



# Planning Panels Victoria

Department of Environment, Land, Water and Planning

23 December 2020

As addressed

Dear Submitter,

1 Spring Street  
Melbourne Victoria 3000  
GPO Box 2392  
Melbourne, Victoria 3001  
Telephone (03) 8392 5115

## **Directions from the Fingerboards Mineral Sands Project Inquiry and Advisory Committee (IAC)**

The Fingerboards Mineral Sands Project Inquiry and Advisory Committee (IAC) held a Directions Hearing for the above matter on 14 December 2020 by video link. A copy of the Committee's Directions and a distribution list for the exchange of expert evidence is attached.

There are a number of key dates relevant to this matter; a summary is provided in the table behind this letter. Please read the Directions in detail for the context to these dates.

The following key dates apply:

- Expert witness reports must be circulated to the IAC and all parties on the evidence distribution list by **midday Friday 29 January 2021**
- The Hearing will start at **10.00am Monday 15 February 2021**
- Other key dates are in the attached table.

Please find attached:

- IAC Directions
- Expert Evidence Distribution List

A Version 1 Timetable for Hearings will be circulated shortly.

Please note some IAC members made declarations which were circulated prior to the Directions Hearing (Tabled Document 15). No comments on, or objections to, the members have been received.

If you have questions, please contact Amy Selvaraj at Planning Panels Victoria at [Fingerboards.IAC@delwp.vic.gov.au](mailto:Fingerboards.IAC@delwp.vic.gov.au).

Yours sincerely,

**Nick Wimbush**

Chair, Inquiry and Advisory Committee

### Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Privacy and Data Protection Act 2014. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Privacy Coordinator, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002



## KEY DATES LEADING TO HEARING

Direction	Item	Key dates	Who to respond?
4	Communication of name, area of expertise and place of employment of expert witnesses to IAC	2.00pm on Thursday 7 January 2021	All parties calling evidence
29	Provide word versions draft PSA, Incorporated Document and EMF	2.00pm on Thursday 7 January 2021	Proponent
26	Identification of issues against submission number	2.00pm on Thursday 7 January 2021	Proponent
33	Draft site inspection itinerary, including locations proposed to be visited and maps	2.00pm on Thursday 7 January 2021	Proponent
34	Nominations for attendees and locations on the accompanied site visit	2.00pm on Thursday 7 January 2021	Groups and submitters
36	Advise IAC of other locations in broader region or other areas to visit	2.00pm on Thursday 7 January 2021	Submitters
2	Exchange of expert evidence	Midday (12.00pm) on Friday 29 January 2021	All parties calling evidence
30	'Track change' versions of the PSA, Incorporated Document and EMF outlining 'without prejudice' proposed amendments	Midday (12.00pm) on Friday 29 January 2021	EGSC
31	Accompanied site visit	Monday 1 February 2021	IAC and relevant Parties
54	Circulation of Part A submission	10.00am on Monday 8 February 2021	Proponent
28	Response to RFI	10.00am on Monday 8 February 2021	Proponent
27	Response to submissions (by issue)	10.00am on Monday 8 February 2021	Proponent
57	Opening submissions by submitters	Midday (12.00pm) on Thursday 11 February 2021	Submitters requesting an opening submission
5	Subject matter experts to meet <u>prior</u> to the Hearing	Meeting <u>prior</u> to Monday 15 February 2021	Subject matter experts in like areas of expertise being called by parties
39	Hearing commences	10.00am on Monday 15 February 2021	All
40	'Track change' versions of the PSA, Incorporated Document and EMF outlining proposed amendments, including consideration of EGSC amendments.	10.00am on Monday 15 February 2021	Proponent
58	Provide any additional written submissions and any other documents (or extracts of	One clear business day prior to nominated submission time as	Submitters presenting to IAC

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documents) to be relied upon during  
presentation

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presented in the Hearing  
Timetable

# Inquiry and Advisory Committee Directions

Directions from the Fingerboards Mineral Sands Project Inquiry and Advisory Committee (IAC)

All communication with the Inquiry and Advisory Committee (IAC) including filing of documents must be made through Planning Panels Victoria at [Fingerboards.IAC@delwp.vic.gov.au](mailto:Fingerboards.IAC@delwp.vic.gov.au)

If any party has issues supplying documents electronically, they should contact Planning Panels Victoria.

## Before the Hearing

### Expert witness reports

1. An expert witness report must:
  - a. comply with the Guide to Expert Evidence (<https://www.planning.vic.gov.au/panels-and-committees/planning-panel-guides>)
  - b. provide an up front summary of key issues, opinions and recommendations
  - c. not refer to any individual submitter by name – if necessary, submitters should be referred to by submission number
  - d. be provided to the IAC as an unlocked Word and PDF document and be less than 20MB in size.
2. Kalbar Operations Pty Ltd (the Proponent) and any Party proposing to have a witness appear for them is required to deliver their electronic Expert witness reports to the IAC and all parties on the Expert Evidence Distribution List by **midday (12.00pm), Friday 29 January 2021**. These will be uploaded to the Engage Victoria website within three business days to: <https://engage.vic.gov.au/fingerboards-IAC>

### Summary of evidence being called

3. The following evidence has been identified to the IAC to date:

Party	email address
Proponent	Air Quality, Noise, Transport, Ecology, Water (overview), Groundwater, Surface Water (hydrology), Surface Water (quality), Landform and sedimentation, Horticulture, Rehabilitation, Radiation and Human Health.
East Gippsland Shire Council (EGSC)	To be advised (potentially four experts)
Mine Free Glenaladale (MFG)	Soil science / rehabilitation, Hydrogeology, Ecology, Economics, Tailings and Radiation.

4. A number of other submitters indicated they may wish to call evidence. All parties must confirm by **2.00pm Thursday 7 January 2021** the name, business address and area of expertise of experts to be called via email to [Fingerboards.IAC@delwp.vic.gov.au](mailto:Fingerboards.IAC@delwp.vic.gov.au).

### Meeting of Expert Witnesses

5. Where more than one expert is being called in a particular field, expert witnesses are directed to meet to identify and discuss the key issues, facts and assumptions relevant to these issues in the period after circulation of statements and prior to the hearing commencing on Monday 15 February 2021. On a preliminary view of the evidence topics, the IAC considers expert meetings may be required in the following technical areas:

- a. Surface water – allocation and water quality
- b. Groundwater – allocation and groundwater quality
- c. Hydrology
- d. Air quality and dust
- e. Radiation
- f. Human Health
- g. Landform and rehabilitation
- h. Economics
- i. Ecology

There may be some overlap in the expert meetings between these subject areas.

6. Government agency submitter representatives with technical expertise in the expert areas should also be invited to attend the relevant meeting(s). In this case this may include:
  - a. EPA – water quality
  - b. DELWP Forest Fire and Regions – ecology
  - c. Southern Rural Water – water
  - d. Department of Health and Human Services - Radiation
7. The suggested expert meeting topics may be further broken down with the agreement of the parties who are calling the experts who participate in that meeting. Any such agreement should be communicated in writing to the IAC.
8. The arrangement and conduct of the meeting is at the discretion of the experts. It is normal practice for an expert appointed by the proponent to act as a chairperson for the expert meeting and coordinate arrangements and note taking, but other arrangements may be made by agreement between the experts. The chairperson may appoint someone from their organisation to assist with recording the discussion at the expert meeting and to help prepare the statement of outcomes of those discussions. This person must not offer any opinions on the substantive issues under discussion or engage in discussions in any way.
9. The expert meeting may be adjourned and reconvened as may be thought necessary by those participating.
10. The expert meeting is to be conducted in person, as far as practicable and in accordance with applicable COVID-safe requirements. Where a face-to-face meeting is not practicable, the participating experts may agree to hold the expert meeting by other means (e.g. teleconference, videoconference, etc).
11. If in person, the expert meeting is to be conducted at a mutually convenient location as agreed by the participating experts.
12. Advocates for parties, those instructing the experts and submitters in general must not attend the expert witness meeting.
13. A brief statement from each expert meeting should be prepared by the participating experts which highlights points of agreement and disagreement between the experts. The experts present for any significant discussion point should be noted and if some attendees are only there for part of the meeting.
14. The expert meeting statement should be concise, have numbered paragraphs and must identify the following matters as succinctly as possible:
  - a. The key issues identified by the participating experts, including any issues in relation to methodology, assumptions, results and interpretation of results.

- b. The facts and opinions agreed and not agreed in respect of each issue and the reasons for any disagreement.
  - c. Where relevant, the appropriate technical standards or criteria upon which the issue should be assessed by the IAC.
  - d. Any agreed changes to the relevant Environmental Management Framework (EMF) or other approval documentation or identification of where disagreement exists.
15. The agreed statement should not restate the evidence. Where appropriate, that evidence should be cross-referenced in the agreed statement.
  16. Where an issue has only been discussed between particular experts, only those experts who have participated in that discussion should comment on that issue. The statement should record which experts participated in discussion of what issues.
  17. The chairperson of the expert meeting should prepare a first draft of the agreed statement for circulation to the other participating experts at or shortly after the conclusion of each expert meeting. Those experts may suggest amendments to that document to ensure that it is a fair and accurate summary of what was discussed, agreed or not agreed at the expert meeting. Where agreement cannot be reached on a proposed change to the document, the fact of that disagreement and the reasons for it should be recorded.
  18. The statement should be signed by all participants and tabled on the first day of the Hearing or at least two clear business days prior to the first witness in the meeting being called.
  19. If any expert witness directed by the IAC to meet with any other expert is instructed not to reach agreement in respect of points of difference, the fact of such instructions must be reported in writing to the IAC by the expert witness.

#### **All Experts – Leave Required to Cross Examine**

20. Legally represented parties do not require leave to cross examine. However, in accordance with the Terms of Reference, the IAC may limit the time for cross examination where in its view this will not cause material detriment to any party or infringe natural justice.
21. Parties who are not legally represented seeking to cross examine experts must advise the IAC **two** clear business day prior to the evidence being called, notifying of the expert you wish to cross examine and your questions under clear topic headings. Questions should be e-mailed to [Fingerboards.IAC@delwp.vic.gov.au](mailto:Fingerboards.IAC@delwp.vic.gov.au) and the email must be clearly labelled with your name and submission number clearly marked (Submission numbers are included on the timetable).
22. Questions from Direction 21 may be put to experts by the IAC or parties; the IAC will regulate this in the Hearing.
23. In some circumstances, having reviewed the proposed questions, the IAC may limit the cross examination of experts. Matters that will be considered by the IAC include whether the topic areas have been sufficiently covered or the IAC proposes to ask questions on those topic areas. The IAC will advise, prior to the expert presenting evidence if you have not been given permission to cross examine an expert witness on particular topics or for particular questions.
24. No person may cross examine an expert if they have not read the expert's entire report, including an EES technical report adopted as part of the expert's evidence; and been present for the entirety of the expert's evidence in the Hearing.

#### **IAC expert**

25. The IAC has engaged one expert to give it advice on technical aspects of the proposed Project (Radiation). The written advice has been made publicly available.

## Submissions

26. The Proponent shall provide a summary of issues raised by submission (using submission number only) to the exhibited EES, Planning Scheme Amendment (**PSA**), draft Work Plan and draft Works Approval application (with cross-references to submission numbers by topic). This should be provided to the IAC no later than **2.00pm on Thursday 7 January 2021**. This will then be uploaded on the Engage Victoria website.
27. A response by the Proponent to the issues raised in submissions and where they are addressed in the EES documentation, PSA, Work Plan or Works Approval application should be provided to the IAC by **10.00am on Monday 8 February 2021**. This response will then be uploaded to the Engage Victoria website. This should include a response to any requests for further information made in submissions.

## Information to be supplied

28. At the Directions Hearing, the IAC tabled its Request for Further Information (RFI) from the Proponent. The Proponent has indicated it will respond to the RFI in its Part A submission, expert evidence and in an RFI response table. The RFI response table should be provided to the IAC by **10.00am on Monday 8 February 2021**.
29. The Proponent should provide an unlocked MS Word version of the draft PSA, Incorporated Document and EMF to the IAC and make it available on the Kalbar Fingerboards Mineral Sands project website by **2.00pm on Thursday 7 January 2021**.
30. East Gippsland Shire Council should provide 'track change' versions of the PSA, Incorporated Document and EMF outlining its 'without prejudice' proposed amendments to these documents by **midday (12.00pm) on Friday 29 January 2021** via email to [Fingerboards.IAC@delwp.vic.gov.au](mailto:Fingerboards.IAC@delwp.vic.gov.au). These will be uploaded to the Engage Victoria website within three business days at: <https://engage.vic.gov.au/fingerboards-IAC>

## Site visits

31. An accompanied site inspection will be held on **Monday 1 February 2021** focusing on the proposed mining area, major plant locations and the proximity of the proposed mine.
32. The site inspection is meant to provide an overview of key areas and issues for the project; not a detailed understanding of the whole project and every element. No submissions can be made on the inspection to the IAC; only matters of fact pointed out.
33. The Proponent should develop a draft itinerary for the site inspection that includes the locations proposed to be visited with appropriate maps and provide it to the IAC by **2.00pm on Thursday 7 January 2021** via email to [Fingerboards.IAC@delwp.vic.gov.au](mailto:Fingerboards.IAC@delwp.vic.gov.au).
34. The following should be provided to the IAC by **2.00pm on Thursday 7 January 2021** via email to [Fingerboards.IAC@delwp.vic.gov.au](mailto:Fingerboards.IAC@delwp.vic.gov.au):
  - a. Any suggested locations to be visited on the accompanied site inspection.
  - b. Nominations from individual submitters, submitter organisations or community groups for a representative to attend the site inspection, including name, email and phone contact details.
  - c. Nominations from the following parties (maximum two each) including names, email and phone contact details:
    - i. Minister for Planning (represented by Department of Environment, Land, Water and Planning (DELWP) Impact Assessment Unit)
    - ii. East Gippsland Shire Council
    - iii. Mine Free Glenaladale

- iv. EPA
  - v. Department of Transport
  - vi. DELWP - Fire Forest and Regions
  - vii. Gunaikurnai Land and Waters Aboriginal Corporation
35. The IAC will have final discretion on the locations to be visited. The IAC may, at its discretion, limit the locations to be visited and the number of persons attending the site inspection depending on timing, safety and transport considerations. The IAC may reschedule the site inspection if safety considerations warrant, including bushfire risk.
36. Submitters who wish the IAC to visit other locations such as individual properties, locations in the broader region or other areas should also advise these to the IAC at [Fingerboards.IAC@delwp.vic.gov.au](mailto:Fingerboards.IAC@delwp.vic.gov.au) by **2.00pm on Thursday 7 January 2021**. Inspections will be organised on an accompanied or unaccompanied basis as necessary.

### Document management

37. To assist the running and the circulation of documents to other parties during the hearing the Proponent must set up an online document sharing platform for tabled documents that each submitter who wishes to be heard at the hearing can:
- a. access through a link sent to them by Planning Panels Victoria
  - b. download documents
  - c. upload documents they wish to share at the hearing so they can be accessed by other parties and/or expert witnesses.
- Note: all documents tabled with the IAC during the hearing will also be made available to the public on the Engage Victoria website but there could be a slight delay.
38. The IAC will provide updated document lists throughout the process.

## At the Hearing

### Draft Planning Scheme Amendment and Environmental Management Framework

39. The Hearing will commence at **10.00am Monday 15 February 2021**.
40. At the commencement of the Hearing (10.00am Monday 15 February 2021), the Proponent should provide updated 'track changes' versions of the PSA, Incorporated Document and EMF if there are any suggested changes from those exhibited. This version should include the 'without prejudice' amendments requested by EGSC suitably referenced (refer Direction 30).
41. The Proponent must update the PSA, Incorporated Document and EMF at regular intervals through the Hearing with 'track changes' to reflect the matters discussed, indicating with a note whether the change has been made in response to submissions or evidence.
42. All submitters wishing to make submissions about the draft PSA, Incorporated Document or EMF should do so in the time allocated for their submission. Further input to these documents will be sought in the 'without prejudice' drafting session (see Direction 52).
43. All Parties making submissions about specific wording of the draft PSA, Incorporated Document and EMF should use the most up-to-date version of the draft PSA, Incorporated Document or EMF as uploaded onto the Engage Victoria website.



## Electronic Material

44. Except with the written consent of the IAC, all material filed with the IAC must be provided in electronic format (unlocked PDF) to [Fingerboards.IAC@delwp.vic.gov.au](mailto:Fingerboards.IAC@delwp.vic.gov.au)  
These will become public documents to be uploaded on the Engage Victoria website.
45. Files must not exceed 20MB in size. Documents larger than 20MB should be broken down into smaller files less than 20MB.
46. Written submissions are to be in Microsoft Word format.
47. Exemption from the requirements of Direction 44 can be made by contacting the IAC on [Fingerboards.IAC@delwp.vic.gov.au](mailto:Fingerboards.IAC@delwp.vic.gov.au) at least two business days in advance of the time that the material is due to be filed.
48. Submitters who have obtained an exemption should deliver hard copy submissions to the IAC for it to scan and upload prior to the day upon which they are making their submission.

## Order of Proceedings

49. The following parties will be invited to make brief opening submissions on Day 1 of the Hearing:
  - a. Minister for Planning
  - b. EPA
  - c. East Gippsland Shire Council (EGSC)
  - d. Mine Free Glenaladale (MFG)
  - e. Other Parties who are not legally represented (by request).
50. Following the opening submissions a traditional 'case based' approach led by the Proponent, then agencies and Council organisations and groups then individual submitters will be followed.
51. The Proponent will be given the opportunity to make a reply and closing submission. Brief rights of reply may be offered to the parties in Direction 49 at the discretion of the IAC. These must be focused on outstanding matters from the Hearing.
52. Time at the end of the Hearing will be allocated for a "without prejudice" discussion of the draft PSA, Incorporated Document and EMF.

## Recording

53. An audio recording of each day of the Hearing will be made and a link to the recording will be provided on the Engage Victoria website within 48 hours.

## Written submissions at the Hearing

54. The Proponent must provide its Part A written submission (and a copy of any documents or extracts of documents that the Proponent intends to rely upon which have not already been provided to the IAC) to the IAC for uploading on the Engage Victoria website by **10.00am Monday 8 February 2021**.
55. The Proponent's Part A submission must address the IAC's Terms of Reference including:
  - a. A summary of and initial response to submissions (Direction 27)
  - b. A response to the IAC's and information requests agreed to at the Directions Hearing as far as practicable (Direction 28).
  - c. An outline of the background, development and key elements of the Project and EES.

56. This Part A submission will be taken as read at the Hearing subject to any questions of clarification from the IAC.
57. ESGC, MFG, EPA and others as agreed must provide a brief written opening submission to the IAC for uploading on the Engage Victoria website by **midday (12.00pm) on Thursday 11 February 2021** if they wish to make such a submission.
58. All submitters must provide any additional written submissions and any other documents (or extracts of documents) to be relied upon, to the IAC at [Fingerboards.IAC@delwp.vic.gov.au](mailto:Fingerboards.IAC@delwp.vic.gov.au) **one clear business day prior to their nominated submission time as presented in the Hearing timetable**. All material must be clearly labelled (including appendices), with the submission number clearly marked (Submission numbers are included on the timetable).

All submissions will be loaded on the Engage Victoria website as soon as possible after they are received: <https://engage.vic.gov.au/fingerboards-IAC>.

# Evidence Distribution List

Directions from the Fingerboards Mineral Sands Project Inquiry and Advisory Committee (IAC)

Use this list to circulate expert witness statements. It must not be used for any other purpose.

## Electronic documents

Party	email address
<b>Inquiry and Advisory Committee</b>	<a href="mailto:Fingerboards.IAC@delwp.vic.gov.au">Fingerboards.IAC@delwp.vic.gov.au</a>
<b>Environment Protection Authority</b>	[REDACTED] [REDACTED] [REDACTED]
<b>DELWP Impact Assessment Unit</b>	[REDACTED]
<b>Proponent - Kalbar Operations Pty Ltd (Kalbar)</b>	[REDACTED] [REDACTED]
<b>East Gippsland Shire Council</b>	[REDACTED]
<b>Mine Free Glenaladale</b>	[REDACTED] [REDACTED] [REDACTED]