

STATEMENT OF DECISION

APPLICATION TO VARY AN AQUACULTURE LICENCE

File Number: L2569/13-02
Applicant: Pelsaert (WA) Pty Ltd
Application Date: 2 November 2018
Application Type: Variation of an Authorisation

1 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.

The application has been made under section 142(1)(a) of the Act. There are no express limitations on the face of the provision; the power therefore appears to be unconstrained.

Although section 142(1)(a) does not provide for any express limitations on the exercise of the power in respect of an aquaculture licence, or any other authorisation, I regard section 142 as a general provision that is intended to enable variation of an authorisation where that would not be in conflict with other provisions of the Act that are more restrictive or exhaustive.

In my view it would be unreasonable to construe the legislation as intending that a new licence could not be granted to authorise a certain activity in a specified area because certain express preconditions were not satisfied, yet an existing licence could be varied to authorise that same activity in that same area without the preconditions being satisfied.

The substance of the variation application is to authorise aquaculture of certain species that are not presently authorised.

I therefore consider that the power under section 142 to vary the existing Licence in the manner applied for may be exercised where the preconditions that would need to be satisfied if a new licence had been applied for are first satisfied; accordingly, assessment of the variation application will first give consideration to the issues that would need to be satisfied if the application had been for the grant of a new licence.

On the basis of the above, 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;*
 - (ba) 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;*
 - (b) 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.

2 DETAILS OF THE APPLICATION

Background facts

Pelsaert (WA) Pty Ltd (“Pelsaert”) (ACN 116 859 593) is the holder of Aquaculture Licence No. 1540 (“the Licence”).

The Licence authorises the culture of the following species:

- Bat wing pearl oyster (*Pteria penguin*);
- Black lip pearl oyster (*Pinctada margaritifera*); and
- Akoya pearl oyster (*Pinctada fucata*);
- Shark Bay pearl oyster; and
- Families of sponges and encrusting algae: (Hymedesmiidae, Mycalidae, Iriniidae, Latunculiidae, Spongiidae, Thorectidae).

Under the Licence the authorised site includes 367.92 hectares of water (**Attachment 1**) within the Pelsaert Group at the Abrolhos Islands and is subject to certain conditions.

Details of the Licence variation application

On 2 November 2018, Pelsaert made an application to the CEO of the Department of Primary Industries and Regional Development (“Department”) under s.92 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. On 1 February 2018, Pelsaert also made an application for an aquaculture lease for the site area under the Licence.

The application seeks to vary Schedule 1 of the Licence to include the following species:

- scallops: (*Amusium balloti*, *Chlamys australis*);
- clams: (*Tapes literatus*, *Tapes dorsatus*, *Tridacna maxima*, *Tridacna squamosal*, *Tridacna derasa*);
- rock oysters: (*Saccostrea* spp.);
- sea cucumbers: (*Holothuridae*, *Holothuria scabra*, *Actinopyga* spp.);
- sea urchins: (*Tripneustes gratilla*, *Tripneustes* spp., *Toxopneustidae*);
- seaweed: (*Pterocladia lucida*, *Cladosiphon filum*)

During the consultation process, Aquaculture Branch received internal advice that the species *H. scabra* and *T. derasa* did not naturally occur in the Abrolhos Islands. Based on this advice, Pelsaert agreed to remove those species from the application.

In addition to the species, Pelsaert is seeking to vary Schedule 2 of the Licence to add a holding barge and jetty facility owned by Pelsaert and located at Basile Island.

3. RELEVANT ISSUES 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 the company has a proven history of success within the aquaculture industry. Based on the information provided I am of the view that Pelsaert 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 Pelsaert 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.

Pelsaert provided a business plan based on future production 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, which Pelsaert was required to produce as part of the application, provided financial information on assets and liabilities and cash flows based upon future production. Based on the information provided, I have no reason to believe that Pelsaert 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 Pelsaert has a clear understanding of the level of infrastructure and aquaculture equipment needed for the successful implementation of the proposed project. Pelsaert has a history of keeping records and paying relevant fees; I have therefore 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; secondly, the importance of accurate, complete and timely records.

With respect to the matter of persons acting on behalf of the licence holder, Pelsaert is a company and accordingly must act through natural person agents. These persons

are the officers (such as directors) and employees of the company. The Licence does not authorise persons to act “on behalf of” Pelsaert, so Pelsaert cannot authorise independent contractors or “lessees” to carry out aquaculture. Pelsaert has been an established company for some years, so can be assumed to understand 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 Pelsaert, I consider the Company 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, on balance, I consider Pelsaert is “fit and proper” to hold a licence to conduct aquaculture of the proposed species at the authorised site and proposed jetty facility and holding barge.

(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.

Pelsaert 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. The proposed area in this variation application will be incorporated in the lease application, which is being assessed simultaneously to the application for variation.

Accordingly, I consider that Pelsaert will have appropriate tenure over the proposed jetty facility and holding barge.

(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 proceeds 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 and the addition of the jetty area 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.

With respect to detriments such as disease and impact on the environment, I consider that these are sufficiently considered below in relation to whether the proposed activities “are unlikely to adversely affect other fish or the environment”. To the extent that disease testing is required, being a major element of the biosecurity controls, these are generally to be paid for by Pelsaert.

A consideration which may be seen as a “detriment” is if the Department assumes an unduly onerous regulatory burden. The Department performs a compliance function, to ensure that people, in particular licence holders, comply with the law.

Due to the low risk and because the Department must support activities consistent with the objects of the Act, I do not consider that the regulatory burden constitutes a persuasive factor against concluding that the proposed activities are in the better interests of the State.

Another relevant consideration would be whether the proposed waters of operation would be better applied to another use, thereby serving the “better interests” of the State and the community to a greater extent. For example, if an alternative use of the proposed area delivered far greater economic benefits than that may be a reason that it is not in the better interests to authorise the addition of a jetty facility and holding barge as well as the addition of species to the Licence.

On balance, 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, Pelsaert’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 economic impacts on the wild-stock and recreational fishers, as well as a consequential impact on the aquatic ecosystem generally; there is unlikely to be any potential impact on the pearling sector or other aquaculture licence holders.

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 is 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; therefore, if a disease outbreak occurs and pathogens are released into the water, it is generally difficult to control or treat the disease, which generally has to run its natural course. Biosecurity controls are therefore needed to prevent the introduction of pathogens into the environment and to minimise the risk of diseases developing at the site 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 Pelsaert site at the Abrolhos Islands. I note that from time to time the 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.

Pelsaert will be using local broodstock to produce larvae, juveniles and spat at the existing hatchery on Rat Island owned by Abrolhos Aquaculture Australia Pty Ltd. Pelsaert 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, or that may be 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 Pelsaert Group 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

In this case, the proposed jetty site will initially be used for the grading, seeding and harvesting for the pearling operations. The holding barge will temporarily hold the animals transferred from the site to the jetty facility for handling.

The animals will be suspended from the barge in panels or holding crates.

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 Pelsaert 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.

Abrolhos Island Oysters Pty Ltd (AIO) commented that the close proximity of Pelsaert's site to AIO's site may have detrimental effects on AIO's operation in relation to the proposed addition of species to the Licence, on the premise that a high stocking density of filter feeders would remove significant amount of nutrients from the water. AIO requested information on Pelsaert's measures to prevent disease and a deterioration of water quality. In its response, Pelsaert reiterated that it has long-standing experience in shellfish aquaculture at the site and would ensure that shellfish would be stocked and held at sustainable densities and that water monitoring data collected through the current environmental monitoring plan have not indicated any water quality problems. Based on its history in promoting and implementing biosecurity measures as well as complying with licence conditions and restrictions in relation to health certificates of spat, translocation and general broodstock movements, Pelsaert foresees no water quality or disease issues.

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. I conclude the proposed species will have minimal impact on the surrounding environment as there will be no increase in nutrient levels; however, 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 assure that no introduction of exotic species is made to the natural marine ecosystem. This is covered 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 that needs to provide approval.

(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, 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.

Pelsaert 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 Pelsaert (**Attachment 2**).

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

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.

I am satisfied that the power to vary Pelsaert’s Licence exists in this case.

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.

I do not consider a “contrary intention” exists in the Act. Accordingly, I am required to consider whether to exercise the power or not, at discretion.

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
- (b) Environmental impact
- (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 earlier at part 3.1(d)(1) of this decision, including interbreeding, and concluded genetic issues will be unlikely to have any detrimental impact.

I have considered the issue of disease introduction earlier at part 3.1(d)(1) of this decision and concluded sufficient controls will be in place and that this issue will be unlikely to have any detrimental impact.

To address the risk of disease development *in situ*, additional testing of the proposed species at the farm site at the Abrolhos Islands can be required through a licence condition.

I have noted the issue cannot be about eliminating all risk; otherwise, aquaculture operations in the marine environment would not be able to proceed. That is contrary to the object and operation of the Act. The task, therefore, is to reduce the risk of disease outbreak to an appropriately low level by identifying and assessing biosecurity, environmental and other risks and implementing management strategies and controls to reduce the risks. This is addressed primarily through biosecurity controls implemented in the MEMP and licence conditions.

(b) Environmental impact

The MEMP provides an environmental monitoring program developed to ensure the proposed aquaculture activity will be unlikely to have any significant impact on the environment and that any impacts that may occur will be managed effectively.

Given the information provided in the MEMP, I am of the view that the proposed aquaculture activity could be implemented without significant deleterious impacts on the environment. Existing aquaculture legislation and adaptive management mechanisms provide further confidence that the aquaculture industry can be developed sustainably.

Given the information set out above, I am of the view there are sufficient controls in place to manage any environmental impact

(c) Impact on compliance and resourcing

I note that licence conditions are generally designed to facilitate efficient and effective enforcement activities and that disease testing of cultured stock is generally the financial responsibility of the operators. Therefore, I do not consider that compliance activities undertaken to enforce the varied licence conditions in this case will be unduly onerous, as they should fall within the usual activities of the Department.

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

The variation is for the addition of species, a jetty facility and offshore holding barge so the additional area 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 has advised that no marking or lighting is required for the proposed jetty facility. The proposed barge was assessed as Category 4 as set out in the document "Guidance Statement for Evaluating and Determining Categories of Marking and Lighting for Aquaculture and Pearling Leases/ Licences (2010)".

(f) The possible impact on recreational fishing

The variation is for the addition of species, a jetty facility and holding barge so the additional area 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, a jetty facility and holding barge, so, as with recreational fishing, the additional area 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
- (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 Pelsaert's existing site at the Abrolhos Islands indicates the suitability of the site for that purpose. In its application, Pelsaert provided justification for the additional area applied for under the variation and confirmed its need to make the venture more commercially viable by expanding its current operation to include various species, a jetty facility and holding barge.

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 jetty facility and holding barge to the existing area 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

The establishment of aquaculture operations in regional areas has the potential to add to the economic growth of the region and increase local employment. Existing aquaculture farms around the State are already providing employment opportunities.

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 about 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 would not only increase the efficiency of the commercial activity, but also provide a basis for adaptive management by the Department.

(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

My reasoning has noted that certain matters can be satisfied if they are able to be dealt with by licence conditions. Accordingly, before deciding on the application to vary Pelsaert's licence, I now turn my mind to conditions I consider ought to be imposed on the licence.

The matters for which conditions may be considered are as follows.

- Requirement for a lease

A lease will be required for aquaculture to be conducted at the site.

- Aquaculture method and gear

Conditions in respect of aquaculture method and gear provide controls over the deployment of aquaculture gear. These controls are set out in the MEMP.

- Biosecurity (including disease and genetics)

Conditions in respect of biosecurity include controls over record keeping, the source of broodstock, health management, procedures to be followed in the event of suspicion of disease and controls over the disposal of biological waste materials.

As Pelsaert would not have exclusive possession of the site and waters, an officer of DPIRD's Diagnostics and Laboratory Services and Marine Officer can enter the site at any time to inspect stocks.

I note that with disease testing a balance needs to be struck between the benefit derived from testing against the cost of undertaking the testing. Repeated testing of healthy stock is likely to be of low value, yet would require the licence holder to incur significant costs. On the other hand, targeted testing of dead or moribund species will be likely to identify the presence of any disease-causing organisms. A level of testing should be undertaken on the recommendation of DPIRD's Diagnostics and Laboratory Services.

As with any condition, if circumstances change then the requirement for testing can be changed.

- Marking and lighting

Marking and lighting requirements will be determined according to the document "Guidance Statement for Evaluating and Determining Categories of Marking and Lighting for Aquaculture and Pearling Leases/ Licences (2010)".

- Environmental monitoring

Conditions in respect of environmental monitoring and reporting are set out in the MEMP.

- Compliance issues

Conditions in respect of compliance issues provide controls over or requirements for making and keeping of records.

The power to delete and add new conditions is provided for in s.95 of the Act.

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. Requirement for appropriate tenure to authorise activity

The holder of this licence must make every reasonable endeavour to obtain, and must maintain in force at all times, the legal right to use the site. No aquaculture is to be carried on at the site without the legal right to use the site for aquaculture having first been granted.

3. Marking and Lighting

(1) Marking and lighting of the offshore site must be installed and maintained in accordance with Category 4 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) Areas being used for "bottom culture only" do not require any surface navigational marking provided the associated apparatus used maintains a minimum clearance of no less than 5 metres between the highest point of the apparatus above the seabed and the sea surface at Lowest Astronomical Tide (LAT).

(4) Surface marking and lighting will immediately revert to Category 2 if the bottom gear/ equipment does not meet minimum draft clearance requirements.

4. Aquaculture gear

- (1) Aquaculture gear must be used in such a way that it is not in contact with and 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.

5. Jetties

No aquaculture activity is to be conducted on or above any jetty unless the jetty has been assessed by a qualified structural engineer, and the engineer has issued a certificate specifying the working load limit of the jetty. No aquaculture activity is to be conducted on or above any jetty unless a copy of the working load limit certificate is kept at the jetty for inspection at any time by any Fisheries and Marine Officer and the working load limit specified in the certificate is not being exceeded. The original certificate must be kept safe and secure as a record of compliance with this condition.

6. 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.

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. 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.

9. 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.

10. 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.

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; and
 - (e) all mortalities at the site, both in total and as a percentage of total stock held at the site at the time.
- (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 Fisheries Officer at any time

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.

DECISION

On the basis of the above and subject to the amendment of the licence by imposing conditions referred to above, I have decided to vary the Aquaculture Licence No. 1540, submitted by Pelsaert (WA) Pty Ltd to include a jetty facility, and holding barge as well as the species of scallops, clams (excluding *T. derasa*), oysters, seaweed, sea urchins and sea cucumbers (excluding *H. scabra*).

I have also decided to approve the MEMP and delete the existing conditions on the Licence and impose new conditions on the Licence under s.95 of the Act. The new conditions to be imposed are set out above at part 5 (conditions 1-14) of this statement of decision.

RIGHT TO REVIEW

The decision to vary an aquaculture licence to Pelsaert (WA) Pty Ltd is a decision to which section 148 applies.

Under section 149 of the Act, “affected persons” have the right to apply to the State Administrative Tribunal for a review of the above decision. To this end, Pelsaert (WA) Pty Ltd is an “affected person”.

I note that pursuant to section 149(2) of the Act “an affected person applying under subsection (1) for a review is required to give the CEO a copy of the application on the day on which it is lodged with the State Administrative Tribunal.”

Heather Brayford

DEPUTY DIRECTOR GENERAL, Sustainability and Biosecurity

As delegate of the CEO

Dated this 10th 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 –

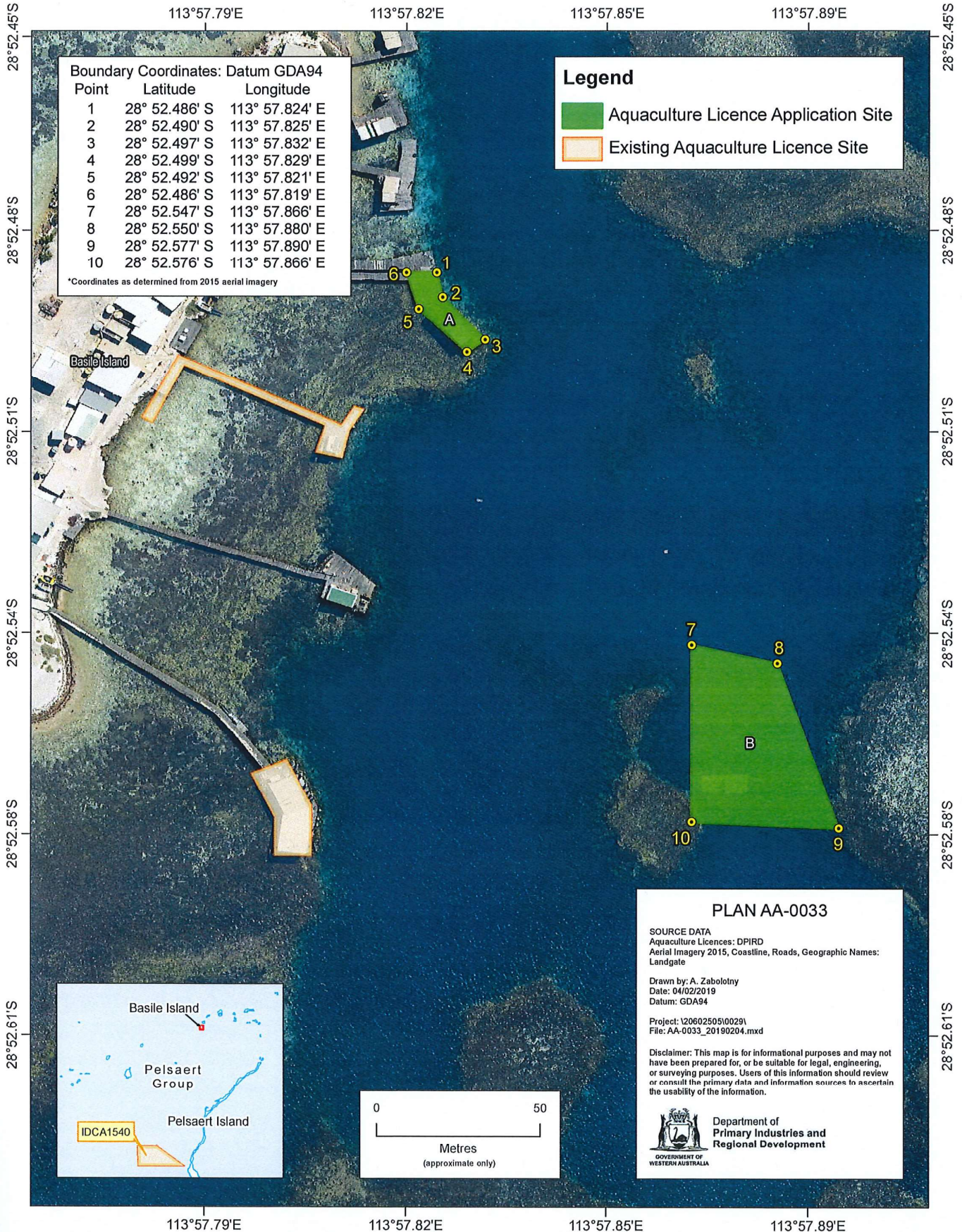
- (1) Application Site Plan
- (2) Management and Environmental Monitoring Plan

PELSAERT GROUP - BASILE ISLAND

PELSAERT (WA) PTY LTD

AQUACULTURE LICENCE APPLICATION - SITE PLAN

ALL THAT PORTION OF WATER WITHIN THE BOUNDARY DESCRIBED AND COLOURED GREEN ON THE PLAN BELOW COMPRISING A TOTAL AREA OF 191 (A) and 1,570 (B) SQUARE METRES RESPECTIVELY



Boundary Coordinates: Datum GDA94

Point	Latitude	Longitude
1	28° 52.486' S	113° 57.824' E
2	28° 52.490' S	113° 57.825' E
3	28° 52.497' S	113° 57.832' E
4	28° 52.499' S	113° 57.829' E
5	28° 52.492' S	113° 57.821' E
6	28° 52.486' S	113° 57.819' E
7	28° 52.547' S	113° 57.866' E
8	28° 52.550' S	113° 57.880' E
9	28° 52.577' S	113° 57.890' E
10	28° 52.576' S	113° 57.866' E

*Coordinates as determined from 2015 aerial imagery

Legend

- Aquaculture Licence Application Site
- Existing Aquaculture Licence Site



PLAN AA-0033

SOURCE DATA
 Aquaculture Licences: DPIRD
 Aerial Imagery 2015, Coastline, Roads, Geographic Names:
 Landgate

Drawn by: A. Zabolotny
 Date: 04/02/2019
 Datum: GDA94

Project: I20602505\0029\
 File: AA-0033_20190204.mxd

Disclaimer: This map is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

**Department of
Primary Industries and
Regional Development**
GOVERNMENT OF
WESTERN AUSTRALIA