HEIDI GOAT CHEESE
naturally good

KOONAC Goat Farm

A hairy Marron story

Preface

In October 2002 we quit our secure jobs in Switzerland and migrated to WA to realise the dream of our life: To set up and run a Marron farm. Soon after our arrival in Australia we started an intensive search for a property that would be suitable for such an aquaculture venture. It had to have the right soil and slope, had to offer enough water, and had to be in save distance from vineyards or blue gum plantations. Not an easy task! We evaluated several dozen properties between North of Perth and East of Albany, before we finally bought Lot 12 of Sussex Location 3607, approximately 20km east of Margaret River. Being located at the top of the catchment of a tributary to the Margaret River, and being surrounded by state forest at three sides, it looked like the perfect place for our plans.

With this article, which was published in an earlier version in the journal of the Marron Grower's Association of WA, we summarise our experiences with the Local and State administration and bureaucracy when we applied for the permission to build and operate a Marron farm. The whole process was very frustrating and disappointing for us. We make it publically available on our webpage because we believe that our experience is a good example to demonstrate how bad "Red Tape"[1] has become in Western Australia.

The first part of this text covers the process of getting the planning permission to build our Marron farm, where the Shire of Augusta – Margaret River (AMRS), the Department of Conservation and Land Management (CALM[2]), and the Waters & Rivers Commission (WRC) where involved. The second part is about our experiences with the Department of Fisheries (DoF) in order to get our Aquaculture (Marron) licence.

(*Italic fonts* are used for quotations from original documents).

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[1] **Red tape,** according to Wikipedia, is an idiom that refers to excessive regulation or rigid conformity to formal rules which are considered redundant or bureaucratic and hinder or prevent action or decision-making.

One definition is the "collection or sequence of forms and procedures required to gain bureaucratic approval for something, especially when oppressively complex and time-consuming". Another definition is the "bureaucratic practice of hair splitting or foot dragging, blamed by its practitioners on the system that forces them to follow prescribed procedures to the letter".

[2] Now Department of Parks and Wildlife (see https://www.dpwa.wa.gov.au)

Part 1: Getting the planning permission to build our Marron farm

On 21. October 2003 we submitted our ***Applications for development permits to construct a gully wall dam and a Marron aquaculture farm*** ... to the Director of Planning, Planning Department of the Shire of Augusta – Margaret River (AMRS).

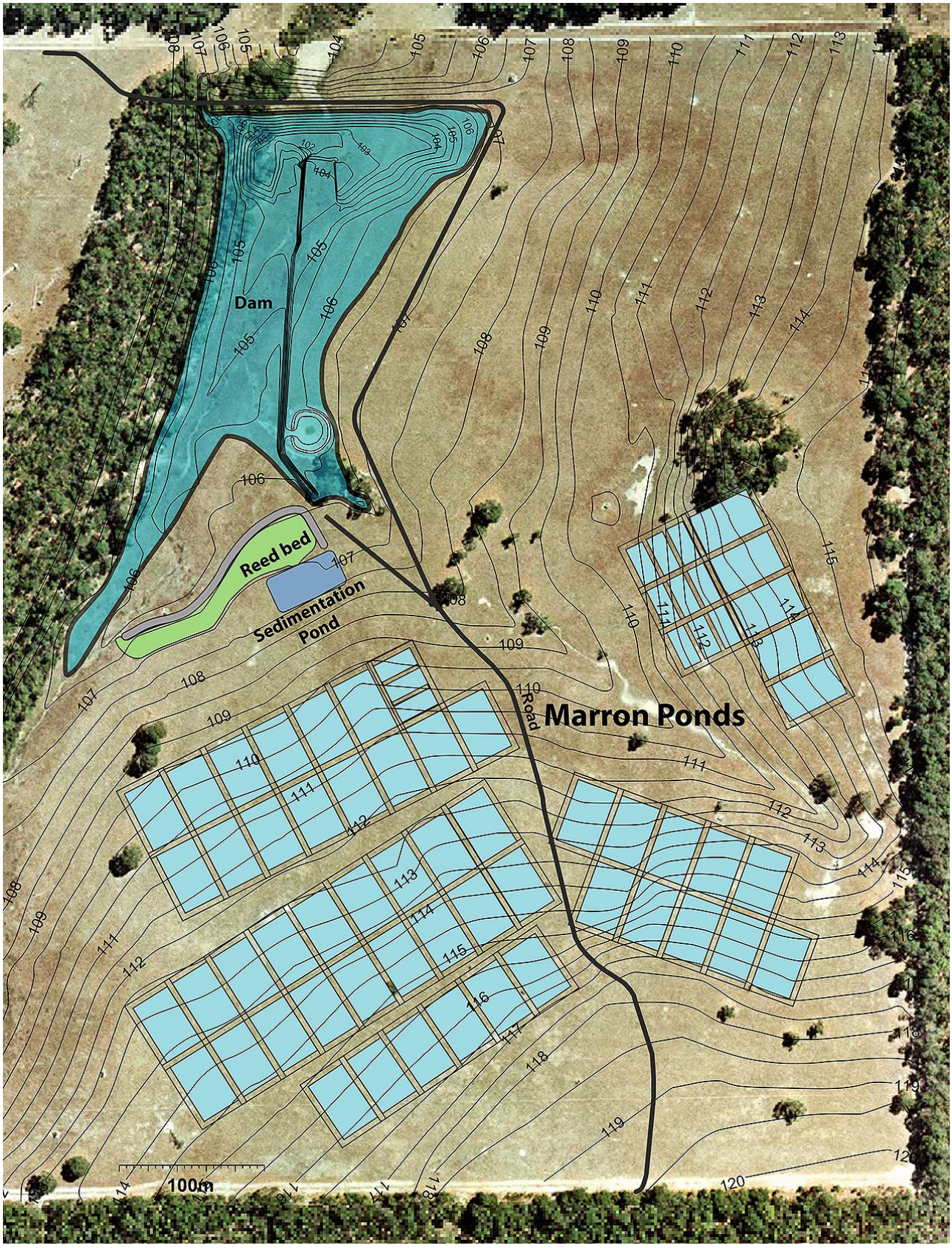
In this application, we described our intentions as *to set up and run a Marron aquaculture farm with approximately 5ha of production ponds ... . The farm will produce about 10 tonnes of Marron per year, which equals approximately $ 300'000 annual turnover and $ 80'000 annual return. It will serve the local market (upper class restaurants in the Margaret River area) as well as other Australian and overseas destinations...*

The water supply for the Marron farm would be a *gully wall dam across the main drainage line close to the lowest part of the property. This dam, which will have a surface area of 3.9 ha and an estimated storage volume of 79'000 m^3, will collect most of the surface and superficial water that is available on the property and will also retain all pond seepage. Less than 1 ha of vegetation has to be cleared for the construction of this dam*. Using our "Dynamic Water Budget Model" (a Microsoft EXCEL-based computer model to calculate the water budged of a Marron farm) we showed that the *annual water requirements to run a Marron farm with 5 ha of production ponds* (in the Margaret River area) *are approximately 138'000 m^3. To satisfy this water demand, ... the minimal total dam volume that is required ... is around 60'000 m^3*, and, therefore, the size of the dam we applied for was appropriate for our intentions[3].

Our farm and pond design (Picture 1) followed the recommendations of the Department of Fisheries (Cassells G., Brand-Gardener S & Maguire G. "How to Farm Marron in WA").

Our application to the AMRS also mentioned Environmental safety and ecology: *Due to its low-intensity production, Marron farming is per-se considered as low environmental risk. Nonetheless it is our aim to minimise the environmental impacts of our farm, and also to increase the ecological value of our property. On the one hand this will be achieved by the circumstance that Marron are free of major diseases but highly sensitive to pesticides and, therefore, Marron farms can be operated without chemicals. On the other hand, we will maintain excellent water quality in the storage dam and, consequently, also in the creek downstream of our Marron farm by re-circulating the pond water as much as possible, and by retaining most nutrients on the property...*

[3] The dam wall that we finally build, after it has become clear that DoF's Red Tape would make our Marron farm not viable, is less high than originally planned. The volume of our dam is approximately 46'500 m^3.



Picture 1: Layout of the proposed Marron Farm with 53 production ponds, 12 breeding ponds, and the deep sedimentation pond and reed bed to remove particles and nutrients from the Marron ponds before the water is recycled into the dam.

After we had submitted out planning application, the Planning Department of the AMRS advices us that, because our property lies within a declared catchment for public drinking water supplies (PDWSA), we also had to apply for a 5C licence from WRC to build the above described dam and to take the required amount of water.

In January 2003 WRC signalled that the 5C licence will be granted as soon as our planning application was approved by the AMRS (assuming no substantial public opposition was raised).

As usual, our application was referred to neighbours, relevant government agencies and to the EPA (Environmental Protection Agency). On 26/02/2004 the AMRS provided us with an update of the application and its status.

From this letter we learned, for example, that CALM had opposed our dam project: *In commenting on the prior subdivision proposal, the Department (CALM) had recommended to the WA Planning Commission that remnant vegetation should be retained, in particular riparian vegetation – see attached copy of the subdivision response to WAPC dated 16/9/03.*

This plain opposition against our dam proposal by CALM to protect the riparian vegetation was somewhat surprising for us, since in the above mentioned subdivision response to WAPC, less than 5 month ago, the same CALM officer had stated that *proposed Lot 12 is largely cleared..*, and that *the riparian vegetation on the two streamlines within proposed Lot 12 appears to have been mostly cleared.* Only after we sent CALM a letter (29. February 2004) and pointed out that

- *the creek line on our property has been cleared long ago and has been cattle-grazed ever since then and therefore currently no riparian vegetation exists that could be destroyed or protected;*
- *our dam project will effectively increase the ecological value of the property by creating additional riparian and aquatic habitats*,

CALM withdrew its objections to the proposal (letter dated 10/3/04).

We also learned from the planning officer of the AMRS that the "Cape to Cape Catchment Group" (a regional environmental protection NGO) had submitted their opposition against our *potentially highly pollutant Marron farm* (without ever having contacted us or having looked at our application documents!) and that, therefore, the AMRS had referred our proposal to the EPA for assessment of the potential environmental impacts. Fortunately, EPA knew better. On 2. March 2004 we were informed that *the Authority (EPA) has decided not to subject this proposal to the formal environmental assessment process and the subsequent setting of formal conditions by the Minister for Environment, given the controls available under other approval processes.* Still, this referral of our proposal to the EPA delayed the entire process by approximately 6 weeks.

Furthermore, the letter from AMRS contained the information that *a particular concern is the possibility of the Smooth Marron (in the farm) to escape into natural habitat and threaten the Hairy Marron population*.

Finally, our proposal was discussed at the March Ordinary Meeting of the Council of Augusta Margaret River (held 30. March 2004). On 23. April, we were officially informed that the Council had determined to approve our proposal, *subject to the conditions outlined in the enclosed Planning Approval*.

Firstly, it has to be pointed out that we received this Council decision 185 days after we had lodged our application, whereas the statutory period to finalise applications like ours would have been 42 days (6 weeks).

Secondly, the planning approval contained 39 (!) conditions, which made it quite obvious that the Planning Department of AMRS did not wanted our project to proceed, but, because no legal reason could be found to forbid it, tried to stop it by implying conditions that were impossible to comply with. For example:

Condition 6: *The development of the proposed Aquaculture – Marron Farm is limited to the stocking of ponds with the endemic Margaret River Hairy Marron (Cherax tenuimanus). To this end, there shall be no translocation of the Smooth Marron (Cherax cainii) to the Site*[4].

This condition on its own was already enough to kill our entire project, because at this time no stock of Hairy Marron was available. How should we build up a Marron farm without brood stock??

Condition 8: *The proposed dam shall remain ancillary to the proposed Marron farm. To this end, should the proposed aquaculture development (Marron farm) cease use/operation, the Site shall be returned to the original condition (with the exception of any riparian vegetation planted as a condition of this approval). The dam shall be decommissioned and the creek line returned to a functioning standard in the event the proposed Marron farm use ceases operation (unless otherwise approved in writing by Council and/or an alternative land use requiring water volumes commensurate with that of the approved dam capacity is approved by Council through a planning approval)*.

This condition represents an extreme interpretation of the Shire policy that no dams shall be built without particular need (i.e. to prevent the constructions of dams only for aesthetic reasons). However, who on earth would invest $100'000 or more in the construction of a dam wall under such a condition?

[4] The International Commission on Zoological Nomenclature (ICZN) ruled in December 2008 that the scientific name for "Hairy Marron" is *Cherax cainii*, whereas *Cherax tenuimanus* remains the scientific name for the Smooth Marron ("Industry Marron"), see Footnote 5. Before this ICZN decision, *Cherax tenuimanus* was used for the Hairy Marron, and *Cherax cainii* for the Smooth Marron by the different governmental agencies (e.g. AMRS, DoF).

Condition 17: ... *Revegetation/landscaping shall be implemented and thereafter maintained within 2 months of the practical completion of works to the satisfaction of the Director of Sustainable Planning.*

The planning officers of the AMRS justified this condition with the need *to ensure timely and effective implementation of planning conditions* to be *in line with orderly and proper planning*. A purely bureaucratic approach! Nature (fortunately) does not care about bureaucratic guidelines. To survive, each plant needs to be planted at its season, and, consequently, at least one year is required for such a revegetating process. Planting everything immediately after the dam wall has been finished would result in a high portion of losses.

Condition 23: *Independent water quality monitoring shall be undertaken throughout the operation of the Proposal at the expense of the operator of the proposed development. Such independent monitoring shall be undertaken every 6 months (unless otherwise approved in writing by the Director of Sustainable Planning).*

Given the low tolerance of Marron against water pollution, such independent water quality monitoring, which would cost several $1000/year, seemed unnecessary and hardly justified.

Condition 25: *Toxic and hazardous substances (other than small quantities of household disinfectants) shall not be used on the Site without prior written approval of Council.*

Consequently, we would have to ask for written approval of the AMRS if we wanted to use Diesel fuel, petrol, paint, herbicide, maybe even for home-brew!

Because some of the conditions where obviously not within the jurisdiction of the AMRS (e.g. condition 6, 8), impossible to fulfil (e.g. condition 17, 25), not justified (e.g. condition 23), or in direct contradiction to each other, we appealed against the Shire's decision at the Town Planning Appeal Tribunal (12. May 2004). However, instead of going to court, we agreed to discuss and try to solve the discrepancies at a mediation meeting (16. July 2004) and several "directions hearings" (by telephone). A consent was finally reached by the end of September (the "Minute of Consent Orders" are dated 6. October 2005).

In summary our appeal was successful. For example:

- Condition 8 was removed entirely.
- The period to implement revegetation in condition 17 was extended from 2 to 12 months.
- Condition 23 was altered to *Independent water quality analysis (...) shall be undertaken as required by Council at the landowner' expense...* and *...limited to a maximum of one analysis per annum...*
- The problem about *toxic and hazardous substances* was solved by means of a *Management Plan*, where *Details of all toxic or hazardous substances stored or proposed to be used on the Site for construction and operation of the Development ...* where regulated.

Condition 6 (restriction to Hairy Marron) remained unaltered. However, the AMRS accepted that it was primarily the DoF to decide what species may be farmed at an approved aquaculture site. We were assured that the AMRS would give us permission for whatever species the DoF allowed us to farm on our property. The only thing we would have to do, once we had the OK from DoF, would be to apply for a *change of use* of our (approved) Marron farm.

On 6. October 2005 we finally got the DoF permission to farm Smooth Marron (see below). Consequently, we applied for a *change of use* of our (approved) Marron farm (19. October 2005). We expected this to be a minor formality, but now were informed that *the provisions under Town Planning Scheme No. 11 does not permit modification to Planning Applications/Consents. Therefore, the proposal is to be considered as a new/separate Planning Application.* This meant that we had to submit a second, full application for a Marron farm with all required details and plans. This application (dated 7. December 2005) had to be published again to allow for public comment, and again all *relevant government agencies* (i.e. CALM, WRC, EPA) were consulted. Small wonder that this caused some confusion in some agencies, and that we had to explain several times that the whole process was purely formal and required only to remove the restriction of our Marron farm to Hairy Marron.

On 21. March 2006 (882 days after our first application), we finally got the *Formal Planning Approval* for *Rural Pursuit – Aquaculture* for a 5ha Marron farm with an ancillary dam of 3.9 ha surface.

Remains to be added that, after we got the first planning permission of the AMRS (23. April 2004), we received a *Permit to obstruct or interfere* (i.e. to build our dam) from WRC, which was valid from 20. May to 19. July 2004. Do we expect too much if we assume that an officer who works at WRC and signs dam permits should know that during this period (winter) the ground is normally already too wet for the heavy machinery that is required to build a gully dam wall? The problem could be solved relatively easy with a telephone call and a written application to postpone the building period to February – April 2005. However, such events leave us with serious doubts about the competence and efficiency of the involved governmental agencies.

The 5C water licence WRC granted us would have allowed us to use 89.6 ML of water from our dam for the Marron farm. However, after it has become obvious that the Marron farm would not be realised, and we, consequently, would not need the water, we applied to cancel the licence (letter from 9. August 2007). The main reason was because, at that time, the Western Australian Government had announced that *it is proposing to introduce water licence administration fees*, which we wanted to avoid.

Two (!) years later (on 17. June 2009) we received an answer to our application to cancel our licence from the Department of Water, informing us that it is not possible to cancel our licence. Furthermore, *In regards to the Rights in Water & Irrigation Act 1914 (The Act), with respect to licensing surface water use, it has become apparent that the relevant water source on your*

property is not a controlled watercourse to which section 5C of the Act applies, as such a licence is not required.

The Margaret River and certain tributaries are proclaimed under the Rights in Water and Irrigation Act (1914), whilst your water use is on a tributary of the Margaret River which, at this stage, is not a proclaimed tributary of the river and does not require controls in the form of a licence. Your Surface Water Licence number 154660 has been put into "Not Required" status. The call of the AMRS Planning Department for a 5C water licence as a condition to approve the Marron Farm was apparently not based on a legal requirement.

Part 2: Getting an Aquaculture (Marron) Licence

Because an Aquaculture (Marron) licence is only required to sell (but not to breed) Marron, we would normally have applied for a Marron licence not earlier than one or two years after we had received the planning permission to build our Marron farm. However, because the Shire of Augusta – Margaret River (AMRS) informed us that *The council would need to be satisfied that the Fisheries Department, based on information provided, would at least be prepared to issue a licence* (letter, dated 24. February 2004) to approve our planning application, we applied for an Aquaculture (Marron) licence already in March 2004.

Informal contacts with the Department of Fisheries (DoF) prior to this licence application revealed that DoF took the view that the "Industry Marron" (Smooth Marron) was non-endemic to the Margaret River catchment, and that we, therefore, additionally would have to apply for a Translocation Authority to bring Smooth Marron (brood stock) onto our property.

This additional requirement was quite a surprise for us. We had planned the realisation of our Marron farm very carefully. For example, we had intensive contacts with several staff members of Fisheries and even attended two road-shows on "Establishing a Marron Aquaculture Enterprise" in December 2002 and April 2003, i.e. during the period we evaluated properties suitable for a Marron farm. Furthermore, we had consulted all documents available from Fisheries about "How to establish a Marron Farm enterprise". But none of these documents referred to a potential translocation problem in regards to a Marron aquaculture enterprise. Neither was the problem with the Hairy Marron (*Cherax tenuimanus*) in the Margaret River catchment ever mentioned to us (although it was known within the DoF for at least two years!). Clearly, we were not given proper advice by the DoF. If only once someone would have mentioned this potential problem to us, we would most likely not have purchased a property within the Margaret River catchment!

Furthermore, the legal basis of the DoF for such a requirement seems all but sound:

- The "Smooth Marron" (*Cherax cainii*) was described as a separate species by Austin & Ryan in 2002. However, since this suggested separation of the "Smooth Marron" and the

"Margaret River Marron" (Hairy Marron, *Cherax tenuimanus*) into two separate species was not yet approved by the International Commission of Zoological Nomenclature in London during the period when we applied for our aquaculture licence, officially (legally) still only one Marron species exists at this time.

- This legal situation is also reflected in the fact that officially only one Marron licence exists, and that in all documents related to the translocation application only *Cherax tenuimanus* is mentioned (if at all)[5]. Furthermore, in the document *River drainage divisions and Basins of Western Australia*, which we received from the DoF as part of the translocation application documentation, the Margaret River catchment is not listed as a separate catchment.

Isn't a bit odd that the DoF requests a permission to translocate a species which officially (legally) does not exist into a catchment which is not listed in their documents?

Anyway, on 8. March 2004 we submitted our application for an Aquaculture (Marron) licence together with an *Application for the translocation of non-endemic fish into and within Western Australia*.

At this stage we did not expect that the need for a translocation authority would be a serious obstacle for our plans, mainly because our Marron farm would be equipped with electric fences and bird netting and, therefore, the risk that some Smooth Marron would escape from our farm would be minimal. Nonetheless, to prove our good-will, and also to contribute to the conservation efforts to save the Hairy Marron, we added a statement to our translocation application, saying that *We share the concerns about the endangered status of the Hairy Marron and are willing to co-operate in activities to protect and recover its distribution. In particular, we are prepared to farm C. tenuimanus (Hairy Marron) instead of C. cainii (Smooth Marron) on our farm.*

Because farming Hairy Marron bears substantial commercial uncertainties, and also because not enough brood stock of *C. tenuimanus* would be available, it would not have been possible for us start our Marron farm based entirely on *C. tenuimanus*. Therefore, we suggested *that starting our production with C. cainii and gradually shifting over to C. tenuimanus should be feasible and would represent a commercially acceptable way to go".*

On 28. May we were informed that our translocation application was refused, because *The translocation represented by this application of Smooth Marron into the Margaret River catchment represents an unacceptable level of ecological risk to the genetic diversity and natural heritage within Western Australia.*

[5] In December 2008 the International Commission on Zoological Nomenclature ruled (ICZN Opinion 2212, Case 3267) that *An application to conserve the specific name Cherax tenuimanus Smith, 1912 by designation of neotypes for this species and for Cherax cainii Austin in Austin & Ryan, 2002, two species of freshwater crayfish or 'marron' important in the Australian aquaculture industry, was not approved. Type fixations for Cherax tenuimanus Smith, 1912 and Cherax cainii Austin in Austin & Ryan, 2002 are maintained.* Hence, the correct scientific name for Hairy Marron is *C. cainii*, whereas *C. tenuimanus* remains the scientific name for the Smooth Marron ("Industry Marron").

The Department of Fisheries is currently in the process of developing an Interim Recovery Plan (IRP) for Hairy Marron. Within this IRP there are clear statements around the risks proposed by Smooth Marron and details of removal of Smooth Marron from the upper Margaret River catchment as one of the actions. The fact that the proposed site for the aquaculture facility is within this area is directly in conflict with the Department's intended course of action.

From a whole of industry perspective, long-term cumulative and synergistic impacts need to be considered. Should this application be approved any future applications of a similar nature are likely to be approved on a consistency basis. This would result in long-term cumulative and synergistic impacts, through the additional development of Smooth Marron aquaculture industry within the Margaret River catchment, further threatening the endemic Hairy Marron population.

The principles for a translocation decision are regulated by the "*Ministerial Policy Guideline No. 5: The aquaculture and recreational fishing stock enhancement of non-endemic species in Western Australia (June 1997)*". According to this guideline, which ...*provides direction to the Executive Director (of DoF)*:

- *The translocation of non-endemic species… must not be authorised until a risk assessment has been undertaken prior to translocation.*
- *The risk assessment must be based on the best scientific data available on the biology of the species and the environment into which the species is to be translocated.*
- *The translocation decision should balance any significant economic and social benefits of the translocation against the biological and environmental risk*

For us it was quite obvious that the decision was mainly a political one, since the translocation refusal violated this Ministerial Policy Guideline in several ways. For example,

- The translocation decision was solely based on conservation aspects. Potential *economic and social benefits* of our Marron farm were not taken into account, and also our offer to farm Hairy Marron was completely ignored.
- No proper risk assessment was ever conducted by the DoF. Based on the Act of Freedom of Information we asked the DoF at several occasions to make all relevant documents concerning the risk assessment available to us, but never got any documents about such a risk assessment back from them.

Different to Shire's planning decisions, no official alley exists to appeal against a translocation decision of the DoF. However, because we were not willing to accept the refusal of our translocation application, we wrote to the Director of Fisheries (27. June 2004), repeating our offer to farm Hairy Marron on our property, and asking for a re-assessment of our situation. The answer we got back (dated 14. July 2004) was quite promising:

I also note your previous request to undertake aquaculture of Smooth Marron ... and then move to the sole aquaculture of Hairy Marron once you had built enough stock to be reliant of this

species. This alternative scenario may change the risk profiles associated with aquaculture of Smooth Marron such that translocation approval may be granted. You might consider the lodgement of a new translocation application.

For your information, the Department's Research Division has advised that it could make available the following stocks of Hairy Marron:

- *Broodstock – 20 females and 20 males*
- *1+ individuals – 30 females and 30 males*
- *0+ individuals – 200 of mixed sexes"*

The only condition to get some Hairy Marron from the DoF's Research facility in Pemberton was that we had to hold a Hairy Marron Aquaculture Licence.

The timing seemed perfect. If we could pick up these "Hairys" in July or early August, there would just be enough time for them to acclimatise to our tanks before breeding starts. However, because our application was *not a conventional Marron aquaculture licence application* it took the DoF 245(!) days before we finally received our licence on 16. Nov. 2004. With this, the 2004 breeding season was missed, and our project delayed by one year!

It got even worse! Early January 2005, when we wanted to pick up "our" Hairy Marron in Pemberton, Fisheries informed us that (although probably well known for some time within parts of Fisheries) ...*it was not until October 2004 that the question of the genetic 'purity' of the Hairy Marron held at the PFRC was brought to the attention of staff in Head Office... (PFRC staff members) were confident that brood stock were carefully selected on an anatomical basis and that during periodic draining of breeding ponds at the PFRC, any Smooth Marron that may have migrated from other ponds and any potential hybrid offspring would be discarded. This protocol has been carried out carefully. ...Upon subsequent advice to Fish & Fish Habitat Program ...it was decided that greater certainty was needed especially if Hairy Marron were to be bred privately. Hence, a decision was made to require molecular testing prior to transfer of Hairy Marron to Koonac Enterprise* (Letter, dated 10. January 2005).

We understand that the DoF wanted to be absolutely sure that only 100% pure Hairy Marron were relocated to our place. DoF would look pretty bad if, after some years, it would turn out that the so-called "Hairy Marron" they gave us as brood stock actually were Smooth Marron x Hairy Marron hybrids. However, it's Fisheries task and responsibility to preserve the genetic diversity of Marron! For this reason, stock of different Marron varieties, which were collected some years ago from different river systems throughout the South-West of WA are held at PFRC. Hence, it is hard to understand why "greater certainty" about the genetic purity of that stock was only needed *if Hairy Marron were to be bred privately*. Shouldn't such genetic tests have been conducted immediately after serious doubts about the genetic purity of their Hairy Marron stock arose?

Between July and September 2005, after funding was available and a suitable DNA test developed, all “Hairy Marron” from PFRC were genetically tested at UWA and, subsequently, all Marron which were not 100% pure “Hairys” destroyed. Approximately 100 animals (10% of the tested animals) survived. Generously, Fisheries gave us half of these “genetically approved” Hairy Marron (39 females and 13 males). On 22. September 2005 (435 days after they have been offered to us) we picked them up from PFRC and placed them in our four $5m^3$ tanks (Pictures 2 to 5).

Oddly contrasting to the bureaucratic requirements we had experienced so far, NO paperwork at all was involved when we picked up the “Hairys” in Pemberton. We did not have to fill in, or sign any forms. We simply packed the marron into our eskies and drove home with them.

Picture 2: Picking up 50 “genetically approved” Hairy Marron from the research facilities of the Department of Fisheries in Pemberton on 22. September 2005.

Picture 3: Hairy Marron (one leg is missing because it has been used for the genetic test).

Picture 4: Proudly releasing Hairy Marron at our farm.

Picture 5: Our breeding tanks with bird netting against predatory birds.

However, because it was already very late in the breeding season, and probably also because the animals had been stressed and disturbed a lot during the genetic tests (in order to conduct the tests, some tissue from every animal was required, which was collected by cutting off one leg of

every animal) and the relocation process, no breeding took place. Now we hoped that the next year will be more successful, and that we will one day be able to make some money with our Hairy Marron.

Parallel to these activities around the Hairy Marron, we continued to try to get a translocation permission for Smooth Marron, at least for some years, as the Director of Fisheries had encouraged us in his letter (see above). However, because of the connections between the translocation issue and the planning approval for the Marron farm we could not react to the DoF's translocation refusal until the outcome of our appeal against the Shire's planning decision was available (in October 2004). Furthermore, from DoF's "Fish and Fish Habitat Protection" Division we were informed that, in contrast to the Director's letter, it would not be possible to process a second translocation application about the same project, unless substantial new information has been added.

On 5. Dec. 2004 we therefore asked the DoF to re-assess our first application. We explained this request with our finding that the first translocation decision did not comply with the Ministerial Policy Guideline No. 5:

- Relevant industry groups (e.g. MGA) had not been consulted
- important information (e.g. breeding also Hairy Marron) was not taken into account
- no proper risk assessment has been carried
- no balance between economical/social benefits and biological/environmental risk was sought, the decision was more or less entirely based on conservation aspects.

Additionally, we conducted our own risk assessment, which we included in our re-application. Based on quite conservative assumptions we demonstrated that only 2-3 Smooth Marron from our Farm would reach the Margaret River alive every year, compared to approximately 300 Smooth Marron which originate from other private farm dams in the upper Margaret River catchment. Hence, the risk our Marron farm would represent for the Hairy Marron population in the Margaret River would be negligible compared to the threat that comes from existing private farm dams. The conclusion that our farm would represent an *unacceptable level of ecological risk* seemed therefore exaggerated and hardly justified.

By the end of January 2005 Fisheries had still not confirmed the receipt our re-application or reacted to it in any other way. We therefore asked for *a written, detailed reply to our request to re-consider our translocation application, where the current position of Fisheries in this regard is explained in detail. We also expect you to explain why our own risk management assessment, which demonstrates that our intention to breed Smooth Marron on our property for a limited time would represent a low risk (at most) for the Hairy Marron in the MR catchment, should be wrong or not applicable, respectively* (E-mail to DoF, 25. Jan. 2005).

No reply!

Hoping to speed up the process, we then wrote to the Minister for Agriculture, Forestry and Fisheries (The Hon Kim Chance MLC) and also to the Ombudsman of WA, explaining our case and asking for support. With limited success! The Minister's reply (dated 4. April 2005) had obviously been prepared by the DoF and reflected nothing but the DoF's position. It's content was similar to a letter we received on 27. April 2005 from DoF.

However, the latter contained one piece of information which was new and gave us some hope: *With regard to your request to review your original application, I note your dissatisfaction with the original translocation assessment process. In light of these developments and to ensure a timely resolution of these issues and reinstitute your confidence in the translocation assessment process, the Executive Director Mr Peter Rogers intends to oversee an examination of your past translocation assessment and is prepared to assist with any future applications. I understand that a site visit is intended in support of these actions.*

Obviously, we finally had barked loud enough to be heard in the top storey of DoF. As announced, Peter Rogers visited us at our property on 13. May 2005. During this visit, which we found very helpful, all problems in relation to a potential translocation risk were identified and possible solutions discussed.

Based on the outcome of this on-site discussion with P. Rogers, we submitted a second translocation application to DoF (13. June 2005). It included detailed descriptions and plans of all measures we would apply to...

- *prevent Smooth Marron from migrating into our dam from outside of our property*
- *prevent Smooth Marron from escaping from our grow-out ponds*
- *prevent Smooth Marron from mixing with Hairy Marron on our farm*

Because juvenile Smooth Marron were identified to be the most likely age group to successfully escape into the Margaret River, we also accepted that we would not breed (only grow out) Smooth Marron on our property.

On 6. October 2005 our second translocation application was finally approved, however, subject to 21 conditions. Some of them were new and exceeded the agreement we had previously found with P. Rogers, for example:

***Condition 16**: While Smooth Marron are maintained within the facility MRM (= Margaret River Marron = Hairy Marron) stocks shall be genetically tested on an annual basis, in agreement with the Department of Fisheries' Executive Director.*

The cost to genetically test a Marron exceed its market value by approximately 500%! It remains Fisheries' secret how it should be possible to earn money under such a condition. Furthermore, we expected to have a Hairy Marron stock of approximately 33'000 animals in the last year of the translocation period. Besides the fact that testing all these animals would have costed us

more than $600'000, we doubt that any laboratory exists that would have been able to conduct such a big number of genetic tests within reasonable time.

***Condition 19**: All Smooth Marron shall be removed from the facility at any time, on request from the Department of Fisheries Executive Director.*

With this, our operation was completely depending on the good-will of the DoF's Executive Director, without leaving us any legal rights.

***Condition 21**: This Authority is valid for a period of twelve months ..." (and) "...open to renewal on an annual basis for a limited period of four years....*

After our previous experiences with translocation applications, we were not keen to go through the same procedure every year...

All-in all, Fisheries gave us no security or legal guaranty that we would be able to farm Smooth Marron for four years. In contrary, based on their conditions they would have been able to stop us at any time, without explanation. The financial risk to invest several $100'000 in the construction of Marron ponds under such conditions was therefore simply too high for us.

In a last, desperate attempt to change the situation we wrote to the Director of Fisheries (12. November 2005):

Dear Peter,

the reason for our application to get permission to farm Smooth Marron on our property for a limited period was to become economically viable within reasonable time. After careful consideration we came to the conclusion that the conditions you added to the translocation authority (dated 5. October 2005) make it impossible to achieve this goal. In general they expose us to the goodwill of the Department of Fisheries' Executive Director without giving us any legal security against arbitrariness or unjustified demands and, therefore, represent an intolerable financial risk for us

….

In summary, it is pointless for us to farm Smooth Marron under these conditions. If they cannot be substantially altered in our favour, i.e. without detailed descriptions under what circumstances each of these conditions would be enforced, we unfortunately have to resign from this SM-project.

In vain! Fisheries did not even respond to our letter. Early December we therefore decided to cancel the "Smooth Marron project", and informed the DoF accordingly. We had not migrated to Australia to spend the rest of our time fighting bureaucratic red tape!