

# Using Crown land for oyster farming

Crown Lands is assisting the oyster industry to utilise Crown land for oyster farming and aquaculture activities.

## Important

This is general information about land-based oyster farming on Crown land. It should not be used as a substitute for legal or professional advice and tenure holders should seek professional advice.

Crown Lands issues Crown leases and licences (tenures) under the *Crown Land Management Act 2016* for land-based oyster farming activities.

Land-based oyster sites on Crown land are strategically located near oyster growing areas and are often small in size and scarce. They are industrial in nature and mostly found in sensitive estuarine environments.

Crown Lands, the NSW Oyster Industry Sustainable Aquaculture Strategy Fourth Edition 2021 and the NSW planning system seek to protect land-based oyster sites from inappropriate uses and land-use conflict.

The NSW Department of Primary Industries and Regional Development – Fisheries issues aquaculture leases and permits under the *Fisheries Management Act 1994*. This fact sheet does not advise on oyster farm areas under that Act.

## Use of Crown land for oyster farming activities

There are several important points to consider when assessing the use of Crown land for land-based oyster farming activities:

- There must be a current tenure from Crown Lands for the land use and occupation for purposes including but not limited to: oyster farming, production and processing, reclamation, retaining walls, jetties, ramps, storage, structures and berthing areas.
- Site use must be consistent with the purpose of the tenure and compliant with tenure terms and conditions.

- The tenure holder must be an oyster farmer with a current aquaculture permit under the *Fisheries Management Act* and a Food Authority Licence under the Food Regulation 2015 (NSW) to cultivate and/or harvest oysters (including spat).
- Any proposed development or use of Crown land must be permitted in the zone and the applicable land use table in the relevant environmental planning instrument, such as a local environmental plan or state environmental planning policy.
- The tenure holder must get all required planning approvals and carry out the development under the conditions of consent imposed by the relevant planning consent authority.
- Indigenous land interests under the *Aboriginal Land Rights Act 1983* (NSW) and the *Native Title Act 1993* (Cth) must be considered when issuing tenures or providing landowners consent to new developments on oyster land-based sites. For more information, visit [Aboriginal land claims](#) and [Native title and the oyster farming industry](#).
- [Crown land 2031](#) promotes multiple uses of Crown land to maximise public value. Ancillary uses such as ‘farm gate premises’ or ‘retail premises’ in the right circumstances have the potential to support diversification and generate additional public value. These additional uses need [consent from the landowner](#) and relevant planning approvals, and must be consistent with the objects and principles of the *Crown Land Management Act*.

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## Tenure holder responsibilities

A tenure holder has responsibilities under the terms and conditions of their tenure.

The terms and conditions include:

- using the site only for the permitted use
- paying rent
- meeting environmental obligations
- complying with other relevant laws
- holding current insurance and permits
- other general tenure obligations.

## Ancillary uses

Land uses or selling products other than oysters from a Crown land site may be prohibited in the tenure terms or conditions. Crown Lands can consider a variation to the tenure terms and conditions if:

- the tenure holder has landowner's consent (which will consider Indigenous land interests)
- planning approvals have been obtained
- the ancillary use meets the objects and principles of the *Crown Land Management Act*.

## Environmental planning approvals

Tenure holders must obtain all required environmental planning, development, building, and operating approvals for structures, uses and activities on tenured Crown land.

Oyster processing will need planning and building approval. For example, for constructing or demolition of buildings, retaining walls, jetties, tar pits, to set up onsite sewerage management systems or the change of use of the land for agritourism, farm gate premises or retail premises.

A tenure holder should check if the proposed development is permissible before applying for planning approval. This will depend on the zoning of the land and the applicable land use table in the relevant environmental planning instrument.

A tenure holder needs landowner's consent to lodge a development application, obtain a construction certificate or to do anything on Crown land that requires separate approval from a consent authority.

The landowner's consent application form enables Crown Lands to consider changes to land uses or development on Crown land. The application will be checked for consistency with the tenure terms and conditions, Indigenous land interests and the impacts the development may have on land-based sites available for oyster processing.

Landowner's consent is also usually required for a grant funding application. In this case, contact Crown Lands for advice.

The 'Planning Controls' section of this fact sheet contains more information on the different uses and planning controls.

## Other approvals

Approvals may also be required from Transport for NSW or the Department of Primary Industries and Regional Development – Fisheries or local council (eg. water, sewer, onsite waste disposal, waste management).

## Work plan compliance

Where a tenure specifies a work plan for completion of required site works, the tenure holder must meet the obligations outlined in their work plan agreements.

Non-compliance with work plan agreements may result in compliance action by Crown Lands including lease forfeiture or licence revocation.

Work plans will be phased out in new tenures.

## Tenure rent

As per the *Crown Land Management Act*, market rent is applied to any use and occupation of Crown land under tenure.

For oyster farming, processing or aquaculture activities, the rent payable reflects the primary production use of the site. This rent is reduced compared to agritourism, retail or commercial use. Road access or water-only access also changes the rent payable.

If there is a change on Crown land to enable other land uses, for example, agritourism, retail premises or farm gate premises (with consent):

- the use must be allowed under the tenure including any licence or sublease of that tenure, and
- the rent will likely change if there is an increased possibility for income generation.

Crown Lands may consider requests for financial concessions and financial hardship applications relating to rent payments. For more information, visit [financial assistance](#).

## Compliance action for unauthorised uses

Uses on Crown land that do not comply with the terms and conditions of tenure or the applicable planning controls for the land are assessed on a case-by-case basis.

In each case, Crown Lands assesses the risk, potential for land-use conflict, objectives and ability to become compliant. Compliance activity may restrict unauthorised uses, remove or terminate a tenure, refuse to renew a tenure or result in fines or prosecution.

The Crown land could also be deemed unlawfully used and occupied, which may have further implications.

## Planning controls

Planning controls that regulate proposed developments are set by the *Environmental Planning and Assessment Act 1979*, Environmental Planning and Assessment Regulation 2000 and the applicable environmental planning instruments.

The zoning and permissibility of land-based oyster farming on Crown land are different across NSW.

Tenure holders need to check the zoning of their land under the relevant environmental planning instrument. To check zoning, enter the address into the [NSW Planning Portal](#).

Other planning controls or development standards may apply to the land. Tenure holders should seek legal or professional advice to find out if the proposed land use is permitted.

A planning consultant or the duty planner from the local council may be able to assist with enquiries on permissible land uses.

## Retail activities

Farm gate sales of oysters may be permissible in some locations based on:

- the zoning of the land
- permissibility under applicable environmental planning instruments
- consistency with the tenure
- any other planning controls.

Each case is considered individually.

Tenure holders may need legal and professional advice to find out if the planned retail use is considered a permitted use or additional to the permitted use. For example:

- The sale of oysters may be different to oyster production and processing and considered an ancillary use. This development may comprise a farm gate premises' or be a separate land use.
- 'Food and drink premises' such as 'restaurants', 'cafés', 'take aways' and 'bars' are unlikely to be characterised as oyster production or processing and may require separate planning and tenure approval. As these uses may reduce the land available for oyster processing, increase environmental impacts (e.g., additional demands on sewerage systems) or create land-use conflict (due to noise, odour, traffic or parking), they may require separate approval.

Other considerations will determine if retail or food and drink premise are permitted:

- The zoning of the land (and the applicable land use table) under the relevant environmental planning instrument, where such uses may be permitted in some zones and prohibited in others.
- Other legislation, such as the *Food Act 2003*, *Liquor Act 2007* and *Work Health and Safety Act 2011*
- Some tenures do not allow retail activities even if they are ancillary or additional to the permitted use under the tenure, though it may be possible to amend the tenure purpose.

Tenure holders should seek independent legal or professional advice if there is uncertainty about the permissibility of their proposed activities.

## Oyster agritourism

In addition to oyster production, agritourism is a way oyster farmers can create or diversify business. Under the NSW planning system, 'agritourism' may be permissible on land where oysters are produced with development consent.

The proposed agritourism use must be permitted in the land zone under the environmental planning instrument and meet the definition of a farm gate premises or farm experience premises. These terms are defined in the [Dictionary of the Standard Instrument](#).

The type of planning approvals and construction certificates needed for oyster agritourism will depend on the size and type of development. It could be 'exempt' or 'complying' development if the land is in an applicable zone and certain development standards are met. This is assessed on a case-by-case basis, and a tenure holder should seek legal and professional advice about this option.

If the proposed agritourism does not meet the requirements for exempt or complying development, a development application may be submitted to the consent authority.

More information about agritourism can be found in the [Setting up an agritourism business – A guide to planning approvals available on the NSW Planning Portal](#).

## Compliance action by a consent authority

The consent authority may take enforcement action for non-compliance where development is inconsistent with a development consent or the applicable planning controls. This may result in fines, orders or prosecution against the tenure holder.

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## Further information

You can find general information about leases and licences on the Crown Land's website: [crownland.nsw.gov.au](http://crownland.nsw.gov.au) or by phone: 1300 886 235.

The differences between leasing and licencing of Crown land as it relates to the oyster industry is explained in a separate [fact sheet](#).