



# Planning Panels Victoria

Department of Environment, Land, Water and Planning

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As addressed

Dear Parties,

## **Fingerboards Mineral Sands Project: Ruling on Request to Record the Hearing**

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After the close of the Hearing on Wednesday 14 July 2021 submitter Mr Peter Vaughan from the Environmental Media Foundation made requests to record in the final days of the Hearing.

The attached document sets out the Inquiry and Advisory Committee's reasons for its decision.

Yours sincerely

**Nick Wimbush**

Chair, Inquiry and Advisory Committee

### **Privacy Statement**

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**Background**

1. The Fingerboards Mineral Sands Project Inquiry and Advisory Committee (IAC) is conducting Hearings into the environment effects of the Project. The Hearings are expected to run for 36 days (face to face and on videoconference).
2. At the IAC's direction the entire proceedings have been audio-only recorded and the recordings made available within approximately 36 hours on the publicly accessible YouTube website.
3. On the evening of Wednesday 14 July 2021, after Day 32 of the Hearings, and the morning of Thursday 15 July 2021 (Day 33 of the Hearings) submitter Mr Peter Vaughan from the Environmental Media Foundation sent a series of emails to the IAC seeking to record, in summary:
  - a. Nine individual submitters on Days 33 and 34
  - b. Closing submissions of:
    - i. Kalbar Operations Pty Ltd (the Proponent)
    - ii. East Gippsland Shire Council
    - iii. Mine Free Glenaladale
    - iv. Environment Protection Authority Victoria
  - c. The right of reply from the Proponent; and
  - d. Closing comments from the IAC Chair.
4. It was clarified with Mr Vaughan that the request was for video recording as well as audio.
5. The request was made on the basis that the recording may be used in a feature length documentary film being produced by the Environmental Media Foundation.
6. Mr Vaughan indicated that he did not have the written authorisation from those to be recorded but that this could be supplied.
7. The IAC took submissions on the request on the morning of 15 July 2021 (Day 33 of the Hearing).

**Submissions**

8. Mr Vaughan attended via video conference in support of the request and submitted, in summary, that:
  - a. He is producing a documentary on mining in Victoria with a focus on the Fingerboards Project
  - b. Mining regulation is topical and of great importance to the Victorian community
  - c. There is strong public interest in the project (over 900 submissions) but due to Covid there has been limited ability for submitters to engage with the process
  - d. Democracy requires transparency, including media coverage, and it is important that processes are open, fair and accountable
  - e. The agreement of submitters could be obtained, and it is reasonable to record legal Counsel
  - f. He indicated that the film has been finished for two months but that the issues around the extended Mining Licence application have changed the situation.
9. Ms Trescowthick for Mine Free Glenaladale and Ms McGuigan for the Environment Protection Authority did not object to the recording.

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10. Mr Wong for East Gippsland Shire Council did not object to Council's closing submission being recorded but did not offer an opinion on the recording of others.
  11. Mr Morris for the Proponent opposed the application to record on the grounds, in summary, that:
    - a. Whilst the Hearing must be conducted fairly and in public, the recording of video is not necessary for fairness or for the purposes of the IAC
    - b. Whilst in the past (pre-Covid) television cameras have been allowed in Panels and Inquiries, this is usually based on shooting footage without sound for a few minutes to show the Hearing setup
    - c. This is a formal Hearing and parties and the IAC have no control as to how the footage may be ultimately used
    - d. There is a risk that the recording may give rise to defamatory matters in future
    - e. It is not usual practice for Panel Hearings and Inquiries to be video recorded.

**Ruling**

12. The IAC denies the request to video record the Hearing.

**Reasons**

13. The IAC accepts Mr Vaughan's proposition that there is strong public interest in this matter. This is self-evident in the over 900 submissions received to the Environment Effects Statement (EES), said to be the highest number of submissions to a mining project in Victoria.
14. The significant number of those submitters wishing to speak to the IAC (over 140) and the consequent 36 days of Hearing also attests to this interest and concern.
15. The IAC also accepts the need for transparency, openness, and accountability in the process. The IAC notes that regional, and sometimes State, media has been covering the Project and Hearing in print, on television and on radio.<sup>1</sup>
16. The IAC also notes that audio recording of the entire Hearing has been undertaken and made available to the public for those not able to attend every session.
17. Whilst Covid restrictions have made the IAC process less desirable to some, this is no different to dozens of Panels and Inquiries that have been conducted since the start of the crisis in early 2020.
18. Attendance on video conference of between 30 and 70+ participants daily compares favourably with in-person attendance for other major projects; and the IAC has provided in-person opportunities in Bairnsdale for those who may not have been able to participate on videoconference.
19. The entire proceedings, including the face to face hearings at Bairnsdale, have been live streamed, increasing overall accessibility to the hearings, compared with historical requirements to attend the hearing venue in person.
20. The IAC thus does not consider the video recording as requested for use in a future documentary is necessary to accord natural justice and procedural fairness in this process, which is focused on the IAC developing its advice to the Minister for Planning on the environmental effects of the Project.

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<sup>1</sup> A request to record live audio of the Hearing by ABC Local Radio early in the Hearing was granted without objection.

21. Further, the IAC considers that authorising the video recording when it has no control over its future use, which may include editing, broadcast and internet distribution of the material, leaves open the possibility that the IAC could be seen to have authorised or endorsed the views expressed in the documentary. The IAC considers that this could bring into question the independence of the IAC and the EES process.
22. Of note, and not determinative of our decision, it is unfortunate that the request was made so late in proceedings.