

State Environmental Planning Policy No 62—Sustainable Aquaculture (2000 EPI 473)

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New South Wales

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New South Wales

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State Environmental Planning Policy No 62—Sustainable Aquaculture (2000 EPI 473)



New South Wales

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, including sustainable oyster 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 development permissible in certain zones under the Standard Instrument, as identified in the *NSW Land Based Sustainable Aquaculture Strategy*, 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 (including risks related to climate change, in particular, rising sea levels), and
- (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.

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](#).

Department means the Department of Planning.

Director-General means the Director-General of the Department.

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

intensive 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.

minimum performance criteria—see clauses 7 and 8.

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.

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).

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

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.

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

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—

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

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.

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

tank-based aquaculture means 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 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.

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.

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.

(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.

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 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.

(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

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.

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.

8 Natural water-based aquaculture (other than oyster aquaculture) permissible with consent

- (1) This clause applies to development for the purpose of natural water-based aquaculture to which this Policy applies, other than oyster aquaculture development.
- (2) A person may carry out any such aquaculture development with development consent if, in the opinion of the consent authority, 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.

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.

9 Consent authority for permissible aquaculture

The consent authority for development to which this Policy applies (other than oyster aquaculture 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,
- (d) if there is no consent authority under paragraphs (a)-(c)—the Minister.

10 Consent authority to take aquaculture industry development plan into consideration

- (1) 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.
- (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*.

11 Other aquaculture development prohibited

Aquaculture development to which this Policy applies that is not permissible (whether with or without consent) under this Policy with development consent is prohibited.

Part 3 Determination of assessment category of aquaculture development

12 Project profile analysis

- (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.
- (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.

13 Categorisation of development having regard 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 in accordance with the opinion of the consent authority formed having regard to 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.
- (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.
- (4) This clause does not apply with respect to oyster aquaculture development.

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 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*.

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 (Repealed)

18 Application of amendments made by SEPP 62 (Amdt No 1)

The amendments made to this Policy by *State Environmental Planning Policy No 62—Sustainable Aquaculture (Amendment No 1)* extend to a development application made but not finally determined before the amendments commence.

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.

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.

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.

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.