

STATEMENT OF REASONS FOR REVOCATION OF DETERMINATIONS and NOTIFICATION made 31 MAY 2017 ISSUED TO TASSAL OPERATIONS PTY LTD and AQUATAS PTY LTD MADE PURSUANT TO MANAGEMENT CONTROLS 3.0.1, 3.3.1 AND 3.3.5 of the *MACQUARIE HARBOUR MARINE FARM DEVELOPMENT PLAN OCTOBER 2005*. REISSUING OF DETERMINATIONS and NOTIFICATION on 6 JUNE 2017.

Background

On 5 May 2017 I wrote to Mr Ryan, Mr Wood and Mr Bender outlining my intended biomass determination for the whole of Macquarie Harbour and how I proposed to allocate the biomass between the companies. I received written and verbal submissions from Tassal, Huon and Petuna in response to my proposed decision. I made my decision (the determinations and notifications for each respective company) on 31 May 2017.

On 6 June 2017, I was made aware that Huon had filed proceedings in the Federal Court seeking a declaration that Tassal was in breach of my biomass determination of 13 tonnes/hectare. I reviewed the determination instrument in question and formed the view that an error had been made in omitting reference to lease 266 in the biomass allocation instruments (attachment 2 and attachment 3), thus limiting the biomass determination to 13 tonnes per hectare for only the two leases, numbers 214 and 219 .

At 5.59pm on 6 June 2017, I revoked the three determinations and one notification issued to Tassal and reissued four instruments with amendments made to the biomass determinations (attachment 2 and attachment 3) to make clear my intent.

Findings on question of fact

In making my decision, I made the following findings of fact:

- At all times, Huon, Tassal and Petuna were aware of my intention to include the area of lease 266 (Tassal) in the biomass calculation for the year 2016 class fish.
- At all times, Huon, Tassal and Petuna were aware of my intention to NOT include the area of lease 266 (Tassal) in 2017 year class smolt intake.
- On 6 June 2017 I reviewed the legal instrument (attachment 2) that was subject to the Federal Court action Huon had initiated. I formed the view that both biomass determinations were drafted in a manner that did not accurately reflect my intention which had been communicated to all parties.

Evidence for the decision

The evidence on which my above findings are based includes:

- 29 November 2016 correspondence to Mr Ryan, Mr Wood and Mr Bender;
- 5 May 2017 correspondence to Mr Ryan, Mr Wood and Mr Bender;
- Correspondence to Wood, Bender, and Ryan dated 18 May 2017 responding to questions regarding the draft determination received from Huon Aquaculture;

- Tassal’s projected weekly biomass modelling report for Macquarie Harbour leases, 24 May 2017;
- Email correspondence from Mr Wood at 6.30pm on 6 June saying “Thanks Wes Understood this was always the case”;
- Tassal’s weekly biomass reports for Macquarie Harbour leases, 6 June 2017, 5:14pm.

Reasons

My letter of 29 November 2016 to Mr Ryan, *inter alia* outlined how I proposed to allocate the biomass between the companies for the short period of 31 January 2017 to 30 April 2017 which included lease 266 in the biomass allocation;

“The 14,000 tonnes will be apportioned on the percentage basis of biomass in the harbour for the November reporting period. A draft determination of your biomass allocation to be achieved by 31 January (based on current estimated biomass information for November) is provided in attachment 3”

Extract of attachment 3

Period	Maximum permissible biomass (tonnes per hectare) that may be stocked within the combined area of Lease Nos 266, 219 and 214
31 January 2017 to 30 April 2017	22.93

Subsequent draft biomass determinations and letters included the area of lease 266. My letter of 5 May 2017 to Mr Ryan, Mr Wood, and Mr Bender *inter alia* outlined how I proposed to allocate biomass in tonnes/ hectare between the companies;

“I intend making the following decisions to reduce the total peak biomass in the Harbour to 12,000 tonnes. The justification for these intended decisions is provided in detail in the draft statement of reasons attached to this letter.

1. The peak biomass for the 1 June 2017 to 31 May 2018 period will be 12,000 tonnes. This will be comprised of two year classes, with the 2016 year class being the significant proportion. Peak biomass will be allocated on percentage of lease held or operated basis (respectively: Petuna 44.92%; Tassal 30.24%; Huon 24.84%) and equates to a total for both year classes of 13 tonnes per hectare.
2. The allocation of the 2017 year class will be based on an available lease area to grow salmonids of 805.89 hectares, with the Franklin lease area not included in the calculation of the 2017 intake. This will mean that effective share of the smolt intake will be allocated as: 51.61% to Petuna; 28.53% to Huon; and 19.85% to Tassal. Based on the assumption that a total biomass of 12,000 tonnes in December 2018 is made up of 90% 2017 year class fish and 10% 2018 year class fish, the companies will need to factor this into their stocking plans. The specific number of smolt authorised to go into the Harbour will be determined with each company when the proposed stocking plans are submitted.
3. Upon request, companies will be provided with a **supplementary** biomass allocation for the 2016 year class fish to allow 2016 year class fish in excess of the allocation determined as above in point 1, to be grown through to harvest size. This will only occur where an **in-water solid waste collection system suspended under the fish cage**, is approved and implemented by 1 September 2017. Waste collection systems will be required to be installed to collect waste from 1.5 tonnes of fish for every tonne of fish to be grown through that is in excess of the peak biomass

allocation determined as above. For example, should Tassal wish to grow all the current 2016 year class fish through to harvest size they will need to capture waste from all pens holding 2016 year class fish. The intent of the waste collection system is to capture the waste before it settles on the harbour floor, and not to extract it from the harbour floor.

4. Companies to move to a single year class of fish per lease by 31 January 2018.

It is my intent to make the following determination pursuant to Management Control 3.0.1 and 3.3.5 of the *Macquarie Harbour Marine Farming Development Plan October 2005*, (the Plan) for the allocation of biomass between the leaseholders licenced for finfish marine farming operations within all the areas covered by this plan.

Proposed determinations under Management Control 3.3.5 and 3.0.1

- I. *The maximum permissible biomass for salmonids held in cages **without approved waste collection systems** for the total area of the leases operated by the companies is 13.0 tonnes per hectare for the period 1 June 2017 to 31 May 2018.*
- II. *The maximum permissible **additional** biomass for 2016 year class salmonids held in cages **with approved waste collection systems** installed is an additional 15.0 tonnes per hectare.*
- III. *The maximum permissible number of 2017 year class smolt is not to exceed the quantity of fish (allowing for normal mortality) that would achieve a biomass for the year class of 13.4 tonnes per hectare in the period 1 December 2018 to 31 January 2019. (Based on the assumption that a total biomass of 12,000 tonnes in December 2018 is made up of 90% 2017 year class fish and 10% 2018 year class fish, and with 805.89 hectares available the total biomass will be in the order of 14.9 tonnes per hectare.)*
- IV. *The calculation of the smolt intake for each company is to be based on the lease area available for stocking and authorised to grow fish at the time the smolt are introduced.*

Note that for points I. and II. Tassal's combined lease areas for the calculation of 2016 year class biomass includes leases 214, lease 219 and lease 266.

Note that for point III. and IV. Tassal will be limited to using the combined lease areas for lease 214 and lease 219 in the calculation of smolt to be introduced to the Harbour. The area of lease 266 will be excluded from the smolt calculation, unless it is approved for restocking prior to 1 August 2017. Should lease 266 be approved for restocking prior to 1 August 2017, the smolt allocations under point III. will be revised and will revert to the lease percentages of 44.92%, 30.24%, 24.84%."

On 18 May I wrote to Mr Wood, Mr Bender and Mr Ryan responding to a series of questions from Huon;

"Calculations from allocations:

- a) Why was lease 266 included in the calculations of the combined lease area for the calculation of 2016 year class on the basis that it is not currently approved for stocking, but excluded in the calculations for the 2017 year class on the basis that for the 2017 year class Tassal will be limited to using only lease 214 and 219 unless lease 266 is approved for restocking prior to 1 August 2017?

The lease calculation for the 2016 year class remains the same as when the fish went to sea in Spring of 2016. Note that the lease area for the Pelias lease was included in the calculation of the Huon smolt intake for 2016".

My intention to include lease 266 in the biomass allocation calculation for the 2016 year class fish but not the 2017 year class smolt intake had been made clear to all the companies.

On 31 May I changed the final version of the instrument to remove 266 on the basis that it made the instrument look odd that I was including 266 when it could not be farmed. I confused biomass

allocation (amount of stock in an area) with the area available for farming (use). I had not changed my intent of the decision.

I revoked the legal instrument issued on 31 May and reissued all four instruments so my intent was made clear. At no stage did I believe I was limiting Tassal to a biomass of 13 t/ha for only 160 ha (lease 219 and 214). I acted promptly. Huon's application to the Federal Court is founded on an instrument that I incorrectly drafted and issued.

On 6 June at 1:10 I issued Tassal with an authority under Management Control 3.0.1 of the *Macquarie Harbour Marine Farming Development Plan October 2005* and Clause 1.4 of Schedule 3 of Marine Farming Licence No. 214 and 219 to conduct a four-week trial which has the effect of increasing the biomass limit to 28 tonnes per hectare. Even if the legal instruments of attachment 2 and attachment 3 are taken to be NOT as I intended (excluding lease 266), Tassal's authority of 28 tonnes/hectare equates to 4,480 tonnes. If it is taken to be as I intended, with lease 266 included in the calculation, then biomass limit for Tassal became 7,840t at 1:10 pm on 6 June 2017. Based on Tassal's own stocking plans, Tassal is not in breach of a biomass limit of 4,480 t or as I intended, 7,840t.