



Mr Nick Wimbush
Chair of the Fingerboards Mineral Sands Project Inquiry and Advisory Committee
Planning Panels Victoria

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

Dear Mr Wimbush

Fingerboards Mineral Sands Project Environment Effects Statement (EES) – EPA’s comments on the Proponent’s latest draft documents – On the papers drafting pursuant to IAC Directions dated 18 June 2021

In accordance with the IAC’s Directions dated 18 June 2021, please find attached the EPA’s written comments to the relevant draft documents in ‘track changes’. For ease of reference, EPA has highlighted in yellow the parts of the documents to which it has made deletions, additions, amendments or comment.

In addition, the EPA provides the following overarching comments, which apply to all of the documents, in relation to the *Environment Protection Act 2017* (**New EP Act**).

This Project must be assessed against, and will need to comply with, the requirements of the New EP Act, the *Mineral Resources (Sustainable Development) Act 1990* (**MRSDA**) and their associated regulatory frameworks.

Compliance with the Project documents, such as the mine Work Plan and the Incorporated Document will be necessary but alone is not sufficient to discharge the General Environmental Duty (**GED**) in the New EP Act.

EPA submitted that all relevant documentation needs to be updated to reflect the new environment protection framework that applies from 1 July 2021. EPA noted that it is not the EPA’s responsibility to correct the Proponent’s documentation and to ensure that it accurately reflects the new legislative regime.

In the current version of draft documentation, the Proponent has made various amendments to replace references to the *Environment Protection Act 1970* (**EP Act 1970**) and associated framework with the New EP Act and associated framework (and removed any reference to ‘transitioning’ in the Incorporated Document).

However, in EPA’s view, the Proponent has used documents and plans which were developed under the EP Act 1970 and amended those documents by changing the ‘references’ (ie updating references to legislation and guidelines). This task of replacing references is, in EPA’s view, not adequate. Rather the documentation needs to be amended to give effect to the intent of the New EP Act and the general environmental duty (**GED**), as well as to reflect the existing objectives of the MRSDA.

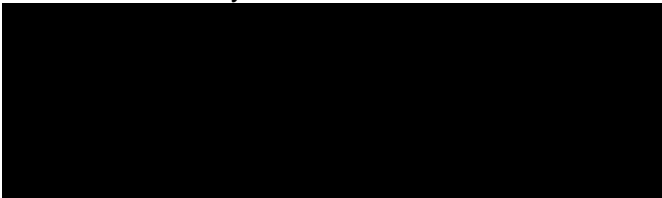
For example:

- The ‘objectives’ and ‘acceptance criteria’ for the dust, noise and water risk treatment plans need to meet the objectives of the MRSDA and be able to comply with GED. That is to eliminate or minimise the risk of harm to human health or the environment from pollution or waste to the extent reasonably

practicable (this has been drafted in the water risk treatment plan, but not the noise or dust risk treatment plans)

- It needs to be made clear that the objectives in the New EP Act, Environment Reference Standard (ERS) or other guidance are not compliance standards to pollute up to (language in the mitigation measures such as “apply dust reduction measures to achieve the PM10 objective...” and “contingency procedures will be developed and implemented if noise emissions during construction exceed relevant guideline values” should be amended).
- The focus needs to move away from compliance, and towards prevention (for example the objective of monitoring as described in the preamble to Table 9-1 in the risk treatment plans is not solely for ensuring compliance with acceptance criteria but should be to ensure reactive management which can enable minimising the risk of harm to human health or the environment to the extent reasonably practicable).
- The focus needs to be on demonstrating that the mitigation measures, and any other measures reasonably practicable, have been implemented and are effective (for example ‘performance measures’ which merely show compliance with ‘standards’ are not sufficient, they need to show that the mitigation measures have minimised the risk of harm to human health or the environment to the extent reasonably practicable)
- In the case of noise, Kalbar’s evidence was that it had not considered the changes introduced by the new legislation (for example, the changes to the definition of “noise sensitive areas” under the regulations nor the new environmental value in the ERS for human tranquillity and enjoyment outdoors of natural areas). Additionally, Kalbar seem to have misunderstood that the obligations in the New EP Act regarding the GED and unreasonable noise (sections 3, 25 and 166) apply to all noise. The proposed documents do not accommodate this sufficiently, and until that work is undertaken it cannot be known what extent of change to the relevant project documentation will be required.

Yours sincerely



Con Lolis
Director Development & Infrastructure
Regulatory Policy & Permissioning

12 July 2021