

Aquaculture leases with cadastral boundary issues

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Policy Statement

This policy defines under what circumstances NSW Department of Primary Industries (NSW DPI) will address the issue of an aquaculture lease overlapping the cadastral boundary and what steps will be taken to resolve the issue.

Scope

The policy applies to all aquaculture leases in NSW, administered under Part 6 of the *Fisheries Management Act 1994* (the Act) and the Fisheries Management (Aquaculture) Regulation 2017 (the Regulation). This includes Priority Oyster Aquaculture Area (POAA) as described in the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS).

In accordance with the Act, an aquaculture lease is an area of public water land (submerged Crown land) used for the purpose of aquaculture. The cadastral boundary system defines and records the location and extent of property rights/ownership, restrictions and responsibilities. This includes defining where public water land (submerged Crown land) ends and unsubmerged land starts. It is administered by NSW Crown Lands.

Requirements

1. When NSW DPI has identified a potential issue where the boundaries of a POAA (either current or vacant) may cross the cadastral boundary, the lease will be flagged in the AquaAssist system.
2. For a vacant POAA, the cadastral boundary issue will be addressed if NSW DPI receives a new lease application for the area. The following steps will be taken:
 - a. NSW DPI will assess if there is an overlap of the proposed lease with the cadastral boundary (freehold or unsubmerged Crown land). This may involve consultation with Crown Lands.
 - b. If it is found that the proposed lease does overlap the cadastral boundary, a new survey will be required as part of the new lease application process.
3. For a current POAA, the cadastral boundary issue will be addressed if the leaseholder submits one of the following applications.
 - a. Lease renewal – where the lease is renewed for another term.
 - b. Lease transfer – where there is a change of ownership of the lease.
 - c. Lease consolidation, subdivision or part-surrender – where a new survey of the lease is required.

Lease renewal

4. When an application to renew a current POAA is received, and that lease has a potential cadastral boundary issue, NSW DPI will determine the following in consultation with Crown Lands:
 - a. the extent of the overlap (i.e. how much of the lease overlaps the cadastral boundary) and
 - b. if the overlap involves Crown Land or private land.
5. NSW DPI will use this information to determine whether a new lease survey is required as part of the lease renewal process, or whether the lease can be renewed in its current form.

6. If a new lease survey is required as part of the lease renewal process, NSW DPI can formally request this requirement as a condition of the renewal in accordance with Section 169 of the Act. If the leaseholder does not comply with a Notice under this legislation, NSW DPI can arrange for the survey to be carried out by a registered surveyor at the leaseholder's expense.
7. If a new lease survey is required as part of the lease renewal process, and the total area being removed from the lease is less than 0.1 hectare, then the equivalent area may be added to the lease without the need for development consent under Schedule 4 of the *State Environmental Planning Policy (Primary Production and Rural Development) 2019*. This will result in minimal loss of lease area for the leaseholder.
8. If a new lease survey is required as part of the lease renewal process, and the total area being removed from the lease is more than 0.1 hectare, then the leaseholder will be required to lodge an application to part-surrender the overlapped portion of the lease. In such cases, the prescribed lease surrender application fee will be waived.
9. In cases where significant lease area is lost due to a cadastral boundary issue, and the remaining portion of the aquaculture lease is not viable for oyster aquaculture, NSW DPI may decide to not renew the lease in accordance with Section 167(2) of the Act.

Note: a leaseholder is entitled to the renewal of a lease if it is the first renewal after the lease granting in accordance with Section 167(3) of the Act.
10. A leaseholder may decide at any time during the lease renewal process to withdraw their application to renew the lease. In these instances, the lease will expire and the leaseholder will be issued with a Section 171 Notice to remove all improvements from the lease area.
11. Any lease survey required as part of the lease renewal process will be completed at the leaseholder's expense.
12. Any lease area that is removed from a current POAA due to a cadastral boundary issue should be extinguished under the relevant policy.

Lease transfer

13. When an application to transfer an aquaculture lease is received, and that lease has a potential cadastral boundary issue, NSW DPI will liaise with the transferee and provide detail of the issue. NSW DPI should receive written confirmation from the transferee that they wish to proceed with the lease transfer before the application is finalised.

Lease consolidation, subdivision and part-surrender

14. These transactions require a new lease survey as part of the standard application process and any potential cadastral boundary issues can be resolved as part of these survey requirements.
15. When an application to consolidate, subdivide or part surrender a current POAA is received, and that lease has a potential cadastral boundary issue, NSW DPI will determine the following in consultation with Crown Lands:
 - a. the extent of the overlap (i.e. how much of the lease overlaps the cadastral boundary) and
 - b. if the overlap involves Crown Land or private land.
16. If a lease being consolidated or subdivided has a cadastral boundary issue, and the total area that needs to be removed from the lease is less than 0.1 hectare, then the equivalent area may be added to the lease without the need for development consent under Schedule 4 of the *State Environmental Planning Policy (Primary Production and Rural Development) 2019*. This will result in minimal loss of lease area for the leaseholder.

Note: for lease consolidation and subdivision applications, the new lease area(s) must be identical to the former lease area(s).
17. If a lease being consolidated or subdivided has a cadastral boundary issue, and the total area that needs to be removed from the lease is more than 0.1 hectare, then the leaseholder will be required to lodge an application to part-surrender the overlapped portion of the lease. In such cases, the prescribed lease surrender application fee will be waived.
18. In cases where significant lease area is lost due to a cadastral boundary overlap, and the remaining portion of the aquaculture lease is not viable for oyster aquaculture, NSW DPI may refuse an application to consolidate or subdivide the aquaculture lease.
19. Any lease survey required as part of the lease subdivision, consolidation or part-surrender

process will be completed at the leaseholder's expense.

20. Any lease area that is removed from a current POAA due to a cadastral boundary issue should be extinguished under the relevant policy.

Procedures

- Aquaculture Administration Appendix E – Unapproved structures and cadastral boundary issues

Roles and responsibilities

- Program Leader, Aquaculture
- Senior Fisheries Manager, Aquaculture
- Senior Policy Officer, Aquaculture
- Fisheries Manager, Spatial Planning

Delegations

- Refer to relevant Delegation Manual.

Legislation

- *Fisheries Management Act 1994*
- Fisheries Management (Aquaculture) Regulation 2017

Related policies

- O-072 Extinguishment of Priority Oyster Aquaculture Area
- O-071 Aquaculture Lease Allocation Policy
- NSW Oyster Industry Sustainable Aquaculture Strategy

Related documents

- Surveyor-General's Directions No. 13 – Aquaculture Lease Surveys

Revision history

Version	Date issued	Notes	By
1.0	24 February 2022	This is a new policy	Senior Fisheries Manager Aquaculture

Contact

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