

J Eastman – Fingerboards IAC short closing July 23 2021

I thank the Panel for the opportunity to make a few closing comments. I could write a book about the problems that I think should be considered or addressed, but time is very limited so I will try to get through as much as I can as briefly as I can.

*Contrary to what Mr Morris contended about the EES process being one that decides how a project should proceed, the planning website says that it enables statutory decision-makers (Ministers, local government and statutory authorities) to make decisions about **whether a project with potentially significant environmental effects should proceed.***

And the Ministerial Guidelines say that the 'Minister's assessment may conclude that....

- a project would have an unacceptable level of environmental effects, or
- a project would need major modifications and/or further investigations in order to establish that an acceptable level of environmental outcomes would be achieved."

The Panel made it clear at the start that the obligations of experts and submitters are to the Panel to enable it to make an informed decision. It seems that that obligation doesn't seem to have extended to Kalbar as Mr Morris has repeatedly pointed out, including page 13 of their part C submission which states that they have **no responsibility for addressing issues identified** and **no obligation to tell the truth or to prove what they're saying** in a panel hearing. It leaves me wondering just who the community can rely on to protect its interests.

The **constant changes to the project** – primarily in response to matters raised by submitters - have made it incredibly difficult to keep up with and created an incredibly unfair and untenable situation. However, it is the type of thing we have come to expect from **Kalbar** who **continue to treat the community, the panel and all other submitters with contempt** as evidenced by the application for a mining licence that includes an extra 400 hectares.

SITUATIONS VACANT		
KALBAR OPERATIONS PTY LTD Notice of Application for a Mining Licence <i>Mineral Resources (Sustainable Development) Act 1990 - Section 15(5)</i> <i>Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019 - Regulation 22(1) and Schedule 1</i> Name and address of applicant(s): Kalbar Operations Pty Ltd, 48 Bailey Street, Bairnsdale 3875 Contact details of applicant (for map and other information requests): 03 5152 3130 contactus@fingerboardsproject.com.au Applicant's website: www.fingerboardsproject.com.au Details of the application: Application Number: MIN007636 Locality of the land to which the application relates: Glenaladale Approximate area of application: 2148.3Ha Date of application: 14 May 2021 Term of licence applied for: 20 years Outline of the proposed program of work: Definitive Feasibility Study Complete - Q2 2022 Workplan Development and Approval - Q2 2023 Commence Engineering and Design - Q3 2023 Commence on site construction - Q3 2024 Commence commissioning - Q3 2025	Objections or Comments: Any person may object or comment to a licence being granted. (Section 24, Mineral Resources (Sustainable Development) Act 1990). A person who objects or comments must a. put the objection or comment in writing; and b. include the grounds on which it is made. All objections or comments must be lodged within 21 days after the latest date on which the application was advertised and can be lodged online or posted to: The Minister for Resources c/ - Manager Licensing Earth Resources Regulation GPO Box 4509 Melbourne Victoria 3000 It is recommended that objections or comments are lodged online to ensure timely consideration: https://rram.force.com/ObjectionSubmission Enquiries can be made by writing to the Manager Licensing at the above address or by phoning the Earth Resources Information Centre on 1300 366 356. Other Statutory Requirements: a. Subject to other statutory requirements being satisfied, a mining licence, if granted, entitles the holder of the licence to carry out mining on the relevant land, explore for minerals, construct any facilities specified in the licence, and do anything else that is incidental to that mining.	b. Further information regarding the statutory requirements that must be complied with prior to work being undertaken on a licence, including landowner and occupier consent requirements, is available on the department's Community & Land Use page: https://earthresources.vic.gov.au/community-and-land-use <p>28% bigger than project area that was subject to the EES. How is that legal? What about the one square mile rule?</p> <p>Applied for in the middle of the EES process and accepted by ERR before panel has opportunity to consider evidence or make recommendation</p> <p>Subjecting community to four more years of hell while Kalbar works out what it is doing. Disgusting and grossly unfair</p> <p>And no doubt used to force compulsory acquisition of land for easements and to coerce people to accept inequitable offers</p>

Figure 1: Importunate application for mining licence that clearly demonstrates the contempt held for the process and the people

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There has been no opportunity for the community to ask questions of the proponent or their lawyer throughout the process. However, there are a few things I would like the panel to consider.

1. Throughout the process the panel and the proponent have been made aware of a number of **foreseeable, negative outcomes** from the project. Those cannot be 'unseen' and in fact they raise a number of other risks that are now foreseeable to the proponent and the panel, (and indeed ERR and other decision-makers). Two examples are the very high likelihood of deaths or serious injury resulting from the failure of the freshwater dam or the Perry Gully Tailings Storage Facility. What is the legal situation when the proponent, or decision-makers, know or should have known the risks from the project? It appears to me that the **basic principles relating to Duty of Care** very much **apply** and that **the reasonable man could foresee those deaths or injuries** and would expect someone to be held accountable. I would not imagine that bureaucrats and other decision-makers who choose to ignore or turn a blind eye to those risks would find themselves with any legal protection, and nor should they. The directors and executives of the mine would be in the same situation
2. Where is the **modelling of dam and TSF failure**? It is not so difficult to do. (The WGCMA website has some excellent short videos showing flooding of various creeks that could be used as a guide.) What is Kalbar hiding? Why are they so **determined not to show modelling of flood or failure**? Allowing Kalbar to wait until after the licence has been approved to do this modelling is rewarding very poor behaviour – as this modelling is likely to be the very thing that shows just how risky the mine is.
3. What **insurance** does Kalbar have, or would it be able to obtain, to cover not only the likelihood of damage to human health but also to local infrastructure and local businesses. What **reassurance of compensation** can be obtained by farmers whose pasture, crops and other products are contaminated by dust from the mine?
4. **What genuine penalties** are in place **to deter** the miner from **breaching** such things as air quality, noise contamination or even unplanned releases of contaminated water to the rivers? It appears far too often that **pitifully low fines** enable miners to breach conditions with impunity and given Kalbar's track record they would be all too willing to **take advantage of the weakness in legislative penalties**. In relation to breaches, what means are available to show that – intentionally or otherwise – Welchman and Delaire have produced **air quality and dust reports that significantly underestimate impacts on 'sensitive receptors'**. I refer particularly to the figures used by each for assessing **impacts of machines** (which are the cause of most dust and noise) used on the mine and note the figures the consultants used are more than three times lower than the figures Kalbar put forward in their Work Plan (17 compared to 54). Excesses were already evident in the original reports – the **impacts using the corrected numbers are frightening**. Why did Kalbar not see fit to correct the misapprehension of its consultants?

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Workplan Table 4.3 Page 4-19		Air Quality and Greenhouse Gas Report Table H2 Utilisation rates for equipment and machinery p212			
		Component	Numbers from % use	Equipment	
		Component		Machine	Model
		Construction		Generator	20 KW
		Topsoil	1	Tractor Scoop	650 hp
CAT14M	2	Overburden	1	Grader	12
		Ore	1	Loader	960
		Plantsite	1	Loader	960
CAT980	1	Tailings cake transport	1	Loader	?
		Overburden	1	Compactor	825H
Hitachi	5	Overburden	1	Excavator	Cat 8030
CAT773	2	Overburden	1	Water Truck	Cat 777
CAT777D	11	Overburden	2	Dump Truck	Cat885
		Plantsite	1	Dump Truck	Cat885
CATD10	7	Ore	2	Dozer	D10
CATD11	1			Dozer	D11
		Overburden	1	Dozer	D9
CAT657B	6	Overburden	1	Scraper dozer	D9
		Ore	1	Dozer	D9
		Rehab Contour	0	Dozer	D9
	13	Light Vehicles	1	Landcruiser Ute	Ute
	1			Agricultural Tractor	
	1			Bus	
	1			Pad foot roller	
	1			Boilermaker truck	
	1			All terrain crane	
	1			Service truck	
	54	TOTAL MACHINES	17		

Figure 2: Heavy machinery listed in workplan compared with that used by consultants in assessing dust and noise

- What evidence is there to support Kalbar’s contention the IAC should be proceed on the bases that the regulators will indeed do their job. We saw what happened at Douglas, we saw what has happened in Bendigo and we saw the ticking time bomb that is the Stawell tailings dam. These are all examples of misguided reliance on the regulators doing their job. I would add there, particular concerns I have about the management of radiation in Victoria. It appears from tabled document 40, (and from the lived experience of Pit 23 at Douglas) that DHHS readily ‘adjusts’ the standards it accepts in radiation licences in line with what a project is emitting (which appears to be in direct contravention of ARPANSA and IAEA guidelines). I also understood that no mine workers from the Douglas mine were ever given statements of radiation exposure after leaving the mine and that a similar situation exists in relation to workers at the Hamilton Mineral Processing Plant. What can we expect to see if the Fingerboards mine is approved – and what can the owners and workers at the Port of Geelong expect? (I notice that Kalbar are very keen to pass all responsibility for radiation to them – have they any idea what they are faced with). On that note, I heard Mr Morris say that he had been in contact with the Port of Portland to determine how the Port of Geelong might manage the shipping of the radioactive

HMC. I find it very odd that the option of the Port of Geelong was not introduced as a shipping option until well into the hearing process, not only has no consultation been done around it but that Kalbar are relying on Mr Morris and his contacts to develop a plan around it. Regardless, Mr Morris should be very much aware that the HMC exported by Iluka from the Port of Portland was not considered radioactive as the monazite had already been separated and returned to Pit 23. That is a very different situation to Kalbar's HMC.

6. In TN40 Kalbar put forward the prospect of an Independent Technical Reviewer to oversee the working of the mine. I can't see how that would be any different to the experience the people of Douglas had with an Iluka paid chair of an Environment Review Committee. (I.e., a master-servant relationship where issues were not addressed for fear of upsetting the paymaster.) The response from the Benambra community is that this was not an effective arrangement and did not address concerns that the community had about the failings of regulators. There were limitations on what the ITR could do, and it was in essence toothless, was never independent and so was never able to achieve what it was purportedly set up to. If the Stockman model is used by the proponent it will similarly fail to do what it promises for the community – but will no doubt do exactly what the miner intends. Therefore, as currently proposed, the ITR will not address community concerns about the failure of regulators. **The EPA stated in their closing submission that they are not bound by any findings of the ITR. An ITR is then ineffective and would have no role in assessing failures of the miner or the regulator because regulators can ignore it.**
7. Should, despite all that is common sense, this project be approved, and Kalbar sells it on – which appears to be their clear indication – what reassurance does the community have that any conditions associated with the environment effects process transfer with the ownership.
8. No-one from Kalbar, the Panel, or the community would think it is okay to try to live and work with noise from mining 24/7. We have heard that this would not be allowed in Western Australia. Why is it even being considered here? If Kalbar argues that is the only way to make the mine profitable then we have clear evidence that the financial viability of the mine is extremely tenuous.
9. As stated earlier, one of the most disturbing things throughout the process is Mr Morris's continued and strident refrain that his client has no 'onus of proof' for anything they say to the panel. This stance is obviously quite contrary to what the rest of us were led to believe were the expectations of the panel – in that our obligation is to the panel to enable it to make the right decision. In the end you have to wonder what you can believe. Small wonder I and so many others have had to continually go on fact checking tours to try to establish some semblance of truth. It they are happy to lie to a panel, what will they do to the community?
10. On that note, I'd like to comment on Kalbar's claims that they have spent \$50m on the mine to date. I've examined all its financial reports to date, I contend that that is an absolute untruth, completely unfounded and without evidence. If that money were spent it is very well hidden and I look forward to following up with ASIC and the Tax Department to ensure there is a full investigation into the matter. I myself presented some information on how Kalbar artificially inflated its reported equity through the issuing of 'non-cash' shares. And I note in their tabled document 736, the creativity continues in their inclusion of the proceeds and costs of offloading of the Hillgrove mine in Indonesia in FY 2012 in their \$50m explanation. That is absolute, misleading

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garbage. They did not purchase the exploration licence for the Fingerboards till FY 2013.

11. I have extracted information from all their relevant annual reports. It shows their profit and loss figures since they purchased the exploration licence show a total expenditure over that time of \$15 million to the end of June 2020. The majority of that has gone to share based payments and wages and salaries. Try as I might I have unsuccessfully combed the statements to find evidence of payments to consultants, etc. You can also notice, from the incongruity between the minimal interest payments, the lack of expenditure on the mine and their claims of > \$40m in shareholder equity that things are not adding up. I know there has been a frantic attempt to get some drilling done after the EES was released – I assume in relation to pressure from Appian but that goes nowhere near towards the other \$35million. (Why should anyone have any sympathy for them if they have already ordered machines or equipment before the mine is approved?)

	2013	2014	2015	2016	2017	2018	2019	2020	TOTALS
Income									
Research and development rebate							292,642		292,642
Interest income							21,711	6,359	28,070
Revenue	21,710	5,092	8,310	13,039	636,624	26,801			711,576
Other Income								271,145	271,145
TOTAL INCOME	21,710	5,092	8,310	13,039	636,624	26,801	314,353	277,504	1,303,433
Expenditure									0
Finance costs								-50,870	-50,870
Accounting Expenses			-10,900	-27,744	-68,922	-99,175	-224,503	-119,858	-551,102
Legal costs								-43,687	
Advertising Expenses		-2,743	-1,800						-4,543
Auditor's remuneration	-10,000	-11,000	-10,000	-11,000	-12,500				-54,500
Interest expense				-16,500	-43,000	-23,632	-154,139	-585,687	-822,958
Consultancy Fee									0
Depreciation	-897	-448	-875	-814	-8,222	-27,124	-46,828	-45,924	-131,132
Exploration Expenditure			-40,000						-40,000
Share based payments				-70,000	-80,000	-930,000	-3,425,038	-942,204	-5,447,242
Travelling expense		-12,128	-2,960	-76,063	-137,665	-226,043	-300,818	-119,255	-874,932
Wages and salaries					-122,211	-662,562	-452,654	-784,089	-2,021,516
Executive and Non-Executive Directors Fees						-687,356	-507,613	-615,605	-1,810,574
Transaction costs								-2,857,421	
Other expenses	-200,119	-30,182	-23,459	-96,751	-212,386	-558,535	-499,712	-538,149	-2,159,293
Loss on sale of fixed assets								-52	-52
TOTAL EXPENSES	-211,016	-56,501	-89,994	-298,872	-684,906	-3,187,626	-5,611,305	-6,702,801	-16,843,021
Profit (Loss) before income tax	-189,305	-51,409	-81,684	-285,833	-48,282	-3,160,825	-5,296,952	-6,425,297	-15,539,587
Income tax expense	-10,331	0	0	0	0	0	0	0	-10,331
Profit (Loss) for the year	-199,636	-51,409	-81,684	-285,833	-48,282	-3,187,626	-5,296,952	-6,425,297	-15,576,719

Figure 3: Profit and loss figures since Kalbar has 'owned' the project

12. As I said, I've been following them closely for years and am aware of the creativity they use in their figures but it beggars belief that they are pulling the \$50m expenditure trick and trying to garner IAC sympathy for the supposed risk they've taken in investing in the mine. Why aren't the IAC being asked to consider the many millions of dollars invested in local farms over many generations and many years. Why is this all about what Kalbar is putting forward? What about the horticulturalists. What about the continual improvements to the land around the Fingerboards that doesn't belong to Kalbar or to people they have done "\$deals" with. Those improvements are incremental, ongoing and sustainable. These people there are concerned about leaving the land better than they found it. They are concerned about intergenerational equity. They are already doing their bit to ameliorate and adjust to climate change. The mining project offers nothing but heartache and irreversible damage. The only ones to benefit will not be living in the area.
13. Water is another issue I would like to comment on. Mr Morris's opinion that 'water being a marketable commodity is a good thing' sends shudders down my spine. His

remarks promoting a ‘water to the deepest pocket’ system, similar to that which has seen the demise of the Murray Darling, are more than worrying and do not bode well for the future of agriculture and horticulture in our area. If the mine is approved, he has as good as said they will take what they want as they’ll be able to pay more than farmers, and that he (Kalbar) could not care less about agriculture or existing local farm businesses. (No doubt I was not the only person who retched when they heard him make that statement.)

14. Also of concern is his odd interpretation of the purpose of the Victorian Water Act. The Water Act talks about water being used for the good of Victorians. Kalbar is not a Victorian company. According to Kalbar Limited’s Share Register, around 40% of Kalbar Limited’s current shareholders are foreign. Only 60% of its shareholders are Australian. Only 4.5% are Victorian. Only 0.6% are from East Gippsland. (I might add, most of those ‘local’ shares were non-cash ‘rewards’ for services of one type or another.) Currently, according to the ASIC documentation Kalbar Limited is the main shareholder in Kalbar Operations with about 81% of KOPL shares and Appian the rest. (ASIC 7EBF36299). According to ASIC document if the mine is approved, Kalbar’s ownership of KOPL will reduce to between 46-59%, so less than 30% of KOPL shares will belong to Australians, less than 2.5 % will be Victorian and less than 0.3% from Gippsland. How is allowing Kalbar such huge amounts of water in the interest of Victorians?
15. There are many other issues associated with the mine with one of the main ones being whether the resource is viable. Rio Tinto and Metallica Minerals walked away for good reason. Kalbar has yet to put forward a convincing case about its claims of profitability. It is still quoting in-situ product that can’t be processed and quoting ludicrously low returns for viability. There are so many other mines in Victoria and Australia that are far better options, have bigger and better reserves (including rare earths), have better transport options, are far less environmentally damaging and far less complex to develop (and hence less costly) from an engineering perspective. That includes Iluka’s 1 million tonnes of monazite at Eneabba that has already been dug up and is ready to go. All these makes the Fingerboards mine a completely nonstrategic proposition, and one that if approved, will end up costing many, many millions of taxpayer dollars to establish and to continue to prop up, and will no doubt leave our community and the state with a massive rehabilitation bill that will never be recovered. If history repeats itself the Council will pay massively for the ‘honour’ of hosting the mine, the State could be constantly forking out to prop it up (and will no doubt once again give a mineral sands mine a ‘royalty holiday’ to try to make it a success, and there is no doubt there will never be any company tax paid. The only money to the Commonwealth will be from employee’s income tax.
16. In the end approval of the Fingerboards project is just rewarding laziness covered up by slick marketing and the ability to make and massage the ‘right’ connections, a contemptuous attitude to community and extremely bad behaviour. Kalbar reminds me of the worst of private school boys who refuse to do their homework but whose parents exercise their power and undue influence on the school board and community to get them over the line. Unfortunately, those are the type of entitled spoilt brats who cause nothing but grief when they are let loose on the world.¹

¹ <https://www.thebigsmoke.com.au/2020/09/24/our-privileged-private-schools-entitlement-protected-by-exclusion/>
<https://www.theage.com.au/national/victoria/male-privilege-continues-to-go-unquestioned-at-private-boys-schools-20191024-p533v4.html>

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