



New South Wales

State Environmental Planning Policy No 62—Sustainable Aquaculture

under the

Environmental Planning and Assessment Act 1979

His Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979* in accordance with the recommendation made by the Minister for Urban Affairs and Planning.

ANDREW REFSHAUGE, M.P.,
Minister for Urban Affairs and Planning

Sydney, 23rd August 2000.

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State Environmental Planning Policy No 62—Sustainable Aquaculture

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Clause 1 State Environmental Planning Policy No 62—Sustainable Aquaculture

Part 1 Preliminary

**State Environmental Planning Policy
No 62—Sustainable Aquaculture**

Part 1 Preliminary

1 Name of Policy

This Policy is *State Environmental Planning Policy No 62—Sustainable Aquaculture*.

2 Commencement of Policy

This Policy commences on 1 October 2000.

3 Aim etc of Policy

The aims and objectives of this Policy are:

- (a) to encourage sustainable aquaculture in the State, namely, aquaculture development which uses, conserves and enhances the community's resources so that the total quality of life now and in the future can be preserved and enhanced, and
- (b) to make aquaculture a permissible use in certain areas for which a comprehensive and integrated regional aquaculture strategy has been developed (being a strategy that incorporates the relevant Aquaculture Industry Development Plan under the *Fisheries Management Act 1994* and the assessment regime for integrated aquaculture development), and
- (c) to set out the minimum site location and operational requirements for permissible aquaculture development (the *minimum performance criteria*), and
- (d) to establish a graduated environmental assessment regime for aquaculture development based on the applicable level of environmental risk associated with site and operational factors, and
- (e) to apply the Policy in the first instance to pond-based and tank-based aquaculture development in the North Coast region of the State following the preparation of a strategy for that kind of aquaculture development in that area.

4 Definitions

(1) In this Policy:

aquaculture, fish and marine vegetation have the same meanings as in the *Fisheries Management Act 1994*.

Note. The *Fisheries Management Act 1994* defines ***aquaculture, fish and marine vegetation*** as follows:

aquaculture means:

- (a) cultivating fish or marine vegetation for the purposes of harvesting the fish or marine vegetation or their progeny with a view to sale, or
- (b) keeping fish or marine vegetation in a confined area for a commercial purpose (such as a fish-out pond),

but does not include:

- (c) keeping anything in a pet shop for sale or in an aquarium for exhibition (including an aquarium operated commercially), or
- (d) anything done for the purposes of maintaining a collection of fish or marine vegetation otherwise than for a commercial purpose, or
- (e) any other thing prescribed by the regulations.

fish:

- (a) means marine, estuarine, or freshwater fish or other aquatic animal life at any stage of their life history (whether alive or dead), and
- (b) includes:
 - (i) oysters and other aquatic molluscs, and
 - (ii) crustaceans, and
 - (iii) echinoderms, and
 - (iv) beachworms and other aquatic polychaetes, and
- (c) also includes any part of a fish, and
- (d) does not include whales, mammals, reptiles, birds, amphibians or other things excluded from the definition by the regulations.

marine vegetation means any species of plant that at any time in its life must inhabit water (other than fresh water).

aquaculture development means development for the purpose of aquaculture.

aquaculture industry development plan means an aquaculture industry development plan published under Part 6 of the *Fisheries Management Act 1994*.

Director-General means the Director-General of the Department of Urban Affairs and Planning.

intensive aquaculture means aquaculture undertaken by providing supplementary food for the fish or marine vegetation (whether or not naturally occurring food is also consumed or available for consumption by the fish or marine vegetation).

minimum performance criteria—see clauses 7 and 8.

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Part 1 Preliminary

natural water-based aquaculture means aquaculture undertaken in natural waterbodies (including any part of the aquaculture undertaken in tanks, ponds or other facilities such as during the hatchery or depuration phases).

Note. Typical natural water-based aquaculture is fin fish culture in cages and oyster, mussel or scallop culture on or in racks, strings or cages.

pond-based aquaculture means intensive aquaculture undertaken predominantly in ponds, raceways or dams (including any part of the aquaculture undertaken in tanks such as during the hatchery or depuration phases), but not including natural water-based aquaculture.

Note. Typical pond-based aquaculture is the pond culture of prawns, yabbies or silver perch.

tank-based aquaculture means intensive aquaculture undertaken exclusively in tanks, but not including natural water-based aquaculture.

Note. Typical tank-based aquaculture is the tank culture of barramundi or abalone.

the Act means the *Environmental Planning and Assessment Act 1979*.

- (2) Notes in this Policy and the table of contents do not form part of this Policy.

5 Where the Policy applies

This Policy applies:

- (a) in relation to pond-based or tank-based aquaculture—to the parts of the State described in Schedule 1, and
- (b) in relation to natural water-based aquaculture—to the parts of the State described in Schedule 2.

Note. At the commencement of this Policy, there were no areas set out in Schedule 2 to which the Policy applies.

6 Relationship to other environmental planning instruments

- (1) In the event of an inconsistency between this Policy and another environmental planning instrument whether made before or after this Policy, this Policy prevails to the extent of the inconsistency, subject to section 36 (4) of the Act.
- (2) *State Environmental Planning Policy No 1—Development Standards* does not apply to aquaculture development to which this Policy applies.

Part 2 Permissible aquaculture development

7 Pond-based and tank-based aquaculture permissible with consent

- (1) This clause applies to development for the purpose of pond-based aquaculture, or tank-based aquaculture, to which this Policy applies.
- (2) A person may carry out any such aquaculture development with development consent if it complies with the site location and operational requirements set out in Schedule 1 for the development (the *minimum performance criteria*).
- (3) The requirements set out in Schedule 1 are minimum requirements and do not limit the matters a consent authority is required to take into consideration under the Act or the conditions that it may impose on any development consent.

8 Natural water-based aquaculture permissible with consent

- (1) This clause applies to development for the purpose of natural water-based aquaculture to which this Policy applies.
- (2) A person may carry out any such aquaculture development with development consent if it complies with the site location and operational requirements set out in Schedule 2 for the development (the *minimum performance criteria*).
- (3) The requirements set out in Schedule 2 are minimum requirements and do not limit the matters a consent authority is required to take into consideration under the Act or the conditions that it may impose on any development consent.

9 Consent authority for permissible aquaculture

The consent authority for development to which this Policy applies (other than State significant development) is as follows:

- (a) the consent authority (if any) designated in Schedule 1 or 2,
- (b) if there is no consent authority under paragraph (a)—the authority that would be the consent authority for the development but for this Policy,
- (c) if there is no consent authority under paragraphs (a) and (b)—the council of the area in which the development is to be carried out,

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Part 2 Permissible aquaculture development

(d) if there is no consent authority under paragraphs (a)–(c)—the Minister.

10 Consent authority to take aquaculture industry development plan into consideration

In determining a development application for aquaculture development to which this Policy applies, the consent authority is to take into consideration such of the provisions of any aquaculture industry development plan as are relevant to the subject of the development application.

11 Other aquaculture development prohibited

Aquaculture development to which this Policy applies that is not permissible under this Policy with development consent is prohibited.

Part 3 Determination of assessment category of aquaculture development

12 Project profile analyses

- (1) For the purposes of this Policy, the Director-General is to publish in the Gazette a project profile analysis for any particular kind of aquaculture development in any particular part of the State.
- (2) A project profile analysis is a matrix of environmental and operational criteria for ranking the level of environmental risk in relation to site location and operational attributes of aquaculture development. There are to be 3 levels of risk for each attribute (Level 1, 2 or 3 in ascending order of risk).
- (3) The criteria in a project profile analysis are to be consistent with the relevant aquaculture industry development plan.
- (4) A project profile analysis must be reviewed by the Director-General when the relevant aquaculture industry development plan is amended or replaced.

13 Categorisation of development according to project profile analysis

- (1) For the purposes of determining the level of assessment of applications for development consent under this Policy, the proposed aquaculture development is to be categorised, by the consent authority in accordance with the relevant project profile analysis, as follows:
 - (a) Class 1—Non-designated development (low-level risk),
 - (b) Class 2—Non-designated development (medium-level risk),
 - (c) Class 3—Designated development.
- (2) The relevant class is to be determined as follows:
 - (a) Class 1—if all the risk levels in relation to each attribute are Level 1,
 - (b) Class 2—if all the risk levels in relation to each attribute are Level 2 or Levels 1 and 2,
 - (c) Class 3—if any risk level in relation to an attribute is Level 3.

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Part 3 Determination of assessment category of aquaculture development

- (3) The consent authority is not to consent to aquaculture development under this Policy unless it has first categorised the development in accordance with this clause after receiving adequate information from the applicant for that purpose.

14 Designated development

- (1) Development categorised as Class 3 aquaculture development is designated development for the purposes of the Act.
- (2) Development categorised as Class 1 or 2 aquaculture development is not designated development by virtue of any other environmental planning instrument.

Note. Designated development must be advertised for 30 days. The regulations under the Act provide that aquaculture development to which this Policy applies is designated development under the regulations only if it is Class 3 development.

15 Advertised development

- (1) Development categorised as Class 1 or 2 aquaculture development is advertised development for the purposes of the Act.
- (2) Class 2 aquaculture development must be advertised for at least 30 days, even though the regulations under the Act may only require the development to be advertised for at least 14 days.

Note. Class 1 aquaculture development is, by the regulations under the Act, required to be advertised for at least 14 days.

Part 4 Miscellaneous

16 Existing development

- (1) This Policy applies if development consent is sought for any alteration of or addition to existing aquaculture development.
- (2) However, the Minister may waive (with or without conditions) any of the minimum performance criteria in connection with the continuation of any existing aquaculture development (including the re-establishment of aquaculture development in an area in which aquaculture was abandoned before the commencement of this Policy).
- (3) In this clause, *existing aquaculture development* means aquaculture development being undertaken in an area when this Policy first applies to that area.

17 Non-intensive pond-based or tank-based aquaculture not affected

This Policy does not apply to or affect any development for the purpose of aquaculture that is neither intensive aquaculture nor natural water-based aquaculture.

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Schedule 1 Pond-based and tank-based aquaculture

Schedule 1 Pond-based and tank-based aquaculture

(Clauses 5 and 7)

Part 1 Regions to which Policy applies

1 North Coast Region

The area of the State comprising the local government areas of Ballina, Bellingen, Byron, Coffs Harbour, Copmanhurst, Greater Taree, Grafton, Hastings, Kempsey, Kyogle, Lismore, Maclean, Nambucca, Pristine Waters, Richmond Valley and Tweed.

Part 2 Minimum performance criteria for permissible development

Division 1 Site location requirements

2 Zoning under environmental planning instrument

- (1) Pond-based aquaculture—within areas zoned for rural purposes.
- (2) Tank-based aquaculture—within areas zoned for rural purposes or zoned for industrial purposes.

3 Tidal boundary for estuarine pond-based aquaculture

Within an area that is no more than 1 kilometre from a tidal stream or no more than 1 kilometre from the upper tidal limit (identified in the NSW Coastal Policy) of the tidal stream.

4 Elevation Australian Height Datum (AHD)

- (1) Estuarine pond-based aquaculture—within an area that is above 1 metre AHD and below 10 metres AHD.

- (2) Tank-based aquaculture and freshwater pond-based aquaculture—within an area that is above 1 metre AHD.

Note. AHD for areas may be sourced in the Acid Sulphate Soils Risk Maps published by the Department of Land and Water Conservation.

5 Landform exclusion zones (high acid sulphate soils risk areas)

Not within ASS risk codes EsO, EcO, EuO or Em shown on Acid Sulphate Soils Risk Maps published by the Department of Land and Water Conservation.

6 Flood liability

- (1) Not within an area subject to flooding in the case of high risk species (having regard to the probable maximum flood level).
- (2) High risk species are species designated as high risk species in the relevant aquaculture industry development plan (eg barramundi).

7 Conservation exclusion zones

Not within:

- (a) areas dedicated or reserved under the *National Parks and Wildlife Act 1974*, or
- (b) marine parks or aquatic reserves (other than areas designated as general use zones), or
- (c) vacant Crown land (other than areas used only for access to water provided under a licence).

Division 2 Operational requirements

8 Species selection

Species of fish or marine vegetation cultivated or kept must be consistent with the relevant Aquaculture Industry Development Plan.

Note. Refer to policy in the Plan relating to translocation of live aquaculture organisms. Under the Plan, non-indigenous species are not cultivated or kept for purposes of estuarine pond-based aquaculture.

9 Pond-based aquaculture—pond design

Ponds, raceways or dams capable of being drained or pumped and then completely dried.

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Schedule 1 Pond-based and tank-based aquaculture

10 Freshwater discharges

No discharge of freshwater used to cultivate or keep fish or marine vegetation to natural waterbodies or wetlands.

11 Saline discharges

All saline water discharged from an aquaculture farm must be held in a reconditioning system for a minimum of 24 hours prior to discharge and must be returned to the tidal reaches of the waterway.

12 Outlets from ponds etc

All outlets from ponds, tanks and other facilities must be screened to avoid the escape of fish.

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Natural water-based aquaculture

Schedule 2

Schedule 2 Natural water-based aquaculture

(Clauses 5 and 8)

Part 1 Areas to which Policy applies

Part 2 Minimum performance criteria for permissible development

Note. This Schedule was blank on the commencement of this Policy.