Chapter 6

Foreign investment and agricultural development: the Ord irrigation area case study

6.1 As part of the committee's inquiry, it considered the issue of foreign investment in major agricultural developments. As a specific and topical example, the committee focussed on the Ord irrigation area development as a case study. In April 2013, the committee held public hearings in Perth and Kununurra and undertook site visits of agricultural properties in northern Western Australia.

6.2 This chapter considers the issues arising from foreign investment in the region and the implications it has for foreign investment in future agricultural developments. Following an outline of the Ord irrigation area, the chapter discusses the key issues of capital investment, water entitlements (in order to assist capital investment), land tenure and the community views towards foreign investment in this region.

Figure 6.1—Rural and Regional Affairs and Transport Committee members visiting agricultural producers in northern Western Australia

The Ord irrigation area

6.3 The Ord irrigation area was established in 1971 when the Ord River Dam was completed and created Lake Argyle near Kununurra, Western Australia. This resulted in the Ord Stage 1 development of 14 000 hectares of irrigated agricultural land. The current produce in this area includes a variety of horticultural produce, chia[1], and sandalwood. A map of the Ord irrigation expansion is included in Appendix 6.

6.4 In November 2012, the Western Australian Government announced that Kimberley Agricultural Investments (KAI), the Australian wholly owned subsidiary of the privately owned Chinese based company Shanghai ZhongFu (Group) Co, was the successful bidder for the development of the Ord Stage 2 under the Ord-East Kimberley Expansion Project.[2]

6.5 Under the proposed arrangements, KAI would lease land from the Western Australian Government and develop 13 400 ha of farmland, primarily for growing sugar cane. At the time of the committee's visit to the Ord irrigation area, the KAI and the Western Australian government had not reached a formal agreement on the development of the Ord and the negotiations are expected to be completed by

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1 Chia is a commercially grown seed crop that contains high levels of omega 3 and dietary fibre.

2 Hon Colin Barnett MLA and Hon Bredon Grylls MLA, Media Release, “Ord-East Kimberley Proponent Announced” 20 November 2012.

mid-2013.[3] Therefore, details about this aspect of the Ord development were not fully available to the committee for examination.

Figure 6.2—Committee members' aerial viewing of the Ord River Dam

Key issues

Capital investment

6.6 The committee heard evidence that the challenges in attracting domestic capital investment for major agricultural developments was a significant reason that foreign investment was sought after by agricultural businesses.[4] The committee heard that for major agricultural developments to occur, the industry should move to more concentrated capital investment. Foreign investment was said to provide sources for such capital more readily than from domestic investors. The committee also heard that agriculture was an industry that required 'patient' capital, that is, capital investment that took a long-term view to returns on the investment. Finally, the committee was told of the barriers imposed by the Australian banking sector towards domestic investment in agriculture which led companies to source capital off-shore. These three issues will be discussed below, in turn.

Structure of capital – concentrated and patient capital in agriculture

6.7 The committee heard evidence that for major agricultural developments to occur in Australia, the agriculture industry needed to move from its traditional

3 The Hon Colin Barnett MLA, Premier and Minister for State Development, Western Australia, correspondence to the Senate Rural and Regional Affairs and Transport References Committee, 5 April 2013 (received 11 April 2013). KAI was announced as the *confirmed* proponent of the Ord development on 29 May 2013, see Hon Colin Barnett MLA and Hon Brendon Grylls MLA, media release, "Ord development takes important step", 29 May 2013, www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=StatementsBarnett&StatId=7425 (accessed 14 June 2013).

4 The committee's interim report noted evidence from the AACo that there were a number of tax barriers to domestic companies competing in fair and even terms with foreign investors. In addition to the taxation issues, the committee heard evidence of other key challenges for capital investment in agricultural developments. Senate Rural and Regional Affairs and Transport References Committee, Examination of the Foreign Investment Review Board National Interest Test, Interim Report: Tax arrangements for foreign investment in agriculture and the limitations of the *Foreign Acquisitions and Takeovers Act 1975*, November 2012, pp 16–20.

diversified capital structure to more concentrated capital investments. As Mr Andrew Murray, Chair, Western Australian Regional Development Trust, told the committee:

> If you look at the use of capital in Australia historically, it mirrors the use of capital elsewhere. Most people, when confronted by the modern way in which capital is applied and used in mineral resources, forget that once the resourcing of mines and the exploitation of resources were similar to what has applied to farming. In other words, they were small-scale, and the great mining houses resulted from a collection and an aggregation of small mining operations, because they needed economies of scale, basically, on both the finance and the technical basis. A similar thing is happening now in agriculture, where you find that the formerly dispersed financial model, where money was fed into small family or corporate organisations, is now shifting into larger corporate concentrations of capital.[5]

6.8 Furthermore, Mr Murray noted foreign investors were providing more concentrated levels of capital in Australia:

> Interestingly, [corporate concentrations of capital]...is much more a feature of the foreign investor than the Australian investor, and one of the issues you need to address—which I do not know the answer to—is why Australian capital is much more negative about that sort of investment and application of financial know-how and investment than is foreign capital, especially bearing in mind that it is expensive for foreigners to invest in Australia—it is not cheap; it is very expensive. So they see an application of capital in ways which Australians, so far, have not.[6]

6.9 In a similar respect, the committee heard about high level of 'patient' capital required for sugar development in the Ord irrigation region. A local producer from the Ord stage 1 area was sceptical of the possibilities for the development of land from Ord stage 2 to occur without significant foreign investment, which he implied was a key source of patient capital:

> **Senator EDWARDS:** But the actual development of the land [at Ord stage 2] is secondary investment. Somebody has to clear it all, somebody has to level it all, somebody has to put the channels in and somebody has to redevelop the land. All of those things still have to happen, don't they?
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> **Mr Boshammer:** That is right, and that is a significant investment. It will be done gradually by people in private capacities. If it is given to them, however, I doubt very much whether we will have a sugar industry if it is left in a private capacity without significant foreign investment. That is a huge investment, and there is just no patient capital available in Australia for an investment like that. And we probably don't know the market well enough to know that we can market the product long-term.[7]

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5 Mr Andrew Murray, Chair, Western Australian Regional Development Trust, *Committee Hansard*, 9 April 2013, p. 33.

6 Mr Andrew Murray, Chair, Western Australian Regional Development Trust, *Committee Hansard*, 9 April 2013, p. 33.

7 Mr Robert Boshammer, private capacity, *Committee Hansard*, 11 April 2013, p. 4.

Figure 6.3—Aerial view of the Ord Stage 1 area showing the scale of current agricultural production

Domestic banking constraints

6.10 The TFS Corporation noted that it was required to look for sources of capital off-shore due to difficulties in obtaining finance from Australian banks. TFS representatives told the committee that it received 'unfair' treatment from its bank when seeking finance for its business. As a result TFS stated that it was forced to seek capital investment off-shore.[8] As the Hon Mr Chris Ellison, Advisory Director, TFS Corporation further explained:

> ...We believe that we abided by our banking covenants. We believe that we were charged banking fees which were exorbitant, somewhere in the region of three-quarters of a million dollars. That is what we are saying. We are saying that the bank had made a decision to get out of agriculture and used that decision, that policy, and followed it and pursued whatever means it could to get out of the agricultural sector.
>
> We do not believe that we are alone on this issue. We think that other businesses in Australia have experienced the same thing. When you talk about foreign investment, TFS would like nothing more than to have an Australian banking system providing finance to have Australian investors.[9]

6.11 In a similar context, the committee heard evidence about the limited access of finance for agricultural businesses due to the level of interest rates and the difficulty this creates for financial returns.[10] However, another witness noted that the risk-averse bank lending by Australian banks provided a greater level of security and protection from the global financial crisis.[11]

8 The Hon Mr Chris Ellison, Advisory Director, TFS Corporation, *Committee Hansard*, 11 April 2013, p. 27.

9 The Hon Mr Chris Ellison, Advisory Director, TFS Corporation, *Committee Hansard*, 11 April 2013, p. 27.

10 Mr Mike Introvigne, private capacity, *Committee Hansard*, 9 April 2013, pp 11–14.

11 Mr Tony Chafer, CEO, Cambridge Gulf Limited, *Committee Hansard*, 11 April 2013, pp 50–51.

Figure 6.4—Aerial view showing the scale of the current Ord development

Committee view

6.12 The committee notes that the typically diverse and small-scale structure of domestic capital in the agricultural industry is a major driver of companies accepting large-scale capital investments from off-shore. This, in turn, has fuelled the current concerns regarding foreign investment in Australia. Foreign investment has been, and will continue to be, a legitimate and important source of capital in Australian agriculture. However, this does not mean that greater efforts should not be made to improve access to capital from Australian sources.

6.13 The committee understands that agriculture is an industry which is subject to many short-term and medium-term uncertainties. However, the committee also considers that increased long-term investment in agriculture is not only beneficial for the industry and the nation, but can also provide suitable financial returns to investors. Such returns are likely to improve with future growth in capital investment and the resulting development of the industry. So that the Australian economy can maximise the benefits from growth in agriculture, the committee considers it necessary that the government develop policies and establish structures that will encourage long-term (or patient) capital investment from Australian investors, including Australian superannuation funds and other domestic investors with long-term horizons.

Recommendation 26

6.14 The committee recommends that the Australian government commission an extensive and independent review of possible incentives and barriers for long-term capital investment in major Australian agricultural developments by

Australian investors, including superannuation funds and other domestic investors with long-term horizons. The review should make a comparative analysis with the incentives for foreign investors to invest in major Australian agricultural developments.

6.15 Based on the findings of the review, the Australian government should develop, publish and implement policies to encourage long-term domestic capital investment in Australian agriculture. The policies should specifically identify opportunities for Australian superannuation funds and other domestic investors with long-term horizons and where appropriate, the policies should be coordinated with relevant state governments and agencies.

6.16 The committee acknowledges the evidence provided by TFS Corporation that outlined the financial disincentives that the business faced in obtaining capital through Australian banks. The committee is also mindful that other industry participants found that current domestic banking arrangements made borrowing difficult. One of the consequences is that local business may be pushed towards foreign investment when they would prefer domestic sources of capital.

6.17 The evidence received regarding this issue came late in the inquiry and it was impractical for the committee to fully examine the issue with input from relevant stakeholders. However, as the committee considers that appropriate access to domestic finance from banks is related to the broad themes of the inquiry, the committee intends to write to a number of banking industry stakeholders seeking explanations of these matters and, where appropriate, publish the responses received on the committee's website. Furthermore, the committee encourages the government to use any of the responses that the committee may publish and the evidence already available as part of this inquiry, to address the broader issue of improving access for Australian agricultural businesses to domestic finance.

Recommendation 27

6.18 The committee recommends that, as part of the review and policies established under recommendation 26, and with appropriate consultation with the banking industry, the agricultural sector and other interest parties, the government should consider appropriate avenues for improving access for Australian agricultural businesses to domestic finance from Australian banks.

Water entitlements and access to domestic capital

6.19 The committee was informed that water infrastructure and subsequently a water market were essential to the development of agricultural regions in northern Australia. As Mr Andrew Murray explained to the committee, water was one of a number of key factors in this regard:

> Regional development cannot occur sustainably unless the basic development underpinnings are available; water, power, transportation,

communications, housing and social resources. Of these, in WA water is often the biggest challenge to regional development.[12]

6.20 Mr Murray went on to add:

Water use must be sustainable. Sustainability is predicated on good data, experience and science. WA has an estimated 12½ thousand gigalitres of unallocated surface and ground water. Since only 15 per cent of WA has been water mapped, inadequate water mapping and a lack of data—which is not surprising in a state the size of Western Europe—means that any estimate of water for development must presently be viewed as conservative… Water priorities and projects must feed in to such Commonwealth and state planning.[13]

6.21 The committee heard evidence that the creation of a water market would help manage diverse cropping in the Ord irrigation area and potentially assist the development of the sugar industry that is being considered by foreign investors. As a local Kununurra producer told the committee in the following exchange:

CHAIR: ...if there were a market and a price on the water, wouldn't what happens with the water be driven by the commercial return on the water, rather than you getting the land and 17 megalitres a hectare...[14]

Mr Boshammer: Absolutely. There would be some advantages and there probably would be a good combination between the sandalwood, which now is not using very much water as it gets older and it has got its roots fairly deep down, and actually doing some good for the watertable and maintaining that. There would be some real benefits for the sandalwood companies in being able to sell their allocation to the Chinese sugar companies.[15]

6.22 Another witness at the Kununurra public hearing noted the role that market-driven water entitlements could play in the future development of the Ord irrigation area. Mr Tony Chafer commented based on his previous experience with the issue in the following exchange:

CHAIR: …there is about 80,000 hectares [in the Ord region] if you take the rising sand country. With good technology, there [are] many thousands of hectares there. If you had freehold title on Ord stage 1 and a water licence entitlement, were in the sandalwood business, only needed two

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12 Mr Andrew Murray, Chair, Western Australian Regional Development Trust, *Committee Hansard*, 9 April 2013, p. 32.

13 Mr Andrew Murray, Chair, Western Australian Regional Development Trust, *Committee Hansard*, 9 April 2013, p. 32.

14 Farmers in the Ord Stage 1 area have a water allocation of 17 megalitres per hectare, see: Cr John Moulden, Shire President, Shire of Wyndham and East Kimberley, *Committee Hansard*, 11 April 2013, p. 21.

15 Mr Robert Boshammer, private capacity, *Committee Hansard*, 11 April 2013, pp 7–8. However, Mr Boshammer also noted the limited benefits that a water market would have for attracting capital: Mr Robert Boshammer, private capacity, *Committee Hansard*, 11 April 2013, p. 8.

megalitres a hectare a year and could trade your other water, and there might be someone out on that sand country, like down at Carnarvon, doing fertigation who wanted to fund his fertigation through the sale of some of his water, all of that would make it more of an incentive for young blokes to get into the market, wouldn't it?

Mr Chafer: It definitely would, and it would make an incentive for people to use their water a little more smartly. I would love to see trading. In fact, in a previous life I was the Chief Executive Officer of the Ord Irrigation Cooperative here...and we had the biggest water allocation licence in Western Australia. Unfortunately, we could trade between ourselves, but we could not trade externally. In fact, we effected the only trade in the Ord when another farmer in the sand country wanted to come along. We spent a million dollars on improvements in the irrigation infrastructure and sold a bit of the water entitlement that we had saved to that person. But it had to remain within our licence...

CHAIR: If we built it to 100,000 or 80,000 hectares, that would be enough, I reckon, to create a market.

Mr Chafer: Yes.

CHAIR: If the sugar job got a pain in the guts and it was a rotation a couple of years out of sugar, you might be able to grow something, sell some water and fund it. It just gives more flexibility.[16]

Mr Chafer: Absolutely.

Committee view

6.23 The committee is of the view that irrigation areas such as the Ord irrigation area, should establish a system of water entitlements that are environmental sustainable, tradable, commercially viable, and that attribute appropriate value to the water used. The committee is mindful of the difficult lessons that can be learnt from the over-allocation of water resources in the Murray-Darling Basin and over-confidence about the long-term availability of water. It urges relevant government agencies and stakeholders to move to a water market early and to give adequate consideration to these factors if and when such a system is created.

6.24 Furthermore, the committee considers that the creation of appropriate water entitlements is a key mechanism for creating levels of certainty around the monetary value of irrigated farming in areas such the Ord. A likely corollary of the monetary value that water entitlements would attribute to farms is that it will provide more scope for relevant businesses to borrow from domestic banks in order to raise capital. This in turn could reduce the pressures on companies to source capital from foreign financiers and reduce the associated risks to Australia’s national interest.

16 Mr Tony Chafer, CEO, Cambridge Gulf Limited, *Committee Hansard*, 11 April 2013, p. 48.

Recommendation 28

6.25 The committee recommends that the Australian government encourage the Western Australian and Northern Territory governments to consider possibilities for establishing a water market (including tradable water entitlements) for irrigation developments, including the Ord, in Australia's north. The information about foreign ownership of any water entitlements established under this regime should be included in the national foreign ownership register for agricultural land.

6.26 In establishing water entitlements, the committee urges the relevant bodies to consider lessons from the Murray-Darling Basin, including avoiding problems such as over-allocation, the value of different water security types, and water efficiency mechanisms. In addition, any new water entitlements should be developed in a manner that can allow for transparent oversight of the use water resources by foreign investors. As such, the committee recommended in chapter three that foreign interests in Australian water entitlements should be included as information collected under the government's national foreign ownership register for agricultural land.

Land tenure

6.27 The committee heard evidence that agricultural development in Western Australia is intimately related to the issue of land tenure. For example, Mr Murray noted the commitment of relevant state and federal governments to developing agriculture in Australia's northern regions, while noting the relationship of land tenure arrangements in Western Australia:

> It is worth noting the broad federal, state and territory intergovernmental support for agricultural development in Northern Australia. At the fifth meeting of the Northern Australia Ministerial Forum, on 22 November 2012:
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> Ministers agreed that the development of agriculture in northern Australia is a rapidly emerging policy priority across the north, supporting national and international food security and regional development more broadly.
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> WA is a vast underdeveloped state of great variety and resource. It is the size of Western Europe, or five times the size of France, with just over two million people in it. Only seven per cent of WA is freehold. Of all tenures, freehold is the most important in underpinning modern societies and economies.[17]

6.28 However, the extensive leasehold arrangements could have longer-term benefits in relation to foreign investment in Western Australia. As Mr Murray noted when questioned about the leasehold arrangements for the Ord development:

> …If you want to retain and store and increase value, the best thing you can do as a government which has an investment is have a leasehold because eventually you get it back. So without going into the pros and cons of that

17 Mr Andrew Murray, Chair, Western Australian Regional Development Trust, *Committee Hansard*, 9 April 2013, p. 32.

specific deal about which I do not have deep understanding, I would suggest to you that the model is a pretty good one because you have not sold it off permanently. You have retained an asset that you have leased out.[18]

6.29 Despite the potential benefits of such leasehold arrangements, the committee also heard that where foreign acquisitions in agricultural land are made from state governments, such as crown land, the Foreign Investment Review Board (FIRB) is not involved in the review process. As Mr Wilson noted in the following exchange, FIRB is constrained in reviewing such acquisitions because of the provisions in the *Foreign Acquisitions and Takeovers Act 1975* (FATA):

> **Mr Wilson**: It is not a matter for the board [FIRB], it is a matter under the act (FATA). Ever since the Foreign Acquisitions and Takeovers Act was put in place in 1975, there has been a blanket exemption for sales by governments.
>
> **CHAIR:** Government to government.
>
> **Mr Wilson:** Or government to private. So any sale by a state or territory or Commonwealth government is explicitly excluded from the actual Foreign Acquisitions and Takeovers Act.
>
> **CHAIR:** That is very interesting. So, in the national interest, when we measure all this stuff—given the unexploited mosaic of opportunities of a lot of Crown land in Northern Australia—there is the possibility that could run off the rails if there isn't some sort of oversight. Is that going out too far with the thought?
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> **Mr Wilson:** I suppose that is a matter for the legislators.
>
> **Mr Rollings:** I would hazard a guess there could be some constitutional constraints behind that legislation. That is just a thought.[19]

6.30 On the other hand, outside of crown land, the committee was told of the limits of leasehold arrangements for managing foreign investment. In particular, it was noted that such an arrangement was unlikely to be suitable for private-owners of freehold titles. The Western Australian Farmers Federation (WAFF) was asked whether leasing was a 'pathway' for foreign investment in Australia. This resulted in the following exchange:

> **Mr Park:** Well, let me know when you convince someone that holds a freehold title to give it back and let the government have the leasehold. The next one will be the first I suspect—willingly anyway.

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18 Mr Andrew Murray, Chair, Western Australian Regional Development Trust, *Committee Hansard*, 9 April 2013, pp 34–35.

19 Mr Brian Wilson, Chair, Foreign Investment Review Board, and Mr Jonathan Rollings, General Manager, Foreign Investment and Trade Policy Division, Treasury, *Committee Hansard*, 9 May 2013, p. 10.

> **Senator HEFFERNAN:** That would be the catch. Who is going to pay for the title to let the cocky get out and retire while someone else takes on the lease?
>
> **Mr Park:** That is exactly right. So who is going to buy that?
>
> **Senator HEFFERNAN:** It would have to be very patient capital.
>
> **Mr Park:** Traditionally we are leaseholders with it being government owned.[20]

Committee view

6.31 The committee understands and respects that land tenure is an issue for State governments. However, given the feedback from stakeholders in Western Australia that is outlined above, the committee encourages the Western Australian government to address these concerns in a manner that promotes the ability of Australian companies to develop agricultural land in the region.

6.32 At the same time, the committee is mindful of some of the benefits that large state government held leases have for managing foreign investment in new developments such as the Ord irrigation area. The committee considers that there are significant limitations to suggestions that all foreign investment should be based on leasing arrangements as this would make foreign investment impractical for the large number of privately-owned freehold farms. However, the use of long-term lease arrangements to encourage foreign investment in crown land is generally supported by the committee. This is because in such cases, the overall ownership of the agricultural asset remains within Australia and ultimately under Australian control.

6.33 In addition, the committee urges the commonwealth, state and territory governments to consider developing a common policy for FIRB to be consulted in the case of significant foreign acquisitions from respective governments. The committee considers that FIRB would only be consulted in those cases that FIRB would review equivalent foreign acquisitions from private Australian businesses. The committee also acknowledges that any final decision for foreign acquisitions from federal, state or territory governments should remain the prerogative of the respective government.

Recommendation 29

6.34 The committee recommends that the commonwealth, state and territory governments work together to consider appropriate policy options for consulting with FIRB in cases of proposals for significant foreign acquisitions from respective governments bodies.

Community sentiment towards foreign investment

6.35 The lack of confidence of local communities about the benefit of foreign investment has been a common theme throughout this inquiry. However, unlike some

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20 Mr Dale Park, President, Western Australian Farmers Federation, *Committee Hansard*, 9 April 2013, p. 30.

of the concerns expressed elsewhere, the Kununurra council expressed general support for foreign investment in the Ord irrigation case. The shire President, described this perspective as part of the following exchange:

> **Councillor Moulden:** ...This is a very practical town. We do not have an ideological standpoint to start with. I have been asked the question before: what would happen and what would be the reaction here if the bid went to the Chinese? My response to that is: if that is the best outcome for the community here, the state and the country, how could you oppose it?
>
> **CHAIR:** I guess you would like the capacity, the sovereignty of Australia, to provide the hospitals and the roads, so we must make sure they are in the revenue base.
>
> **Councillor Moulden:** Absolutely. I can tell you from my observation that, by and large, there has not been any negative reaction to the success of the Chinese bid. The principals of Shanghai Zhongfu fronted a public meeting in Kununurra in December [2012] after it had been announced they were the preferred tenderer. Maybe 200-plus people were in the room. There was opposition voiced by maybe three people. Generally, the community is excited that something is happening. They were curious to see the people who are going to be living with them. From my point of view, the Chinese have handled their relations with this community absolutely perfectly. They have been visible. They have been upfront and they have explained themselves.[21]

6.36 Similar support was expressed by other stakeholders.[22]

Committee view

6.37 The committee was encouraged by the general support for the large-scale foreign investment in the Ord irrigation area among local community representatives and stakeholders. The committee considers that the Ord development with KAI appears to be proceeding in a manner that will provide significant economic benefit for the region while at the same time sensitively managing local relationships and social interests.

6.38 In this respect, the committee notes correspondence received from the Premier of Western Australia that the KAI proposal forms part of 'future potential for irrigated agriculture in the region [that] based on best practice irrigation practices has been

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21 Cr John Moulden, Shire President, Shire of Wyndham and East Kimberley, *Committee Hansard*, 11 April 2013, pp 22–23.

22 For example see Mr Robert Boshammer, *Committee Hansard*, 11 April 2013, p. 1. Another stakeholder expressed that he was generally 'pro-investment' and ambivalent regarding the investment source being foreign or domestic, see Mr Anthony Chafer, Chief Executive Officer Cambridge Gulf Limited, *Committee Hansard*, 11 April 2013, p. 49.

estimated…to be as much as 100,000 ha.'[23] The result of such a development could greatly assist Australia's contribution to the future global food task.

6.39 Therefore, the committee is generally supportive of the project and the approach taken to date by the Western Australian Government. However, the committee urges the Western Australian Government to manage remaining arrangements with KAI in a way that will maximise the potential for Australian producers to participate in the market created by the Ord expansion. Furthermore, the Western Australian Government should ensure that KAI participates fully in the marketplace in a manner that is commercially motivated, fair to Australian businesses, and that protects Australia's tax revenue.

Senator the Hon Bill Heffernan

Chair

23 The Hon Colin Barnett MLA, Premier and Minister for State Development, Western Australia, correspondence to the Senate Rural and Regional Affairs and Transport References Committee, 5 April 2013 (received 11 April 2013).