

Save Langebaan Lagoon  
Postnet Suite 7  
Private Bag X6  
Langebaan  
7357  
Western Cape

The Minister of Environmental Affairs  
Private Bag X447  
Pretoria 0001  
For attention: The Director: Appeals and Legal Review Department  
Email: [appeals@environment.gov.za](mailto:appeals@environment.gov.za)

Our Ref: SLL 2020/10 Appeal  
Your ref: 14/12/16/3/3/1/1728/AM2  
9<sup>th</sup> October, 2020

Dear Minister

**RE: APPEAL IN RESPECT OF AMENDMENT OF THE ENVIRONMENTAL  
AUTHORISATION ISSUED ON 08 JANUARY 2018 DEA REF 14/12/16/3/3/1/1728/AM2 FOR  
THE SEA BASED AQUACULTURE DEVELOPMENT ZONE (ADZ) IN SALDANHA BAY  
WITHIN SALDANHA BAY LOCAL MUNICIPALITY IN THE WESTERN CAPE.**

***Introduction***

1. Save Langebaan Lagoon hereby submit our appeal in terms of section 43 of the National Environmental Management Act 107 of 1998 (NEMA) and section 4(1)(c) of the Environmental Impact Assessment Regulations GN R. 982 of 2014 (EIA Regulations),
2. We confirm that we have simultaneously provided this appeal submission to the Applicants, and known Interested and Affected Parties (I&APs), and that we have done so in compliance with section 4(1) of the NEMA National Appeals Regulations, GN R. 993 of 2014.

3. Save Langebaan Lagoon (SLL) is a Voluntary Organisation, duly constituted under the Nonprofit Organisations Act, 71 of 1997, and has a current membership of 1478 registered I&APs. SLL was formed to educate the public regarding the impacts that the aquaculture development zone will have on the Langebaan Lagoon and the greater Saldanha Bay marine system, the quality of and access to its waters and the socio-economic prosperity of Langebaan. Further, SLL's role is to represent I&APs in interactions with the developers/proponents, their agents and the Competent Authority.
4. *Our Statement on the Grounds of Appeal, as follows, must be read together with supportive documentation attached to this letter*

Annexure A: Appeal Questionnaire

Annexure B: Appeal Response Report

Appendix 1: Amendment of the Environmental Authorisation issued on 08 January 2018 for the sea-based Aquaculture Development Zone (ADZ) in Saldanha Bay within Saldanha bay Local Municipality in Western Cape Province

Appendix 2: Save Langebaan Lagoon (SLL) Mandate

Appendix 3: Save Langebaan Lagoon Appeal February 2018

Appendix 4: Saldanha Bay ADZ Environmental Authorisation 14/12/16/3/3/1/1728.

Appendix 5: Saldanha Bay ADZ Environmental Management Programme (Number 499020/6).

Appendix 6: Save Langebaan Lagoon Letter to DEFF – Fisheries 25 September 2020

Appendix 7: Saldanha Bay Aquaculture Development Zone – Final Basic Assessment Report (FIN BAR/ EIA)

Appendix 8: Saldanha Bay Sea Based Aquaculture Development Zone Baseline Benthic Survey Report – Final Draft.

Appendix 9: Saldanha Bay Sea Based Aquaculture Development Zone Baseline Benthic Survey – Final Presentation.

Appendix 10: Management Actions 2020 scientific findings – Final.

Appendix 11: Sailing School Appeal Letter

## *Statement of Grounds of Appeal*

### *5. Failure to conduct public participation process*

It is contended that the Applicants failed to conduct a public participation process prior to the application for amendment of the environmental authorisation. The Saldanha Bay ADZ Environmental Authorisation Ref. 14/12/16/3/3/1/1728 (Appendix 4), and the Saldanha Bay ADZ Environmental Management Programme (EMPr) Report number 499020/6 (Appendix 5), clearly requires the Aquaculture Monitoring Committee (AMC) and DEFF-Fisheries to provide updated information to the public (e.g. farm coordinates, water quality information, notification of new aquaculture operations).

Further, the overarching function of the Consultative Forum is to review environmental monitoring data, advise on ADZ management and recommend measures. In order for the CF to fulfil its mandate, members of the CF must be capacitated with prior information in order to *de facto* influence the decision-making process.

The Consultative Forum was not informed of any proposed amendments to the Saldanha Bay ADZ EA, which violates the requirements set out in the EA and EMPr.

### *6. Exclusion of Consultative Forum with regard to future changes to EMPr.*

Amendment 4 of Appendix 1, namely, "*Approval of the revised Environmental Management Programme (EMPr) and the inclusion of a condition to confirm that future amendments to the impact management actions of the EMPr may be approved by the ADZ Management Committee (AMC)*", refers:

The approved amendment permits the AMC to affect actions regarding impact management of the ADZ without consultation with the members of the Consultative Forum, thereby excluding the opportunity for independent over-sight of such actions and in violation of the entrenched right of I&APs to contribute to decision-making regarding environmental governance. Consultation is clearly contemplated in the NEMA and in the EIA Regulations.

The guidelines for interpretation of the wording of the NEMA require that interpretation "is consistent with the purpose of this Act" (section 1 (3)). In this context, approval of this condition of the amendment creates an unlawful barrier to meaningful involvement of I&APs, thereby denying the benefit of scrutiny and input by I&APs to the ADZ project.

Further, the amendment states that the applicant does not require approval from DEA&DP prior to effecting changes. This additional exclusion of critical independent review of the AMC's actions, materially heightens the myriad risks to the receiving environment, as identified by the proponents in the Final Basic Assessment Report, as well as those acknowledged in the conditions attached to the EAs.

The widening of the authority of the AMC to make unilateral decisions suggests an intentional withdrawal of transparency by DEFF-Fisheries, which will fatally damage the tenuous trust between the parties that has been hard won through the stakeholder engagement process of the Consultative Forum.

**7. *Open-ended timeframe for construction phase of final Environmental Audit is prejudicial.***

Amendment , of Appendix 1, namely, "*Amendment of condition 33 of the EA to specify final audit report submission requirements more appropriate to type of development*" refers:

The approved amendment permits the submission of audited reports for the construction phase only when the last aquaculture farm has been established in the ADZ. This amended condition fails to set a deadline for the final facility construction. Foreseeably, this could take several years, during which time the construction of facilities will go unaudited and therefore, impacts associated therewith, will not be independently assessed and addressed, thereby placing the receiving environment at untenable risk of harm.

In support of this argument: The ADZ is an 884 ha development, with several zones, which are to be developed by numerous independent aquaculture farmers. A phased-in approach spanning 5 to 10 years has been approved. This time-scale is likely to result in the first audited report submission a decade post the first construction period. It is therefore of critical importance that an audited report on the impact of construction work be submitted every six months for scrutiny by members of the Consultative Forum.

**8. *Failure to clarify factually correct coordinates of authorised ADZ site.***

The lack of clarification of the actual coordinates of the authorised ADZ site presents a navigational hazard. The absence of correctly delineated coordinates that unambiguously reflect the positioning of the various farms (those planned and currently operational), continue to frustrate the updating of critical navigational charts for the area.

Recreational water users (sailing vessels, power boats, anglers, paddlers) as well as commercial vessels entering and leaving the Saldanha Bay waters require accurate and up-to-date maritime charts to ensure safety. ( Attached is a Letter from a Sailing School – Appendix 11).

The errors on the charts appear to be due to a failure by DEFF, the ADZ AMC and Transnet Port Authorities to provide the Navy Hydrographer (hydrosan@iafrica.com) with consistently accurate information.

Alternatively, the various aquaculture operators/concession holders have failed to moor their farms in accordance with the requisite co-ordinates.

Consequently, a number of sailing vessels have incurred damage in collisions with equipment associated with aquaculture activities, such as buoys, lines, rafts, which are incorrectly marked on current charts, or moored in areas outside their designated locations. These incidents have occurred both north of the current aquaculture activity in Small Bay, as well as in Outer Bay, suggesting that aquaculture farmers are operating outside of their designated boundaries.

Furthermore, the area south of Mykonos is no longer designated as part of the ADZ, yet the latest navigation charts still show this to be an area reserved for aquaculture.

We therefore urgently request that all aquaculture activity is suspended until there is clarification of the ADZ's coordinates and reliable confirmation that the individual farms are operating strictly within their allocated siting.

9. *Waste Management act not assessed in EIA*

The National Environmental Management: Waste act,2008(ActNo.59 of 2008) serves to regulate waste management in order to protect the health environment by providing reasonable measures for the prevention of pollution and ecological degradation. In the Saldanha bay ADZ Final Basic Assessment Report (FIN BAR), it was stated that the ADZ is a Sea-based project and the developer will need to apply separately for land based processing activities with regards to waste management. The effects of aquaculture activity in terms of waste on the Sea- bed must be addressed. Fin Fish farming produces organic waste in the form of faecal matter and surplus fish feed which sinks to the sea-bed and is suspended in the water column below the Fin Fish cages. The build up of organic waste on the reef habitat below causes ecological degradation. We submit that the Waste Act,2008(Act No. 59 of 2008) should apply to the ocean and lagoon as well. A waste management program must be implemented to provide a structure to mitigate the organic waste sediment and to address the plastic waste that breaks free from the aquaculture infrastructures. This pollutes the water and beaches, the mitigations steps set in place to date, are inadequate, resulting in floating debris in the form of plastic barrels, buoys and plastic baskets.

10. *New scientific evidence of Reef Habitat in ADZ :*

**The applicant has failed to include critical scientific evidence in their application.**

Please note point 10 is a copy of a letter sent to the DEFF on 25 September 2020 requesting the suspension of all aquaculture activity in part of the authorised Saldanha Bay Aquaculture Development zone (ADZ), due to critical new scientific findings regarding the receiving environment. Annex 6.

**Re: New scientific information concerning current operations of aquaculture facilities in the Saldanha Bay Aquaculture Development Zone**

## ***Background***

The Baseline Benthic Survey was commissioned in 2020 by the Department of Environment, Forestry and Fisheries (DEFF), Branch Fisheries, the holder of an Environmental Authorisation for the Saldanha Bay Aquaculture Development Zone (ADZ) and conducted by Anchor Research and Monitoring.

The new findings of the above survey indicate that the Saldanha Bay Aquaculture Development Zone (ADZ) presents an untenable risk to the receiving environment of the Big Bay precinct of Saldanha Bay, for which no mitigations were submitted in the Basic Assessment Report, in application for environmental authorisation.

This research was conducted post the granting of the environmental authorization, Annex 4, no impact mitigations to avoid/reduce harm to the sensitive reef ecosystems were investigated, nor has a programme to contain/reduce such impact been set out in the approved Environmental Management Programme (Number 499020/6) for the ADZ, Annex 5.

Below, please find relevant extracts from the Saldanha Bay ADZ Baseline Benthic Survey Presentation (Annex 9), in support of our contention that these new findings show conclusively that the ADZ presents an immitigable risk to this marine eco-system.

## ***Statement of Concerns***

### ***1. Results and Discussion: Presence of hard substrata/reef in Big Bay<sup>1</sup>***

- i. The marine specialist report for the Saldanha ADZ EIA considered subtidal reef habitat to be scarce in Saldanha Bay (Pulfrich 2018).<sup>2</sup>
- ii. Only identified Lynch blinder and North Bay blinder as important reef areas.<sup>3</sup>
- iii. Reports from divers during this assessment revealed the presence of calcrete rock at several sampling sites during the baseline survey (Capfish 2019).<sup>4</sup>
- iv. Difficulties in obtaining grab samples at several stations in Big Bay during 2020 (AR&M) sediment surveys also suggests that rock which may form reef is more widespread in Big Bay than originally suspected.<sup>5</sup>
- v. Observations by ARM divers deploying water quality monitoring instruments during April 2020, also indicated reef in several areas of the Big Bay ADZ precinct.<sup>6</sup>
- vi. Subsequent literature review revealed the existence of an extensive abrasion platform (areas of exposed calcrete rock) throughout much of Big Bay (Flemming 2015).<sup>7</sup>
- vii. The distribution of the abrasion platform is overlaid on a map of Big Bay and the ADZ boundaries as well as the sampling sites on the following slide.<sup>8</sup>

---

<sup>1</sup> Annex 9 – page 17

<sup>2</sup> Annex 9 – page 17

<sup>3</sup> Annex 9 – page 17

<sup>4</sup> Annex 9 – page 17

<sup>5</sup> Annex 9 – page 17

<sup>6</sup> Annex 9 – page 17

<sup>7</sup> Annex 9 – page 17

<sup>8</sup> Annex 9 – page 17

- viii. Pictures of the rock/reef type habitat found in the finfish area were taken during instrument servicing in the finfish area on the 29<sup>th</sup> of June 2020. These images were taken in extremely poor visibility but indicate the presence of basket stars (Phylum Echinodermata), sponges (Phylum Porifera) and possibly Bryozoans. Before conclusions can be drawn about the nature of the communities, specimens would need to be collected and identified.<sup>9</sup>

## 2. *Presence of hard substrata/reef in Big Bay /Recommendations*<sup>10</sup>

- i. Given the presence of low-lying reef detected during the baseline surveys and instrument deployments in the finfish area in Big Bay, it is recommended that a side scan sonar survey be undertaken across the whole of Big Bay to establish the actual extent of this reef and that reef biota be surveyed.<sup>11</sup>
- ii. Once the extent and nature of the reef and associated benthic communities have been assessed and quantified, the management measures, mitigation measures and monitoring measures should be reassessed.<sup>12</sup>
- iii. West Coast Rock Lobster (*Jasus Lalandi*) are evident in the video footage recorded from the Molapong dives and were noted by AR&M divers deploying instruments.<sup>13</sup>
- iv. While Rock Lobster would benefit from increased organic matter originating from the aquaculture as a food source, their habitat may ultimately become smothered by fall off biofouling and culture animals.<sup>14</sup>

## 3. *Conclusions/ Presence of hard substrata and reef in the big bay precinct*<sup>15</sup>

- i. The presence of hard substrata and low lying reef (besides that identified at Lynch Blinder) within the Big Bay ADZ precinct has been highlighted for the first time.<sup>16</sup>
- ii. The reef appears to be low-profile that is mostly < 1m in height, although some outcrops greater than 1 m in height are present.<sup>17</sup>
- iii. The extent and nature of the reef needs to be quantified throughout Big Bay which is frequently impacted by scouring and sand deposition.<sup>18</sup>
- iv. The nature of the macro-faunal/epifaunal assemblages associated with the reef needs to be quantified.<sup>19</sup>

<sup>9</sup> Annex 9 – page 21

<sup>10</sup> Annex 9 – page 24

<sup>11</sup> Annex 9 – page 24

<sup>12</sup> Annex 9 – page 24

<sup>13</sup> Annex 9 – page 22

<sup>14</sup> Annex 9 – page 22

<sup>15</sup> Annex 9 – page 27

<sup>16</sup> Annex 9 – page 27

<sup>17</sup> Annex 9 – page 27

<sup>18</sup> Annex 9 – page 27

<sup>19</sup> Annex 9 – page 27

- v. Once the above aspects are completed, the impacts of aquaculture in the Big Bay precinct in light of there being reef present should be re-assessed.<sup>20</sup>

4. *Extract from the “Saldanha Bay ADZ Baseline Benthic Survey Report – Final Draft, (Annex 2), in support of the contention that the ADZ poses an immitigable threat to this marine eco-system.*

“The impact assessment for bivalve aquaculture did not assess the impact of placing the culture structures over hard substrata (SRK BAR 2017, appendix D2), and while the impact assessment for finfish culture does consider the presence of reef, it assumed limited distribution which was confined to Lynch Blinder (SRK BAR 2017, appendix D2). The effects of aquaculture on patches of low-lying reef with some substantial outcrops exceeding 1m in height and their associated epifaunal communities has thus not been considered in the Big Bay precinct beyond Lynch Blinder. Given the identification of reef in this precinct further studies should be conducted to address this omission. It is important to note that this is **ONLY** applicable to areas of the Big Bay precinct (not the ADZ as a whole) where reef occurs (the present day extent of reef in Big Bay is yet to be determined and a detailed bathymetry/side scan sonar survey should be undertaken).”<sup>21</sup>

5. *Annex 10 refers: “Preliminary way forward with regards to scientific findings to be undertaken forward by the DEFF: Fisheries Management”, published in Management Actions 2020 scientific findings, as communicated to the members of the ADZ Consultative Forum.*

In consideration of the findings identified in the Benthic Survey Presentation and Report, Save Langebaan Lagoon Action Group therefore avers that the recommendations by DEFF in Annex 3 are inadequate and/or inappropriate, in addition to lacking the necessary sense of urgency to meaningfully address these additional ecological risks to the receiving environment.<sup>22</sup>

6. *In addition to the above, please clarify:*

- i. Why the Flemming report/side scan sonar report as mentioned in the Benthic Survey was not included in the environmental impact assessment studies conducted as part of the Final Basic Assessment Report?
- ii. Why no investigation was conducted by DEFF regarding the presence of a reef as identified by Pulfrich (2018)?

<sup>20</sup> Annex 9 – page 27

<sup>21</sup> Annex 8 – page 40

<sup>22</sup> Annex 10



We therefore request that the concerns raised and the gaps in knowledge identified by Anchor Research and Monitoring in the Benthic Survey Presentation and Report be addressed immediately by DEFF.

Further, we request independent oversight of the steps to be taken to ameliorate such risk and that all interested and affected parties are comprehensively apprised of such action.

The Benthic Survey Presentation and Report raise numerous critically important questions regarding the impact of aquaculture on the habitats of these rocky outcrops, including the health of the rock lobster population, and the dispersion of pollutants, issues germane to assessment of the risk of ecological harm posed by the ADZ and the type and efficacy of mitigation measures.

*In conclusion:*

We submit that the omission of a comprehensive assessment of the sea-bed in the area of the sited ADZ in the final basic assessment report must render the Environmental Authorisation granted fatally and technically flawed. Mitigations submitted in the final BAR are incomplete or lacking and therefore should not have been relied upon by the Minister of Environmental Affairs to inform a positive authorisation.

We therefore call on DEFF to immediately suspend the current Saldanha Bay ADZ operations until these critical deficiencies of the approved Environmental Management Programme for the ADZ have been comprehensively addressed.

Yours Sincerely



Clifford Wright

Chairman – Save Langebaan Lagoon

## TABLE OF APPENDICES

APPENDIX	TITLE
APPENDIX 1	Amendment of the Environmental Authorisation issued on 08 January 2018 for the sea-based Aquaculture Development Zone (ADZ) in Saldanha Bay within Saldanha bay Local Municipality in Western Cape Province
APPENDIX 2	Letters of Mandate
APPENDIX 3	Save Langebaan Appeal 09 February 2018
APPENDIX 4	Saldanha Bay ADZ Environmental Authorisation 14/12/16/3/3/1/1728
APPENDIX 5	Saldanha Bay ADZ Environmental Management Program ( Number 499020/6)
APPENDIX 6	Save Langebaan lagoon Letter to DEFF-Fisheries 25 September 2020
APPENDIX 7	Saldanha Bay ADZ Final Basic Assessment Report (FIN BAR / EIA)
APPENDIX 8	Saldanha Bay Sea Based Aquaculture Development Zone Baseline Benthic Survey Report – Final Draft.
APPENDIX 9	Saldanha Bay Sea Based Aquaculture Development Zone Baseline Benthic Survey – Final Presentation.

<b>APPENDIX 10</b>	<b>Management Actions 2020 scientific findings – Final.</b>
<b>APPENDIX 11</b>	<b>Sailing School Appeal Letter</b>

