



## **Hunter and Central Coast Sustainable Aquaculture Strategy**

### **Readers' Note**

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This document is part of a larger publication. The remaining parts and full version of the publication can be found at:

<http://www.dpi.nsw.gov.au/fisheries/aquaculture/publications/general-management-and-policy/hunter-and-central-coast-sustainable-aquaculture-strategy>

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# Integrated Approvals

Hunter and Central Coast Sustainable  
Aquaculture Strategy  
Land Based Aquaculture

A NSW Government Initiative

# Hunter and Central Coast Sustainable Aquaculture Strategy

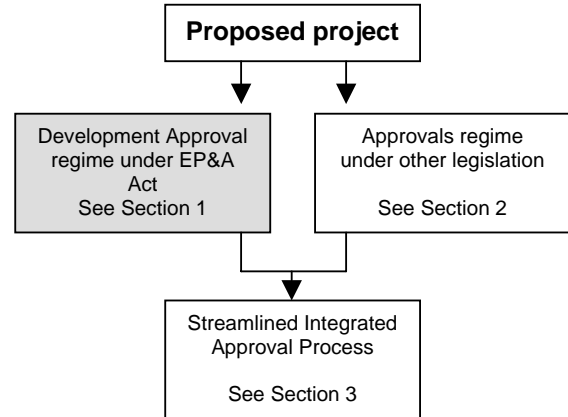
A NSW Government initiative of Department of Primary Industries, Department of State and Regional Development, Department of Environment and Conservation, Department of Land, Department of Infrastructure, Planning and Natural Resources and NSW Premiers Department to encourage sustainable aquaculture in New South Wales.

## Integrated Approvals

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## 1. Planning approval regime



### The Existing Assessment Regime

Under the *Environmental Planning and Assessment Act 1979* (EP&A), new aquaculture enterprises or alterations or additions to existing farms require an approval under the Local Environment Plan (LEP). The LEP also identifies the areas where aquaculture projects are permissible and where they are prohibited. In regional LEPs, both tank and pond aquaculture is permissible in most rural zones, while tank aquaculture is not permissible in industrial zones in most LEPs.

All aquaculture developments are considered to be integrated development because aquaculture permits are required from Department of Primary Industries and possibly a pollution licence from DEC and water licence from DIPNR.

Most intensive aquaculture developments are designated development because of the provisions in Schedule 3 of the EP&A Regulation and require an environmental impact statement (EIS).

Under Schedule 3, intensive aquaculture farms (involved in supplemental feeding in tanks or ponds) need an EIS if they:

- are located in areas of high water table or acid sulfate soils; or
- have a total water storage area of more than 2 hectares or a total water volume of more than 40 megalitres and are located on a floodplain or release wastewater or sludge into a natural waterbody or wetlands or into groundwater; or
- have a total water storage area of more than 10 hectares or a total water volume of more than 400 megalitres; or
- farm species not indigenous to New South Wales within 500 metres of a natural waterbody or wetlands or on a floodplain.

These provisions will continue to prevail in areas where the Strategy does not apply. It should be noted that this Strategy only applies to land-based aquaculture.

**1.1 The Strategy’s assessment regime**

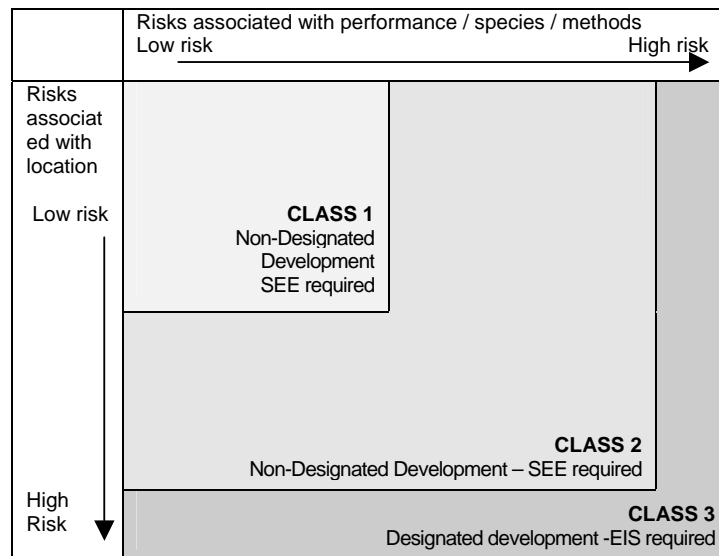
As a component of the Strategy, a more streamlined assessment and approvals regime has been developed to complement the Aquaculture Industry Development Plan (AIDP) under the Fisheries Management Act. As a result of the provisions in the AIDP, the level of risk associated with different types of aquaculture proposals in different locations can be used to rank classes of development for assessment and approval purposes.

Based on the location and performance risk profiles, approval processes can be streamlined without compromising the environmental outcome. The Strategy identifies three categories of development based on the level of risk associated with their location and performance. This forms the basis for the new assessment and approval process implemented through an amendment to the EP&A Regulation and SEPP 62 - Sustainable Aquaculture. The SEPP has the potential to apply in any region of the State where Regional Sustainable Aquaculture Strategy have been developed and adopted by the Government.

SEPP 62 in combination with performance provisions in the Aquaculture Industry Development Plan (AIDP):

- clarifies that aquaculture is permissible in certain areas;
- identifies aquaculture development that are Class 1 and Class 2 non-(designated development) and Class 3 (designated development).

**Figure 6. Level of Assessment based on risk profile**



The amendment to the EP&A Regulation recognises Class 1 development as a class of development that has been pre-assessed through the AIDP as being low risk. As a result it reduces the exhibition time to 14 days and the approvals cycle to 40 days.

**Table 28. Classes of Development**

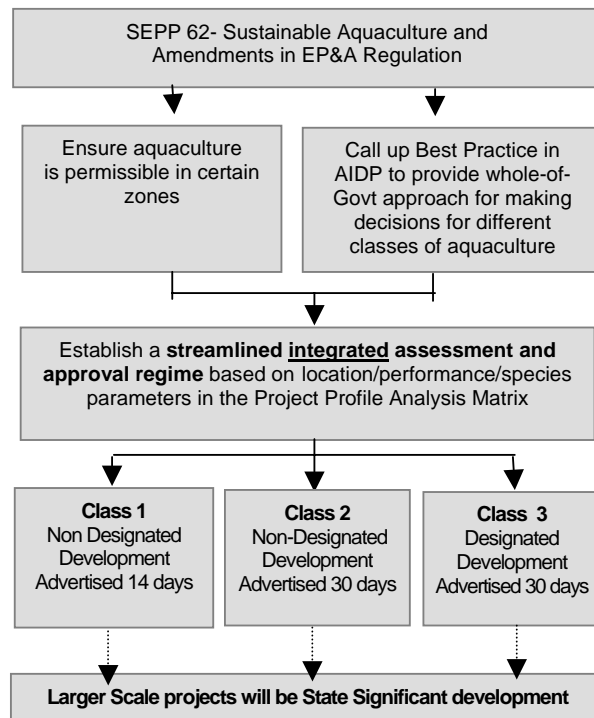
Class	Level of Assessment	Assessment document	Minimum days Advertised	Decision target time
Class 1	Non-Designated Development	SEE	14 days	40 days
Class 2	Non-designated Development	SEE	30 days	60 days
Class 3	Designated Development	EIS	30 days	60 days

**Change of assessment provisions under the EP&A Regulation**

Some of the Class 1 and 2 developments may meet the criteria in Schedule 3 of the EP&A Regulation for designated development that applies across the whole State. As Class 1 and 2 development have been pre-assessed under the AIDP as not likely to significantly affect the environment, Schedule 3 of the EP&A Regulation has been amended to remove the designation status from these classes of developments. However, Class 3 development have been classified as designated development, even though that class may include development which would otherwise not be designated development under Schedule 3.

In addition, to streamline the assessment process for Class 1 development because this class of development has been pre-assessed as being low risk, the EP&A Regulation has been amended to reduce the exhibition period for this class of development to 14 days. Consent authorities and approval bodies will have 21 days to request additional information for this class of development. The approval cycle has been reduced from 60 days to 40 days.

**Figure 7. Integrated Assessment**



## 1.2 The consent authority

It is the responsibility of the consent authority (the local council or the Minister for Infrastructure and Planning) to determine the level of assessment for a particular development application. Therefore it is essential that the applicant consults with the consent authority prior to lodging a development application and provides the consent authority with sufficient information to make a decision on the level of assessment based on the Project Profile Analysis in the Strategy. If in doubt about any technical issue, the applicant should first consult with Department of Primary Industries or the relevant government agency prior to submitting the information in the Project Profile Analysis to the consent authority (council or Department of Infrastructure, Planning and Natural Resources).

Once the consent authority has indicated what class of development the application falls into, the relevant development application (DA) documentation should be prepared (SEE or EIS) to assess the impacts of the project and to demonstrate compliance with best practice in the AIDP. If the project is Class 3, then the Director-General of the Department of Infrastructure, Planning and Natural Resources must be consulted regarding any requirements for the preparation of the EIS.

### (a) Local development

The Local Council is the consent authority for most aquaculture development proposals – called Local Development.

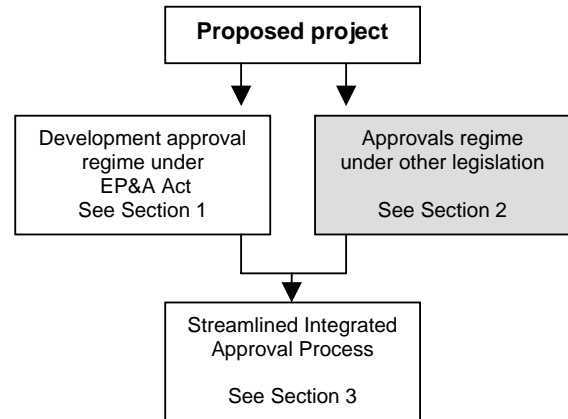
### (b) State significant development

Certain types of aquaculture development that have been declared by the Minister to be of State or regional planning significance are categorised as being “State Significant” development. The Minister for Infrastructure and Planning is the consent authority for State Significant development and the development application is lodged with Department of Infrastructure, Planning and Natural Resources, not the council.

An aquaculture project is State significant development if in the opinion of the consent authority,

1. the project has been identified as being of State or regional significance in a strategic plan adopted by the Director-General; or
2. the project will employ more than 20 people; or
3. the project is to be located in an “environmentally sensitive area of State significance”. For the purpose of the Declaration, environmentally sensitive areas of State significance means:
  - (a) land identified and mapped in SEPP 14 or SEPP 26, or
  - (b) land reserved as an aquatic reserve or marine park under the Fisheries Management Act 1994, or
  - (c) land declared under RAMSAR or recognised as a World Heritage area; or
  - (d) land identified in a planning instrument as being of Aboriginal cultural significance; or
  - (e) land identified by the Minister for the Environment for inclusion in a National Park but which has not yet been gazetted; or
  - (f) land identified as being critical habitat or habitats of threatened populations or ecological communities listed in the Threatened Species Conservation Act at the time the development application was lodged.

## 2. Approval regime under other legislation



The Aquaculture Industry Development Plan (AIDP) has been developed to take into consideration the provisions of all relevant legislation and approval provisions. Where model performance outcomes or approval conditions exist in relation to any approval, these have been incorporated into the AIDP. Performance provisions have been set to represent best practice.

### 2.1 Existing integrated approvals regime

Under the Integrated Development Assessment (IDA) provisions of the Environmental Planning and Assessment (EP&A) Act, aquaculture developments (whether designated or non-designated) are considered to be integrated development if they require an Aquaculture Permit or an amendment to an existing Aquaculture Permit.

Under the IDA provisions of the EP&A Act, if licences, permits and approvals listed in Table 29 are required for a development, these approvals are linked to the development consent process. All development requiring one or more of these approvals are considered to be “integrated development”.

Under the Integrated Development Assessment provisions, the consent authority must liaise with other approval authorities for an integrated consent. This process results in a streamlined approval process and a reduction in overlapping requirements from approval authorities. The process helps to ensure that the approval requirements are appropriate for the particular type of aquaculture proposal and reflect the level of risk.

**Hunter and Central Coast Sustainable Aquaculture Strategy**  
**Integrated Approvals**

**Table 29. Summary of Integrated Approvals under the EP&A Act**  
*Most approvals will only relate to the establishment phase of the project. Those marked with \* may be relevant throughout the life of the project.*

<b>Act</b>	<b>Provision</b>	<b>Integrated approvals applying to aquaculture</b>
<i>Fisheries Management Act 1994</i>	s 144* s 201/205	<ul style="list-style-type: none"> <li>• aquaculture permit</li> <li>• permit to carry out dredging or reclamation work in any waters or</li> <li>• to cut, remove, damage or destroy marine vegetation on public water land or an aquaculture lease, or on the foreshore of any such land or lease</li> </ul>
<i>Heritage Act 1977</i>	s 58	<ul style="list-style-type: none"> <li>• approval in respect of the doing or carrying out of an act, matter or thing referred to in s 57 (1)</li> </ul>
<i>National Parks and Wildlife Act 1974</i>	s 90*	<ul style="list-style-type: none"> <li>• consent to knowingly destroy, deface or damage or knowingly cause or permit the destruction or defacement of or damage to, a relic or Aboriginal place</li> </ul>
<i>Protection of the Environment Operations Act 1997</i>	ss 43 (a), 47 and 55* Ss 43 (b), 48 and 55*  Ss 43 (d), 55 and 122*	<ul style="list-style-type: none"> <li>• Environment protection licence to authorise carrying out of scheduled development work at any premises.</li> <li>• Environment protection licence to authorise carrying out of scheduled activities at any premises (excluding any activity described as a “waste activity” but including any activity described as a “waste facility”).</li> <li>• Environment protection licences to control carrying out of non-scheduled activities for the purposes of regulating water pollution resulting from the activity.</li> </ul>
<i>Rivers and Foreshores Improvement Act 1948</i>	Part 3A	<ul style="list-style-type: none"> <li>• Permit under Part 3A</li> </ul>
<i>Roads Act 1993</i>	s 138	consent to: <ul style="list-style-type: none"> <li>• erect a structure or carry out a work in, on or over a public road, or</li> <li>• dig up or disturb the surface of a public road, or</li> <li>• remove or interfere with a structure, work or tree on a public road, or</li> <li>• pump water into a public road from any land adjoining the road, or</li> <li>• connect a road (whether public or private) to a classified road</li> </ul>
<i>Water Act 1912</i> <i>Note: the Water Act is under review</i>	s 10*  s 13A*  s 18F*  s 20B*  s 20CA*  s 116  Part 8	<ul style="list-style-type: none"> <li>• licence to construct and use a work, and to take and use water, if any, conserved or obtained by the work, and to dispose of the water for the use of occupiers of land</li> <li>• licence to construct a supply work and to take and use water obtained thereby</li> <li>• permit to construct and use a work, and to take and use water, if any, conserved or obtained by the work, and to dispose of the water for the use of occupiers of land for any purpose other than irrigation</li> <li>• authority to take water from a river or lake for the purposes of a joint water supply scheme</li> <li>• authority to construct a supply work and to take and use water conserved or obtained thereby</li> <li>• licence to commence sinking a bore or to enlarge, deepen or alter a bore</li> <li>• approval to construct a controlled work</li> </ul>

### **Aquaculture permits**

All aquaculture enterprises including hatcheries and fishout ponds must hold a valid aquaculture permit from Department of Primary Industries.

#### ***Class D Permit - Intensive Aquaculture***

Class D permits authorise intensive aquaculture to be undertaken in specifically constructed ponds (earthen, concrete, plastic lined), intensive tanks, raceways, aquaria and floating cages. To ensure viability and environmental sustainability, attention needs to be given to water availability, water treatment/reuse, farm design and best aquaculture practice. Intensive growout and effluent storage facilities must not be constructed in natural waterways. Intensive facilities must have a reliable supply of good quality water - 40 ML/ha/yr is the recommended minimum water budget required for freshwater earthen pond culture.

#### ***Class F Permit - Fishouts***

Fishout facilities offer aquaculture farms opportunity to diversify activities and supplement farm income with tourism. Fish cultured extensively or intensively in confined areas offer excellent opportunities for anglers. Fishouts can be associated with existing aquaculture farms or established as an adjunct to tourist and recreational facilities, eg. farm-stays, golf course, and tourist resort. For fishout facilities operated on intensive farms, permit conditions require all fishout operators to provide fishing equipment that is used solely at the fishout facilities in order to reduce any risk of introducing disease to the farm or spreading it from the farm. Privately owned gear may be used on extensively operated farms.

#### ***Class G Permit - Experimental Aquaculture***

The Class G permit offers proponents the opportunity to trial aquaculture on a limited scale, under appropriate conditions for a defined time period. The Class G permit promotes the trialing of aquaculture sites, species and associated technologies to assess commercial and biological viability. The Fisheries Management Act 1994 does not permit proponents undertaking experimental fish culture to sell the fish at the end of the trial without an aquaculture permit.

#### ***Class H Permit - Hatcheries***

The development of an aquaculture industry depends on the reliable supply of juvenile stock. There is also an increased focus on hatcheries to produce fingerlings for conservation purposes and for stock enhancement of waterways for recreational and commercial fishers. However, the establishment and operation of a hatchery for any aquaculture species has serious potential hazards, both from an environmental and economic perspective.

### Changes to the Protection of the Environment Operations Act

An aquaculture activity, not including oysters, will require a licence under the *Protection of the Environment Operations Act 1997* (POEO) if it is listed in Schedule 1 of the Act. A recent amendment to the Schedule 1 by way of a Regulation, makes aquaculture projects which discharge to natural waterbodies scheduled premises.

In circumstances where a licence is required under the POEO Act, the DEC is the appropriate regulatory authority for regulating all types of pollution (air, noise, water and waste) generated at the premises. Aquaculture which does not discharge to natural waterbodies will no longer be scheduled premises. For those aquaculture proposals that are non-scheduled premises, local council is usually the appropriate regulatory authority for regulating pollution (air, noise, water and waste) generated at the premises.

### 2.2 Threatened Species Conservation Act

Under s5A of the EP&A Act, the consent authority must consider whether the granting of consent for an aquaculture proposal is likely to significantly affect terrestrial or aquatic threatened species, populations or ecological communities or their habitats (listed in the *Threatened Species Conservation Act 1995* and in the *Fisheries Management Act 1994*).

Applicants must provide the consent authority with adequate information to reach a conclusion as to whether threatened species, populations or ecological communities or their habitats are likely to be present on the development site and if so if the development is likely to significantly affect them. This is called the “8 Part Test”.

If there is likely to be a significant impact or if the proposal is on land that is, or is part of critical habitat, a Species Impact Statement (SIS) must be prepared in accordance with the requirements of the Director-General of DEC (terrestrial plant and animal species and including marine mammals and reptiles) or Director-General of DPI (marine vegetation and aquatic species not including marine mammals and reptiles). The SIS may be integrated into the SEE or EIS or exhibited separately. If a SIS is required and council determines that a proposal is likely to proceed and will have a significant impact on threatened species, populations, ecological communities or their habitats, council must seek the concurrence of the Director-General of DEC/DPI in making a decision. The Minister as consent authority must consult with the Minister for the Environment / Primary Industries in making a decision.

*Appendix 2 of the Assessment Guidelines provides the details of the requirements of the Threatened Species Conservation Act and the Fisheries Management Act and the “8 Part Test”.*

### 2.3 Other approvals

In addition to those approvals listed in S91 of the EP&A Act, approvals may be required under other legislation such as

- *Crowns Land Act (if the project is on Crown land or access is required across Crown land for water supply, utilities or road access),*
- *Native Vegetation Conservation Act (if clearing native vegetation not covered under the Rivers and Foreshore Act)*
- *National Parks and Wildlife Act, (if intending to destroy predator birds)*

- *Exhibition of Animals Act (if intending to display live fish)*

To issue these approvals, additional consultation, assessment and approvals may be required after the integrated approval has been issued. Where possible or appropriate, these approvals should be treated as if they are integrated development approvals. Where this is possible, the integrated approvals approach will ensure that the provisions of this legislation are considered at the outset and are complied with in an efficient manner through the integrated approvals framework.

It should be noted that if a proposal is to be carried out in the vicinity of a marine park, under the Marine Parks Act 1997, the likely impact on the marine park must be considered and the Marine Parks Authority must be consulted if impacts are likely.

## 2.4 Native title and land claims issues

Most vacant Crown land in the Hunter and Central Coast region is now under at least one claim. Typically, Native Title Claims under the Commonwealth *Native Title Act* take a long time to be resolved. Generally, claims under the *NSW Aboriginal Land Rights Act* are granted unless an essential public use of the lands can be proved.

Proposals made on Crown lands under Native Title claims cannot proceed until the claims are resolved. Aquaculture applications that require works such as road or water pipeline access across Crown Land under Native Title claims should be avoided unless agreements can be made in writing with the claimants. It would be expected that if the works do not adversely affect the estuary or the broader environment, agreement could be gained for access across Crown land under claim.

## 2.5 Commonwealth legislation

### (a) Wildlife Protection Act

If it is intended that native fish species are to be exported, an approval may be required from the Fisheries and Aquaculture Branch of the Department of Agriculture, Fisheries and Forestry, GPO Box 858 Canberra ACT 2601. The Branch should be contacted regarding information requirements for approvals or visit the web site (<http://www.affa.gov.au>). Changes to Schedule 4 of the Wildlife Protection Act came into effect in December 2001. Prior to this, the export of most marine fish will continue to be exempt from export controls under this Act.

### (b) Environment Protection of Biodiversity and Conservation Act

Aquaculture proposals that are likely to affect matters of “national” significance as defined under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) must be referred to Department of the Environment and Heritage to determine if an approval is required.

For more information about the EPBC Act and for a guideline on National Significance Criteria and for guidance on when proposals must be referred to

Department of the Environment and Heritage, call Department of the Environment and Heritage's Community Information Unit on 1800 803 772 or visit the web site ([www.deh.gov.au/epbc/](http://www.deh.gov.au/epbc/)).

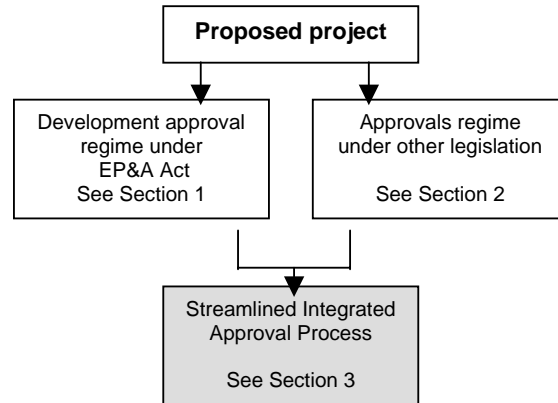
An EPBC on-line information system is available at Department of the Environment and Heritage's web site and can be used to help determine whether a specific action may need referral. The system allows a proposal's location to be entered and a search made against geographic information on matters protected under the EPBC Act. Referrals may be submitted by mail to; Referrals Section (EPBC Act), Approvals and Legislation Division, Department of the Environment and Heritage, GPO Box 787, CANBERRA ACT 2601, or facsimile (02 6274 1878) or electronically [epbc@deh.gov.au](mailto:epbc@deh.gov.au).

If an approval is triggered under the EPBC Act, an EIS must be prepared under the EPBC Act (until such time as a bilateral agreement has been approved and the NSW EIA system is accredited). The Commonwealth assessment parallels the NSW EIS process and can be carried out along with the NSW environmental assessment.

**An EPBC approval** is required for any development that significantly affects:

- one or more of these **Species and Ecological Communities** protected under the EPBC Act. The EPBC Act adopts Schedule 1 of the *Commonwealth Endangered Species Protection Act 1992* which includes species such as the Little Tern *Sterna albifrons*. The listed species and ecological communities protected under the EPBC Act are regularly reviewed.
- **Migratory Species** protected under CAMBA and JAMBA international agreements. The full list of species can be seen on the Internet. They include CAMBA species and JAMBA species (*See Site Selection Section*).
- **Listed Marine Species** including all species in the Family Cheloniidae (marine turtles), the Family *Dermochelys coriacea* (leatherback turtles) and the Class Aves (birds) that occur naturally in Commonwealth marine areas.
- **World Heritage Area** Please note that a project does not need to be in or next to a World Heritage area to have an impact eg development in a catchment of World Heritage area could significantly affects water quality and quantity in the World Heritage area.
- **Ramsar wetlands**. Kooragang Island and the Myall Lakes are listed Ramsar Wetlands in the Hunter and Central Coast Region. However it should be noted that wetlands listed in the *Directory of Important Wetlands in Australia* should also be considered.
- **Commonwealth land or activities**.

### 3. Streamlined integrated development process



#### 3.1 Pre-lodgement consultation

Prior to lodging an application, the applicant should have considered the matters in the AIDP with regard to *Business Planning*, *Species Selection*, *Site Selection* and *Planning and Design*. In particular, the applicant should check to ensure that the proposal, in the applicant's opinion, meets the Minimum Performance Criteria.

##### (a) Selecting the preferred options

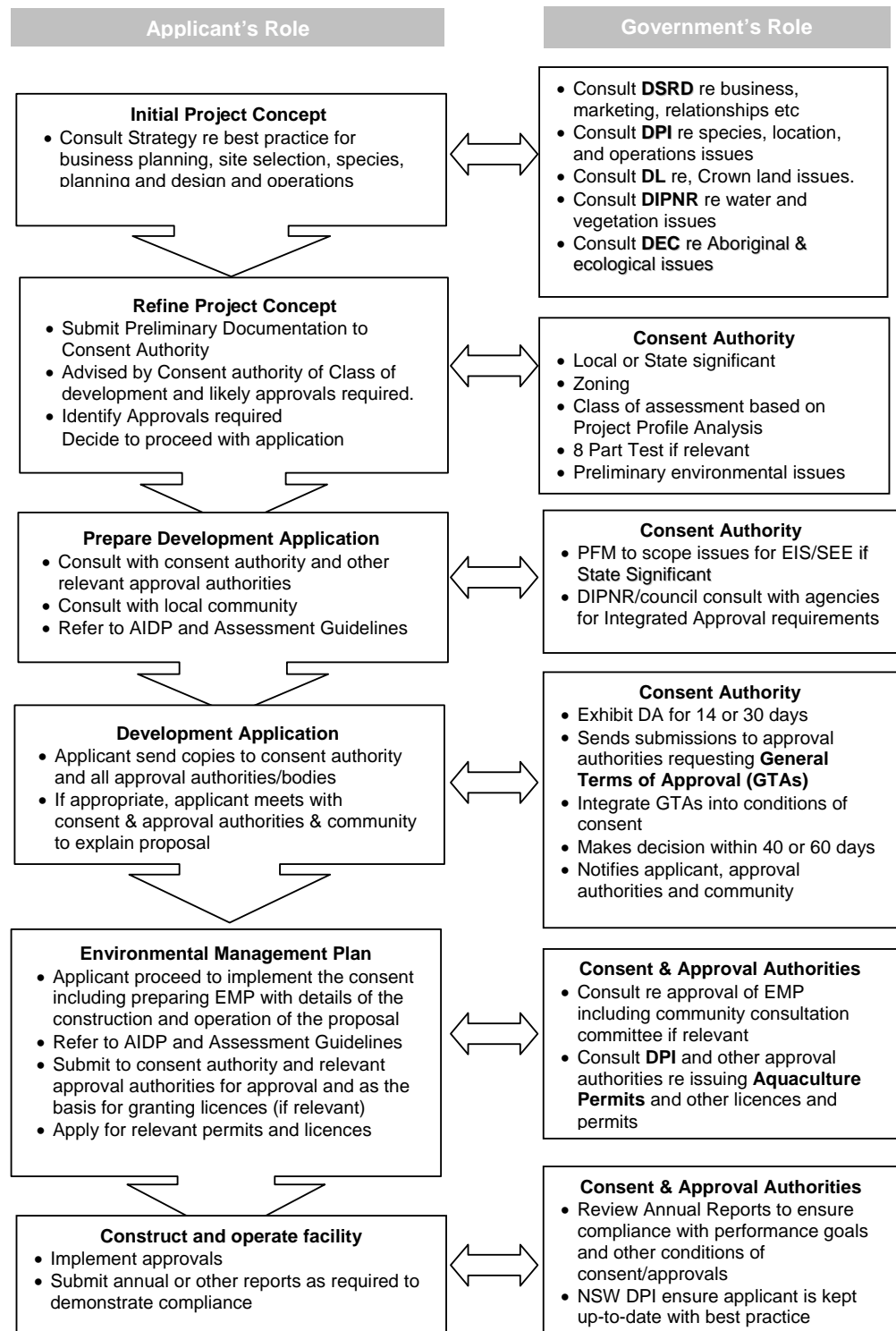
The Project Profile Analysis matrix provides a basis for ranking site, design, layout and operational alternatives preferably resulting in a proposal with a low level of environmental impacts which will minimise the need for expensive on-going mitigation measures and monitoring. It is preferable to avoid impacts when possible. The availability of mitigation measures to minimise impacts is second best.

See the Project Profile Analysis Section

It is wise for the applicant to consult with the Department of Primary Industries early in the option selection phase especially with regard to the species and production issues. In addition, where there is a need for a new water supply, DIPNR should be contacted at the outset regarding availability and security of quality water supply. DL and DIPNR can also provide technical advice regarding dam construction, drainage and flooding, vegetation management and Crown lands issues.

While recognising that environmental issues are not the only factors in selecting sites or operational options, it is critical that when assessing alternatives, environmental constraints and the long term costs are weighted with other factors, in particular start-up costs (eg. land and construction costs). It is preferable that any serious operational constraint is identified at this stage, rather than later after significant investments has been entered into.

Figure 8. Integrated Approval Process



**(b) Establishing who is the consent authority**

It is essential to consult the consent authority early in the approvals process (Council for Local development or the Department of Infrastructure, Planning and Natural Resources for State significant development). The principal criteria for State significant aquaculture development are whether the project will employ more than 20 people (ie equivalent to 20 people full time taking into consideration part time or casual workers) or if it is located in environmentally sensitive locations eg affecting a SEPP 14-Coastal Wetlands (Check Section 1.3 for the full list of criteria). If the project is State significant, the Department of Infrastructure, Planning and Natural Resources should be notified as soon as possible, as in most circumstances, a planning focus meeting would be convened to clarify environmental or other outstanding issues.

**(c) Establishing the level of assessment**

The applicant should consult with the Department of Primary Industries on the technical issues in the Project Profile Analysis such as site location, the species and production methods. As a result, the applicant should submit a **Project Profile Analysis** to the consent authority (council or Department of Infrastructure, Planning and Natural Resources) to establish the Class of assessment for the proposal. It is essential to consult with the consent authority prior to lodging a development application to determine if a SEE or an EIS is required.

If the Project Profile Analysis indicates that the development falls into the Class 1 or 2 a SEE must be prepared. If the project falls into Class 3 ie designated development, an EIS must be prepared.

If there is likely to be any disturbance of native vegetation or habitats of native terrestrial or aquatic fauna, an "8 Part Test" (under s5A of the EP&A Act) should be undertaken to establish if a Species Impact Statement (SIS) is required. (See *Appendix 2 of Assessment Guidelines*)

**(d) Documentation to accompany a DA**

The Assessment Guideline and the relevant performance goals and best practice in the AIDP provide the information for the preparation of a SEE or EIS to accompany a development application. In addition, the applicant must consult:

- *If an EIS is required*, the Director-General of the Department of Infrastructure, Planning and Natural Resources for any additional requirements of the EIS.
- *If a SIS is required*, the Director-General of DEC or DPI.

Whatever document is prepared, it should address relevant issues in sufficient detail so that the various approval authorities can quickly and efficiently make an informed decision about the environmental impacts of the proposal and whether it complies with the AIDP. If insufficient information is provided, approval authorities can "stop the assessment clock" and delay the approval of the proposal.

If an EIS is required and/or the development is State significant development, a planning focus meeting may be convened with Department of Infrastructure,

Planning and Natural Resources, Department of Primary Industries, Council and other relevant Government Agencies, to determining whether there are any additional matters (to those in the Assessment Guidelines) which require the consideration of the applicant in the preparation of the EIS/SEE.

Following the planning focus meeting, the Director-General of the Department of Infrastructure, Planning and Natural Resources must be consulted for any specific requirements to be included in the EIS/SEE. Department of Infrastructure, Planning and Natural Resources must formally consult with relevant approval authorities for their specific requirements (in addition to the ones in the *Assessment Guidelines*) to be included in the Director-General's Requirements.

### 3.2 Development application

#### (a) Lodging an application

Care should be taken to ensure all relevant information is provided with the application so that there are not delays as a result of additional information being requested including:

- the development application on the appropriate form with relevant supporting documentation;
- indication of all approvals required;
- the owners consent (if the applicant is not the owner. DL must be consulted if Crown Land is affected);
- the SIS if relevant; and
- the relevant development application fee sent to the Consent authority and assessment fee sent directly to each relevant approval authorities.

The applicant is required to lodge a copy of the development application with the relevant integrated approval body either before or on the same day as they lodge the DA with the council for local development or Department of Infrastructure, Planning and Natural Resources for State significant development. It is wise to check with the consent authority as to the appropriate regional office of the integrated approval body that will be assessing the application. In some cases, the consent authority will dispatch the DA information to the approval bodies on behalf of the applicant.

If there is a need for a clearing approval under the Native Vegetation Conservation Act, an application should be lodged with DIPNR at the same time to ensure that it can be considered simultaneously.

Within 2 days of receiving the application, the consent authority must notify the relevant approval body of the receipt of the DA. The consent authority has 7 days to check if the DA is not valid (these time periods could be extended).

If the information in the application and accompanying documents is insufficient, the consent authority and the integrated approval bodies may request additional information from the applicant during the first 21/25 days of the development application being lodged. A request from an integrated approval body (through the consent authority) will stop the "assessment clock" (for the purposes of deemed refusal) until the requested information is received. When the applicant supplies the consent authority with the

information, they will refer the information to the integrated approval bodies and 're-start' the clock 2 days after the information is sent.

## **(b) Assessment**

In making a determination, the consent authority is required to consider s79C of the EP&A Act which provides the following five generic heads of considerations:

matters in environmental planning instruments (SEPPs, REPs and LEPs), including draft instruments, as well as development control plans, and prescribed matters (the coastal policy and changes of building use);

- the impact of the development on the environment;
- the suitability of the site for the development;
- any submissions received; and
- the public interest.

The consent authority has 40 days (if Class 1) and 60 days (if Class 2 or 3) from the day the development application was lodged to determine the application. This time includes the exhibition period. If the clock is stopped as a result of a request for additional information, the number of days the clock is stopped is added to the total number of days for a determination.

### **Class 1 Non-designated development**

Class 1 category projects have low risk operational characteristics in low risk locations. As pre-assessed in the AIDP, these types of proposals have predictable outcomes. The applicant must lodge an advertised integrated development application (DA) with a straight forward statement of environmental effects (SEE) which simply sets out the details of the development to demonstrate compliance with all the Class 1 criteria and with the best practice in the AIDP. Streamlined integrated approval provisions apply and the DA and SEE would only be advertised for 14 days with a 40 days assessment cycle.

### **Class 2 Non-designated development**

All Class 2 developments are non-designated integrated development with a SEE prepared to assess the impacts on the environment. This category of proposal carries a low or acceptable level of risk but will require a more substantial assessment in the SEE than Class 1 projects. A minimum 30 day exhibition period will provide for public participation. As part of the assessment process, consideration would need to be given to whether non-compliance with certain aspects of the AIDP is reasonable for this type of development. This would be based on a case by case assessment. A 60 day assessment cycle would apply with a streamlined integrated approval regime.

### **Class 3 – Designated development**

This category of proposals is higher risk. An application for a proposal meeting the criteria in this category would require an EIS to be prepared to fully assess the implications of the proposal. A minimum 30 day exhibition period will provide for public participation. Again, the proposal would need to incorporate the best practice in the AIDP but may also require additional measures to manage the risks associated with the particular location and/or operational regime. If these developments were previously designated development, they would remain designated. If they were previously non-

designated they would become designated. A 60 day assessment cycle would apply with a streamlined integrated approval regime.

### (c) Integrated approval

All projects will be integrated development as an aquaculture permit is required in addition to development consent. In addition, other approval authorities may need to give an approval particularly for the establishment of the project. The integrated approval body has a fixed period to inform the consent authority of its “general terms of approval”.

- If a SIS has been required for a “local” development and the consent authority is likely to approve the development and considers it will have a significant impact on threatened species, the Director-General of DEC/DPI will make a decision as to whether to grant concurrence in relation to the approval of the proposal. In the case of State significant development where a SIS has been required, the Minister must consult with the Director-General of DEC prior to making a decision.
- If it is considered by DEC that a relic or Aboriginal place is likely to be disturbed, DEC can require up to an additional 46 days to consult with Aboriginal communities, organisations or Land Councils after the development application has been lodged prior to issuing general terms of approval.

The “general terms of approval” should be consistent with the performance provisions in the AIDP

The general terms should take a performance-based approach with more specific requirements detailed in the subsequent licence or other approval. If the approval body fails to inform the consent authority of its general terms within the prescribed period, the consent authority may proceed with determining the development application. In these circumstances, the agency will be bound by the development consent conditions as if they had given general terms of approval. The agency can not subsequently refuse to issue an approval.

Any approval issued within three years of the development consent by the approval body must be consistent with the consent.

When an approval body is not prepared to give its general terms of approval, it can require the consent authority to refuse the development application. With State significant development, if a resolution cannot be agreed between the approval body and the Minister, the Minister must submit the dispute to the Premier for settlement under section 121 of the EP&A Act. Also with State significant development, the Minister is not bound by the general terms of approval bodies.

### (d) Appeal provisions

An integrated DA may be deemed to be refused if a decision has not been made within 40 days (if Class 1) and 60 days (if Class 2 or 3) plus the number of days when the clock was stopped.

A deemed refusal simply allows the applicant to begin proceedings in the Land and Environment Court and does not prevent the consent authority

determining the application. The applicant may choose to continue working with the consent authority, Department of Primary Industries and other relevant approval authority to find a solution to any outstanding issues that may be holding up the approval process. The Court may make determinations on development consents where an applicant has appealed against a refusal or in relation to conditions of consent, or when a third party has appealed against the decision on the legality of the process.

With Class 3 development, an objector to the DA can appeal the decision of the consent authority in the Land and Environment Court on the merits of the decision.

Where integrated development consent is considered by the Court, both the consent authority and the approval body will be bound to the decision of the Court. The approval body should join with the consent authority in appeals to ensure that the Court addresses all relevant concerns.

### **3.3 Construction and occupation certificate**

#### **(a) Need for a certificate**

Under s109 of the EP&A Act, a construction certificate must be issued by the consent authority or an accredited certifier prior to any building works commencing. Building work means any physical activity involved in the erection of a building including alterations and additions. The purpose of the construction certificate is to ensure that the building is safe for use taking into consideration structural and fire safety matters and that the relevant provisions in the *Building Code of Australia* (BCA) are complied with.

#### **(b) Construction certificate**

Once a construction certificate has been issued, it becomes part of the development consent. It is possible to issue construction certificates for various stages of the development. In some circumstances, the development application and the construction certificate can be lodged and approved together.

#### **(c) Before works begin**

Before works begin, a principal certifying authority (PCA) must be appointed to ensure that the construction is in accordance with the approval. The PCA may be the consent authority or a private accredited certifier. While it can be done any time before the commencement of building works, it must be finalised 2 days before works begin to allow required notice to the consent authority. The PCA must undertake an audit of the building works by either carrying out specified inspections or by relying on other certifiers or professions such as wet areas, structural adequacy, fire safety, termite control. The PCA may serve a notice to require a person to comply with the consent.

#### **(d) Occupation certificate**

Before a PCA can issue an occupation certificate, they must be satisfied that the specific works have been completed in accordance with the construction certificate and DA and the building complies with the relevant provisions in the BCA.

#### 4. Information sources

The level of information necessary for the Project Profile Analysis should be commensurate with the scale of the proposal, the potential environmental risks associated with the proposal and the potential sensitivity of the location. Information from desk top as well as site evaluation should be considered to identify the likely risks to the environment of various options. The higher the level of risk associated with particular options, the more detailed the level of investigation and the higher the likely costs to manage the site sustainably. The availability of mitigation measures alone to ameliorate potential impacts should not be used to conclude that particular options are suitable.

The ranking of Level 1, 2 and 3 for individual criteria will provide a picture of the potential hurdles in developing the site and the likely level of environmental assessment and regulation which could apply – the lower the level of risk, the lower the level of assessment and regulation required. It is preferable that serious site, design and operational constraints are identified as early as possible, rather than later after significant investments has occurred.

The information for the Minimum Performance Criteria is available in Council's Local Environment Plan (LEP) maps and flooding maps or in DIPNR Acid Sulfate Soils (ASS) Risk Maps and from key agencies.

**Table 30. Sources of Information**

<b>Source</b>	<b>Information</b>	<b>Maps</b>
DSRD, DPI & DIPNR	Acceptable areas for saline pond culture	Estuarine Aquaculture Maps
Council	Zones in LEPs SEPP 14 – Coastal Wetlands SEPP 26 – Littoral Rainforests Conservation areas Flood liability Boundary of tidal limit	LEP Maps  Coastal Policy Maps
DEC	National Parks, Nature Reserves and other DEC protected areas Aboriginal heritage issues Threatened, rare and protected species issues	
Marine Park Authority	Marine Parks	Marine Parks Maps
Heritage Office	State Heritage Inventory	
DIPNR	Elevation in coastal areas Location of ASS, coastal sands and other landform information Native vegetation management plans Water availability Tidal movements, some information on flood liability	ASS Risk Maps
DL	Vacant Crown Land and Native Title claims	
Department of Primary Industries	Translocation Policy and high risk species Pond design and management Aquatic Reserves and Aquatic threatened species issues	
Land Information Centre	Elevation in non-coastal areas	Topographical Maps

### Department of Primary Industries

Department of Primary Industries hold **Estuarine Aquaculture Maps** that identify land that meets the *Minimum Locational Performance Criteria for Estuarine Ponds*. These maps have been produced by Department of Primary Industries, DIPNR, DL and DSRD using Geographical Information Systems (GIS) to assist investors and their consultants when selecting sites. **The maps are critical for the identification of sites for saline pond culture.**

Department of Primary Industries also holds information on the location of native fish species and the implementation of the Translocation Policy

### Local Council Information

Under the provisions of the SEPP 62, pond and tank aquaculture is permissible in all Rural Zones carrying the number (1). Tank aquaculture will also be permissible in Industrial Zones carrying the number (4) and those zones identified in the LEP zoning table in the Project Profile Analysis.

At an early stage in the site selection process, it is essential to consult with the local council to ensure that the proposal is a permissible use under the relevant land use zoning as identified in the Local Environmental Plans (LEPs) Planning Maps. LEP Planning Maps can also provide information on the location of road reserves or corridors identified for the Pacific Highway upgrade, wetlands mapped in SEPP 14 - Coastal Wetlands or SEPP 26 - Littoral Rainforests and other land reserved for environmental protection under the LEP, for example any (7) zones. Alternative sites should be sought if the land is identified in any of these areas.

If the LEP Maps have been updated since 1997, they should also include information on the extent of the tidal limit as identified in the NSW Coastal Policy (1997). This tidal limit is set at 1 kilometre beyond the mangrove limit and provides an indication of the extent of reliable saline water supply. If the LEP Maps do not include this information, then ask the Council for a copy of the maps accompanying the NSW Coastal Policy.

### DIPNR Information

For coastal aquaculture, the ASS Risk Maps (prepared by DIPNR and held by Councils & DIPNR) should be consulted. These maps (which are based on 1:25,000 topographic maps) provide site information on ASS, elevation, the location of coastal sands (W Class soils) and other relevant landform information. This information is needed as Minimum Locational Performance Criteria and in the Tier 1 evaluation of the site for saline pond aquaculture sites. DIPNR holds information on tidal characteristics of many estuaries as well as the water availability in river catchment/sub-catchments. In some areas, DIPNR can also provide information on the flood liability of land and flood management plans for catchments.

DIPNR should also be consulted on whether vegetation management plans have been prepared for a particular catchment that could provide information relevant of site selection.

**DL Information**

DL can provide information on Vacant Crown Land and Crown land that is the subject of Native Land Claims. They will also have information on land subject to Aboriginal land claims.

**DEC Information**

DEC hold information on the important areas for conservation and protection. These include:

- DEC protected areas - national parks, nature reserves, karst conservation reserves, historic sites, State recreation areas, regional parks
- Recorded Aboriginal sites and places, relevant contacts for local Aboriginal communities
- Areas subject to Voluntary Conservation Agreements, Joint Management Agreements, Critical Habitat listed under the Threatened Species Conservation Act
- Areas where threatened species, populations and ecological communities have been recorded.
- Recovery and threat abatement plans have been prepared under the Threatened Species Conservation Act

**Land Information Centre**

The NSW Government Land Information Centre holds Topographical Maps that provide information on elevation important for aquaculture in non-coastal areas [www.ditm.nsw.gov.au](http://www.ditm.nsw.gov.au).