

Aquaculture Leases: Tenures and Renewals

August 2015

What is an aquaculture lease?

An aquaculture lease is a tenure over public water land for the purpose of aquaculture.

Lease tenure

In accordance with the *Fisheries Management Act 1994*, aquaculture leases are let for a maximum term of 15 years. The lessee is entitled to the first renewal for another term of 15 years and subsequent renewals, subject to conditions.

Lease renewals

NSW DPI receives an average of 134 lease renewal applications each year. Of these, an average of three each year are refused.

Instances where a renewal may be refused include:

- The application is incomplete (e.g. all details including photos are not submitted);
- The lessee has outstanding debt;
- The lessee has a poor record of managing their aquaculture leases (e.g. failed to clean-up a previously terminated lease area);
- The lessee is a disqualified person; or
- The area is no longer available for aquaculture, or it is in the public interest to refuse the application.

Transactions permitted within a lease's tenure

Within the tenure of a lease, the lessee may apply to:

- Transfer (sell) the lease;
- Surrender (either the whole or part of) the lease so the area is returned to public water land;
- Sublet the lease to a current aquaculture permit holder;
- Subdivide the lease to create two smaller areas;
- Consolidate the lease with an adjoining lease to create one larger area (provided the two areas are held by the same lessee).

Activities not permitted on a lease

Activities not permitted include:

- Cultivating or holding stock for another person without a sublet agreement being in place;
- Cultivating stock or installing infrastructure on an expired or otherwise terminated lease;
- Installing cultivation material outside the boundaries of the lease, as shown on the approved GIS plan;
- Using cultivation equipment not endorsed by the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS);
- Depositing waste in the lease area; and
- Constructing any kind of structure without the relevant approvals.

Lease mortgages

An aquaculture lease is "real property" and as such, a mortgage may be endorsed over the lease.

In accordance with the *Fisheries Management Act 1994*, the Minister must endorse on a lease document the particulars of any mortgage, charge or other interest to which the lease is subject.

There is no administrative charge for registering or discharging a mortgage on an aquaculture lease.

If a mortgage or other interest (encumbrance) is endorsed over a lease, NSW DPI cannot progress a lease transaction (e.g. transfer, surrender) without the written consent of the mortgagee.

As at 30 June 2015, there were 118 oyster leases with a mortgage endorsed over the area.

More information

See www.dpi.nsw.gov.au.

For legislation see www.legislation.nsw.gov.au.