

Way of Access through an Aquaculture Lease

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Policy Statement

This policy sets out the circumstances and process under which a Way of Access (WOA) will be granted through an aquaculture lease.

Scope

This policy applies to all aquaculture leases. This includes Priority Oyster Aquaculture Area (POAA) as described in the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS) and lease area described in the NSW Marine Waters Sustainable Aquaculture Strategy (MWSAS) and the State Environmental Planning Policy (Primary Production and Rural Development) 2019.

In accordance with Section 176 of the *Fisheries Management Act 1994*, the lessee of a leased area, or the owner or occupier of any land adjoining the area, may apply in writing to the Minister for the determination of an access way over the area.

For current leases, a WOA will be administered as a part surrender under Section 174 of the Fisheries Management Act 1994 and Clause 47 of the Fisheries Management (Aquaculture) Regulation 2017. In such circumstances, the prescribed fee in Cl. 47(1)(b) will be payable.

Requirements

1. An application for a WOA through an aquaculture lease must be made in writing on the prescribed form.
2. An application for a WOA through an aquaculture lease will only be considered where:
 - a. the applicant is the lessee of a leased area, or the owner or occupier of any land adjoining the aquaculture lease
 - b. no other viable option to the proposed WOA can be identified
 - c. any adverse effect on an existing lease holder and the oyster industry is mitigated
 - d. any compensation required by the Act or Regulation is paid.
3. If Clause 2 is satisfied and the area is a current aquaculture lease, then the proponent must privately negotiate compensation terms with the lessee for:
 - a. the cost of all work to be carried out by the lessee or agent to establish the way of access
 - b. the cost of any compensation payable to the leaseholder for the loss of cultivatable lease area
 - c. the cost of a new lease survey carried out by a registered surveyor and comply with the Surveyor General's Direction requirements for aquaculture lease surveys and lease part surrender to establish the agreed way of access.
4. If Clause 2 is satisfied and the area is not a current aquaculture lease but is designated as POAA or lease area identified in the MWSAS, then the proponent is responsible for:

- a. the cost of all work to be carried out to remove any redundant lease infrastructure present on the area subject to the application
 - b. the cost of an approved survey carried out by a registered surveyor and comply with the Surveyor General's Direction requirements for aquaculture lease surveys to establish the agreed way of access.
5. If the requirements specified in Clauses 3 and/or 4 are satisfied, and the WOA is less than 15 metres wide, NSW DPI will create an access way under Section 175 of the *Fisheries Management Act 1994*.
 6. If the requirements specified in Clauses 3 and/or 4 are satisfied and the WOA is greater than 15 metres wide the application will only be granted for POAA where it fulfils the provisions for the extinguishment of OISAS POAA prescribed in NSW DPI Policy O-072 *Extinguishment of Priority Oyster Aquaculture Area*.
 7. If the WOA application is through OISAS POAA for a public purpose such as a public wharf, utility services, bridge or public boat ramp the application will be dealt with under Section 176 of the *Fisheries Management Act 1994 (Power to withdraw land from a lease)* and must meet the requirements for the extinguishment of OISAS POAA set out in NSW DPI Policy O-072 *Extinguishment of Priority Oyster Aquaculture Area*.
 8. Policy Officer Aquaculture (Oysters) will be the primary contact for enquires from proponents seeking approval for a WOA through OISAS POAA.

Procedures

- Aquaculture Administration Procedure Manual – Way of Access

Roles and responsibilities

- *Policy Officer Aquaculture*: Undertake procedures set out in this policy
- *Fisheries Manager*: Undertake procedures set out in this policy

Delegations

- Refer to relevant Delegation Manual

Definitions

- Private purpose: means any purpose associated with a private or non-government individual/company/organisation
- Public purpose: means any purpose for which land may by law be acquired by compulsory process under the Land Acquisition (Just Terms Compensation) Act 1991
- Lease survey: An aquaculture lease survey carried out by a registered surveyor that complies with the Surveyor Generals requirement for oyster aquaculture leases

Legislation

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

Related policies

- State Environmental Planning Policy (Primary Production and Rural Development) 2019
- NSW DPI Policy O-072 Extinguishment of Priority Oyster Aquaculture Area

Other related documents

- NSW Oyster Industry Sustainable Aquaculture Strategy 2016
- NSW Marine Waters Sustainable Aquaculture Strategy 2018

Revision history

Version	Date issued	Notes	By
1.0	15/01/2021	New Policy	Stephen McOrrie

Contact

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