

Aquaculture leases with cadastral boundary issues

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Authorised by:	Director, Fisheries and Aquaculture Management	Authorised date:	30 October 2024
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Category:	Operations and Industry	Review date:	30 October 2026

Policy statement:

This policy defines under what circumstances NSW Department of Primary Industries and Regional Development (DPIRD) 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 2024 (the Regulation). This includes priority oyster aquaculture areas (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:

- When DPIRD identifies a potential boundary issue involving a POAA (either current or available) crossing the cadastral boundary, the lease will be flagged in AquaAssist.
- For available POAA, the cadastral boundary issue will only be addressed if the department receives an expression of interest for the area. The following steps will be taken:
 - The department will determine if there is an actual overlap of the proposed lease with the cadastral boundary (freehold or unsubmerged Crown land) in consultation with relevant government authorities.
 - If it is found that the proposed lease overlaps the cadastral boundary, the freehold or unsubmerged Crown land will be surveyed out of the proposed lease as part of the lease tender process.
- For a current POAA, the cadastral boundary issue will be addressed if the lessee submits one of the following applications.
 - Lease renewal – where the lease is renewed for another term.
 - 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 a lease renewal application is received, and the lease has a potential cadastral boundary issue, the department will determine the following in consultation with relevant government authorities:
 - a. the extent of the overlap (how much of the lease overlaps the cadastral boundary), and
 - b. if the overlap involves Crown Land or private land.
5. The department 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, the department can formally request this requirement as a condition of the renewal in line with section 169 of the Act. This survey will be completed at the lessee's expense.
7. If the lessee does not comply with a notice under section 169 of the Act, the department can arrange for the survey to be carried out by a registered surveyor and recover the associated costs from the lessee as additional rent payable.
8. If a new lease survey is required, 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) 2021. This will result in minimal loss of lease area for the lessee.
9. If a new lease survey is required, and the total area being removed from the lease is more than 0.1 hectare, then the lessee 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 in line with section 288B of the Act.
10. In cases where significant lease area is going to be lost due to a cadastral boundary overlap, and the remaining lease area is not viable for oyster aquaculture, the department may decide not to renew the lease in line with section 167(2) of the Act. In such cases, a lease survey will not be undertaken. The lessee may apply for a refund of the renewal application fee under the relevant policy.

Note: a lessee is entitled to the renewal of a lease if it is the first renewal after the lease was granted in line with section 167(3) of the Act.
11. A lessee 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 lessee will be issued with a notice under section 171 of the Act for the removal of all improvements from the lease area.
12. Any lease area that is removed from a current POAA due to a cadastral boundary overlap will be extinguished under the relevant policy.

Lease transfer

13. When a lease transfer application is received, and the lease has a potential cadastral boundary issue, the department will advise the transferee of the potential issue. If the transferee decides to proceed with the transfer, the department will seek written confirmation from the transferee that they understand the lease may need to be resurveyed in the future.

Lease consolidation, subdivision and part surrender

14. These transactions require a new lease survey as part of the application process. 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 lease is received, and that lease has a potential cadastral boundary issue, the department will determine the following in consultation with relevant government authorities:

- a. the extent of the overlap (how much of the lease overlaps the cadastral boundary), and
 - b. if the overlap involves Crown Land or private land.
16. If a lease is found to have 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) 2021. This will result in minimal loss of lease area for the lessee.
 17. If a lease that is pending consolidation or subdivision is found to have a cadastral boundary issue, and the total area that needs to be removed from the lease is more than 0.1 hectare, then the lessee 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 in line with section 288B of the Act.
 18. In cases where significant lease area is lost due to a cadastral boundary overlap, and the remaining lease area is not viable for oyster aquaculture, the department may refuse an application to consolidate or subdivide the aquaculture lease.
 19. A lease survey that is required as part of a lease subdivision, consolidation or part surrender application will be completed at the lessee's expense.
 20. Any lease area that is removed from a current POAA due to a cadastral boundary overlap will be extinguished under the relevant policy.
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Roles and responsibilities:

- Program Leader, Aquaculture: has final approval over the application of this policy.
 - Senior Fisheries Manager, Aquaculture: manages the progression of lease applications including renewals and transfers.
 - Spatial Planner Aquaculture: manages the spatial database for aquaculture, including spatial layers for aquaculture leases and cadastral boundaries.
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Legislation

- *Fisheries Management Act 1994*
 - Fisheries Management (Aquaculture) Regulation 2024
 - State Environmental Planning Policy (Primary Production) 2021
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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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Policy:

- Extinguishment of priority oyster aquaculture area policy (RDOC22/3423)
 - Aquaculture debt and fee waiver policy (RDOC24/169871)
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Revision history:

This policy replaces the aquaculture leases with cadastral boundary issues policy v 2.0 (RDOC22/14242).

Version	Revised date	Details
2.0	30 October 2024	• Update reference to the new 2024 Regulation. • Update reference to the department from DPI to DPIRD. • Update reference to SEPP 2021.