Notice

Environmental Protection Act 1994

Direction Notice

This direction notice is issued by an authorised person pursuant to section 363B of the Environmental Protection Act 1994.

Mainstream Aquaculture Queensland Pty Ltd ACN 625 858 693
249 Martyville Road
Martyville, QLD, 4858

Your reference: E-100256722

Our reference: C-CPLPO-100245604;

1 July 2022

Take notice: that under the *Environmental Protection Act 1994* (the Act) a direction notice is issued to Mainstream Aquaculture Queensland Pty Ltd (ACN 625 858 693) (you) by an authorised person under section 363B of the Act.
The direction notice is issued with respect to your activities at the Mainstream Killaloe aquaculture facility situated at 6458 Captain Cook Highway, Killaloe 4877 QLD on land described as Lot 204 on SP264765 (the premises).

A. Grounds

The direction notice is issued on the grounds that the authorised person believes that:

1. you are contravening a prescribed provision, being section 426 of the Act which states: "A person must not carry out an environmentally relevant activity unless the person holds, or is acting under, an environmental authority for the activity"; and
2. it is likely the contravention of section 426 will continue; and
3. the matter relating to the contravention can be remedied and it is appropriate to give you an opportunity to remedy the matter.

The facts and circumstances forming the basis for these grounds are:

1. You occupy the premises located at Lot 204 on SP264765 known as 6458 Captain Cook Highway, Killaloe 4877 QLD (the premises).
2. You hold environmental authority (EA) EPPR00931213 that authorises environmentally relevant activities (ERAs):
    a. ERA 01 – Aquaculture, threshold 1 (b), authorising cultivating or holding crustaceans in enclosures that are on land and have a total area of (b) more than 10ha but not more than 100ha; and
    b. ERA 27 - Seafood processing.

Queensland Government

3. On 16 May 2022, authorised persons of the Department of Environment and Science (the department) entered the premises lawfully and conducted an inspection.

4. The authorised persons observed activities, including cultivating or holding estuarine or freshwater organisms (namely barramundi) in enclosed ponds on the premises, consistent with environmentally relevant activity (ERA) 1 – Aquaculture, threshold 2, being carried out at the time of the inspection.

5. During the inspection, authorised persons observed and/or collected evidence of the following:

   a) That barramundi (*Lates calcarifer*), a catadromous bony fish, are being held and cultivated in 16 enclosed aquaculture ponds that are situated on land at the premises.

   b) That the ponds at the premises were originally designed and used for holding crustacean (prawn) species in order to conduct a commercial prawn aquaculture operation under the EA.

   c) That barramundi are being held and cultivated at the premises as a commercial enterprise, with the object of later harvesting them for processing and sale.

   d) That the ponds being used to cultivate the barramundi incorporate 'monk' structures that are designed and constructed as the principal pond water release point of each aquaculture pond with the purpose of managing pond water levels and releasing pond water.

   e) That pond water released via each monk structure reports to a drainage system.

   f) That several of the monk structures inspected were releasing pond water to the drainage system.

   g) That the drainage system can conduct released pond water away from the ponds via two drains. One drain is connected to Muddy Creek and the other drain is connected to Packers Creek.

   h) That one drain was observed to be releasing water through tidal gates into Muddy Creek.

   i) That the water being released from the onsite drain into Muddy Creek consisted of tidal water and water from ponds being used to cultivate barramundi.

   j) That the other onsite drain releases pond waters to Packers Creek and that due to the connection of this drain to Packers Creek, pond waters observed releasing from the ponds into this drain are released to Packers Creek.

6. Schedule 2, part 1 of the *Environmental Protection Regulation 2019* describes ERA 1 Aquaculture threshold 2 and details exclusions that apply to the operation of the activity:

   (2) The relevant activity does not include cultivating or holding marine, estuarine or freshwater organisms—

   (a) in an aquarium for display purposes only; or

   (b) in an enclosure from which no water, other than uncontaminated stormwater, can be released to waters; or

   (c) if the marine, estuarine or freshwater organisms receive no augmented food supply.

7. The department considers that none of the exclusions apply, (as detailed above at paragraph 5) being that:

   a. barramundi were not being held in an aquarium for display purposes and were being held in ponds for commercial purposes;

   b. observations were made by authorised persons that water from the ponds (that was not uncontaminated stormwater), was being released to waters off site;

c. the barramundi receive augmented food supply, including pellet feed supplied to the ponds on a daily basis by farm operators.

8. A search of the department's electronic databases indicates that you do not hold an EA to lawfully carry out ERA 1 – Aquaculture, threshold 2 at the premises.
9. You are not acting under an EA to lawfully conduct the ERA at the premises.
10. Under section 426 of the Act, a person must not carry out an ERA unless the person holds, or is acting under, an EA for the activity.
11. It is reasonable to require you to remedy the contravention by ceasing to carry out the activity at the premises, unless or until, you hold or are acting under an EA.

B. Steps required

The authorised person considers that the following reasonable steps are necessary to remedy the contravention of section 426 of the Act:

1. You must not conduct ERA 01 – Aquaculture 2 (i.e., cultivating or holding marine, estuarine or freshwater organisms, other than crustaceans in enclosures on land that have a total area of more than 100m^2) at the premises until you have obtained approval under an environmental authority to conduct this environmentally relevant activity.

Take notice:

1. You must stop carrying out environmentally relevant activity (ERA 1 – Aquaculture, threshold 2(b)) by **3:00pm** on the date that the notice is received or by **Tuesday, 12 July 2021**, whichever date comes first.
2. This notice remains in force until further notice from an authorised person.

C. Reviews and appeals

The provisions regarding reviews of decisions and appeals are found in sections 519 to 539 of the Act.

A person who is dissatisfied with an original decision made by the Department of Environment and Science (the department) may apply to have that decision internally reviewed.

Information about starting a review or appeal in relation to this notice is contained within the Internal Reviews and Appeals Information Sheet (available at www.qld.gov.au using the publication number ESR /2015/1742 as a search term)

A request for review is to be made using the approved form 'Application for review of original decision' (available at www.qld.gov.au using the publication number ESR/2015/1573 as a search term.

Applications for reviews are to be sent to Permit and Licence Management, Department of Environment and Science: via email at palm@des.qld.gov.au , or by mail to the following address: GPO. Box 2454, Brisbane, QLD, 4001.

Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able to appeal against that decision to the relevant court within 22 business days after receiving notice of the review decision.

A person whose interests are or would be adversely affected by a decision of the department may be able to apply for a statutory order of review under the *Judicial Review Act 1991*.

You may have other legal rights or obligations and should seek your own legal advice.

D. Public Register

Pursuant to section 540 of the EP Act, the Department is required to maintain a register of certain documents and information authorised under the EP Act. A copy of this document will be kept on the public register. The register is available for inspection by members of the public who are able take extracts, or copies of the documents from the register. Documents that are required to be kept on the register are published in their entirety, unless alteration is required by the EP Act. There is no general discretion allowing the Department to withhold documents or information required to be kept on the public register. For more information on the Department's public register, search 'public register' at www.qld.gov.au. For queries about privacy matters please email privacy@des.qld.gov.au or telephone 13 74 68.

E. Penalties

Failing to comply with a direction notice is an offence unless you have a reasonable excuse.

- The maximum penalty for wilfully contravening a direction notice is 1665 penalty units, totalling $229,520.25 for an individual and $1,147,601.25 for a corporation.
- The maximum penalty for contravening a direction notice is 600 penalty units, totalling $82,710 for an individual and $413,550 for a corporation.

Section 3 of the *Penalties and Sentences Regulation 2015* prescribes the monetary value of a penalty unit.

The department may also consider alternative compliance or enforcement action in relation to the offences that are the subject of this notice.

Should you have any queries in relation to the notice, please contact Samuel Hedge, Team Leader - Compliance on telephone number (07) 4222 5331.

T. B—	1/07/2022
Signature	Date

Tim Brain, Manager (Compliance)
Department of Environment and Science
Authorised Person
Environmental Protection Act 1994

EnquiriesCompliance Centre: **Cairns**
Email: ESTowsnville@des.qld.gov.au
Telephone: (07) 4222 5334

Attachment 1 Prescribed ERA description of ERA 1 Aquaculture

1 Aquaculture

(1) Aquaculture (the relevant activity) consists of cultivating or holding marine, estuarine or freshwater organisms in an enclosure on land or in waters.

(2) The relevant activity does not include cultivating or holding marine, estuarine or freshwater organisms—

(a) in an aquarium for display purposes only; or

(b) in an enclosure from which no water, other than uncontaminated stormwater, can be released to waters; or

(c) if the marine, estuarine or freshwater organisms receive no augmented food supply.

(3) In the following table, the aggregate environmental score for the relevant activity is the score stated opposite the threshold within which the relevant activity is carried out.

Threshold	**Aggregate environmental score**	**3**
1 cultivating or holding crustaceans in enclosures that are on land and have a total area of—		
(a) more than 100m² but not more than 10ha	11	C
(b) more than 10ha but not more than 100ha	21	C
(c) more than 100ha	34	C
2 cultivating or holding marine, estuarine or freshwater organisms, other than crustaceans, in enclosures that are on land and have a total area of—		
(a) more than 100m² but not more than 10ha	19	C
(b) more than 10ha but not more than 100ha	29	C
(c) more than 100ha	32	C
3 carrying out the relevant activity in enclosures that are in waters and have a total area of—		
(a) no more than 1ha	26	C
(b) more than 1ha	36	C

(4) In this section—

augmented food supply, for cultivating or holding marine, estuarine or freshwater organisms, means the addition of foods for cultivating or holding the organisms.

enclosure includes a cage, pond or tank.