

# Aquaculture Development Zones in Western Australia

Policy principles relating to considerations  
for aquaculture licences and leases



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## **1. Introduction**

### **1.1 Aquaculture in Western Australia**

Aquaculture is one of Australia's fastest growing primary industries and in Western Australia (WA) the industry continues to expand. A key attraction of WA for aquaculture is its broad geographical and climatic range, extending from the vast Kimberley through to the south coast and inland areas, which provide tropical and temperate environments suitable for a variety of species.

Aquaculture offers important economic diversification to regional WA – the significant commercial investment required to establish and operate aquaculture businesses brings with it new skills, jobs and investment to the regions. The industry also fosters innovation and requires technical support from various disciplines ranging from water quality specialists, engineers, oceanographic and marine experts, environmental scientists and animal health expertise. WA has a range of educational institutions and training providers offering these specialist skills.

In August 2015, the WA Government released a Statement of Commitment to the development of the aquaculture industry in the State; it will achieve this by, among other initiatives, providing investment-ready aquaculture development zones where strategic environmental approvals have been secured.

### **1.2 Aquaculture Development Zones**

Under Section 101A(2A) of the *Fish Resources Management Act 1994* (FRMA) the Minister for Fisheries (Minister) may declare an area of WA waters to be an aquaculture development zone, subject to the provisions set out in s.101A(2B).

A declared aquaculture development zone is a designated area of water selected for its suitability for a specific aquaculture sector. Declaring areas as aquaculture development zones provides an 'investment ready' platform for applicants that want to set up commercial aquaculture operations with minimal delay.

A declared aquaculture development zone is created through a process that principally involves environmental assessment of the zone as a strategic proposal under Part IV of the *Environmental Protection Act 1986* (EP Act). Approval of a strategic proposal will create opportunities for applicants to refer project proposals to the Environmental Protection Authority (EPA) as Derived Proposals. The outcome is a more streamlined assessment process and a clear management and regulatory framework, which collectively provide clarity and certainty for prospective investors.

### **1.3 Scope of this paper**

The Objects of the FRMA enable the allocation of resources to achieve maximum benefits for the aquaculture industry.

This paper identifies the matters the Department of Fisheries (Department) will consider when assessing applications for licences and leases in a declared aquaculture development zone and the process it will use to do so.

The key objectives of the policy principles set out in this paper relating to the grant of aquaculture licences and leases within a declared aquaculture development zone are to ensure:

1. a transparent and equitable assessment process for applications; and
2. that licences and leases are granted to persons who demonstrate they have the capacity and ability to achieve the optimum economic and social benefit from the resource in an environmentally sustainable manner.

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## 2. Principles and process

### 2.1 Applications

Following the Minister's declaration of an aquaculture development zone, the Department may invite interested persons to apply for aquaculture licences and leases within that zone and advise a date by which applications should be made. The Chief Executive Officer of the Department (CEO) will then consider applications according to the relevant provisions of the FRMA and in respect of the relative merits of competing applications.

An "Application for an Aquaculture Licence" form and an "Application for an Aquaculture Lease" form should be completed and submitted to the Department with the relevant application fees.<sup>1</sup> Applications will be required to describe the intended activities and must be accompanied by a Category 1 Management and Environmental Monitoring Plan (MEMP), a business plan and if applicable, application for a translocation approval.<sup>2</sup> Further details of

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<sup>1</sup> Aquaculture leases and licences are subject to the payment of application fees and annual fees. Aquaculture lease, grant or renewal (r.67 of the *Fish Resources Management Regulations 1995*) 2,461.00\*; Aquaculture licence under section 92 of the Act – In respect of non-freehold land 771.00\*; Annual lease fees are calculated at a per-hectare rate. \*These figures are subject to change and should be used as a guide only.

<sup>2</sup> For clarity and to distinguish between the authorisations and plans mentioned in this paper:

- an aquaculture licence authorises the aquaculture activity;
- an aquaculture lease provides suitable tenure;
- a Management and Environmental Monitoring Plan (MEMP) gives effect (under the FRMA) to the requirements of a zone specific Management Policy and an EMMP. A Category 1 MEMP consists of a MEMP Document containing biosecurity information, Ministerial Statement (Minister for Environment), Department of Fisheries overarching Environmental Management and Monitoring Plan (EMMP) and the relevant Department of Fisheries Aquaculture Development Zone Management Policy.
- an Environmental Monitoring and Management Plan (EMMP) is a document approved by the Minister for Environment that ensures environmental quality and ecological integrity are maintained within acceptable limits;

Further information is provided at the link in Section 3.

these requirements are included in the application form (available on the Department's website, details in Section 3).

Separate applications must be made for an aquaculture licence and an aquaculture lease. Both applications must be submitted to the Department for assessment. In the processes to assess the licence and lease applications, the process to assess the licence will generally predominate and consequently be used to determine the outcome of the process. The decision makers for the licence and lease are, respectively, the CEO and the Minister.

## **2.2 Environmental approvals**

Aquaculture development zones in Western Australia are generally developed through a Strategic Environmental Impact Assessment process. The outcome of that process is assessed by the Environmental Protection Authority (EPA), which makes recommendations to the Minister for Environment, who in turn issues a Ministerial Statement (environmental approval) with conditions.

Following a decision by the Department to grant an aquaculture licence in an aquaculture development zone, the applicant may then refer its application as a proposal to the EPA requesting that it be declared a Derived Proposal (under section 39 B(1) of the EP Act). A flowchart outlining these processes is at **Appendix 1**.

The request for a Derived Proposal must then be advertised for public comment. The EPA will consider any comments received in the context of whether the proposal can be declared a Derived Proposal and for this reason, the applicant is encouraged to consult with key stakeholders prior to referring the proposal to the EPA.

If the Minister for Environment declares the proposal to be a Derived Proposal, then the relevant Ministerial Statement and any accompanying conditions apply.

## **2.3 Applications for the same waters**

The Department is aware of the possibility that multiple applications may be received for the same or overlapping areas of waters within the declared aquaculture development zone. In this event, the Department may discuss with the applicants possible amendments to their applications, to attempt to achieve an outcome that satisfies the Objects of the FRMA, meets the requirements of the applicant and that accommodates the management requirements of the zone. If applicants are not willing to make amendments, resulting in applications for areas that extend or lie partly or wholly over each other, then those applications will be considered competitive and assessed accordingly.

## 2.4 Assessment – considerations and merit

Applications will be considered in relation to s.92(1) and s.97(5A) of the FRMA and with regard for Ministerial Policy Guideline No. 8 (MPG 8).<sup>3</sup>

Under s.92(1) of the FRMA, the CEO may grant to the person an aquaculture licence if the CEO is satisfied all of the essential criteria listed below are met –

- (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 interest of the State and the community to grant the licence;
- (c) the activities to be conducted under the licences 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; and
- (e) any other matters prescribed for the purposes of this subsection.

Applications that satisfy the above preconditions will then be further assessed on merit and consideration will likely be given to matters such as business viability, business capability and biosecurity issues. The Department may seek additional or more detailed information from applicants if initially they do not provide sufficient information to assess their application or if there are competing applications, which would require consideration of relative merits. The Department may also seek independent specialist advice to clarify information on an as-needed basis.

The process to assess applications received after the initial invitation for applications may result in areas of the zone remaining unallocated. Future applications for unallocated areas will be assessed according to the same process.

In the case of competing applications where all the essential criteria have been met, preferred applicants may be determined on a discretionary basis, by giving further consideration to which of them better meet the essential criteria that are set out below.

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<sup>3</sup> Licence and Lease applications within a zone will be assessed with regard to MPG 8, noting that the consultation requirements will generally have been met through the strategic assessment of the zone. The grant of licences and leases will be determined primarily in relation to the provisions of s.92 and s.97(5A) of the FRMA.

- **The person is a fit and proper person to hold such a licence**

*Further Consideration may be given to:*

Previous Aquaculture or other Relevant Experience

Consideration of previous aquaculture or other relevant experience, including performance and locations. The level to which an applicant demonstrates an understanding of the requirements for establishing and operating a commercially viable aquaculture business.

Business Capability

The extent to which an applicant's business plan addresses the requirements and provides evidence of ability to secure funding for the proposed project, including capital and ongoing operational requirements.

- **It is in the better interest of the State and the community to grant the licence**

*Further Consideration may be given to:*

Business Viability

For example, an application that demonstrates a genuine higher profitability – all other matters being equal – would likely be preferred to one with a lower profitability.

Employment and Community Engagement

Consideration of the engagement with, and efforts or undertakings to provide employment opportunities for, local communities.

Economic Benefits

Given the Object of 'sharing' resources in the FRMA, an application that seeks the whole of the area may be less favorable than several smaller compatible operations unless that application provides full justification for the area sought as well as evidence of funding and related project development capabilities.

Any flow-on or multiplier effects of the proposed activity on regional businesses and communities may be considered.

- **The activities to be conducted under the licences are unlikely to adversely affect other fish or the aquatic environment**

*Further Consideration may be given to:*

Biosecurity Issues

The level to which aquaculture activities proposed in applications pose a biosecurity risk and the extent to which this is addressed in the Management and Environmental Monitoring Plan through a risk assessment and other means.

Following its assessment of the licence and a decision being made to grant a licence, the Department will make relevant considerations to the Minister in respect of the preconditions that must be satisfied under the FRMA before the Minister makes a decision to grant a lease.

Under s.97(5A) of the FRMA, before granting or renewing a lease, the Minister must be satisfied of all of the following –

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

## **2.5 Decision**

The Department will generally assess applications concurrently; those deemed unsuitable based on merit may be refused prior to giving approval to those that may be granted a licence and lease.<sup>4</sup> An application for which a decision has been made to grant a licence can then be referred to the EPA as a Derived Proposal.

In the event two or more applicants are considered to comparably hold equal merits and cannot be differentiated, then the Department may advise the Minister to determine the outcome by a ballot under Section 97C, which provides for the Minister to offer an area of land or WA waters for aquaculture leases by means of public auction, public tender, ballot or private treaty.

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<sup>4</sup> 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. Accordingly, where the CEO does not consider a “contrary intention” exists in the FRMA, the CEO is required to consider whether to exercise the power or not, at discretion. In considering the exercise of discretion, the CEO will therefore have regard for the merits of the application. That would require consideration of the respective merits of competing applications and balancing the opposing considerations against the supporting considerations. For any detrimental factors, the CEO would have regard for how detriments may be minimised and controlled.

Aquaculture licences that may be granted will be subject to conditions, including a requirement for the licence holder to meet defined performance criteria.

## **2.6 Review**

The State Administrative Tribunal (SAT) is the primary place for the review of decisions made by Government agencies, public officials and local governments.

The main objectives of the SAT in dealing with matters within its jurisdiction are to:

- achieve the resolution of questions, complaints or disputes, and make or review decisions, fairly and according to the substantial merits of the case;
- act as speedily and with as little formality and technicality as is practicable, and minimise the costs to parties; and
- make appropriate use of the knowledge and experience of SAT members.

Further information on the SAT can be obtained from the website:

<http://www.sat.justice.wa.gov.au>

An affected person has 21 days after publication of the decision to apply for a review of the decision in accordance with the FRMA and MPG 8.

Where an application for an aquaculture licence is refused, the proponent will have the right to seek review by the SAT.

Where competing applications have been considered, the Department intends to resolve any review proceedings prior to granting any licence or lease. It is likely that the proponents of competing applications will be joined in any review proceedings to enable the SAT to have regard to the relative merits of the competing applications.

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### 3. Further information

The following documents can be found on the Site Allocation page in the Aquaculture Development Zones section on the Department of Fisheries website at:

<http://www.fish.wa.gov.au/Fishing-and-Aquaculture/Aquaculture/Aquaculture%20Zones/Pages/default.aspx>

- “Application for an Aquaculture Licence” Form and “Application for an Aquaculture Lease” Form.
- Ministerial Policy Guideline No. 8.
- Management and Environmental Monitoring Plan (MEMP) Guidance Statement.
- Zone specific Aquaculture Development Zone Management Policy.
- Zone specific Environmental Protection Authority Information.

Further information on the State Administrative Tribunal can be obtained from the website:

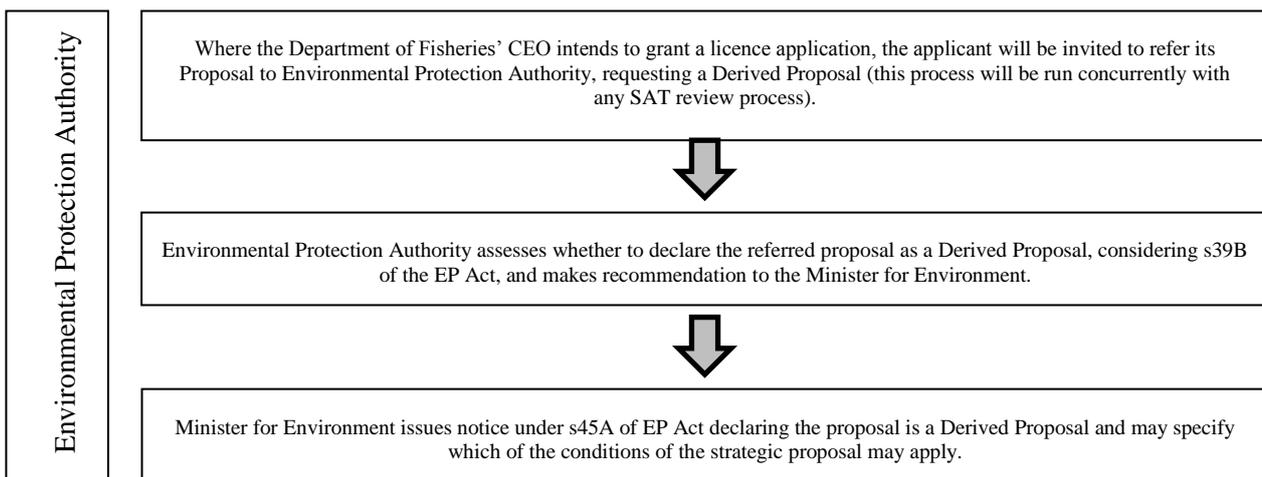
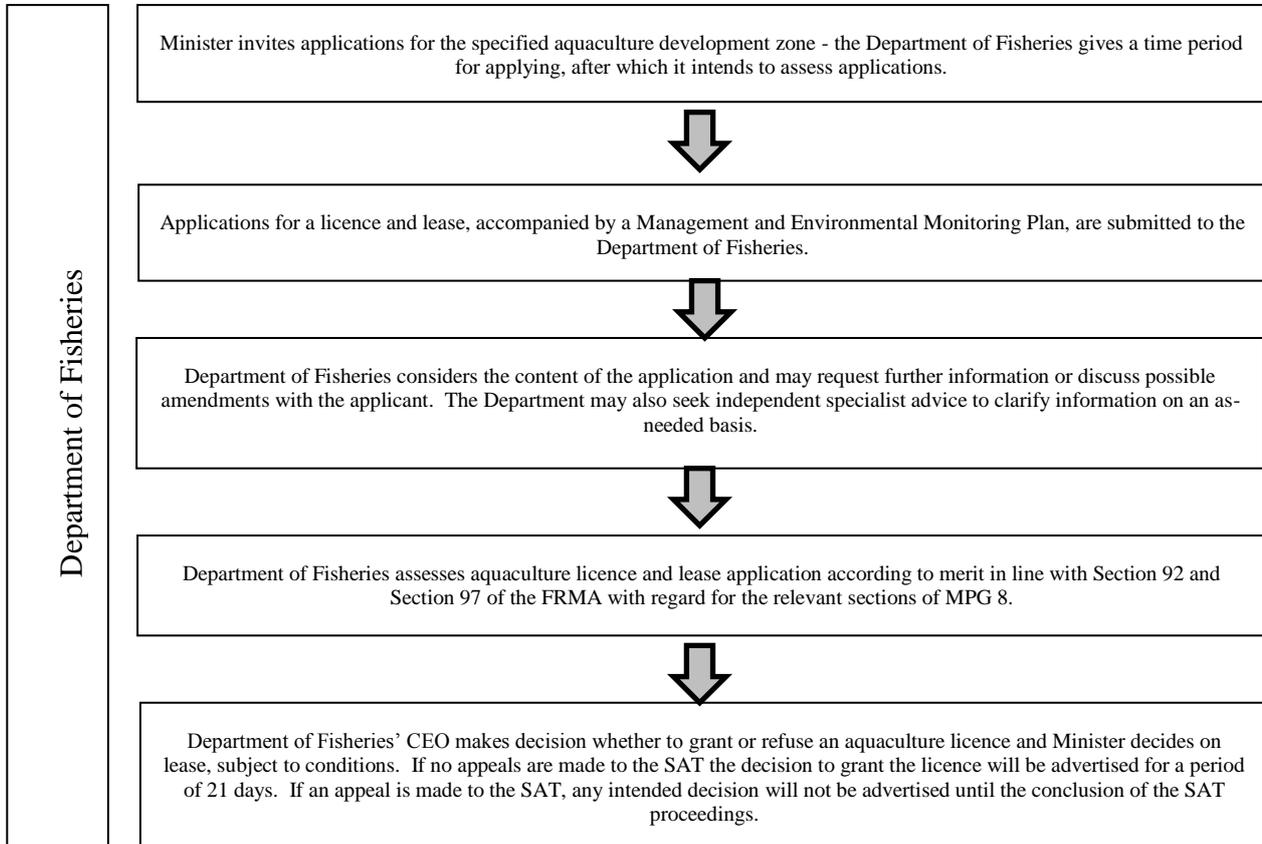
<http://www.sat.justice.wa.gov.au>

Further Enquiries should be directed to the Aquaculture Branch on

[aquaculture@fish.wa.gov.au](mailto:aquaculture@fish.wa.gov.au)

## 4. Appendix

### 4.1 Appendix 1: Outline of Aquaculture Development Zones Licence and Lease Application Process



Department of Fisheries will give effect to the grant of the licence and the Minister will grant the lease.