



forestry, fisheries & the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

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PER E-MAIL / MAIL

Dear Mr Katmer

NOTIFICATION OF SUSPENSION OF THE APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF REGULATION 14 OF THE EIA REGULATIONS 2014 AS AMENDED FOR THE PROPOSED GAS TO POWER VIA POWERSHIP PROJECT AT THE PORT OF SALDANHA WITHIN THE SALDANHA BAY LOCAL MUNICIPALITY IN THE WESTERN CAPE PROVINCE

The abovementioned application for environmental authorisation (EA) and the associated final Environmental Impact Assessment Report (EIAR) received by the Department on 26 April 2021 refers.

- i. On 31 May 2021, the Department received written notice, as contemplated in Regulation 14(2) of the Environmental Impact Assessment (EIA) Regulations, 2014 as amended from The Green Connection making allegations of suspected non-compliance by the appointed Environmental Assessment Practitioner (EAP) with Regulation 13 of the EIA Regulations, 2014 as amended.
- ii. Regulation 14(3) of the EIA Regulations, 2014 as amended provides that, where an interested and affected party (I&AP) so notifies the competent authority of suspected non-compliance, the competent authority must investigate the allegation promptly.
- iii. As a result of the above and in line with the relevant provisions of Regulation 13, the Department initiated the investigation and the matter is under consideration.
- iv. The Department has reason to believe that the suspected non-compliance is based on the following:
 - a) The EAP has failed to ensure that the Environmental Impact Assessment Report (EIAR) sets out the environmental impacts, mitigation and closure outcomes as well as the residual risks of the proposed activity as required under section 1(2) of Appendix 3 of the EIA Regulations 2014, as amended.
 - b) The EAP has failed to promote compliance with the objective of the regulations which according to section 2 is to determine through a consultative process the - (i) nature, significance, consequence, extent, duration and probability of the impacts occurring to inform identified preferred alternatives; and

- (ii) degree to which these impacts - (aa) can be reversed; (bb) may cause irreplaceable loss of resources, and (cc) can be avoided, managed or mitigated.
- c) The EAP failed to conduct a specialist study of the potential consequences or impacts on the environment and marine resources of Saldanha Bay - in particular, those on which small scale fishers of Saldanha Bay depend for their livelihoods - of underwater noise generated by the ships, prior to submission of the EIAr to the Department for decision making.
- d) The lack of a marine ecological specialist assessment in the EIAr to assess the impacts of noise on marine life in the Saldanha Bay, resulted in I&AP's, in particular small scale fishers, being deprived of fully understanding the potential impacts of the development on their livelihoods.
- e) I&AP's, including the small scale fishers have been deprived of the opportunity of providing comment and making submissions prior to the EIAr being submitted to the Department for decision making.
- f) Reliance has been based on information relating to Karpowerships in Ghana, in circumstances where topography of the ocean and its impact on sound has not been determined.
- g) The Marine Ecology Specialist Report had recommended a quantitative underwater noise assessment to comprehensively assess the impact on the marine ecology. As a result of the failure to undertake this study prior to submitting the EIAr to the Department, the Competent Authority will not have all relevant information and considerations before it in order to make an informed lawful decision as required in terms of the Promotion of Administrative Justice Act.
- h) The EAP voiced concern at the meeting of 19th April 2021 that the EIAr must be submitted by 25th of April 2021. This reason cannot exempt the EAP from complying with the EIA Regulations, 2014 as amended and assessing all potentially significant impacts which has been identified at the scoping phase.
- i) The approved Plan of Study stated that "A specialist study is required to determine the baseline / status-quo description describing aspects of the marine environment that may be affected by the proposed development and assess the impacts of the project on the marine environment, inclusive of entrainment." The EAP has failed to ensure compliance with the EIA Regulations, 2014 as amended and the approved Plan of Study.
- v. In terms of Regulation 14(1)(a) of the EIA Regulations, 2014, as amended, you are hereby informed that the application and associated timeframes for reviewing and considering the application for EA for the Proposed Gas to Power Powership Project at the Port of Saldanha Bay within the Saldanha Local Municipality in the Western Cape Province (14/12/16/2/2/2006) is suspended until the matter is resolved. The extended timeframe for the processing of the application will be communicated once a decision on the matter has been reached in terms of Regulation, 14(5) of the EIA Regulations, 2014 as amended.
- vi. In terms of Regulation 14(1)(b) of the EIA Regulations, 2014, as amended, you are hereby afforded the opportunity to make representations in writing on the attached allegations made by The Green Connection, and to submit such representations to this Department on or before **Wednesday, 30 June 2021**.
- vii. Upon receipt of the information, or failure to submit the representations by the abovementioned date, this Department will then consider the matter (with or without your representations) and advise in terms of Regulation 14(5) of the EIA Regulations, 2014, as amended.

- viii. In terms of Regulation 14(6) of the EIA Regulations, 2014, as amended, you are hereby informed to notify all registered interested and affected parties (I&AP's) of the Department's decision within seven (07) days from the date of this letter.
- ix. In addition to the above, Regulation 10(c) of the EIA Regulations, 2014, as amended states that "an applicant must provide the competent authority with all information that reasonably has or may have the potential of influencing any decision with regard to an application".
- x. Regulation 13(1)(b) states that "An EAP and a specialist, appointed in terms of regulation 12(1) or 12(2), must have expertise in conducting environmental impact assessments or undertaking specialist work as required, including knowledge of the Act, these Regulations and any guidelines that have relevance to the proposed activity;"
- xi. Regulation 13(1)(c) states that "An EAP and a specialist, appointed in terms of regulation 12(1) or 12(2), must ensure compliance with these Regulations;"
- xii. Regulation 13(1)(d) states that "An EAP and a specialist, appointed in terms of regulation 12(1) or 12(2), must perform the work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the application".
- xiii. You are hereby informed that in terms of Regulation 48(1)(a) of the EIA Regulations, 2014, as amended, it is an offence to "provide incorrect or misleading information in any form, including any document submitted in terms of these Regulations to a competent authority or omits information that may have an influence on the outcome of a decision of a competent authority;" and in terms of Regulation 48(1)(b) of the EIA Regulations, 2014, as amended "fails to comply with regulation 10(c)."

Should you have any queries or wish to discuss the points raised above, please do not hesitate to contact the writer.

Yours faithfully


Mr Sabelo Malaza
Chief Director: Integrated Environmental Authorisations
Department of Forestry, Fisheries and the Environment
Date: 08/06/2021

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