



# Planning Panels Victoria

Department of Environment, Land, Water and Planning

8 February 2021

As addressed

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

Dear Party

## **Fingerboards Mineral Sands Project Inquiry and Advisory Committee (IAC) – Adjournment of Hearing and second Directions Hearing**

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As advised on Friday 5 February 2021, the Inquiry and Advisory Committee (IAC) has adjourned the Hearing to a date to be determined. A second Directions Hearing will be held by videoconference using the Zoom videoconference platform at:

**10.00am, Monday 15 February 2021**

Parties and interested observers can access the second Directions Hearing using the following link and details below:

<https://us02web.zoom.us/j/82787404379?pwd=OG84UkhldzgyeVRjRzNUQ2pVdURsZz09>

**Second Directions Hearing Webinar ID:** 827 8740 4379

**Second Directions Hearing Webinar Password:** 267576

Full details on joining are shown in **Attachment 1** below.

### **Background to Adjournment**

In correspondence dated 5 February 2021 (Document 101), Mine Free Glenaladale (MFG) sought an adjournment to the Hearing. In essence the request goes to the fair consideration of new project elements (the potential use of centrifuges) and the associated technical material and implications (if any) for environmental effects. As MFG put it:

*In circumstances where significant changes to the project (and its attendant potential environmental effects) continue to be proposed, our client considers that both the IAC's terms of reference and the fair and efficient conduct of the hearing require the hearing to be adjourned. Community organisations like our client should be given a proper and fair opportunity to understand and respond to these material changes. This is especially so given the potentially significant consequences of the project for our client.*

MFG specifically requested an adjournment to allow:

- a. Kalbar to finalise its project proposal and properly assess the impacts of the project;
- b. [MFG] and the community time to properly assess the new information;
- c. Any further public submissions on the subject matter of the new information; and
- d. The preparation of additional and or supplementary witness statements in order to respond to the new information.

East Gippsland Shire Council (Council) supported the adjournment request (Document 103) whilst acknowledging that it will have cost and time implications. They noted:

#### **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



*Council considers that the hearing is a critical step in the process where all parties can present their concerns. In this context, it is essential that all parties, including the community and those who had not indicated an intention to call evidence on the basis of the Project in the form reflected in the exhibited EES, have had and believe they have had a fair opportunity to prepare and present their respective cases.*

Council pointed out several difficulties in the process to date including, in summary:

- Two new witnesses were apparently briefed in September last year and yet notification to call them was only provided by the Proponent on 31 January 2021
- Two other witnesses were briefed in mid January and notification to call them was not provided by the Proponent until two weeks later
- Lack of opportunity to respond to the late notification of new witnesses
- The volume of material still to be circulated including response to the Request for Further Information (RFI) and 17 witness statement addendums only five days from the commencement of the scheduled hearing
- It is evident that Kalbar's own witnesses are seeking time to consider changes

They concluded:

*For these reasons, and despite the significant inconvenience and continuing questions as to the conduct of the hearing, Council considers that MFG's request is reasonable in the circumstances. Recognising the importance of observing the rules of natural justice, it is essential that the community, including MFG, are given a fair and reasonable opportunity to consider the voluminous and complex new material now filed and foreshadowed by the proponent.*

Kalbar Operations Pty Ltd (the Proponent) (Document 102) provided an overview of the material they are expecting to circulate on Monday 8 February 2021 in relation to the centrifuge (Directions 59) and Directions 27, 28 and 54. In response to the adjournment request they submitted:

*Our client notes and accepts the IAC's remarks last Friday about the length of time taken in preparing the Fingerboards EES and the inconvenience an adjournment would cause to stakeholders and community members. We respectfully submit that while this is a very important consideration, it can never be a substitute for affording procedural fairness to all of the parties to the hearing.*

*Our client will be prepared to proceed with the hearing on 15 February 2021. It does not accept at present that to proceed would necessarily constitute a denial of procedural fairness to MFG or the other parties to the hearing, but accepts that this is ultimately a matter for the IAC.*

### **IAC Response**

As indicated in previous correspondence (Document 66), the IAC is acutely aware of the need to provide procedural fairness to parties and the consideration of a potentially significant new element in the project must not be treated lightly.

Having reviewed the material still to come in relation to the centrifuge issue (see in particular Document 102) and considered the detailed concerns of the represented parties, the IAC is of the view that an adjournment should be granted. In essence this is based on:

- A better understanding since a week ago of the amount of new technical material expected in relation to the centrifuges including significant new evidence
- The difficulty of absorbing and understanding this material in the week before, and during, the Hearing
- The difficulty for submitters to provide additional submissions and/or evidence in response to the new material whilst preparing for, and then attending the Hearing

- The difficulty for the IAC to properly consider the material prior to commencing a Hearing on 15 February 2021.

### Directions Hearing

The purpose of the second Directions Hearing will be to set out a new timeframe for the Hearing to commence, including:

- the circulation of evidence and in what form (original reports plus addenda, revised original reports etc...)
- additional submissions on the centrifuge material from submitters (the IAC is not proposing additional broad notice given the awareness of the project in the community)
- scheduling of conclaves
- a hearing start date
- general hearing scheduling of the represented parties (for example it appears the Proponent has nine days to call 17 witnesses; this appears optimistic)
- other matters as necessary.

With the above in mind the IAC suggests the following draft program for discussion on Monday.

Date	Action	Comment
Monday 8 February 2021	Circulation by the Proponent of: <ul style="list-style-type: none"> <li>• Response to submissions (by issue) (Direction 27)</li> <li>• Response to RFI (Direction 28)</li> <li>• Expert evidence and other material on centrifuges (Direction 59)</li> </ul>	
Monday 15 February 2021	Directions Hearing	
Friday 19 February 2021	Council and MFG circulate evidence in relation to centrifuge issue	
Friday 26 February 2021	Additional submissions from existing submitters only (whether appearing at the hearing or not) would close.	IAC would receive submissions. Note that parties' expert witnesses will not have seen these submissions. Leave will be granted to respond to them as necessary.
Monday 22 February 2021 – Friday 5 March 2021	Conclaves scheduled to be held prior to hearing commencing	Conclave topics to be discussed at the Directions Hearing.
No later than Tuesday 9 March 2021	Hearing commences	Combination of videoconference and face to face hearing as previously scheduled. General order of timetable V1 to be retained.

### **The IAC directs:**

- Prior to the Directions Hearing, the Proponent, Council and Mine Free Glenaladale meet to consider:
  - The form of expert evidence to be provided; whether it should be revised original statements (in relation to implications of the centrifuge only) in track changes (the IAC's preferred approach); the use of addenda or another approach. This is not an opportunity to change or provide additional evidence on non-centrifuge matters.
  - The topic areas where conclaves will occur and who will attend; noting the IAC has directed they must occur.
  - The general program above and its workability.
  - Revised times for case presentation (if necessary).
- The parties must report back on the outcome of these discussions **on Monday 15 February 2021**.

Comments from other parties as necessary will be taken during the Directions Hearing. The IAC does not consider that Counsel availability of itself should be a driver to depart from the above or a similar program.

### **Centrifuges**

The IAC notes the possible introduction of a significant new element into the project which was not included in the project referral to the Minister for Planning or exhibited with the EES endorsed by the Minister for Planning for public exhibition.

The implications for environment effects are not yet understood by the IAC and may be both positive and negative in terms of impact amelioration. **The IAC directs** that the Proponent provide a written submission to the IAC and parties by **Midday (12.00pm) on Friday 12 February 2021** outlining:

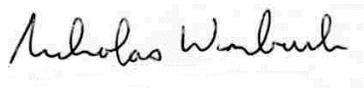
- Whether the introduction of this new element raises any significant legal issues in terms of the EES process and the work of the IAC, with reference to the *Environment Effects Act 1978*, the *Environment Protection and Biodiversity Act 1999*, the *Environment Protection Act 2017* and the IAC's terms of reference.
- Is the concept of *transformation* in planning scheme amendments relevant in this case to the draft PSA.
- Whether there are any other significant project changes being countenanced that the IAC and submitters should be aware of.

### **Other Directions**

Following the Directions Hearing the IAC will issue a new consolidated set of new directions. These will replace the earlier directions issued by the IAC on 23 December 2020 and 29 January 2021. In the interim, directions requiring, for example, the circulation of submissions this week, are set aside pending the setting of new dates.

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

# Attachment 1

## Joining the Directions Hearing by Zoom

Parties and interested observers can access the second Directions Hearing using the following link and details below:

<https://us02web.zoom.us/j/82787404379?pwd=OG84UkhldzgyeVRjRzNUQ2pVdURsZz09>

**Second Directions Hearing Webinar ID:** 827 8740 4379

**Second Directions Hearing Webinar Password:** 267576

To dial into the second Directions Hearing by **phone**, find your relevant dial-in location number based on your current location and access the Directions Hearing using the **same Webinar ID** and **password above**.

If you're dialling in from Victoria, +61 3 7018 2005 is the recommended number.

Note the dial in location phone numbers for other Australian locations are provided at the end of this attachment.

To assist you in accessing and using Zoom, the [\*Your Guide to Using Zoom – How to participate in the online Hearing for the Fingerboards Project Environment Effects Statement\*](#) contains more detailed information on how to join the second Directions Hearing, and what to do during the Directions Hearing. A walkthrough video on how to access and use Zoom is also available here: <https://www.fingerboardsproject.com.au/ppv/video-guide>.

When you join the videoconference can you please use your first name and last name so the IAC can easily identify you. If you are representing an organisation, include the organisation name after your name - for example, Nick Wimbush, Chair IAC.

All people who join the Directions Hearing will be placed in an attendee's room where you will be able to see the IAC members, but your camera will be defaulted to off and your microphone on mute. As directed by the IAC some parties will be moved to the presenter's room as required during the second Directions Hearing.

Should attendees need to raise something with the IAC like a question as outlined in the guidance material, you can either click the chat function and send a message advising that you have a question or use the raise your hand function. The IAC will be alerted to this and will let you know when you can speak or will respond verbally at the appropriate time.

The Zoom second Directions Hearing link will be published on the Engage Victoria website and will be accessible by the public who seek to observe the proceedings.

The IAC intends to record the second Directions Hearing (audio only). Participants are prohibited from recording any part of the second Directions Hearing in any form without permission from the IAC.

### Technical Assistance

If you require technical assistance joining or need support during the second Directions Hearing, please contact the Proponent's dedicated phone line on 1800 791 396. This phone number will be active during all business hours (Monday to Friday 9am to 5pm) during the second Directions Hearing.

If parties are not able to receive the technical support they require, they are to contact Planning Panels Victoria on [Fingerboards.IAC@delwp.vic.gov.au](mailto:Fingerboards.IAC@delwp.vic.gov.au) to raise any issues.

## Joining the Directions Hearing by Telephone

If you do not have access to a computer or mobile device or you cannot connect to a network for video and computer audio, you can join and participate in the Directions Hearing by telephone.

To dial into the Directions Hearing by **phone**, find your relevant dial-in location number based on your current location and access the Directions Hearing using the following log in details:

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The dial in location numbers for other Australian locations are:

+61 8 7150 1149

+61 2 8015 6011

+61 7 3185 3730