



New South Wales

State Environmental Planning Policy No 62—Sustainable Aquaculture (Amendment No 3)

under the

Environmental Planning and Assessment Act 1979

Her 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 Planning. (S06/00687)

FRANK SARTOR, M.P.,
Minister for Planning

State Environmental Planning Policy No 62— Sustainable Aquaculture (Amendment No 3)

under the

Environmental Planning and Assessment Act 1979

1 Name of Policy

This Policy is *State Environmental Planning Policy No 62—Sustainable Aquaculture (Amendment No 3)*.

2 Aims of Policy

The aims of this Policy are:

- (a) to identify priority oyster aquaculture areas (*priority areas*) in accordance with the Government's *NSW Oyster Industry Sustainable Aquaculture Strategy*, and
- (b) to make oyster aquaculture development in priority areas permissible without consent, and
- (c) to retain the requirement for consent for oyster aquaculture development outside priority areas, and
- (d) to require the Director-General of the Department of Primary Industries to be notified of any application for consent to a development that, because of its proposed location, may affect a priority oyster aquaculture area or oyster aquaculture outside such an area, and
- (e) to remove the requirement for certain classes of oyster aquaculture development to be approved under Part 3A of the Act, and
- (f) to protect priority areas and oyster aquaculture development outside these areas from new development that is unrelated to oyster aquaculture that may have adverse impacts on water quality (and, consequently, on the health of oysters and oyster consumers) by introducing particular requirements for the assessment of such development.

3 Land to which Policy applies

- (1) In so far as this Policy amends *State Environmental Planning Policy No 62—Sustainable Aquaculture* it applies to all the land to which that Policy applies.

-
- (2) In so far as this Policy amends *State Environmental Planning Policy (Major Projects) 2005* it applies to the State.

4 Amendment of State Environmental Planning Policy No 62—Sustainable Aquaculture

State Environmental Planning Policy No 62—Sustainable Aquaculture is amended as set out in Schedule 1.

5 Amendment of State Environmental Planning Policy (Major Projects) 2005

State Environmental Planning Policy (Major Projects) 2005 is amended as set out in Schedule 2.

2006 No 720

State Environmental Planning Policy No 62—Sustainable Aquaculture
(Amendment No 3)

Schedule 1 Amendment of State Environmental Planning Policy No 62—Sustainable
Aquaculture

Schedule 1 Amendment of State Environmental Planning Policy No 62—Sustainable Aquaculture

(Clause 4)

[1] Clause 4 Definitions

Insert in alphabetical order in clause 4 (1):

NSW Oyster Industry Sustainable Aquaculture Strategy means the New South Wales Department of Primary Industries publication of that title, as published in 2006.

oyster aquaculture development means development for the purposes of oyster aquaculture.

priority oyster aquaculture area means an area identified as a priority oyster aquaculture area on a map referred to in Chapter 5.3 of the *NSW Oyster Industry Sustainable Aquaculture Strategy*, being a map a copy of which is held in the head office of the Department of Primary Industries.

[2] Clause 5 Where this Policy applies

Omit clause 5 (b). Insert instead:

(b) in relation to natural water-based aquaculture in the form of oyster aquaculture—to the State, and

(ba) in relation to other forms of natural water-based aquaculture—to the parts of the State described in Schedule 2.

[3] Clause 5A

Insert after clause 5:

5A Development to which this Policy applies

(1) This Policy, other than Part 3A, applies to aquaculture development.

(2) Part 3A applies to all development.

[4] Clause 8 Natural water-based aquaculture (other than oyster aquaculture) permissible with consent

Insert “, other than oyster aquaculture development” after “Policy applies” in clause 8 (1).

[5] Clauses 8A

Insert after clause 8:

8A Oyster aquaculture development permissible

- (1) A person may carry out oyster aquaculture development only with development consent, except as provided by subclause (3).
- (2) The consent authority for oyster aquaculture development is the council of the area in which the development is to be carried out.
Note. Sections 19 and 20 of the *Marine Parks Act 1997* impose requirements relating to a determining authority's approval, or carrying out, of an activity within a marine park and a consent authority's consideration of a development application for the carrying out of development within a marine park.
- (3) A person may carry out oyster aquaculture development without the need for development consent:
 - (a) on any land that is wholly within a priority oyster aquaculture area, or
 - (b) on any land that is partly within and partly outside a priority oyster aquaculture area, but only if the land outside the area is no more than 0.1 hectare in area.

[6] Clause 9 Consent authority for permissible aquaculture

Omit "State significant". Insert instead "oyster aquaculture".

[7] Clause 10 Consent authority to take aquaculture industry development plan into consideration

Insert at the end of clause 10:

- (2) Without limiting subclause (1), in determining a development application for oyster aquaculture development the consent authority is to take into consideration the *NSW Oyster Industry Sustainable Aquaculture Strategy*.

[8] Clause 11 Other aquaculture development prohibited

Insert "(whether with or without consent)" after "permissible".

[9] Clause 12 Project profile analysis

Insert after clause 12 (4):

- (5) This clause does not apply with respect to oyster aquaculture development.
Note. Suitability of sites for oyster aquaculture development is to be assessed having regard to the *NSW Oyster Industry Sustainable Aquaculture Strategy*—see clause 10.

2006 No 720

State Environmental Planning Policy No 62—Sustainable Aquaculture
(Amendment No 3)

Schedule 1 Amendment of State Environmental Planning Policy No 62—Sustainable
Aquaculture

[10] **Clause 13 Categorisation of development having regard to project profile analysis**

Insert after clause 13 (3):

- (4) This clause does not apply with respect to oyster aquaculture development.

[11] **Part 3A**

Insert after Part 3:

Part 3A Consideration of effects of proposed development on oyster aquaculture

15A Application of Part

This Part applies to all development and all land.

15B Consultation with Director-General of Primary Industries

- (1) Before determining a development application for any development, a consent authority:
 - (a) must consider whether, because of its nature and location, the development may have an adverse effect on oyster aquaculture development or a priority oyster aquaculture area, and
 - (b) if it suspects that the development may have that effect, must give notice of the application to the Director-General of the Department of Primary Industries.
- (2) In determining a development application for any development, a consent authority must consider any comments received from the Director-General of the Department of Primary Industries pursuant to subclause (1), including, in particular, such comments as identify:
 - (a) any adverse effect that the development may have on, or ways in which the development may impede or be incompatible with, any oyster aquaculture development or priority oyster aquaculture area, and
 - (b) any measures to avoid or minimise any such adverse effect, impediment or incompatibility.

Note. Development may be incompatible with or impede oyster aquaculture if, for example, the development will limit access to oyster leases or have an impact on water quality and, consequently, on the health of oysters and of consumers of those oysters.

- (3) This clause does not require a consent authority to consider any comments received more than 21 days after notice was given as referred to in subclause (1) (b).

15C Development consent may be refused if development adversely affects oyster aquaculture

A consent authority may refuse to grant consent to development:

- (a) if it is satisfied that the development will have an adverse effect on, or impede or be incompatible with:
- (i) any oyster aquaculture development that is being carried out (whether or not within a priority oyster aquaculture area), or
 - (ii) any oyster aquaculture development that may in the future be carried out within a priority oyster aquaculture area, or
- (b) if it is not satisfied that appropriate measures will be taken to avoid or minimise any such adverse effect, impediment or incompatibility.

15D NSW Oyster Industry Strategy to be considered

In exercising their functions under this Part, a consent authority and the Director-General of the Department of Primary Industries must each take into consideration the *NSW Oyster Industry Sustainable Aquaculture Strategy*.

[12] Clause 19

Insert after clause 18:

19 Application of amendments made by SEPP No 62—Sustainable Aquaculture (Amendment No 3)

An application for or with respect to:

- (a) an approval under Part 3A of the Act, or
- (b) development consent under Part 4 of the Act,

in relation to oyster aquaculture development, being an application that was made but not finally determined before the commencement of *State Environmental Planning Policy No 62—Sustainable Aquaculture (Amendment No 3)*, is to be determined as if that Policy had not commenced.

2006 No 720

State Environmental Planning Policy No 62—Sustainable Aquaculture
(Amendment No 3)

Schedule 2 Amendment of State Environmental Planning Policy (Major Projects) 2005

**Schedule 2 Amendment of State Environmental
Planning Policy (Major Projects) 2005**

(Clause 5)

Schedule 1 Part 3A projects—classes of development

Insert after clause 2 (2):

- (3) This clause does not apply to development for the purpose of oyster aquaculture.

Note. Subclause (3) is affected by clause 19 of *State Environmental Planning Policy No 62—Sustainable Aquaculture*, which relates to applications under the Act with respect to oyster aquaculture that were pending immediately before the commencement of subclause (3).

BY AUTHORITY
