



P O Box 24308
Lansdowne
7779
www.thegreenconnection.org.za

6th March 2023

Department of Environment, Forestry and Fisheries
Private Bag X447
Pretoria
0001

Attention:

Ms Millicent Solomons

Acting Chief Director: Integrated Environmental Authorisations, Department of Forestry, Fisheries and the Environment

Email: MSolomons@environment.gov.za

Mr Coenrad Agenbach

Deputy Director: Priority infrastructure Projects, Department of Environment, Forestry and Fisheries

cagenbach@dffe.gov.za

Ms Thabile Sangweni

Case Officer, Department of Forestry, Fisheries and the Environment

Email: TSangweni@environment.gov.za;

Cc:

Ms. Hantie Plomp

Managing Director: Triplo4

E-mail: pppsaldanha.triplo4@gmail.com / hantie@triplo4.com

Dear Sir/Madam,

Section 13 Complaint – KARPOWER GAS TO POWER POWERSHIP PROJECT/SALDANHA BAY

DEFF Ref: 14/12/16/3/3/2/2006

Re: Complaint against consultants subcontracted by Afro Development Planning contracted by Triplo4

INTRODUCTION

1. This complaint is submitted by the Green Connection in terms of regulation 13 of the EIA regulations, as amended¹ regarding failure of the Environmental Assessment Practitioner (“EAP”), Triplo4, to ensure compliance with EIA regulations pertaining to the contents of environmental impact assessment reports. The complaint relates to the environmental impact assessment conducted under the application for environmental authorisation for the Proposed Gas to Power Powership Project at the Port of Saldanha Bay, Saldanha Local Municipality, Western Cape.² The complaint is submitted in terms of section 32(1) of NEMA, by the Green Connection in their own and the public interest, in the interests of protecting the environment and in the interests of small scale fishers of Saldanha Bay whose fishing interests may be affected.³
2. The Green Connection is a registered non-governmental organisation, that believes economic growth and development, improvement of socio-economic status and conservation of natural resources can only take place within a commonly understood framework of sustainable development. It aims to provide practical support to both the government and non-governmental/civil society sectors, which are an integral part of sustainable development.
3. The facts on which this complaint is based are the attempt by the consultant to fraudulently present other persons’ comments and views as those of small scale fishers.

LEGISLATIVE CONTEXT

4. Among other things, regulation 13 requires an EAP to be independent, to ensure compliance with the EIA Regulations, and to perform work relating to the application in an objective manner, even if this results in views and findings that are not favourable to the application.

¹ ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 Government Notice R982 in Government Gazette 38282 dated 4 December 2014, as amended published in GN 326 07 APRIL 2017, promulgated under the National Environmental Management Act of 1998.

² DEFF REF NO: 14/12/16/3/3/2/2006

³ Section 32(1)(b) and (c)

5. Regulation 14 requires that, where the competent authority has reason to believe that an EAP has not complied with the requirements of regulation 13, the application be suspended until the matter is resolved.

6. Requirements for the EIA reports are set out in the Regulations as follows:

Section 40. Purpose of public participation

40(2) (2) The public participation process contemplated in this regulation must provide access to all information that reasonably has or may have the potential to influence any decision with regard to an application unless access to that information is protected by law.

(6) When complying with this regulation, the person conducting the public participation process must ensure that - (a) information containing all relevant facts in respect of the application or proposed application is made available to potential interested and affected parties; and (b) participation by potential or registered interested and affected parties is facilitated in such a manner that all potential or registered interested and affected parties are provided with a reasonable opportunity to comment on the application or proposed application.

7. In addition section 2(4)(f) of NEMA requires that :

The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.

Refusal of the First Karpower EIA.

8. In making their decision to refuse to grant Karpower the environmental authorisation on 23 June 2021, the competent authority made a number of findings, including the following:
 - a. “The public participation process was not conducted in terms of regulation 39.40.41,42,43 &44 of the EIA regulations, 2014, as well as per the principles of NEMA as outlined in Chapter 2 of the Act”; and
 - b. “The minimum requirements, specifically with regard to public participation, were not met. The purpose of public participation is not only to promote

informed decision making but also to promote the legitimacy and acceptance of an outcome or decision and to promote participatory democracy.”⁴

9. In the decision to refuse the appeal by Karpower and to refer the decision back to the competent authority, the Minister referred to the impact that the proposed Project could have on the much broader community of Saldanha, who are reliant on small-scale fishing, needing to be considered (page 25), and that the specialist studies indicate that concerns raised by small-scale fishers were valid (page 48).
10. In the current Karpower EIA process, one would assume that the aim of the EIA was to cure the gaps in information and the procedural defects that were found to be material, and which led to the Minister dismissing Karpower’s appeal against the DFFE’s refusal to issue an authorisation. It was to be expected that Karpower consultants would therefore engage meaningfully with small scale fishers.

Grounds of complaint

11. To avoid voluminous appendices, we refer to the draft EIR, the Final EIR and the report designation D1.1. all can be found on the Triplo 4 consultant drive. https://drive.google.com/drive/folders/1LBep_lzAq6Z2pQPp5zS_aVgzwwQOPFih
12. It is assumed that these documents are before the Competent Authority.

Misrepresentation of persons attending the Small-scale Fisheries Engagement meeting 03/10/2022

13. Afro Development Planning was contracted by Triplo4 to undertake a supplementary socio-economic assessment. The consultants who undertook the small-scale fisheries engagement process on behalf of Afro Development Planning, Steenkamp and Rezaei, misrepresented the persons who attended the meeting entitled Small-scale Fisheries Engagement held on 3 October 2022. This meeting was part of the public participation process. There was only one small-scale fisheries meeting which is documented in the Report entitled Steenkamp, T. and Rezaei, S.A.S. (2022). Stakeholder Engagement Report: Small Scale Fishers at the Port of Saldanha, Western Cape, South Africa. Karpowership SA, Environmental Impact Assessment, 2022. Afro Development Planning Pty Ltd, eThekweni, South Africa.
14. These persons who signed the Attendance Register and then were required to sign declarations entitled ‘Small-scale Fisheries Engagement’, are not small-scale fishers as recognised by the Department of Forestry, Fisheries and the Environment (DFFE) in terms of the Marine Living Resources Act of 2014 and Regulations on SSF of 2016. They therefore were not in a position to provide accurate information to the consultants on small-scale fisheries and fishers’ livelihoods.
15. All of these attendees at the meeting entitled small-scale fisheries engagement on the 3 October 2022 clearly identified themselves as being Directors, owners or officials in the Aquaculture industry on the attendance register (Attached), with the exception of one

⁴ DFFE decision on Saldanha karpowerships - page 17 – 23/06/2021

person who comes from the Commercial Pelagic sector. None of them are small-scale fishers or interim relief fishers permitted to fish in the Saldanha bay or Langebaan area. Yet the consultants got them to fill in statements confirming that they were small-scale fishers. Even these participants themselves indicated on the form that they signed that they were actually from the aquaculture sector/pelagic commercial sector. It is difficult to understand why these persons were involved in a focus group that claimed to represent the small-scale sector when they were actually not in a position to do this.

2. Information from aquaculture and commercial fisheries participants was used as if it was valid information from the small-scale sector.

16. The consultants used the information gathered from these aquaculture and other representatives who do not have experience of having a permit or a history of being permitted to fish in this area, as if it was valid, reliable small-scale fisher information.
17. In the appendix 9 – list of specialist studies, appendix D1.1 specifically states that it is about “small scale fishers engagement”⁵ This is reiterated in the final EIR.
18. A focus group meeting held in 2021 during the first Karpower EIA with some fishers concluded that further consultation was needed with the broader small scale fisher community. There is no record of such further engagement during the first Karpower EIA process. It should be noted that the EIA application was refused and poor public consultation was part of the grounds of refusal by the competent authority and the Minister during the appeal process.
19. The FEIR in the current process refers to the SSF as a marginalised group and that a workshop was held with small scale fishers to explain the aspects of the project and obtain viewpoints of how the project may impact on fishing and the fishing community.⁶ The FEIR states that this meeting was attended by “commercial fishers and mariculture”.⁷ This is despite the attendance registers headed small scale fisher engagement. It therefore appears that Triplo4 was well aware that their small-scale fisher engagement was in fact, nothing of the sort. However, the report 9-D1.1 is still included in the FEIR.
20. Furthermore, the paragraph describing the comments of attendees at the workshop states:

“from the comments received, it was perceived that the perception of some were potentially negatively influenced by the media projecting objections and opposing views to the project. it was established that the SSF are not directly affected as no fishing was conducted in the immediate vicinity of the project”.
21. It must be reiterated that the persons making such comments were not SSFs.

⁵ Draft EIA report – 9 November 2022

⁶ FEIR page 116

⁷ FEIR page 116.

22. For example in Section 4.2 of the attached Steenkamp and Rezaei Report (Annexure 1) as described in the methodology chapter, during the workshop attendees were asked to share their knowledge of the proposed project site (i.e. the Port) with the team. This included describing how they make use of the site for fishing or other purposes and illustrating this on the map. This could also include historical use or access to the Port, and its surrounds.
23. Attendees indicated that they do not fish in the port and immediate surrounds. They were also not able to definitively state where they fish in proximity to the site (page 7).
24. Table 5-10 lists the main issues raised during the EIA phase public participation (10 Nov to 13 December 2022). In a response to a comment that “small scale fishers were not consulted”, the FEIR refers to Appendix 9-D1.1 titled Small Scale Fishers Engagement⁸.
- “limited employment opportunities and lack of alternative sources of income were identified as key issues within communities in the SBM, especially among small-scale fishers.”⁹ However, as the consultants did not meet with SSFs in their engagement workshop, this comments is clearly stretching the truth considerably.
25. Specific sections of the FEIR which discuss SSFs acknowledges that Saldanha Bay supports a strong small-scale fishers industry that spans several communities in surrounding areas, which provides income, food and cultural significance to these communities”. The FEIR goes on to say that “to understand the positions and concerns of small -scale fishers, the engagements undertaken by Steenkamp and Rezaei from Adri Development Lanning’s resulting Stakeholder Engagement Report are referenced. The report also states “Steenkamp and Rezaei (2022) conducted engagements with small-scale fishers to understand potential impacts to small-scale fishers within the area, with the subsequent paragraphs informed by their report”. However, the comments that follow that are attributed to SSFs are, by Triplo4’s own admission, not those of SSFs. In our view, this constitutes non-disclosure of material information or misrepresentation of a material fact, and possibly even fraud.
26. Another example is that according to Steenkamp and Rezaei (2022), one of the central issues raised during their stakeholder engagement was the need for skills development, support for small and medium businesses, supporting local sports and recreation activities. It may be that these were issues raised during the engagement but as there were no small scale fishers there, it is false to attribute this concern to small scale fishers.¹⁰
27. The FEIR states how it encouraged transdisciplinary specialist integration, encouraging different specialists to meet to discuss and coordinate approaches. One of the topics where specialists met was over small scale fishers and the potential impacts. However, as no engagement had been had with SSFs, any insights presented in that meeting, should not have been attributed to small scale fishers.

⁸ FEIR page 135 – 6th January 2023

⁹ FEIR pg 193

¹⁰ FEIR page 323

28. In a summarised table of need and desirability, in response to a question about the limits of current knowledge, the FEIR states that numerous independent studies were done including small scale fishers. This is clearly a false statement as there was very little engagement with small scale fishers.¹¹
29. The FEIR concludes that the potential impact on small scale fishers were thoroughly investigated.¹² Given that there was no focus group meeting with SSFs, it is difficult to understand how this conclusion was derived.
30. In response to how the needs and interests and values were taken into account, and that adequate recognition was given to all forms of knowledge, including traditional and ordinary knowledge, the FEIR states that specific stakeholder workshops were held, inclusive of small-scale fishers.¹³ Their conclusion is that there are opportunities for small scale fishers to benefit but there is no mention that this conclusion was derived without any engagement with the small-scale fishers.¹⁴
31. In the report by Steenkamp and Rezaei, they state that, “Authorities were excluded from the engagements, to provide the opportunity for open communication. This was an important consideration given factors relating to illegal fishing, poaching, and subsistence fishing in the face of growing poverty and joblessness in the country”.¹⁵ It is clear therefore that the consultants felt that it was highly likely that there might not be open consultation if this vulnerable group were left to engage in the public meetings. It is therefore quite puzzling that in the FEIR, Triplo4 conclude that although the specific SSF stakeholder engagement did not include SSFs, there was further opportunity for engagement in the pp process. There is no record of any further SSF engagement.
32. The report D1.1. mentioned that fishers were probably at sea as there was a snoek run which might explain the absence of fishers.¹⁶ There is no record of how the consultants then attempted to set up further meetings with the fishers thereafter. There is a record of phone calls that were attempted, but there is no further description of how the consultants incorporated the views of SSFs. Indeed, the FEIR states that Steenkamp and Rezaei conducted engagements with small-scale fishers to understand potential impacts to small-scale fishers within the area, with the subsequent paragraphs informed by their report.¹⁷ The FEIR is therefore using the report of a meeting where no fishers are present to justify their responses to small-scale fishers comments.
33. The conclusion of the Annexure D1.1. report is that the community members present were positive with regards to the desire for this project to proceed. Overall, no significant impact directly associated with small-scale fishing activities were noted. It is entirely possible that such a conclusion could be drawn from the participants in the room, but given that this report is entitled engagement with small-scale fishers, and there were no

¹¹ FEIR page 431

¹² FEIR 432

¹³ FEIR page 435

¹⁴ FEIR page 455

¹⁵ Steenkamp/Rezaei page 1

¹⁶ Steenkamp/Rezaei page 2

¹⁷ FEIR page 322

small-scale fishers in the room, it can only be concluded that this is a deliberate misrepresentation. These aquaculture officials and one commercial pelagic official were asked to provide information on the small-scale interim relief fishers and this information was then presented in the report as if it was valid, reliable information about the small-scale, interim relief fishers of the area.

Conclusion:

34. Initial reading of the draft EIR could lead to an impression that the EAP failed to ensure that the contractor was sufficiently qualified to distinguish between small scale fishers and other ocean-based livelihoods such as aquaculture. However, in the FEIR, there is an acknowledgement that the group was not SSFs and yet, the FEIR uses the results of that engagement to deliberately falsely represent the views expressed in the focus group as being that of small-scale fishers.
35. Based on the information contained above, it appears that Triplo4 has deliberately attempted to mislead the competent authority. The EAP has not only failed to engage those stakeholders which are historically opposed to the project but they have gone further. They have produced a false report, which purports to represent fishers views but does not contain the views of any fishers, and rely on these ostensible small-scale fisher views to support a conclusion that the project should be authorised.
36. In our view, Triplo4 has failed to comply with the requirements for EAPs, as set out in NEMA and the EIA Regulations, in at least the following respects:
 - a. the EAP failed to ensure compliance with the EIA Regulations (regulation 13(1)(c));
 - b. the EAP failed to perform the work relating to the application in an objective manner (regulation 13(1)(d)); and
 - c. the failed to disclose all material information in possession of the EAP (regulation 13(1)(f)).
37. In accordance with regulation 14, we call on the competent authority to suspend the pending application for environmental authorisation and to fully investigate this allegation.

Yours faithfully

Neville van Rooy

Community Outreach coordinator

Liz McDaid

Strategic Lead

Small Scale Fishers Engagements

Environmental Impact Assessment for the proposed powership project in Saldanha Bay, Western Cape, South Africa

Date: Monday, 03 October 2022

Time: 14h00 – 16h00

Venue: 1 Malva St, Louwville, Vredenburg, Western Cape

Name	Organisation	Title / position	Phone number	Email	Signature
Michael	Xesibe aquaculture	Mr	0824989351	Khulotrans @felkansa.net	
CLIFFIE VRAAGOM	REGUA ENTERPRISE	CHAIRMAN	0836612875	cliferic@ gmail.com	
Leon MOSKLEY WILLIAM	REGUA ENTERPRISE	MR.	082942830	Moskley @Ahaad.com	
WUGAL	WABA PROJECTS	MR	073 238 4117	WILLIAM MUGAL@ GMAIL.COM	
Leroy	Regua Enterprises	MR	0849816726	lmudz@ gmail.com	
Nolan Adams	African Olive Trading	Manager	078 195 8819	nolan.extrad@ gmail.com	



Afro Development Planning Pty Ltd / tasneem@afrodevplan.co.za / +27 60 521 7919

Small Scale Fishers Engagements

Environmental Impact Assessment for the proposed powership project in Saldanha Bay, Western Cape, South Africa

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Name	Organisation	Title / position	Phone number	Email	Signature
Chacton Swicelur	SAPFU	Union SECRETARIAT	02486464	CS1019367@ gmail.com	
Bukunjo Nsatu	MIPSS	Owner	071 000 9922	bukunjomnsatu @gmail.com	B M
Faith Filtone	KPS	CLO	0731978650	faith.filtone@ kapsowership.com	
Robert Abdol	KPS	CLO	0731929642	robert.abdol@ kapsowership.com	



Afro Development Planning Pty Ltd / tasneem@afrodevplan.co.za / +27 60 521 7919