

## Way of access through aquaculture lease policy

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|----------------|-----------------------------------------------|------------------|-----------------|
| Policy number: | RDOC24/184316                                 | Version:         | 3.0             |
| Authorised by: | Director Fisheries and Aquaculture Management | Authorised date: | 30 October 2024 |
| Issued by:     | DPIRD Fisheries                               | Effective date:  | 30 October 2024 |
| Category:      | Operations and Industry                       | Review date:     | 30 October 2026 |

### Policy statement:

This policy sets out the circumstances and process under which NSW Department of Primary Industries and Regional Development (DPIRD) will grant an access way through a current aquaculture lease.

### Scope:

This policy applies to all current 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) 2021.

This policy applies to an access way for private purposes only. For a public purpose, the application will be dealt with under section 176 of the *Fisheries Management Act 1994* (the Act) and will be assessed against Policy O-072 Extinguishment of Priority Oyster Aquaculture Area.

There are 2 different pathways to granting an access way through an aquaculture lease:

- In line with section 174 of the Act and section 57 of the Fisheries Management (Aquaculture) Regulation 2024 (the Regulation), the lessee may surrender part of a leased area to the Minister.
- In line with section 175 of the Act, the lessee of the lease or adjoining lease, or the owner or occupier of any land adjoining the lease area, may apply in writing to the Minister for the determination of an access way over the area.

### Requirements

#### *Application to part surrender under section 174 of the Act*

1. If a lessee agrees to surrender a portion of their lease to accommodate an access way, an application to part surrender an aquaculture lease will be required. If the application is approved, the access way will sit outside the boundaries of the lease, which means the lessee will not be required to pay lease rent or permit fees for the access way area.
2. An application to part surrender an aquaculture lease under section 174 of the Act and section 57(1) of the Regulation must be made by the lessee of the lease that is being part surrender, on the approved form and accompanied by:
  - a. a description to identify the area to be surrendered.
  - b. a survey diagram or plan depicting the area to be surrendered.

- c. the processing fee prescribed in schedule 3 of the Regulation.
- 3. An application to part surrender an aquaculture lease may be refused if, in the Minister's opinion, it would not be in the public interest to consent to the surrender, or if the lessee:
  - a. is disqualified under section 161 of the Act from holding an aquaculture permit.
  - b. has outstanding rent or permit contributions on their customer account.
  - c. has a lease or former lease listed as clean-up program, and administrative sanctions apply as a result.
- 4. In assessing a part surrender application for the purpose of an access way, DPIRD will consider any adverse effects on the oyster industry, and whether other viable options for the access way can be identified.
- 5. If DPIRD supports the application to part surrender, the lessee will need to organise for a registered surveyor to undertake a survey of the lease and generate a new lease plan for the lease area being retained. The lease area being retained will be given a new lease number.
- 6. The lessee will be responsible for the costs associated with the lease survey, though they may choose to negotiate payment of these costs with the person who has requested the access way.
- 7. The lessee will be required to remove all improvements (cultivation materials, lease markings, boundary posts and structures) from the portion of the lease being surrendered. This work must be completed before DPIRD can grant the part surrender.
- 8. If a lease area that has been part surrendered to accommodate an access way is identified as POAA under OISAS, DPIRD may consider the extinguishment of the POAA in line with the extinguishment of POAA policy.

***Application for an access way under section 175 of the Act***

- 9. An application for an access way over a leased area must be made in writing. The application must include a description of the proposed access way sufficient to identify it.
- 10. An application for an access way will only be considered if:
  - a. The applicant is the lessee of the relevant lease or adjoining lease, or the owner or occupier of the land adjoining the lease area.
  - b. No other viable option to the proposed WOA can be identified.
  - c. Any adverse effect on the lessee and the oyster industry is mitigated.
- 11. In the case of an application being submitted by an adjoining lessee or the owner or occupier of adjoining land, DPIRD must, before determining an access way, serve the lessee of the lease subject to the proposed access way, with a notice of the application under section 175(2) of the Act.
- 12. If DPIRD supports an application for an access way, the applicant must privately negotiate compensation terms with the lessee for:
  - a. The cost of any work to be carried out by the lessee or agent to establish the access way.
  - b. The cost of any compensation payable to the lessee for the loss of cultivatable area.
  - c. If a new lease survey is required, the cost of the survey to be carried out by a registered surveyor.
- 13. If DPIRD supports an application for an access way, the lessee will be encouraged to survey out the access way via a part surrender application under section 174 of the Act. In cases where the lessee does not want to remove the access way from the lease area (for example, the access way is in the middle of the lease), a special condition will be imposed on the lease requiring the lessee to maintain an access way through their lease.

*Note: if the access way is not surveyed out of the lease area as a part surrender under section 174 of the Act, the lessee will continue to pay lease rent and permit fees for that area.*

14. If an access way is not surveyed out of a lease area, the lessee will be required to mark out the access way within 30 days of being notified of the determination, or any further period allowed by the Minister. The access way must be marked out in accordance with OISAS.
15. The Minister may determine an access way without an application, but only after giving written notice to the lessee concerned, in line with section 175(5) of the Act.
16. The Minister may vary or rescind a determination made under section 175 of the Act.
17. The Minister withdraw area from an aquaculture lease under section 176 of the Act where appropriate.
18. An access way determined under section 175 of the Act, which remains inside the boundaries of a current lease, is not affected by the renewal or transfer of the lease.

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#### **Roles and responsibilities:**

- Policy Officer Aquaculture: undertake procedures set out in this policy and will be the primary contact for enquiries from proponents seeking approval under this policy.
- Senior Policy Officer Aquaculture: undertake procedures set out in this policy.

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#### **Legislation**

- *Fisheries Management Act 1994*
- Fisheries Management (Aquaculture) Regulation 2024

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#### **Delegations:**

- Fisheries Management Instrument of Delegation (Minister) 2024
- Fisheries Management Instrument of Delegation (Secretary) (No 2) 2024

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#### **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 be acquired by compulsory process the *Land Acquisition (Just Terms Compensation) Act 1991*.
- **Lease survey:** an aquaculture lease survey must be carried out by a registered surveyor and comply with the Surveyor General Directions for oyster aquaculture leases.
- **Lease plan:** the plan that is generated from a lease survey, which shows the boundaries, coordinates and area of the lease area. The lease plan must comply with the Surveyor General Directions and be approved by the delegated officer of DPIRD.

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#### **Related policies**

- State Environmental Planning Policy (Primary Production) 2021
- NSW DPIRD policy O-072 Extinguishment of priority oyster aquaculture area
- NSW Oyster Industry Sustainable Aquaculture Strategy
- NSW Marine Waters Sustainable Aquaculture Strategy

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#### **Revision history**

This policy replaced the way of access through aquaculture lease policy v 2.0 (RDOC22/3359).

| Version | Date Issued     | Notes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.0     | 30 October 2024 | <ul style="list-style-type: none"> <li>• Update scope to include current aquaculture lease only.</li> <li>• Update scope to include pathway of surrender lease under s 174 of the Act as well as access way determination under s 175 of the Act.</li> <li>• Update to refer to the Fisheries Management Act (Aquaculture) Regulation 2024.</li> <li>• Statement that policy applies to access ways that are less than 15 metres wide removed.</li> <li>• Clauses 15 – 18 added to the policy as per s 175 of the FMA.</li> </ul> |