

Chapter 8 – Other approvals and conditions

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8 Other approvals and conditions

8.1 Overview

The controlled action is the modified operation of the modernised GMID attributable to NVIRP. The controlled action excludes all construction and the use and development of private works arising from the connections program. Approvals which may be relevant to the construction aspect of modernisation – for example, planning permits for development and vegetation removal, heritage permits (where a heritage structure is affected), cultural heritage management plans under Aboriginal heritage legislation, consents to works on waterways under the Water Act 1989 (Vic) and the like – are not, strictly speaking, relevant to the action. Notwithstanding this, NVIRP can confirm that, for the construction phase, approvals of this kind have been obtained where necessary. In many instances the nature of the works, extent of likely impacts (limited) and/or use of existing approved irrigation infrastructure footprint meant that new approvals were not required.

The key issue was whether, and to what extent, NVIRP would trigger the need for environmental impact assessment under either, or both, the *Environment Effects Act* 1978 (Vic) (EE Act) and the *Environment Protection and Biodiversity Conservation Act* 1999 (Cth) (EPBC Act) by reason of the possibility that harvesting ‘lost’ water may adversely affect local and regional hydrology. As described below, in addition to referral under the EPBC Act, a referral was made to the Minister for Planning under the EE Act to ensure there were no unintended gaps in planning approvals. A facilitative planning scheme amendment was also introduced, incorporating into each relevant planning scheme an authority to undertake development and conduct land uses required for NVIRP, within the existing irrigation infrastructure footprint.

8.2 Minister for Planning’s decision on referral under the Environment Effects Act 1978

8.2.1 Decisions and conditions

On 20 April 2009 the Victorian Minister for Planning determined that the project did not require assessment by way of an Environment Effects Statement (**EES**) under the EE Act, subject to NVIRP complying with six conditions (**the Victorian EES determination**):

1. Construction Environmental Management Framework
2. Expert Review Panel (**ERP**)
3. Water Change Management Framework and processes and methodologies for assessing ecological risks to wetlands, waterways and groundwater dependent ecosystems potentially affected by NVIRP
4. Assessment report on the ecological consequences of hydrological changes from the modified operation of the fully-modernised GMID for the Murray River, Goulburn River and the Barmah Forest Ramsar site

5. Environmental Watering Plan (**EWP**), before operation of relevant modernisation commences, for short-listed 'at risk' waterways and wetlands
6. Publication of the Expert Review Panel advice.

As with the EPBC Act referral, the EES referral excluded any reconfiguration works of the Kerang Wetlands. A copy of the Minister's decision is provided at Appendix 3.

Condition 1 required NVIRP, prior to commencing any works involving either removal of native vegetation or direct construction impacts on wetlands or natural waterways, to prepare a framework for environmental management of works to the satisfaction of the Minister for Planning, having regard to written advice to be sought from the Minister for Environment and Climate Change.

Condition 2 required the appointment of an Expert Review Panel (with membership and terms of reference to be endorsed by the Minister for Environment and Climate Change), to provide advice on hydrological and related ecological changes due to the implementation of the project.

Condition 3 required NVIRP to prepare a framework for protection of aquatic and riparian ecological values through management of water allocation and flows through the modified GMID system, including the preparation (unless demonstrated to be unnecessary in any given case) of Environmental Watering Plans to mitigate potential impacts on a list of potentially 'at risk' wetlands and waterways, being waterways and wetlands with high environmental values, including MNES, that might otherwise be impacted by the reduction of incidental water due to the Project. This framework must be to the satisfaction of the Minister for Water having regard to written advice from the Expert Review Panel and following consultation with the Minister for Environment and Climate Change.

The 'at risk' waterways listed in the determination were Broken Creek, Sheepwash Creek, Tongalong Creek, Tullah Creek, Yambuna Creek, Wells Creek, Campaspe River, Loddon River (downstream of Kerang), Bannacher/Penny Royal Creek, Cailvil Creek, Loddon River, Nine Mile Creek, Pyramid creek, Sevens Creek and Twelve Mile Creek. The listed 'at risk' wetlands were McDonalds Swamp, Round Lake, Lake Elizabeth, Johnson Swamp, Little Lake Boort, Lake Yando, Lake Leagher, Lake Meran, Little Lake Meran, Lake Murphy, Hunts Swamp, Bray's Swamp, Thunder Swamp, Kanyapella Basin, Kinnairds Swamp and Golf Course Lake/Tresco Lake.

Condition 4 requires an assessment report to be prepared before December 2010 on the ecological consequences of hydrological changes arising from the implementation of NVIRP for the River Murray, the Goulburn River and the Barmah Forest Ramsar Site.

Condition 5 requires the approval of an Environmental Watering Plan, before operation of relevant works commences, for 'at risk' waterways and wetlands listed in the Minister's decision and any others nominated by the Secretary DSE, unless he or she is satisfied following advice from the Expert Review Panel that a waterway or wetland would not be at risk such as to warrant an Environmental Watering Plan.

Condition 6 requires the Expert Review Panel's advice to be made publicly available.

8.2.2 Implementation

8.2.2.1 Condition 1 - Construction Environmental Management Framework

NVIRP prepared a Construction Environmental Management Framework (**CEMF**). The CEMF contains a statement of environmental commitments and performance requirements which include compliance with applicable Regional River Health Strategies, relevant Regional Catchment Strategies and Victoria's Native Vegetation Framework, together with processes and methodologies for assessing potential impacts on native vegetation and listed flora and fauna. The CEMF was approved by the Minister for Planning in May 2009.

The CEMF contains the following strategies, plans and protocols:

- Native Vegetation Management Strategy, describing how NVIRP will manage and control the potential impacts on native vegetation from capital works. The native vegetation Offset Management Strategy and associated plans are subsidiary to this strategy.
- Flora and Fauna Management Strategy, describing how NVIRP will manage and control the potential impacts on Commonwealth and state listed flora and fauna from capital works.
- Cultural Heritage Management Strategy, describing how NVIRP will manage and control the potential impacts on Aboriginal cultural heritage from capital works.
- Capital Works Environmental Management Plans, setting out the specific management controls for a particular program of modernisation.
- Connections Protocol, describing how potential environmental impacts will be identified and how landholders and their contractors will be guided in managing the environmental approvals for the connections program.
- Communication and Consultation Protocol.

NVIRP conducts internal audits against the requirements of the CEMF. In addition, an independent environmental audit of the activities and outcomes of each program of modernisation is conducted annually. The Secretary DSE, or delegate, and the Minister for Planning, or delegate, is consulted in confirming the detailed scope of the audit. The independent auditor is agreed with the Secretary DSE. The audit findings are provided to DSE and the Department of Planning and Community Development.

8.2.2.2 Condition 2 – Expert Review Panel

An Expert Review Panel (ERP) was appointed in June 2009 to provide advice to NVIRP, the Minister for Water and the Secretary DSE in relation to hydrological and related ecological changes due to implementation of NVIRP.

The Panel comprises three experts:

- Mr Denis Flett - strategic water resource planning, water entitlement reform and natural resource assessment (Chair)

- Dr Terry Hillman - ecologist with extensive knowledge of the Murray Darling Basin, rivers and floodplains
- Dr Jane Roberts - vegetation ecologist for floodplains, rivers and wetlands.

The Panel's deliberations are informed by a Technical Advisory Committee (**TAC**) which provides advice to NVIRP and the Panel on the appropriate assessment approach to evaluate ecological changes and the development of the environmental approvals documents (including Environmental Watering Plans) to ensure that:

- a proper process is being followed
- the information provided is appropriate
- the recommendations are practical and feasible.

The TAC includes agencies which will be responsible for ongoing delivery and review of management and mitigation measures and includes representation from:

- Catchment Management Authorities
- Goulburn - Murray Water
- Department of Primary Industries
- Parks Victoria
- Department of Sustainability and Environment.

On occasions other stakeholders (e.g. managers of particular wetlands) also attend the TAC.

The ERP recommended the Minister's acceptance of the Water Change Management Framework and advised on the shortlisting reports for wetlands and waterways requiring EWPs and on EWP content. It has also provided advice in relation to the hydrological and technical reports supporting this PER. The ERP provide their advice directly to the Minister for Water and the Secretary DSE.

Copies of the ERP's advice can be found at Appendix 20.

8.2.2.3 Condition 3 – Water Change Management Framework

The Water Change Management Framework approved by the Minister for Water on 14 August 2009 is the framework for the protection of aquatic and riparian ecological values through management of water allocation and flows through the modified GMID system required by condition 3 of the Planning Minister's determination.

Further details of the WCMF are provided in Chapters 3 and 7.

8.2.2.4 Condition 4 – Murray and Goulburn Rivers assessment report

The report, currently under preparation and due by December 2010, requires assessment on the ecological consequences of hydrological changes arising from implementation of NVIRP for the River Murray, the Goulburn River and the Barmah Forest Ramsar Site. The surface water and groundwater reports (SKM 2009a, SKM 2009b) and ecological reports (Brett Lane and Associates 2009, Ecological Associates 2009, Hale 2009, King and Tonkin 2009) have been prepared in partial fulfilment of this condition 4 requirement. For this reason the reports have been reviewed by the ERP.

The outcomes of these reports have been used in preparing this PER.

8.2.2.5 Condition 5 - Environmental Watering Plans

Two shortlisting reports, for wetlands (Hydro Environmental 2009a) and waterways (Feehan 2009) have been prepared to identify which of the 'at risk' wetlands and waterways identified in the Minister's decision require Environmental Watering Plans. The ERP provided advice on these reports to the Secretary DSE. The Secretary DSE approved the revised list.

The wetlands and waterways identified as requiring EWPs are discussed in Chapter 7. To date one EWP, for Johnson Swamp has been approved by the Minister for Planning, on the advice of the ERP, while four others have been given interim approval.

8.2.2.6 Condition 6 – Publicly available documents

The WCMF, short-listing reports and EWP, together with the associated ERP advice are publicly available on NVIRP's website at www.nvirp.com.au/planningandenvironment.aspx.

8.2.3 Further referral

Since the referral of the project to the Minister for Planning under the EE Act, the Victorian Government added the irrigation areas of Central Goulburn 1-4 and Shepparton to NVIRP's scope. They were previously modernised under a separate program. They are considered to be part of NVIRP only to the extent of additional water savings derived from the connections program and limited additional channel rationalisation and channel lining. NVIRP is currently preparing a further submission to the Minister for Planning to include the further modernisation of these irrigation areas within the approved scope.

8.3 Planning Framework

Under the Victorian Planning Scheme, water storage, transmission and distribution infrastructure is covered by the land use definition of 'Utility Installation' and the control covers the broad range of NVIRP activities 'associated with' that land use, in addition to vegetation removal, earthworks and road-making as specified. The control authorises 'use' as well as 'development'.

On 29 May 2009 the Victorian Minister for Planning made Planning Scheme Amendments C25 to the Loddon Planning Scheme, C71 to the Campaspe Planning Scheme, C25 to the Gannawarra Planning Scheme, C35 to the Swan Hill Planning Scheme, C60 to the Moira Planning Scheme, C123 to the Greater Bendigo Planning Scheme and C135 to the Greater Shepparton Planning Scheme, which introduced site-specific controls based on the 'Northern Victoria Irrigation Renewal Project Incorporated Document May 2009' permitting the use and development of land for the project without the need for planning permits, subject to conditions.

The planning scheme amendments introduced site-specific controls based on the *Northern Victoria Irrigation Renewal Project Incorporated Document May 2009* permitting the use and development of land for the project without the need for planning permits, subject to conditions. These amendments apply to the backbone works and connection points, but not to individual landholder infrastructure. The controls require compliance with the Construction Environmental Management Framework required by Condition 1 of the Victorian EES determination and with environmental management plans to the satisfaction of the Minister for Planning. It should be noted that these amendments apply to the backbone and meters, but not to works for which individual landholders are responsible under the connections program. Landholders will need to apply for planning permits, as necessary, prior to implementing reconfigured connections.

Subsequent to these Planning Scheme Amendments, the geographic scope of the project has been extended to Central Goulburn 1-4 and Shepparton irrigation areas plus other specific minor extensions. NVIRP will seek an additional Planning Scheme Amendment for the Strathbogie Planning Scheme, or will obtain individual planning permits as necessary.

8.4 Other approvals

8.4.1 Flora and fauna

The Department of Sustainability and Environment issued permits to NVIRP under the *Flora and Fauna Guarantee Act 1988 (Vic)* to:

- take protected flora from public land and collect and transpose flora species listed under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* and the *Flora and Fauna Guarantee Act 1988 (Vic)*.
- undertake searches, live capture and relocate fauna listed as threatened under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* and the *Flora and Fauna Guarantee Act 1988 (Vic)*, during pre-construction
- undertake daily searches of the construction site, live capture and relocate fauna during construction phase
- monitor the Murray Cod.

The Department of Primary Industries issued a permit to NVIRP under the *Fisheries Act 1995 (Vic)* to capture and translocate native fish species from irrigation channels within the Goulburn Murray Irrigation District.

The requirements of these permits are being managed through the Construction Environmental Management Framework for the project.

8.4.2 Heritage

NVIRP is conducting ongoing consultation with relevant Aboriginal groups. The project does not require a mandatory Cultural Heritage Management Plan under the *Aboriginal Heritage Act 2006*. In consultation with the Aboriginal groups, NVIRP is entering into Voluntary Cultural Heritage Management Plans in order to manage specific areas which could contain Aboriginal heritage.

8.5 Summary

Under Victorian planning requirements, a referral was made to the Minister for Planning under the EE Act. The minister determined that no EES was required, subject to six conditions:

1. Construction Environmental Management Framework
2. Expert Review Panel
3. Water Change Management Framework and processes and methodologies for assessing ecological risks to wetlands, waterways and groundwater dependent ecosystems potentially affected by NVIRP
4. Assessment report on the ecological consequences of hydrological changes from the modified operation of the fully-modernised GMID for the Murray River, Goulburn River and the Barmah Forest Ramsar site
5. Environmental Watering Plan, before operation of relevant modernisation commences, for short-listed 'at risk' waterways and wetlands
6. Publication of the Expert Review Panel advice.

NVIRP has implemented, or is in the process of implementing, all of these requirements in accordance with the timeframes specified in the conditions.

In addition, to ensure there were no unintended gaps in planning approvals, a facilitative planning scheme amendment was introduced, incorporating into each relevant planning scheme an authority to undertake development and conduct land uses required for NVIRP, within the existing irrigation footprint.

NVIRP has also obtained other relevant approvals required, including flora and fauna permits.

Subsequent to the Minister's decision and the planning scheme amendment, the Victorian Government extended the geographic scope of NVIRP to include the irrigation areas of Central Goulburn 1-4 and Shepparton. NVIRP is currently preparing further Victorian submissions to include these irrigation areas within the approved scope.