose relationships with the proposal are unknown (noting the Council and the Proponent itself identified particular community sectors and groups which should be consulted in respect of community values, but that it is unclear whether those sectors or groups were in fact consulted beyond an invitation to the March 2018 workshop: see SEIA PDF29, [2.5.1]);
- b) a community meeting in July 2018 – which appears to have been a meeting held by Kalbar to present findings in respect of radiation, air quality and or biodiversity studies (Attachment G, PDF33-34);
- c) interviews “with a number of landholders adjacent to the Project Area in December 2018” – noting this amounted to interviews with eight landholders conducted by unnamed “Coffey staff” asking unspecified questions (SEIA, PDF25; Attachment G, PDF26);
- d) The “community surveys conducted by the Proponent in 2017 and 2018” – which relate to a survey conducted by the Proponent itself, and a survey “to understand the level of awareness that community members... had about the project and the EES process [and] also sought to understand community members’ views on the project” (SEIA, PDF25 [2.1.2]).

No evidence called by anyone other than the Proponent could identify the relevance or suitability of those ‘activities’ to the SEIA.

⁶⁹ Of course, the Proponent and Appian appear to believe it has some role: for example, on Appian’s website, it notes that, “The Appian team is keenly aware of the continuous need for the social license to operate and ensures all projects and investment opportunities evaluated have a well-established and long term workable social license”: <<https://appiancapitaladvisory.com/esg/esg-overview/>> (accessed 21 July 2021). Submitters have otherwise identified the Proponent’s historical representations regarding the need for social licence: see e.g. TD643, PDF28, and the Proponent’s website <<https://www.fingerboardsproject.com.au/news/fingerboards-project-q-and-a-with-jozsef-patarica-ceo-kalbar-operations>> (accessed 21 July 2021).

measures (a finding which the Council considers is simply not open), the absence of a social licence would be manifestly detrimental to the mine operator's ability to ensure such mitigation is carried forward over the long term.

- 113 Fourth, the Proponent criticises the Council's comments in respect of the relevant mitigation measures for being "every bit as vague" as the mitigation measures themselves. While it is appropriate to concede that on the available information it is difficult to encapsulate a commitment to: (a) evaluating the effectiveness of these commitments; (b) reporting to the community; and (c) adjusting the commitments to deliver what is sought – that does not detract from the value of the proposition that this procedure should occur. Such a commitment is important to ensuring the measures proposed are effective.
- 114 The Proponent's response – that it sought to save time by prioritising other witnesses over one able to address social impact, but that the Council should have either committed further resources to assessing the environmental effects of the Project (or prioritised resources to provide for an assessment of social rather than other impacts) – is disingenuous and no excuse.
- 115 Of course, the Council's position in respect of social impact evidence does not only go to negative impacts.
- 116 Rather than inviting the IAC to conclude that the relevant effects will be acceptable, the Proponent says at [724]: "The reality is that there is no reason to assume that the social impacts of the Project cannot be adequately managed subject to appropriate monitoring and management conditions of the kind contemplated in the mitigation register".
- 117 This is not a forum for assumption.
- 118 And there is no basis to conclude the monitoring and management conditions "contemplated" in the mitigation register are appropriate.

H CONCLUSION

- 119 It is apparent that the Environment Effects Statement as advertised was incapable of forming a sound basis of assessment of the likely environmental effects of this Project. It contained significant errors and does not represent the Project the Proponent wishes to pursue.
- 120 Whatever recommendations it should determine to make in respect of the Project, the IAC's recommendations should commence with a clear statement recognising:
- (a) the inadequacy of the exhibited environmental effects statement for the purposes of assessing the environmental effects of the Project;
 - (b) the difficulties this approach has created for the IAC and submitters in terms of understanding what Project is proposed to be pursued and what the effects of the Project are; and
 - (c) the extent to which this approach has lead to wasted time expense and effort being expended by the Council, the community, and the IAC itself.
- 121 The manner in which this hearing has been conducted and the state of the evidence particularly as presented by the witnesses on behalf of the Proponent makes it apparent that the EES as exhibited was inadequate and incapable of being assessed as being likely to have acceptable environmental effects.
- 122 As these inadequacies have become apparent together with the apparent changes to the accommodate Proponent's own understanding of its Project, the Proponent has attempted to change and retrofit its proposal over the course of the hearing. These changes have:
- (a) drawn attention to the inadequacy of the advertised EES;
 - (b) raised more questions which have not been the subject of cross examination and which require consideration (for example, whether the centrifuges are capable of delivering the results initially asserted);

- (c) identified further deficiencies; and
- (d) resulted in a situation in which participants in the hearing were given no real opportunity to address the many changes introduced through technical notes seeking to retrospectively address deficiencies in the evidence presented.

123 The IAC is now asked to essentially accept and address a project description produced towards the end of the hearing process and to:

- (a) make its findings without hearing evidence on the actual proposal from either the Proponent's experts or other witnesses;
- (b) make the choice to accept the evidence of one expert over another where neither has addressed the final proposal;
- (c) rely on technical notes produced after all evidence has concluded in efforts to cure defects identified in the evidence presented by the Proponent after cross-examination was complete and/or in answer to questions from the IAC;⁷⁰ and
- (d) accept that the proposed project team will in some way address the deficiencies and produce an acceptable environmental outcome which ought to have been capable of detailed assessment by this IAC.

124 While the Council has attempted on a without prejudice basis to engage in this process and to the greatest extent possible with the mitigation measures proposed in the various circulated documents this should not be taken to suggest that these represent an acceptable outcome. Many matters remain unknown. Many are unclear. Many are inadequately addressed and many simply defer decision making to another time and to processes in which public participation is not possible (such as approval of the work plan for a now uncertain mining area) or should have been adequately addressed as part of this process.

⁷⁰ See paragraph 29(a) above.

- 125 The findings of the IAC should address this issue and conclude that there has been a failure to produce material in a timely manner so as to allow the environmental effects of the Project to be fully ventilated – in an integrated manner.
- 126 It is apparent that the EES has been many years in the making and produced significant concern for members of the community, but that appropriate work has not been explored in a timely way. For example, while the Council has not formed a view on the details of the proposed test pit, conceptually it seems a reasonable proposition that a test pit or investigation exercise would yield useful information about soil types, transmissivity, potentially dust generation, noise, and now the effectiveness and impacts of the proposed centrifuges.
- 127 it is also noted that no explanation has been provided as to why the centrifuge option was not explored in the options paper rather than requiring an inconvenient adjournment of this hearing and creating the uncertainty apparent as to its effectiveness.
- 128 The Proponent has had every opportunity to prepare and to present its case.
- 129 It if the Minister concludes that the likely impacts are unacceptable, then the minerals sands will remain for the benefits said to arise from the Project to be realised if and when the relevant approvals process is properly completed in the future.
- 130 Alternatively, if the IAC concludes that more is required to be done to assess the likely environmental impacts then there is no reason to avoid such a conclusion. This Project does not address a critical community need by providing services or answering a need for community infrastructure, and no urgency has been demonstrated.

131 Options available to the IAC, depending upon its conclusions, are to conclude:

- (a) That it is unable to conclude that the environmental effects of the Project are likely to be acceptable;
- (b) That it is unable to draw conclusions as to the environment effects of the Project due to the absence of important information and the inability of the IAC and the parties to properly and objectively assess this information; or
- (c) That if the Project were to be pursued, the Minister should call for a supplementary EES which attends to the Project in its current form and which clearly, accurately and comprehensively addresses all of the evaluation objectives and the gaps in information which remain.

Dated: 22 July 2021

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Instructed by Planology

For East Gippsland Shire Council