

STATEMENT OF DECISION

APPLICATION TO VARY AN AQUACULTURE LICENCE

File Number: L1297/13-02
Applicant: Bruce Cunningham Pty Ltd
Application Date: 7 December 2018
Application Type: Variation of an Authorisation

1 DETAILS OF THE APPLICATION

Background facts

Bruce Cunningham ("Cunningham") (ABN 971 670 697) is the holder of Aquaculture Licence No. 1347 ("the Licence").

The Licence authorises the culture of the following species:

- Black lip pearl oyster (*Pinctada margaritifera*); and
- Akoya pearl oyster (*Pinctada fucata*); and
- Shark Bay pearl oyster (*Pinctada albina*).

Pursuant to the Licence the authorised site includes two sites of water of 213.72 hectares and 166.35 hectares (**Attachment 1**) within the Cunningham Group at the Abrolhos Islands and one land-based site of 0.14 hectares on Coronation Island (**Attachment 2**).

Details of the Licence variation application

On 7 December 2018, Cunningham made an application to the CEO of the Department of Primary Industries and Regional Development ("Department") under s.142 of the Act, for the variation of an aquaculture licence. The application fee, an updated Management and Environmental Monitoring Plan and additional information were submitted with the application.

The application seeks to vary the list of species authorised to be cultured (in Schedule 1 of the Licence) to include the following scallop species:

- saucer scallop (*Ylistrum balloti*);
- doughboy scallop (*Mimachlamys australis*);
- commercial scallop (*Pecten fumatus*); and
- austral scallop (*Chlamys australis*).

2 LEGISLATION

Section 142 of the *Fish Resources Management Act 1994* (“the Act”), provides that –

- (1) *The CEO may vary an authorisation if —*
- (a) *the holder of the authorisation applies to the CEO for the variation; or*
 - (b) *it is necessary to correct any error in the authorisation; or*
 - (c) *it is necessary to give effect to the provisions of this Act.*
- (2) *Subject to subsection (3), if a person applies to the CEO for the variation of an authorisation the person is not entitled to the variation as of right.*
- (3) *If —*
- (a) *a management plan specifies criteria for the variation of an authorisation; and*
 - (b) *a person applies to the CEO for the variation of such an authorisation; and*
 - (c) *the CEO is satisfied that the criteria have been satisfied,*
the CEO is to vary the authorisation.

Section 142(1)(a) of the Act provides that an authorisation may be varied where the holder of the authorisation has applied for the variation.

S.56 of the *Interpretation Act 1984* provides that where the word “may” is used in conferring a power, then the word shall, unless the contrary intention appears in the Act, be interpreted to imply that the power may be exercised or not, at discretion.

The application has been made under section 142(1)(a) of the Act.

It is important to note that section 142, as a general provision, is intended to enable variation of an authorisation where the effect would be consistent with other provisions of the Act.

I consider that the power under section 142 to vary the existing Licence in the manner applied for is akin to the power to grant a new licence to authorise aquaculture of those species. Accordingly, assessment of the variation application will give consideration to the requirements that would need to be satisfied had the application been for the grant of a new aquaculture licence.

On this basis, the matters in section 92 and section 92A of the Act require consideration.

Section 92 of the *Fish Resources Management Act 1994* (“the Act”), provides that –

If a person applies to the CEO for the grant of an aquaculture licence and the CEO is satisfied of all of the following –

- (a) *the person is a fit and proper person to hold such a licence;*
- (b) *the person has, or will have, appropriate tenure over the land or waters on or in which the activities under the licence are to be conducted;*
- (c) *it is in the better interests of the State and the community to grant the licence;*

(c) *the activities to be conducted under the licence are unlikely to adversely affect other fish or the aquatic environment;*
(d) *the activities to be conducted under the licence have been approved by other relevant authorities;*
(e) *any other matters prescribed for the purposes of this subsection, the CEO may grant to the person an aquaculture licence.*

Section 92 of the Act provides that an aquaculture licence may be granted where the applicant has satisfied all the above criteria. The power to grant an aquaculture licence is also discretionary in nature; that is, the CEO “may” grant the licence (please also see section 56 of the *Interpretation Act 1984*).

Section 92A of the Act provides that unless the applicant is exempt –

an application for an aquaculture licence must be accompanied by a management and environmental monitoring plan (“MEMP”) identifying how the applicant will manage any risks to the environment and public safety in relation to the proposed activity for which the licence is sought.

Section 97 of the Act provides for the grant of an aquaculture lease by the Minister for Fisheries. The aquaculture lease provides tenure over the waters in which the aquaculture activity authorised under an aquaculture licence is to be conducted.

Section 99 of the Act provides that an aquaculture lease does not authorise the use of the leased area without an aquaculture licence.

3 RELEVANT CRITERIA TO BE SATISFIED

Based on the legislative criteria set out in s.92 of the Act, consideration has been given to various matters.

To this end, reference is made to s.246 of the Act and Administrative Guideline No. 1 *Assessment of applications for authorisations for Aquaculture and Pearling in coastal waters of Western Australia* (“AG 1”). A copy of AG1 is available on the Department’s website at http://www.fish.wa.gov.au/Documents/administrative_guideline/ag001.pdf.

Consultation was undertaken according to the process set out in AG1; that is, with relevant Government agencies and representative community and industry groups and including the opportunity for public comment.

Where relevant, those matters arising out of the consultation process that are of greater significance are referred to below.

The matters arising by reason of s 92 and 92A of the Act are twofold:

1. The criteria specified in s 92(1); and
2. The Management and Environmental Monitoring Plan (“MEMP”).

3.1 Criteria in s.92(1)

Under s.92(1) of the Act, the CEO may grant an aquaculture licence to a person if satisfied of all of the following:

- the person is fit and proper to hold an aquaculture licence;
- the person has, or will have, appropriate tenure over the land or waters on or in which the activities under the licence are to be conducted;
- it is in the better interests of the State and the community to grant the licence;
- the proposed activities are unlikely to adversely affect other fish or the aquatic environment;
- the proposed activities have been approved by other relevant authorities; and
- any other matters prescribed for the purposes of this subsection.

(a) “Fit and proper person”

S.92(1)(a) of the Act requires the CEO to be satisfied that a person who has applied for an aquaculture licence is a fit and proper person to hold an aquaculture licence.

Ministerial Policy Guideline No. 19 titled *Matters Of Importance In Respect Of The “Fit And Proper Person” Criterion For Authorisations Under The Fish Resources Management Act 1994* (“MPG 19”) provides a discussion of the types of considerations relevant to the “fit and proper person” consideration by reference to the key concepts of honesty, knowledge and ability.

- Knowledge

The concept of “knowledge” refers to relevant qualifications; knowledge of relevant legislation; relevant training, business and technical skills; and previous relevant experience.

From the information submitted with the application, I have noted that Cunningham has two years of aquaculture experience. Based on the information provided I am of the view that Cunningham has the knowledge required to undertake the proposed aquaculture activity.

- Honesty

The concept of “honesty” generally refers to matters such as history of compliance with fishery legislation, offences and convictions for falsifying returns. I have no reason to believe Cunningham does not meet this concept of honesty.

- Ability

The concept of “ability” refers to the person’s financial situation and capacity to access finance; history of business success; possession of or access to relevant equipment or infrastructure; ability to keep records and ability to pay relevant fees.

Cunningham provided a business plan as part of the application. The importance of business planning is critical because it offers a comprehensive plan of the overall

project and provides the model or mechanism the applicant will use to direct resources to achieve the objectives. Importantly, for a project of this nature and level of complexity, the Department requires a business plan to enable it to evaluate the financial viability of the proposal, particularly in an environment that is not fully predictable.

The business plan that Cunningham submitted, provided full budgets, financial information on assets and liabilities and cash flows. Based on the information provided, I have no reason to believe that Cunningham would not have the capacity to raise the finance needed for the establishment and operation of the project.

From the information provided, it is evident that Cunningham has a clear understanding of the level of infrastructure and aquaculture equipment needed for the successful implementation of the proposed project. Cunningham has a history of keeping records and paying relevant fees; I therefore have no reason to doubt the ability of the company in this regard.

MPG 19 sets out two matters of importance: firstly, consideration of the extent to which persons may act on behalf of the licence holder; and secondly, the importance of accurate, complete and timely records.

With respect to the matter of persons acting on behalf of the licence holder, only Cunningham and anyone employed by Cunningham can act under the Licence. The Licence does not authorise persons to act “on behalf of” Cunningham, so Cunningham cannot authorise independent contractors or “lessees” to carry out aquaculture. Cunningham owns several agricultural companies, and appears to understand these relevant principles of agency.

The discussion in MPG 19 about the importance of accurate, complete and timely records refers to commercial fisheries and fishing boat operators. The activity authorised by the Licence does not relate to fishing and is therefore not relevant. What is important, however, is the requirement under regulation 64 of the *Fish Resources Management Regulations 1995* (“FRMR”) for the licence holder to keep records and submit returns in respect of the sale of fish and the accurate and timely communication of information relating to disease and biosecurity. Having regard for the MEMP written by Cunningham, I consider that it properly understands the significance of accurate, complete and timely provision of relevant information.

Based on my consideration of the matters set out above and the information that is before me, I consider Cunningham is “fit and proper” to hold a licence to conduct aquaculture of the proposed species at the authorised site.

(b) Tenure

S.92(1)(ba) requires the CEO to be satisfied that a person who has applied for an aquaculture licence has, or will have, appropriate tenure over the land or waters on or in which the activities under the licence are to be conducted.

Under s.99(1) of the Act, an aquaculture lease does not authorise the use of the leased area without an aquaculture licence.

Under s.97(5A) of the Act, before granting a lease the Minister for Fisheries must be satisfied of all of the following:

- the person is a fit and proper person to hold the lease;
- it is in the better interests of the State and the community to grant or renew the lease;
- the applicant will make, or has made, effective use of the area of land or water the subject of the lease for aquaculture purposes;
- the activities to be, or that are being, conducted under the lease are unlikely to adversely affect other fish or the aquatic environment;
- any other matters prescribed for the purposes of this subsection.

Cunningham has made an application to the Minister for Fisheries for an aquaculture lease under s.97 of the Act in respect of the existing area of operation.

Accordingly, I consider that Cunningham will have appropriate tenure over the authorised site.

(c) Better interests

S.92(1)(b) requires the CEO to be satisfied that the granting of an aquaculture licence to the applicant would be in the better interests of the State and the community.

The interests of the State and community would be best served by ensuring resources are allocated to persons who have proven ability to utilise those resources to generate a return to the State by establishing a commercial project that has the ability to provide sustainable, profitable production as well as long-term employment opportunities and associated benefits to the community.

I consider that the assessment of the “better interests of the State and the community” requires a broad balancing of the benefits against the detriments of the intended aquaculture activities, including ensuring that the proposed aquaculture would be economically and environmentally sustainable.

This consideration is exercised in the context of the objects of the Act under s.3, which include developing and managing aquaculture in a sustainable way.

The means of achieving this object include:

- ensuring that the impact of aquaculture on the aquatic fauna and their habitats is ecologically sustainable: s.3(2)(b);
- fostering the sustainable development of aquaculture: s.3(2)(d); and
- achieving the optimum economic, social and other benefits from the use of fish resources: s.3(2)(e).

The issues to consider in respect of the “better interests of the State” relate primarily to positive economic impacts. These economic impacts include factors such as regional economic diversification, increased regional and local revenue, creation of job opportunities and improving infrastructure and technology.

The issues to consider in respect of the “better interests of the community” are more localised although not necessarily limited to the geographically adjacent area. The community will include wild-stock licensed fishers and other aquaculture licence holders.

Aquaculture at the Abrolhos Islands comprises a potentially significant and sustainable sector of Western Australia’s aquaculture industry and has the potential to expand. Aquaculture of the proposed species will facilitate this expansion. Aquaculture activities provide a significant contribution to economies and food production throughout the world. Aquaculture activities also provide potential growth areas of food production compared to the traditional “fishing of wild stock” activities, which are directly extractive of a natural resource.

Sustainable aquaculture projects therefore have the potential to make a significant contribution to the State’s economy and provide community benefits such as employment opportunities and economic diversification in regional areas.

Another benefit is that the proposed activities will provide further experience and scientific information that can assist with future aquaculture proposals. The development of science depends upon ongoing activities to provide information for analysis.

By reason of the above considerations I am of the view that the grant of the application would be in the better interests of the State and community.

(d) Whether the proposed activities are unlikely to adversely affect other fish or the aquatic environment

S.92(1)(c) requires the CEO to be satisfied that the proposed aquaculture activities are unlikely to adversely affect other fish or the aquatic environment.

The main considerations for this criterion are –

1. Genetics, disease and pests
2. Aquaculture gear
3. Environmental impact
4. Visual amenity and noise pollution

1. Genetics, disease and pests

Genetics is not an issue because the proposal does not contemplate introducing new genetic combinations.

In respect of diseases and pests, Cunningham’s aquaculture operation operates under controls imposed through licence conditions and a MEMP, which includes biosecurity protocols and procedures. These controls are based on the requirement to demonstrate low risk of disease and pest introduction and spread.

There are two concerns with respect to disease: firstly, that disease may be introduced into the natural environment through species that may be carrying the disease; secondly, that a disease outbreak may occur in the species cultured at the aquaculture site, caused by the conditions at the site.

a. Disease introduction

The potential consequences of a disease outbreak include potentially serious ecological and economic impacts on the wild-stock, as well as a consequential impact on the aquatic ecosystem generally.

The accidental introduction of disease pathogens into Western Australia through the translocation of fish can be a major concern, particularly in view of the State's relative freedom from disease. Adequate health testing and certification are consequently an essential element of any translocation policy.

Once present in the water column and under suitable conditions, disease-causing organisms have the ability to spread; consequently, if a disease outbreak occurs it is generally difficult to control or treat. Biosecurity controls are therefore needed to prevent or minimise the risk of disease outbreaks and the introduction of pathogens into the environment, by not permitting operations to be conducted so as to predispose organisms on the site to develop disease (by preventing or minimising predisposing factors).

There can also be a requirement for disease testing on stock held in the marine farm. This approach ensures a high level of confidence in the ability to detect known disease agents.

I am aware that there have been no reported disease events in the authorised species grown at the Cunningham site at the Abrolhos Islands. I note that from time to time DPIRD's Diagnostics and Laboratory Services may wish to undertake disease testing in the absence of a reported disease event and that these requirements may change from time to time, taking into account the diseases of interest, the characteristics of the tests available and the required confidence in the result as determined by a risk assessment. A licence condition will be imposed to enable DPIRD's Diagnostics and Laboratory Services to determine these requirements for disease testing.

Given the biosecurity protocols in place for the existing offshore site and the controls imposed, or that may be imposed, over the movement of the proposed species, I consider the threat of disease being introduced to the Abrolhos Islands is low.

I note that any movements to the site will require a translocation authorisation, which would deal with matters including disease.

Cunningham will be utilising facilities such as DPIRD Hillarys, Albany Multi Species Hatchery and the hatchery on Coronation Island to breed scallop larvae from local broodstock. Cunningham will operate under biosecurity controls imposed through licence conditions and a MEMP. These controls are based on the requirement to demonstrate low risk of disease introduction and spread through conducting comprehensive health testing prior to movements being permitted.

I consider the threat of disease being introduced to the Abrolhos Island and the surrounding areas generally to be low, given the biosecurity protocols in place and the controls imposed over the movement of the fish to the site.

b. Disease development in situ

I have noted that aquaculture has been carried out at the existing site in the Abrolhos Islands for over 20 years. In that time, there have been no reported disease incidents.

I am also mindful of the conditions to be imposed on the licence in respect of disease reporting requirements and the biosecurity provisions set out in the MEMP.

Therefore, I consider the risk of disease outbreak at the site and the spreading of disease from the site to be generally low, given the biosecurity protocols in place and the controls imposed, or that may be imposed, over the species being grown at the site.

2. Aquaculture gear

There are two aspects to the consideration of the effect of aquaculture gear on other fish or the environment: its physical and spatial impact on benthic habitats (that is, its “footprint”); and failure to remove the aquaculture gear if the aquaculture operation ceases. The environmental impact of the aquaculture activity on benthic habitats and water quality is a separate issue that is dealt with below.

a. Impact of the aquaculture gear

For the grow-out phase of the scallop spat, Cunningham will be using mesh ropes and bags in culture cages hanging below established longlines. The longlines are placed above sand and rubble seabed with anchors placed within the site boundary, avoiding coral reefs.

Once spat have reached a certain size, they are removed from the ropes and bags and placed into mesh pearl nets, lantern cages, pearl panels, mesh or plastic racks and strung in groups below established surface and subsurface longlines.

Therefore, I consider that there would be minimal environmental impact arising from the use of the described aquaculture gear.

b. Removal of the aquaculture gear

In the event of aquaculture ceasing, any issues concerning the clean-up and rehabilitation of the site would be covered by the relevant provisions of the Act.

3. Environmental impact

I note that it is in the best commercial interest of Cunningham to maintain a healthy environment and to ensure any ongoing environmental impact is adequately measured

and evaluated. The monitoring and management of environmental factors is a separate issue that is dealt with in the MEMP section below.

I have noted that the species selected for production and culture will be filter feeders that are endemic to the Abrolhos Islands and require no additional feeding; consequently, there will be no increase in nutrient levels arising from the introduction of manufactured feeds. I therefore consider the proposed species to have minimal impact on the surrounding environment. To ensure the water quality remains high, monitoring sites will be established to record seawater quality parameters identified in the MEMP. In addition, Pelsaert will only culture species that occur naturally within the Abrolhos Islands to avoid introduction of exotic species to the natural marine ecosystem. I note this is dealt with in the MEMP.

The Abrolhos Islands is recognised for its significant marine and terrestrial fauna and flora; however, the risk of the proposed aquaculture activity having any significant impact on the environment is considered low and can be managed through the requirements of the MEMP.

Therefore, I consider that the matter of environmental impact has been fully addressed and sufficient environmental monitoring and management controls provided in the MEMP and conditions of the Licence.

4. Visual amenity and noise pollution

I have noted the location of the jetty facility and holding barge and the remote location of the site; the proposed project will not have any negative impact on visual amenity and will not result in any noise pollution.

After considering the relevant issues regarding s.92(1)(c), I am satisfied the proposed activities are unlikely to affect other fish or the aquatic environment and can be managed through the MEMP and conditions imposed on the licence under s.95 of the Act.

(e) Whether the proposed activities have been approved by other relevant authorities

S.92(1)(d) requires the CEO to be satisfied that the proposed activities have been approved by relevant authorities. I have not identified any other relevant authority.

(f) Other matters prescribed

S.92(1)(e) requires the CEO to be satisfied of any other matters prescribed for the purposes of s.92(1). There are no other prescribed matters.

Therefore, I am satisfied of all of the criteria in s.92(1) of the Act have been met in respect of the variation application.

3.2 The MEMP

Section 92A of the Act requires an applicant to lodge a MEMP when lodging an application for an aquaculture licence.

A MEMP forms part of an integrated management framework for aquaculture activities, which also includes relevant legislative requirements (including the FRMR and the *Biosecurity and Agriculture Management Act 2007*) as well as conditions on licences and leases.

The purpose of a MEMP is to satisfy the CEO that any risks to the environment and public safety will be managed per s.92A(1) of the Act. A MEMP provides information on the background and purpose of the aquaculture activity, including its objectives, other information such as the species of fish to be farmed, the location of the site and the farming method, and details of environmental monitoring and management and biosecurity.

With reference to the provisions of s.92A of the Act, I note that MEMPs generally contain requirements in respect of the following.

1. An overview of the aquaculture operation, including information on species and quantity of fish; location and areas of land or waters; and farming methods and aquaculture gear.
2. Environmental Management and Monitoring, including information on and details of baseline information; environmental monitoring parameters; the environmental monitoring program; and response thresholds and response protocols.
3. Impact on protected species and other aquatic fauna.
4. Biosecurity, including information on and details of general facility information; administrative biosecurity procedures; operational biosecurity procedures; and biosecurity incident and emergency procedures.

Cunningham has an approved, existing MEMP in respect of its Licence. That MEMP has been amended to apply to the activities proposed under the variation to the Licence.

As such, I approve the MEMP provided by Cunningham (**Attachment 3**).

In respect of the public availability of the MEMP, I note that under s.250(1)(c) of the Act, a MEMP lodged under the Act is “confidential information” and cannot be divulged by the Department.

4 DISCRETION TO VARY – MERITS OF THE APPLICATION

In considering the exercise of discretion I give regard to the merits of the application. That requires balancing the opposing considerations against the supporting

considerations. For any detrimental factors, I give regard to how detriments may be minimised and controlled.

Potential disadvantages of variation

The potential disadvantages of the proposed variation are:

- (a) Genetics, diseases and pests (refer to 3.1(d)(1))
- (b) Environmental impact (refer to 3.1(d)(3))
- (c) Impact on compliance and resourcing
- (d) Limitation on access to the proposed waters
- (e) Impact on navigation
- (f) Impact on recreational fishing
- (g) Impact on commercial fishing and other commercial activities including tourism

(a) Genetics, diseases and pests

I have considered the issue of genetics, diseases and pests earlier at part 3.1(d)(1) of this decision, including interbreeding, and concluded genetic issues will be unlikely to have any detrimental impact.

(b) Environmental impact

I have considered the issue of Environmental Impact earlier at part 3.1(d)(3) of this decision, and concluded that there are sufficient controls in place to manage any environmental impact.

(c) Impact on compliance and resourcing

I note that aquaculture activities are managed through licence conditions and regular disease testing which results in a low impact on compliance and resourcing.

(d) Whether the proposal involves limitation on access to the proposed waters.

The variation does not provide the licence holder with exclusive access to the site; therefore, granting the Licence to authorise aquaculture at the site will not limit access to waters.

(e) The possible impact on navigation

The Department referred the proposal to the Department of Transport (Navigational Safety), which recommended the areas of the site be subject to marking and lighting in accordance with Category 3 as set out in the document *Guidance Statement for Evaluating and Determining Categories of Marking and Lighting for Aquaculture and Pearling Leases/Licences (2010)*. This can be dealt with under a standard licence condition.

(f) The possible impact on recreational fishing

The variation is for the addition of species, so the variation will not have any impact on recreational fishing.

(g) The possible impact on commercial fishing and other commercial activities including tourism

The variation is for the addition of species, so, as with recreational fishing, the variation will not have any impact on commercial fishing.

Potential advantages of variation

The potential advantages of the proposed variation are:

- (a) Suitability of the location for aquaculture and proximity to existing operation
- (b) Very low impact on other users of the resource
- (c) Potential economic benefits for the State (refer to 3.1(c))
- (d) Contribution to ongoing development of science and knowledge of aquaculture
- (e) No impact on native title.

(a) Suitability of the location for aquaculture and proximity to existing operation

Correct site selection is the single most important factor that determines the success of aquaculture ventures. The history of successful oyster aquaculture at Cunningham's existing site at the Abrolhos Islands indicates the suitability of the site for that purpose. In its application, Cunningham provided justification for the additional species applied for under the variation to make the venture more commercially viable.

There are numerous reasons why the site provides a good location for the proposed activity and, specifically, I have noted the following factors in respect of the location of the site:

- the physical features of the site satisfy the biological requirements for the production of the proposed species; and
- the proximity of the aquaculture site and the hatchery on Coronation Island provides an added advantage in respect of operational efficiency and compliance activity.

I am of the view the reasons set out above show that the location is suitable for the aquaculture of the proposed species, and that the addition of the new area to the existing site would afford advantages in respect of operational efficiency and commercial viability.

(b) Very low impact on other users of the resource (providing disease issues are dealt with)

For the reasons set out above, the granting of the variation to the Licence would not have any impact on other users of the resource.

The proposal has no impact on visual amenity and noise pollution.

I have noted that the proposal was developed in consultation with a range of stakeholders.

Providing that disease issues are dealt with, I have formed the view that the proposal will have little to no impact on other users of the resource.

(c) Potential economic benefits for the State

I have considered the issue of economic benefits for the State earlier at part 3.1(c) of this decision.

(d) Contribution to ongoing development of science and knowledge of aquaculture

Information generated from the expansion of aquaculture activities at the site would contribute to the ongoing development of the science and knowledge in relation to aquaculture, in part by providing data pertaining to environmental impact of activities of this nature on the key identified environmental factors at this type of site; namely, benthic communities and habitat, marine environmental quality and marine fauna.

The science developed from the proposal may increase the efficiency of the commercial activity, but would also provide a basis for adaptive management by the Department, through continual monitoring to evaluate and improve the management processes to ensure implementation of best-practice environmental management as technologies develop over time.

(e) No impact on native title

There is no impact on Native Title.

In respect of the various issues opposing and in favour of the proposal, I am satisfied the benefits outweigh the disadvantages and that the risks, possible detriments and other issues associated with the proposed licence variation can be managed by licence conditions and the MEMP.

5 LICENCE CONDITIONS

The conditions on the licence being varied are outdated and will be replaced as set out below.

The Department has liaised with the Applicant over the licence conditions. The indicative (intended) substance of the licence conditions is as follows.

1. Interpretation

1. In the conditions on this licence –

Pathologist means an employee of a laboratory facility that is accredited by the National Association of Testing Authorities, Australia;

DPIRD Diagnostics and Laboratory Services means the officer(s) occupying that position in the Department, or any officer occupying a comparable position in the Department that the CEO advises the licence holder by notice in writing will be performing the duties of a pathologist of DPIRD's Diagnostics and Laboratory Services;

site means the area specified in Schedule 2 of this licence.

2. The following terms used in the conditions on this licence have the same meaning as in the *Fish Resources Management Act 1994* –
 - aquaculture lease;
 - CEO;
 - Department;
 - record.

2. Marking and Lighting

- (1) Marking and lighting of the offshore site must be installed and maintained in accordance with Category 3 as set out in the document "Guidance Statement for Evaluating and Determining Categories of Marking and Lighting for Aquaculture and Pearling Leases/ Licences (2010)".
- (2) The marking and lighting required under paragraph (1) must be installed before any aquaculture activity is undertaken at the site.

3. Aquaculture gear

- (1) Aquaculture gear must be used in such a way that it does not damage any reef, coral or seagrass bed.
- (2) The holder of the licence must ensure that all aquaculture gear is located within the boundaries of the site, and maintained in a safe, secure and seaworthy condition; and all floating aquaculture gear, including ropes and buoys, must be fastened securely.

4. Possession of fish and translocation

Any fish that is not native to the Abrolhos Islands must not be brought onto or kept on the site.

5. Interaction with protected species

Any interactions between any aquaculture gear at the site and any protected species, including entangled or stranded animals, must be immediately

reported to the Department of Biodiversity, Conservation and Attraction's Wildcare Hotline on (08) 9474 9055 (24-hour emergency number), the DBCA's Nature Protection Branch on (08) 9219 9837 and the local DBCA District Office.

6. Broodstock

The licence holder must:

- a) immediately upon bringing onto, or receiving at, the site any fish for the purpose of breeding for each species of fish, make a clear written record in duplicate of:
 - i. the date of bringing fish onto, or receiving fish at, the site;
 - ii. the specific geographic location where the fish came from
 - iii. for each species, the number of fish;
 - iv. the name and address of the person who took the fish; and
 - v. the specific authority by which the fish were taken (licence or exemption);
 - vi. the size of the fish (as determined by measuring the shell from edge to edge across the longest diameter);
 - vii. the sex of the fish (where possible); and
 - viii. any mortalities of breeding stock.
- b) within 48 hours of bringing onto, or receiving at, the site any fish, forward to the DPIRD Geraldton District Office the original written record made for the purposes of (a);
- c) keep broodstock originating from different locations in separate rooms at all times;
- d) keep broodstock of different species in separate tanks at all times; and
- e) keep clear and legible written records in respect of where all stock is placed; and
- f) notify a DPIRD Fisheries and Marine Officer at the DPIRD Geraldton District Office at least 48 hours prior to moving any broodstock to the site.

7. Waste

Where any person has, or the CEO advises the licence holder in writing (including by email) that the CEO has, reasonable grounds for suspecting that

—

- (1) A disease to which regulation 69 (d) relates is confirmed in any tank, cage or enclosure at the site; or
- (2) There is a real and sensible risk of disease being spread to the oceanic waters or stock in those waters through the discharge of waters from the tank or tanks,

then no waters are to be discharged from the tank, cage or enclosure, either directly or indirectly, to any oceanic waters or other natural waters.

8. Health management and certification

- (1) The licence holder must not move fish, excluding fish being moved to the Abrolhos Islands if originating from the same location, from the hatchery site unless –
 - (a) the licence holder has submitted the request form for the provision of a health certificate, provided by the DPIRD's Diagnostics and Laboratory Services – Aquatic Diagnostics Lab, to a Pathologist employed by the Department for the provision of a health certificate; and
 - (b) the licence holder has received a health certificate from a DPIRD Pathologist in respect of all fish being moved to the site; or
 - (c) where the licence holder has made a request under paragraph (a) to a Pathologist who is not an officer of the Department, the licence holder has received confirmation that a copy of a health certificate for those fish is in the possession of the DPIRD Aquatic Diagnostics Labs.
- (2) The licence holder must ensure that any fish moved from the hatchery site is accompanied at all times by a copy of the health certificate received under paragraph (1).
- (3) Paragraphs (1) and (2) do not apply with respect to broodstock collected or taken from the waters of the Abrolhos Islands Fish Habitat Protection Area.

9. Disease testing

- (1) The licence holder must ensure that disease testing of fish is carried out –
 - (a) prior to transport to or from the site; or
 - (b) while the fish is situated at the site,as required by notice in writing from DPIRD's Diagnostics and Laboratory Services.
- (2) The testing carried out under paragraph (1) will be at the cost of the licence holder.

10. Biosecurity measures

Where the licence holder -

- (1) suspects that any fish at the site are affected by disease; or
- (2) becomes aware of any significant or unusually high levels of fish mortality, caused by disease or otherwise, the licence holder must -
 - (a) immediately notify the Department on 1300 278 292 (all hours) of the level of mortality or signs of disease; and
 - (b) follow the directions of DPIRD's Diagnostics and Laboratory Services in relation to providing reports, samples of fish, or any other relevant item, at such a time as required.

11. Record keeping

- (1) The licence holder must make accurate and timely records of –
 - (a) the aquaculture gear used at the site;
 - (b) the movement of fish to each type of aquaculture gear, including –
 - i. the estimated average weight and numbers of the fish moved;
 - ii. the time and date the movement took place; and
 - iii. any mortalities of fish that occurred during the movement;
 - (c) the estimated weight and numbers of fish being kept on each type of gear at the site;
 - (d) the estimated weight and numbers of fish harvested from each type of aquaculture gear at the site;
 - (e) all mortalities at the site, both in total and as a percentage of total stock held at the site at the time; and
 - (f) all health certificates issued to the licence holder by a Pathologist.
 - (g) breeding carried out in all hatchery tanks by reference to the following –
 - i. the number of broodstock;
 - ii. the batch number of the larvae or juveniles;
 - iii. water temperatures;
 - iv. water quality test results;
 - v. the loss of larvae, juveniles and broodstock and cause of loss;
 - vi. any symptoms of disease; and
 - vii. estimated numbers of post larvae when sampling for health certificates.
- (2) The licence holder must keep the records made under paragraph (1) in a secure place at the licence holder's registered place of business for a period of seven years.
- (3) Records under paragraph (1) must be available to an authorised DPIRD Officer at any time
- (4) The licence holder must, upon request from time to time, provide the data under paragraph (1) to DPIRD's Diagnostics and Laboratory Services – Aquatic Diagnostics Lab.
- (5) Records must be made immediately after inspection, or upon receipt of the health certificate, as the case requires.

12. MEMP Compliance Audit

An independent audit of compliance with the MEMP must be commissioned and carried out by the licence holder, at the expense of the licence holder, within four months of being directed in writing by the CEO to commission the audit. A copy of any interim and final audit report must be delivered to the CEO within seven days of being received by the licence holder.

13. MEMP Report

The holder of the licence must:

- (1) at all times comply with and implement the latest Management and Environmental Monitoring Plan ("MEMP") prepared by the holder of the licence, and delivered to the Department; and
- (2) before 31 July each year, submit to the CEO at the head office of the Department at Perth, a written annual report on its activities conducted under the MEMP during the year, which must include all results of management and monitoring activities to 1 July.

The conditions will be imposed by providing the Applicant with notice in writing, noting there is a requirement for a review period before giving effect to the decision.

I note that the aquaculture venture is a dynamic operation, not a static event, and in the event that varied or additional conditions become appropriate then those can be imposed in the future in accordance with the process in the Act.

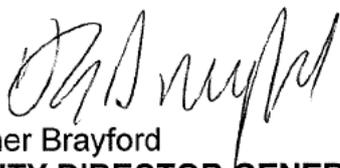
6 DECISION

In view of the above considerations, I have decided to vary the Aquaculture Licence on the basis that conditions are imposed on the licence.

Aquaculture Licence No. 1347, submitted by Cunningham (WA) Pty Ltd is to be varied to include saucer scallop (*Ylistrum balloti*), doughboy scallop (*Mimachlamys australis*), commercial scallop (*Pecten fumatus*) and austral scallop (*Chlamys australis*).

Existing conditions on the licence are to be removed and replaced with new conditions pursuant to section 95 of the Act and which are set out above at part 5 (conditions 1-13) of this statement of decision.

I have also decided to approve the MEMP.



Heather Brayford

DEPUTY DIRECTOR GENERAL, Sustainability and Biosecurity

As delegate of the CEO

Dated this 21st day of May 2019

I hereby give instruction for notice of the decision to vary the Licence under s.142 of the Act and impose conditions under s.95 of the Act to be advertised in the West Australian newspaper in accordance with s.148 of the *Fish Resources Management Act 1994*.

Attachments –

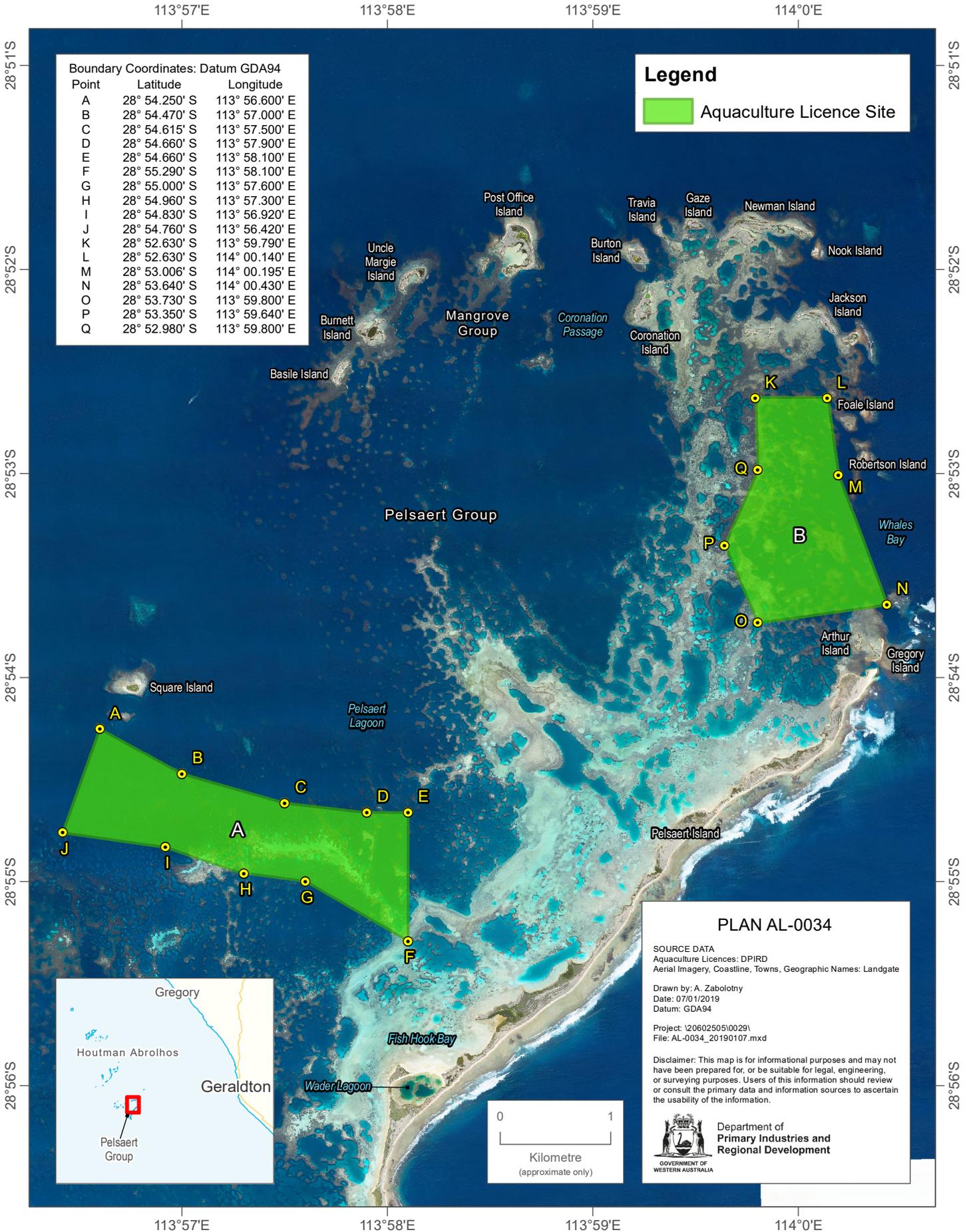
- (1) Site Plan 1 – Pelsaert Island Group
- (2) Site Plan 2 – Coronation Island
- (3) Management and Environmental Monitoring Plan

HOUTMAN ABROLHOS - PELSAERT GROUP

BRUCE CUNNINGHAM

AQUACULTURE LICENCE - SITE PLAN

ALL THAT PORTION OF TERRITORIAL WATER WITHIN THE BOUNDARY DESCRIBED AND COLOURED GREEN ON THE PLAN BELOW COMPRISING A TOTAL AREA OF 213.72 (A) and 166.35 (B) HECTARES RESPECTIVELY



CORONATION ISLAND BRUCE CUNNINGHAM AQUACULTURE LICENCE - SITE PLAN

ALL THAT PORTION OF LAND WITHIN THE BOUNDARY DESCRIBED AND COLOURED GREEN ON THE PLAN BELOW COMPRISING A TOTAL AREA OF 0.014 HECTARES

