



14/3/1/41/0188/16

Mr N Smith  
Nicholas Smith Attorneys  
2<sup>nd</sup> Floor, 114 Breë Street  
**CAPE TOWN**  
8001

Dear Mr Smith

**APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998, AGAINST ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED ESTABLISHMENT OF THE BERG RIVER MOUTH FAMILY AND LIFESTYLE FACILITY ON ERVEN 2837 AND 2838, LAAIPLEK**

The appeal lodged on behalf of your client, Amawandle Pelagic (Pty) Ltd, against the Environmental Authorisation ("EA") granted by the Department of Environmental Affairs and Development Planning on 22 April 2016, refers.

After considering all relevant facts and supportive documents, I wish to advise that, in terms of section 43(6) of the *National Environmental Management Act, 1998* ("NEMA"), I have decided to confirm the abovementioned decision of the delegated officer and dismiss the appeal. The original Environmental Authorisation ("EA") granted on 22 April 2016 and the conditions under which the authorisation was granted are therefore still valid, however Condition E2 and section F are excluded from this appeal decision and Conditions E1, E3 and E4 have been amended.

Attached please find a copy of my appeal decision addressed to the applicant containing the reasons for my appeal decision.

Yours faithfully

**ANTON BREDELL**  
**WESTERN CAPE MINISTER OF LOCAL GOVERNMENT,  
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE: 12/12/2019



14/3/1/41/0188/16

Mr Andre Viljoen  
Amawandle Pelagic (Pty) Ltd.  
2 River Street  
**LAAIPLEK**  
7365

e-mail: [andre@amawandlep.co.za](mailto:andre@amawandlep.co.za)

Dear Mr Viljoen

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DATE: 12/12/2019



14/3/1/41/0188/16

Mr Andries A. Smit  
Top Gear Investments (Pty) Ltd  
Postnet Suite 242  
**SOMERSET WEST**  
7129

Tel: (021) 855 0751  
Email: [riaan@tourcor.co.za](mailto:riaan@tourcor.co.za)

Dear Mr Smit

**APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998, AGAINST ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED ESTABLISHMENT OF THE BERG RIVER MOUTH FAMILY AND LIFESTYLE FACILITY ON ERVEN 2837 AND 2838, LAAIPLEK**

The appeal lodged against the Environmental Authorisation ("EA") granted by the Department of Environmental Affairs and Development Planning on 22 April 2016, refers.

After considering all the relevant facts and supportive documents, I wish to advise that, in terms of section 43(6) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA"), I have decided to dismiss the appeal and confirm the abovementioned decision of the delegated officer. The original Environmental Authorisation ("EA") granted on 22 April 2016 and the conditions under which the authorisation was granted are therefore still valid, however Condition E2 and section F are excluded from this appeal decision and Conditions E1, E3 and E4 have been amended to read as follows:-

**Condition E1**

- 1.1 The appeal Environmental Authorisation is valid for a period of five (5) years from the date of this appeal decision, within which commencement must occur.

- 1.2 The development must be concluded within 10 years from the date of commencement of the first listed activity.

### **Condition E3**

The holder of the appeal Environmental Authorisation must within fourteen (14) calendar days of the date of the appeal decision ensure, in writing, that all the registered interested and affected parties are provided with access to the appeal decision and the reasons for such decision.

### **Condition E4**

A written notice of seven (7) calendar days must be given to the Competent Authority before commencement of construction activities.

- 4.1 Such notice shall make clear reference to the site location details and reference number given above.
- 4.2 The said notice must also include proof of compliance with the following conditions described herein:

Conditions: 3 and 13

### **REASONS FOR THE DECISION:**

The reasons outlined in the original EA are concurred with and having considered the appeal and the subsequent additional information, the following are the reasons for this decision:

#### ***1. Failure to take relevant considerations into account***

With regard to the impact of the existing land uses, including but not limited to noise and odours emanating from the adjacent harbour and the active fishing industry in and around the harbour I have requested on 15 May 2017 that an Independent Noise (September 2018) and Air Quality (October 2018) Impact Assessments be undertaken.

The Noise Impact Assessment ("NIA") was undertaken by Mackenzie Hoy Consulting Acoustic Engineers with more than 38 years of experience. The NIA was required to be conducted continuously for two days at the proposed site but this was not possible due to the following:

- Security on site did not allow for the installation of permanent monitoring instruments;
- Numerous environmental and operational variables were present on site:
  - The supply of fish to the factory was intermittent and unpredictable. The size and type of catch supplied to the factory determined which part of the factory was operational.

- In terms of the operational status of factory whether the factory was operational and which parts of the factory were operational was determined by the catch size and type.
- In terms of weather conditions (wind, rain, mist etc.) the noise levels at the proposed development site were influenced by the weather conditions.

The measurement methodology was adapted to allow for evaluation of the site conditions during measurements. The applied measurement methodology was as follows:

- Upon confirmation that the fishing vessels were delivering a catch to the factory the weather conditions were evaluated.
- If the weather conditions were favourable, measurements were conducted at suitable measurement locations over suitable measurement periods to obtain realistic and worst-case noise levels of the environment influencing the proposed development site.
- Continuous measurements were applied. The measurement period for each period was selected based on the noise type (e.g. continuous, intermittent, impulsive etc.).
- All measurements are A-Weighted Equivalent Continuous Sound Pressure Levels (LAeq).

The sources of noise in the immediate surrounding areas were identified as follows:

- Amawandle Pelagic (Pty) Ltd;
- Eigevis/Sanboskraal MeatPackers cc;
- Laaiplek Slipway cc;
- Harbour (Fishing Vessels);
- Laaiplek Hotel;
- Mariba Engineering (located on the proposed development site);
- Pyroca Houtwerke (located on the proposed development site); and
- Bergrivier Cut and Edge cc (located on the proposed development site).

The NIA concluded that as follows:

- The impact on the proposed development from surrounding land users and from the appellant (Amawandle Pelagic) is negligible.
- The noise level at the Amawandle Pelagic when the plant is in operation is not classified as not being a "disturbing noise" in terms of the Western Cape Noise Control Regulations.
- As long as the noise levels at Amawandle Pelagic does not exceed the limit for a "disturbing noise" in terms of the Western Cape Noise Control Regulations, the noise levels at the proposed development site will not exceed the maximum permitted levels for the development site and type.

The Air Quality Impact Assessment ("AQIA") was undertaken by Chris Albertyn of Lethabo Air Quality Specialists (Pty) Ltd ("LAQS") who has more than 40 years' experience in the industry.

The main objectives of the Air Quality Impact Assessment, as per the Approved Terms of Reference from the Minister's office, were to:

- Identify all the air pollution/nuisance sources surrounding the proposed site.
- Establish the acceptable air quality level for each source.
- Contextualize the acceptable limits of pollution/nuisance for the specified area in terms of the zoning of the surrounding area.

The methodology employed for the AQIA were:

- Establish an emissions inventory from all important air pollution and odour sources in the immediate vicinity of the proposed development. The pollutants to be included in the estimations are PM10, SO<sub>2</sub>, NO<sub>x</sub>, NO<sub>2</sub> and CO. Other odorous compounds, such as H<sub>2</sub>S should also be considered.
- Assess the existing air quality monitoring and emissions data from the potential directly impacting sources and provide a "gap analysis" of the existing specialist information requirements.
- Based on the emissions inventory, predict the air quality and odour concentrations at the proposed development location due to potential directly impacting sources.
- Assess air quality impacts taking into consideration the intended utilisation of the proposed development.
- Establish the ambient air quality monitoring requirements, identify the optimum locations for ambient monitoring and provide a suitable monitoring plan. This refers to baseline air quality data which will assist future measurements.

The Air Quality Impact Assessment was conducted largely on the back of assumed data based on the estimation of emissions from the various stacks serving the Amawandle Pelagic's operations, informed, albeit with a degree of uncertainty, from:

- the maximum amount of coal that Amawandle Pelagic may burn and the data contained in their provisional Atmospheric Emissions Licence (PAEL); and
- the maximum production rate allowed by the PAEL.

Although the Air Quality Specialist used a conservative approach (worst-case scenario), there is, still a degree of uncertainty in the estimated emissions.

The limitations for the AQIA included:

- use of a set of data provided by South African Weather Service (SAWS), as collected at their monitoring station at Cape Columbine as no local sources were available that could provide reliable weather data for the purposes of dispersion modelling.
- the limited cloud cover option was used to estimate solar radiation data for dispersion modelling purposes.
- The study is based on a worst-case scenario that gives annual averaged concentrations that could potentially occur if the Appellant were to operate at full capacity.
- All of the assumptions used by the Air Quality Specialist were valid.

Trimethylamines ("TMA") was not included in the assessment, as the elevated nature of the emissions may transfer these odours further. The reason TMA smells so foul is because it is a common product of plant and animal decomposition (and some infections). The oxygenated precursor to TMA is present in fish and breaks down to give that characteristic rotting fish smell.

The AQIA concluded that:

- The proposed development must accept that odours will always be emitted from the Appellant's operations as it is part-and-parcel of fish waste processing.
- The atmospheric conditions that could affect the impact that odorous emissions have on the proposed development were expected to be in the "low" category.
- The annual average ground-level concentration of H<sub>2</sub>S and TMA, indicated that very few odours would, on average, be detectable on Top Gear Investments ("TGI") site. The 95-percentile ground-level concentrations, indicate that odours may be detectable on TGI's site for 5% of the time, i.e. 440 hours per year (equivalent to 18.3 days per year).
- The 99<sup>th</sup>-percentile ground-level concentrations, indicate that odours will be detectable on TGI's site for 1% of the time, i.e. 88 hours per year (equivalent to 3.7 days per year).
- Emissions could be expected to occur continuously, but not necessarily at the rate on which this study was based.

The NIA and AQIA was made available to the registered Interested and Affected Parties ("IAPs") via a notification letter informing them of the availability of the Addendum Report at the Velddrift library, the Bergrivier Municipal offices and via a dropbox hyperlink from 8 November 2018 until 29 November 2018.

The following relevant statutory bodies received a copy of the Addendum Report for review and comment:

- Heritage Western Cape;
- Cape Nature;
- Department of Agriculture, Forestry & Fisheries;
- Department of Water and Sanitation;
- Department of Transport and Public Works;
- Local authority (Bergrivier Municipality and the Ward Councillor);
- District authority (West Coast District Municipality); and
- Sub-Directorate: Coastal Impact Management from the Department of Environmental Affairs and Development Planning.

Comments were received from:

- Sub-Directorate: Coastal Impact Management from the Department of Environmental Affairs and Development Planning;

- Amawandle Pelagic (Pty) Ltd;
- West Coast District Municipality; and
- Demos Dracoulides and Associates Environmental Engineers ("DDA") on behalf of Amawandle Pelagic (Pty) Ltd.

The comments related to the following:

- The Air Quality Impact Assessment ("AQIA") reports for the Proposed Berg River Mouth Family and Lifestyle Facility -
  - i) Amawandle Pelagic provided access to the facility for the applicant's air quality specialist to conduct stack emission surveys. The specialist declined the offer to sample and analyse the stack and instead insisted that Amawandle Pelagic provide their stack survey report. Amawandle Pelagic is not obliged to provide the stack emission report.
  - ii) Disagreement that the Amawandle Pelagic plant will not have an impact on the development. The facility is within compliance of its Atmospheric Emissions Licence conditions. It is important to note that the facility is in an industrial area zone and hence the inherent misalignment with a residential or commercial development in the same area.
  - iii) The apportionment of the emissions in the air quality report does not represent the actual situation of the plant operation.
  - iv) The boiler stacks paragraph on page 15 of section 7.2.1 in AQIA report has an incorrect assumption of the boiler operations. The facility has seven boilers, 1 cannery and 6 fishmeal boilers. Only the flue gas from the fishmeal boilers are used in the fishmeal plant. On 10 September 2018, the air quality specialist, Mr CH Albertyn met with Amawandle Pelagic management at the facility, but he refused to conduct a site walk to understand the operations. During the meeting management informed him that the chemical scrubbers have been installed and that the values in the Provisional Atmospheric Emissions License refers to the seawater scrubbers and not the new chemical scrubbers. The velocity used in Air Quality Impact Assessment report is therefore incorrect as the chemical scrubbers' stacks are very different in diameter and heights compared to the seawater scrubbers.
  - v) For the estimation of the maximum emissions, the PAEL maximum flowrate for each scrubber (i.e. 78,400 m<sup>3</sup>/hr) and the allowed H<sub>2</sub>S quantity of 5 mg/m<sup>3</sup> should have been used as a worst-case scenario. Thus, the resulting H<sub>2</sub>S emissions and impacts will be expected to be much higher.
  - vi) The area TMA emissions are likely to be overestimated, since the vast majority of these emitted compounds will also pass through the scrubbers.
  - vii) The scrubber emissions also need to include trimethylamines, as the elevated nature of the emissions may transfer these odours further, albeit at lower concentrations.
  - viii) Based on a DDA Air Quality Impact report (July 2013), the 99<sup>th</sup>-percentile of the Odour Units ("OU") calculated from amines, fatty acids, hydrogen sulphide and mercaptan



emissions, the resulting OUs at the development location were estimated to be 3 OU. This may be significant if the potential occupants for the development are not fully aware of the possibility of unpleasant odours.

- ix) Based on the same DDA 2013 report, the flow rates, stack heights, scrubber usage, boiler usage and actual representation of the plant operations in terms of emissions is very different to those utilised and presented in the present AQIA report.
- The Noise Impact Assessment("NIA") reports for the Proposed Berg River Mouth Family and Lifestyle Facility-
  - i) The results indicate that the Amawandle Pelagic plant is within the noise level guidelines according to the regulations reference limits for industrial areas and does not contribute significantly to the noise levels at the Family and Lifestyle Facility for the daytime conditions.
  - ii) The Amawandle Pelagic Plant is a 24-hour operation and as such, the current night-time noise levels in the area and the existing night-time noise impacts should have been included in the assessment, as well as the results included in the report. Only a reference to the night-time levels at the harbour is made in the report with no evidence of these measurements or where they were conducted.
  - iii) The report is ambiguous, as it may refer to further night-time measurements but the measurements in Appendix A are only for daytime.
  - iv) Due to the limited day-time noise measurements, Amawandle Pelagic needs to confirm that the plant was fully operational when the noise testing was done, i.e. 23<sup>rd</sup> of February 2018 and the 14<sup>th</sup> and 16<sup>th</sup> of March 2018.
  - v) More information and calculation details needs to be provided to support the statement in the report. These estimations should include night-time calculations for favourable conditions, i.e. towards the development.
- Coastal Process –

At a site visit conducted on 23 September 2018 at Laaiplek Harbour and adjacent properties by officials from SD:CM, extensive erosion was observed seaward of erven 2837 and 2838. Although the erosion has not impacted on the said erven, the applicant must be cognisant of the impacts of coastal processes such as storm surges and erosion on the proposed development. Be advised that should erven 2837 and 2838 be impacted by erosion, relevant sections of the ICM Act, specifically sections 14 and 15 must be considered.
- Activities at the harbour –

The Operation Phakisa: Small Harbours Initiative has gained momentum in the last two years. It is anticipated that the maintenance and repair activities in the harbour will provide for a maximum operation of activities within the harbour.
- Duty of Care (section 28 of NEMA).

A summary of the responses from the applicant to the comments are as follows:

The AQIA reports for the Proposed Berg River Mouth Family and Lifestyle Facility:

- i) Amawandle Pelagic did not offer the AQIA specialist the chance to determine emissions, but stated that Air Quality specialist conducts its own measurements (this was not part of LAQS's scope of work). Furthermore, the Air Quality specialist did not "*insist that AP provide their stack survey report*".

During the site meeting, and in subsequent email communication with Amawandle Pelagic, the AQIA specialist stated the following :-

- AQIA only needed to know the flue gas velocities or flow rates and the flue gas temperatures in the various stacks. As far as AQIA specialist knows Amawandle Pelagic appointed DDA to carry out emission measurements. This is a reputable company and the AQIA specialist would not have any reason to doubt the validity of the results reported by them.
- The AQIA specialist did not need to know what the actual concentrations of pollutants were as the "*Regulations Regarding Air Dispersion Modelling*" as published in Government Notice GN R.533 of 11 July 2014 (GN R.533) dictates that emission limits must be used in the estimation of emissions. (In fact, GN R.533 gives the lowest ranking to measured concentrations as a means to estimate mass flows of pollutants.)

In an attempt to identify and include all possible sources of odorous emissions, the AQIA also used information about the wastewater treatment plant which it obtained from the Bergrivier Municipality.

- ii) Amawandle Pelagic misread the AQIA report as nowhere in the report does it state that Amawandle Pelagic emissions "will not have an impact". The AQIA report states that, in the specialist's opinion, the impact on the development will be low. This statement is qualified in AQIA report through the discussions of the uncertainties involved in the air quality impact development in the same area assessment.

The AQIA specialist cannot make any response to the comment that "*the facility is in full compliance of its Atmospheric Emissions License conditions*" as it has not been given any access to any emission test reports. From copies of presentations made at Air Quality Stakeholder meetings the that Amawandle Pelagic has exceeded the limits of H<sub>2</sub>S as stated in the PAEL.

The AQIA is of the opinion that the developers are well aware of the fact that their development neighbours a functioning harbour and industrial activities, of which Amawandle Pelagic is one.

- iii) The AQIA requested information about the actual plant operations, e.g. annual production rate, monthly cycles, etc., from Amawandle Pelagic so that the plant's emissions profile could be defined as accurately as possible in the dispersion model.

Amawandle Pelagic could not provide any such information as the plant operations are highly variable and totally dependent on fish harvesting rates, a highly variable activity at best. The worst-case operating scenario was used, i.e. operating continuously, 24 hours per day and 8 000 hours per year at the production rate and coal combustion data defined in Amawandle Pelagic's PAEL. This means processing a maximum of 38 tons of material per hour and burning a maximum of 5 tons of coal per hour, regardless of the quantity of fish delivered for processing. The AQIA used these figures, together with emission factors for TMA and products of coal combustion to estimate annual emission as the PAEL does not state any limits for these pollutants.

- iv) The AQIA declined the site walk as it saw no benefit in it. The AQIA was interested only in the points of emission and rates of emissions. Amawandle Pelagic declined to provide any information, other than pointing out the positions of 4 stacks on a site map, two of which were stated to be boiler stacks and two were stated to be scrubber stacks. Amawandle Pelagic declined to provide the basic information requested and no site walk would have any further emissions information.

Therefore, according to the information provided by Amawandle Pelagic during the onsite meeting, only two stacks serve the boilers, regardless of how many are installed. The AQIA assumed this to imply that boiler flues are ducted to a common stack, the possible exception being the cannery boiler. The issue raised by Amawandle Pelagic would have been void if they had provided the basic information requested. As they declined cooperation, the AQIA was based on the available data.

The chemical scrubbers may have impacted the emissions stipulated, but, as stated previously, any details of the stacks and flue gas conditions was available to the AQIA. Numerous requests to the licensing authorities for a copy of any revised AEL that may have been issued to Amawandle Pelagic but, to date no information has been received. As such the existing AEL information was used for the air quality impact assessment. Thus the AQIA based its assessment of worst-case conditions, i.e. burning 5 tons of coal per hour, regardless of where the energy is used. According to GN R.533 "all nearby sources" must be included in dispersion modelling studies, regardless of the processes served by the various sources, in order to obtain a cumulative impact assessment.

- v) The AQIA recalculated the impact of the higher flow rate on estimated ground-level H<sub>2</sub>S concentrations and found the following:
- Annual average concentrations: 0.23 µg/m<sup>3</sup>, i.e. below the odour threshold value.
  - 90-percentile concentration: 0.33 µg/m<sup>3</sup>, i.e. below the odour threshold value.

- 99-percentile concentration: 2.97 µg/m<sup>3</sup>, i.e. above the odour threshold value.

It is, therefore, possible that odours may exist for 1% of the time, if Amawandle Pelagic may happen to be processing fishmeal at their maximum allowed production rate at the time when the necessary weather conditions occur to cause such dispersion conditions.

- vi) The approach of the AQIA to the project was to simulate worst-case conditions. Overestimation of emission implies overestimation of the ground level concentrations.
- vii) The levels of TMA have been overstated, but it is not likely that including these emissions at point sources will exceed the worst-case emissions used by the AQIA in its estimations.
- viii) Amawandle Pelagic advised that DDA's 2013 study was to estimate conditions after all upgrades had been conducted to their plant and that the information in that report could not be used. The AQIA only used the weather parameters (public data) that was in the study. The AQIA specialist is of the opinion that the applicant is well aware of the fact that odours could potentially occur on their site from time to time.

I conclude that the applicant provided sufficient responses to the comments on the AQIA.

The Department of Environmental Affairs and Development Planning's Directorate: Air Quality Management's review of the AQIA concluded that the following should be noted:

- No actual stack measurements were used and the baseline studies was outdated according to the report. Air pollution simulating models were used. Lower wind speeds were more common during the early hours (00h00 to 09h00) of the morning, thus leading to a lower dispersion potential of pollutants, resulting in higher readings at those respective times.
- Trimethylamines should have been included, as the elevated nature of the emissions may transfer these odours further. The reason trimethylamine smells so foul is because it is a common product of plant and animal decomposition (and some infections). The oxygenated precursor to trimethylamine is present in fish and breaks down to give that characteristic rotting fish smell.
- The processes associated with fish and fish products between the time fish are caught or harvested, and the time the final product is delivered to the customer, the normal/inherent fish processing smell is evident. The management of odours is a major concern for both the industry required to control the nuisance and for residents expecting respect and enjoyment of their neighbourhood.

The Noise Impact Assessment ("NIA") reports for the Proposed Berg River Mouth Family and Lifestyle Facility-

- a) The results provided in the Figures 6 and 7 of the NIA indicate that the Amawandle Pelagic plant is within the noise level guidelines according to the regulations reference limits for

industrial areas and does not contribute significantly to the noise levels at the Family and Lifestyle Facility for the daytime conditions.

- b) The current Western Cape Noise Control Regulations, 2013, set a "rating level" for day time and a rating for night time. A disturbing noise is generally one which exceeds the rating level by 7 dBA. There is a special case where the residual level is 10 dBA or more than the rating level but this does not apply in this case.

The noise level of Amawandle Pelagic will be the same during the day, when in full operation, as during the night. Thus the evaluation of the noise impact is as follows:

- When the factory is in full operation (this is confirmed with them and the fishing fleet) take noise measurements for as long as the factory is in operation.
- When the factory is not in operation, take residual noise measurements.
- Obtain the night time rating level from Table 2 of SANS 10103.
- If the rating level is not 10 dBA more than the residual level set the maximum noise level allowable on the factory plot boundary as the night time rating level + 7 dBA.
- The residual level was recorded as between 50 dBA and 52 dBA.
- A considerable number of residual noise measurements were taken early morning during the "night " period. These are in spreadsheet form as below. It was not considered appropriate to include these in the report as they are confusing. The measurements were at the factory plot boundary.

- c) Security issues prevented a full 24-hour measurement period.

- d) A limit was set for the maximum level at the factory plot boundary. Due to the nature of the technical information and the calculations, it will not be readily understood by the general public and was thus excluded.

I am satisfied that sufficient responses to the comments related the NIA were provided by the applicant.

The Department of Environmental Affairs and Development Planning's Directorate: Air Quality Management's review of the NIA concluded that the following should be noted:

- With regard to noise and based on the study, the impact on the proposed development of noise from surrounding land users and from Amawandle Pelagic is negligible.
- The noise level at the Amawandle Pelagic when the plant is in operation is not considered a "disturbing noise" in terms of the regulations.
- The NIA Report by Mackenzie Hoy states that "all measurements were recorded during the "daytime". However, and since Amawandle Pelagic is a 24-hour operation their night time activities, potentially, might have an impact on the proposed development. It is thus important that the night time activities also be assessed.

The Department of Environmental Affairs and Development Planning's Sub-Directorate Coastal Impact Management comment:

- 1) The comment related to erosion and coastal processes were submitted during the EIA application process and were adequately addressed.
- 2) The applicant is cognisant of sections 14 & 15 of the National Environmental Management: Integrated Coastal Management Act.
- 3) The applicant is well aware that their proposed development is located within a fully functional and working harbour with normal harbour related activities.
- 4) The applicant is also aware of their responsibility related to their general duty of care and remediation of environmental damage in terms of section 28 (l) of NEMA.

The National Department of Public Works issued a planning instruction to prepare a Spatial and Economic Development Framework ("SEDF") for all twelve proclaimed fishing harbours in the Western Cape Province. The main objectives are:

- To unlock the economic potential of each fishing harbour and to create sustainable livelihoods for the local communities;
- To develop a SEDF which will provide a strategic, indicative forward planning tool to guide development and planning, as well as decision-making on land use that encourages an optimal tenant mix; and
- To identify sustainable socio-economic opportunities for each fishing harbour.

The Proclaimed Fishing Harbours SEDF includes targets that have been set to improve these proclaimed fishing harbours to ensure their heritage value and the preservation of the surrounding areas. Diversification must occur so that harbours become multi-functional. Harbours must retain their primary functions as marine access points, with the primary role being to provide infrastructure and efficient services that are required to support fishing activities. Permitted non-harbour dependent activities must not compete or take away opportunities which are present in the surrounding environment.

If the Bergrivier Municipality was of the opinion that the development would not comply with the principles contained in the aforesaid plans, it would not have approved the rezoning application, and would have provided comments during the EIA process to the effect that the development would not facilitate the retention of essential characteristics of "a working harbour".

The West Coast District Municipality ("WCDM") states in an email dated 1 December 2014, page 13 of the Comments and Response Report ("CRR") that the proposal is aligned with the Bergrivier SDF for the area and the WCDM stated that they do not wish to provide any further comments on the NIA and the AQIA. In addition, the WCDM stated in its comments on the Final Basic Assessment Report ("FBAR") that *"the West Coast District Municipality supports the development*

*which is aligned with the Bergrivier Municipal Spatial Development Framework (area earmarked for Urban Renewal) provided the development is appropriate in the context of this specific site. The local municipality has also approved the planning application".*

The Bergrivier Municipality authorised the land use application on 19 November 2015 for the rezoning from Industrial Zone 1 to Business Zone 1 and consent use for flats and hotel in terms of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) ("LUPO"). On 30 November 2017 the validity period was extended for an additional three (3) years. Thus, the LUPO approval infer that, from a planning perspective, the proposed development is acceptable.

In addition, the Bergrivier Municipality is the regulatory authority for noise and odour related complaints and did not have any comments on the regarding potential noise and odour related impacts that they felt could impact on the viability of the proposed development nor did they provide any comment on the NIA and the AQIA.

I am satisfied that the proposed development at the Laaiplek Harbour is in line with Proclaimed Fishing Harbours SEDF and the Laaiplek precinct plan developed by the Municipality.

## ***2 Failure to adequately address the impact of existing land uses on the proposed development***

Mariba Engineering, Pyroca Houtwerke and Bergrivier Cut and Edge cc are located on the proposed development site and the surrounding land users comprises of Amawandle Pelagic (Pty) Ltd, Eigevis/Sanboskraal MeatPackers cc, Laaiplek Slipway cc, Harbour (Fishing Vessels) and the Laaiplek Hotel.

While tourist facilities and working fishing harbours can present as competing land uses, a move towards fishing tourism is becoming more common. This would be similar to agri-tourism where holidaying on working farms are gaining traction in the agricultural sector.

The applicant is aware that their proposed development is located within a fully functional and working harbour which operates 24 hours a day with associated harbour related activities.

With the West Coast region being known for its fishing, it is anticipated that the proposed development will introduce new interest into the area and the harbour precinct, and the development should be marketed that it is located at a working harbour. The proposed development's clientele must be made aware that they will be visiting a working harbour with associated businesses, such as the fish processing plant, which at times operates 24 hours a day.

Aside from the unique beauty that the Berg River mouth and the coastline to the north offers, visitors will also have the opportunity to visit a working harbour which in turn presents opportunities for fishing vessels to offer fishing charters and tours.

It is stated in the FBAR that the existing legal rights of the industries in close proximity to the proposed development will not be negatively impacted if the neighbouring businesses, in

particular the fish processing plant, is operating within the legal parameters in which it may operate, e.g. the Atmospheric Emissions Licence. Thus, the appellant must comply with the requirements of the *National Environmental Management Air Quality Act, 2004 (Act No. 39 of 2004)* ("NEMAQA") as the rendering of industrial fish to produce fishmeal is considered to be a Category 10 Listed Activity in terms of Government Notice 893 of the NEMAQA. If the Appellant has adopted the best practicable environmental option for odour abatement management as required by NEMAQA, then this should not negatively impact on the proposed development.

The AQIA concluded that:

- The proposed development must accept that odours will always be emitted from the Appellant's operations as it is part-and-parcel of fish waste processing.
- The atmospheric conditions that could affect the impact that odorous emissions have on the proposed development were expected to be in the "low" category.
- The annual average ground-level concentration of H<sub>2</sub>S and TMA, indicated that very few odours would, on average, be detectable at the site. The 95<sup>th</sup>-percentile ground-level concentrations, indicate that odours may be detectable at the site for 5% of the time, i.e. 440 hours per year (equivalent to 18.3 days per year).
- The 99<sup>th</sup> -percentile ground-level concentrations, indicate that odours will be detectable at the site for 1% of the time, i.e. 88 hours per year (equivalent to 3.7 days per year).
- Emissions could be expected to occur continuously, but not necessarily at the rate on which this study was based.

Although the AQIA concluded that there will be no significant impact on the proposed development from an air quality point of view, it is recommended that the applicant install a continuous H<sub>2</sub>S monitoring facility at the development. H<sub>2</sub>S emissions may increase proportionally if the Amawandle Pelagic, subject to an application, was to increase its throughput, and the odorous emissions may increase 20-fold should stale fish be processed as well.

Even though the main odorous compound emitted from the Amawandle Pelagic's operations is amines, there is no easy method for measuring such compounds and costs of monitoring runs into a few million Rands for continuous monitoring of amines. The continuous monitoring of H<sub>2</sub>S will show trends on increasing or decreasing emissions over time.

The NIA concluded that as follows:

- The impact on the proposed development from surrounding land users and from the appellant (Amawandle Pelagic) is negligible.
- The noise level at the Amawandle Pelagic when the plant is in operation is not classified as not being a "disturbing noise" in terms of the Western Cape Noise Control Regulations.
- As long as the noise levels at Amawandle Pelagic does not exceed the limit for a "disturbing noise" in terms of the Western Cape Noise Control Regulations, the noise levels at the proposed development site will not exceed the maximum permitted levels for the development site and type.



All aspects of the proposed development, the surrounding land use and its impact on each other (noise, odours and primary industrial surrounding land use) were considered during the adjudication of the appeal and I thus conclude that all the developments within the harbour precinct can co-exist based on the current assessment and impacts identified.

### **3 Failure to adequately address comments received from Foodcorp, the Appellant and other interested and affected persons**

All the information and comments submitted as part of the application and FBAR was reviewed and considered during the adjudication of the appeal. The appellant's appeal is a reiteration of the comments submitted during the EIA application.

The NIA and AQIA were requested in response to the issues raised in the BAR and the appeal. An additional opportunity to provide comment was provided to all the registered IAPs when the NIA and AQIA were released for public comment. Comments were received from Sub-Directorate Coastal Impact Management from the Department of Environmental Affairs and Development Planning, Amawandle Pelagic (Pty) Ltd, West Coast District Municipality and Demos Dracoulides and Associates Environmental Engineers.

The comments related to the following:

- The Noise and Air Quality reports for the Proposed Berg River Mouth Family and Lifestyle Facility
  - i) Amawandle Pelagic provided access to the facility for the applicant's air quality specialist to conduct stack emission surveys. The specialist declined the offer to sample and analyse the stack and instead insisted that Amawandle Pelagic provide their stack survey report. Amawandle Pelagic is not obliged to provide the stack emission report.
  - ii) Disagreement that the Amawandle Pelagic plant will not have an impact on the development. The facility is within compliance of its Atmospheric Emissions Licence conditions. It is important to note that the facility is in an industrial area zone and hence the inherent misalignment with a residential or commercial development in the same area.
  - iii) The apportionment of the emissions in the air quality report does not represent the actual situation of the plant operation.
  - iv) The boiler stacks paragraph on page 15 of section 7.2.1 in Air Quality Impact Assessment report has an incorrect assumption of the boiler operations. The facility has seven boilers, 1 cannery and 6 fishmeal boilers. Only the flue gas from the fishmeal boilers are used in the fishmeal plant. On 10 September 2018, the air quality specialist, Mr CH Albertyn met with Amawandle Pelagic management at the facility, but he refused to conduct a site walk to understand the operations. During the meeting management informed him that the chemical scrubbers have been installed and that the values in the Provisional Atmospheric Emissions License refers to the seawater scrubbers and not the new chemical scrubbers. The velocity used in Air Quality Impact

Assessment report is therefore incorrect as the chemical scrubbers' stacks are very different in diameter and heights compared to the seawater scrubbers.

- Activities at the harbour –

The Operation Phakisa: Small Harbours Initiative has gained momentum in the last two years. It is anticipated that the maintenance and repair activities in the harbour will provide for a maximum operation of activities within the harbour.

These comments were sufficiently responded to by the AQIA as follows:

- i) Amawandle Pelagic did not offer the AQIA specialist the chance to determine emissions, but stated that LAQS conducts its own measurements (this was not part of LAQS's scope of work). Furthermore, LAQS did not "*insist that AP provide their stack survey report*".

During the site meeting, and in subsequent email communication with Amawandle Pelagic, the AQIA specialist stated the following

- AQIA only needed to know the flue gas velocities or flow rates and the flue gas temperatures in the various stacks. As far as AQIA specialist knows Amawandle Pelagic appointed DDA to carry out emission measurements. This is a reputable company and the AQIA specialist would not have any reason to doubt the validity of the results reported by them.
- The AQIA specialist did not need to know what the actual concentrations of pollutants were as the "*Regulations Regarding Air Dispersion Modelling*" as published in Government Notice GN R.533 of 11 July 2014 (GN R.533) dictates that emission limits must be used in the estimation of emissions. (In fact, GN R.533 gives the lowest ranking to measured concentrations as a means to estimate mass flows of pollutants.)

In an attempt to identify and include all possible sources of odorous emissions, the AQIA specialist requested information about the wastewater treatment plant from the Bergvriervier Municipality who made all information available.

- ii) Amawandle Pelagic misread the AQIA report as nowhere in the report does it state that Amawandle Pelagic emissions "will not have an impact". The AQIA report states that, in the specialist's opinion, the impact on the development will be low. This statement is qualified in AQIA report through the discussions of the uncertainties involved in the air quality impact development in the same area assessment.

The AQIA specialist cannot provide any response to the comment that "*the facility is in full compliance of its Atmospheric Emissions License conditions*" as it has not been given any access to any emission test reports. From copies of presentations made at Air Quality Stakeholder meetings Amawandle Pelagic has exceeded the limits of H<sub>2</sub>S as stated in the PAEL.

The AQIA is of the opinion that the developers are well aware of the fact that their development neighbours a functioning harbour and industrial activities, of which Amawandle Pelagic is one.

- iii) The AQIA requested information about the actual plant operations, e.g. annual production rate, monthly cycles, etc., from Amawandle Pelagic so that the plant's emissions profile could be defined as accurately as possible in the dispersion model.

Amawandle Pelagic could not provide any such information as the plant operations are highly variable and totally dependent on fish harvesting rates, a highly variable activity at best. The worst-case operating scenario was used, i.e. operating continuously, 24 hours per day and 8 000 hours per year at the production rate and coal combustion data defined in Amawandle Pelagic's PAEL. This means processing a maximum of 38 tons of material per hour and burning a maximum of 5 tons of coal per hour, regardless of the quantity of fish delivered for processing. The AQIA used these figures, together with emission factors for TMA and products of coal combustion to estimate annual emission as the PAEL does not state any limits for these pollutants.

- iv) The AQIA declined the site walk as it saw no benefit in it. The AQIA was interested only in the points of emission and rates of emissions. Amawandle Pelagic declined to provide any information, other than pointing out the positions of 4 stacks on a site map, two of which were stated to be boiler stacks and two were stated to be scrubber stacks. Amawandle Pelagic declined to provide the basic information requested and a site walk would not have any further emissions information.

Therefore, according to the information provided by Amawandle Pelagic during the onsite meeting, only two stacks serve the boilers, regardless of how many are installed. The AQIA assumed this to imply that boiler flues are ducted to a common stack, the possible exception being the cannery boiler. The issue raised by Amawandle Pelagic would have been void if they had provided the basic information requested. As they declined cooperation, the AQIA had to make do with available research material and generic information.

The chemical scrubbers may have impacted on the emissions stipulated, but, as stated previously, any details of the stacks and flue gas conditions was not available to the AQIA. Numerous requests to the licensing authorities for a copy of any revised PAEL that may have been issued to Amawandle Pelagic but, to date no information has been received. As such the existing PAEL information was used for the air quality impact assessment. Thus the AQIA based its assessment of worst-case conditions, i.e. burning 5 tons of coal per hour, regardless of where the energy is used. In terms of the National Environmental Management: Air Quality Act, "all nearby sources" must be included in dispersion

modelling studies, regardless of the processes served by the various sources, in order to obtain a cumulative impact assessment.

v) Amawandle Pelagic management met with the air quality specialist at the facility, but a site walk to understand the operations, was deemed not necessary by the air quality specialist. During the meeting Amawandle Pelagic management informed him that the chemical scrubbers have been installed and that the values in the PAEL refers to the seawater scrubbers and not the new chemical scrubbers. The velocity used in the AQIA report is therefore incorrect as the chemical scrubbers' stacks are very different in diameter and heights compared to the seawater scrubbers.

The AQIA recalculated the impact of the higher flow rate on estimated ground-level H<sub>2</sub>S concentrations and found the following:

- Annual average concentrations: 0.23  $\mu$  g/m<sup>3</sup>, i.e. below the odour threshold value.
- 90<sup>th</sup> -percentile concentration: 0.33  $\mu$  g/m<sup>3</sup>, i.e. below the odour threshold value.
- 99<sup>th</sup> -percentile concentration: 2.97  $\mu$  g/m<sup>3</sup>, i.e. above the odour threshold value.

It is, therefore, possible that odours may exist for 1% of the time, if Amawandle Pelagic may happen to be processing fishmeal at their maximum allowed production rate at the time when the necessary weather conditions occur to cause such dispersion conditions.

vi) The approach of the AQIA to the project was to simulate worst-case conditions. Overestimation of emission implies overestimation of the ground level concentrations.

vii) It is unlikely that including these emissions as point sources will exceed the worst-case emissions used by the AQIA in its estimations.

viii) Amawandle Pelagic advised that DDA's 2013 study was to estimate conditions after all upgrades had been conducted to their plant and that the information in that report could not be used. The AQIA only used the weather parameters (public data) that was in the study. The AQIA specialist is of the opinion that the applicant is well aware of the fact that odours could potentially occur on their site from time to time.

These comments were sufficiently responded to by the AQIA follow:

a) The results provided in the Figures 6 and 7 of the NIA indicate that the Amawandle Pelagic plant is within the noise level guidelines according to the regulations reference limits for industrial areas and does not contribute significantly to the noise levels at the Family and Lifestyle Facility for the daytime conditions.

b) The current Western Cape Noise Control Regulations, 2013, set a "rating level" for day time and a rating for night time. A disturbing noise is generally one which exceeds the rating level by 7 dBA. There is a special case where the residual level is 10 dBA or more than the rating level but this does not apply in this case.

The noise level of Amawandle Pelagic will be the same during the day, when in full operation, as during the night. Thus the evaluation of the noise impact is as follows:

- When the factory is in full operation (this is confirmed with them and the fishing fleet) take noise measurements for as long as the factory is in operation.
- When the factory is not in operation, take residual noise measurements.
- Obtain the night time rating level from Table 2 of SANS 10103.
- If the rating level is not 10 dBA more than the residual level set the maximum noise level allowable on the factory plot boundary as the night time rating level + 7 dBA.
- The residual level was recorded as between 50 dBA and 52 dBA.
- A considerable number of residual noise measurements were taken early morning during the "night " period. It was not considered appropriate to include these in the report as they are confusing. The measurements were at the factory plot boundary.

c) Security issues prevented a full 24-hour measurement period.

d) A limit was set for the maximum level at the factory plot boundary. Due to the nature of the technical information and the calculations, it will not be readily understood by the general public and was thus excluded.

The EIA undertaken for the development and the subsequent AQIA and NIA conducted in 2018 and the land use approval issued by the Bergrivier Municipality provided the me with sufficient information to conclude that the proposed development can be established at the Laaiplek Harbour based on the current assessment and level of impacts identified.

Whilst the existence of precedence does not justify the establishment of the proposed lifestyle centre at the harbour, it does offer evidence that these two types of land uses can be located in close proximity to each other and can co-exist. It will offer tourists with unique opportunities to visit and experience a working harbour. This factor formed part of the aspects considered in planning and conceptual phases of the proposed development.

The reference to "*within prescribed legal parameters*" refers to the PAEL and the limitations and conditions stipulated therein. The fish processing plant, as with any other facility, is bound by limitations imposed by relevant legal statutes, much like the limitations imposed by the total allowable catch for fish that is a key informant is in the quantum stated in fishing quotas.

#### **4 Failure to address the Appellant's concerns in the reasons for the decision**

Whilst site visits can provide key information and insight into the placement of a proposed development within the context of a receiving environment, it is not a legislated requirement which the Department is obliged to undertake. The proposed development site and harbour area was visited twice during the adjudication of the appeal.

It is after the first site visit that the additional studies were requested. Following its submission, I am satisfied that the proposed development can be established within the Laaiplek Harbour precinct.

I have applied my mind to the fundamental considerations of the proposed development in the context of the harbour location and the surrounding land uses.

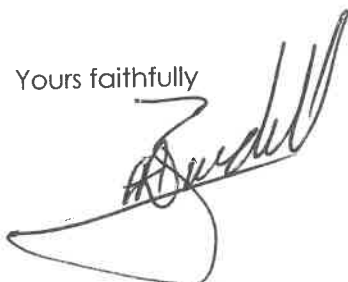
The National Environmental Management Principles (set out in section 2 of the NEMA) which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment. In terms of the NEMA Principles, the effects of decisions on all aspects of the environment are to be taken into account. As such, the consideration, assessment and evaluation of the social, economic and ecological impacts of activities (disadvantages and benefits) must be undertaken, and decisions are to be appropriate in the light of such consideration and assessment.

I conclude that the proposed development of the proposed lifestyle development will be able co-exist within the Laaiplek Harbour precinct and that all potential impacts were identified and adequately assessed and mitigated.

In view of the above, the NEMA principles, compliance with the conditions stipulated in the EA, and compliance with the conditions of the EMP, the proposed development will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and any potentially detrimental environmental impacts resulting from the proposed development can be mitigated to acceptable levels.

Your interest in the future of our environment is greatly appreciated.

Yours faithfully



**ANTON BREDELL**  
**PROVINCIAL MINISTER OF LOCAL GOVERNMENT,**  
**ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE: 12/12/2019

Copied to: 1. Mr D. Janeke  
2. Mr J.P. Pretorius  
3. Mr Z Toefy

(DJ Environmental Consultants)  
(Hannes Pretorius Bock & Bryant)  
(Directorate: Development Management (Region 2))

Fax: (021) 851 0933  
Fax: (086) 270 8255  
Fax: (021) 483 4372