



**MINISTER  
ENVIRONMENTAL AFFAIRS  
REPUBLIC OF SOUTH AFRICA**

**Reference: LSA 138222**

**APPEAL DECISION**

**APPEALS LODGED AGAINST THE ENVIRONMENTAL AUTHORISATION (EA)  
ISSUED TO THE DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES  
FOR THE DEVELOPMENT OF THE PROPOSED SEA BASED AQUACULTURE  
DEVELOPMENT ZONES IN PORT ELIZABETH (ALGOA FISH FARM), EASTERN CAPE  
PROVINCE**

**1. INTRODUCTION**

In terms of regulation 36 (1) of the Environmental Impact Assessment Regulations, 2010, published by Government Notice (GN) No. R. 543 of 18 June 2010 (2010 EIA Regulations), regarding activities identified under section 24 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), the Deputy Director-General: Legal, Authorisations, Compliance and Enforcement (DDG: LACE) of the Department of Environmental Affairs (the Department) authorised the Department of Agriculture, Forestry and Fisheries (the applicant), on 9 July 2014, to proceed with the development of Sea Based Aquaculture Zones in Port Elizabeth (Algoa Fish Farm), Eastern Cape Province.

## **2. BACKGROUND**

- 2.1 The applicant lodged an application for EA in February 2011 for the proposed development of a Sea Based Aquaculture Development Zone for the farming of finfish in Algoa Bay, Port Elizabeth, within the Eastern Cape Province.
- 2.2 The applicant commissioned an independent environmental consultancy, Cape Environmental Assessment Practitioners (Pty) Ltd, to conduct an Environmental Impact Assessment for the above mentioned proposed project. The final Environmental Impact Assessment Report (EIR) was received by the Department on 3 August 2013.
- 2.3 The Department was satisfied that the minimum requirements in terms of the 2010 EIA Regulations had been complied with and that the assessment was adequate for an informed decision to be taken.
- 2.4 As a result thereof, the Department granted an EA to the applicant on 9 July 2014.

## **3 THE APPEAL**

In terms of section 43 (1) of NEMA, a total of 134 Notices of Intention to appeal were received by the Directorate: Appeals and Legal Review. Following the receipt of these notices of intention to appeal, a total of 28 appellants lodged substantive appeals during the period from 1 September 2014 to 30 October 2014 against the EA issued to the applicant on 9 July 2014. An online petition against the proposed development at its approved location was also set up, which has generated in excess of 17 000 signatures.

## **4. DECISION**

- 4.1 In reaching my decision on the appeal against the aforementioned EA, I have taken the following into consideration:
- 4.1.1 Material information contained in the project file (12/12/20/2181);

- 4.1.2 The grounds of appeal submitted by all the appellants;
- 4.1.3 The response to the grounds of appeal submitted by the applicant;
- 4.1.4 The answering statement submitted by some of the appellants, to the extent that the responding statement introduced new information;
- 4.1.5 The comments received from the Chief Directorate: IEA of the Department pertaining to the grounds of appeal;
- 4.1.6 The comments received from the Chief Directorate: Integrated Coastal Management of the Department pertaining to the grounds of appeal;
- 4.1.7 The outcomes of the public meeting held at the Port Elizabeth City Hall on 26 January 2015;
- 4.1.8 The outcomes of the consultations held at the Department between the Directorate: Appeals and Legal Review, the applicant and three aquaculture specialists on 26 February 2015;
- 4.1.9 The outcomes of the consultations held between the Directorate: Appeals and Legal Review and the Nelson Mandela Bay Municipality on 10 April 2015;
- 4.1.10 The outcomes of the consultations held between the Directorate: Appeals and Legal Review and Airports Company South Africa (ACSA) on 10 April 2015;
- 4.1.11 The observations of the site visit conducted at a pilot fish farm in Saldanha Bay on 9 April 2015;
- 4.1.12 The outcomes of the consultations held between the Directorate: Appeals and Legal Review and the Nelson Mandela Bay Municipality on 29 April 2015;

- 4.1.13 The outcomes of the consultations held between the Directorate: Appeals and Legal Review and the Nelson Mandela Bay Tourism and Business Chambers, tourism stakeholders and appellants on 29 April 2015;
- 4.1.14 Correspondence received from the Nelson Mandela Metropolitan Municipality, dated 1 June 2015;
- 4.1.15 Correspondence received from the applicant, dated 3 August 2015.
- 4.2 Having considered the above information, and in terms of section 43 (6) of NEMA, I have decided to revert the matter to the DDG: LACE of the Department for reconsideration, following the undertaking by the applicant of the following:
- 4.2.1 A detailed assessment of the feasibility of Algoa 5 as a preferred alternative;
- 4.2.2 A detailed analysis of the projected revenue and employment opportunities likely to be created by the proposed project, measured against the perceived loss in revenue and employment opportunities as a result of the proposed project at Algoa 1; and
- 4.2.3 A detailed comparative assessment on the feasibility of Algoa 1 and Algoa 5.
- 4.3 Due to the nature of the decision, I have deemed it unnecessary to make a particular ruling on each of the grounds of appeal raised by the appellants. I have, however, noted that the key grounds of appeal include inadequate public participation prior to the granting of the EA; the inadequacy of information at the disposal of the Department prior to making its decision; adverse tourism and economic impacts associated with the proposed development; adverse impacts on international sporting events such as Ironman and Ocean Race, the failure to consider viable land based aquaculture as the preferred alternative; adverse visual and water quality impacts; adverse impacts on the local fishing community; and potential alteration of the marine ecosystem.
- 4.4. The reasons for my decision are as follows:

#### **4.5 ALTERNATIVES CONSIDERED DURING THE EIA PHASE**

- 4.5.1 I have taken note of the fact that during the scoping process for the above mentioned proposed project, various alternative sites were considered by the applicant, ranging from Algoa 1 to Algoa 6, as well as the “no-go” option. However, for reasons relating to amongst others, high shipping traffic, subsidisation of private initiatives and shallow depth, only Algoa 1 and Algoa 5 were further considered and investigated during the EIA process. However, Algoa 5 was not assessed to the same extent as Algoa 1.
- 4.5.2 I have also noted that the Eastern Cape has been recognised as one of the few areas along the South African coastline considered to be suitable for marine based aquaculture.
- 4.5.3 The Algoa 1 site is approximately 669ha in size, and situated approximately 2km off shore from the popular beach area that makes up Summerstrand and Humewood. The Algoa 5 site, located within the proposed expansion area for the Addo Marine Protected Area, is approximately 1 750ha in size and is to be located roughly 4.2kms off shore from the Sunday River Mouth.

#### **4.6 OUTCOME OF CONSULTATIONS DURING THE APPEAL PROCESS**

- 4.6.1 As a result of the contention raised by a number of appellants in respect of inadequate consultation during the initial public participation process, the Directorate: Appeals and Legal Review facilitated a public meeting on 26 January 2015 at the Port Elizabeth City Hall. The meeting was attended by the appellants, the applicant, the Nelson Mandela Metropolitan Municipality, ACSA, the Nelson Mandela Bay Tourism and Business Chambers, Iron Man South Africa and members of the media. A number of concerns were raised by the appellants and interested and affected parties during the said meeting, resulting in the Directorate: Appeals and Legal Review committing to further consultations with ACSA, the Nelson Mandela Metropolitan Municipality and the Nelson Mandela Bay Tourism and Business Chambers. These groups represented key stakeholders who collectively raised concerns of inadequate consultation during the public participation process.

- 4.6.2 During the aforementioned public meeting, most of the appellants, I&APs, as well as key stakeholders which were consulted during the appeal administration process indicated that they were not opposed to aquaculture development in the province but that they opposed the development at its current location, which is situated approximately 2km off shore from the popular tourist beach area in Port Elizabeth.
- 4.6.3 On 26 February 2015, a meeting was held at the Department between the applicant and three Aquaculture specialists namely, Mr Greg Stubbs (M.Sc Aquaculture 30 with years' experience in the industry and CEO of Three Streams Holdings (Pty) Ltd); Mr Robert Landman (B.Sc Hons Genetics Aquaculture and commercial and research manager at I&J with 20 years' experience in the industry); and Mr Gert le Roux (M.Phil Aquaculture with 18 years' experience in the industry and Director of aquaculture at Stellenbosch University). The meeting was called at the request of the applicant, wherein the aforementioned specialists illustrated that sea cage aquaculture can be implemented responsibly and in a manner consistent with the principles of sustainable development. The Directorate: Appeals and Legal Review thereafter met with the Nelson Mandela Bay Metropolitan Municipality, the Nelson Mandela Bay Tourism Chamber and ACSA on 10 April 2015.
- 4.6.4 During the consultation with ACSA, it became evident that ACSA's main concern was regarding the location of the land based fish processing plant. This, they felt, would pose potential risks of bird collisions with air traffic to and from the nearby Port Elizabeth International Airport. However, it was explained to ACSA that authorisation for the offshore processing facility had not been approved and that they could make inputs in respect thereof when that application was being considered. It was further agreed that an ornithologist, appointed by ACSA, will compile a summary of ACSA's recommendations, relating to, amongst others, the location of the land based fish processing facility, as well as additional mitigation measures, should the project go ahead at its current location.
- 4.6.5 Both the Nelson Mandela Bay Metropolitan Municipality and the Nelson Mandela Bay Tourism Chamber requested further separate meetings to discuss its respective concerns around the proposed fish farm at its current location.

- 4.6.6 On 9 April 2015, the Directorate: Appeals and Legal Review conducted a site visit of an established pilot fish farm located in Saldhana Bay, Western Cape. The purpose of the site visit was to obtain a better understanding of the operations, challenges, monitoring and impacts associated with an operational sea based fish farm in order to adequately address various grounds of appeal raised against the proposed project. The Directorate was satisfied, following the site visit, that visual impacts from a distance of two kilometres would be minimal. However, this facility was situated a long distance from tourist facilities and outside of public scrutiny. In many ways, it is an ideal location for a floating fish farm.
- 4.6.7 On 29 April 2015, the Directorate: Appeals and Legal Review met with the Nelson Mandela Bay Metropolitan Municipality in order to obtain a clear understanding as to the Municipality's stance relating to the appeals against the proposed development. At the aforementioned meeting, the Municipal Manager requested an additional month to submit its position to the Directorate: Appeals and Legal Review, during which time it would meet with the applicant and other relevant stakeholders.
- 4.6.8 The Nelson Mandela Bay Tourism and Business Chambers were also further consulted on 29 April 2015. During this meeting, the interests of the tourism industry were highlighted, as well as the inference that the negative impacts and perceptions of the proposed development would jeopardise the multi billion rand tourism sector revenues. It was further emphasised by Ironman South Africa that the international Ironman Association would withdraw the event from Port Elizabeth should the Fish Farm be developed at its current location, as it would not be able to guarantee the safety of its swimmers. The stakeholders further emphasised that they supported aquaculture in the province, but not at its proposed location, just two kilometres off its blue flagship beach. This was further confirmed in a letter from the CEO of the Tourism Chamber and a letter from the CEO of the Business Chamber, confirming its respective stances against the project at its current location.
- 4.6.9 On 10 March 2015, due primarily to the nature of the grounds of appeal from within the tourism sector, I approved the convening of an appeals panel in terms of section 43 (5) of NEMA, the terms of reference for which was to conduct an analysis of the key

considerations of the projected revenue and employment opportunities likely to be created by the proposed project, measured against the perceived loss in revenue and employment opportunities as a result of the proposed project at its current location.

4.6.10 However, prior to the appointment of the aforementioned appeals panel, the applicant requested that the appointment thereof be kept in abeyance until such time as it had an opportunity to further consult with the Nelson Mandela Metropolitan Municipality.

4.6.11 On 1 June 2015, following a meeting between the applicant and the Nelson Mandela Metropolitan Municipality, the Municipality reaffirmed their support for marine aquaculture in the province but not at its current proposed location and further requested the applicant to consider an alternative site for the proposed project.

4.6.12 Following further consultations between officials from the Department and the applicant, on 3 August 2015, the applicant submitted a request that it be afforded an opportunity to further explore the feasibility of Algoa 5 as a preferred location and to do a comparative assessment between Algoa 1 and Algoa 5. The applicant submits furthermore that following that process, it would resubmit an application for EA to the Department.

4.6.13 As a result of the foregoing, the matter is herewith reverted to the Directorate: Integrated Environmental Authorisations of the Department for reconsideration, as per the requirements in terms of 4.2 above.



**MRS B E E MOLEWA, MP**

**MINISTER OF ENVIRONMENTAL AFFAIRS**

**DATE:** 2015/08/18