



# Planning Panels Victoria

Department of Environment, Land, Water and Planning

19 February 2021

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) – Consolidated version**

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The Fingerboards Mineral Sands Project Inquiry and Advisory Committee (IAC) held a second Directions Hearing for the above matter on 15 February 2021 by video link. A copy of the Committee's consolidated Directions is attached.

**These Directions are numbered to be a stand-alone consolidated set. If earlier Directions are referred to they should be prefaced with the date issued (see Documents 22 and 66).**

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

Please note the following:

- A Directions Hearing is scheduled for **10.00am on Wednesday 31 March 2021**. The purpose of this Directions Hearing will be to finalise any outstanding arrangements leading up to the hearing (note this will only be held if required by the IAC).
- The Hearing will start at **10.00am on Monday 3 May 2021**

A Version 2 Timetable for the Hearing will be circulated in the coming weeks.

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

Note all information is to be provided to the IAC by midday (12.00pm) on the date identified

Direction	Item	Key dates	Who to respond?
58	Proponent to advise on status of centrifuge within project	26 February 2021	Proponent
46	Parties calling evidence to advise on amended time request if necessary	26 February 2021	Proponent, EGSC, MFG
3	EGSC and MFG to advise if they are calling centrifuge and other evidence in relation to Proponents four new witnesses	26 February 2021	EGSC, MFG
31	Updated advice on outstanding information	26 February 2021	Proponent
59	Responses to Document 141 due	5 March 2021	Any submitter who wishes to respond to legal issues
4	Evidence in Direction 3, on centrifuges and in response to four additional expert witnesses to be circulated (if any)	12 March 2021	EGSC, MFG
5	Supplementary evidence statement on Ecology	12 March 2021	EGSC
29	Response to further RFI on centrifuges	12 March 2021	Proponent
60	Reply submission to Document 141 responses	12 March 2021	Proponent
64	Updated Tabled Document 25 (EES Summary)	12 March 2021	Proponent
32	Supplementary submission on centrifuges due	26 March 2021	Existing submitters
-	Third Directions Hearing (if required)	31 March 2021	All
21	Expert meetings to be completed and statements circulated	19 April 2021	Proponent, EGSC, MFG, relevant Government agencies
30	Revised planning documentation	19 April 2021	EGSC
7	Proponent to provide order of witnesses	19 April 2021	Proponent
37	Revised planning documentation	26 April 2021	Proponent
53	Part A submission circulated	26 April 2021	Proponent
56	Opening submissions circulated	29 April 2021	EGSC, MFG, EPA others as agreed
36	Hearing commences	3 May 2021	All

# Inquiry and Advisory Committee Directions

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

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.

### Summary of evidence being called

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

Party	email address
Kalbar Operations Pty Ltd (Proponent)	Air Quality, Noise, Traffic and Transport, Ecology, Water (overview), Groundwater, Surface Water (hydrology), Surface Water (quality), Erosion and sedimentation, Horticulture, Rehabilitation, Radiation, Human Health, Water Balance issues, Water impact assessment, Planning and Centrifuges
East Gippsland Shire Council (EGSC)	Traffic and Transport, Ecology, Surface Water and Groundwater
Mine Free Glenaladale (MFG)	Soil science / rehabilitation, Hydrogeology, Ecology, Economics, Tailings, Health and Radiation

3. EGSC and MFG indicated they may still wish to call evidence on centrifuges and in response to the Proponent's four additional expert witnesses on Water balance issues; Water impact assessments; Groundwater (Peer review of groundwater modelling - groundwater impact assessment App 006); and Planning.

EGSC and MFG must advise the IAC and all parties on the Expert Evidence Distribution List by **midday (12.00pm) on Friday 26 February 2021** whether they are calling evidence in these fields and the name and business address of such experts.

4. If evidence is being called by EGSC or MFG on centrifuges and in response to the Proponent's four additional expert witnesses as per Direction 3, the electronic expert evidence must be circulated to the IAC and all parties on the Expert Evidence Distribution List by **midday (12.00pm) on Friday 12 March 2021**.
5. EGSC indicated at the second Directions Hearing they wish to provide a supplementary expert evidence statement on Ecology from Mr Lane. This supplementary statement should be

provided to the IAC and all parties on the Expert Evidence Distribution List no later than **midday (12.00pm) on Friday 12 March 2021.**

6. No additional evidence beyond that discussed in the above directions is to be called without specific leave from the IAC.
7. The Proponent must provide its order of witnesses to the IAC and parties on the evidence distribution list by **midday (12.00pm) on Monday 19 April 2021.**

#### **Meeting of Expert Witnesses**

8. 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 MFG and EGSC statements under Direction 4 and 5 and prior to the expert meeting statements being due on Monday 19 April 2021. Following the discussion at the Directions Hearing the IAC considers expert meetings are required in the following technical areas:
  - a. Water – surface water, groundwater and hydrogeology – quality, quantity, water balance, water impact (note this meeting or meetings should occur prior to the ecology meeting and the outputs provided to the ecology meeting)
  - b. Radiation and human health
  - c. Ecology
  - d. Traffic and transport
  - e. Rehabilitation and erosion/sedimentation
  - f. Centrifuges; subject to EGSC and MFG calling evidence in centrifuges.
9. 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
  - e. Department of Transport – traffic and transport
  - f. Earth Resources Regulation - centrifuges
10. The 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.
11. 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 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.
12. The expert meeting may be adjourned and reconvened as may be thought necessary by those participating.
13. 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).

14. If in person, the expert meeting is to be conducted at a mutually convenient location as agreed by the participating experts.
15. Advocates for parties, those instructing the experts and submitters in general must not attend the expert witness meeting.
16. 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.

Where joint subject-matter expert meetings are held, separate expert meeting statements must be provided for each discipline (for example, a separate expert meeting statement for each of groundwater and surface water as a minimum should be provided in relation to any joint water expert meeting held).

17. 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.
18. The expert meeting statement should not restate the evidence. Where appropriate, that evidence should be cross-referenced in the expert meeting statement.
19. 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 expert meeting statement should record which experts participated in discussion of what issues.
20. The Chairperson of the expert meeting should prepare a first draft of the agreed expert meeting 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 in the expert meeting statement.
21. Each expert meeting statement should be signed by all participants and be provided to the IAC and all parties calling evidence on the distribution list no later than **midday (12.00pm) on Monday 19 April 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>.
22. 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

23. 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.
24. 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).
25. Questions from Direction 24 may be put to experts by the IAC or parties; the IAC will regulate this in the Hearing.
26. 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.
27. 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

28. 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 (Tabled Document 9).

## Information to be supplied

29. The IAC may provide a further RFI to the Proponent in the week commencing 22 February 2021 in relation to information already provided on the use of centrifuges. If an RFI is submitted, a response from the Proponent to any further RFI will be required by **midday (12.00pm) on Friday 12 March 2021**.
30. East Gippsland Shire Council should provide a revised 'track changes' versions of the PSA, Incorporated Document and EMF outlining its 'without prejudice' proposed amendments to these documents, including consideration of the potential use of centrifuges, by **midday (12.00pm) on Monday 19 April 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>
31. The Proponent must provide by **midday (12.00pm) on Friday 26 February 2021** a list of outstanding information and the anticipated date of provision to the IAC and parties including:
  - a. From Direction 59 of 29 January 2021
  - b. Technical notes 4, 7 and 10
  - c. Draft revised workplan
  - d. Other material from Directions or as foreshadowed by Proponent as relevant.

## Written submissions on the centrifuge

32. Existing submitters (whether appearing at the Hearing or not) who wish to provide a supplementary submission on the additional information provided on the use of centrifuges should provide it to the IAC at [Fingerboards.IAC@delwp.vic.gov.au](mailto:Fingerboards.IAC@delwp.vic.gov.au) by **midday (12.00pm) on Friday 26 March 2021**. Any submissions must:

- a. Focus on the use of centrifuges and not update or amend previous submissions on other matters
- b. Be clearly labelled. Put your existing submission number and **Supplementary submission – Centrifuges** in the subject line.

*Note: these supplementary submissions will be uploaded and made available on the Engage Victoria website following Friday 26 March. If your supplementary submission is more than 500 words, you may like to attach it as a separate unlocked document (word or pdf) to your email (you should not include any other personal information in the body of your supplementary submission, such as physical address, email address and phone details, unless that information can be made publicly available). Individual files must be less than 20 MB in size.*

#### **Site visits**

33. Further site visits will be arranged between now and the Hearing commencement on an accompanied and unaccompanied basis as necessary. The IAC will contact landowners/parties to make arrangements.

#### **Document management**

34. 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.*

35. The IAC will provide updated document lists throughout the process.

### **At the Hearing**

#### **Draft Planning Scheme Amendment and Environmental Management Framework**

36. The Hearing will commence at **10.00am Monday 3 May 2021**.
37. By no later than **midday (12.00pm) on Monday 26 April 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).
38. 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.
39. 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.
40. 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

41. 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.
42. Files must not exceed 20MB in size. Documents larger than 20MB should be broken down into smaller files less than 20MB.
43. Written submissions are to be in Microsoft Word format.
44. Exemption from the requirements of Direction 41 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.
45. 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.

## Hearing Timetable

46. Parties calling evidence must provide, if necessary, a revised realistic estimate of Hearing time required to the IAC by **midday (12pm) on Friday 26 February 2021** following the finalisation of evidence to be called to enable the IAC to prepare a version 2 timetable.

## Order of Proceedings

47. The Proponent will be asked to provide a maximum one hour overview of Project at the commencement of the Hearing.
48. 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).
49. 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.
50. 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 48 at the discretion of the IAC. These must be focused on outstanding matters from the Hearing.
51. Time at the end of the Hearing will be allocated for a "without prejudice" discussion of the draft PSA, Incorporated Document and EMF.

## Recording

52. 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

53. 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 **midday (12pm) Monday 26 April 2021**.



54. The Proponent's Part A submission must address the IAC's Terms of Reference including:
- A summary of and initial response to submissions (Direction 27 issued on 23 December 2020) including centrifuge submissions.
  - A response to the IAC's and information requests agreed to at the Directions Hearing as far as practicable (Direction 28 issued on 23 December 2020 and Direction 29 in this document).
  - An outline of the background, development and key elements of the Project and EES.
55. This Part A submission will be taken as read at the Hearing subject to any questions of clarification from the IAC.
56. EGSC, 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 29 April 2021** if they wish to make such a submission.
57. 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>.

#### **Tabled Document 141 – Submission from Proponent on Centrifuges**

58. The Proponent must advise the IAC and all parties calling evidence on the distribution list by **midday (12.00pm) on Friday 26 February 2021** whether the Proponent proposes to proceed on the basis that the IAC should consider:
- both the project in its original form (i.e. as exhibited) and the project as modified by Technical Note 1 (the Centrifuge); or
  - the project as modified by Technical Note 1 (only).
59. Any party wishing to make a submission to the IAC in response to Tabled Document 141 and the response to Direction 58 must circulate its submission to the IAC and all parties calling evidence on the distribution list by **midday (12.00pm) on Friday 5 March 2021**. Please note this is in response to the legal submission only; submissions on the merits of centrifuges must be made in accordance with Direction 32.
60. In the event that any submissions are received under Direction 58, the Proponent must circulate its reply to those submissions (if any) to the IAC and all parties calling evidence on the distribution list by **midday (12.00pm) on Friday 12 March 2021**.
61. The IAC will consider Tabled Document 141, any submissions received under Direction 58-60 and will make further directions or issue a ruling as necessary.

#### **Privacy issue**

62. A privacy issue relating to expert evidence was raised and discussed at the Directions Hearing on 15 February 2021. The Proponent and all parties must ensure that any private or sensitive information is used within the framework of the *Privacy and Data Protection Act 2014*.

#### **Tabled Document 108 – Table of Responses to IAC Request for Further information (RFI)**

63. Tabled Document 108 has some 'broken links' which should be corrected and provided to the IAC to replace the current Tabled Document as soon as possible.

## **Tabled Document 25 – EES Submission Summary prepared by Proponent**

64. The IAC has received a number of complaints that table of issues by submission does not reflect the submissions accurately. The IAC will provide this information (the submissions number and the issues said to be not listed) to the Proponent to review and provide an updated Tabled Document 25 by **midday (12.00pm) on Friday 12 March 2021**.