



New South Wales

Standard Instrument (Local Environmental Plans) Amendment (Primary Production and Rural Development) Order 2019

under the

Environmental Planning and Assessment Act 1979

DAVID HURLEY, Governor

I, General The Honourable David Hurley AC DSC (Ret'd), Governor of New South Wales, with the advice of the Executive Council, and in pursuance of section 3.20 of the *Environmental Planning and Assessment Act 1979*, make the following Order.

Dated, this 28th day of February 2019.

By His Excellency's Command,

ANTHONY ROBERTS, MP
Minister for Planning

Standard Instrument (Local Environmental Plans) Amendment (Primary Production and Rural Development) Order 2019

under the

Environmental Planning and Assessment Act 1979

1 Name of Order

This Order is the *Standard Instrument (Local Environmental Plans) Amendment (Primary Production and Rural Development) Order 2019*.

2 Commencement

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

Schedule 1 Amendment of Standard Instrument prescribed by Standard Instrument (Local Environmental Plans) Order 2006

[1] Land Use Table

Omit “*State Environmental Planning Policy (Rural Lands) 2008*” and “*State Environmental Planning Policy No 62—Sustainable Aquaculture*” from the note to the Table.

Insert at the end of the list in the note:

State Environmental Planning Policy (Primary Production and Rural Development) 2019

[2] Land Use Table

Insert “Aquaculture;” in alphabetical order in item 3 of the matter relating to Zones RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots, IN4 Working Waterfront, SP3 Tourist, RE1 Public Recreation, RE2 Private Recreation, W2 Recreational Waterways and W3 Working Waterways.

[3] Land Use Table

Insert “Aquaculture” in item 3 of the matter relating to Zones RU3 Forestry and W1 Natural Waterways.

[4] Land Use Table

Insert “; Oyster aquaculture” and “; Tank-based aquaculture” in alphabetical order in item 3 of the matter relating to Zones RU5 Village, RU6 Transition, R3 Medium Density Residential, B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Core, B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, B8 Metropolitan Centre, IN1 General Industrial, IN2 Light Industrial and IN3 Heavy Industrial.

[5] Land Use Table

Insert “Pond-based aquaculture” in item 4 of the matter relating to Zones RU5 Village, RU6 Transition, R3 Medium Density Residential, B1 Neighbourhood Centre, B2 Local Centre, B3 Commercial Core, B4 Mixed Use, B5 Business Development, B6 Enterprise Corridor, B7 Business Park, B8 Metropolitan Centre, IN1 General Industrial, IN2 Light Industrial and IN3 Heavy Industrial.

[6] Land Use Table

Insert “; Oyster aquaculture”, “; Pond-based aquaculture” and “; Tank-based aquaculture” in alphabetical order in item 3 of the matter relating to Zone R1 General Residential.

[7] Land Use Table

Insert “; Oyster aquaculture; Pond-based aquaculture” and “; Tank-based aquaculture” in alphabetical order in item 3 of the matter relating to Zone R2 Low Density Residential.

[8] Land Use Table

Insert “; Oyster aquaculture; Pond-based aquaculture; Tank-based aquaculture” in alphabetical order in item 3 of the matter relating to Zones R5 Large Lot Residential, E3 Environmental Management and E4 Environmental Living.

[9] Land Use Table

Insert “; Oyster aquaculture” in alphabetical order in item 3 of the matter relating to Zone R4 High Density Residential.

[10] Land Use Table

Insert “Pond-based aquaculture; Tank-based aquaculture” in item 4 of the matter relating to Zone R4 High Density Residential.

[11] Land Use Table

Insert after the heading “**Zone SP1 Special Activities**”:

Direction. The following must be included as “Permitted with consent” for this zone:
Aquaculture

[12] Land Use Table

Insert “Aquaculture” in alphabetical order in the list of types of development in the Direction under the heading “**Zone SP2 Infrastructure**”.

[13] Land Use Table

Insert “Oyster aquaculture” in item 3 of the matter relating to Zone E2 Environmental Conservation.

[14] Land Use Table

Insert “; Pond-based aquaculture” and “; Tank-based aquaculture” in alphabetical order in item 4 of the matter relating to Zone E2 Environmental Conservation.

[15] Clause 4.2 Rural subdivision [compulsory if clause 4.1 adopted and land to which Plan applies includes land zoned RU1, RU2, RU3, RU4 or RU6]

Insert after clause 4.2 (2) (b):

(baa) Zone RU3 Forestry,

[16] Clauses 5.16–5.19

Insert after clause 5.15:

5.16 Subdivision of, or dwellings on, land in certain rural, residential or environment protection zones [compulsory if land to which Plan applies includes land to which clause applies and Plan is referred to in Direction 1 to clause]

- (1) The objective of this clause is to minimise potential land use conflict between existing and proposed development on land in the rural, residential or environment protection zones concerned (particularly between residential land uses and other rural land uses).
- (2) This clause applies to land in the following zones:
 - (a) Zone RU1 Primary Production,
 - (b) Zone RU2 Rural Landscape,
 - (c) Zone RU3 Forestry,
 - (d) Zone RU4 Primary Production Small Lots,
 - (e) Zone RU6 Transition,
 - (f) Zone R5 Large Lot Residential,
 - (g) Zone E2 Environmental Conservation,

- (h) Zone E3 Environmental Management,
 - (i) Zone E4 Environmental Living.
- (3) A consent authority must take into account the matters specified in subclause (4) in determining whether to grant development consent to development on land to which this clause applies for either of the following purposes:
- (a) subdivision of land proposed to be used for the purposes of a dwelling,
 - (b) erection of a dwelling.
- (4) The following matters are to be taken into account:
- (a) the existing uses and approved uses of land in the vicinity of the development,
 - (b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,
 - (c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),
 - (d) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c).

Direction 1. This clause is compulsory for a Plan that:

- (a) includes any zone to which the clause applies, and
- (b) is for a local government area other than the following:
 - (i) Central Coast,
 - (ii) City of Lake Macquarie,
 - (iii) City of Newcastle,
 - (iv) City of Wollongong,
 - (v) any local government area in the Greater Sydney Region (within the meaning of the *Greater Sydney Commission Act 2015*).

Direction 2. This clause is optional for a Plan that:

- (a) includes any zone to which the clause applies, and
- (b) is for any of the following local government areas:
 - (i) Central Coast,
 - (ii) City of Lake Macquarie,
 - (iii) City of Newcastle,
 - (iv) City of Wollongong,
 - (v) any local government area in the Greater Sydney Region (within the meaning of the *Greater Sydney Commission Act 2015*).

5.17 Artificial waterbodies in environmentally sensitive areas in areas of operation of irrigation corporations [compulsory if land to which Plan applies includes land to which clause applies]

- (1) The objective of this clause is to require development consent for, and ensure appropriate environmental assessment of, development for the purpose of artificial waterbodies with a storage capacity of 15 megalitres or more but less than 100 megalitres that will be carried out in environmentally sensitive areas in the area of operations of (or certain other areas managed by) irrigation corporations.
- (2) This clause applies to the following land:
 - (a) land within the area of operations of an irrigation corporation within the meaning of Part 1 of Chapter 4 of the *Water Management Act 2000*,

- (b) land shown edged heavy black on the East Cadell Map under *State Environmental Planning Policy (Primary Production and Rural Development) 2019*.
- (3) Development consent is required to carry out development for the purpose of an artificial waterbody on land to which this clause applies if:
 - (a) its storage capacity is 15 megalitres or more but less than 100 megalitres, and
 - (b) the development is carried out in an environmentally sensitive area.
- (4) Development consent must not be granted under subclause (3) unless the consent authority has considered the following:
 - (a) a statement of environmental effects relating to the proposed development,
 - (b) if a licence, approval or other authority is required for the proposed development under any legislation (for example, the *Local Land Services Act 2013*, the *Water Management Act 2000* or the *Protection of the Environment Operations Act 1997*)—details of the authority,
 - (c) if an exemption from a requirement for a licence, approval or other authority for the proposed development applies or will apply—details of the exemption.
- (5) To remove any doubt:
 - (a) Part 2 (Planning principles) of *Murray Regional Environmental Plan No 2—Riverine Land* applies when a consent authority determines a development application required by this clause for land to which that Plan applies, and
 - (b) the provisions of Part 3 (Planning requirements and consultation) of that Plan that provide for consultation by a consent authority apply when development defined in the Planning Control and Consultation Table in that Part is required to be carried out with development consent because of this clause.
- (6) In this clause:
environmentally sensitive area has the same meaning as in clause 1.5 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

5.18 Intensive livestock agriculture [compulsory if intensive livestock agriculture permitted with consent]

- (1) The objectives of this clause are:
 - (a) to ensure appropriate environmental assessment of development for the purpose of intensive livestock agriculture that is permitted with consent under this Plan, and
 - (b) to provide for certain capacity thresholds below which development consent is not required for that development subject to certain restrictions as to location.
- (2) This clause applies if development for the purpose of intensive livestock agriculture is permitted with consent under this Plan.
- (3) In determining whether or not to grant development consent under this Plan to development for the purpose of intensive livestock agriculture, the consent authority must take the following into consideration:

- (a) the adequacy of the information provided in the statement of environmental effects or (if the development is designated development) the environmental impact statement accompanying the development application,
 - (b) the potential for odours to adversely impact on the amenity of residences or other land uses within the vicinity of the site,
 - (c) the potential for the pollution of surface water and ground water,
 - (d) the potential for the degradation of soils,
 - (e) the measures proposed to mitigate any potential adverse impacts,
 - (f) the suitability of the site in the circumstances,
 - (g) whether the applicant has indicated an intention to comply with relevant industry codes of practice for the health and welfare of animals,
 - (h) the consistency of the proposal with, and any reasons for departing from, the environmental planning and assessment aspects of any guidelines for the establishment and operation of relevant types of intensive livestock agriculture published, and made available to the consent authority, by the Department of Primary Industries (within the Department of Industry) and approved by the Planning Secretary.
- (4) Despite any other provision of this Plan, development for the purpose of intensive livestock agriculture may be carried out without development consent if:
- (a) the development is of a type specified in subclause (5), and
 - (b) the consent authority is satisfied that the development will not be located:
 - (i) in an environmentally sensitive area, or
 - (ii) within 100 metres of a natural watercourse, or
 - (iii) in a drinking water catchment, or
 - (iv) within 500 metres of any dwelling that is not associated with the development, or a residential zone, or
 - (v) if the development is a poultry farm—within 500 metres of another poultry farm.
- (5) The following types of development are specified for the purposes of subclause (4):
- (a) a cattle feedlot having a capacity to accommodate fewer than 50 head of cattle,
 - (b) a goat feedlot having a capacity to accommodate fewer than 200 goats,
 - (c) a sheep feedlot having a capacity to accommodate fewer than 200 sheep,
 - (d) a pig farm having a capacity to accommodate fewer than 20 breeding sows, or fewer than 200 pigs (of which fewer than 20 may be breeding sows),
 - (e) a dairy (restricted) having a capacity to accommodate fewer than 50 dairy cows,
 - (f) a poultry farm having a capacity to accommodate fewer than 1,000 birds for meat or egg production (or both).
- (6) For the avoidance of doubt, subclause (4) does not apply to development that is prohibited or that may be carried out without development consent under this or any other environmental planning instrument.

- (7) In this clause:
environmentally sensitive area has the same meaning as in clause 1.5 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

residential zone means Zone RU4 Primary Production Small Lots, Zone RU5 Village, Zone RU6 Transition, Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone R5 Large Lot Residential, Zone B4 Mixed Use, Zone B6 Enterprise Corridor, Zone E3 Environmental Management or Zone E4 Environmental Living.

5.19 Pond-based, tank-based and oyster aquaculture [compulsory]

(1) **Objectives**

The objectives of this clause are as follows:

- (a) to encourage sustainable oyster, pond-based and tank-based aquaculture in the State, namely, aquaculture development that 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,
- (b) to set out the minimum site location and operational requirements for permissible pond-based and tank-based aquaculture development.

(2) **Pond-based or tank-based aquaculture—matters of which consent authority must be satisfied before granting consent**

The consent authority must not grant development consent to carry out development for the purpose of pond-based aquaculture or tank-based aquaculture unless the consent authority is satisfied of the following:

- (a) that the development complies with the site location and operational requirements set out in Part 1 of Schedule 6 for the development,
- (b) in the case of:
 - (i) pond-based aquaculture or tank-based aquaculture in Zone R1 General Residential, Zone R2 Low Density Residential or Zone R5 Large Lot Residential—that the development is for the purpose of small scale aquarium fish production, and
 - (ii) pond-based aquaculture in Zone E3 Environmental Management or Zone E4 Environmental Living—that the development is for the purpose of extensive aquaculture, and
 - (iii) tank-based aquaculture in Zone R3 Medium Density Residential, Zone E3 Environmental Management or Zone E4 Environmental Living—that the development is for the purpose of small scale aquarium fish production, and
 - (iv) pond-based aquaculture or tank-based aquaculture in Zone W1 Natural Waterways, Zone W2 Recreational Waterways or Zone W3 Working Waterways—that the development will use waterways to source water.

- (3) The requirements set out in Part 1 of Schedule 6 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.

(4) **Extensive pond-based aquaculture permitted without consent in certain zones**

Development for the purpose of pond-based aquaculture, that is also extensive aquaculture, may be carried out without development consent if:

- (a) the development is carried out in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots or Zone RU6 Transition, and
- (b) the development complies with the site location requirements and operational requirements set out in Part 2 of Schedule 6.

(5) **Oyster aquaculture—additional matters that consent authority must consider in determining a development application**

In determining a development application for development for the purpose of oyster aquaculture, the consent authority must consider:

- (a) any provisions of any aquaculture industry development plan that are relevant to the subject of the development application, and
- (b) the *NSW Oyster Industry Sustainable Aquaculture Strategy*.

(6) **Oyster aquaculture permitted without consent in priority oyster aquaculture areas**

Development for the purpose of oyster aquaculture may be carried out without development consent:

- (a) on land that is wholly within a priority oyster aquaculture area, or
- (b) on 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.

(7) **Definitions**

In this clause:

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

extensive aquaculture has the same meaning as in the *Fisheries Management (Aquaculture) Regulation 2017*.

NSW Oyster Industry Sustainable Aquaculture Strategy means the third edition of the publication of that title, as published in 2016 by the Department of Primary Industries (within the Department of Industry).

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 (within the Department of Industry) and published on that Department's website.

[17] Schedule 6

Insert after Schedule 5:

Schedule 6 Pond-based and tank-based aquaculture

(Clause 5.19)

Part 1 Pond-based and tank-based aquaculture

Division 1 Site location requirements

1 Conservation exclusion zones

- (1) Must not be carried out on the following land, except to the extent necessary to gain access to water:
 - (a) land declared an area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*,
 - (b) vacant Crown land,
 - (c) land within a wetland of international significance declared under the Ramsar Convention on Wetlands.
- (2) 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 *Marine Estate Management Act 2014*,
 - (b) land declared as a marine park under the *Marine Estate Management Act 2014*.

Note. Nothing in this clause affects any requirement under an Act relating to land specified in this clause 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 (within the meaning of clause 5.19).

3 Pond-based aquaculture that is also intensive aquaculture—pond design

For pond-based aquaculture that is also intensive aquaculture—ponds must be capable of being drained or pumped and then completely dried.

4 Pond-based aquaculture and tank-based aquaculture that is also intensive aquaculture—freshwater discharges

For pond-based aquaculture and tank-based aquaculture that is also intensive aquaculture—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.

6 Definition

In this Division:

intensive aquaculture has the same meaning as it has in the *Fisheries Management (Aquaculture) Regulation 2017*.

Part 2 Extensive pond-based aquaculture

Division 1 Site location requirements

7 Conservation exclusion zones

- (1) Must not be carried out on the following land, except to the extent necessary to gain access to water:
 - (a) land declared an area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*,
 - (b) vacant Crown land,
 - (c) land within a wetland of international significance declared under the Ramsar Convention on Wetlands.

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

8 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

9 Species selection

Species of fish or marine vegetation cultivated or kept must be consistent with the relevant aquaculture industry development plan (within the meaning of clause 5.19).

10 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 waterbodies or wetlands.

11 Culture water

Must use freshwater.

[18] Dictionary

Insert “It includes oyster aquaculture, pond-based aquaculture and tank-based aquaculture.” after “1994.” in the definition of *aquaculture*.

[19] Dictionary, definition of “dairy (pasture-based)”

Insert “generally feed by grazing on living grasses and other plants on the land and” after “cattle”.

[20] Dictionary, definition of “extensive agriculture”

Omit paragraph (b). Insert instead:

- (b) the grazing of livestock (other than pigs and poultry) for commercial purposes on living grasses and other plants on the land as their primary source of dietary requirements, and any supplementary or emergency feeding, or temporary agistment or housing for weaning, dipping, tagging or similar husbandry purposes, of the livestock,

[21] Dictionary, definition of “extensive agriculture”

Omit paragraph (d). Insert instead:

- (d) a dairy (pasture-based) where the animals generally feed by grazing on living grasses and other plants on the land as their primary source of dietary requirements, and any supplementary or emergency feeding, or temporary agistment or housing for weaning, dipping, tagging or similar husbandry purposes, of the animals.

[22] Dictionary, definition of “feedlot”

Omit the definition and the note. Insert instead:

feedlot means a confined or restricted area that is operated on a commercial basis to rear and fatten cattle, sheep or other animals, but does not include a poultry farm, dairy or pig farm.

Note. Feedlots are a type of *intensive livestock agriculture*. Intensive livestock agriculture does not include *extensive agriculture*. See the definitions of those terms in this Dictionary.

[23] Dictionary, definition of “intensive livestock agriculture”

Insert “, sheep” after “goats, horses”.

[24] Dictionary, definition of “intensive livestock agriculture”

Omit “that are fed wholly or substantially on externally-sourced feed”.

[25] Dictionary, paragraph (c) of definition of “intensive livestock agriculture”

Omit “piggeries”. Insert instead “pig farms”.

[26] Dictionary

Insert in alphabetical order:

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

Note. Oyster aquaculture is a type of *aquaculture*—see the definition of that term in this Dictionary.

pig farm means land that is used to keep or breed pigs for animal production, whether an indoor, outdoor, free-range or other type of operation.

Note. Pig farms are a type of *intensive livestock agriculture*—see the definition of that term in this Dictionary.

pond-based aquaculture means 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. Pond-based aquaculture is a type of *aquaculture*—see the definition of that term in this Dictionary. Typical pond-based aquaculture is the pond culture of prawns, yabbies or silver perch.

poultry farm means land that is used to keep or breed poultry for animal production, whether for meat or egg production (or both) and whether an indoor, outdoor, free-range or other type of operation.

Note. Poultry farms are a type of ***intensive livestock agriculture***—see the definition of that term in this Dictionary.

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

Note. Tank-based aquaculture is a type of ***aquaculture***—see the definition of that term in this Dictionary. Typical tank-based aquaculture is the tank culture of barramundi or abalone.

[27] Dictionary, definition of “water reticulation system”

Omit “, dosing facilities and water supply reservoirs”. Insert instead “and dosing facilities”.