



# forestry, fisheries & the environment

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

Private Bag X 447· PRETORIA ·0001· Environment House ·473 Steve Biko Road, Arcadia· PRETORIA

**DFFE Reference:** 14/12/16/3/3/2/2005

**Enquiries:** Mr Coenrad Agenbach

**Telephone:** (012) 399 9403 **E-mail:** CAgenbach@dffe.gov.za

Mr Mehmet Katmer  
Karpowership SA (Pty) Ltd  
PO Box 619  
**PRETORIA**  
001

**Telephone Number:** +90 212 295 47 37 - 121  
**Email Address:** Mehmet.Katmer@karpowership.com

## PER E-MAIL

Dear Mr Katmer

### **APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, ACT NO. 107 OF 1998, AS AMENDED: FOR THE GAS TO POWER VIA POWERSHIP PROJECT AT THE PORT OF NGQURA WITHIN THE COEGA SEZ IN THE NELSON MANDELA BAY METROPOLITAN MUNICIPALITY IN THE EASTERN CAPE PROVINCE**

With reference to the above application, please be advised that the Competent Authority has decided to refuse the application for Environmental Authorisation. The reasons for this refusal are contained in the Record of Refusal, of which a copy is attached hereto.

In terms of Regulation 4(2) of the Environmental Impact Assessment Regulations, 2014, as amended (the EIA Regulations), you are instructed to notify all registered interested and affected parties, in writing and within fourteen (14) days of the date of the Record of Refusal, of the Competent Authority's decision as well as the provisions regarding the submission of appeals that are contained in the EIA Regulations.

In terms of the Promotion of Administrative Justice Act, 2000 (Act No 3 of 2000), you are entitled to the right to fair, lawful and reasonable administrative action; and to written reasons for administrative action that affects you negatively. Further your attention is drawn to the provisions of the Protection of Personal Information Act, 2013 (Act no. 4 of 2013) which stipulates that the Competent Authority should conduct itself in a responsible manner when collecting, processing, storing and sharing an individual or another entity's personal information by holding the Competent Authority accountable should the Competent Authority abuses or compromises your personal information in any way.

Your attention is drawn to Chapter 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) National Appeal Regulations published under Government Notice R993 in Government Gazette No. 38303 dated 08 December 2014 (National Appeal Regulations, 2014), which prescribe the appeal procedure to be followed. Kindly include a copy of this document (National Appeal Regulations, 2014) with the letter of notification to interested and affected parties in this matter.

Should any person wish to lodge an appeal against this decision, he/she must submit the appeal to the appeal administrator, and a copy of the appeal to the applicant, any registered interested and affected party, and any organ of state with interest in the matter within 20 days from the date that the notification of the decision was sent to the registered interested and affected parties by the applicant; or the date that the notification of the decision was sent to the applicant by the Competent Authority, whichever is applicable.

**Appeals must be submitted in writing in the prescribed form to:**

The Director: Appeals and Legal Review of this Department at the below mentioned addresses.

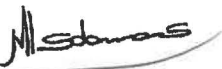
By email: [appealsdirector@dfpe.gov.za](mailto:appealsdirector@dfpe.gov.za);

By hand: Environment House  
473 Steve Biko  
Arcadia  
Pretoria  
0083; or

By post: Private Bag X447  
Pretoria  
0001

To obtain the prescribed appeal form and for guidance on the submission of appeals, please visit the Department's website at [https://www.dffe.gov.za/documents/forms#legal\\_authorisations](https://www.dffe.gov.za/documents/forms#legal_authorisations) or request a copy of the documents at [appealsdirector@dfpe.gov.za](mailto:appealsdirector@dfpe.gov.za).

Yours faithfully



**Ms Milicent Solomons**  
**Acting Chief Director: Integrated Environmental Authorisations**  
**Department of Forestry, Fisheries and the Environment**  
Date: 07/03/2023.

cc:	Ms Aletta Plomp	Triplo4 Sustainable Solutions	Email: <a href="mailto:hantie@triplo4.com">hantie@triplo4.com</a>
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# forestry, fisheries & the environment

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

## Record of Refusal

In terms of Regulation 24(1)(b) of the Environmental Impact Assessment Regulations, 2014,  
as amended

Gas to Power via Powership Project at the Port of Ngqura within the Coega SEZ in the Nelson Mandela  
Bay Metropolitan Municipality in the Eastern Cape Province

Sarah Baartman District Municipality

<b>Application Register Number:</b>	<i>14/12/16/3/3/2/2005</i>
<b>Last Amended</b>	<i>Second Issue</i>
<b>Applicant:</b>	<i>Karpowership SA (Pty) Ltd</i>
<b>Location of activity:</b>	<i>Erf 251 Coega Erf 312 Coega Remainder of ERF 252 Coega Remainder of Erf 281 Coega Remainder of Erf 275 Coega Rem Erf 329 Coega Rem of Erf 276 Coega Erf 356 Coega Nelson Mandela Bay Metropolitan Municipality Sarah Baartman District Municipality Eastern Cape Province</i>

## Decision

The Competent Authority is satisfied, on the basis of information available to it that the applicant should not be authorised to undertake the activities specified below.

Details regarding the basis on which the Competent Authority reached this decision are set out in Annexure 1 to this Record of Refusal.

## Activities refused

By virtue of the powers conferred on it by the National Environmental Management Act, Act No. 107 of 1998, as amended and the Environmental Impact Assessment Regulations, 2014, as amended, the Competent Authority hereby refuses the application for Environmental Authorisation to –

### **KARPOWERSHIP SA (PTY) LTD**

with the following contact details –

Mr Mehmet Katmer

Karpowership SA (Pty) Ltd

PO Box 619

**PRETORIA**

0001

Telephone Number: +90 212 295 47 37 - 121

Email Address: Mehmet.Katmer@karpowership.com

not to undertake the following activities (hereafter referred to as “the activity”) indicated in Listing Notice 1, 2 and 3 of the EIA Regulations, 2014 as amended:

Activity number	Activity description
<p><u>Listing Notice 1, Activity 11:</u></p> <p><i>“The development of facilities or infrastructure for the transmission and distribution of electricity-</i></p> <p><i>(i) outside urban areas or industrial complexes with a capacity of more than 33 but less than 275 kilovolts...”</i></p>	<p>Application is made for this listed activity for the transmission line proposed between the Shark and Khan Powerships moored within the Port of Ngqura at the locations that are not associated with the berths terminals or admin craft basin. The power generated on the ship will be converted by the on-board High Voltage substation (110kV-170kV) and transmitted along the 132kV twin conductor overhead transmission line.</p>
<p><u>Listing Notice 1, Activity 12:</u></p> <p><i>“The development of</i></p> <p><i>(ii) infrastructure or structures with a physical footprint of 100 square meters or more; where such development occurs</i></p> <p><i>(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse...”</i></p>	<p>This Listed Activity is triggered since the location of the proposed switching station (including the associated 50-meter corridor and 31-meter working servitude) will be within 32 meters of a watercourse. This activity also does not exclude industrial complexes and it is highly debatable whether the proposed activities are associated with built up areas or the edge of built up areas given the vast expense of open areas associated with the CDC. In addition, although no NFEPA wetland was identified on site, the wetland is still indicated on NFEPA.</p>
<p><u>Listing Notice 1, Activity 15:</u></p> <p><i>“The development of structures in the coastal public property where the development footprint is bigger than 50 square metres, excluding...”</i></p>	<p>This Listed Activity is triggered since the location of the proposed overland gas pipeline portion connecting to the Powerships and the associated contractor facilities and stringing yard for the gas pipeline facility, will have the effect of increasing the footprint of the port. There are no existing gas</p>

	<p>infrastructure at the port. The contractor facilities and associated activities will exceed 6 weeks. This Listed Activity is accordingly applied for.</p>
<p><u>Listing Notice 1, Activity 17:</u>  <i>“Development—</i>  <i>(i) in the sea;</i>  <i>(iii) within the littoral active zone</i>  <i>(v) if no development setback exists, within a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever is the greater;</i>  <i>in respect of-</i>  <i>(d) rock revetments or stabilising structures including stabilising walls; or</i>  <i>(e) infrastructure or structures with a development footprint of 50 square metres or more...”</i></p>	<p>This Listed Activity is triggered since the mooring systems, the secured gas pipeline, the proposed towers for the transmission line, the switching station and the temporary laydown area for the gas pipeline installation will cumulatively exceed a footprint of 50 square meters within the sea, and littoral active zone.</p>
<p><u>Listing Notice 1, Activity 18:</u>  <i>“The planting of vegetation or placing of any material on dunes or exposed sand surfaces of more than 10 square metres, within the littoral active zone, for the purpose of preventing the free movement of sand, erosion or accretion.”</i></p>	<p>This Listed Activity is triggered since sections of the secured gas pipeline and transmission line, where it comes on shore, need to be stabilised to prevent erosion on the substrate where the pipeline and transmission line is established.</p> <p>Furthermore, rehabilitation for the land-based portions will be required. Although some port areas has already been transformed due to port activity, the planting of vegetation on exposed sand surfaces within the port and dune areas along the transmission route of more than 10 square meters to ensure proper environmental management will be required.</p>

	<p>Application for this activity is also made in regard to the maintenance management plan, forming part of the EMPr for activities required to maintain the infrastructure and operations.</p>
<p><u>Listing Notice 1, Activity 19:</u>  <i>"The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse."</i></p>	<p>Although no NFEPA wetland was identified on site, the wetland is still indicated on NFEPA. It is preferable that the indicated NFEPA wetland be considered from a precautionary perspective. (This is despite our contention that the proximity of such activities is to the estuary itself and not a watercourse). Application for this activity is also made in regard to the maintenance management plan, forming part of the EMPr for activities required to maintain the infrastructure and operations.</p> <p>In such event, it could follow that such infrastructure and structures are deemed to increase the development footprint of the port and thus are not excluded from this activity. As a matter of caution therefore, we persist with the application for this Listed Activity.</p>
<p><u>Listing Notice 1, Activity 19A:</u>  <i>"The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from—</i>  <i>(i) the seashore;</i>  <i>(ii) the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater; or</i>  <i>(iii) the sea"</i></p>	<p>This Listed Activity is triggered since the mooring systems, the secured gas pipeline, the erection of the towers for the transmission line, and the construction facilities will require the infilling or depositing, excavation, removal or moving of more than 5 cubic metres of material from the littoral active zone, an estuary or within a distance of 100 meters of an estuary, and the sea. Installation of the subsea as well as land-based portions of the pipeline will require excavation, levelling, infilling and compaction.</p>

	<p>These structures and infrastructure are deemed to increase the development footprint of the port and thus are not excluded from this activity.</p> <p>Application for this activity is also made in regard to the maintenance management plan, forming part of the EMPr for activities required to maintain the infrastructure and operations.</p>
<p><u>Listing Notice 1, Activity 27:</u>  <i>"The clearance of an area of 1 hectare or more, but less than 20 hectares of indigenous vegetation..."</i></p>	<p>This Listed Activity is triggered. The proposed switching station, onshore gas pipeline and the temporary construction facilities will cumulatively require clearance of more than 1 hectare of indigenous vegetation. The 50-metre corridor which includes the 31-meter working servitude is part of the switching station and it can be strongly contended that it is not part of the linear activity.</p>
<p><u>Listing Notice 2, Activity 2:</u>  <i>"The development and related operation of facilities or infrastructure for the generation of electricity from a non-renewable resource where the electricity output is 20 megawatts or more."</i></p>	<p>This Listed Activity is triggered since the Project's design capacity is 540MW and the contracted capacity will be 450MW of electricity to be supplied to the national grid. Electricity will be generated by up to 27 reciprocating engines, each having a heat input in excess of 10MW (design capacity of 18.32MW each at full capacity). Heat generated by operation of the reciprocating engines is captured, and that energy is used to create steam to drive three steam turbines that each have a heat input of circa 15.45MW. Related operation of facilities or infrastructure include the facilities and infrastructure on the Powership, the FSRU, gas pipeline and evacuation of power from the onboard substation.</p>



<p><u>Listing Notice 2, Activity 4:</u></p> <p><i>“The development and related operation of facilities or infrastructure, for the storage, or storage and handling of a dangerous good, where such storage occurs in containers with a combined capacity of more than 500 cubic metres.”</i></p>	<p>Storage of LNG on the FSRU will exceed 500 cubic meters (maximum estimated storage is 175 000 cubic meters at any given time).</p>
<p><u>Listing Notice 2, Activity 6:</u></p> <p><i>“The development of facilities or infrastructure for any process or activity which requires a permit or licence or an amended permit or licence in terms of national or provincial legislation governing the generation or release of emissions, pollution or effluent...”</i></p>	<p>This Listed Activity is triggered since the engines used for electricity generation are a Listed Activity under GN 893 of 22 November 2013 (as amended) in terms of section 21 of the NEM:AQA Sub-Category 1.5: Reciprocating Engines. In the case of the proposed project, the Powerships will have a combined sum of 27 engines that each have a heat input capacity of more than 10MW.</p> <p>The three steam turbines have a heat input capacity of less than 50MW, but more than 10MW. These units are therefore declared Controlled Emitters and they will be regulated in terms of GN 831 of 1 November 2013 for Small Boilers.</p>
<p><u>Listing Notice 2, Activity 7:</u></p> <p><i>“The development and related operation of facilities or infrastructure for the bulk transportation of dangerous goods—</i></p> <p><i>(i) in gas form, outside an industrial complex, using pipelines, exceeding 1 000 metres in length, with a throughput capacity of more than 700 tons per day;”</i></p>	<p>This Listed Activity is triggered since a subsea gas pipeline for transportation of gas in gas form, exceeding 1000 meters, is proposed. This Listed Activity does not exclude pipelines in the “sea” or within a port. The exclusion of “within an industrial complex” is open to dispute and interpretation, so it cannot be relied upon.</p>
<p><u>Listing Notice 2, Activity 14:</u></p> <p><i>“The development and related operation of—</i></p> <p><i>(ii) an anchored platform; or</i></p>	<p>This Listed Activity is triggered since the Powerships and FSRU will be anchored and moored in the port utilising the vessel's anchoring system. The</p>

<p>(iii) any other structure or infrastructure — on, below or along the sea bed;”</p>	<p>transmission of the regassified LNG will flow via a secured gas pipeline from the moored floating storage regasification unit (FSRU) ship along the seabed to the main generation ships (the Powerships) for processing. The subsea gas pipeline is proposed to be installed, operated and maintained along the toe of the existing dredged slopes between the FSRU and Powership to ensure gas supply for power generation.</p>
<p><u>Listing Notice 3, Activity 10:</u>  <i>“The development and related operation of facilities or infrastructure for the storage, or storage and handling of a dangerous good, where such storage occurs in containers with a combined capacity of 30 but not exceeding 80 cubic metres</i></p> <p>a. Eastern Cape</p> <p>i. Outside urban areas</p> <p>(jj) Areas within 10 kilometres from national parks or world heritage sites or 5 kilometres from any other protected area identified in terms of NEMPAA or from the core areas of a biosphere reserve;</p> <p>(kk) Areas seawards of the development setback line or within 1 kilometre from the high-water mark of the sea if no such development setback line is determined;</p> <p>(ll) Areas on the watercourse side of the development setback line or within 100 metres from the edge of a watercourse where no such setback line has been determined;</p> <p>(mm) Within 500 metres of an estuarine functional zone, excluding areas falling behind the development setback line;</p>	<p>This Listed Activity is triggered due to the proximity of the Project to various identified protected areas. Since quantities of between 30 and 80 cubic meters of LNG is anticipated to be contained in the proposed facilities or infrastructure (the gas pipeline itself) at any given time. The storage of up to 175 000 cubic meters of LNG in the FSRU is also obviously covered by Listed Activity 4 (LN2) above.</p>

<p>(nn) In an estuarine functional zone, excluding areas falling behind the development setback line; or                  (oo) Within a watercourse.”</p>	
<p><u>Listing Notice 3, Activity 12:</u>                  “The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan</p> <p>a. Eastern Cape</p> <p>iii. Within the littoral active zone or 100 metres inland from the high water mark of the sea, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas;</p> <p>iv. Outside urban areas, within 100 metres inland from an estuarine functional zone; or.”</p>	<p>This Listed Activity is triggered since indigenous vegetation exceeding 300 square metres will be cleared for the establishment of the transmission line towers, onshore gas pipeline and switching station, within the littoral active zone and within 100 metres inland from the highwater mark of the sea and estuarine functional zone. Application for this activity is also made in regard to the maintenance management plan, forming part of the EMPr for activities required to maintain the infrastructure and operations.</p>
<p><u>Listing Notice 3, Activity 14:</u>                  “The development of—</p> <p>(ii) infrastructure or structures with a physical footprint of 10 square metres or more; where such development occurs—</p> <p>(c) if no development setback has been adopted, within 32 metres of a watercourse, measured from the edge of a watercourse;</p> <p>Eastern Cape</p> <p>i. Outside urban areas:                  (hh) Areas within 10 kilometres from national parks or world heritage sites or 5 kilometres</p>	<p>This Listed Activity is triggered since the proposed infrastructure or structures (transmission line and corridor) with a footprint of more than 10 square meters will be developed within the Port of Ngqura (the preferred option), within the estuarine functional zone and within 5km of the Coega Bontveld and within 1km of the high water mark the CDC’s potentially preferred alignment of the transmission line and the associated 50 metre corridor which includes the 31m working servitude will be located within 32m of a watercourse. This Listed Activity must be applied for. These infrastructure and structures are</p>

<p><i>from any other protected area identified in terms of NEMPAA or from the core area of a biosphere reserve;</i></p> <p><i>(ii) Areas seawards of the development setback line or within 1 kilometre from the high-water mark of the sea if no such development setback line is determined; or</i></p> <p><i>(jj) In an estuarine functional zone, excluding areas falling behind the development setback line;.”</i></p>	<p>deemed to increase the development footprint of the port and thus are not excluded from this activity.</p>
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as described in the Final Environmental Impact Assessment (EIAr) dated 6 January 2023 and the confirmation on the listed and specified activities received on 24 February 2023:

**21 Digit SG Codes**

C	0	7	6	0	0	2	3	0	0	0	0	0	2	5	1	0	0	0	0	0
C	0	7	6	0	0	2	3	0	0	0	0	0	3	1	2	0	0	0	0	0
C	0	7	6	0	0	2	3	0	0	0	0	0	2	5	2	0	0	0	0	0
C	0	7	6	0	0	2	3	0	0	0	0	0	2	8	1	0	0	0	0	0
C	0	7	6	0	0	2	3	0	0	0	0	0	2	7	5	0	0	0	0	0
C	0	7	6	0	0	2	3	0	0	0	0	0	3	2	9	0	0	0	0	0
C	0	7	6	0	0	2	3	0	0	0	0	0	2	7	6	0	0	0	0	0
C	0	7	6	0	0	2	3	0	0	0	0	0	3	5	6	0	0	0	0	0

- for the 540MW Gas to Power Powership Project at the Port of Ngqura within the Coega SEZ in the Nelson Mandela Bay Metropolitan Municipality in the Eastern Cape Province, hereafter referred to as “the property”.

The proposed Gas to Power Powership Project will entail the following:

- Two floating mobile Powerships and Floating Storage Regasification Unit (FSRU);
- Berthing and mooring of the Powership and FSRU;
- Transmission line and switching station;
- Onshore and Offshore Gas Pipeline;
- Laydown areas;

- Stringing yard; and
- Site offices.

Technical details of the proposed facility:

<b>Component</b>	<b>Description/ Dimensions</b>
Location of the site	Port of Ngqura and Coega Special Economic Zone, situated near Port Elizabeth
Export capacity	~540MW
Preferred Site access	The proposed location of the Project is situated within the existing and operational Port of Ngqura and Coega IDZ, and therefore the existing access road network from the N2 will be used to access the Powerships site.

## **Legislative Requirements**

### **Refusal of the application**

1. The application for Environmental Authorisation is refused for the 540MW Gas to Power Powership Project at the Port of Ngqura within the Coega SEZ in the Nelson Mandela Bay Metropolitan Municipality in the Eastern Cape Province as described above.

### **Notification of refusal and right to appeal**

2. The applicant must notify every registered interested and affected party, of the Competent Authority's decision, in writing and within fourteen (14) calendar days of the date of this record of refusal.
3. The notification referred to must –
  - 3.1. specify the date on which the record of refusal was issued;
  - 3.2. inform the interested and affected party of the appeal procedure provided for in the National Appeal Regulations, 2014;
  - 3.3. advise the interested and affected party that a copy of the record of refusal will be furnished on request; and,

3.4. give the reasons of the Competent Authority for the decision.

Date of refusal of the application for Environmental Authorisation: 01/03/2023.



**Ms Millicent Solomons**

**Acting Chief Director: Integrated Environmental Authorisations**

**Department of Forestry, Fisheries and the Environment**

## Annexure 1: Reasons for Decision

### 1. Information considered in making the decision

In reaching its decision, the Competent Authority took, *inter alia*, the following into consideration -

- a) The appeal decision (LSA207022) dated 01 August 2022.
- b) The listed activities as applied for in the revised application form received on 06 January 2023.
- c) The information contained in the Final EIAr dated 06 January 2023.
- d) The confirmation of listed activities received from the EAP on 24 February 2023.
- e) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act 107 of 1998).

### 2. Key factors considered in making the decision

All information presented to the Competent Authority was taken into account in the Competent Authority's consideration of the application. A summary of the issues which, in the Competent Authority's view, were of the most significance is set out below.

- a) The information contained in the application form, the Final EIAr dated 06 January 2023 and the confirmation of listed activities received from the EAP on 24 February 2023.
- b) The appeal decision (LSA207022) dated 01 August 2022.
- c) The comments by the Chief Directorate: Integrated Environmental Authorisation on the draft EIAr dated 09 December 2022.

### 3. Findings

After consideration of the information and factors listed above, the Competent Authority made the following findings -

#### **a) Listed and specified activities applied for and associated legislative requirements:**

- (i) Point 3 (d) of Annexure 1 of the Record of Refusal dated 23 June 2021 indicated that "*The Competent Authority advised the EAP on a number of occasions, i.e. comments on the draft Scoping Report, acceptance of the Scoping Report and comments issued on the draft Environmental Impact Assessment Report that the EAP must ensure that all relevant listed and specified activities are applied for, are specific and can be linked to the development activity or infrastructure as described in the project description, and*

*that a final list of all applicable listed activities must be clearly identified and provided. However, the final EIAr and amended application form both contain listed activities where the EAP indicated uncertainty in terms of their applicability and requirement for environmental authorisation. As such, the objectives of the Environmental Impact Assessment Process as outlined in Appendix 3 of the EIA Regulations, 2014 as amended were not fulfilled and the Competent Authority was unable to make an informed decision on the on the potential impacts of the listed or specified activities on the receiving environment."*

- (ii) Paragraph 3.5 of the appeal decision dated 01 August 2022 indicated that *"Therefore, having duly considered all the information pertaining to the various appeals, I deem that an appropriate order in terms of section 43(6) of NEMA is to remit the matter the CA, as I hereby do, so that the various gaps in the information and procedural defects in relation to the PPP that led to the rejection of the EA application may be addressed during the reconsideration and re-adjudication of the EA application, provided that the timeframes prescribed by the 2014 EIA Regulations in respect of the EIA process are adhered to by the appellant and the CA."*
- (iii) The draft Environmental Impact Assessment report (EIAr) dated 10 November 2022 resubmitted as per the Ministers appeal decision dated 01 August 2022 did not address the concern raised regarding the listed and specified activities as highlighted in point (i) and (ii) above.
- (iv) The Department issued comments on the draft EIAr on 09 December 2022, in particular point (b) which requested the EAP to clearly identify and provide a final list of all applicable listed activities to be included as part of the final EIAr.
- (v) This was not addressed and included in the final EIAr dated 06 January 2023 submitted for decision making. On 22 February 2023, the Department requested confirmation from the EAP of the applicable listed and/or specified activities with their respective sub-activities that is required for authorisation. This confirmation was submitted on 24 February 2023.
- (vi) Based on the confirmation of listed and specified activities received on 24 February 2023, the EAP confirmed that the application now triggers Activity 11(i) of Listing Notice 1 of the EIA Regulations 2014 as amended for the 132kV twin conductor overhead transmission line.
- (vii) The submission of the generic Environmental Management Programme (EMPr) is a legislative requirement in terms of GN No. 435 dated 22 March 2019 in instances where activity 11 of Listing Notice 1 of the EIA Regulations, 2014 as amended is triggered. As such, the generic EMPr for overhead electricity transmission and distribution infrastructure as set out in Appendix 2 of GN No. 435, should have been included in the draft and final EIAr's.
- (viii) The Environmental Impact Assessment process was compromised as the applicant failed to comply with the requirements prescribed in terms of GN No. 435 dated 22 March 2019 regarding the submission of the generic EMPr.



**b) Location of the projects within the port of Ngqura:**

- (i) Based on the information presented in the final EIAr dated 06 January 2023, the EAP indicates that there has been numerous engagements between the Transnet National Ports Authority (TNPA) and Karpowership South Africa (KPS).
- (ii) The agreement between TNPA and KPS was that the locations of the KPS vessels was only feasible for a five to seven year period, subject to TNPA commencing with the Port Development Framework Plan. The agreement further indicated that KPS will at its own cost relocate the vessels to an alternate location agreed to by TNPA and conduct the necessary EIA process for this location.
- (iii) TNPA in a letter dated 13 December 2022, during the public consultation period of the EIAr phase, indicated to KPS and the EAP that the location of the KPS vessels will need to be relocated to an alternate location. The letter further indicated that *"In the event that Department of Forestry, Fisheries and Environment (DFFE) grants KPS the Environmental Authorisation (EA) for the proposed development, it must be registered that the Port development will take precedence over the KPS proposed operation which is planned to be initiated by the financial year 2024/25."*
- (iv) In response to the above, the EAP indicated that the KPS project is designated as a SIP and that in terms of the Infrastructure Development Act No. 23 of 2014, would require TNPA to provide concise, definitive and timely direction on future port planning which may (or may not), require a relocation of the Powerships within the Port.
- (v) On consideration of the issues raised, the Department confirmed that an Environmental Authorisation was issued to TNPA for the *"Provision of marine infrastructure, including a General Cargo Berth and Liquid Bulk Berths at the Port of Ngqura within the Coega Industrial Development Zone"* on 24 November 2014 and an amended EA to extend the validity period to 24 November 2024 was granted on 05 November 2019.
- (vi) The proposed location of the KPS project is in direct conflict with the abovementioned Environmental Authorisation (14/12/16/3/3/2/475) issued by the Department to TNPA as TNPA indicated that the detailed designs for Berth A100 has been approved in anticipation for construction to commence by the 2024/2025 financial year.
- (vii) In a letter dated 06 February 2023 TNPA informed the Department directly of their concerns with regards to the proposed locations of the KPS projects and the direct conflict it presents in relation to the future Port development framework plans in the Port of Ngqura which provide for the construction of a Liquid Bulk Terminal in Berth A100.
- (viii) Based on the above, and at the time of making a decision on the application for EA, there is no consensus between TNPA and KPS for the proposed projects within the Port of Ngqura. The EAP failed to adequately consider the concerns raised by TNPA during the EIA process, and in addition failed to engage with TNPA to identify alternative and viable locations in the port.

Consequently, there is no sufficient, adequate and reliable basis upon which the statutory discretion of the Competent Authority can be exercised in favour of the applicant and therefore the application for Environmental Authorisation is refused.