

25 June 2021

Mr Nicholas Wimbush  
Chair Fingerboards Inquiry and Advisory Committee  
Department of Environment, Land, Water and Planning  
Level 5, 1 Spring Street Melbourne, Victoria 3000

Via email

Dear Mr Wimbush

**Re: Hearings Submission 335 - Corroborating Evidence**

The attached three documents further illuminate issues raised in my hearings' submission on 19 May 2021. My research has been ongoing and, unfortunately, due to time constraints, I only unearthed this information after my presentation. In the interests of procedural fairness, I tender the following information to provide balance to the legal cases tabled by Mr. Morris, and to note that the law is always evolving. Therefore, I respectfully request that this letter and the attachments be tabled in addition to Tabled Documents 378-382.

**Notes to Appendices**

The following notes and comments relate to:

1. Big Hill EES Panel Report
2. McGlade lecture
3. Fent article
4. TD 524

**1. Big Hill EES Panel Report**

The issues examined mirror many of the concerns I and other submitters have raised regarding Kalbar's proposal. Big Hill was rejected by both the Panel and the Minister. Relevant excerpts are highlighted.

**Visual and Landscape impacts of Centrifuge Infrastructure**

Photos in submissions show that the mine sits above the Mitchell River and Dargo-Bairnsdale Rd. Even Daniel Banks' supplementary submission 303 shows a clear view from his house to the mine site. Kalbar should erect a sight pole to show the 12m approx. height of the centrifuge buildings (as is common practice in town planning). A contour diagram and a digital image of the centrifuges superimposed on the landscape would clearly show the visual impacts. To simply provide a whole lot of tables and some drawings with circles and dots is completely inadequate and designed, IMO, to obscure just how dominating two (is it two or more?) effectively 3 storey buildings will have on the landscape and for surrounding homes. This will be a fantastic tourist attraction. Come to Gippsland and see the centrifuges!!!

## 2. Professor Jacqueline McGlade, A Just and Rights Based Framework for Nature? 27 April 2021(Broadcast on Big Ideas, ABC RN, 14/6/21).

### Accounting for Greenhouse Gas Emissions

Dual Gas Pty. Ltd. v. EPA and Smith v. Fronterra Co-Operative Group Limited

The decisions in these cases, cited in McGlade, (the former case, TD 386, tabled by Mr Morris) found that the greenhouse gas emissions produced by each company is minuscule in the global context. However, in **Juliana v United States** (p2/7), which McGlade deems one of the two “most famous climate cases”, the dissenting judge wrote that even a small step toward slowing climate change would help. While individual contributions may be just “a drop in the bucket” and therefore, inconsequential, he considered that every drop mattered because “we are perilously close to overflowing the bucket” (McGlade p6/11).

Moreover, the opinion in Smith that “reasonable persons in the shoes of the defendants could not have foreseen the damage claimed by Mr Smith” is contrary to Hutley SC’s advice that company directors will be liable for climate change risks, especially if they are foreseeable. Governments worldwide have signed up to the Paris Agreement making clear that climate change risks are foreseeable. Like Hutley, McGlade expects climate litigation will increase.

Reference my submission that **all** of Kalbar’s emissions be counted, the National Greenhouse and Energy Reporting Scheme now requires the reporting of Scope 1 and 2 emissions while Scope 3 emissions can be used under Australia’s National Greenhouse accounts <http://www.cleanenergyregulator.gov.au/NGER>.

### Indigenous Cultural Heritage - Chthonic Law

The chthonic legal tradition is the original tradition of peoples, especially of indigenous owners, which means that you must live life with as much respect to natural things as to yourself; **it is not about repairing damage to the environment**. Chthonic law can be seen as profoundly conservationist. Stakeholders or people “are an inextricable sacred part of a sacred whole. **To destroy the environment is thus to commit a double wrong –to that which is immediately destroyed and to all that which may be dependent on it wherever this occurs in the envelope of time**” McGlade, p10/11).

**Human Rights and Responsibilities Act 2006, S19 (2) Cultural rights** states *inter alia* that Aboriginal persons must not be denied their right to enjoy their identity and culture and to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

## 3. The Anticipatory Politics of Dispossession in a Senegalese Mining Negotiation (Ashley Fent)

This research article analyses the approvals’ process for Astron Corporation’s mineral sands project in Niarang, Senegal. (Note: the first part is in French; the full article in English).

This is the same Astron Corp. (ASX code ATR) that I discussed in TD 382 as part of my hearings’ submission. Like ATR’s Donald Mine, the Niarang mine has also not proceeded.

Astron’s website states: “Environmental and Mining licences were awarded in 2017. A small mining licence (SML) was initially awarded to Astron and transferred to its Senegalese

based subsidiary. Extensive community and stakeholder engagement has occurred while community development initiatives are in place.”

Fent documents the process of landholder dispossession in Senegal and how the local people fought back. Parallels can be drawn between the Niarang experience and what is happening in Glenaladale. “The mining company and the State used anticipatory techniques, such as environmental impact assessment, to render the mine and its effects minimal and inconsequential” (p10/21), including accusations that Astron’s development plans were “being blocked **because of negligible risks for a few landowners**” (p11/21).

## Onselling

In 2017 Canadian miner Kirkland Lake Gold agreed to sell the Stawell gold mine in Victoria to Melbourne-based equity fund, Arete Capital Partners for \$6.5 million. [Kirkland Lake offloads Stawell gold mine to Australian equity fund - Australian Mining](#), [Ben Creagh, December 12, 2017News](#):

“Kirkland Lake [suspended mining at the historic Stawell](#) operation [in 2016, leaving up to 150 workers without a job, but has continued underground exploration while **the site has been placed under care and maintenance...** Kirkland Lake chief executive Tony Makuch said the transaction was consistent with the company’s long-term strategy to focus on low-cost, high-grade core assets.”

Kirkland Lake also operates the **Fosterville gold mine in Victoria**, its sole producing operation in Australia. <https://miningglobal.com/automation-and-ai/kirkland-lake-gold-sell-stawell-gold-mine-dollar65-million>

Strong ownership links exist between Stawell and Fosterville. In February 2008 Canadian corporation Northgate Minerals made a successful \$282M bid to acquire the Stawell and Fosterville gold mines. A series of mergers and acquisitions then saw ownership pass quickly through AuRico Gold Inc., Crocodile Gold Corp., and Newmarket Gold Inc. to Kirkland Lake Gold Ltd in 2016.

History of Fosterville Gold Mine <https://amconsultants.com/experience/kirkland-lake-fosterville-gold-mine/>

## 4. Tabled Document 524: Overview of Kalbar’s Mining Experience

Also cited in this article is **Projet Grand Cote** mineral sands mine located on the coast north of Dakar, Senegal. Mineral Deposits Ltd (MDL) managed Grand Cote for whom Jozsef Patarica, Robert Sennitt, John Francisco and Maurice Kok (not disclosed in TD 524), Kalbar’s Mining Experience) all worked.

Robert Sennitt is also listed as Senior Adviser Australia for Appian Capital. Notwithstanding Appian’s stated commitment to ESG performance, it should be known that prior to joining Appian, Mr.Sennitt was managing director of Mineral Deposits Ltd (MDL) which owned a 50% interest in the TiZir Joint Venture which comprised Grand Cote and TiZir (Norway). Mr. Sennitt was also joint managing director of Tizir. <https://appiancapitaladvisory.com/team/the-appian-team/robert-sennitt/>

Whereas MDL’s website boasts “Zero Harm” <https://mineraltechnologies.com/zero-harm>, according to the Environmental Justice Atlas: **“Projet Grande Côte displaced vegetables gardeners and continues pumping the water resources at the expense of agriculture. The cohabitation between the zircon mining project and the inhabitants is fragile due to the many**

unkept promises by the company: <https://ejatlas.org/conflict/diogo-zircon-mining-niayes-senegal>

TD 524 reveals that other Kalbar executives also have mining experience in Africa as well as with Fosterville Gold Mine, including that Jozsef Patarica was general manager at Fosterville when they transitioned to underground and hospitalised ten people in 2007 due to poor planning.

### Fit and Proper Person Test

“The concept of a fit and proper person is not narrowly construed or confined, nor does it remain constant over time” (ERR). Under the Corporations Act (Cth), Sec 124(1), a company has the legal capacity and powers of a person. So, ERR’s fit and proper person test applies as much to the company as to individual directors/ executives.” MRSDA, Sec 16: factors that *must* be considered in assessing whether an applicant is a fit and proper person under section 15(6)(a), include *inter alia*,

- whether the applicant has been obstructive, misleading or untruthful in dealing with regulatory bodies or courts;
- behaved unethically towards or failed to work cooperatively with relevant landholders and local communities;
- any business associations with any person, body or association that is not of good repute having regard to character, honesty and integrity;
- the competence, diligence and judgement of the applicant (which may include the applicant's level of relevant experience), as it relates to the nature and details of the application.

TD 524 is silent on Kalbar the company’s experience. None of Kalbar’s iterations: Kalbar Resources, Kalbar Limited or Kalbar Operations has any actual mining experience, let alone relevant mineral sands mining experience.

[https://resourceglobalnetwork.com/portfolio\\_page/kalbar-resources/](https://resourceglobalnetwork.com/portfolio_page/kalbar-resources/)

Regarding the “fit and proper” test, the company’s experience and its directors/executives’ past performances do not inspire any confidence in Kalbar’s capacity to operate and manage a mineral sands mine in this very sensitive social and environmental area.

Yours sincerely

Jane Hildebrant  
**Submitter 335**