



New South Wales

State Environmental Planning Policy No 62—Sustainable Aquaculture (Amendment No 4)

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*. (S09/01205/PC)

TONY KELLY, MLC
Minister for Planning

State Environmental Planning Policy No 62— Sustainable Aquaculture (Amendment No 4)

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 4)*.

2 Commencement

This Policy commences on the day on which it is published on the NSW legislation website.

3 Repeal of Policy

- (1) This Policy is repealed on the day following the day on which this Policy commences.
- (2) The repeal of this Policy does not, because of the operation of sections 5 (6) and 30 of the *Interpretation Act 1987*, affect any amendment made by this Policy.

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

[1] Clause 3 Aim etc of Policy

Insert “, including sustainable oyster aquaculture,” after “sustainable aquaculture” in clause 3 (a).

[2] Clause 3 (b)

Omit the paragraph. Insert instead:

- (b) to make aquaculture development permissible in certain zones under the Standard Instrument, as identified in the *NSW Land Based Sustainable Aquaculture Strategy*, and

[3] Clause 3 (d)

Insert “(including risks related to climate change, in particular, rising sea levels)” after “operational factors”.

[4] Clause 3 (e)

Omit the paragraph. Insert instead:

- (e) to apply the Policy to land-based aquaculture development and oyster aquaculture development in the State and to include facility for extension of the Policy to natural water-based aquaculture.

[5] Clause 4 Definitions

Omit the definitions of *Department* and *intensive aquaculture* from clause 4 (1).

Insert instead:

Department means the Department of Planning.

intensive aquaculture has the same meaning as it has in the *Fisheries Management (Aquaculture) Regulation 2007*.

[6] Clause 4 (1)

Insert in alphabetical order:

extensive aquaculture has the same meaning as it has in the *Fisheries Management (Aquaculture) Regulation 2007*.

land-based aquaculture means any form of aquaculture that is not natural water-based aquaculture.

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NSW Land Based Sustainable Aquaculture Strategy means the publication of that title, as published in 2009 by the Department of Industry and Investment (being a strategy that incorporates the relevant aquaculture industry development plan and the assessment regime for integrated aquaculture development).

open flow through system means an aquaculture facility which discharges on average between 15 to 100% of its culture water per day directly to a waterway.

oyster aquaculture means the cultivation of any species of edible oyster for a commercial purpose.

Standard Instrument means the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

[7] Clause 4 (1), definitions of “pond-based aquaculture” and “tank-based aquaculture”

Omit “intensive” wherever occurring.

[8] Clause 5

Omit the clause. Insert instead:

5 Land to which this Policy applies

- (1) Except as otherwise provided by this Policy, this Policy applies to the State.
- (2) In relation to natural water-based aquaculture, other than oyster aquaculture, this Policy applies only 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.

[9] Clause 5B

Insert after clause 5A:

5B Interpretation—references to land use zones

- (1) A reference in this Policy to a named land use zone is a reference to a land use zone of that name in an environmental planning instrument made as provided by section 33A (2) of the Act.
- (2) A reference in this Policy to an equivalent zone to a named land use zone is a reference to a non-standard land use zone that is equivalent to the named land use zone.

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- (3) A non-standard land use zone is equivalent to a named land use zone if the Director-General, by order published in the Gazette, certifies that the non-standard land use zone is equivalent to the named land use zone.
- (4) A non-standard land use zone is equivalent to a named land use zone in relation to a particular development proposal if:
- (a) subclause (3) applies, or
 - (b) the relevant authority, in relation to the development proposal, is of the opinion that the land use zone is equivalent to the named land use zone.
- (5) In this clause:
- non-standard land use zone* means a land use zone in an environmental planning instrument that is not made as provided by section 33A (2) of the Act.
- relevant authority* means:
- (a) in relation to development proposed to be carried out by or on behalf of a public authority, the public authority, or
 - (b) in relation to any other development proposal, the Director-General.

[10] Clauses 7 and 7A

Omit clause 7. Insert instead:

7 Pond-based and tank-based aquaculture permissible in certain zones with consent

- (1) This clause applies to development for the purpose of pond-based aquaculture or tank-based aquaculture that is carried out in a named land use zone or an equivalent zone.
- (2) A person may carry out any development to which this clause applies, with development consent, if:
 - (a) the development is of a kind specified in Table 1 to be permissible in the relevant named land use zone, and
 - (b) in the opinion of the consent authority, the development 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.

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- (4) Development that, under Table 1, is not permissible, or is prohibited, in a named land use zone is prohibited in any such named land use zone and in any equivalent zone.
- (5) Notes to Table 1 form part of this Policy.
- (6) This clause is subject to clause 7A (which allows some pond-based aquaculture, that is extensive aquaculture, to be carried out without development consent).

Table 1

LEP ZONES	AQUACULTURE TYPE	
	Pond-based	Tank-based
Rural		
RU1 Primary Production	Permissible	Permissible
RU2 Rural Landscape	Permissible	Permissible
RU3 Forestry	Permissible	Permissible
RU4 Rural Small Holdings	Permissible	Permissible
RU5 Village	Prohibited	Permissible
RU6 Transition	Prohibited	Permissible
Residential		
R1 General Residential	Permissible (1)	Permissible (1)
R2 Low Density Residential	Permissible (1)	Permissible (1)
R3 Medium Density Residential	Prohibited	Permissible (1)
R4 High Density Residential	Prohibited	Prohibited
R5 Large Lot Residential	Permissible (1)	Permissible (1)
Business		
B1 Neighbourhood Centre	Prohibited	Permissible
B2 Local Centre	Prohibited	Permissible
B3 Commercial Core	Prohibited	Permissible
B4 Mixed Use	Prohibited	Permissible
B5 Business Development	Prohibited	Permissible
B6 Enterprise Corridor	Prohibited	Permissible
B7 Business Park	Prohibited	Permissible

LEP ZONES	AQUACULTURE TYPE	
	Pond-based	Tank-based
Industrial		
IN1 General Industrial	Prohibited	Permissible
IN2 Light Industrial	Prohibited	Permissible
IN3 Heavy Industrial	Prohibited	Permissible
IN4 Working Waterfront	Permissible	Permissible
Special Purpose Zones		
SP1 Special Activities	Permissible	Permissible
SP2 Infrastructure	Permissible	Permissible
SP3 Tourist	Permissible	Permissible
Recreation		
RE1 Public Recreation	Permissible	Permissible
RE2 Private Recreation	Permissible	Permissible
Environment protection		
E1 National Parks and Nature Reserves	Prohibited	Prohibited
E2 Environmental Conservation	Prohibited	Prohibited
E3 Environmental Management	Permissible (2)	Permissible (1)
E4 Environmental Living	Permissible (2)	Permissible (1)
Waterway		
W1 Natural Waterways	Permissible (3)	Permissible (3)
W2 Recreational Waterways	Permissible (3)	Permissible (3)
W3 Working Waterways	Permissible (3)	Permissible (3)

Note (1) Permissible only if the development is for the purposes of small scale aquarium fish production.

Note (2) Permissible only if the development is for the purposes of extensive aquaculture.

Note (3) Permissible only if the development will utilise waterways to source water.

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7A Extensive pond-based aquaculture development permitted without consent in certain zones

- (1) A person may carry out development for the purpose of pond-based aquaculture, where it is also extensive aquaculture, without development consent if:
 - (a) the development is carried out in a zone in which pond-based aquaculture, that is also extensive aquaculture, is permitted under this clause, and
 - (b) the development complies with the site location requirements and operational requirements set out in Schedule 1A.
- (2) Pond-based aquaculture, that is also extensive aquaculture, is permitted under this clause in the following named land use zones, or an equivalent zone:
 - (a) RU1 Primary Production,
 - (b) RU2 Rural Landscape,
 - (c) RU3 Forestry,
 - (d) RU4 Rural Small Holdings,
 - (e) RU6 Transition.

[11] Clause 17 Non-intensive pond-based or tank-based aquaculture not affected

Omit the clause.

[12] Schedules 1 and 1A

Omit Schedule 1. Insert instead:

Schedule 1 Pond-based and tank-based aquaculture

(Clause 7)

Division 1 Site location requirements

1 Conservation exclusion zones

- (1) Must not be carried out on land dedicated or reserved under the *National Parks and Wildlife Act 1974*.

- (2) Must not be carried out on the following land, except to the extent necessary to gain access to water:
- (a) land declared as critical habitat under the *Threatened Species Conservation Act 1995*,
 - (b) vacant Crown land,
 - (c) land within a wetland of international significance declared under the Ramsar Convention on Wetlands.
- (3) Must not be carried out on the following land, except for the purposes of minimal infrastructure to support the extraction of water from, and discharge of water to, the land concerned:
- (a) land declared as an aquatic reserve under the *Fisheries Management Act 1994*,
 - (b) land declared as a marine park under the *Marine Parks Act 1997*.

Note. Nothing in subclause (2) or (3) affects any requirement under an Act relating to land specified in subclause (2) or (3) to obtain a licence or other authority under that Act for development of the land.

Division 2 Operational requirements

2 Species selection

Species of fish or marine vegetation cultivated or kept must be consistent with the relevant aquaculture industry development plan.

3 Intensive pond-based aquaculture—pond design

Ponds must be capable of being drained or pumped and then completely dried.

4 Intensive pond and tank aquaculture freshwater discharges

No discharge of freshwater used to intensively cultivate or keep fish to natural waterbodies or wetlands is permitted, except freshwater discharge from open flow through systems.

5 Outlets from culture ponds etc

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

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Schedule 1A Extensive pond-based aquaculture

(Clause 7A)

Division 1 Site location requirements

1 Conservation exclusion zones

- (1) Must not be carried out on land dedicated or reserved under the *National Parks and Wildlife Act 1974*.
- (2) Must not be carried out on the following land, except to the extent necessary to gain access to water:
 - (a) land declared as critical habitat under the *Threatened Species Conservation Act 1995*,
 - (b) vacant Crown land,
 - (c) land within a wetland of international significance declared under the Ramsar Convention on Wetlands.

Note. Nothing in subclause (2) affects any requirement under an Act relating to land specified in subclause (2) to obtain a licence or other authority under that Act for development of the land.

2 Flood liability

Must be designed or constructed on land so that it will not be inundated by the discharge of a 1:100 ARI (average recurrent interval) flood event.

Division 2 Operational requirements

3 Species selection

Species of fish or marine vegetation cultivated or kept must be consistent with the relevant aquaculture industry development plan.

4 Pond design

- (1) Must not require the construction of new ponds, water storages, dams or buildings.
- (2) Must not be located on permanent watercourses, creeks, billabongs or isolated outreaches of creeks or rivers.

- (3) Must be capable of preventing the escape of stock into natural water bodies or wetlands.

5 Culture water

Must use freshwater.