

Submission Cover Sheet

Fingerboards Mineral Sands Project Inquiry and Advisory
Committee - EES

521

Request to be heard?: Yes

Full Name: Carmel Henderson

Organisation: Gippsland, Forest Fire and Regions Group, Department of Environment, Land, Water

Affected property:

Attachment 1:

Attachment 2:

Attachment 3:

Comments: See attached submission



Submission to Planning Panels Victoria

Gippsland, Forest Fire and Regions Group, Department of Environment, Land, Water and Planning - 29 October 2020

FINGERBOARDS MINERAL SANDS PROJECT ENVIRONMENT EFFECTS STATEMENT DRAFT AMENDMENT TO THE EAST GIPPSLAND PLANNING SCHEME DRAFT WORK PLAN – DRAFT REHABILITATION PLAN

Introduction

- 1) The Department of Environment, Land, Water and Planning (DELWP) Forest Fire and Regions Gippsland (FFR), participated as members of the Technical Reference Group (TRG) in the preparation of the Environment Effects Statement (EES) for the Fingerboards Mineral Sands Project. During the EES process, DELWP planning and natural environment officers provided comments on draft technical documents produced by Kalbar Operations Pty Ltd.
- 2) FFR has reviewed the exhibited documents in accordance with the *Scoping Requirements for the Fingerboards Mineral Sands Project* (DELWP March 2018) and provides this submission for the consideration of the Minister for Planning.
- 3) FFR has also reviewed the exhibited documents against the requirements of the *Flora and Fauna Guarantee (FFG) Act 1988* and the *Guidelines for the removal, destruction and lopping of native vegetation* (DELWP 2017) (the Guidelines) and associated *Assessor's handbook* (DELWP 2018). The Guidelines are incorporated into the Victoria Planning Provisions and all planning schemes in Victoria and describe the application of Victoria's state-wide policy in relation to assessing and compensating for the removal of native vegetation. DELWP has also considered the application in accordance with requirements under the *Catchment and Land Protection Act 1994* and the *Crown Land (Reserves) Act 1978*.
- 4) The Project Scoping Requirement objectives relevant to DELWP are:
 - a. *to avoid or minimise potential adverse effects on native vegetation, listed threatened and migratory species and ecological communities, and habitat for these species, as well as address offset requirements for residual environmental effects consistent with State and Commonwealth policies;*
 - b. *to minimise effects on water resources and on beneficial and licensed uses of surface water, groundwater and related catchment values (including the Gippsland Lakes Ramsar site) over the short and long-term; and*
 - c. *to establish safe progressive rehabilitation and post-closure stable rehabilitated landforms capable of supporting native ecosystems and/or productive agriculture that will enable long-term sustainable use of the project area.*
- 5) The proposed activity was referred under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) in May 2017. The project was deemed a 'Controlled Action' and subject to assessment under the bilateral agreement in July 2017.
- 6) The Project Scoping Requirement objective listed in point 4b is a DELWP policy area, however regional oversight is the responsibility of the East Gippsland Catchment Management Authority (EGCMA), the West Gippsland Catchment Management Authority (WGCMA) and the Environment Protection Authority (EPA). FFR has not assessed this objective in this submission.
- 7) FFR considers the highest value biodiversity areas at risk from the proposed mine is the vegetation communities along the Crown land rail and roadside reserves, the remnant native vegetation in gullies on private land and adjacent to riparian areas, large trees in the paddocks and water quality and quantity affecting aquatic biodiversity in the Mitchell River and Gippsland Lakes.

Proposal

- 8) The Project
 - a. is located on private land and public land (roadside reserves) 20 km north-west of Bairnsdale near the Mitchell River in East Gippsland; and
 - b. the proponent, Kalbar Resources Pty Ltd proposes to mine and produce mineral sand concentrates over a projected 20-year operating life.
- 9) The Draft Planning Scheme Amendment proposes to use and develop land with affiliated facilities and infrastructure associated with the Project that is located outside the project mining area by:
 - a. the inclusion of Crown and freehold land identified as Project Land Outside the Mining Licence Area in the Specific Controls Overlay;
 - b. introducing the Specific Controls Overlay into the East Gippsland Planning Scheme
 - c. inserting a new Schedule 1 to the Specific Controls Overlay at Clause 45.12; and
 - d. incorporating a new document by listing the document at the Schedule to Clause 72.04.

This will exempt the off-site use, development, vegetation removal and other works from requiring planning permits subject to certain conditions being met.
- 10) The draft Work Plan is a requirement of the *Mineral Resources (Sustainable Development) Act 1990* to authorise work under a mining licence and includes the Mine Rehabilitation Plan.

FINGERBOARDS MINERAL SANDS PROJECT ENVIRONMENT EFFECTS STATEMENT

TERRESTRIAL AND AQUATIC BIODIVERSITY (CHAPTER 8.2), APPENDIX A005 – DETAILED ECOLOGICAL INVESTIGATIONS ATTACHMENT E – BIODIVERSITY OFFSET MANAGEMENT STRATEGY

Biodiversity Loss Summary

- 11) Kalbar states the project will
 - a) remove 160.3 hectares of remnant patch and 6.10 hectares of mapped 'current wetlands' native vegetation including 373 Large Trees;
 - b) remove 461 scattered trees comprising 331 Large Trees;
 - c) remove 1.74 hectares of EPBC Act listed Gippsland Red Gum Grassy Woodland (GRGGW);
 - d) remove 14.54 hectares of FFG Act listed Forest Red Gum Grassy Woodland (FRGGW);
 - e) remove part of the population of three State significant flora species;
 - f) remove known habitat for the following fauna species of national, State and regional significance – Grey-headed Flying Fox (remnant woodland and forest), Yellow-bellied Sheathtail Bat, Masked Owl (461 scattered trees and 160.3 hectares of remnant vegetation), Emu (forest, woodland, wetland/aquatic habitat and disturbed land) and Eastern Long-necked Turtle;
 - g) remove potential habitat for a range of flora and species of national, State and regional significance;
 - h) removal of hollow-bearing trees used by a range of fauna species; and
 - i) potentially reduce flows to Mitchell River following surface water extraction which may lead to localised impacts to existing biodiversity and aquatic values.

- 12) FFR notes the property at 2705 Dargo-Bairnsdale Road, Glenaladale was not surveyed as part of the ecological assessment for the proposal. This property contains approximately 50 ha of native vegetation planned for removal (Figure 7 and 6f, Appendix 9) that has not been subject to a detailed site assessment as required under the Guidelines. It is unclear how the proponent will resolve this issue, which has the potential to impact significant species or vegetation communities that may be present within the property. FFR understands this property has not been included in biodiversity loss calculations. FFR also notes, the appendices associated with the DELWP *Native Vegetation Removal Report* has not been included in Appendix 6 of the Detailed Ecological Investigations report. The provision of a complete DELWP Native Vegetation Removal Report is a mandatory information requirement under the Guidelines.

The three-step approach – avoid, minimise and offset

- 13) The Guidelines implements a three-step approach to achieve no net loss to biodiversity as a result of the removal of native vegetation. Kalbar must investigate all reasonable options to avoid clearing, evaluate options for the minimisation of clearing where avoidance cannot be achieved and mitigate any unavoidable clearing through identifying policy compliant offset measures.
- 14) Efforts to avoid the removal of, and minimise the impacts on, native vegetation should be commensurate with the biodiversity and other values of the native vegetation focussed on areas of native vegetation that have the most value.
- 15) The proposal has not fully explored feasible opportunities to avoid and minimise impacts on native vegetation. One example is the proposed location of the railway siding at Fernbank East which will directly and indirectly impact on native grassland and grassy woodland vegetation of very high value (see point 27). Alternative sites have not been assessed or discussed in detail in the Detailed Ecological Investigations report. These include:
- a) the existing Bairnsdale or locations near the Hillside railway sidings; or
 - b) locating the joining point of the siding into the existing line where the biodiversity values are less significant.
- 16) Kalbar needs to demonstrate clear changes to the project have been made to avoid adverse impacts on native vegetation with the highest biodiversity values and reduce the total area of native vegetation proposed for removal (see Point 7).
- 17) Examples provided by Kalbar describing avoidance of native vegetation already protected in a State Park or by existing statutory requirements to protect water quality (such as not siting waste dumps within gullies) are not acceptable.
- 18) The avoid and minimise statement must clearly describe the measures taken to minimise native vegetation removal or adverse impacts to retained native vegetation at a site level e.g. locating plant and materials away from identified retained native vegetation. Measures must be commensurate with the biodiversity values of the impacted native vegetation e.g. how impacts on significant roadside values have been minimised.
- 19) The offset requirements described by Kalbar for the Work Plan area, which excludes 2705 Dargo-Bairnsdale Road, are:
- a) 1.001 general units in either the EGCMA area, WGCMA area or East Gippsland Shire Council with a minimum Strategic Biodiversity Score (SBS) of 0.253;
 - b) 29.022 Species Habitat Units (SHUs) for Australian Grayling (EPBC listed as Vulnerable and FFG Act listed and vulnerable in Victoria);
 - c) 57.384 SHUs for Flinders Pygmy Perch – vulnerable in Victoria
 - d) 91.822 SHUs for Sticky Wattle - rare in Victoria
 - e) 38.066 SHUs for Yellow-wood – FFG Act listed, rare in Victoria
 - f) 46.310 SHUs for Thick-lip Spider-orchid – EPBC listed as Vulnerable, vulnerable in Victoria

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- g) 97.984 SHUs for Purple Diuris - FFG Act listed, vulnerable in Victoria;
 - h) 102.384 SHUs for Bushy Hedgehog -grass – endangered in Victoria;
 - i) 98.544 SHUs for Rough-grain Love-grass – rare in Victoria;
 - j) 66.713 SHUs for Slender Violet-bush – rare in Victoria;
 - k) 102.384 SHUs for Slender Wire-lily – rare in Victoria;
 - l) 28.253 SHUs for Star Cucumber – vulnerable in Victoria;
 - m) 97.589 SHUs for One-flower Early Nancy – rare in Victoria;
 - n) 86.710 SHUs for Limestone Blue Wattle - EPBC listed as Vulnerable, vulnerable in Victoria;
 - o) 56.891 SHUs for Thin-leaf Daisy-bush – endangered in Victoria;
 - p) 94.130 SHUs for Forest Red-box – rare in Victoria;
 - q) 40.354 SHUs for Heath Spider-orchid – FFG Act listed, vulnerable in Victoria; and
 - r) 704 Large Trees.
- 20) The desktop assessment of 2705 Dargo-Bairnsdale Road shows additional offsets to those described above would be required, should clearing be approved. This includes between 30-40 SHUs for 10 of the above species and 130-140 SHUs for two additional species – Golden Pomaderris and Silky Kidney-weed.
- 21) The biodiversity values of native vegetation proposed for removal are assessed as being of 'higher value' as outlined in the *Assessor's handbook* (DELWP 2018) due to the following criteria:
- a) extent of proposed native vegetation removal is very high (calculated by the proponent as 166.4 ha of patch native vegetation and 461 scattered trees);
 - b) extent of Large Trees proposed for removal is very high (calculated by the proponent as 706 trees)
 - c) two endangered EVC's are affected by the proposed removal – Plains Grassy Woodland (which comprises EPBC Act listed GRGGW and FFG listed FRGGW vegetation communities) and Aquatic Herbland; and
 - d) habitat for rare or threatened for 16 species, of which three are nationally threatened and six are threatened in Victoria.
- 22) FFR advises land and water protection values of the native vegetation proposed for removal in gully lines and next to riparian areas are assessed as of 'higher value' as outlined in the *Assessor's handbook* (DELWP 2018). These areas of native vegetation perform a significant role in preventing soil erosion and slippage, a considerable environmental risk in this area. Further efforts should be made to avoid the removal of native vegetation in gullies.

Biodiversity and Offset Management Strategy

- 23) There are 16 species requiring species habitat units based on calculated native vegetation losses and an additional two species if 2705 Dargo-Bairnsdale Road is included. Of these 18 species, only seven have species units available for purchase from the Native Vegetation Offset Register (NVOR). Offsets for the remaining 11 species are not available or able to be secured at this time.
- 24) The proponent has identified eight properties in the Iguana Creek, Melwood and Mount Taylor areas that may satisfy the outstanding species offset requirements. However, to satisfy the Guidelines requirements for an offset statement, the proponent must include evidence that the required offset
- a) is available from a third party;
 - b) will be established as a new offset and has the agreement of the proposed offset provider. This requires
 - I. evidence the proposed offset site meets the mandatory offset requirements;

- II. written confirmation the landowner understands the obligations, costs and responsibilities of establishing a secure offset and agrees to entering into a security agreement; and
 - III. confirmation a statutory authority is prepared to enter into a security agreement registered on title to permanently protect the offset site(s); or
- c) can be met by a first party offset.

The current offset strategy does not satisfy the above requirements as only some of the offset requirements are currently available and able to be secured.

Conclusion concerning compliance with the Guidelines

- 25) FFR considers that to satisfy the above requirements, Kalbar must
- a) undertake a site assessment for all land affected by the proposal that complies with the requirements of the detailed assessment pathway as described in the Guidelines;
 - b) undertake additional efforts to avoid native vegetation removal and minimise impacts on native vegetation that is commensurate with, and focussed on, areas of native vegetation with the highest biodiversity values; and
 - c) provide an offset strategy that demonstrates the offset requirements of this cost and scale are available and able to be secured, should clearing be approved.

Threatened Fauna, Flora and Vegetation Communities

- 26) FFR generally supports the flora and fauna survey work completed and presented by Kalbar.
- 27) As noted in point 15, FFR has significant concerns with the location of the Fernbank East railway siding and considers the following threatened flora and vegetation communities at risk
- a) west of the Cowells Lane intersection in the railway reserve is a small (less than 10) population of *Prasophyllum correctum*, **Gaping Leek-orchid**. This is likely to be the **only extant population** of this species. The only other known population at Munro railway reserve has not been recorded since 2015. The species is listed as endangered in Victoria and under the EPBC Act 1999 and is listed under the FFG Act 1988. FFR has been managing the site, co-operatively with V-line, since its discovery in the mid-1990's through regular burning, weed control, fencing and tree and shrub removal. Efforts to grow the species in situ have failed to date though some improvements have occurred recently. The population is within 50m of the proposed railway siding and modelled habitat is directly impacted. FFR considers the current proposed location of the railway siding and connector to the existing railway line too close to be confident that the species can survive and flourish at the site into the future;
 - b) at the intersection of Cowells Lane with the railway reserve FFR has recorded and monitored a population of *Diuris punctata* **Purple Diuris** (see Appendix 2.2 page 201). The population is located at the site where the siding joins the Bairnsdale-Melbourne line and hence appears to be directly impacted. This species is vulnerable in Victoria and listed under the FFG Act 1988. FFR does not support the current join point of siding to the existing rail line due to likely impact on this population;
 - c) between Buntines Lane and 1.5km west of Cowells Lane are excellent examples of native grassland listed under the EPBC Act 1999 as **GRGGW** and Associated Native Grasslands and the FFG Act 1988 listed as Central Gippsland Plains Grassland Community. Only around 20-30 hectares of this grassland community remains within Gippsland, mostly restricted to railway reserves and cemeteries and is not described or discussed in the ecology report supporting this project. DELWP has been managing this area since the mid-1990's due to its conservation significance. Management involves fencing, regular burning, weed and pest control and tree and shrub removal. While the area directly impacted by the joining point of the proposed railway siding at the Cowells Lane intersection is a more disturbed example of the community, FFR does not support the proposed impacts due its rarity.
 - d) There is also examples of grassy woodland FFG Act 1988 listed **FRGGW** along the proposed haulage road easement including at the proposed Cowells Lane crossing and railway reserve.

- e) Saplings Morass Flora and Fauna is adjacent to the proposed railway siding. This Parks Victoria managed reserve contains excellent examples grassy woodland (unassessed) and the wetland area contains a significant population of Swamp Everlasting (listed under EPBC Act 1999 as Vulnerable and FFG Act 1988 listed as threatened in Victoria). The indirect impact of the railway siding on the wetland area through changes in hydrological regimes and increased dust is unclear.
- 28) Considerable uncertainty exists concerning the impact of the proposed railway siding on these values including the
- exact alignment of the railway siding and any direct impact to existing biodiversity values;
 - native vegetation removal required for safety at the expanded railway crossing;
 - future native vegetation management requirements in conflict with current conservation management; and
 - potential for future expansion and possible implications on existing biodiversity values.
- As such, FFR considers the risk posed to these values is too high.
- 29) FFR considers the current impact assessment in this area to be inadequate. Kalbar has not demonstrated that an alternative siting cannot be achieved that avoids impacts on these values. Kalbar needs to provide:
- details of other options available for a railway siding and joining points that avoid and minimise impact on these values e.g. locating the siding at the mine site, moving the current joining point further east or to other sites impacting on Lowland Forest areas rather than grassland communities or utilising existing sidings at Bairnsdale and Hillside;
 - detailed construction plans and on-going vegetation management requirements to the satisfaction of the Department of Transport for these sites and the Fernbank East option;
 - a full biodiversity assessment of the direct and indirect impacts of each option including impacts on FFG Act and EPBC Act listed threatened flora and vegetation communities; and
 - mitigation and compensation measures for any of these impacts.
- 30) As a member of the Technical Reference Group, FFR provided biodiversity exclusion zone maps and requested detailed biodiversity assessments and construction plans for this site and has requested alternative sites be adequately assessed. Kalbar has yet to provide this information.
- 31) Biodiversity-related mitigation measures proposed by the proponent lack sufficient detail to demonstrate what actions will be undertaken by Kalbar and how any success be measured. This is particularly important for the protection of aquatic species such as Australian Grayling, Groundwater-dependent ecosystems and riparian values.

Planning scheme considerations of environmental assets

- 32) FFR seeks to protect and reduce any impacts on native vegetation and threatened species within the project footprint as does the East Gippsland Planning Scheme through the Municipal Strategic Statement (MSS), Overlays and Section 52.17 all that would be considered if a planning permit was required for the project and the planning scheme amendment.
- 33) An Environmental Significance Overlay and a Vegetation Protection Overlay under the East Gippsland Planning Scheme covers most of the roadsides within the project area. The purpose of these overlays is to
- preserve the remnants of native vegetation that previously extended over the private land and has been cleared for agriculture and
 - retain the roadside vegetation as linking corridors between patches of remnant native vegetation

The planning of the proposed mine and the rail siding development has not shown any evidence of trying to avoid or reduce disturbance of these road reserves and thus comply with the objective of the MSS and the overlays.

DRAFT AMENDMENT TO EAST GIPPSLAND PLANNING SCHEME

- 34) FFR does not support the draft Planning Scheme Amendment (PSA) based on the currently proposed Fernbank East railway siding due to the highly significant biodiversity values present within the railway reserve, the road reserve and at Saplings Morass Flora and Fauna Reserve.
- 35) The draft PSA must contain maps of the final haul road and water pipeline to clearly identify its alignment and written documentation on how native vegetation removal has been avoided.
- 36) The PSA does not discuss the impact on the objectives and decision guidelines of any land within the project area affected by Environmental Significance Overlay Schedule 1, 2 and 3 or Vegetation Protection Overlay Schedule 1. The proponent must fully consider and address measures to avoid and minimise or mitigate adverse impacts on these values.

DRAFT WORK PLAN - APPENDIX C DRAFT REHABILITATION PLAN

- 37) FFR generally agrees with the proposed Rehabilitation Plan. However, the proponent needs to provide details that clearly identify
 - a) the areas to be revegetated and the management standards to be achieved; and
 - b) the on-title security mechanism(s) to be used to ensure any revegetated areas have long-term protection and native vegetation cover is established.