



## PLANNING SYSTEM

State environmental planning policies

<b>Circular</b>	PS 07-014
<b>Issued</b>	22 August 2007
<b>Related</b>	PS 07-013

# Amendment no. 3 to SEPP 62 –implications for development that may affect oyster aquaculture

This circular is to advise coastal councils of the planning implications of State Environmental Planning Policy No. 62—Sustainable Aquaculture (Amendment No. 3), gazetted on 8 December 2006, and the NSW Oyster Industry Sustainable Aquaculture Strategy relating to developments that may affect oyster aquaculture.

### Introduction

Oyster aquaculture is the commercial cultivation of any species of edible oyster, e.g. Sydney rock oyster, Pacific oyster and Angasi flat oyster.

Oyster aquaculture in NSW is threatened by declining estuarine water quality, increased use of waterways and development adjacent to estuaries. These affect both oyster productivity and the suitability of oysters for human consumption.

OISAS identifies priority oyster aquaculture areas (POAA) and provides for the protection of these areas from development that may adversely affect the environmental conditions required for viable oyster aquaculture. OISAS also establishes industry best practice based on the principals of ecological sustainable development.

Copies of OISAS and maps showing the location of POAAs have been sent to the relevant coastal councils and are available from the Department of Primary Industries website at <http://www.dpi.nsw.gov.au>.

### Development that may affect oyster aquaculture

Consent authorities are required to consider whether, because of its nature and location, a development may have an adverse effect on oyster aquaculture or POAAs.

If such an effect is anticipated:

- the development application must be referred to the Department of Primary Industries for

comment (see Further Information below for address details for referral)

- the consent authority must consider these comments if received within 21 days.

A consent authority may refuse an application if it is satisfied that the development will have an adverse effect on, or impede or be incompatible with oyster aquaculture (or future oyster aquaculture in a POAA) despite any mitigation measures proposed.

In determining an application for any development the consent authority is to take OISAS into consideration.

Table 1. Water quality guidelines for oyster aquaculture areas

Parameter	Guideline	Source
Faecal (thermo-tolerant) coliforms	90th percentile of randomly collected Faecal coliform samples do not exceed 43MPN or 21 MF/100mL	ASQAP Operations Manual 2002 and the NSW Shellfish Program Operations Manual 2001
pH	6.75 – 8.75	Schumway (1996)
Salinity	20.0 – 35.0 g/L	Australian and New Zealand Guidelines for Fresh and Marine Water Quality (2000)
Suspended solids	<75 mg/l	
Aluminium	<10µg/L	
Iron	<10µg/L	
Other parameters	For other parameters please refer to Section 4.4 and Section 9.4 of the Australian and New Zealand Guidelines for Fresh and Marine Water Quality (2000)	

## What development is likely to have an adverse effect on oyster aquaculture or POAAs?

Development may have adverse impacts on 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 or the consumers of those oysters. Such development, and any other development that by its nature is likely to adversely affect the environmental conditions required for oyster aquaculture, must be referred to the Department of Primary Industries.

As a guide, development that is likely to have an adverse effect will be located in the same estuary catchment, be within 10 kilometres of a POAA or other oyster aquaculture, be in close proximity to a waterway and be:

- subdivision of land where the future development created by the subdivision will rely on onsite disposal of sewage effluent
- subdivision of land adjacent to a river or estuary or adjacent to foreshore crown reserve
- development that will rely on onsite disposal of sewage effluent
- development that includes small or private sewage treatment plants where effluent might be discharged to or infiltrate to a receiving water
- reticulated sewers with overflow or designated discharge points
- biosolid, effluent or purified wastewater reuse schemes
- development where significant volumes of organic or mineral fertilizer will be stored or used such as golf courses, turf farms, soil supplies, landscape supplies, nurseries
- development that may limit marine access to POAA
- tourism and recreation-related development immediately adjacent to a POAA or other oyster aquaculture
- marine-related development, including marinas, jetties, wharves, boat-launching ramps, boat repair facilities, charter and tourist boat facilities, boatsheds, moorings for visiting vessels, pump out facilities and commercial port facilities
- intensive livestock industries, livestock processing facilities, animal boarding or training facilities, stock and saleyards, animal racetracks
- dredging or reclamation
- development involving earthworks on potential or actual acid sulphate soil.

## OISAS to be considered in making local environmental plans

The Minister for Planning has issued a section 117 direction, which commenced on 19 July 2007 (see Direction No. 1.4 attached) requiring councils to show POAAs on local environmental plans and have regard for these areas in preparing a new local environmental plan. The Director-General of the Department of Primary Industries may object to the terms of a draft local environmental plan on the grounds of deleterious effects on an oyster aquaculture area.

### Further information

For more information on OISAS please contact:

Senior Policy Officer - Aquaculture  
Department of Primary Industries  
Locked Bag 1, Nelson Bay NSW 2315  
Phone: 02 4916 3823  
Mobile: 0 429 424 306  
Fax: 02 49819074

Referral of development applications to the Department of Primary Industries under clause 15B(1)(b) should be addressed, as relevant, to:

#### North Coast (Hastings River to Tweed River)

Senior Fisheries Conservation Manager  
Department of Primary Industries  
1243 Bruxner Highway Wollongbar NSW 2477  
Phone: 02 6626 1200

#### Central Coast (Manning River to Brisbane Water)

Senior Fisheries Conservation Manager  
Department of Primary Industries  
Private Bag 1, Nelson Bay 2315  
Phone: 02 4982 1232

#### Sydney Region (Botany Bay, Georges River and Hawkesbury River)

Senior Fisheries Conservation Manager  
Department of Primary Industries  
PO Box 21, Cronulla NSW 2230  
Phone: 02 9527 8422

#### South Coast (Shoalhaven River to Wonboyn River)

Senior Fisheries Conservation Manager  
Department of Primary Industries  
PO Box 97, Huskisson NSW 2540  
Phone: 02 4441 8969

### Authorised by:

Sam Haddad  
Director General

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**Important note:** This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

## 1.4 Oyster Aquaculture

### Objectives

- (1) The objectives of this direction are:
  - (a) to ensure that Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area are adequately considered when preparing a draft LEP,
  - (b) to protect Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.

### Where this direction applies

- (2) This direction applies to Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area as identified in the *NSW Oyster Industry Sustainable Aquaculture Strategy (2006)* ("the Strategy").

### When this direction applies

- (3) This direction applies when a council decides to prepare, or is directed by the Minister to prepare, any draft LEP that proposes a change in land use which could result in:
  - (a) adverse impacts on a Priority Oyster Aquaculture Area or a "current oyster aquaculture lease in the national parks estate"; or
  - (b) incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or a "current oyster aquaculture lease in the national parks estate" and other land uses.

### What a council must do if this direction applies

- (4) In the preparation of a draft LEP affected by this direction, the council shall:
  - (a) identify any Priority Oyster Aquaculture Areas and oyster aquaculture leases outside such an area, as shown the maps to the Strategy, to which the draft LEP would apply,
  - (b) identify any proposed land uses which could result in any adverse impact on a Priority Oyster Aquaculture Area or oyster aquaculture leases outside such an area,
  - (c) identify and take into consideration any issues likely to lead to an incompatible use of land between oyster aquaculture and other land uses and identify and evaluate measures to avoid or minimise such land use incompatibility,
  - (d) consult with the Director-General of the Department of Primary Industries (DPI) of the proposed changes in the preparation of the draft LEP, and
  - (e) ensure the draft LEP is consistent with the Strategy.
- (5) Where a draft LEP proposes land uses that may result in adverse impacts identified under (4)(b) and (c), council shall:
  - (d) provide the Director-General of DPI with a copy of the draft LEP and notification of the relevant provisions,
  - (e) allow the Director-General of DPI a period of 40 days from the date of notification to provide in writing any objections to the terms of the draft LEP, and
  - (f) include a copy of any objection and supporting information received from the Director-General of DPI with the statement to the Director-General of the Department of Planning under section 64 of the *Environmental Planning and Assessment Act 1979*.

### Consistency

- (6) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are of minor significance.

**Note:** In this direction:

- (a) "Priority Oyster Aquaculture Areas" has the same meaning as in the NSW Oyster Industry Sustainable Aquaculture Strategy; and
- (b) an "incompatible use of land" includes access to oyster leases being limited by the change in land use or the risk of adverse impacts as a result of that change in land use on water quality and, consequently, on the health of oysters and on the health of consumers of those oysters.