

Terms of Reference

Fosterville Gold Mine Sustained Operations Project Inquiry



VICTORIA
State
Government

Department
of Transport
and Planning

Version: July 2024

The Fosterville Gold Mine Sustained Operations Project Inquiry (the Inquiry) is appointed to inquire into, and report on, the proposed Fosterville Gold Mine Sustained Operations Project (the project) and its environmental effects in accordance with these terms of reference.

The Inquiry is appointed pursuant to:

- section 9(1) of the *Environment Effects Act 1978* (EE Act) as an Inquiry.

Name

1. The Inquiry is to be known as the 'Fosterville Gold Mine Sustained Operations Project Inquiry'.

Skills

2. The Inquiry should consist of members with expertise in:
 - a. groundwater and surface water;
 - b. amenity including air quality and noise;
 - c. gold mine landform design and rehabilitation; and
 - d. biodiversity and ecology;
 - e. land use and socio-economic effects.
3. The Inquiry will comprise an appointed Chair (Inquiry Chair), a Deputy Chair and other appropriately qualified members.

Purpose of the Inquiry

4. The Inquiry is appointed by the Minister for Planning (the Minister) under section 9(1) of the EE Act to hold an inquiry into and report on the environmental effects of the project. The Inquiry is to:
 - a. review and consider the environment effects statement (EES), the other exhibited documents, and submissions received in relation to the project;
 - b. consider and report on the significance and acceptability of likely environmental effects of the project, having regard to relevant policy and legislation and relevant evaluation objectives in the EES scoping requirements;
 - c. consider and report on potential significant impacts on relevant matters of national environmental significance protected under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), including the significance and acceptability of residual impacts.
 - d. identify any project modifications or additional measures beyond those identified in the EES the Inquiry considers necessary and effective to avoid, mitigate or manage the significant environmental effects of the project consistent with relevant policy and legislation; and
 - e. advise on how these modifications and measures should be implemented through the necessary approvals and consents for the project.
5. The Inquiry needs to assess the effects of the project components and works as described in Section 9 of these terms of reference. It is not the role of the Inquiry to examine the specific effects of the existing approved mining operations. However, the Inquiry needs to consider the combined effects of the existing operations and the project, where there is potential for cumulative effects as a result of the Sustained Operations Project.
6. The Inquiry is to produce a report of its findings and recommendations to the Minister to inform the Minister's assessment under the EE Act, which will be considered by statutory decision makers for the project.

Background

Project outline

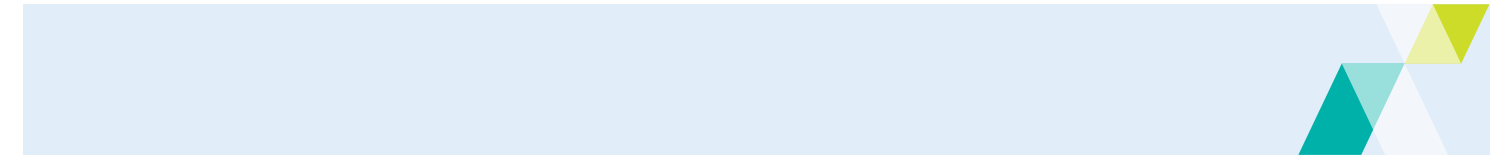
7. Fosterville Gold Mine (FGM) is an underground gold mine operated by Fosterville Gold Mine Pty Ltd which is a wholly owned subsidiary of Agnico Eagle Mines Ltd. Fosterville Gold Mine is located on Dja Dja Wurrung Country on Mining Licence 5404 (MIN5404), approximately 20 kilometres from the city of Bendigo in central Victoria.
8. The primary purpose of the components that make up the project, is to allow mining operations at the gold mine to continue into previously unmined areas of MIN5404, and to provide adequate additional storage space for mine-generated waste products (e.g. tailings, waste rock, mine water) for at least another ten years of mining.
9. The project consists of the following proposed components and works:
 - a. continuation of underground mining development extending to the north and south;
 - b. continuation of mineral exploration within the underground precincts and extending to the north and south;
 - c. open pit mining cutbacks at three existing open pits;
 - d. an above ground waste rock dump at Harrier pit (at the conclusion of backfilling operations of the existing open pit);
 - e. construction and operation of five tailings storage facilities (TSFs) for flotation and neutralisation tailings, including an extension to the existing tailings management precinct with two new above ground facilities (TSF5 and TSF6), and use of three existing pits for in-pit tailings storage following cutback operations.
 - f. construction and operation of two additional carbon-in-leach (CIL) tailings hardstands within the existing hardstand precinct;
 - g. sale of CIL tailings, with excavation from existing CIL hardstands and transportation offsite by a third party;
 - h. construction and operation of a new brine evaporation pond;
 - i. water storages for underground mining water;
 - j. aquifer recharge of treated mine water to the fractured bedrock aquifer;
 - k. relocating existing ancillary infrastructure as required, including pipelines; and
 - l. ancillary components of the project including two new vent shafts from the underground mine to the surface, construction of an embankment existing around Hunt's pit, upgrades to existing internal haul roads, a borrow pit, topsoil storage areas and a combined services corridor.
10. The project is proposed to be delivered in stages, over a 10-year period. The timing and sequence of the delivery of the project components and works would be informed by the progress of operations at the FGM.
11. The proponent is Fosterville Gold Mine Pty Ltd (the proponent), who is responsible for preparing technical studies, consulting with the public and stakeholders and preparing the EES.

EES assessment process

12. In response to a referral under the EE Act from the proponent, the then Minister for Planning determined on 10 November 2021 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**.
13. The EES was prepared by the proponent in response to the EES scoping requirements issued by the Minister in September 2022.
14. The EES will be placed on public exhibition for thirty (30) business days. This public comment process is in accordance with the procedures and requirements issued for this EES by the Minister. The proponent is responsible for public notice of EES exhibition.

Commonwealth assessment process

15. Because of its likely significant impacts on matters of national environmental significance, the project was determined to be a controlled action requiring assessment and approval under the EPBC Act, on 3 November 2021. The relevant controlling provisions under the EPBC Act relate to listed threatened species and communities (sections 18 and 18A).
16. Under the EPBC Act bilateral agreement between the Australian and Victorian governments, the Victorian EES process is serving as the accredited assessment process to address EPBC Act assessment requirements for this project. The



assessment of environmental effects to be made by the Victorian Minister for Planning will be provided to the Commonwealth Minister for Environment and Water to inform the approval decision under the EPBC Act.

Other approvals

17. The project will require other statutory approvals or consents, as outlined in the EES, including the following key approvals:
- approved work plan variation(s) under the *Mineral Resources (Sustainable Development) Act 1990* (MRSD Act);
 - approved cultural heritage management plan(s) under the *Aboriginal Heritage Act 2006*;
 - A18 discharge or deposit of waste to aquifer permits for waste to aquifer activities under the *Environment Protection Act 2017*; and
 - approvals under the *Water Act 1989* for haul road crossing works associated with Gunyah Creek, disposal of treated mine water to groundwater and works associated with the construction of dams.

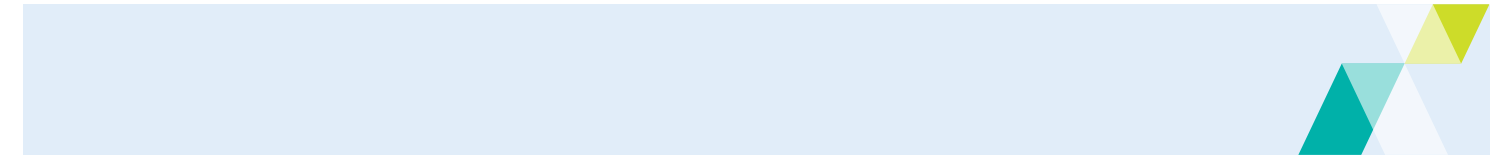
Process

Stage 1 – Submissions

18. Submissions on the EES 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'.
19. Petition responses will be treated as a single submission and only the first names from a petition submission will be registered and contacted.
20. Pro-forma submitters will be registered and contacted individually if they provide their contact details. However, the Inquiry may encourage pro-forma submitters who want to be heard at the hearing to present as a group, given their submissions raise the same issues.
21. All written submissions and other supporting documentation or evidence received through the course of the Inquiry process may be published online, unless the Inquiry specifically directs that the submission or other material, or part of it, is to remain confidential.
22. Electronic copies of each submission on the EES are to be provided to the proponent, Department of Transport and Planning (DTP) (Impact Assessment and Regional Planning Services), City of Greater Bendigo and Dja Dja Wurrung Clans Aboriginal Corporation.
23. PPV will retain any written submissions and other documentation provided to the Inquiry for a period of five years after the time of its appointment.

Stage 2 – Public hearing

24. The Inquiry must hold a public hearing and may make other such enquiries as are relevant to undertaking its role.
25. Before the start of the public hearing, the Inquiry must hold a directions hearing to make directions it considers necessary or appropriate as to the conduct, scope or scheduling of the public hearing, including the preparation and publication of a Request for Further Information report if required.
26. The Inquiry may inform itself in any way it sees fit, but must review and consider:
- the exhibited EES;
 - all submissions and evidence provided to the Inquiry by the proponent, state agencies, local councils and submitters;
 - the views (if known) of Traditional Owners and Registered Aboriginal Parties;
 - any information provided by the proponent and parties that respond to submissions or directions of the Inquiry; and
 - any other relevant information that is provided to, or obtained by, the Inquiry.


- 
27. The Inquiry 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 Inquiry process and hearing itself is to be exploratory and constructive, with adversarial behaviour discouraged and with cross-examination / questioning to be regulated by the Inquiry in the context of these three principles.
 28. The Inquiry may limit the time of parties appearing before it.
 29. The Inquiry 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.
 30. The Inquiry 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 Inquiry Chair or Deputy Chair.
 31. If directed by the Inquiry, an audio 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 Inquiry.
 32. Any other 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 Inquiry.

Stage 3 – Report

33. The Inquiry needs to 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 significant environmental effects;
 - d. recommendations relating to any feasible modifications to the design or management of the project that would offer improved environmental outcomes, particularly in relation to reducing/mitigating significant environmental effects;
 - e. recommendations for appropriate conditions that may be lawfully imposed on any approval for the project, including with respect to the content or controls within a work plan variation, risk treatment plans or conditions that might appropriately be attached to approval of a work plan variation if issued under the MRSD Act;
 - f. recommendations about the structure and content of the proposed environmental management framework, including monitoring of environmental effects, contingency plans and site rehabilitation; and
 - g. specific findings and recommendations about the residual impacts on matters of national environmental significance and their acceptability, including appropriate controls and environmental management.
34. The report should include:
 - a. information and analysis in support of the Inquiry'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 Inquiry, 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

35. The Inquiry should hold a directions hearing no later than 20 business days from the final date of the exhibition period.
36. The Inquiry should commence the hearing no later than 40 business days from the final date of the exhibition period.

- 
37. The Inquiry must submit its report in writing to the Minister for Planning within 30 business days from its last day of its proceedings, unless the report writing period spans the Christmas-New Year period, in which case 40 business days will apply.
38. DTP's Impact Assessment Unit needs to liaise with PPV to agree on the directions hearing and hearing dates, which are to be included on all public notices.

Minister's assessment

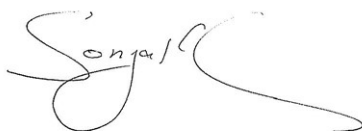
39. The Minister for Planning will make an assessment of the environmental effects of the project after considering the Inquiry's report as well as the EES, submissions and any other relevant matters.
40. PPV will notify submitters of the release of the Minister's assessment and Inquiry report.

Fee

41. The fees for the members of the Inquiry will be set at the current rate for a panel appointed under part 8 of the *Planning and Environment Act 1987*.
42. All costs of the Inquiry, 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

43. The Inquiry may apply to the Minister for Planning to vary these terms of reference in writing, at any time before submission of its report. This includes to seek variation to the required reporting timeframe.
44. The Inquiry may retain specialist expert advice, additional technical support, or legal counsel to assist if considered necessary.
45. PPV is to provide any necessary administrative support to the Inquiry. In addition, the proponent is to provide any necessary administrative or technical support to the Inquiry in relation to the conduct of the hearing (if required).



Sonya Kilkenny MP
Minister for Planning

Date: 24/07/2024



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

Project Management

1. For matters regarding the Inquiry process, please contact Planning Panels Victoria, by phone (03) [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.

STATEMENT OF DECISION ON PROJECT

Decision under section 8B(3) of the *Environment Effects Act 1978*

Fosterville Gold Mine Sustained Operations Project (Sustained Operations Project) (Referral Number 2021-R03)

Assessment through an environment effects statement (EES) under the *Environment Effects Act 1978* is required for the reasons set out in the attached Notice of Reasons for Decision.

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 investigate and document the potential environmental effects of the proposed project, including for any relevant alternatives, as well as associated avoidance, mitigation and management measures. In particular, the EES needs to address:
 - a. effects on biodiversity and ecological values within and near the site including native vegetation, threatened communities and species (flora and fauna) listed under the *Flora and Fauna Guarantee Act 1988* and *Environment Protection and Biodiversity Conservation Act 1999*;
 - b. effects on water resources and their environmental values, including as a result of possible changes to groundwater, stream flows, discharge of sediment and contamination from mine tailings;
 - c. effects on existing land uses, local amenity, considering potential changes in air quality, noise and vibration for nearby sensitive receptors, as well as visual amenity and landscape values of the area;
 - d. effects on Aboriginal and historic cultural heritage values;
 - e. effects from a cumulative perspective, including the above-mentioned values, considering the proposed works, existing mining activities and approved works yet to be undertaken at the mine.
- (ii) The matters to be investigated and documented in the EES will be set out more fully in scoping requirements prepared by the Department of Environment, Land, Water and Planning (DELWP). 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 proponent is to prepare and submit to DELWP a draft EES study program to inform the preparation of scoping requirements.
- (iv) The level of detail of investigation for the EES studies should be consistent with the scoping requirements issued for this proposal and be adequate to inform an assessment of the significance and acceptability of the potential environmental effects of the proposal and any relevant alternatives, in the context of the Ministerial Guidelines.
- (v) DELWP will convene an inter-agency technical reference group (TRG) to advise DELWP and the proponent, as appropriate, on the scoping requirements, the design and adequacy of the

EES studies during the preparation of the EES, as well as coordination with statutory approval processes.

- (vi) The proponent is also to prepare and submit to DELWP its proposed EES consultation plan for engaging with the public and stakeholders during the preparation of the EES. Once completed to the satisfaction of DELWP, the EES consultation plan is to be implemented by the proponent, having regard to advice from DELWP and the TRG.
- (vii) The proponent is also to prepare and submit to DELWP its proposed schedule for the completion of studies, preparation and exhibition of the EES, following confirmation of the scoping requirements. This schedule is intended to facilitate the alignment of the proponent's and DELWP's timeframes, including for TRG review of technical studies.
- (viii) The proponent is to apply appropriate peer review and quality management procedures to enable the completion of EES studies and documentation to a satisfactory 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 and report on 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) of the *Environment Effects Act 1978*, as appropriate:

- Fosterville Gold Mine Pty Ltd (FGM) (proponent);
- Secretary of the Department of Environment, Land, Water and Planning;
- Minister for Energy, Environment and Climate Change;
- City of Greater Bendigo;
- Parks Victoria;
- North Central Catchment Management Authority;
- Goulburn-Murray Water;
- Environment Protection Authority;
- First Peoples - State Relations, Department of Premier and Cabinet;
- Heritage Victoria;
- Dja Dja Wurrung Clans Aboriginal Corporation; and
- Commonwealth Minister for the Environment.



HON RICHARD WYNNE MP
Minister for Planning

Date:

10/06/21