

Terms of Reference

Avonbank Mineral Sands Project
Inquiry and Advisory Committee



Department
of Transport
and Planning

Version: January 2023

The Avonbank Mineral Sands Project Inquiry and Advisory Committee (IAC) is appointed to inquire into, and report on, the proposed Avonbank Mineral Sands Project (the project) and its environmental effects in accordance with these terms of reference.

The IAC is appointed pursuant to:

- section 9(1) of the *Environment Effects Act 1978* (EE Act) as an inquiry; and
- part 7, section 151(1) of the *Planning and Environment Act 1987* (P&E Act) as an advisory committee.

Name

1. The IAC is to be known as the 'Avonbank Mineral Sands Project IAC'.

Skills

2. The IAC members should have the following skills:
 - a. rehabilitation of mineral sands mines;
 - b. amenity impacts relating to air and noise;
 - c. groundwater and groundwater dependent ecosystems; and
 - d. statutory planning.
3. The IAC will comprise an appointed Chair (IAC Chair) and other members.

Purpose of the IAC

4. The IAC is appointed by the Minister for Planning under section 9(1) of the EE Act to hold an inquiry into and report on the environmental effects of the project. The IAC is to:
 - a. review and consider the environment effects statement (EES), submissions received in relation to the project, the predicted environmental effects, and the other exhibited documents;
 - b. consider and report on the potential environmental effects of the project, their significance and acceptability, and in doing so have regard to the evaluation objectives in the EES scoping requirements and relevant policy and legislation;
 - c. consider and report on potential environmental effects on relevant matters of national environmental significance protected under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act);
 - d. identify any measures it considers necessary and effective to sufficiently avoid, mitigate or manage the environmental effects of the project, including any necessary project modifications; and
 - e. advise on how these measures relate to relevant conditions, controls and requirements that could form part of the necessary approvals and consents for the project.
5. The IAC is also appointed as an advisory committee under section 151(1) of the P&E Act to:
 - a. review the draft planning scheme amendment (PSA) C84hors, which has been prepared to apply a Specific Controls Overlay (SCO) and establish planning approval for the project under an incorporated document;



Department
of Transport
and Planning

OFFICIAL

- b. consider issues raised in public submissions received in relation to the draft PSA; and
 - c. recommend any changes to the draft PSA that it considers necessary.
6. The IAC is to produce a report of its findings and recommendations to the Minister for Planning to inform the Minister's assessment under the EE Act, which will be considered by statutory decision makers for the project.

Background

Project outline

7. The Avonbank Mineral Sands Project comprises the development of a mineral sands mine with a disturbance footprint of 3,600 hectares located approximately 15 kilometres north-east of Horsham in north-west Victoria. Open-pit mining and mineral separation processing is proposed to produce 350,000 to 600,000 tonnes per annum of heavy mineral concentrate over a mine life of more than 30 years. Primary ore processing via a mining unit plant will occur within the mining licence and secondary ore processing will occur in the WIM Base Area outside the mining licence. Mine products will be transported by truck to the Port of Portland for overseas export.
8. The key components of the project include:
- a. progressive development of a mineral sands mine;
 - b. two mobile mining unit plants;
 - c. a wet concentrator plant and tailings thickening and disposal plant;
 - d. power and water supply infrastructure;
 - e. site facilities including site offices, warehouse, workshop facilities and fuel storage.
9. The project's proponent is WIM Resource Pty Ltd (WIM Resource), who is responsible for preparing technical studies, consulting with the public and stakeholders and preparing an EES and draft PSA.

EES assessment process

10. In response to a referral under the EE Act from the proponent, the former Minister for Planning determined on 17 August 2019 that an EES was required for the project and issued his decision with procedures and requirements for the preparation of the EES as specified in **Attachment 1**.
11. The EES was prepared by the proponent in response to the EES scoping requirements issued by the Minister for Planning in August 2020.
12. The EES will be placed on public exhibition for thirty (30) business days, together with the draft PSA. This public comment process is in accordance with the procedures and requirements issued for this EES by the Minister for Planning. WIM Resource is responsible for public notice of EES exhibition.

Commonwealth assessment process

13. Because of its potential impacts on matters of national environmental significance, the project was determined to be a controlled action for the purposes of the EPBC Act on 3 July 2020. The relevant controlling provisions under the EPBC Act are listed threatened species and communities (sections 18 & 18A) and nuclear actions (sections 21 & 22A).
14. Under the bilateral agreement between the Australian and Victorian governments, the Victorian EES process is serving as the accredited process for the assessment purposes of the EPBC Act. The assessment of environmental effects to be made by the Victorian Minister for Planning will be provided to the Commonwealth Minister for the Environment to inform the approval decision under the EPBC Act.

Planning approval process

15. The IAC is to consider and provide advice on draft PSA C84hors that proposes the use and development of facilities and infrastructure associated with the project, including a mineral sands secondary processing facility, in the WIM Base Area outside the mining licence and within the Wimmera Intermodal Freight

Terminal. The PSA is proposed to apply a SCO to the WIM Base Area and regulate the use and development of facilities and infrastructure within the SCO in accordance with an incorporated document proposed to be included in the Horsham Planning Scheme.

Other approvals

16. The project may require other statutory approvals and/or consents, as outlined in the EES, including:
- a. a mining licence and approved work plan under the *Mineral Resources (Sustainable Development) Act 1990* (MRSD Act);
 - b. an approved Cultural Heritage Management Plan under the *Aboriginal Heritage Act 2006*;
 - c. planning permits for the alteration or creation of access to a road in a Transport Zone 2 and for the removal of some native vegetation under the P&E Act;
 - d. approvals under the *Radiation Act 2005*;
 - e. approvals under the *Water Act 1989* for extraction of surface and/or groundwater;
 - f. a permission to discharge or deposit waste to an aquifer under the *Environment Protection Act 2017*;
 - g. a permit to export radioactive material under the *Customs Act 1901*;
 - h. a permit to remove listed flora and fauna under the *Flora and Fauna Guarantee Act 1988*; and
 - i. an authority to take or disturb wildlife under the *Wildlife Act 1975*.

Process

Stage 1 – Submissions

17. Submissions on the EES and draft PSA are to be provided in writing on or before the close of submissions. Submissions will be collected by the office of Planning Panels Victoria (PPV) through the Engage Victoria platform. All submissions must state the name and address of the person making the submission. Submissions will be collected and managed in accordance with the 'Guide to Privacy at PPV'.
18. Petition responses will be treated as a single submission and only the first names from a petition submission will be registered and contacted.
19. Pro-forma submitters will be registered and contacted individually if they provide their contact details. However, pro-forma submitters who want to be heard at the hearing may be encouraged to present as a group, given their submissions raise the same issues.
20. All written submissions and other supporting documentation or evidence received through the course of the IAC process will be published online, unless the IAC specifically directs that the submission or other material, or part of it, is to remain confidential.
21. Electronic copies of each submission on the EES and draft PSA are to be provided to the proponent, Department of Transport and Planning (DTP) (Impact Assessment), Horsham Rural City Council and the Baringi Gadjin Land Council Aboriginal Corporation.
22. PPV will retain any written submissions and other documentation provided to the IAC for a period of five years after the time of its appointment.

Stage 2 – Public hearing

23. Prior to the commencement of the public hearing, the IAC must hold a directions hearing to make directions it considers necessary or appropriate as to the conduct, scope or scheduling of the public hearing.
24. The IAC must hold a public hearing and may make other such enquiries as are relevant to undertaking its role.
25. If, following the close of submissions, IAC forms the view that an inquiry by submitter conference may be more appropriate in light of the volume and nature of submissions and issues raised, then it should seek the Minister for Planning's endorsement to change to an inquiry by submitter conference.

26. When it conducts a public hearing, the IAC has all the powers of an advisory committee that are specified in section 152(2) of the P&E Act.
27. The IAC may inform itself in any way it sees fit, but must review and consider:
 - a. the exhibited EES and draft PSA;
 - b. the views of the Barengi Gadjin Land Council Aboriginal Corporation (if known);
 - c. all submissions and evidence provided to the IAC by the proponent, state agencies, local councils and submitters;
 - d. any information provided by the proponent and parties that respond to submissions or directions of the IAC; and
 - e. any other relevant information that is provided to, or obtained by, the IAC.
28. The IAC must conduct its process in accordance with the following principles:
 - a. The public hearing will be conducted in an open, orderly and equitable manner, in accordance with the principles of natural justice.
 - b. The public hearing will be conducted with a minimum of formality and without legal representation being necessary for parties to be effective participants.
 - c. The IAC process is to be exploratory and constructive, with adversarial behaviour discouraged and with cross-examination / questioning regulated by the IAC.
29. The IAC may limit the time of parties appearing before it.
30. The IAC may direct that a submission or evidence is confidential in nature and the hearing be closed to the public for the purposes of receiving that submission or evidence.
31. The IAC may conduct a public hearing when there is a quorum of at least two of its members present or participating through electronic means, one of whom must be the IAC Chair.
32. If directed by the IAC, recording of the hearing must be undertaken by the proponent. If recorded, the audio recording will be provided to PPV as a weblink and would be made publicly available as soon as practicable after the conclusion of each day of the hearing, or otherwise as directed by the IAC.
33. Any other audio recording of the hearing by any other person or organisation may only occur with the prior consent of, and strictly in accordance with, the directions of the IAC.

Stage 3 – Report

34. The IAC must produce a written report for the Minister for Planning containing its:
 - a. analysis and conclusions with respect to the environmental effects of the project and their significance and acceptability;
 - b. findings on whether acceptable environmental outcomes can be achieved, having regard to legislation, policy, best practice, and the principles and objectives of ecologically sustainable development;
 - c. recommendations and/or specific measures that it considers necessary and appropriate to prevent, mitigate or offset adverse environmental effects;
 - d. recommendations as to any feasible modifications to the design or management of the project that would offer improved environmental outcomes;
 - e. recommendations for any appropriate conditions that may be lawfully imposed on any approval for the project, including with respect to the content of a work plan or conditions that might appropriately be attached to approval of a work plan if issued under the MRSD Act or changes that should be made to the draft PSA;

- f. recommendations as to the structure and content of the proposed environmental management framework, including with respect to monitoring of environmental effects, contingency plans and site rehabilitation;
 - g. recommendations with respect to the structure and content of the draft PSA; and
 - h. specific findings and recommendations about the predicted impacts on matters of national environmental significance and their acceptability, including appropriate controls and environmental management.
35. The report should include:
- a. information and analysis in support of the IAC's findings and recommendations;
 - b. a list of all recommendations, including cross-references to relevant discussions in the report;
 - c. a description of the public hearing conducted by the IAC, and a list of those persons consulted with or heard;
 - d. a list of all submitters in response to the exhibited EES; and
 - e. a list of the documents tabled during the proceedings.

Timing

36. The IAC should hold a directions hearing no later than 20 business days from the final date of the exhibition period.
37. The IAC should commence the hearing no later than 50 business days from the final date of exhibition period.
38. The IAC must submit its report in writing to the Minister for Planning within 40 business days from its last day of its proceedings.
39. The DTP's Impact Assessment Unit must liaise with PPV to agree on the directions hearing and hearing dates, which are to be included on all public notices.

Minister's assessment

40. The Minister for Planning will make an assessment of the environmental effects of the project after considering the IAC's report as well as the EES, submissions and any other relevant matters.
41. PPV will notify submitters of the release of the Minister for Planning's assessment and IAC report.

Fee

42. The fees for the members of the IAC will be set at the current rate for a panel appointed under part 8 of the P&E Act.
43. All costs of the IAC, including the costs of obtaining any expert advice, technical administration and legal support, venue hire, accommodation, recording proceedings and other costs must be met by the proponent.

Miscellaneous

44. The IAC may apply to the Minister for Planning to vary these terms of reference in writing, at any time prior to submission of its report.
45. The IAC may retain specialist expert advice, additional technical support and/or legal counsel to assist if considered necessary.

46. PPV is to provide any necessary administrative support to the IAC. In addition, the proponent is to provide any necessary administrative or technical support to the IAC in relation to the conduct of the hearing (if required).



Sonya Kilkeny MP
Minister for Planning

Date: 6/2/2023

The following information does not form part the Terms of Reference.

Project Management

1. For matters regarding the IAC process, please contact Amy Selvaraj, Senior Project Officer of Planning Panels Victoria, by phone [REDACTED] or email Planning.Panels@delwp.vic.gov.au.
2. For matters regarding the EES process please contact the Impact Assessment Unit in DTP by phone [REDACTED] or email environment.assessment@delwp.vic.gov.au.

Attachment 1

Procedures and requirements under section 8B(5) of the *Environment Effects Act 1978*

The procedures and requirements applying to the EES, in accordance with both section 8B(5) of the Act and the *Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978* (Ministerial Guidelines), are as follows.

- (i) The EES is to document investigations and avoidance of potential environmental effects of the proposed project, including for any relevant alternatives (such as for the mining extent, methods for mining and processing, water supply and transport of mining outputs), as well as associated environmental avoidance, mitigation and management measures. In particular the EES should address:
 - a. Effects on the land uses of the site and surrounding areas, including the implications for agricultural productivity;
 - b. Effects on land stability, erosion and soil productivity associated with the construction and operation of the project, including progressive rehabilitation works;
 - c. Effects of project construction and operation on air quality, noise and visual amenity of nearby sensitive receptors (in particular residences);
 - d. Effects on surface water environments, including local waterways and the broader catchment, as well as groundwater (hydrology, quality, uses and dependent ecosystems);
 - e. Solid and liquid waste that might be generated by the project during construction and operation;
 - f. Both positive and adverse socio-economic effects, at local and regional scales, potentially generated by the project, including increased traffic movement and indirect effects of the project construction workforce on the capacity of local community infrastructure;
 - g. Effects on biodiversity and ecological values within and in the vicinity of the site, and associated with adjacent road reserves and crown land, including: native vegetation; listed threatened ecological communities and species of flora and fauna; and other habitats values; and
 - h. Effects on Aboriginal and non-Aboriginal cultural heritage values.
- (ii) The matters to be investigated and documented in the EES will be set out in detail in scoping requirements prepared by the Department of Environment, Land, Water and Planning (the department). Draft scoping requirements will be exhibited for 15 business days for public comment, before being finalised and then issued by the Minister for Planning.
- (iii) The level of detail of investigation for the EES studies should be consistent with the scoping requirements issued for this project and be adequate to inform an assessment of the potential environmental effects (and their acceptability) of the project and any relevant alternatives, in the context of the Ministerial Guidelines.
- (iv) The proponent is to prepare and submit to the department a draft EES study program to inform the preparation of scoping requirements.
- (v) The department is to convene an inter-agency Technical Reference Group (TRG) the proponent and the department, as appropriate, on scoping and adequacy of the EES studies during the preparation of the EES, as well as coordination with statutory approval processes.
- (vi) The proponent is to prepare and submit to the department its' proposed EES Consultation Plan for consulting the public and engaging with stakeholders during the preparation of the EES. Once completed to the satisfaction of the department, the EES Consultation Plan is to be implemented by the proponent, having regard to advice from the department and the TRG.
- (vii) The proponent is also to prepare and submit to the department its proposed schedule for the studies, preparation and exhibition of the EES, following confirmation of the draft scoping requirements. This is to enable effective management of the EES process on the basis of an agreed alignment of the

proponent's and department's schedules, including for TRG review of technical investigations and the EES documentation.

- (viii) The proponent is to apply appropriate peer review and quality management procedures to enable the completion of EES studies to an acceptable standard.
- (ix) The EES is to be exhibited for a period of 30 business days for public comment, unless the exhibition period spans the Christmas-New Year period, in which case 40 business days will apply.
- (x) An inquiry will be appointed under the *Environment Effects Act 1978* to consider the environmental effects of the proposal.

Notification

The following parties (proponent and relevant decision-makers) are to be notified of this decision in accordance with sections 8A and 8B(4)(a)(i) of the *Environment Effects Act 1978*:

- WIM Resource Pty Ltd (proponent)
- Minister for Resources
- Minister for Water
- Minister for Energy, Environment and Climate Change
- Secretary of Department of Jobs, Precincts and Regions
- Secretary of Department of Environment, Land, Water and Planning
- Executive Director of Aboriginal Victoria
- Executive Director of Heritage Victoria
- Horsham Rural City Council
- Grampians Wimmera Mallee Water Authority
- Environment Protection Authority
- Wimmera Catchment Management Authority

