Notice

Environmental Protection Act 1994

Varied Direction Notice

This Direction Notice is issued by the administering authority pursuant to section 326B and section 521 (5) (c) (ii) of the Environmental Protection Act 1994.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;

~~27 June 2022~~ 18 August 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 on land described as Lot 204 on SP264765 situated at 6458 Captain Cook Highway, Killaloe 4877 QLD (the premises).

A. Grounds

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

1. you were 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 maybe repeated; 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 EPPR00931213 (EA) that authorises environmentally relevant activity (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 ERA 27, authorising seafood processing.
3. On 16 May 2022, authorised persons of the Department of Environment and Science (the department) entered the premises lawfully and conducted an inspection.

Queensland Government

1) 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 this 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 drain into Muddy Creek consisted of tidal water and water from ponds being used to cultivate barramundi.

   j) That the other 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.

2) Schedule 2, part 1 of the *Environmental Protection Regulation 2019* (the **Regulation**) describes ERA 01 Aquaculture. Section (2)(b) of the definition of aquaculture is extracted below.

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

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

(the **enclosure exclusion**)

3) As detailed above, observations were made that water, that was not uncontaminated stormwater, was being released to waters and therefore can be released to waters. As a result, I am satisfied that the enclosure exclusion does not apply to Mainstream's activities at the time of the 16 May 2022 inspection.

4) A search of the department's electronic databases indicates that Mainstream does not hold an environmental authority (EA) to lawfully carry out ERA 1, threshold 2 at the premises.

5) Mainstream was not acting under an EA to lawfully conduct the ERA at the premises.

6) Under section 426 of the *Environmental Protection Act 1994* (the **Act**), a person must not carry out an ERA unless the person holds, or is acting under, an EA for the activity.

B. Steps required

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

Take notice:

Condition (1): Ensure that, at all times:

(a) any barramundi cultivated or held on the premises are contained in an enclosure from which no water, other than uncontaminated stormwater, can be released to waters, either directly or indirectly; and

(b) no water or waste is pumped, released or in any other way allowed to be deposited (including overflowing or otherwise moving) from the barramundi pond system on the premises (including the "monks" and any other related infrastructure) (the **Barramundi Pond System**) into any prawn ponds, or any Queensland waters, either directly or indirectly.

Condition (2): Within one month of the date of this notice, provide the Department with an adaptive management plan prepared by an expert who is suitably qualified to prepare the plan, which sets out how any activities involving the cultivating or holding of barramundi on the premises will be managed to achieve compliance with condition (1). The adaptive management plan must provide for, but not be limited to, at least the following measures:

(a) Details relating to the measures employed to ensure that no water or waste is released (including by leaking, overflowing, or otherwise moving) from the Barramundi Pond System into any prawn ponds on the premises or Queensland waters, either directly or indirectly, and that any waste from the Barramundi Pond System is lawfully removed to a licensed waste disposal facility outside the premises that can lawfully accept the waste.

(b) Daily inspections of the Barramundi Pond System must be carried out, and:

  (i) any remedial measures identified in a daily inspection must be attended to immediately; and

  (ii) a written record of each daily inspection must be made and retained and made available for inspection at the request of an authorised person. The record must contain the details of the person inspecting, time/date/place, individual ponds inspected, condition on inspection and remedial measures undertaken (for example “No issues”, “Remediation carried out”, or "Leaking, remediation carried out”).

(d) The daily inspection and written record must be undertaken and prepared by a person with sufficient experience and knowledge about how the Barramundi Pond System works, and who is able to undertake immediate remedial measures and immediately prevent releases of water or waste as required. The person must sign the record on the date that it is made as being true and correct.

(e) A notification must be made to the Department via the Pollution Hotline on 1300 130 372 within 12 hours of finding waters releasing from the Barramundi Pond System into any prawn ponds, or any Queensland waters, either directly or indirectly. Further, a written notification must be sent to the

Department via the dedicated email pollutionhotline@des.qld.gov.au within 72 hours of finding water or waste releasing from the Barramundi Pond System.

(f) Procedures for managing water levels within the Barramundi Pond System to ensure that adequate freeboard is maintained in each barramundi pond at all times so that water, including but not limited to contaminated stormwater, cannot be released from the Barramundi Pond System during rainfall events, including extreme rainfall events typically associated with the "wet season" in Far North Queensland.

(g) Procedures for containing and managing waste, including for example any water extracted from the Barramundi Pond System in order to manage and maintain freeboard levels, to ensure that all waste is lawfully disposed of at an off-site facility lawfully able to accept the waste.

(h) A process for periodically reviewing and amending the adaptive management plan as required, with any amended plan to be provided to the Department within a period of no more than 5 business days after amendment.

Condition (3): Without limiting conditions (1) or (2), you must implement and comply with the adaptive management plan provided in accordance with condition (3) at all times.

Condition (4): Consent to and provide access by an authorised person to the premises on request in order to inspect the Barramundi Pond System for compliance with these conditions.

Condition (5): This notice remains in force until further notice from an authorised person.

I have made variations to the requirements including the addition of new requirements because I consider that they are **necessary** to **avoid further contravention** of section 426 of the EP Act, as contemplated by section 363D(3).

amendment.

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 an individual contravening a direction notice is 600 penalty units, totalling $82,710.

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.



Signature

18/08/2022

Date

Martyn Hughes, Manager (Compliance)
Department of Environment and Science
Authorised Person
Environmental Protection Act 1994
Coal and Central Compliance
Environmental Services and Regulation
Department of Environment and Science

EnquiriesCompliance Centre: **Cairns**
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