

Aquaculture lease allocation policy

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Category:	Operations and Industry	Review date:	15 April 2026

Policy statement:

This policy describes the circumstances under which NSW Department of Primary Industries and Regional Development (DPIRD) will allocate new aquaculture leases by a competitive process.

The *Fisheries Management Act 1994* (the Act) provides for the granting of aquaculture leases by application, public tender, auction or ballot. Section 163 of the Act and division 4 of the Fisheries Management (Aquaculture) Regulation 2024 (the Regulation) describes how the competitive allocation process is conducted. Existing aquaculture leases can be renewed without a competitive process in accordance with section 168 of the Act.

The objects of the Act require DPIRD to conserve fish stocks, key fish habitats and threatened species, populations and ecological communities, and consistently with that object, to promote viable aquaculture industries.

DPIRD will use a competitive allocation process (i.e., auction, public tender, or ballot), to allow fair and equal opportunity for participants and ensure returns to the State are maximised in the allocation of aquaculture leases.

Scope:

This policy applies to all new aquaculture lease applications made under section 163 of the Act.

Requirements:

Step 1: Minister decides whether a particular area should be offered for lease and the method in which that lease should be offered.

1. The Act allows the Minister to, on application or by auction, public tender or ballot, lease an area of public water land for use for aquaculture (s 163(1)). The lease must specify the type of aquaculture authorised to be undertaken within the leased area (s 163(3)).
2. The Minister may lease land:
 - a. on receipt of an application, but only if the land is available for lease and the application is consistent with any relevant development plan (s 163(1) and (7) of the Act).
 - b. by auction (s 163(1) of the Act and s 45 the Regulation).
 - c. by public tender (s 163(1) of the Act and s 46 of the Regulation).
 - d. by ballot (s 163(1) of the Act and s 47 of the Regulation).

3. The Minister may decide that an area should be offered for lease by auction, public tender or public ballot even though the Minister has received an expression of interest to lease the area (s 163(6) of the Act).
4. The method of competitive allocation will be by public tender unless, in the opinion of the Director, Fisheries and Aquaculture Management (as Minister's delegate), the State or public interest would be best served by allocating the lease by auction or ballot.
5. DPIRD will accept an expression of interest for a maximum of 10 lease areas per applicant.
6. Before an area is offered for lease, the Minister (or delegate) will assess the suitability of a proposed lease area. When making this assessment, the Minister (or delegate) must consider how other legislation affects the ability of the Minister to permit aquaculture activities in the proposed leased area. The matters the Minister's delegate must consider are set out in the following table:

Waters	Matters to consider
All proposed lease areas on public water lands	<p><i>Native Title Act 1994 (Cth)</i></p> <ul style="list-style-type: none"> Consult with NTSCORP and, if there has been a determination of native title, the claimant group for an area, or the Registered Native Title Body Corporate (RNTBC) for the area in which the proposed lease area is located (if any) about the potential granting of the lease, as per the future act provisions in the <i>Native Title Act 1993</i>. Any feedback from NTSCORP, RNTBC and/or the claimant group will be considered by DPIRD before proceeding with a competitive process. <p>Note: The department must allow the NTSCORP, RNTBC and/or claimant group a minimum of 28 days to respond.</p> <p>Sections 86, 90, National Parks and Wildlife Act 1974 (NPW Act)</p> <ul style="list-style-type: none"> Consult with National Parks and Wildlife Service (NPWS) on whether aquaculture activities at the proposed site may harm an Aboriginal object or a declared Aboriginal place, which may require an Aboriginal heritage impact permit. <p>Part 7 (s 205), Part 7A, FM Act Part 2, Biodiversity Conservation Act 2016 (BC Act)</p> <ul style="list-style-type: none"> Consider the presence of any mangroves, seagrasses, attached marine or estuarine microalgae or saltmarsh (s 205 of the Act, cl 228 of the Fisheries Management (General) Regulation 2019), oyster reefs or threatened species that may be within adjoining the proposed lease area. Consider the potential impacts on marine vegetation and threatened species on nearby land.
Public water land in a priority oyster aquaculture area (POAA) (or less than 0.1 ha of the proposed lease is outside POAA)	<p>Part 5, Division 5.1, Environmental Planning and Assessment Act 1979 (EP&A Act)</p> <ul style="list-style-type: none"> Consider the POAA criteria outlined in OISAS (table 5) in relation to the proposed lease area. <p>Note: <i>NSW Oyster Industry Sustainable Aquaculture Strategy</i>, August 2021, published in NSW Government Gazette No. 544, Friday 22 October 2021 https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2021_2021-544.pdf (OISAS) is the relevant development plan for oyster aquaculture (s 143, FM Act).</p>

Waters	Matters to consider
Public water land that is wholly or substantially outside POAA	<ul style="list-style-type: none"> Consider the matters described in OISAS. For aquaculture in marine waters, consider the NSW Marine Waters Sustainable Aquaculture Strategy. <p>Note: The <i>NSW Marine Waters Sustainable Aquaculture Strategy, 2018</i>, published in NSW Government Gazette No. 140, Monday 17 December 2018 (https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2018_2018-140.pdf) is the relevant development plan for aquaculture in NSW waters for the production of finfish, shellfish and algae (s 143, FM Act).</p> <p>Note: Aquaculture outside POAA requires development consent and will be assessed by the consent authority as integrated development under Division 4.8, Part 4, EP&A Act. Separate environmental assessment under Part 5, EP&A Act is not required.</p>
Public water land within a marine park	<p>Section 55, Marine Estate Management Act 2014 (MEM Act)</p> <ul style="list-style-type: none"> Consult with the relevant Marine Park Manager and Program Leader Marine Operations in accordance with 9.1.2 of OISAS, who will advise on the likely impacts of the proposed type of aquaculture at that site in accordance with section 55 of the MEM Act, (including the consideration of any management rules, zones, permissible uses, notifications and management plan). <p>Note: The Marine Park Manager will be provided with at least 21 days to provide comment on the suitability of the site and any conditions that may be imposed as part of the relevant Ministers' consent for aquaculture activities at the proposed lease site.</p>
Public water land within an aquatic reserve	<p>Section 57, MEM Act</p> <ul style="list-style-type: none"> Consult with the relevant Aquatic Reserve Manager and Program Leader Marine Planning in accordance with 9.1.2 of the OISAS. <p>Note: The Aquatic Reserve Manager will be provided with at least 21 days to provide comment on the suitability of the site and any conditions that may be imposed as part of the relevant Ministers' consent for aquaculture activities at the proposed lease site.</p> <ul style="list-style-type: none"> Consider whether the relevant Ministers' consent is required by the Aquatic Reserve Notification. <p>Note: The Marine Estate Management (Aquatic Reserve) Notification 2020 applies to the Barrenjoey Head Aquatic Reserve, Boat Harbour Aquatic Reserve, Bronte-Coogee Aquatic Reserve, Cabbage Tree Bay Aquatic Reserve, Cape Banks Aquatic Reserve and Narrabeen Head Aquatic Reserve, Bushrangers Bay Aquatic Reserve, Cook Island Aquatic Reserve, Long Reef Aquatic Reserve, North Harbour Aquatic Reserve, Shiprock Aquatic Reserve and Towra Point Aquatic Reserve.</p>
Land within or adjoining National Park Estate	<p>Section 44, NPW Act</p> <ul style="list-style-type: none"> Consult with NPWS as to whether the proposed lease may be granted. <p>Note: An aquaculture lease cannot be granted for lands in a national park or historic site or for waters beneath which those lands are</p>

Waters	Matters to consider
	submerged, without the written concurrence of the <i>Minister administering the National Parks and Wildlife Act 1974 (s44)</i> .

7. For areas the Minister's delegate decides should be offered for lease by public tender, auction or ballot, DPIRD will, in line with s 42 of the Regulation, publish in the NSW Gazette and on the department's website, a notice that includes the following information:
 - a. the area proposed to be offered for lease.
 - b. the method by which the lease is to be offered.
 - c. the period within which a person may make written submissions objecting to the leasing of the area (not less than 30 days after the date of publication).
 - d. any covenants or conditions to which the disposal of the lease will be subject.
8. A lease area that is subject to a development plan (for example, POAA in OISAS) is exempt from the requirement outlined in clause 7 of this policy.
9. A copy of the notice must be given to any association representing aquaculture permit holders that has notified the Minister of its interest in being notified of the area being considered for leasing (s 42(4) of the Regulation).
10. In deciding whether to proceed with the leasing of the area, the Minister's delegate must consider objections to the leasing of an area (s 42(5) of the Regulation).

Step 2: Offer the proposed lease area by competitive allocation process.

11. If the Minister, after considering objections to the leasing of an area, decides to proceed with the leasing of the area by auction, public tender or ballot, the Minister must, in line with section 43 of the Regulation, publish a notice in the NSW Government Gazette **and** on the department's website containing the following information:
 - a. whether the area is offered for lease by auction, public tender or ballot.
 - b. the persons or class of persons who are eligible to participate in the auction, public tender or ballot.
 - c. a description sufficient to identify the area to be leased.
 - d. the term of the lease.
 - e. the way in which details of the proposed covenants and conditions may be obtained.
 - f. the proposed annual rent.
 - g. the time and place of the auction, or the time and place for submitting tenders or ballot applications.
 - h. if the lease is to be offered by public tender or ballot, the minimum premium that is required.
 - i. the criteria for eligibility to participate in the auction, tender or ballot.
12. DPIRD may hold two scheduled tenders, auctions or ballots per year in March/April and September/October. Additional tenders, auctions or ballots may be held at the discretion of the Director, Fisheries and Aquaculture Management.
13. The notice given under section 43 will specify that to be eligible to participate in a public tender, auction or ballot, the applicant (potential lessee) must:
 - a. hold a current aquaculture permit and as part of the competitive allocation process, apply to vary their aquaculture permit to include the proposed lease areas on their permit as authorised areas, or

- b. as part of the competitive allocation process, lodge an application for a new aquaculture permit for the proposed lease areas, or
 - c. have an agreement with a current permit holder to sublet the proposed lease areas if the applicant (potential lessee) is successful in the competitive allocation process and as part of this process, the permit holder applies to vary their aquaculture permit to include the proposed lease areas on their permit as authorised areas.
14. For proposed lease areas that are not POAA, development consent will be required and the development will be integrated development (s 4.46, EP&A Act).
15. For offers of lease by public tender or ballot, the applicant (potential lessee) must:
- a. complete a duly made application form (s 38 of the Regulation).
 - b. for public tenders, specify the amount of the premium tendered (s 46(3) of the Regulation).
16. For offers of lease by public tender, the prescribed fee specified in schedule 3 of the Regulation only needs to be paid by the successful tenderer (s 46(5) of the Regulation).
17. If the lease is offered by auction, the successful bidder must lodge the application for lease and pay the processing fee immediately after the auction has taken place (s 45(7) of the Regulation).
18. The payment of the application fee may be postponed, waived or refunded under s 288B of the Act. This action will be considered by the Director, Fisheries and Aquaculture only when it is in the public interest (for example, to correct an administrative error) or to promote viable aquaculture industries).
19. For marine lease areas being offered by tender, tenderers will also be required to submit the following as part of their tender submission:
- a. Documentation that demonstrates they have knowledge of the State Significant Development (SSD) application process and the capacity to fund this process. This will form part of the approved application form mentioned in this policy.
 - b. An updated commercial farm development plan, including a lease maintenance plan and biosecurity plan, for the permit that will authorise the lease being offered. This will form part of the permit application mentioned in this policy.

Step 3: Approve the successful applicant (tenderer or bidder)

20. For areas offered through a competitive process, the Aquaculture Lease Tender Committee (ALTC) will convene and evaluate all applicants (lessee). This involves assessing whether the applicants are eligible to participate in the process, as per clause 13 of this policy, and whether their tender or bid is conforming, based on the following criteria:
- a. in the case of an applicant who is not a corporation, the applicant is disqualified under section 161 of the Act from holding an aquaculture permit.
 - b. in the case of an applicant that is a corporation, the applicant, or any of the directors or other persons concerned in the management of the tenderer, is disqualified under section 161 of the Act from holding an aquaculture permit.
 - c. the applicant has rent, contributions or other amounts payable to the Minister that are outstanding in respect of other aquaculture leases.
 - d. the applicant has, in the Minister's opinion, a poor record of managing one or more other leased areas.
 - e. for a tender:
 - i. the tenderer's submission contains conditions that are unacceptable to the Minister.
 - ii. the tenderer's submission has not met all requirements of the tender, as described in the Request for Tender.

- f. in the Minister's opinion, it would otherwise not be in the public interest to grant the lease to the applicant. This will include an assessment of the applicant's business plan, biosecurity plan, lease development and maintenance plan.
21. For eligible and conforming applicants, whose offer to lease will be accepted is:
 - a. for an auction, the person who offers the highest premium (s 45(3) of the Regulation).
 - b. for a tender, the person who offers the highest premium (s 46(4) of the Regulation).
 - c. for a ballot, the person whose application that is drawn first (s 47(3) of the Regulation).
 22. In cases where two or more conforming tenders are received for the same lease area and the tenders are identical in terms of the tender premium offered, then the successful tenderer will be determined via a ballot process in accordance with clause 47 of the Regulation.
 23. An application for an aquaculture lease which is not allocated by competitive process may be refused on the grounds specified in clause 39 of the Regulation (for example, outstanding debt or poor record of lease management).

Step 4: Conduct an environmental assessment of the relevant aquaculture permit application (new permit or vary permit) to determine if it is in the public interest to add the aquaculture lease to the permit as an authorised area

24. For a proposed lease of an area of public water land that has been identified as POAA, once a successful tenderer has been identified by the ALTC, DPIRD will assess the aquaculture activity proposed in the application for an aquaculture permit for the proposed lease area (s 145, the Act) or the application to vary the permit area (s 148 of the Act), and will:
 - a. consider the matters specified in s 147 of the Act and s 8 of the Regulation and relevant to the leased area, consider:
 - i. whether the area is available and suitable for the permit activity being proposed.
 - ii. whether the Minister believes on reasonable grounds that there is a risk to the following if the activity to which the permit relates were authorised:
 - fish (whether cultivated or naturally occurring) could become infected with a particular disease.
 - the environment of the area where it is proposed to carry on the activity would be damaged.
 - b. examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of the aquaculture activity proposed in the permit application, as required by section 5.5, EP&A Act.
 - c. conduct an assessment of the environmental impacts of the proposed type of aquaculture at the proposed lease, as required by section 5.1 EP&A Act, considering the NSW Department of Planning and Environment guidelines for division 5.1 assessments, June 2022 (<https://www.planning.nsw.gov.au/sites/default/files/2023-02/guidelines-for-division-51-assessments.pdf>).
 - d. consider whether the proposed aquaculture activity will "significantly affect the environment", and as a result an environmental impact statement is required, instead of a statement of environmental effects (REF) (s 5.7, EP&A Act), and if a species impact statement is required (s 7.8, BC Act, s 5.8, EP&A Act).

Note: If a proposed aquaculture activity will significantly affect a threatened species (as defined in the *Biodiversity Conservation Act 2016*), then an EIS and SIS must be prepared. Similarly, a species impact statement must be prepared if the proposed activity will harm a threatened species, population or ecological community (as defined in Part 7A, FM Act)
 - e. consider whether the activity is likely to harm a threatened species, population or ecological community, damage critical habitat or damage habitat of a threatened species, population

or ecological community (as defined in Part 7A of the Act). Consider whether the proposed aquaculture activities may require consent under part 7 or part 7A of the Act.

- f. consider whether the activity is likely to harm a plant or animal that is a threatened species, population or ecological community, or protected, damage an area of outstanding biodiversity value, damage habitat of a threatened species, or threatened ecological community (as defined in Part 2, BC Act). Considers whether the proposed aquaculture activities may require consent under part 2 of the BC Act.
 - g. consider whether the proposed aquaculture activities will harm marine vegetation (as defined in s 205 of the Act and cl 228, FM General Regulation) and if the Minister's authority is required under section 205 of the Act.
 - h. consider whether a licence to harm threatened species, population or ecological communities or to damage habitat is required under s 220ZW of the Act.
 - i. consider the Marine Estate Management Strategy (marine.nsw.gov.au/marine-estate-programs/marine-estate-management-strategy) to the extent the MEM strategy is relevant to the carrying out of the proposed type of aquaculture, as required by section 19, MEM Act.
 - j. for land in a marine park or aquatic reserve, have regard to:
 - i. the purposes of the zone in which the area for which the permit will be granted as specified in any management rules for the marine park or aquatic reserve.
 - ii. the permissible uses of the area.
 - iii. the objectives of the marine park or aquatic reserve specified in any management rules.
 - iv. any relevant marine park or aquatic reserve notification (as required by s 55, MEM Act).
 - k. consider any coastal management program developed by the local council, to the extent that the coastal management program is relevant to the carrying out of the proposed type of aquaculture, as required by section 23, *Coastal Management Act 2016*.
25. For an area of public water land that is outside POAA (and requires development consent), the proposed permit holder will have the right to apply for landowner's consent and development consent for that area before the lease is granted. The development will be integrated development (s4.46, EP&A Act).

Note: As part of integrated development process, the consent authority will notify DPIRD, giving DPIRD the opportunity to provide general terms of the aquaculture permit which DPIRD proposes to issue, and will obtain the concurrence of the relevant Ministers under the MEM Act for the proposed aquaculture activities (including any terms of which that concurrence will be granted). DPIRD must also consider whether authorisation is required under s 205 of the Act, and if so, advise the consent authority on what terms.

26. DPIRD will provide the proposed permit holder with a period of time to apply for landowner's consent and development consent. If landowner's consent and development consent are not granted within this period, the tender will be deemed as non-conforming and the area will be offered to the next conforming tenderer.
27. If an aquaculture permit is issued or varied for a proposed lease area within a marine park in accordance with s 55 of the MEM Act, then clause 1.41 of the *Marine Estate Management (Management Rules) Regulation 1999*, means that the permit holder is not required to obtain consent from the Ministers administering the MEM Act to conduct aquaculture, but will be required to obtain the relevant Ministers' consent (via a Marine Parks permit) to:
- a. harm or attempt to harm fish.
 - b. harm or attempt to harm marine vegetation.
 - c. damage, take, interfere with, any part of the habitat (including soil, sand, shells, or other material occurring naturally in the area) (in accordance with clauses 1.11, 1.13, 1.16, 1.17, 1.19, 1.20, 1.22 or 1.23 of the MEM Management Rules).

Step 5: Offer of aquaculture lease

28. If, after all assessments have been completed, the Minister decides to proceed to offer the successful applicant the lease area, the delegated officer will sign a section 5.5 decision statement confirming that the proposal is not likely to have a significant impact on the environment.
29. The proposed lease area will be offered to the successful applicant, who will be provided with 14 days to accept the offer and pay any prescribed application fees, as per clause 16 of this policy.
30. If the Minister refuses to approve the application for lease, DPIRD may offer the area to:
 - a. For an auction, the person with the next highest bid (s 45(4) of the Regulation).
 - b. For a public tender, the person who offered the next highest premium (s 46(6) of the Regulation).
 - c. For a ballot, the applicant whose name was next drawn at the ballot in case the previously successful applicant's application should not be approved under this clause or is withdrawn or to the successful applicant at a later ballot (s 47(5) of the Regulation).

Step 6: Payment tender premiums

31. For leases offered by tender or ballot, a minimum tender premium will be set and advised in the notice given under s 43 of the Regulation. In setting the minimum tender premium, DPIRD will consider the:
 - a. administrative time and resources that have been used to progress the new lease application.
 - b. approvals and/or development consents sought from other agencies by DPIRD on behalf of potential tenderers.
32. The premium must be paid to the Minister by the applicant:
 - a. For an auction, immediately after the auction (s 45(3) of the Regulation).
 - b. For a public tender, within 14 days after the Minister notifies the applicant that their tender has been approved, or within a further period allowed by the Minister (s 46(5) of the Regulation).
 - c. For a ballot, within 14 days of after the Minister notifies the applicant that their lease has been approved (s 47(4) of the Regulation).
33. For a lease offered by public tender, the Minister may allow additional time for payment of the tender premium if:
 - a. the tender premium offered for one lease exceeds \$100,000, where a non-refundable deposit of 10% must be paid no later than 14 days after notification and a payment plan over a maximum period of 6 months may be negotiated for payment of the remaining amount.
 - b. the successful tenderer is provided with a period of time after the competitive process to apply for landowner's and development consent for an area that is not within a POAA, the tender premium must be paid no later than 14 days after notification of development consent being granted.
 - c. extenuating circumstances exist, the Director, Fisheries and Aquaculture Management may approve an extension of time for a successful tenderer to pay the tender premium offered.
34. If a successful tenderer withdraws their application for an area or does not pay the premium tendered, DPIRD may offer the area to the next conforming tenderer, under s 46(6) of the Regulation.
35. The tender premium is not refundable.

Step 7: Applications to change the boundaries of a current lease area outside a POAA

36. A current lessee who wishes to shift the boundary of a current class 1 lease onto public water land that is outside a POAA may do so without undertaking a competitive allocation process and without obtaining development consent providing the public water land outside POAA is no more than 0.1 hectares in area (schedule 4 of the State Environmental Planning Policy (Primary Production) 2021, clause 8(6)).
 37. Consultation outlined in clause 6 of this policy must still be undertaken for the additional area being added to the current lease.
 38. An environmental assessment of the proposed aquaculture activities under Part 5, Division 5.1, EP&A Act will be required for the additional area. This will be undertaken via an application submitted by the permit holder to vary their aquaculture permit.
 39. The lessee may make application to shift the boundary of a current lease only once during the tenancy of that lease.
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Roles and responsibilities:

- Program Leader, Aquaculture
 - Senior Policy Officer, Aquaculture
 - Senior Fisheries Manager, Aquaculture
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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:

- **Capability and capacity:** demonstrated experience of the applicant to undertake marine waters aquaculture.
 - **Marine waters:** as per Glossary of Terms in the NSW Marine Waters Sustainable Aquaculture Strategy (2018).
 - **Minimum tender premium:** the minimum tender premium may change from time to time and will be based on advertising costs, NSW DPIRD administrative and management staff time (refer to NSW DPIRD Salary Scale/Salary Points for Clerk (General Scale), plus 23% salary related on-costs, plus 48% overheads on base salaries.
 - **Priority oyster aquaculture area (POAA):** relates to Class 1 aquaculture leases as defined in the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS). An area that has been previously assessed and identified to be suitable for estuarine oyster aquaculture.
 - **Terminated pending clean up:** area previously leased that has expired, been surrendered or cancelled but still has improvements and/or cultivation material present and the former lessee has not completed their clean-up obligations.
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Legislation

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

- State Environmental Planning Policy (Primary Production) 2021
 - NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS) 2021
 - NSW Marine Waters Sustainable Aquaculture Strategy 2018
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Revision history

Version	Date issued	Notes
5.1	30 October 2024	<ul style="list-style-type: none"> References to the new Aquaculture Regulation updated. New clause stating that lease areas subject to a development plan are exempt from being advertised for objections (new section in regulation). Remove clause 12 as already covered in clause 10. New clause stating that application fee only needs to be paid by successful tenderer (new section in regulation). New clause to clarify that applications to modify boundaries of current lease still require consultation with relevant agencies.
5.0	15 April 2024	<ul style="list-style-type: none"> Step 1 expanded to include details of the environmental assessment that will be completed for all POAA before proceeding to tender. Step 1 expanded to acknowledge the consultation process with Marine Parks and National Parks when required. Step 1 expanded to acknowledge the consultation process with NTSCORP. Step 4 added to include a detailed assessment of the permit application prior to granting the lease. Update reference to SEPP 2021.