

SARA reference: 2105-22650 SDA

14 December 2023

Mainstream Aquaculture Queensland 595 Flinders Street TOWNSVILLE QLD 4810 Anne.Zareh@braziermotti.com.au

Attention: Anne Zareh

Dear Anne

SARA Decision notice— 6458 Captain Cook Highway, Killaloe

(Assessment Manager decision notice given under section 63 of the Planning Act 2016)

The development application described below was confirmed as properly made by the State Assessment and Referral Agency (SARA) on 24 May 2021.

Decision

Outcome:	Approved, subject to conditions
Date of decision:	14 December 2023
Conditions:	The approval is subject to the conditions in Attachment 1
Advice:	Advice to the applicant is in Attachment 2
Reasons:	The reasons for decisions are in Attachment 3
Currency period:	This development approval will lapse if development is not started within the currency periods stated in section 85 of the <i>Planning Act</i> 2016

Development Details

Description:	Development permit	Material change of use for Material Change of Use for an Environmentally Relevant Activity - ERA 1 (2)(b)	
SARA role:	Assessment manager		
SARA trigger:	Schedule 8, Table 4, Column 1, Item 1 – Environmentally Relevant Activity (Planning Regulation 2017)		

SARA reference:	2105-22650 SDA
Street address:	6458 Captain Cook Highway, Killaloe
Real property description:	Lot 204 on SP264765
Local government area:	Douglas Shire Council
Applicant name:	Mainstream Aquaculture Queensland
Applicant contact details:	595 Flinders Street
	Townsville QLD 4810
	Anne.Zareh@braziermotti.com.au

Additional details

Category of assessment:	Code assessable
Properly made submissions:	N/A
Environmental authority:	 This development application was also taken to be an application for an environmental authority under section 115 of the <i>Environmental Protection Act 1994</i>. Below are the details of the decision: Approved Reference: P-EA-100205095 Approved by an Order of the Planning and Environment Court dated 30 November 2023 in appeal BD800/2022. Prescribed environmentally relevant activity (ERA): ERA 1 – Aquaculture 2(b) – Cultivating or holding marine, estuarine or freshwater organisms, other than crustaceans, in enclosures that are on land and have a total area of more than 10ha but not more than 100ha
	A copy of the permit will be provided to the applicant separately. However, if you are seeking further information on the environmental authority, the Department of Environment and Science's website includes a register. This can be found at: <u>www.des.qld.gov.au</u>
<i>Human Rights Act 2019</i> considerations:	The decision has been determined with consideration of the <i>Human Right Act 2019</i> sections 15 to 37. The decision does not limit human rights.

Dispute resolution

Representations:	The rights of applicants to make representations about this decision notice during the applicant's appeal period is set out in Chapter 3, Part 5 of the <i>Planning Act 2016</i> . Copies of the relevant provisions are in Attachment 4 .
Appeal:	The rights of applicants to appeal to a tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the Planning Act. Copies of the relevant appeal provisions are in Attachment 5 .

For further information please contact Rebecca Carpenter, Principal Planner, on 0734527652 or via email DAAT@dsdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely

Anna MGut

Anna McGrath Executive Director

- enc Attachment 1 Assessment manager conditions Attachment 2 – Advice to the applicant Attachment 3 – Reasons for the decision Attachment 4 – Change representations provisions Attachment 5 – Appeal provisions Attachment 6 – Documents referenced in conditions
- CC Douglas Shire Council, enquiries@douglas.qld.gov.au

Attachment 1—Assessment manager conditions

(Given under section 63(2)(e)(ii) of the *Planning Act 2016*) (Copies of the documents referenced below are found at **Attachment 6**)

No.	Conditions of development approval	Condition timing				
Material	Material Change of Use – Environmental Relevant Activity					
8.4.1 — The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of Department of Environment and Science to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following condition(s):						
1.	 The Environmentally Relevant Activity must be carried out generally in accordance with the following plans: a) Mossman Aquaculture Farm MCU & EA prepared by Wild Environmental dated 20 May 2021, reference JW211392 	At all times				
2.	Development authorised under this approval for ERA 1(1)(b) and ERA 1(2)(b) is limited to 49 production ponds with a maximum combined area of 62 ha.	At all times				

Attachment 2—Advice to the applicant

General advice		
1.	Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP) (version 2.6). If a word remains undefined it has its ordinary meaning.	

Attachment 3—Reasons for the decision

(Given under section 63(5) of the Planning Act 2016)

The reasons for SARA's decision is that:

• the proposed development complies with State code 22: Environmentally relevant activities and is located and designed to avoid or mitigate environmental harm on environmental values of the natural environment, adjacent sensitive land uses and sensitive receptors.

Material used in the assessment of the application:

- the development application material and submitted plans
- Planning Act 2016
- Planning Regulation 2017
- The SDAP (version 2.6), as published by SARA
- the Development Assessment Rules
- SARA DA Mapping system
- Section 58 of the Human Rights Act 2019

Attachment 4— Change representations provisions

Attachment 5—Appeal provisions

Attachment 6—Documents referenced in conditions

(given under section 43 (b) of the Planning Regulation 2017)

Planning Act 2016 – Change representations provisions.

Chapter 3 Development Assessment

Division 2 Changing development approvals

Subdivision 1 Changes during appeal period

75 Making change representations

- The applicant may make representations (*change representations*) to the assessment manager, during the applicant's appeal period for the development approval, about changing—
 - (a) a matter in the development approval, other than
 - i. a matter stated because of a referral agency's response; or
 - ii. a development condition imposed under a direction made by the Minister under chapter 3, part6, division 2; or
 - (b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).
- 2) If the applicant needs more time to make the change representations, the applicant may, during the applicant's appeal period for the approval, suspend the appeal period by a notice given to the assessment manager.
- 3) Only 1 notice may be given.
- 4) If a notice is given, the appeal period is suspended-
 - (a) if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or
 - (b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until
 - i. the applicant withdraws the notice, by giving another notice to the assessment manager; or
 - ii. the applicant receives notice that the assessment manager does not agree with the change representations; or
 - iii. the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.
- 5) However, if the assessment manager gives the applicant a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

76 Deciding change representations

- The assessment manager must assess the change representations against and having regard to the matters that must be considered when assessing a development application, to the extent those matters are relevant.
- 2) The assessment manager must, within 5 business days after deciding the change representations, give a decision notice to—
 - (a) the applicant; and
 - (b) if the assessment manager agrees with any of the change representations
 - i. each principal submitter; and
 - ii. each referral agency; and
 - iii. if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and
 - iv. if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and
 - v. another person prescribed by regulation.
- 3) A decision notice (*a negotiated decision notice*) that states the assessment manager agrees with a change representation must—
 - (a) state the nature of the change agreed to; and
 - (b) comply with section 63(2) and (3).
- 4) A negotiated decision notice replaces the decision notice for the development application.
- 5) Only 1 negotiated decision notice may be given.
- 6) If a negotiated decision notice is given to an applicant, a local government may give a replacement infrastructure charges notice to the applicant.

Planning Act 2016 – Appeal provisions

The following provisions are the **appeal rights** as defined in the Planning Act 2016, schedule 2.

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
 - (a) matters that may be appealed to-
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person-
 - (i) who may appeal a matter (the *appellant*); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The appeal period is—
 - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person. *Note*—

See the P&E Court Act for the court's power to extend the appeal period.

(4) Each respondent and co-respondent for an appeal may be heard in the appeal.

- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund-
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—
 - (a) the respondent for the appeal; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2 —each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
 - (f) for an appeal to the P&E Court-the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The *service period* is—
 - (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.
- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

231 Other appeals

(1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.

- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—

decision includes—

- (a) conduct engaged in for the purpose of making a decision; and
- (b) other conduct that relates to the making of a decision; and
- (c) the making of a decision or the failure to make a decision; and
- (d) a purported decision; and
- (e) a deemed refusal.

non-appealable, for a decision or matter, means the decision or matter-

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the Judicial Review Act 1991 or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

Schedule 1 Appeals

1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—
 - (a) the P&E court; or
 - (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
 - (a) the refusal, or deemed refusal of a development application, for
 - i a material change of use for a classified building; or
 - ii operational work associated with building work, a retaining wall, or a tennis court; or
 - (b) a provision of a development approval for
 - i a material change of use for a classified building; or
 - ii operational work associated with building work, a retaining wall, or a tennis court; or
 - (c) if a development permit was applied for-the decision to give a preliminary approval for
 - i a material change of use for a classified building; or
 - ii operational work associated with building work, a retaining wall, or a tennis court; or

- (d) development condition if
 - i the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
 - ii the building is, or is proposed to be, not more than 3 storeys; and
 - iii the proposed development is for not more than 60 sole-occupancy units; or
- (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
- (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
- (g) a matter under this Act, to the extent the matter relates to the Building Act, other than a matter under that Act that may or must decided by the Queensland Building and Construction Commission; or
- (h) a decision to give an enforcement notice
 - i in relation to a matter under paragraphs (a) to (g); or
 - ii under the Plumbing and Drainage Act; or
- (i) an infrastructure charges notice; or
- (j) the refusal, or deemed refusal, of a conversion application; or
- (k) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
 - (a) for a matter in subsection (2)(a) to (d)
 - i a development approval for which the development application required impact assessment; and
 - ii a development approval in relation to which the assessment manager received a properly made submission for the development application; or
 - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.
- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
 - (a) column 1 states the appellant in the appeal; and
 - (b) column 2 states the respondent in the appeal; and
 - (c) column 3 states the co-respondent (if any) in the appeal; and
 - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.
- (8) In this section—

storey see the Building Code, part A1.1.

Table 1 Appeals to the P&E Court and, for certain matters, to a tribunal

1. Development applications

For a development application other than a development application called in by the minister, an appeal may be made against-

(a) the refusal of all or part of the development application; or

- (b) the deemed refusal of the development application; or
- (c) a provision of the development approval; or

(d) if a development permit was applied for-the decision to give a preliminary approval.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The assessment manager	If the appeal is about a concurrence agency's referral response—the concurrence agency	 A concurrence agency that is not a co- respondent If a chosen assessment manager is the respondent—the prescribed assessment manager Any eligible advice agency for the application Any eligible submitter for the application

2. Change applications

For a change application other than a change application made to the P&E Court or called in by the Minister, an appeal may be made against—

(a) the responsible entity's decision on the change application; or

(b) a deemed refusal of a change application.

	lumn 1 pellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1. 2.	The applicant If the responsible entity is the assessment manager—an affected entity that gave a pre-request notice or response notice	The responsible entity	If an affected entity starts the appeal—the applicant	 A concurrence agency for the development application If a chosen assessment manager is the respondent—the prescribed assessment manager A private certifier for the development application Any eligible advice agency for the change application Any eligible submitter for the change application

3. Extension applications

For an extension application other than an extension application called in by the Minister, an appeal may be made against-

(a) The assessment manager's decision on the extension application; or

(b) A deemed refusal of the extension application.

Column 1 Appellant		Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1. 2.	The applicant For a matter other than a deemed refusal of an extension application—a concurrence agency, other than the chief executive, for the application	The assessment manager	If a concurrence agency starts the appeal—the applicant	If a chosen assessment manager is the respondent—the prescribed assessment manager

4. Infrastructure charges notices

An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds-

(a) the notice involved an error relating to-

(i) the application of the relevant adopted charge; or

- Examples of errors in applying an adopted charge:
 - the incorrect application of gross floor area for a non-residential development
 - applying an incorrect 'use category', under a regulation, to the development
- (ii) the working out of extra demand, for section 120; or
- (iii) an offset or refund; or
- (b) there was no decision about an offset or refund; or
- (c) if the infrastructure charges notice states a refund will be given—the timing for giving the refund; or
- (d) the amount of the charge is so unreasonable that no reasonable relevant local government could have imposed the amount.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the infrastructure charges notice	The local government that gave the infrastructure charges notice	_	_
5. Conversion applications			
 An appeal may be made agair (a) the refusal of a conversion (b) a deemed refusal of a conversion 	n application; or		
An appeal may be made agair (a) the refusal of a conversio	n application; or	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent	by	olumn 4 Co-respondent election (if
The person given the enforcement notice	The enforcement authority	(if any) 	no pre off ha	he enforcement authority is t the local government for the emises in relation to which the ence is alleged to have ppened—the local vernment
	Appeals to	Table 2 the P&E Court only		
 Appeals from tribunal An appeal may be made against (a) an error or mistake in law or (b) jurisdictional error. 	a decision of a tribunal, other than n the part of the tribunal; or	n a decision under section	on 252, on the	e ground of—
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)		olumn 4 Co-respondent election (if y)
A party to the proceedings for the decision	The other party to the proceedings for the decision	_	_	
an appeal may be made against	change application other than an the decision to approve the applic application or change application	ation, to the extent the o	decision relate	es to-
Column 1 Appellant	Column 2 Respondent	Column 3 Co-responder (if any)	ot	Column 4 Co- respondent by election (if any)
 For a development application—an eligible submitter for the developme application For a change application—a eligible submitter for the change application 	 For a change application 	on—the agency's response	oeal is about rence referral	Another eligible submitter for the application
an appeal may be made against approval, to the extent the matter	change application other than an a provision of the development application of the developmen	proval, or a failure to in	clude a provis	ion in the development
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)		olumn 4 Co-respondent election (if y)

 For a development application—an eligible submitter for the development application For a change application— an eligible submitter for the 	 For a development application—the assessment manager For a change application— the responsible entity 	 The applicant If the appeal is about a concurrence agency's referral response—the concurrence agency 	Another eligible submitter for th application
 an eligible advice agency for the development application or change application 			
 4. Compensation claims An appeal may be made against. (a) a decision under section 32 (b) a decision under section 26 (c) a deemed refusal of a claim 	about a compensation claim; or 5 about a claim for compensation;	; or	
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person dissatisfied with the decision	The local government to which the claim was made	_	_
5. Registered premises	a decision of the Minister under a	hantar 7 part 4	
Column 1 Appellant	a decision of the Minister under c Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
 A person given a decision notice about the decision 	The Minister	_	If an owner or occupier starts the appeal—the owner of the registered premises
2. If the decision is to register premises or renew the registration of premises— an owner or occupier of premises in the affected area for the registered premises who is dissatisfied with the decision			
 area for the registered premises who is dissatisfied with the decision 6. Local laws 	a decision of a local government,	or conditions applied, under a loc	cal law about—

(a) the use of premises, other than a use that is the natural and ordinary consequence of prohibited development; or

(b) the erection of a building or other structure.

Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
 A person who— (a) applied for the decision; and (b) is dissatisfied with the decision or conditions. 	The local government	_	-
	Appe	Table 3 als and tribunal only	
1. Building advisory agency ag An appeal may be made against assessment against the building	giving a development approva	for building work to the exter	nt the building work required code
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A building advisory agency for the development application related to the approval	The assessment manager	The applicant	 A concurrence agency for the development application related to the approval A private certifier for the development application related to the approval
2. Inspection of building work An appeal may be made against subject of a building developmer			inspection of building work that is the
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant for the development approval	The person who made the decision	_	_
information notice about the	g Act, other than a decision ma decision was given or required	ade by the Queensland Buildi to be given under that Act; c	ng and Construction Commission, if an or out the decision ws given or required to
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who received, or was entitled to receive, an information notice about the decision	The person who made the decision	_	-
4. Local government failure to An appeal may be made against required under that Act.		-	he Building Act within the period

Column 1 Appellant	Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who was entitled to receive notice of the decision	The local government to which the application was made		

