

28 January 2021

By Email

To

Amy Selvaraj
Senior Project Officer
Planning Panels Victoria
Fingerboards.IAC@delwp.vic.gov.au

FOR THE URGENT ATTENTION OF NICK WIMBUSH, CHAIR

Dear Amy

**Inquiry and Advisory Committee (IAC)
Fingerboards Mineral Sands Project**

We continue to act for East Gippsland Shire Council (**Council**).

We refer to the letter from White & Case to the IAC dated 18 January 2021 advising of Kalbar Operations Pty Ltd's (**Kalbar**) decision to ask the IAC to consider the use of centrifuges as part of its proposal and to modify various intersection designs.

Kalbar's decision represents a significant and material change to the proposal that was not contemplated or assessed through the EES process. This sudden change represented by Kalbar's decision has taken Council by surprise. Further, the very limited supporting information significantly constrains Council's ability to assess this new option.

The centrifuge option and proposed changes to the proposed intersections directly impact on many relevant and material aspects of the proposal's assessment including ecology, traffic, ground water, surface water and climate change. The absence of updated technical reports, including modelling, precludes Council from undertaking any meaningful assessment of the benefits or disadvantages of the proposal. The undated and unsigned technical report does not serve this purpose. When Kalbar first floated the idea of using centrifuges with Council, Council advised Kalbar, in writing, that such a change would need to be accompanied by appropriate technical reports.

The absence of further and/or updated technical reports and modelling to support such a major change and the timing of Kalbar's decision, will unfairly prejudice the preparation and conduct of Council's case.

Since becoming aware of Kalbar's intention to propose the use of centrifuges as an option, revise the intersection designs and provide details of the haulage road, Council has been working extremely

hard to understand the implications of this change and to negotiate with the legal representatives of Kalbar and Mine Free Glenaladale (MFG) with a view to reaching a joint position regarding a response to this unforeseen and significant change. Unfortunately, at the time of writing, no agreement has been reached.

Council's position

In Council's view, an adjournment of the IAC hearing to allow Kalbar time to prepare further and/or updated technical reports and modelling that consider the use of centrifuges and for these reports and modelling to be reviewed and considered by Council would appear to be the most appropriate remedy in the circumstances. In view of the recent adjournment to accommodate Kalbar's counsel, it appears likely that there would be little or no relevant prejudice to Kalbar from such an adjournment although it would likely cause inconvenience to all parties.

Notwithstanding this position, and on the basis that these changes will be the last material change to the project and that all proposed amendments have now been disclosed, Council seeks the following five changes to the existing timetable and directions from the IAC.

1. Kalbar's expert evidence must:
 - a. provide a detailed explanation regarding the use and operation of the centrifuges and how they are proposed to be incorporated into the proposal, including examples of mines where the technology has been used including their throughput and efficiency rates;
 - b. consider both the positive and negative impacts (discrete, combined and cumulative) of potentially including centrifuges in the proposal; and
 - c. include updated water modelling that considers the potential inclusion of centrifuges in the proposal.

(White & Case's letter to Planology dated 21 January 2021 (attached) effectively adopts this approach).

2. Kalbar must provide a cross referenced document identifying the impacts of the use of centrifuges on all the study areas of the EES by 12 noon on 11 February 2020.
3. The date that Council (and MFG) must file and serve any expert evidence is amended to be by 12 noon on 11 February 2020. (We acknowledge this is close to the commencement of the hearing, but Kalbar has two weeks to present its case which will provide it with sufficient time to consider Council's expert evidence. Further, a staggered circulation of expert evidence was adopted in the recent Crib Point EES hearing).
4. The date that Council must file and serve without prejudice mark ups to the incorporated document and environment management framework is amended to be by 12 noon on 11 February 2020.
5. The direction for expert witness conclaves is withdrawn.
6. Responses to the IAC's request for further information must be provided by 12 noon on 11 February 2020.

We acknowledge that the above proposed amendments are less than ideal. However, given timing and effect of Kalbar's decision to include centrifuges as an option, these modifications to the timetable are considered necessary in order to provide Council with some time (albeit extraordinarily limited time) for Council to attempt to fairly and objectively consider the implications of Kalbar's decision.

Council acknowledges that the IAC, in addition to considering this request, will still need to consider whether the other parties and the members of the community will have sufficient notice and time to consider the centrifuge option.

Council reserves it right to make submissions about the implications, acceptability and timeliness of the proposed changes to the EES.

We expect that Kalbar and MFG will respond to this letter.

If there is no agreement between the parties, or if the IAC has any concerns regarding Council's request, we request that an urgent directions hearing be conducted. Council's counsel can be available for any further directions hearing at short notice and at the IAC's convenience.

If you have any questions, please do not hesitate to contact me.

Yours sincerely



Darren Wong
Principal

