



# **Knox Creek Plain EPBC Approval 2014/7143**

# **Annual Report 2019**

April 2019

Prepared for Kimberley Agricultural Investment Pty Ltd by



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## Acronyms and Abbreviations

CAR	Compliance Assessment Plan
DoEE	Department of Environment and Energy
DPIRD	Department of Primary Industries and Regional Development
DSD	(Former) Department of State Development
DWER	Department of Water and Environmental Regulation
EMP	Environmental Management Program
EPA	Environmental Protection Authority
EPBC	Environment Protection and Biodiversity Conservation (Act 1999)
FPDP	Final Project Design Plan
IRG	Independent Review Group
KAI	Kimberley Agricultural Investment Pty Ltd
WA	Western Australia

## 1.0 Overview

On June 16, 2015, the Australian Government Department of the Environment, under delegation of the Minister for the Environment, issued Kimberley Agricultural Investment Pty Ltd (KAI) conditional approval to develop the Knox Creek Plain for irrigated agriculture. Approval 2014/7143 contains fifteen conditions targeted at ensuring the protection of Matters of National Environmental Significance, listed under the Environment Protection and Biodiversity Conservation (EPBC) Act 1999.

This document reports on progress against implementation of the conditions of approval, for the period ending 31 December 2019, and meets the annual report requirement under Condition 3 of EPBC 2014/7143.

It will be supplemented by the 2019 annual Environmental Management Program (EMP) audit of compliance with the requirements of Statement 938, issued by the Western Australian Minister for the Environment, in relation to the development of the M2 agricultural area in the north-east Kimberley, which partially includes the Knox Creek Plain. The 2019 EMP annual compliance audit is being undertaken for the Western Australian Department of Primary Industries and Regional Development (DPIRD) and was not finalised at the time of preparation of this report.

Development of the Knox Creek Plain for irrigated agriculture has not yet commenced (see Attachment A for satellite imagery). Investigations and planning, including required baseline research and the development of management plans required under EPBC 2014/7143, commenced in 2015/16.

## 2.0 Key approval changes in 2019

### ***Variation to conditions***

No condition variations were issued in 2019.

### ***Statement 938 changes and review of Environmental Management Plan***

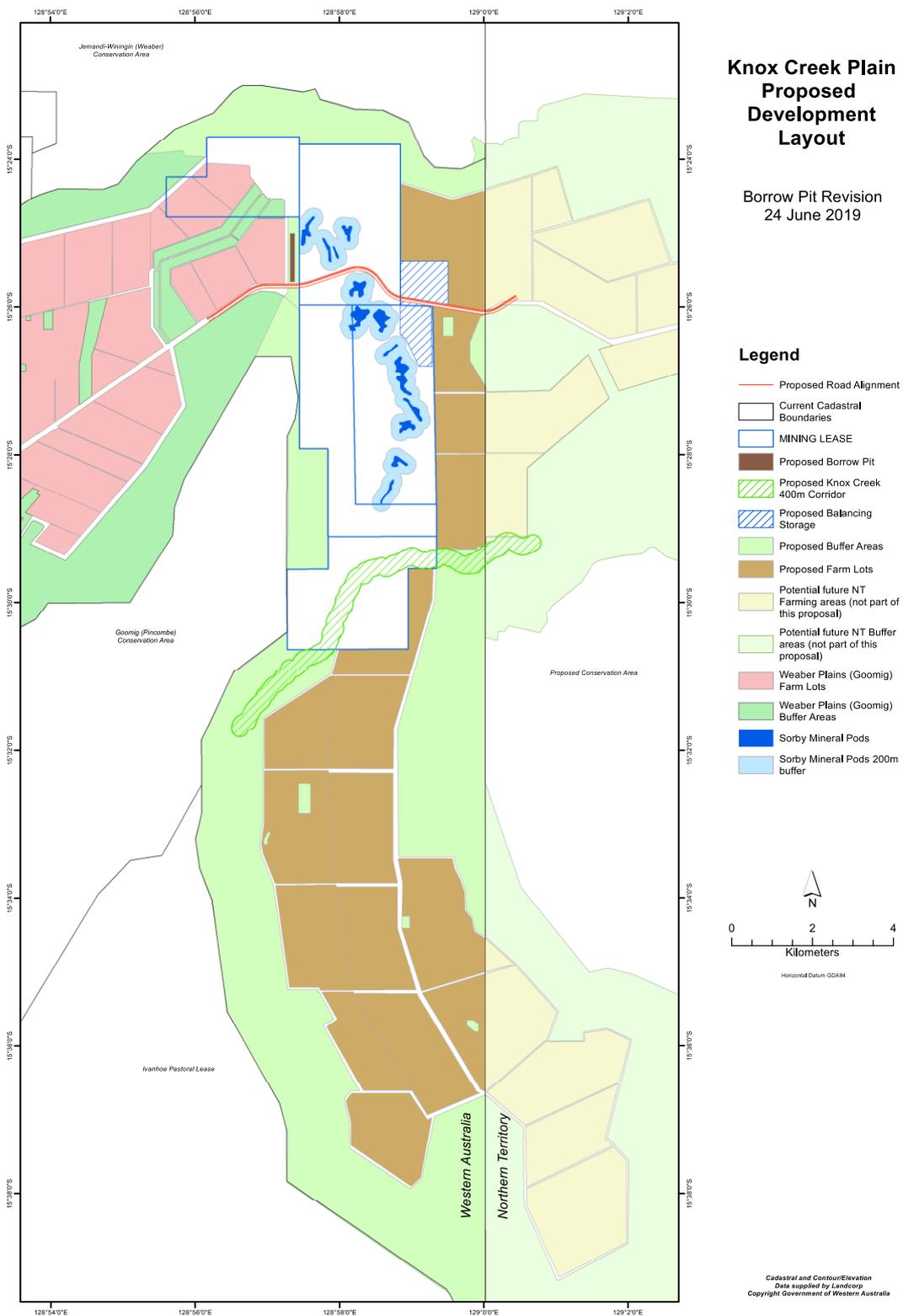
Ministerial Statement 938 covers both the Weaber Plain (Goomig) and Knox Creek Plain developments. On 12 December 2017, the proponenty transferred from the WA Department of State Development (DSD) to DPIRD. The Department of Water and Environmental Regulation (DWER) requested, in mid-2017, that the proponent for Statement 938 conduct a full review of the EMP, in line with new DWER guidelines issued in March 2017. The revised EMP will amalgamate the existing Weaber and Knox EMPs, which have both been approved under Statement 938.

The revised EMP for the Weaber and Knox areas had not been finalised by DPIRD for approval by DWER, at the end of this reporting period. It will be submitted to the DoEE as required under the (revised) condition 5 of the Knox Creek Plain EPBC approval when the WA government and DWER complete the revision process.

### ***Final Project Design Plan amendment***

The WA government has submitted amendments to the *Knox Creek Plain Final Project Design Plan*, required under Statement 938, to the WA Environmental Protection Authority for approval. Figure 1 provides the current overall layout. No additional implications for EPBC-listed Matters of National Environmental Significance have been identified by the State in determining the road route and the revised layout. It is not expected that additional clearing will be required by KAI as the road is contained within the current EPBC approval area.

Figure 1 - Knox Creek Plain revised layout to accommodate road realignment



### 3.0 Statement of progress against EPBC 2014/7143 conditions

Table 1 provides a summary of progress during the period 1 January 2019 to 31 December 2019.

Table 1 - EPBC 2014/7143 Progress Statement 2019

Condition	Requirement	Statement of Progress – 2018 (refer to 2015 and 2016 reports for background status information)	Statement of Progress - 2019
1	Within 30 days after the commencement of the action, the person taking the action must advise the Department in writing of the actual date of commencement.	No change. Commencement of the action has not yet occurred.	No change. The action had not commenced by 31 December 2019.
2	The person taking the action must maintain accurate records substantiating all activities associated with or relevant to the conditions of approval, including measures taken to implement the management plans required by this approval, and make them available upon request to the Department. Such records may be subject to audit by the Department or an independent auditor in accordance with section 458 of the EPBC Act, or used to verify compliance with conditions of approval. Summaries of audits will be posted on the Department's website. The results of audits may also be publicised through the general media.	KAI is maintaining records of environmental investigations and compliance with the requirements of EPBC 2014/7143.	KAI is maintaining records of environmental investigations and compliance with the requirements of EPBC 2014/7143.
3	By 31 March of each year after commencement of the action, the person taking the action must publish a report on their website addressing compliance with the conditions of this approval over the previous 12 months, including implementation of any management plans as specified in the conditions. Non-compliance with any of the conditions of this approval must be reported to the Department within two days of the person taking the action becoming aware of the non-compliance and at the same time as the compliance report is published. The person taking the action must continue to publish the report until such time as agreed in writing by the Minister or the approval has expired.	This report is provided to update the Minister for the Environment on progress against compliance with EPBC 2014/7143, despite the action having not yet commenced. The Statement 938 2018 compliance audit will be forwarded when a copy is received by KAI.	This report is provided to update the Minister for the Environment on progress against compliance with EPBC 2014/7143, despite the action having not yet commenced. The Statement 938 2019 compliance audit will be forwarded when a copy is received by KAI.
4	Upon the direction of the Minister, the person taking the action must ensure that an independent audit of compliance with the conditions of approval is conducted and submitted to the Minister. The person taking the action must not commence the audit until the independent auditor and audit criteria have been approved by the Minister. The audit report must address the criteria to the satisfaction of the Minister.	No audit requests received to date.	No audit requests received to date.

Condition	Requirement	Statement of Progress – 2018 (refer to 2015 and 2016 reports for background status information)	Statement of Progress - 2019
5	<p>The person taking the action may choose to revise the <i>Knox Creek Plain Environmental Management Program, August 2015</i>; Bare-rumped Sheathtail Bat Management Plan; and Aquatic Fauna Management Plan, approved by the Minister without submitting it for approval (including under section 14A of the EPBC Act), if the taking of the action in accordance with the revised plan would not be likely to have a new or increased impact. If the person taking the action makes this choice they must:</p> <p>a) Notify the Department in writing that the approved plan has been revised and provide the Department, at least four weeks before implementing the revised plan, with:</p> <ul style="list-style-type: none"> <li>i. An electronic copy of the revised plan;</li> <li>ii. An explanation of the differences between the revised plan and the approved plan; and</li> <li>iii. The reasons the person taking the action considers that the taking of the action in accordance with the revised plan would not be likely to have a new or increased impact.</li> </ul>	<p>The review of the EMP approved under the requirements of WA EP Act approval Statement 938 is still being undertaken by DPIRD as proponent for that approval. A copy of the revised EMP (when approved by the WA EPA) will be provided when received.</p>	<p>No change to status. DPIRD is continuing with the EMP review, in conjunction with amendments to management plans under the associated Weaber Plain (Goomig) EPBC Approval 2010/5491.</p>
5A	<p>The person taking the action may revoke its choice under condition 5 at any time by giving written notice to the Department. If the person taking the action revokes its choice to implement the revised plan, without approval under Section 143A of the EPBC Act, the plan approved by the Minister must be implemented.</p>	N/A	N/A
5B	<p>If the Minister gives a notice to the person taking the action that the Minister is satisfied that the taking of the action in accordance with the revised plan would be likely to have a new or increased impact, then:</p> <ul style="list-style-type: none"> <li>i. Condition 5 does not apply, or ceases to apply, in relation to the revised plan; and</li> <li>ii. The person taking the action must implement the plan approved by the Minister.</li> </ul> <p>To avoid any doubt, this condition does not affect any operations of conditions 5 or 5A in the period before the day the notice is given.</p>	N/A	N/A

Condition	Requirement	Statement of Progress – 2018 (refer to 2015 and 2016 reports for background status information)	Statement of Progress - 2019
	<p>At the time of giving the notice, the Minister may also notify that for a specified period of time condition 5 does not apply to the plan required under the approval.</p> <p>Conditions 5, 5A and 5B are not intended to limit the operation of section 143A of the EPBC Act which allows the person taking the action to submit a revised plan to the Minister for approval.</p>		
6	<p>If the Minister believes that it is necessary or convenient for the better protection of the listed threatened or migratory species to do so, the Minister may request that the person taking the action make specified revisions to the management plans specified in the conditions and submit the revised management plan for the Minister's written approval. The person taking the action must comply with any such request. The revised approved management plan must be implemented. Unless the Minister has approved the revised management plan, then the person taking the action must continue to implement the management plan originally approved, as specified in the conditions.</p>	No requests from the Minister have been received to date.	No change.
7	<p>If, at any time after five years from the date of this approval, the person taking the action has not substantially commenced the action, then the person taking the action must not substantially commence the action without the written agreement of the Minister.</p>	KAI has not yet commenced development of the Knox Creek Plain.	No change as at 31 December 2019.
8	<p>Unless otherwise agreed in writing by the Minister, the person taking the action must publish all management plans referred to in these conditions of approval and any baseline information and monitoring results required by these plans on their website. Each management plan must be published on the website within one month of being approved and all baseline information and monitoring results must be published on the website annually, beginning twelve months after the commencement of the action. The person taking the action must continue to publish the approved management plans and baseline information until such time as agreed in writing by the Minister or the approval has expired.</p>	Three years' baseline bore monitoring has been completed and is currently being analysed by the WA DPIRD through its role as Proponent for Statement 938 under the WA EP Act 1986. This report will be made available when received.	<p>The analysis of bore monitoring data for the period 2014 to 2018, including a comparison to baseline data and original groundwater modelling, was completed by DPIRD in July 2019. This review was considered by the Independent Review Group established for the Weaber Plain (Goomig) project at its February 2020 meeting.</p> <p>Arising from this and an associated review of stormwater management arrangements, it is expected that the Stormwater and</p>

Condition	Requirement	Statement of Progress – 2018 (refer to 2015 and 2016 reports for background status information)	Statement of Progress - 2019
			Groundwater Discharge Management Plan, Groundwater Management Plan and Aquatic Fauna Management Plan approved under the Weaber Plain conditions will be amended in coming months. This will have implications for the associated Knox management plans, and will be addressed as and when required.
9	Any amendments to Sections of the <i>Knox Creek Plain Environmental Management Program May 2015</i> referred to in the conditions below must be submitted to the Department and approved by the Minister prior to any amendments being implemented.	Condition revoked.	Condition revoked.
10	To avoid and/or minimise impacts on listed threatened and migratory species from impacts resulting from the action, the person taking the action must not clear more than 6,280ha of vegetation, as specified by 'Proposed Development Area' in Annexure 1.	No clearing of the Knox Creek Plain occurred in 2018.	No clearing of the Knox Creek Plain occurred in 2019.
11	To protect the critically endangered Bare-rumped Sheathtail Bat ( <i>Saccolaimus saccolaimus nudicluniatu</i> s) from impacts resulting from the action, the person taking the action must:		
11A	Ensure the clearance of the Development Area does not result in the death of any Bare-rumped Sheathtail Bats	No change.	No change.
11B	Conduct Bare-rumped Sheathtail Bat roosting tree surveys of potential Bare-rumped Sheathtail Bat habitat areas in accordance with the advice of a Bare-rumped Sheathtail Bat expert. Bare-rumped Sheathtail Bat roosting tree surveys must identify, tag and map all potential or confirmed Bare-rumped Sheathtail Bat roost trees in the potential Bare-rumped Sheathtail Bat habitat areas and be completed within six months prior to clearance of potential Bare-rumped Sheathtail Bat habitat areas; and	No change. This action will be progressed when the development is scheduled to commence.	No change.
11C	If the Bare-rumped Sheathtail Bat roosting tree surveys identify potential or confirmed Bare-rumped Sheathtail Bat roost trees in the potential Bare-rumped Sheathtail Bat habitat areas, then submit to the Department a Bare-	No change. This action will be progressed when the development is scheduled to commence.	No change.

Condition	Requirement	Statement of Progress – 2018 (refer to 2015 and 2016 reports for background status information)	Statement of Progress - 2019
	rumped Sheathtail Bat Management Plan (BRSBMP). The BRSBMP must detail how all potential and confirmed Bare rumped Sheathtail Bat roost trees in the potential Bare-rumped Sheathtail Bat habitat areas will be avoided, mitigated or offset. The BRSBMP must be submitted for approval by the Minister. The person taking the action must not commence clearance of potential Bare-rumped Sheathtail Bat habitat areas until the BRSBMP is approved by the Minister. The BRSBMP must be approved by the Minister prior to implementation		
	The approved BRSBMP must be implemented and include commitments to:	No change. This action will be progressed when the development is scheduled to commence.	No change.
11C(i)	Consider the implementation of more focused survey methods, such as mist netting, to obtain more refined results. This may be particularly beneficial in the event that the number of potential or confirmed Bare-rumped Sheathtail Bat roost trees identified during Bare-rumped Sheathtail Bat roosting tree surveys is high	No change.	No change.
11C(ii)	Conduct all clearance of potential Bare-rumped Sheathtail Bat habitat areas outside of the Bare-rumped Sheathtail Bat breeding season	No change.	No change.
11C(iii)	Conduct a pre-clearance disturbance regime in accordance with the advice of a Bare-rumped Sheathtail Bat expert	No change.	No change.
11C(iv)	Fell any potential or confirmed Bare-rumped Sheathtail Bat roost trees that cannot be avoided, with care, in the presence of a Bare-rumped Sheathtail Bat expert, and in accordance with the advice of a Bare-rumped Sheathtail Bat expert, so as to avoid mortality of Bare-rumped Sheathtail Bat individuals	No change.	No change.
11C(v)	Translocate, with the service of a Bare-rumped Sheathtail Bat expert, any Bare rumped Sheathtail Bat that is captured following the felling of a potential or confirmed Bare-rumped Sheathtail Bat roost tree	No change.	No change.
11C(vi)	Report site locations (both original location site and, if a Bare-rumped Sheathtail Bat is captured, the translocated site) to the Department if any confirmed Bare rumped Sheathtail Bat roost trees are found	No change.	No change.

Condition	Requirement	Statement of Progress – 2018 (refer to 2015 and 2016 reports for background status information)	Statement of Progress - 2019
11C(vii)	Provide offsets of no less than \$100,000 to a trust fund for Bare-rumped Sheathtail Bat research for each confirmed Bare-rumped Sheathtail Bat roost tree cleared for the proposal, to a maximum contribution of \$500,000. The offset trust fund and research activities must be approved by the Minister prior to implementation; or	No change.	No change.
11C(viii)	Not clear selected potential or confirmed Bare-rumped Sheathtail Bat roost trees or any vegetation within a 30m zone around these trees	No change.	No change.
12	Buffer Management		
12A	The person taking the action must establish a buffer area of at least 6,415ha, as specified by "Proposed Buffer Areas" in Annexure 1.	No change.	No change.
12B	The person taking the action must implement the action in accordance with Sections 10 and 11 of the Knox Creek Plain Environmental Management Program, August 2015.	An audit of the <i>Knox Creek Plain Environmental Management Program</i> has been undertaken as part of the 2018 Statement 938 compliance assessment required by the WA EPA. The associated compliance assessment report will be forwarded when received from the DPIRD.	An audit of the <i>Knox Creek Plain Environmental Management Program</i> has been undertaken as part of the 2019 Statement 938 compliance assessment required by the WA EPA. The associated compliance assessment report will be forwarded when received from the DPIRD.
12C	The person taking the action must ensure that none of the following habitat trees or any vegetation within a 30m zone around these trees are cleared within the Buffer Area:	No change.	No change.
12C(i)	Confirmed or potential Bare-rumped Sheathtail Bat ( <i>Saccolaimus Saccolaimus nudicluniatatus</i> ) roosting trees;	No change.	No change.
12C(ii)	Gouldian Finch ( <i>Erythrura gouldiae</i> ) breeding trees;	No change.	No change.
12C(iii)	Red Goshawk ( <i>Erythrorchis radiatus</i> ) nesting trees; and	No change.	No change.
12C(iv)	Masked Owl (Northern) ( <i>Tyto novaehollandiae kimberli</i> ) nesting trees.	No change.	No change.
12C(v)	The location and date of any incidental sightings of the species listed in Condition 12.C above must be reported to the Department within 30 days of occurrence.	No change.	No change.
13	Weed and Pest Animal Management		

Condition	Requirement	Statement of Progress – 2018 (refer to 2015 and 2016 reports for background status information)	Statement of Progress - 2019
13A	The person taking the action must implement the action in accordance with Section 6 of the Knox Creek Plain Environmental Management Program August 2015.	An audit of the <i>Knox Creek Plain Environmental Management Program</i> has been undertaken as part of the 2017 Statement 938 compliance assessment required by the WA EPA. The associated compliance assessment report will be forwarded when received from the DPIRD.	An audit of the <i>Knox Creek Plain Environmental Management Program</i> has been undertaken as part of the 2019 Statement 938 compliance assessment required by the WA EPA. The associated compliance assessment report will be forwarded when received from the DPIRD.
14	Independent Review Group		
14A	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:	The Knox IRG did not meet in 2018, however the Weaber Plain IRG met on 9/1/18, 24/4/18 and 10/4/18. The Weaber IRG is progressing amendments to the water management and monitoring requirements, through the DoEE. A merger of the two groups occurred in early 2019.	The Weaber Plain (Goomig) IRG met in March 2019. Membership is now merged with the Knox IRG. Although two different proponents (DPIRD and KAI) are responsible for the Weaber and Knox approvals respectively, the single IRG membership, reviews, monitoring and management recommendations relate to both approval areas.
14A(i)	The IRG must be funded, resourced and managed by the person taking the action.	The Knox IRG did not meet in 2018, as the development of the Knox Creek Plain has not yet commenced.	As above.
14A(ii)	The IRG must consist of independent scientific and technical experts, of whom at least one must be a <i>Glyphis</i> and <i>Pristis</i> 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.	No change in 2018.	The Weaber Plain (Goomig) IRG membership consists of David Menzel (Chair) – also approved Knox IRG Chair. Dr Ray Evans – also approved Knox IRG member. Dr Mark Silburn (Queensland Government) Dr David Morgan (Murdoch University). Dr Morgan has replaced Dr Helen Larson, an approved Knox IRG member, who has resigned from both IRG groups. KAI is advised by DPIRD that Dr Morgan’s membership of the Weaber Plain IRG has been approved by the Minister’s delegate.

Condition	Requirement	Statement of Progress – 2018 (refer to 2015 and 2016 reports for background status information)	Statement of Progress - 2019
14A(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 <i>Aquatic Fauna Management Plan</i> to the Minister for approval.	No change.	There has been no change to the Knox Terms of Reference, noting that formal changes and a request to merge with the Weaber Plain IRG (despite different approval holders) will be made when the Knox action commences.
14A(iv)	The IRG must provide advice to the person taking the action on any revisions to the <i>Aquatic Fauna Management Plan</i> . The advice of the IRG must also be provided to the Minister.	No change.	No change.
14A(v)	The IRG must assess any exceedances of trigger values and advise changes to the person taking the action as required; and	No change in 2018.	N/A in 2019 as Knox has not commenced.
14A(vi)	The Minister may seek advice from the IRG at any time.	No change in 2018.	No requests from the Minister were received in 2019.
15	Aquatic Fauna Management.		
15A	The person taking the action must implement the action in accordance with Sections 7, 8 and 9 of the <i>Knox Creek Plain Environmental Management Program August 2015</i> , to minimise impacts on listed threatened and migratory species in the Keep River.	An audit of the <i>Knox Creek Plain Environmental Management Program</i> has been undertaken as part of the 2018 Statement 938 compliance assessment required by the WA EPA. A copy will be made available when received from the DPIRD.	An audit of the <i>Knox Creek Plain Environmental Management Program</i> has been undertaken as part of the 2019 Statement 938 compliance assessment required by the WA EPA. A copy will be made available when received from the DPIRD.
15B	In order to mitigate impacts to listed threatened and migratory species in the Keep River from impacts resulting from the action, the person taking the action must prepare an Aquatic Fauna Management Plan (AFMP), in consultation with the IRG. The AFMP must be submitted for approval by the Minister. The person taking the action must not commence clearance of the Development Area until the AFMP is approved by the Minister. The approved AFMP must be implemented. If a condition of another approval held by the proponent requires an AFMP, the proponent may meet the relevant requirements of both conditions by submitting a single plan. If a single plan is submitted, the plan must	No change in 2018.	No change.

Condition	Requirement	Statement of Progress – 2018 (refer to 2015 and 2016 reports for background status information)	Statement of Progress - 2019
	identify to which approval the sections of the plan relate. The AFMP must include:		
15B(i)	A targeted, non-lethal baseline surveying program for listed threatened species that are likely to occur in the Keep River. This must include the critically endangered Speartooth Shark ( <i>Glyphis glyphis</i> ), the endangered Northern River Shark ( <i>Glyphis garricki</i> ), the vulnerable Dwarf Sawfish ( <i>Pristis clavata</i> ) and the vulnerable Freshwater Sawfish ( <i>Pristis Microdon</i> ), now known as Largetooth Sawfish ( <i>Pristis pristis</i> ). The methodology of the baseline surveying program must be developed in consultation with the IRG. Surveys must be conducted over a period of 3 years and must be undertaken in the four Keep River pools (K1, K2, K3 and K4) and at least three sites in the Keep River estuary.	Complete.	N/A
15B(ii)	An outcome based risk assessment which is based on data collected during the baseline monitoring program and other relevant data to determine the potential risks to the listed threatened species named in Condition 15.B.i above as well as for the listed vulnerable Green Sawfish ( <i>Pristis zijsron</i> ) and the listed migratory Australian Snubfin Dolphin ( <i>Orcaella heinsohm</i> ) and Indo Pacific Humpback Dolphin ( <i>Sousa chinensis</i> ), at an individual and local population level.	Complete.	N/A
15B(iii)	Seasonal, site-specific baseline water quality and flow trigger values for the Keep River listed threatened and migratory species determined with reference to the ANZECC guidelines and the advice of the IRG. Until trigger values are established with the advice of the IRG, ANZECC guidelines trigger values for systems with high conservation/ecological value (as defined in the ANZECC guidelines) must be used. Sample analytes must also be determined with the advice of the IRG.	The 2018 water monitoring report was submitted to the Weaber IRG in early 2018, and also to the WA Department of Water and Environmental Regulation. KAI has determined that Keep River water quality triggers are based on out-of-season data for the receiving pool (K3), and is pursuing amendments to the triggers through the Weaber IRG.	Amendments to the Weaber (and therefore Knox) Stormwater and Groundwater Discharge Management Plan, including triggers, are anticipated in 2020 on the advice of the IRG.
15B(iv)	A monitoring program for the Keep River, Keep River pools, on the Development Area, and of relevant groundwater sites and parameters to be undertaken to monitor water quality and flow with the purpose of enabling early detection of changes so that corrective action can be taken to ensure that trigger values are not exceeded during construction and operation.	No change in 2018.	Keep River monitoring is undertaken as reported by DPIRD through the Weaber Plain approvals.

Condition	Requirement	Statement of Progress – 2018 (refer to 2015 and 2016 reports for background status information)	Statement of Progress - 2019
15B(v)	A method or mechanism for predicting, modelling and/or monitoring the water quality of the seasonal first flush of water capable of detecting water quality trigger levels for listed threatened and migratory species, developed in consultation with the IRG. This may include onsite monitoring.	Not yet required.	Not yet required.
15B(vi)	A targeted aquatic fauna monitoring program to be undertaken during construction and operation to measure the success of management measures to inform an adaptive management approach.	Not yet required as construction has not commenced.	Not yet required.
15B(vii)	Details of management objectives, management actions, performance standards, corrective actions should trigger values be reached, adaptive management and contingency measures to mitigate impacts on listed threatened and migratory species in the Keep River from changes to flow, water quality from surface water, stormwater and groundwater during construction and operation.	No change.	Not yet required.

### 3.0 References

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