



Terms of Reference

Independent Review Group – Knox Creek Plain August 2015

1.0 Background

Kimberley Agricultural Investment Pty Ltd (KAI) has received conditional approval from the Minister for the Environment to develop the Knox Creek Plain for irrigated agriculture. EPBC Approval 2014/7143 permits allows for the development of 12,695 hectares of predominantly black soil alluvial plains located 35 kilometres north-east of Kununurra, Western Australia. This 12,695 hectares includes 5,570 hectares of farms, 6,415 hectares of buffer and 710 hectares of infrastructure (including a balancing storage area).

The Minister for the Environment considered there is potential for impact from the Knox Creek Plain development upon downstream aquatic fauna Matters of National Environmental Significance (MNES) listed under the EPBC Act 1999.

Condition 14 of EPBC Approval 2014/7143 requires the establishment of an Independent Review Group (IRG), to review impacts of the Knox Creek Plain development on aquatic fauna MNES, as follows -

Condition 14 – Independent Review Group

The person taking the action must appoint an Independent Review Group (IRG) to review the impacts of the action on aquatic listed threatened and migratory species. The IRG must be established prior to the submission of the Aquatic Fauna Management Plan to the Minister for approval. If a condition of another approval held by the proponent requires an IRG identical in nature, the proponent may meet the relevant requirements of both conditions by appointing a single IRG.

The IRG must be established by the person taking the action in accordance with the following requirements:

- i) The IRG must be funded, resourced and managed by the person taking the action.*
- ii) The IRG must consist of independent scientific and technical experts, of whom at least one must be a Glyphis and Pristis expert and two must be technical experts with at least five years experience in northern Australian surface water and groundwater hydrology, approved by the Minister.*
- iii) Terms of Reference for the IRG must be prepared by the person taking the action and submitted for approval by the Minister. The Terms of Reference must include the frequency of proposed meetings, tenure of membership, and chairing and quorum arrangements. The Terms of Reference must be approved by the Minister in writing prior to the submission of the Aquatic Fauna Management Plan to the Minister for approval.*
- iv) The IRG must provide advice to the person taking the action on any revisions to the Aquatic Fauna Management Plan. The advice of the IRG must also be provided to the Minister.*
- v) The IRG must assess any exceedances of trigger values and advise changes to the person taking the action as required; and*
- vi) The Minister may seek advice from the IRG at any time.*

In line with this condition, and in consideration of the references to the IRG in relation to Aquatic Fauna Management (EPBC 2014/7143 Condition 15), the terms of reference and operational arrangements for the Knox Creek Plain Independent Review Group are as follows:

2.0 Functions of the Knox Creek Plain IRG

The IRG will

- 2.1 Review and provide advice on the Knox Creek Plain Aquatic Fauna Management Plan (and any subsequent revisions to that plan), prior to submission of the plan by the proponent to the Minister for approval.
- 2.2 Consider and assess the contribution of the Knox Creek Plain development to any exceedances of Keep River water quality trigger values.
- 2.3 In relation to EPBC 2014/7143 Aquatic Fauna Management (Condition 15),
 - a) Provide advice to the Proponent on the methodology for the baseline survey program required under condition 15B(i).
 - b) Provide advice to the Proponent on Keep River trigger levels and analytes to be monitored, per condition 15B(iii).
 - c) Provide advice to the Proponent on a method or mechanism for predicting, monitoring and/or modeling the water quality of the season first flush of water from the Knox Creek Plain, per condition 15B(v).

The IRG will consider, at its annual meeting, the suitability of mitigation responses implemented by KAI in relation to any exceedances of water quality triggers. This may include recommending updates to mitigation measures contained in the Aquatic Fauna Management Plan, and/or further review of mitigation options by way of a special IRG meeting to be called if required.

3.0 Membership of the IRG

The IRG will consist of the following members:

Mandatory

- 1 x Independent Chairperson
- 1 x *Glyphis* and *Pristis* expert
- 2 x Technical experts with a minimum of 5 years experience in Northern Australian hydrology

Optional

- Up to 2 other individuals with Northern Australia hydrology or farming expertise

IRG membership will be nominated by the Proponent, and will commence upon endorsement by the Minister for the Environment.

Members will be initially appointed for a period of three (3) years, with extension considered on recommendation of the Proponent to the Minister.

The Knox Creek Plain IRG will operate until the Minister agrees that the group is no longer required.

4.0 Operations and executive support to the IRG

4.1 Meeting frequency and quorum arrangements

The Knox Creek Plain IRG will meet (at least) annually to consider the impact of the Knox Creek Plain development on the aquatic MNES present in the Keep River. This will include review of annual water quality monitoring results and any exceedances of trigger levels in the Keep River.

The Proponent may invite its consultants, staff and/or other advisors to attend IRG meetings to discuss impacts and/or present research findings relating to aquatic MNES present in the Keep River.

In person, telephone or videoconference meetings are acceptable. Out-of-session decisions will be ratified at the subsequent formal meeting.

A quorum will comprise the Chairperson and at least two of the three mandatory members. Out-of-session consideration of Knox Creek Plain-related aquatic fauna matters will require the same quorum review, and will be ratified at subsequent IRG meetings.

Members unable to attend a meeting may provide written advice, via the Chairperson, for consideration at that IRG meeting.

The Minister for the Environment may seek advice from the IRG at any time. Out-of-session advice or special IRG meetings may be called in the event of a request from the Minister for advice.

4.2 Executive support

Executive support will be provided by KAI as Proponent. Draft meeting records will be distributed within one week of Knox Creek Plain IRG meetings. Meeting records will be finalised and distributed upon approval from the Chairperson on behalf of IRG members.

Meeting records will be distributed to IRG members and the Department of the Environment on request.

All IRG meeting and travel costs will be met by the Proponent. Remuneration arrangements will be negotiated between the Proponent and individual IRG members.

4.3 Conflict resolution

Where a conflict of interest occurs for an IRG member, the member should self-identify. The Chairperson of the IRG will decide if the IRG member who has identified a conflict of interest should be excluded from involvement in the matter being discussed.

The IRG will conform to its Terms of Reference. In the event that a member of the IRG has concerns with IRG decisions, functions and/or progress being made, these concerns shall be brought to the attention of the Chairperson, who will take appropriate action.

4.4 Transparency and confidentiality

KAI is a corporate entity with an explicit commercial interest in the agricultural development of the Knox Creek Plain. IRG matters deemed confidential by KAI will be treated as such by the IRG members.

4.5 Reporting to the Minister

The IRG will report to the Minister at intervals it considers relevant.

Reporting of exceedances of water quality trigger values will be included in KAI's Knox Creek Plain Annual Environmental Report, due to the IRG and the Department of the Environment by 31 March of each year. The reporting period will be the previous calendar year. IRG advice to the Minister may follow this report, at the discretion of the IRG.