

TASMANIAN LAND TITLES OFFICE

Notification of Agreement  
under the

Land Use Planning and Approvals Act 1993

(Section 71)



DESCRIPTION OF LAND			
Folio of the Register			
Volume	Folio	Volume	Folio
160499	2	85589	1

REGISTERED PROPRIETOR:  
CLEAN MARINE AQUACULTURE PTY LIMITED (ACN 116 826 816)

PLANNING AUTHORITY:  
GEORGE TOWN COUNCIL

Dated this 2<sup>nd</sup> day of August 2013

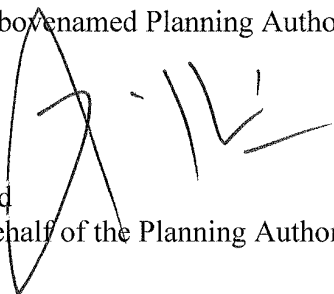
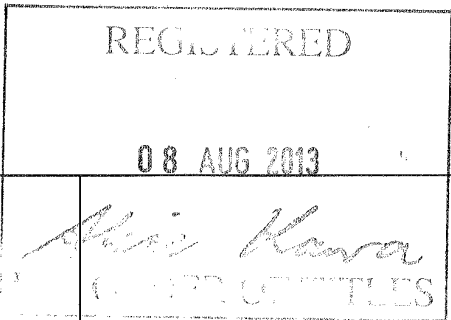
I Shaun McElwaine

of 52 Elizabeth Street Launceston in Tasmania Solicitor for

the abovenamed Planning Authority, certify that the above particulars are correct and that attached is a certified executed copy of the agreement between the abovenamed parties, notice of which is to be registered against the abovementioned folio of the Register.

The abovenamed Planning Authority holds the original executed Agreement.

Signed  
(on behalf of the Planning Authority)

Land Titles Office Use Only

Stamp Duty

**LUA** Version 1

DEED OF AGREEMENT  
LAND USE PLANNING & APPROVALS ACT 1993

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GEORGE TOWN COUNCIL

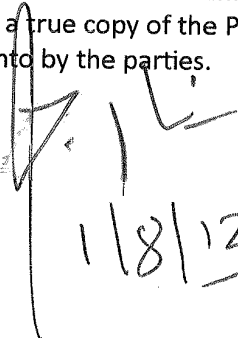
AND

CLEAN MARINE AQUACULTURE PTY LIMITED  
ACN 116 826 816

SHAUN  
MCELWAIN  
+ ASSOCIATES  
BARRISTERS & SOLICITORS  
52 ELIZABETH STREET  
PO BOX 1218  
LAUNCESTON TAS 7250  
  
T: 03 6334 5884  
F: 03 6334 5373  
E: office@shaunmcelwaine.com.au

I, Shaun McElwaine, Barrister of 52 Elizabeth Street Launceston in Tasmania hereby certify this to be a true copy of the Part 5 Agreement entered into by the parties.

Date:

  
1/8/13



**OPERATIVE PART:**

The parties agree and covenant as follows:

**1. Interpretation & Definitions**

**1.1 Definitions**

In this agreement unless the contrary intention appears:

**"Agreement"** means this deed of agreement.

**"Act"** is the Land Use Planning & Approvals Act 1993.

**"Land"** means each of the lands referred to at recital 1 and includes any land created from any subdivision or strata title division of such land.

**"Planning Scheme"** is the George Town Planning Scheme 1991 and any amendment, modification or replacement of that scheme made pursuant to the provisions of the Act.

**"Mortgagee"** includes a reference to any encumbrancee or any other person which has a registered interest in the land.

**"GST"** means Goods and Services Tax pursuant to the provisions of a New Tax System (Goods & Services Tax) Act 1999.

**1.2. Interpretation**

In this agreement:

- (a) A reference to the Council includes a reference to any new council which has jurisdiction in respect of the land established pursuant to part 2 of the Local Government Act 1993 or any other legislation or proclamation;
- (b) A reference to the Owner includes their assignees and any person bound by the covenants in this agreement as provided for in section 79 of the Act;
- (c) A reference to this agreement in another instrument is a reference to this agreement as amended, varied, novated or substituted from time to time;
- (d) A reference to a statute, ordinance, code, law or planning scheme includes a reference to such document as amended or substituted from time to time;

- (e) A reference to a person or party includes that persons executors, administrators, successors, substitutes (including persons taking by novation), transferees, assigns and any person deriving title under such a person;
- (f) Words and expressions used both in this agreement and in this Act or the Local Government Act 1993 have the same meanings as they have in those Acts;
- (g) Words and expressions used both in this agreement and in the planning scheme have the same meanings as they have in the planning scheme;
- (h) A covenant that the Owner pay any money is, where relevant, an undertaking to pay it.

THE PARTIES COVENANT AND AGREE AS FOLLOWS:

**2. Objective and Function of this Agreement**

- 2.1 The Council enters into this agreement with the Owner in accordance with Section 71 of the Act.
- 2.2 Without limiting any operation or effect which this agreement otherwise has, the Council and the Owner acknowledge that this agreement is made under Part 5 of the Act (and in particular section 71) with the intent that the burden of the Owner's covenants run with the land as provided for by section 79 of the Act.
- 2.3 The parties enter this agreement:
  - (a) To provide for the matters set out in Section 72(2) of the Act;
  - (b) To ensure that the Development is commenced and completed.
- 2.4 This agreement must be registered pursuant to Section 78 of the Act in respect of the lands.

**3. Site Remediation and Commencement and Completion of the Development**

- 3.1 The Owner must
  - (a) undertake a site remediation of the land in accordance with the requirements specified at item 2 of the Schedule; and
  - (b) once the site remediation has been completed, develop the land for the purposes of a land based aquaculture project generally in accordance with

the concept design plans annexed as "A" (the Development) or as may be amended from time to time.

3.2 The Owner must:

- (a) commence the site remediation within eighteen (18) months of the date of this agreement;
- (b) complete the site remediation within sixty (60) months of the date of this agreement.

3.3 The Owner must;

- (a) undertake the Development in accordance with a Permit obtained by it pursuant to the Land Use Planning & Approvals Act 1993;
- (b) undertake the Development in accordance with a building Permit obtained by it pursuant to the Building Act 2000; and
- (c) otherwise undertake the Development in accordance with all relevant legal requirements.

3.4 The Owner must:

- (a) substantially commence the Development within sixty (60) months of the date of this agreement; and
- (b) substantially complete the Development within 2 years from the date of substantial commencement.

3.5 The Owner is entitled to an extension of time for the undertaking of the site remediation or completion of the Development if there is delay caused by:

- (a) events that are beyond the reasonable control of the Owner including but not limited to industrial conditions or inclement weather;
- (b) any of the following events;
  - delays caused by the Council, its servants agents or contractors;
  - latent conditions on the land;
  - changes in the law;
  - directions by any statutory authority including the Council acting in any of its statutory capacities; or
  - any breach of this agreement by the Council.

3.6 An extension of for delay is:

- (a) for such period as is agreed by the parties; or
- (b) if agreement cannot be reached, then for a reasonable period having regard to the cause of the delay and its consequent effect upon the construction of the Development determined by arbitration in accordance with the Commercial Arbitration Act 1986.

3.7 For the purposes of clause 3.4:

- (a) substantial commencement means the completion of the footings for the Development; and
- (b) "complete" means the issue of a certificate of completion pursuant to section 112 of the Building Act 2000.

#### **4. *Other Obligations of the Owner***

The Owner must:

- 4.1 Permit registration of this deed of agreement in accordance with section 78 of the Act and pay the registration fee which is required to be paid to the Recorder of Titles.
- 4.2 Secure the consent of any mortgagee or encumbrancee to the registration of this deed of agreement within 30 days of the date of this agreement.
- 4.3 Pay any GST payable in respect of this agreement and any money payable by the Owner pursuant to this agreement (including damages) is plus GST if any.
- 4.4 Take such steps as are necessary to register this agreement in respect of the land, and upon any subdivision of the land, in respect of any other title created as a result of such subdivision which is affected by the rights referred to in this agreement.

#### **5. *Conditional Nature of the Council's Obligations***

The Council is not obliged to perform the provisions of this agreement if the Owner is in breach of it or the Permit at the time that performance by the Council is due.

#### **6. *Relationship Between the Parties***

Nothing in this agreement creates the relationship of partnership or of principal and agent or of joint venture between the Council and the Owner.

**7. Proper Law**

This deed of agreement is governed by the laws of the State of Tasmania and the parties submit to the non exclusive jurisdiction of those courts and from courts competent to hear appeals therefrom.

**8. Commencement**

This agreement begins immediately upon execution by the parties.

**9. Other Documents**

This agreement is to be read in conjunction with the Permit and any plans submitted to and approved by the Council in relation to the Permit or the subdivision of the land.

**10. Termination**

10.1 The Council may terminate this agreement by notice in writing to the Owner if:

- (a) The Owner breaches it;
- (b) The consent required by a mortgagee is not provided;
- (c) The Owner fails to comply with the Planning Scheme or the Act in respect of the use or Development of the land;
- (d) This agreement is not registered pursuant to the provisions of the Land Titles Act 1980 unless failure to achieve registration is due to any act or omission of the Council;
- (e) An order is made or a resolution is passed for the winding up of the Owner or the Owner is placed into administration pursuant to the provisions of the Corporations Act 2001;
- (f) A mortgagee of the land exercises powers available to it to sell the land, enter into possession as mortgagee or appoint a receiver or receiver and manager in respect of the land.

10.2 The Council must not terminate this agreement pursuant to clause 10.1(a), (b), (c) and or (d) unless the Council first gives a notice in writing to the Owner which:

- (a) specifies the breach; and
- (b) gives to the Owner 30 days to remedy the breach, if the breach is capable



- of remedy; and
- (c) the Owner does not remedy the breach as required by that notice.

10.3 This agreement also terminates as provided for in the Act.

**11. *Reading Down and Severability***

If a provision of this agreement is void or voidable by a party, unenforceable or illegal but would not be so if read down or severed from the agreement, it must be read down or severed accordingly.

**12. *Exercise of Powers***

The Council and the Owner expressly acknowledge that any obligation imposed upon the Council under this agreement does not fetter the future exercise of any statutory discretion by the Council whether in relation to the Permit or the land or otherwise and the provisions of this agreement must be read accordingly.

**13. *Further Documents***

The Council and the Owner will do all things and prepare and sign all further documents necessary to give effect to this agreement and to ensure that this agreement is fully carried out.

**14. *Disclosure of this Agreement***

The Owner must not at any time before or after the registration of this agreement sell, transfer, dispose of or in any way part with possession of the land without first disclosing the existence of and nature of this agreement to the Owner's successors.

**15. *Alteration to this Agreement***

15.1 This agreement may amended by agreement between the Council and all persons who are bound by any covenant in the agreement.

15.2 If any proposed amendment to this agreement requires a new or an amended Permit, then that Permit or that amended Permit (as the case may be) must be obtained before this agreement is amended.

## **16. Notices**

16.1 A notice pursuant to this agreement must be in writing. Notices may be served:

- (a) personally by leaving them with the party on whom they are to be served at that party's address stated in clause 16.3; or
- (b) by pre paid post sent to the address stated in clause 16.3; or
- (c) by facsimile (or by any other like method by which a written or recorded message may be sent) directed to the party on whom they are to be served at that party's address stated in clause 16.3; or
- (d) by email sent to and received by the nominated server at the address for service in clause 16.3.

16.2 Notices are not effective until received by the other party and any such notice is without prejudice to any other mode of receipt, deemed to be received by such other party:

- (a) if served personally when left at the address of the other party stated in clause 16.3;
- (b) when mailed, one business day after being put into the post addressed to such party at that address; and
- (c) if made by facsimile or any other like method upon the production of a transmission report by a machine from which the transmission was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient stated in clause 16.3.

16.3 The addresses of the parties for service of notices are as follows:

### The Council

George Town Council  
16-18 Anne Street  
George Town Tas 7253

Telephone: 6382 8800  
Facsimile: 6382 3240  
email: [council@georgetown.tas.gov.au](mailto:council@georgetown.tas.gov.au)

The Company

Clean Marine Aquaculture Pty Limited  
C/- W. M. Fotheringham  
396 Low Head Road  
LOW HEAD TAS 7253

*Telephone: 6382 2406*  
*Facsimile: 6394 3038*  
*Email: aquaserve@intas.net.au*

**17. Mortgagee's Consent**

- 17.1 A mortgagee of the land (if any) must within 14 days of the execution of this agreement by the Owner consent to it and to its registration in accordance with the mortgagee's consent form specified at item 1 of the Schedule.
- 17.2 A failure of the mortgagee to comply with this clause entitles the Council to terminate this agreement by notice in writing to the Owner.

**18. Costs of this Agreement**

- 18.1 The Owner must pay its own legal costs of this agreement.
- 18.2 The Owner must pay any duty payable on this agreement pursuant to the Duties Act 2001.

## THE SCHEDULE

### ***Item 1 – Form of Mortgagee Consent***

XYZ Limited being:

1. A mortgagee under registered mortgage no. over the land contained in certificates of title Vol. Fol. of the Register; and/or
2. A chargee in respect of some or all of the land or assets of the Owner under registered charge no.

consents to this agreement and agrees that it may be registered.

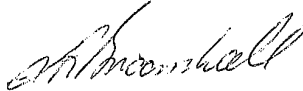

### ***Item 2 - Remediation Works Required to be Undertaken***

The site shall be remediated by:


- the disconnection and removal of power supply to all buildings and structures on the property;
- the identification and removal by licensed contractor of any remaining asbestos product on the property;
- the extraction and removal from the property to Council's Waste Water Treatment Plant of all remaining sewerage sludge and liquids;
- the dismantling and removal from site of all steel infrastructure and pipelines other than those in or serving the southern flocculation chamber to be retained;
- the excavation of all concrete, steel, brick or timber infrastructure foundations and sub-surface infrastructure;
- the dismantling crushing and stockpiling on site for later use of all brick concrete and filter product;
- the extraction and removal from the property of all steel reinforcing bar and mesh;
- the demolition and removal from the property of all buildings and materials not specifically identified for retention as part of the proposed Development;
- the dismantling and provision to Council of reusable fencing materials from the internal fencing for re-erection by Council; and
- the contouring, levelling and sowing down of the land surface of the property to a maintainable condition.

EXECUTED AS A DEED

THE COMMON SEAL of the **GEORGE TOWN COUNCIL** was placed on this document pursuant to a resolution of Council passed the **24<sup>th</sup> day of October 2006** in the presence of:

)  
)  
)   
) Mayor  
)   
) General Manager

THE COMMON SEAL of **CLEAN MARINE AQUACULTURE PTY LTD** (ACN 116 826 816) was placed on this document in accordance with its Constitution in the presence of:

)  
)  
) Director   
) Director/Secretary 