



GUNN
ATTORNEYS

COMMERCIAL
MINING
ENVIRONMENTAL

To: The Minister
Honourable: Barbara Creecy
Department of Forestry, Fisheries & the Environment

And to: The Director - Appeals and Legal Review

Department of Forestry, Fisheries & the Environment

By email: appealsdirector@environment.gov.za

By hand: Environmental House, 473 Steve Biko, Arcadia, Pretoria, 0083

13 July 2021

Dear Sir/Madam

RE: APPEAL AGAINST THE DECISION TO REFUSE THE APPLICATION FOR ENVIRONMENTAL AUTHORIZATION 14/12/16/3/3/2/2006, APPLIED FOR BY KARPOWERSHIP SA (PTY) LTD FOR THE GAS TO POWER VIA POWERSHIP PROJECT AT THE PORT OF SALDANHA WITHIN THE SALDANHA BAY LOCAL MUNICIPALITY, WESTERN CAPE PROVINCE

Cover Letter

1. We refer to the above decision to refuse the environmental authorization applied for in respect of the above project (“**the Decision**” or “**the Record of Refusal**”) taken by the Department of Forestry, Fisheries & the Environment (“**DFFE**”) in respect of an application for authorization made, by Karpowership SA (Pty) Ltd (“**our Client**” or “**the Appellant**”), dated 23 June 2021.
2. Our Client is aggrieved by the Decision and accordingly we have been instructed by our Client to lodge an appeal in terms of Section 43(2) of the NEMA (read together with the NEMA EAI Appeal Regulations) against the Decision, which decision was made in terms of Regulation 24(1)(b) of the Environmental Impact Assessment Regulations, 2014, as amended.
3. As the DFFE is no doubt aware:
 - 3.1 On 7 July 2020, the Minister of Mineral Resources and Energy issued a section 34 determination under the Electricity Regulation Act, 2006 (“**Determination**”) for the procurement of 2000 MW of energy from a range of technologies, including Liquefied Natural Gas (“**LNG**”).
 - 3.2 Pursuant to the Determination, the Department of Mineral Resources and Energy (“**DMRE**”) launched the Risk Mitigation Independent Power Producer Procurement Program (“**RMIPPPP**”) on 23 August 2020.

- 3.3 The objective of the RMIPPPP is to fill the current short-term energy supply gap, to alleviate the current electricity supply constraints (and its concomitant risks) and to reduce the extensive utilisation of diesel-based peaking electrical generators.
- 3.4 The RMIPPPP has been designed to procure 2000 MWs of new generation capacity from different types of dispatchable power generation projects. The selected projects must contribute towards socio-economic development and sustainable economic growth, while enabling and stimulating the participation of independent power producers in the electricity supply industry in South Africa.
- 3.5 The RMIPPPP targets connection to the grid as soon as reasonably possible but by no later than 18 months after Financial Close (as defined in the RMIPPPP).
- 3.6 The DMRE has been specified as the procurer, with Eskom being the buyer that will purchase energy from Independent Power Producers (“IPPs”).
- 3.7 The RMIPPPP’s Request for Proposals (“RFP”) invited bidders to submit proposals for the construction, financing, operation and maintenance of new power generation projects. The RFP provided for tight time frames from (a) RFP to bid, (b) from Preferred Bidder appointment to Commercial and Financial Close (as defined and provided for in RFP, but essentially comprising the project start date) and (c) from project start date to commercial operation date.
- 3.8 Our Client:
- 3.8.1 Specifically launched the Project in response to the RFP. The project is one of 3 projects for which our Client submitted bids in response to the RFP with an aggregate power generating capacity of 1220 MW, to be provided by Powerships using regasified LNG, at three locations: 450 MW at Coega, 450 MW at Richards Bay and 320 MW at Saldanha Bay; and
- 3.8.2 was appointed Preferred Bidder for the project and for the other 2 projects (accordingly making up 1200MW of the allocated and required 2000MW) on 18 March 2021.
- 3.9 The project is a Strategic Integrated Project (“SIP”) and is vital for alleviating the country’s current energy crisis.
4. The Environmental Impact Assessment very thoroughly considered all relevant terrestrial and marine aspects, including socio-economic aspects. No fatal flaws were identified. Public Participation was comprehensive and in accordance with the law.
5. We:
- 5.1 submit that the DFFE have not properly considered the EIA;

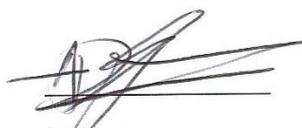
5.2 note with concern the relentless and targeted attacks of certain media and NGO's, designed to derail or cause delay to the project, and the extent which these may have influenced the decision; and

5.3 consider the grounds for refusal to be unfounded and are of the view that, on a proper assessment and interpretation of the information presented in the Final Environmental Impact Assessment, the project should have been authorised.

We accordingly submit the attached appeal, together with annexures, in response to the Record of Refusal for the Minister's consideration.

We look forward to your urgent response herein.

Yours faithfully

A handwritten signature in black ink, appearing to be 'A. Gunn', written over a horizontal line.

Gunn Attorneys
Per: Adam Gunn