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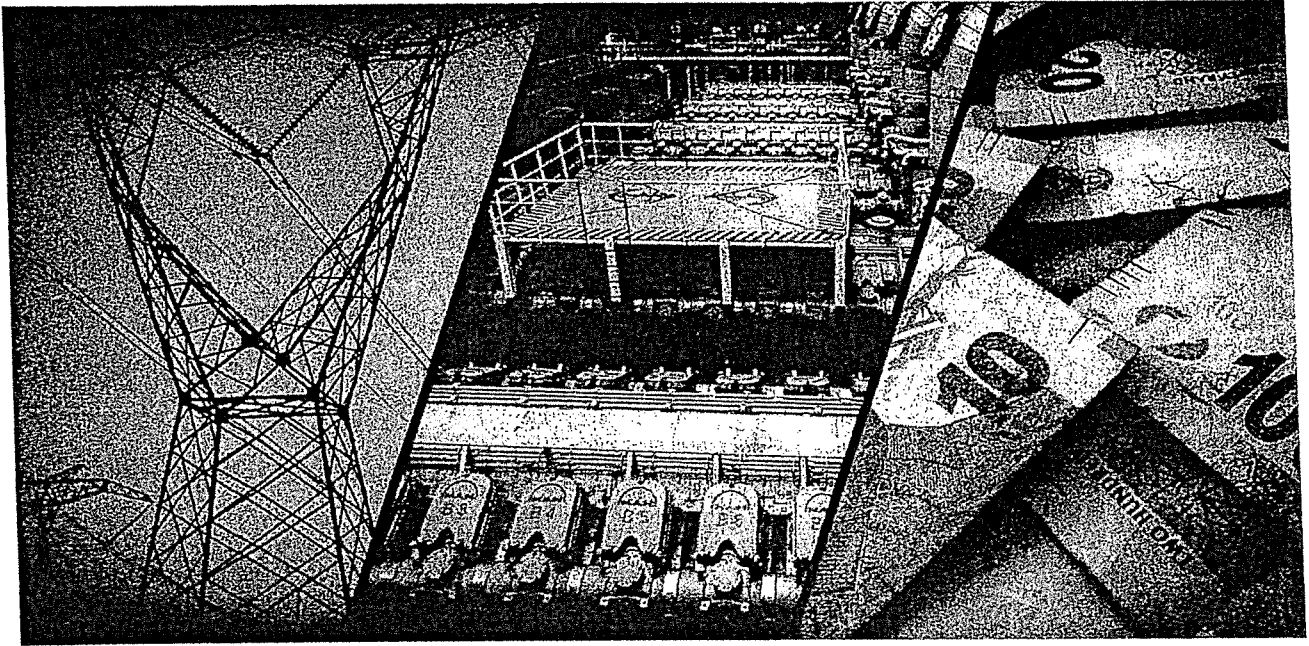
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BUSINESS MAVERICK

AMABHUNGANE

Karpowership SA: Green Scorpions enviro investigation could capsize R225bn deal




📷 Power lines run from one of Eskom's coal-fired power stations near Villiers in the Free State. (Photo: EPA-EFE / KIM LUDBROOK)
/ A general view of the giant generators inside the Fatmagul Sultan floating power plant moored off the shore of the Lebanese town of Zouk Mosbeh, northern Beirut. (Photo: EPA-EFE / NABIL MOUNZER) / Adobe Stock

By amaBhungane Reporters

(<https://www.dailymaverick.co.za/author/amabhungane-reporters/>)

09 Jun 2021



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The Karpowership SA consortium is weeks away from its deadline to wrap up a 20-year electricity supply deal with Eskom. But a Green Scorpions investigation into 'misleading' information may prevent it from getting the environmental authorisation it needs.



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The Green Scorpions are investigating whether Karpowership SA or its environmental consultants provided misleading information to secure an emergency exemption from stringent provisions of the National Environmental Management Act (Nema).

The Environmental Management Inspectorate – known as the Green Scorpions – is tasked with investigating environmental crimes.

The investigation could result in criminal charges, but could also torpedo Karpowership's environmental authorisations, which it needs for its mammoth R225-billion deal with Eskom to go ahead.

In March, the Turkish-led consortium was selected as a preferred bidder to provide 1,220MW of emergency power under the Risk Mitigation Independent Power Producer Procurement Programme (RMI4P). The electricity will come

from gas-fired powerships which are intended to be moored in the ports of Richards Bay, Coega and Saldanha.

The investigation stems from an extraordinary authorisation in June 2020 – just before the tender was announced – by a top official in the Department of Forestry, Fisheries and the Environment (DFFE).

The official exempted Karpowership under an emergency provision of Nema from doing environmental impact assessments (EIAs), supposedly because it would provide emergency power to help combat Covid-19.

The department revoked the exemption after an outcry, claiming it had been misled. This forced Karpowership to reapply, this time with complete EIAs for all three sites. But the DFFE has confirmed that these new applications could be denied if the investigation confirms that Karpowership and its consultants intentionally misled officials.

“The Department is currently investigating the conduct of the [environmental consultants] and [Karpowership] in relation to the Nema... exemption application,” spokesperson Albi Modise said in a written response.

Modise confirmed that the investigation is being led by the “Environmental Management Inspectors within the Department”, aka the Green Scorpions, who have been tasked to establish “whether or not *prima facie* evidence exists of the commissioning of an offence”.

“Should *prima facie* evidence exist of an offence, the Department will bring the relevant information to the attention of the South African



Police Service for further investigation and/or the Director of Public Prosecutions to commence a prosecution,” he told us.

“If the outcome of the investigation reveals that there was something untoward about their conduct, then that would have a material effect on the current EIA applications that [are] under review by the Department.”

DFFE has also commissioned an external legal review to establish whether Karpowership’s current EIA applications should have been rejected because the proposed projects lacked consent from Transnet National Ports Authority (TNPA), as the owner of the land.

Karpowership is hoping to secure TNPA’s consent as a “sole source provider” or through an 11th hour special directive issued by Transport Minister Fikile Mbalula. But a legal opinion (<https://www.dailymaverick.co.za/article/2021-06-02-business-urges-speedy-plan-b-for-sa-electricity-crisis-as-mbalula-drawn-into-turkish-power-ship-controversy/>) delivered to Business Unity South Africa last week warned that any permit handed to Karpowership faces a barrage of legal challenges.

The stakes are high: Karpowership desperately needs its environmental permits and landowner consent before the end of July, the deadline for all preferred bidders selected for the RMI4P tender.

If the Turkish-led consortium fails to secure these permits it risks losing the R183-million bid bond it has put up as collateral. If found guilty of intentionally misleading government officials,



Karpowership and its environmental consultants could receive fines of up to R10-million or 10 years in jail.

On the other hand, if the government greenlights Karpowership's projects, five gas-fired powerships could arrive in South African ports next year. This is intended to kickstart a new energy future for South Africa, one fuelled by liquified natural gas (LNG) but also fraught with environmental problems.

Karpowership declined to respond to our 46 questions covering a wide range of environmental issues. Instead, spokesperson Kay Sexwale said: "We are confident the unfounded claims about the environmental assessments of our projects will be dealt with swiftly. We are continuing to work to the deadlines... and look forward to getting to work helping to alleviate South Africa's energy challenges and supporting the wider economy.

"Powerships fuelled by LNG are the cleanest, most sustainable way of providing reliable power while supporting South Africa's transition to renewables. Our projects were awarded preferred bidder status because we provided the best combined package of affordability, cleaner energy, proven technology and economic development initiatives."

But to understand how we got to the brink of this multibillion-rand deal, we need to go back to 2015, when Karpowership sidled up to Eskom with a tantalising solution to end load shedding. What our research suggests is that the company has a history of trying to leverage emergencies to get its way.

2015: Dear Mr Tsotsi

A handwritten signature or set of initials, possibly 'M' or 'N', written in black ink in the bottom right corner of the page.

In February 2015, Eskom was facing the uncomfortable prospect of severe load shedding in summer.

Eskom board chair Zola Tsotsi had a plan though. On 10 February 2015, he wrote to the then energy minister, Tina Joemat-Pettersson, requesting the go-ahead for three power-generation solutions – “measures which we believe need to be taken immediately in our quest to [relieve] the constraint in the electricity supply system”.

One of the solutions came from Karadeniz, the parent company of Karpowership: “Their proposal includes the berthing of 500MW ship-plants at our ports. Once a decision to implement the proposal is reached they can dispatch the first 500MW unit onto the grid within six months and then a successive 500MW unit every four months thereafter,” he wrote.



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The Honourable Ms Tina Joemat-Pettersson, MP
Minister of Energy
Private Bag X96
PRETORIA
0007

Dear Ms Joemat-Pettersson

AUTHORISATION OF SUPPLY SIDE OPTIONS

We would like to bring to the attention of the Honourable Minister the measures we believe need to be taken immediately in our electricity supply system.

Ingagane power project

The Ingagane power station is a 500MW station in North West Province that was decommissioned in 1994. A decision by the Minister to dispose of it through a public process. A pre-qualification process followed a second round of elimination. A confidential document was submitted to the Minister of Energy.

150210 Tsotsi Letter to Joe...
(https://www.scribd.com/document/511197506/150210-Tsotsi-Letter-to-Joemat-Pettersson-Powerships#from_embed)

Tsotsi did not specify how many ships Eskom would hire, but made it clear that this would not be done through a standard procurement process: “[W]e request the Honourable Minister to authorise Eskom to engage and conclude all required measures to enable speedy implementation of these projects.”

The Public Finance Management Act does make provision for emergency procurement, but state-owned entities like Eskom must jump through numerous hoops to justify such contracts. And in

Handwritten initials, possibly "PJ", inside a circle, with a signature-like mark below it.

this case, Tsotsi had gone straight to the minister despite Eskom management being lukewarm about the powerships solution.

Tsotsi resigned soon after, and Eskom told Karadeniz to apply to the independent power producer programme, which now falls under the Department of Mineral Resources and Energy.

“As there are a number of potential suppliers of powerships... it is necessary to ensure a fair and transparent engagement,” Eskom told *City Press* at the time.

Tsotsi this week said he did not remember the circumstances of the offer. As far as he could recall, he did not receive an answer from the minister before he stepped down as chair at the end of March 2015.

2018: For the sake of the elections

Three years later, Karpowership was ready to have another go at the South African market.

According to Karpowership’s local partner, Sechaba Moletsane, South Africa was once again facing load shedding and with elections coming up in 2019, he implored the Karadeniz family to intervene.

“We went up to Turkey in [February] 2018... because the elections were coming up and there was major, major load shedding,” he recalled during a recent *Mail & Guardian* webinar sponsored by Karpowership.

As much as this was an electricity supply problem, it was also a political one for the ANC, which has historically been reluctant to implement load shedding ahead of the elections, fearing it would cost the party votes.

Moleksane said they approached Eskom, the Department of Mineral Resources and Energy and the Department of Public Enterprises, but all declined Karpowership's unsolicited bid.

"[T]hey didn't uptake our proposal, the elections went on and successfully, so they ended up using more of the peaker plants," he said, referring to the diesel-fired peaker plants that are Eskom's last resort to avoid load shedding.

2020: Dr Mabunda's plan to tackle Covid-19

By 25 June last year, 118,000 South Africans had tested positive for Covid-19 and 2,335 had lost their lives.

Armed with this and other information about the rapidly escalating infection rate, Dr David Mabunda contacted the DFFE with a plan to tackle the pandemic.

Mabunda was not a medical doctor, but a doctor of tourism management. He had served (not without controversy) as the chief executive of SANParks and Ezemvelo KZN Wildlife. But he was now representing Karpowership.

Sidebar: MalaMala land claim deal

Mabunda resigned from SANParks in 2014. At the time, there were questions about R81-million he received from the controversial MalaMala land claim deal. An internal investigation described this as "a serious conflict of interest", environmental journalism outfit Oxpeckers reported (<https://oxpeckers.org/2015/12/mala-malas-secret-millions/>). Mabunda denied



Wrongdoing at the time, saying he had declared his interest in the deal and received permission to participate.

What South Africa needed, Mabunda told DFFE chief director of compliance Sonnyboy Bapela during a 25 June discussion, was a secure supply of electricity to ensure that hospitals did not go dark and ventilators kept pumping life-saving oxygen to patients.

What Karpowership needed in return was an emergency permit – issued in terms of Section 30A of Nema – allowing it to bypass the costly and highly technical EIA process that normally takes months to complete.

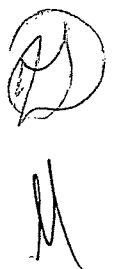
Section 30A was designed for emergencies when quick action can save lives and prevent environmental disaster. A single independent power producer, hoping to supply Eskom with electricity, generally would not qualify.

But when a National State of Disaster was declared in March 2020, in response to the Covid-19 pandemic, Karpowership had its emergency.

Sidebar: National State of Disaster

Under section 30A of Nema, a National State of Disaster counts as an emergency situation and gives the environmental minister the power to override ordinary provisions of the act.

“In terms of section 30A, the Minister... and Provincial Authorities may ... issue a verbal or written directive to carry out activities without obtaining an environmental authorisation,” lawyers from Webber Wentzel wrote in a March 2020 newsletter.



This included building “emergency infrastructure projects to help curb the effects of COVID-19” such as temporary hospitals or cemeteries.

But would powerships count?

The day after his conversation with Mabunda, Bapela gave Karpowership the go-ahead to bring in as many ships as it wanted into the ports of Coega, Richards Bay, Saldanha and Durban – no environmental permits required.

Powerships are more like power plants than cargo ships: critics have warned that the potential harm to fish, birds and Red List species could be severe. These environmental costs may be unavoidable in an emergency. But in July 2020, Karpowership was far from persuading Eskom to buy its electricity.

When Daily Maverick’s Tony Carnie (<https://www.dailymaverick.co.za/article/2020-08-13-proposal-for-turkish-company-to-anchor-floating-power-stations-off-sa-harbours-raises-alarm-bells/>) raised the alarm that Karpowership may be abusing its 30A exemption, sales director Patrick O’Driscoll responded: “Although the energy crisis is not new, the need for a reliable and sustainable power supply is required to safeguard critical infrastructure and maintain industry such as the manufacturers and industries that support the medical fields.”

If Karpowership was asked, he said, it could start supplying power within eight to 10 weeks: “This potential project will assist the government in its efforts to ameliorate the impact of Covid-19 which



will have the overall effect of saving lives during the pandemic. It is also vital for post-Covid-19 national recovery strategies.”

DFFE’s Modise told us that of the 12 applications for section 30A exemptions received since the start of the national disaster, only two cited the Covid-19 pandemic as the cause of the emergency. One came from the Department of Public Works and Infrastructure, which asked for permission to build “military-type bailey bridges” so that ambulances could access rural areas; the other from Karpowership.

‘We were misled’

On 24 August 2020, the Department of Mineral Resources and Energy released the RMI4P tender, the multibillion-rand procurement to supply Eskom with power for the next 20 years.

The next day, the DFFE sent out a press release (https://www.environment.gov.za/mediarelease/karpowershipdirective_electricitygeneration_withdrawal) saying that it had withdrawn Karpowership’s 30A exemption, essentially because the company did not disclose that it wanted the emergency permits for its proposed RMI4P projects, which would probably only start supplying power in 2022.

“When the company had initially submitted their request it had indicated that the country’s electricity supply was under threat because of the increased pressure on the healthcare system as a result of the Covid-19 outbreak.

“It has subsequently emerged that the company had applied for the verbal directive... in preparation for the possible implementation of the [RMI4P]. This information was not disclosed to



the department [and] it has now emerged that there was in fact no emergency situation”, the release said.

“[I]t will be fair to say the department was misled,” spokesperson Modise recently told amaBhungane.

He explained: “The Department already concluded that there was a reasonable belief that the circumstances pertaining to the emergency situation were materially different from what was indicated in the oral request/written confirmation of the oral request. Accordingly, the section 30A directive was revoked.”

In other words, what Mabunda told the department in that 25 June meeting allegedly did not match the reality on the ground. That was enough to withdraw the 30A exemption.

What the Green Scorpions are now investigating is whether Karpowership, Mabunda or Triplo4 Sustainable Solutions, the firm of environmental assessment practitioners doing the consortium’s EIAs, intentionally deceived DFFE in order to secure these valuable exemptions.

Sidebar: Degrees of deception

In 2015, the government gazetted new regulations that apply to verbal requests for Section 30A exemptions:

- *In terms of regulation 12, an official can “amend, suspend or revoke” the exemption if “having assessed the scene of the emergency situation or disaster” they have a “reasonable belief” that the circumstances on the ground are “materially different” to what was described in the verbal request. This is*



- why the department revoked Karpowership's exemption. Karpowership did not challenge the decision.*
- *In terms of regulation 15, it is an offence for anyone to "wilfully, knowingly or negligently, provide incorrect or misleading information" to the department in an attempt to secure an exemption. Regulation 16 says that anyone found guilty of this offence is liable for a fine of up to R10-million and/or jail time of up to 10 years. This is what the Green Scorpions are investigating. Karpowership denies that it is guilty of this offence (<https://www.dailymaverick.co.za/article/2020-09-02-questions-raised-about-accountability-in-wake-of-rescinded-permit-to-turkish-power-company/>).*

Environmental assessment practitioners, like Triplo4, are required to be independent, not paid shills for their clients. If they are found to be complicit in the bogus 30A applications, the new EIAs they have prepared for Karpowership that are now awaiting DFFE approval could be rejected – which could sink the consortium's R225-billion deal.

"[W]e are investigating the professional conduct of the persons who are alleged to have submitted false and misleading information as this would compromise their independence and objectivity. The findings will be brought to the attention of the unit responsible for assessing the current Environmental Impact Assessment applications," Modise confirmed.



Hartie Plomp, the sole director of Triplo4 and Karpowership's lead EIA consultant, declined to answer our detailed questions: "[W]e deny any wrongdoing and advise that a full response cannot be provided as the matters are *sub judice*," she said via email.

Mabunda's role, and that of his company Nselenduna Consulting, appear to be more diverse. Mabunda told us that he is "assisting Triplo4 with the Karpowership project", but letters attached to court papers show that he also assisted Karpowership to obtain another valuable exemption from the Department of Trade, Industry and Competition. This helped Karpowership to bypass the RMI4P's 40% local content rule.

Asked about his apparent ability to secure valuable exemptions from government, Mabunda was coy: "I've been advised by my Counsel... not to respond to any of your questions at this stage as they constitute a greater part of the pending DFFE investigation. The matter is *sub judice* at the moment."

Landowner consent

After the department yanked Karpowership's 30A exemption in August 2020, the company had no choice but to follow the long, tedious process of applying for an environmental permit.

But it was running out of time to meet the November 2020 deadline to submit its RMI4P bid.

On 17 September, DFFE officials met with Karpowership and its consultants to outline the standard process it would now have to follow to

Handwritten signature and initials in the bottom right corner of the page. The signature appears to be 'M' inside a circle, with another 'M' written below it.

get environmental authorisation for its proposed projects in the ports of Richards Bay, Coega and Saldanha.

The officials reminded the consultants that one of the documents it would need was written permission from the landowner – in this case TNPA.

Although the powerships will only be moored in Transnet's harbours, there is other infrastructure – pipelines, pylons, etc – that will need to be built on Transnet land. And without big-picture planning, projects like these could disrupt traffic or hamper port expansion plans.

Faced with this roadblock, Karpowership tried a different tactic.

On 5 October 2020, Jason van der Poel, Karpowership's attorney from law firm Webber Wentzel, produced a legal opinion arguing that the company did not need landowner consent because it was a "strategic integrated project", and therefore exempt.

Section 39(1) of Nema says that anyone wanting an environmental permit must first get the landowner's consent to carry out their proposed project. One of the few exceptions is if it is a strategic integrated project, a gazetted list of projects deemed to be in the national interest.

Because the RMI4P is such a project, Van der Poel argued that any project applying to the RMI4P should be deemed one too.

The department's response was a firm "no".

Sabelo Malaza, the department's chief director of integrated environmental authorisations, responded that he had "noted" Webber Wentzel's



legal opinion, but that Karpowership “must, as advised... submit signed landowner consent”.

The most Transnet was willing to provide was a letter giving Karpowership permission to carry out its environmental impact assessments, although it was careful to remind Karpowership that this should not be construed as Transnet giving the go-ahead for the projects.

Another golden loophole

What happened next is now the subject of a legal review.

There is a simple rule when applying for an environmental permit: first make sure you get permission from the owner of the land to carry out your project. Nema regulation 16(1), which imposes the obligation to attach landowner consent to an EIA application, is so unremarkable that it does not bother to spell out what the department should do if a company turns up without landowner consent.

Instead, officials are simply told to “check whether the application... is properly completed” and accompanied by the required documents.

When Karpowership submitted its application on 8 October 2020, it did not have landowner consent. Instead of being turned away, it was simply warned to submit landowner consent when it came back with its final environmental scoping report.

“Failure to provide the above mentioned information will result in your application for Environmental Authorisation being refused,” an official from Malaza’s department warned in an email.

A handwritten signature in a circle, followed by the letter 'N' written vertically below it.

Asked why the department had not rejected Karpowership's application upfront, the department said that the regulations do not give any explicit instruction to reject an application that is incomplete.

"It is only after a detailed evaluation is done that the failure to submit critical documents will be assessed," Modise noted.

But when Karpowership came back with its final scoping reports in mid-November, still without landowner consent, the department let it slide.

"Following a review... the findings were such that the Department can accept the final Scoping Reports with particular conditions," the department told us.

One of those conditions was that Karpowership would now need to submit landowner consent with its final environmental impact assessment reports in April.

The ruling was a stroke of luck for Karpowership, which had just put up R183-million in bid guarantees. If it turned out that its bids were non-compliant it could be forced to forfeit that money to the Department of Mineral Resources and Energy.

But other bidders for the RMI4P were more risk-averse. One rival bidder, who spoke to amaBhungane on condition of anonymity, said his firm had decided not to submit an RMI4P bid because they knew they could not obtain Transnet consent beforehand. A second company, that did submit a bid, said it opted for a more expensive fuel source because the same landowner consent issue would hamper its ability to import LNG.



The legeway from DFFE was just long enough for Karpowership: in March, it was selected as an RMI4P preferred bidder. Its projects were now undeniably strategic integrated projects, like the RMI4P itself.

This means that to get its EIA approval from the DFFE, Karpowership no longer needs landowner consent. It does, however, still need landowner consent from TNPA as a separate requirement of the tender.

DFFE is emphatic that it did not give Karpowership special treatment, but has commissioned an external legal review: "In light of the numerous queries received on this issue the [department]... wanted to provide assurance that all relevant legislative provisions were correctly interpreted and implemented," Modise said.

The clock is ticking

Karpowership is now waiting to find out if the department will approve its final EIA reports for its projects in the ports of Richards Bay, Coega and Saldanha.

It is facing an uphill battle: a complaint has been laid

(<https://www.dailymaverick.co.za/article/2021-05-09-green-exemption-fixer-hantie-plomp-faces-misconduct-complaint-over-turkish-powerships-covid-19-lifesaving-claims/>) against Triplo4's Plomp, Karpowership's chief environmental consultant, alleging that she ran a sub-standard public participation process and produced biased and flawed environmental reports. The Environmental Assessment Practitioners Association of South Africa, the regulatory body



for environmental consultants, is reviewing the complaint and has yet to say whether it will investigate.

DFFE has also received a formal complaint (<https://mg.co.za/environment/2021-06-04-complaint-brought-against-karpowership-environmental-consultants-for-not-doing-study-on-underwater-noise/>) about the EIA at Saldanha over Triplo4's failure to conduct a study on the powerships' impact on sea-life, which could have knock-on effects for the local fishing industry.



DFFE's Modise, meanwhile, told amaBhungane that the Green Scorpions' investigation is being prioritised: "The relevant findings will be taken into consideration prior to the [EIA] application being finalised. The EIA application is expected to be finalised by not later than 25 June 2021."

Karpowership has, via its bid bonds, placed a R183-million bet that it can clinch the environmental permits it needs before the end of July. The odds are stacked against it. But it appears serenely confident that it can clear any regulatory hurdle.

Based on the evidence, it has reason to be confident: government officials have made concessions at every stage. And now that it is deemed to be in the "national interest" for Karpowership's bid to succeed, is anyone going to stand in its way? **DM**

Green Scorpions (https://www.dailymaverick.co.za/article_tag/green-scorpions/)

Karpowership SA
(https://www.dailymaverick.co.za/article_tag/karpowership-sa/)

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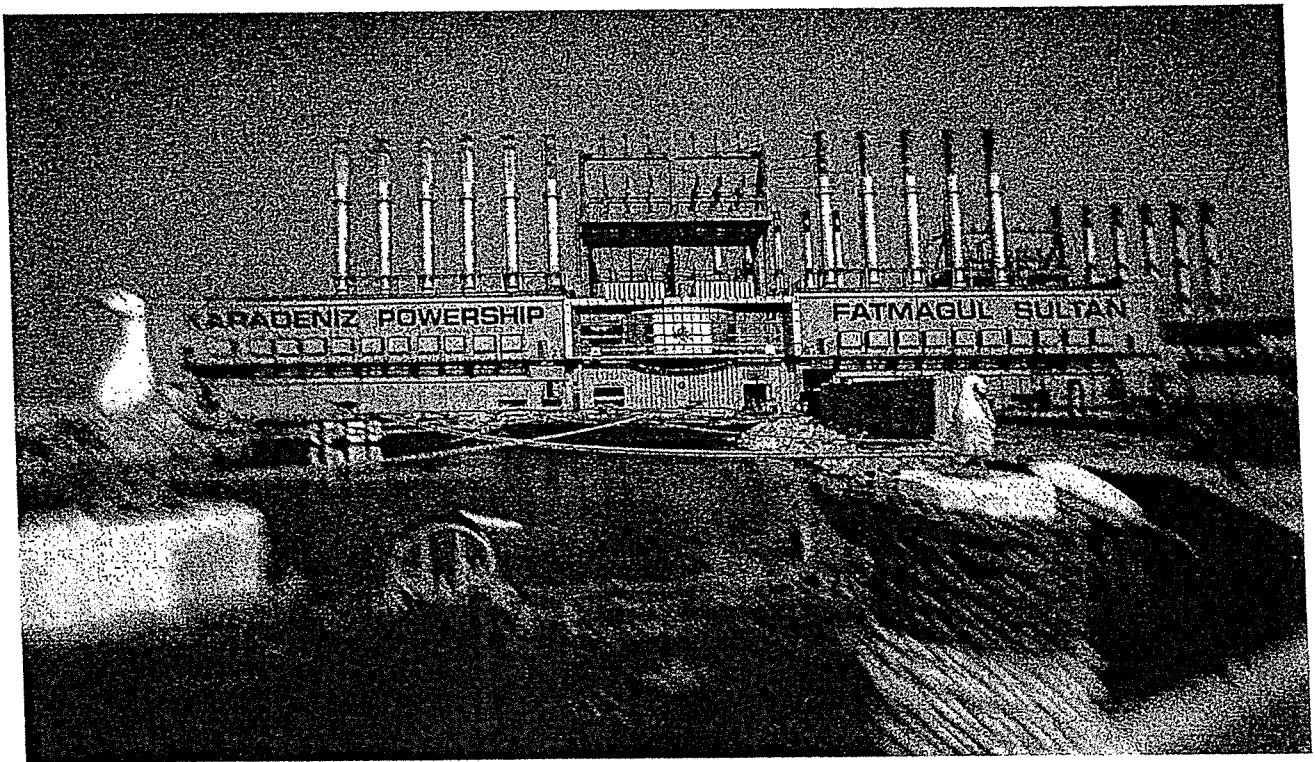
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Green Scorpions close in as Karpowership fights to rescue R225bn deal

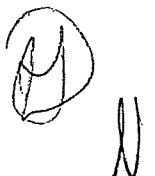


 The Fatmagul Sultan floating power plant moored off the shore of the Lebanese town of Zouk Mosbeh, northern of Beirut, Lebanon.
(Photo: EPA-EFE / NABIL MOUNZER)

By amaBhungane Reporters

(<https://www.dailymaverick.co.za/author/amabhungane-reporters/>)

15 Jul 2021





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The Turkish-led consortium has filed an appeal against the rejection of its powership emergency energy solution on environmental grounds. Meanwhile, the Green Scorpions recommend criminal charges arising from Karpowership's earlier attempt to bypass environmental regulations.



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Karpowership SA is not going down without a fight: on Tuesday it filed an eleventh-hour appeal against the government's decision to reject its ship-borne power plants on environmental grounds.

But its R225-billion deal faces fresh icebergs ahead.

The Green Scorpions, the law enforcement unit tasked with investigating environmental crimes, believes that agents of the company should face criminal charges for intentionally misleading the Department of Forestry, Fisheries and the Environment (DFFE).

"The docket was referred to the Director of Public Prosecutions ('DPP') North Gauteng on the 15th of June 2021. The DPP is in the process of reviewing the docket, and the investigating officer has been

requested to provide additional clarity on certain aspects of the investigation,” spokesperson Albi Modise confirmed in a written statement.

The criminal charges relate to Karpowership’s earlier attempt to bypass the lengthy and costly environmental studies required by the National Environmental Management Act (Nema).

Read Powerships: Enviro investigation could capsize R225-billion deal
(<https://amabhungane.org/stories/210610powerships-enviro-investigation-could-capsize-r225-billion-deal/>).

ADVERTISING

Companies can apply for an exemption under Section 30a of Nema if there is an emergency where quick action can save lives and prevent further environmental damage.

In June 2020 Karpowership used this clause to get its wide-reaching exemption for its powerships by claiming that they would deliver emergency power to assist with the Covid-19 pandemic
(<https://www.dailymaverick.co.za/article/2020->



08-~~3~~-proposal-for-turkish-company-to-anchor-floating-power-stations-off-sa-harbours-raises-alarm-bells/).

The Section 30a permits were withdrawn after the DFFE concluded that “there was in fact no emergency situation”.

In terms of the legislation, it is an offence for anyone to “wilfully, knowingly or negligently, provide incorrect or misleading information” to the department in an attempt to secure an exemption. Anyone found guilty faces a fine of up to R10-million and/or imprisonment of up to 10 years.

In early June, the DFFE confirmed that “Environmental Management Inspectors within the Department”, aka the Green Scorpions, were investigating Karpowership and its environmental consultants: Triplo4 Sustainable Solutions and Nselenduna Consulting.

“Should *prima facie* evidence exist of an offence, the Department will bring the relevant information to the attention of the South African Police Service for further investigation and/or the Director of Public Prosecutions to commence a prosecution,” Modise told us at the time.

By referring the case to the police and the director of public prosecutions, the DFFE is effectively saying it has found *prima facie* evidence.

However, the DFFE would not confirm whether it is Karpowership’s representatives or its environmental consultants, or both, who will be the focus of any potential charges.



Neither Karpowership nor its consultants responded by the time this article was published. We will update the article with any comment that is forthcoming.

'Substandard' environmental reports

Although the Green Scorpion's investigation is separate from the appeal Karpowership filed on Tuesday, the two cases are intertwined.

After its Section 30a exemptions were withdrawn in August 2020, Karpowership was forced to conduct environmental impact assessments (EIAs) on its three proposed projects in the ports of Richards Bay, Coega and Saldanha.

In March this year, these three projects were selected as preferred bidders for the Risk Mitigation Independent Power Producer Procurement Programme (RMI4P). Collectively the gas-fired powerships would deliver 1,220 MW of electricity to Eskom.

At the time, the EIAs were incomplete. But in June, DFFE said it would not grant the environmental authorisations necessary for these RMI4P projects to go ahead, citing numerous shortcomings in the EIAs.

Amongst the many concerns was that the powerships would cause irreparable harm to birds and marine life.

Read [How Karpowership was torpedoed by substandard environmental studies](https://amabhungane.org/stories/210625-how-karpowership-was-torpedoed-by-substandard-environmental-studies/) (<https://amabhungane.org/stories/210625-how-karpowership-was-torpedoed-by-substandard-environmental-studies/>)

The appeal, filed by Karpowership on Tuesday, seeks to overturn this decision.



But ~~the~~ Green Scorpions' investigation makes that harder to do. Essentially, Karpowership and/or its consultants are accused of first lying to bypass an EIA, then producing allegedly substandard EIAs that downplayed the environmental damage the powerships would cause.

The DFFE previously told us: "If the outcome of the investigation reveals that there was something untoward about their conduct, then that would have a material effect on the current EIA applications that are under review by the Department."

Doubling down

Karpowership, meanwhile, is doubling down on claims that the DFFE has been misled by a "vicious, adversarial and aggressive" campaign.

When the DFFE's decision was announced in late June, Karpowership's knee-jerk reaction was to claim that the department had "allowed a misinformation campaign to derail the [Department of Mineral Resources and Energy's] strategic plan to end load shedding and address South Africa's economic and energy crisis".

"South Africans should understand that the decision on behalf of the DFFE threatens the delivery of this power and will extend load shedding for years to come," it warned in a statement to the media.

In its 77-page appeal on the 450 MW Richards Bay project, the company made similar claims, lashing out at its critics, including the media:

"The Minister will be aware that the Karpowership proposal has become highly controversial and is the subject of attacks at a multiplicity of levels,



most of which are uninformed and needlessly adversarial. The Project also raised significant controversy particularly from the media and NGOs, which we believe to be unfounded and emotive,” it said.

At another point in the appeal, Karpowership accuses DFFE officials of being “downright obstructive” for failing to provide guidance on its application.

However, the appeal also sets out the technical reasons why Karpowership believes the DFFE erred by refusing to approve its projects. One of the concerns the DFFE cited was that there was inadequate public consultation. Karpowership insists that it met the minimum standards.

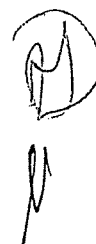
Another reason the DFFE gave for rejecting the projects was that Karpowership had failed to conduct sufficient underwater studies. The company argues that since there are no powerships currently moored in South Africa, it relied on comparative international studies.

It argues that the DFFE could approve the projects but requires the company to conduct ongoing studies of underwater noise and the impact on the environment.

The appeal also recycles the argument that Karpowership will help to end load shedding, and that its projects should be treated as strategically important for the country.

“The Project... is a national priority, requiring a degree of urgency,” it said.

“The DFFE failed to consider the strategic nature of the Project... given the impacts of the Project on energy risk mitigation and the development and



growth of the SA Economy.”

This argument is supported by two other appeals filed by business forums: the West Coast Black Business Alliance and the National African Federated Chamber of Commerce and Industry. Both implore the DFFE to consider the socioeconomic pluses of Karpowership’s projects.

The next 70 days

In terms of the regulations, the appeal will play out over roughly the next 70 days, a process governed by the National Appeal Regulations (2014).

Interested and affected parties have 20 days to compile responding statements, challenging the arguments contained in Karpowership’s appeal.

While Minister Barbara Creecy can grant an extension to this timeframe, there is no provision in the regulations for her to speed up this vital consultation process.

After that, the department can move faster if it chooses to do so. The person in the department handling the appeal (the appeal administrator) has up to 30 days to come up with a recommendation. They can also appoint an independent expert or panel of experts to provide input.

But the appeal administrator only makes a recommendation on whether to uphold the appeal. That recommendation is then sent to the minister, who has another 20 days to take the final decision.

While Creecy could make a decision sooner, she can, by our calculations, wait until early September to make a decision on whether to sink or save Karpowership’s projects.



RMI4P in question

So, where does this leave the RMI4P and can Karpowership continue as a preferred bidder?

Although Karpowership's appeal was filed within the stipulated 20-day window set out in the National Appeal Regulations, it was filed too late for the projects to meet the deadline set by the rules of the RMI4P tender.

The tender required that all preferred bidders reach financial close by 31 July 2021; which included having "unconditional" environmental authorisations in place.


However, the Department of Mineral Resources and Energy (DMRE) has hinted that this deadline could be moved.

"The date of 31 July remains. However, this will depend on the DMRE and Eskom having achieved all the necessary [Public Finance Management Act] approvals," the DMRE told us in a written statement.

But shifting the deadline risks attracting further legal challenges.

The DMRE is already facing a legal challenge from losing bidder DNG Power, which is seeking to overturn the tender on the basis that Karpowership was given preferential treatment.

- **Get up to speed on all the allegations by going to [amaBhungane's Special Projects page](https://amabhungane.org/stories/special-report-tenders-and-powerships-all-amabs-stories-on-the-rmi4p-emergency-power-bidding-process-karpowership-sa-and-more/) (<https://amabhungane.org/stories/special-report-tenders-and-powerships-all-amabs-stories-on-the-rmi4p-emergency-power-bidding-process-karpowership-sa-and-more/>).**



In **recently** filed court papers, DNG chief executive Aldworth Mbalati claimed that the department and others “went to great lengths to ensure that the friction in the course of [Karpowership’s] path was minimised” and that Karpowership “enjoyed a less challenging bid process” than other bidders.

Any attempt to relax the deadlines seemingly for Karpowership’s benefit would fuel those claims.

But the DMRE told us that the case itself was putting the 31 July deadline under pressure: “The case was scheduled for 21-23 July 2021. However, we have been informed that the assigned Judge is no longer available on those dates, we are waiting for the Deputy Judge President to assign another Judge to hear the case.”

The RMI4P plans to bring 2,000 MW of power online by December 2022. **DM/OBP**

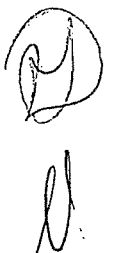
Barbara Creecy (https://www.dailymaverick.co.za/article_tag/barbara-creecy/)



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(https://www.dailymaverick.co.za/article_tag/department-of-forestry/)

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How Karpowership was torpedoed by substandard environmental studies

The R225-billion powerships deal may finally be sunk by the environment department's refusal to authorise the Turkish-led consortium's projects. It failed to deliver adequate environmental reports or listen to warnings from specialists, the department said.

The Karpowership deal was torpedoed by the department of forestry, fisheries and the environment (DFFE) – and, unintentionally, by its own environmental consultants.



#earthcrimes

The Turkish-led Karpowership SA consortium was named preferred bidder in March to supply the lion's share of 2 000MW in capacity that government is procuring to reduce loadshedding. But it first needed to secure environmental permits to moor its powerships in three ports: Coega, Saldanha and Richards Bay.

But on Thursday, DFFE announced that it had refused to grant Karpowership that authorisation.

"The Competent Authority in the Department has decided, after due consideration of all relevant information presented as part of the environmental impact assessment process for all three applications in question, to refuse the applications for the environmental authorisations." spokesperson Albi Modise said in a guarded statement.

An environmental impact assessment (EIA) is a mandatory process of assessing the environmental consequences and viability of a project, and ways of mitigating harm. The process requires an open and transparent engagement with the public, and that stakeholder concerns are properly taken into account.

It also requires that environmental consultants be independent and "perform the work ... in an objective manner, even if this results in views and findings that are not favourable to the [client's] application" the EIA Regulations say.

The record of refusal, signed on Wednesday by chief director Sabelo Malaza, shows that DFFE felt that Karpowership's environmental consultant, Triplo4 Sustainable Solutions, failed to conduct a proper public participation process or heed experts who said additional studies were needed to quantify the potentially destructive impact the powerships could have on birds, fish and fishing communities.

The reasons included: "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.

"The actual and potential impacts on the environment as well as socio-economic conditions could

The social and potential impacts on the environment (in both an acute economic context) could not be properly evaluated (particularly insofar as small-scale fisheries are concerned).”

Another major shortcoming was Triplo4’s failure to “fully investigate” the impact that underwater noise would have on fish and sea mammals.

“Under [these] circumstances it is not possible to make a determination with regard to the significance of potential impacts or consequences for the environment, the effectiveness of potential mitigation measures or whether the project under consideration will constitute a sustainable development.”

- *Read the record of refusal for all three projects in the Evidence Docket*

Explaining the decision to *SAFM* yesterday, DFFE spokesperson Albie Modise said: “If we give you an authorisation on a project of a long-term nature, we need to be comfortable that we can live with that decision for the next 20 years.”

Karpowership responded almost immediately, claiming the DFFE “allowed a misinformation campaign to derail the Department of Mineral Resources and Energy’s [DMRE] strategic plan to end load shedding and address South Africa’s economic and energy crisis”.

DMRE is responsible for the so-called Risk Mitigation Independent Power Producer Procurement Programme (RMI4P), under which Karpowership and others were selected to supply the 2 000MW emergency power.

Karpowership said DFFE’s decision “threatens the delivery of this power and will extend load shedding for years to come”.

It denied that it had failed to consult affected communities, calling its public participation “robust”. It also said it plans to appeal the decision.

But amaBhungane’s perusal of over 1 000 pages of correspondence between Triplo4 and stakeholders suggests that Triplo4’s handling of the process and draft reports fell well short of what was required. The correspondence was disclosed as part of the EIA process for the 450MW Richards Bay project.

And what Karpowership calls a “misinformation campaign” appears rather to be a chorus of criticism from a wide range of specialists, government entities, civil society groups and members of the public.

Amongst many complaints, Triplo4 is accused of commissioning a “woefully inadequate” specialist report that downplayed the devastating impact the powerships could have on critically important bird populations.

The documents also show that many stakeholders raised concerns about the risk of an explosion in the high-traffic Richards Bay port but were told that there had never been an explosion on a gas-fired powership.

What Triplo4 did not disclose was that a steam explosion had occurred on a Karpowership in Indonesia in 2018, as video evidence obtained by amaBhungane shows.

25 November 2018: Kowp...



[REDACTED]

Caught on camera: Steam explosion on a Karpowership in Indonesia in 2018.

Earlier this month, DFFE temporarily suspended approval of Karpowership's 320MW Saldanha project following a formal complaint from civil society group Green Connection. The group said a marine ecology expert advised Triplo4 to conduct further studies of the site in Saldanha to determine what impact the noise would have on vulnerable fish breeding grounds, which could affect the local fishing industry.

Two other civil society groups, the Centre for Environmental Rights and Groundwork, filed similar complaints against Karpowership's 450MW Richards Bay and Coega projects.

Triplo4 was warned that site-specific studies were critical. Ezemvelo KZN Wildlife, the government body responsible for conservation and biodiversity in KwaZulu-Natal, told Triplo4 that the EIA would be "incomplete" without a study of the impact underwater noise would have on everything from the endangered Indian Ocean humpback dolphin to commercial prawn fisheries.

"The potential impacts of a wall of consistent noise from the turbines may interrupt that passage through to the marine [area], effectively reducing [prawn] stocks by more than half," Ezemvelo warned in a letter in March.

Triplo4, apparently under pressure to meet Karpowership's RM14P deadlines, ignored the advice.

DFFE cited this failure as one of the main reasons it refused to authorise Karpowership's projects.

Triplo4 and its managing director, Hantie Plomp, did not respond to detailed questions sent before DFFE's decision. Instead, she sent a brief email saying: "[W]e deny any wrongdoing and advise that a full response cannot be provided as the matters are *sub judice*."

She did not respond when we argued that the *sub judice* rule did not prevent her from speaking to us.

Karpowership also did not respond in detail to our questions. Spokesperson Kay Sexwale provided a brief written statement before DFFE's decision was announced: "We are confident the unfounded claims about the environmental assessments of our projects will be dealt with swiftly. We are continuing to work to the deadlines ... and look forward to getting to work helping to alleviate South Africa's energy challenges and supporting the wider economy."

Although Karpowership says it plans to appeal DFFE's decision, it is unlikely to meet the 31 July deadline for all the RM14P's preferred bidders to reach financial close.

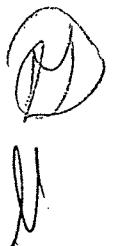
Without environmental authorisation for its projects, Karpowership cannot reach financial close and it risks having its R183-million bid guarantees called up by the DMRE.

But the DMRE has bigger problems: Karpowership was supposed to provide 1 220MW, over 60% of the 2 000MW programme. Its disqualification, unless overturned, leaves the RM14P in tatters.

Karpowership and Triplo4 are still facing a separate investigation by the Green Scorpions, the law enforcement unit tasked with investigating environmental crimes.

In May 2020, Karpowership secured a dubious emergency environmental authorisation under section 30A of the National Environmental Management Act. The permit allowed it to bypass the entire EIA process and bring as many ships as it wanted into South African ports.

That permit was quickly withdrawn and an investigation launched. The Green Scorpions must now determine whether Karpowership, Triplo4 and its representatives should be criminally charged for misleading DFFE officials.



But the dire warnings from specialists disclosed as part of Karpowership's subsequent EIA process show just how devastating the consequences of that decision could have been.

"Fatally flawed"

Some of the most fervent criticism of the Richards Bay EIA has centred on the avifauna report, which examined the project's potential impacts on the diverse bird populations in the bay.

Richards Bay is an area of critical biodiversity and one of the most important coastal waterbird habitats in the country.

An important ecological feature of the bay is a long tail-like sand bed that juts out from the shore called a sandspit, which is a sanctuary habitat for wading birds. Adjacent to the sandspit are the Kabeljous Flats, an area of relatively undisturbed shallows that supports a range of marine and bird life.

Not only is this area home to many indigenous bird species – from giant pelicans to tiny mangrove kingfishers – it also acts as a critical stop-over for migratory birds and provides shelter during storms and cyclones. It is officially designated as "irreplaceable" in terms of the Biodiversity Act.

This special status was underscored when Professor Digby Cyrus, the head of zoology at the University of Kwazulu-Natal, was asked to provide a specialist study for a rival powership project in Richards Bay. Cyrus concluded that the rival Nseleni project was "fatally flawed" because of the impact noise from the ships would have on vulnerable bird populations, including waders, gulls and terns.

Sidenote

In environmental regulations, "fatally flawed" means the potential impacts of a project are dire, almost certain to happen, and nothing can be done to mitigate the impact. In these instances, the specialist will conclude that a project should not go ahead.

Although at 2 800MW the Nseleni project would be far larger than Karpowership's 450MW project, acoustic modelling of the two projects show that the noise levels would be similar.

So when Triplo4's avifauna specialist, Leigh-Ann de Wet, concluded that the impact of Karpowership's project on birds would be "moderate" to "low – and "none" with the right mitigation measures – Cyrus was incredulous.

"There is clear indication in the literature that the noise levels this project will put out will impact on the avifauna and that they will almost certainly abandon the site," he wrote in a 10-page memo to Triplo4.

Triplo4's noise specialist had predicted that noise from the powership's engines could reach up to 90 decibels (technically, A-weighted decibels) on the closest parts of the sandspit, but if silencers were installed (as has been done on one of the company's powerships in Ghana) this would drop to roughly 74 decibels. De Wet argued that based on the data from Ghana, noise levels should be no more than 64 decibels on the sandspit.

To put that into perspective, the legislated noise limit for industrial areas is 70 decibels. But unfortunately for the birds of Richards Bay, "there is currently no legislation for noise limits in environmentally sensitive areas".

Cyrus argued that the level of noise projected to reach the sandspit would be at levels that have been shown to affect birds that are roosting, nesting and feeding.

"The potential total loss (mortality) of the Sandspit wader population and the third most important



coastal wader habitat in KZN, goes against South Africa's commitment to ... 'protect migratory species, their habitats and migratory routes' [and] ... should be ranked as Fatally Flawed," he told Triplo4.

De Wet had a different take.

Although she conceded that the location of the ship was "likely to be detrimental" to the wader population, she had counted few birds when she visited the site.

Her verdict? The risk of any impact would be low. "It is the opinion of the specialist that the proposed development go ahead, provided the mitigation measures are put into place."

De Wet declined to speak to us, referring all questions to Triplo4.

Counting the cost in birds

An EIA is an iterative process, so some level of criticism of a draft report might be expected. But in this case, De Wet was accused of basic failings: poor surveys and cursory research.

Dominic Wieners, a principal conservation planner at Ezemvelo Wildlife, called De Wet's sampling effort during her field surveys "woefully inadequate" and in March sent a scathing seven-page letter to Triplo4 citing "serious concerns with the avifaunal report ... and the subsequent conclusions drawn".

The importance of the sandspit and Kabeljous Flats had been "grossly understated in the avifaunal report".

Wieners pointed to the case of another energy company that wanted to build in a sensitive bird area, which he said was required to do "12 months of specialist study monitoring by recognised and suitably qualified specialists" to establish the "seasonal variance of birds on the site".

"By contrast, only two hours of infield surveys were done for the pelagic bird component by a specialist who has not shown suitable qualifications to undertake a study of this nature or magnitude. Consequently, the inference drawn by the report is that wader numbers are very low on the basis that not many were recorded on site is problematic," he wrote.

Ezemvelo's verdict? Wieners wrote: "The Environmental Impacts Assessment Process ... is substantially deficient and therein renders it unusable for a source document in decision-making."

Early on in the EIA process, the DFFE had warned Triplo4 that "all specialist studies must be conducted in the right season". Karpowership and Triplo4 could not use a shortage of time as an excuse.

One expert pointed out the importance of surveys in summer, "when the key migratory waders were present", while Cyrus, in his 10-page memo, argued that a proper assessment of bird numbers should take place over at least "two full winters and four full summers".

In April, the Mhlathuze municipality, where Richards Bay is located, weighed in via a letter from the deputy municipal manager, Nontsundu Ndonga. "In light of the information gaps and areas of contention of the EIA and specialist reports against (known) ecological and social costs, it is a challenge for the Municipality to draw any firm conclusions on this application," she wrote.

The letter recommended that the study be redone.

But Triplo4 did not hire a new expert to redo the report. Instead, De Wet did further field trips and added further research to her report. When she delivered an updated version two weeks later, her conclusions remained unchanged.



While the powerships “will result in increased levels of noise” that “may result in the displacement of birds that make use of the sand spit”, “recent surveys indicate that the sandspit no longer holds such large numbers of birds and as a result, has a reduced overall sensitivity”, she wrote.

“However, the spit remains an important bird habitat that should be conserved as far as possible. Nonetheless, the noise levels associated with the Karpowership with mitigation are low and likely to affect feeding birds at low tide and not roosting or feeding birds at high tide. Alternative habitat is also present in the adjacent protected Richards Bay Game Reserve.”

“It is the opinion of the specialist that the proposed development go ahead provided the mitigation measures are put into place.”

Athol Marchant, an ecologist who was asked to review De Wet’s updated report – and given only a weekend to do it – had this warning: “The estuarine habitats in South Africa, including mud flats, have been severely depleted over the years. Any further loss will be devastating for migrant birds and will have a global impact... South Africa should regard any further loss as non-negotiable.”

Marchant noted that although De Wet had done additional field work, one of these trips occurred after most migratory birds had already left.

In response to De Wet’s conclusion that the project should go ahead, Marchant wrote: “I cannot agree with this ... and I regard it to be a premature statement.”

DFFE agreed in its record of refusal this week: “Most of the specialists indicated limitations to their respective studies; amongst, others that they either had very limited time to apply their minds, or it does not apply to the standards of undertaking the assessments and that these studies were undertaken in the wrong season.”

Triplo4 was repeatedly warned to address these limitations, DFFE said. “The gaps and limitations identified in the respective assessments; raises concerns with regard to the adequacy of the assessment and the validity of the findings. The studies should have been updated and amended prior to submission for decision making.”

DFFE also criticised Triplo4 for failing to investigate the impact the powerships would have on the nearby Richards Bay Nature Reserve: “The potential for disturbance to birdlife and reclusive species in the fringes of the reserve’s swamp and mangrove forest components is a critical omission... Noise of 50 [decibels] would most certainly result in displacement of species from their core habitat.”

Endangered dolphins and commercial fisheries

One of the major deficiencies identified in DFFE’s record of refusal was the lack of research on what impact two large, vibrating powerships would have on life below the water.

Experts told Triplo4 in October last year that a “marine specialist should be consulted to determine the effects of underwater noise on marine animals”.

“In marine environments sound is important to animals... The limitation of vision, touch, taste, and smell in water means that sound is critical... Marine mammals thus use sound as a primary means for underwater communication and sensing.

“They emit sound to communicate regarding the presence of danger, food, a conspecific or other animal, and also about their own position, identity, and reproductive or territorial status... Any increase in anthropogenic noise could thus have significant effects on the environment in an ecologically sensitive area,” Dr Brent Williams and Jason Hutten from Safetech wrote in their specialist report.

This was reiterated by Ezemvelo Wildlife in a letter in March: “That an underwater noise impact



assessment was not undertaken is, in Ezemvelo's opinion, a significant limitation ... rendering the Environmental Assessment incomplete."

Noise impacts on whales and dolphins had not been considered, nor had the impact that a "wall of consistent noise" could have on the migratory routes used by prawns that make up 60% of commercial prawn fisheries.

"Given the proposed location of the powerships adjacent to the most productive part of the estuary, consideration should have been given to this particular impact," Ezemvelo argued.

A marine ecology report, produced by Lwandle Marine Environmental Services, noted that long-term exposure to high levels of underwater noise could cause "developmental deficiencies" in fish and marine mammals, and may affect "foraging efficiency, avoidance of predation, swimming energetics and reproductive behaviour".

The report said not enough information was available in the context of Richards Bay to conduct an assessment, and instead relied on underwater noise readings from Ghana which recorded up to 111 decibels 200m from a powership.

If the powerships in Richards Bay "are equivalent in sound generation to that moored in Ghana, then effects on the surrounding marine ecology would be unlikely", the report noted, but concluded: "A noise modelling study should be undertaken to gain a more quantitative understanding of the noise produced from powership operations in the Port of Richards Bay and the cumulative impacts on the surrounding marine ecology."

Triplo4's failure to listen to the experts was one of the major reasons DFFE said it did not have enough information to approve the Richards Bay project.

An explosive situation

What is apparent from reading the correspondence disclosed as part of the EIA process, is that many stakeholders were simply not convinced by the rosy picture painted by Triplo4.

Vuyo Keswa, an environmental manager for Transnet, wrote to Triplo4 in March, listing concerns about Triplo4's report: "In many instances, the significance of environmental impacts ... is said to be low. However the mitigation measures read more like recommendations than implementable actions... In other areas the impact mitigation would say 'where possible'."

Keswa asked: "What will happen if it's not possible? Does this mean that the impact will remain? If so how does the impact rating becomes 'low'?"

At public meetings, stakeholders raised concerns about the risk of an explosion aboard the powerships or the nearby storage ship that will hold up to 175 000 cubic meters of liquified natural gas (LNG).

"The risk of an explosion resulting from these ships in busy and economically important port areas are not to be taken lightly," Avena Jacklin from the civil society ground Groundwork warned.

Triplo4, however, dismissed these concerns: "[W]e disagree with the statement that insufficient information about leakage and explosion risks have been provided. Karpowership has carried out numerous risk studies on their powerships ... and have not had any significant safety or other incidents," it said in a letter to a stakeholder.

But was that true?

On 25 November 2018, an explosion ripped through the KPS Zeynep Sultan, a 159m powership moored along the coast of North Sulawesi, Indonesia.



The explosion was captured in a cellphone video. As the camera pans across the port's coal stockyard, a loud bang is heard, followed by the sound of rushing air as debris is sent flying and smoke shrouds the vessel.

According to the Turkish maritime news site Denizhaber.com, the explosion occurred in the ship's boiler room. In response, Karpowership told the site: "[E]lectricity production was interrupted for a short time during the discharge of pressurised steam from the boilers... No injury or loss of life occurred as a result of the technical failure. The outage was completely resolved within a few hours."

There was, however, no mention of this explosion in Triplo4's EIA report or the specialist major hazardous risk assessment report.

Instead, under "Significant Incidents at the Site and Related Sites", expert Claude Thackwray wrote that Karpowership was a "proposed operation and there have been no incidents".

Neither Triplo4 nor Thackwray would not comment on whether Karpowership informed them of the explosion, as it is legally obliged to do.

In its final EIA report, Triplo4 wrote: "To date, Karpowership has generated approximately 70 billion kilowatt hours of power around the world with zero environmental incidents... There has never been an LNG ship explosion anywhere."

That distinction is important: The Zeynep Sultan was not powered by LNG at the time of the explosion, but by heavy-fuel oil.

A "clean" alternative?

Criticism of the EIA has also focused on the very premise that Karpowership has been keen to promote: that the LNG the ships will burn is a "clean" alternative energy, and that the project would herald a leap towards reducing South Africa's carbon emissions.

Triplo4 was accused of having swallowed this line uncritically and of failing to properly consider the broader climate implications of a major fossil fuel development like Karpowership's.

In April 2020, the Richards Bay Clean Air Association wrote to Triplo4: "References in the report to LNG being a 'clean fuel' are grossly misleading. While LNG is a cleaner fuel than coal it still has an environmental footprint, including methane and carbon emissions."

Triplo4's response was that "Burning natural gas for energy results in fewer emissions of nearly all types of air pollutants and carbon dioxide (CO₂) than burning coal or petroleum products".

"Natural gas comprises primarily methane (CH₄), which has a higher energy content relative to other fuels. However, main gas emissions emitted upon combustion of natural gas are nitrogen-oxides, negligible amounts of sulfur-oxides, and particulates."

In general, burning LNG produces 40% less carbon dioxide (CO₂) than burning coal and produces fewer harmful particulates. But Triplo4 was accused of downplaying the impact of methane on the climate.

There is a developing consensus that the world has failed to appreciate the harm to the climate and environment caused by gas leaks from the point of extraction, through the supply chain, to the point of combustion.

Methane is a potent greenhouse gas: not nearly as long-lasting in the atmosphere as carbon, but many times more damaging over a shorter period. The United Nations Economic Commission for



Europe estimates that over 100 years, the global warming potential of methane is 28 to 34 times greater than CO₂; over 20 years, the warming potential is roughly 85 times greater than CO₂.

Ndonga, the deputy municipal manager from Mhlathuze municipality, criticised the draft EIA's lack of detail around gas sourcing, the chemical composition of gas to be used, the regassification process, and poor description of the vessels and the manner in which they would be operated.

In a letter of 6 April, she also slammed the draft EIA for failing to mention "methane and fugitive emissions arising from operational deficiencies," and said that the potential harm of methane as a greenhouse gas needed to be considered against "qualifying LNG as a 'clean' fuel source".

Her letter ended with a stern warning for Triplo4: "The environmental assessment practitioner is reminded that failure to satisfy the above constitutes misleading the process and an offence in terms of ... the EIA Regulations."

Triplo4 dismissed concerns about the source of the LNG, saying that while the source was not confirmed, Shell would supply the gas and had given assurances that it would not be sourced from fracking. Shell would only say that the gas will come from its "global LNG portfolio".

In its final EIA report, Triplo4 cited a claim by Shell that "natural gas is the cleanest-burning hydrocarbon, producing around half the carbon dioxide (CO₂) and just one tenth of the air pollutants of coal when burnt to generate electricity".

"Undemocratic" participation

One of the main failings identified by DFFE, however, was how the project was sold to the communities that would be most impacted, including small-scale fishing operations who might see the fish vanish from beneath their boats.

The South Durban Community Environmental Alliance accused Triplo4 of running a "farical" public participation process "because it has failed to reach the majority of the interested and affected parties". It said it did not believe that "online public meetings and documents only being available electronically achieves equitable and effective participation, particularly in respect of vulnerable and disadvantaged persons".

The Anti-Gas Alliance noted that marginalised fishing communities "disproportionately affected by developments in the marine space" had not been adequately consulted.

Other stakeholders grew increasingly frustrated at what they said were delays in circulating minutes of a public meeting in March. And once those were circulated, frustration only grew over the "inaccuracy of the minutes."

Triplo4, in its responses to stakeholders, disagreed that the public participation process "failed to reach the majority of Interested and Affected Parties".

It said that that the Richards Bay project was advertised in English and Zulu, and that site notices were put up and flyers handed out. Various bodies from ratepayer associations to state entities were informed of the EIA, according to Triplo4, which noted a long list of community organisations that had participated as stakeholders.

But DFFE disagreed: "The Environmental Impact Assessment Process was compromised as the applicant failed to comply with the requirements ... relating to public consultation and information gathering."

Amongst DFFE's objections was that stakeholders were not given adequate time to review the reports, documents were removed from the website and only reinstated when questions were asked, and major changes were made to specialist reports without giving stakeholders a chance to

comment.

This “compromises the decision-making powers” of the department, DFFE said.

Sweetheart consultants?

In May, a complaint against Triplo4’s Hantie Plomp was lodged with the Environmental Assessment Practitioners Association of South Africa (Eapasa), the regulatory body for environmental consultants.

The complaint, made by green activist Judy Bell with three NGOs in support, contains a litany of accusations, including a mishandled public participation process, poor quality reports, and Triplo4’s alleged failure to acknowledge the climate crisis.

Sandy Camminga of the Richards Bay Clean Air Association, one of the three NGOs party to the complaint, was scathing in her assessment of Triplo4.

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She told amaBhungane that stakeholders were constantly “hindered” in their attempts to get information from Triplo4: “We are not dealing with an independent [environmental assessment practitioner] here, we’re dealing with someone who is constantly defending ... Karpowership.”

Eapasa has not said whether it will investigate the complaint.

**This story was updated to reflect Dominic Wieners’ correct title, that of principal conservation planner at Ezemvelo Wildlife.*



"FA 10"

10 Jun 2021

Powerships: Enviro investigation could capsize R225 billion deal



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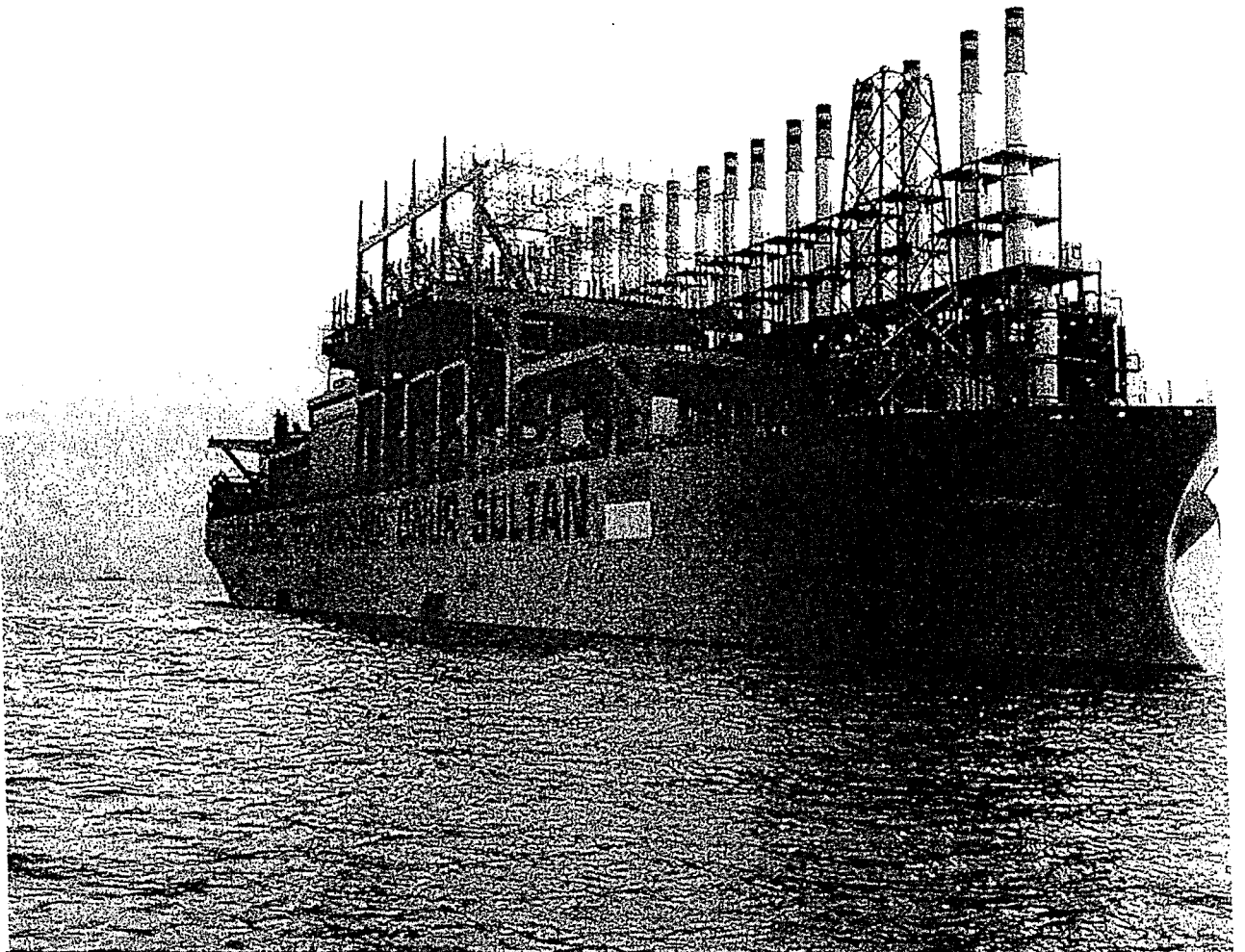


Photo: Karpowership
Photo: Karpowership

- The Turkish-led Karpowership consortium is weeks away from a deadline to finalise its 20-year supply deal with Eskom, but now faces multiple legal hurdles.
 - The Green Scorpions are investigating whether the former head of SANParks provided misleading information to secure an emergency permit on Karpowership's behalf.
 - The environment department has until 25 June to adjudicate Karpowership's application for environmental authorisation – and it may depend on what the investigators find.
-

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The Green Scorpions are investigating whether Karpowership SA or its environmental consultants provided misleading information to secure an emergency exemption from stringent provisions of the National Environmental Management Act (Nema).

The Environmental Management Inspectorate – known as the Green Scorpions – is tasked with investigating environmental crimes.

The investigation could result in criminal charges, but could also torpedo Karpowership's environmental authorisations, which it needs for its mammoth R225 billion deal with Eskom to go ahead.

In March, the Turkish-led consortium was selected as a preferred bidder to provide 1 220MW of emergency power under the Risk Mitigation Independent Power Producer Programme (RMI4P). The electricity will come from gas-fired powerships, which are intended to be moored in the ports of Richards Bay, Coega and Saldanha.

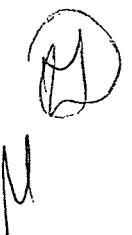
The investigation stems from an extraordinary authorisation in June 2020 – just before the tender was announced – by a top official in the Department of Forestry, Fisheries and Environment (DFFE).

The official exempted Karpowership under an emergency provision of Nema from doing environmental impact assessments (EIAs), supposedly because it would provide emergency power to combat Covid-19.

The department revoked the exemption after an outcry, claiming it had been misled. This forced Karpowership to reapply, this time with complete EIAs for all three sites. But DFFE has confirmed that these new applications could be denied if the investigation confirms that Karpowership and its consultants intentionally misled officials.

"The department is currently investigating the conduct of the [environmental consultants] and [Karpowership] in relation to the Nema ... exemption application," spokesperson Albi Modise said in a written response.

Modise confirmed that the investigation is being led by the "Environmental Management Inspectors within the Department", aka the Green Scorpions, who have been tasked to establish "whether or not *prima facie* evidence exists of the commissioning of an offence".



"Should *prima facie* evidence exist of an offence, the department will bring the relevant information to the attention of the South African Police Service for further investigation and/or the Director of Public Prosecutions to commence a prosecution," he told us.

"If the outcome of the investigation reveals that there was something untoward about their conduct, then that would have a material effect on the current EIA applications that is under review by the department."

DFFE has also commissioned an external legal review to establish whether Karpowership's current EIA applications should have been rejected because the proposed projects lacked consent from Transnet National Ports Authority (TNPA), as the owner of the land.

Karpowership is hoping to secure TNPA's consent as a "sole source provider" or through an 11th hour special directive issued by Transport Minister Fikile Mbalula. But a legal opinion delivered to Business Unity South Africa (Busa) last week warned that any permit handed to Karpowership faces a barrage of legal challenges.

The stakes are high: Karpowership desperately needs its environmental permits and landowner consent before the end of July, the deadline for all preferred bidders selected for the RMI4P tender.

If the Turkish-led consortium fails to secure these permits, it risks losing the R183 million bid bond it has put up as collateral. If found guilty of intentionally misleading government officials, Karpowership and its environmental consultants could receive fines of up to R10 million or 10 years in jail.

On the other hand, if the government greenlights Karpowership's projects, five gas-fired powerplants could arrive in South African ports next year. This is intended to kickstart a new energy future for South Africa, one fuelled by liquified natural gas (LNG), but also fraught with environmental problems.

Karpowership declined to respond our 46 questions covering a wide range of environmental issues. Instead, spokesperson Kay Sexwale said: "We are confident the unfounded claims about the environmental assessments of our projects will be dealt with swiftly. We are continuing to work to the deadlines ... and look forward to getting to work helping to alleviate South Africa's energy challenges and supporting the wider economy."



"Powerships fuelled by LNG are the cleanest, most sustainable way of providing reliable power while supporting South Africa's transition to renewables. Our projects were awarded preferred bidder status because we provided the best combined package of affordability, cleaner energy, proven technology and economic development initiatives."

But to understand how we got to the brink of this multibillion-rand deal, we need to go back to 2015, when Karpowership sidled up to Eskom with a tantalising solution to end loadshedding. What our research suggests is that the company has a history of trying to leverage emergencies to get its way.

2015: Dear Mr Tsotsi

In February 2015, Eskom was facing the uncomfortable prospect of severe loadshedding in summer.

Eskom board chair Zola Tsotsi had a plan, though. On 10 February 2015, he wrote to then energy minister Tina Joemat-Pettersson, requesting the go-ahead for three power-generation solutions – "measures which we believe need to be taken immediately in our quest to [relieve] the constraint in the electricity supply system".

One of the solutions came from Karadeniz, the parent company of Karpowership: "Their proposal includes the berthing of 500MW ship-plants at our ports. Once a decision to implement the proposal is reached, they can dispatch the first 500MW unit onto the grid within six months and then a successive 500MW unit every four months thereafter," he wrote.

Tsotsi did not specify how many ships Eskom would hire, but made it clear that this would not be done through a standard procurement process: "[W]e request the Honourable Minister to authorise Eskom to engage and conclude all required measures to enable speedy implementation of these projects."

The Public Finance Management Act does make provision for emergency procurement, but state-owned entities, like Eskom, must jump through numerous hoops to justify such contracts. And in this case, Tsotsi had gone straight to the minister, despite Eskom management being lukewarm about the powerships solution.

Tsotsi resigned soon after, and Eskom told Karadeniz to apply to the independent power producer programme, which now falls under the Department of Mineral Resources and Energy.

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"As there are a number of potential suppliers of powerships ... it is necessary to ensure a fair and transparent engagement," Eskom told City Press at the time.

Tsotsi said this week he did not remember the circumstances of the offer. As far as he could recall, he did not receive an answer from the minister before he stepped down as chair at the end of March 2015.

2018: For the sake of the elections

Three years later, Karpowership was ready to have another go at the South African market.

According to Karpowership's local partner, Sechaba Moletsane, the country was once again facing loadshedding and, with elections coming up in 2019, he implored the Karadeniz family to intervene.

"We went up to Turkey in [February] 2018 ... because the elections were coming up and there was major, major loadshedding," he recalled during a recent Mail & Guardian webinar, sponsored by Karpowership.

As much as this was an electricity supply problem, it was also a political one for the ANC, which has historically been reluctant to implement loadshedding ahead of the elections, fearing it would cost the party votes.

Moletsane said they approached Eskom, the Department of Energy and the Department of Public Enterprises, but all declined Karpowership's unsolicited bid.

"[T]hey didn't uptake our proposal, the elections went on and successfully, so they ended up using more of the peaker plants," he said, referring to the diesel-fired peaker plants that are Eskom's last resort to avoid loadshedding.

2020: Dr Mabunda's plan to tackle Covid-19

By 25 June last year, 118 000 South Africans had tested positive for Covid-19 and 2 335 had lost their lives.

Armed with this and other information about the rapidly escalating infection rate, Dr David Mabunda contacted the DFFE with a plan to tackle the pandemic.



Mabunda was not a medical doctor, but a doctor of tourism management. He had served (not without controversy) as the chief executive of SANParks and Ezemvelo KZN Wildlife.

But he was now representing Karpowership.

Conflict of interest?

Mabunda resigned from SANParks in 2014. At the time, there were questions about R81 million he received from the controversial MalaMala land claim deal. An internal investigation described this as "a serious conflict of interest", environmental journalism outfit Oxpeckers reported. Mabunda denied wrongdoing at the time, saying he had declared his interest in the deal and received permission to participate.

What the country needed, Mabunda told DFFE chief director of compliance, Sonnyboy Bapela, during a 25 June discussion, was a secure supply of electricity to ensure that hospitals did not go dark and ventilators kept pumping life-saving oxygen to patients.

What Karpowership needed in return was an emergency permit – issued in terms of section 30A of Nema – allowing it to bypass the costly and highly technical EIA process that normally takes months to complete.

Section 30A was designed for emergencies when quick action can save lives and prevent environmental disaster. A single independent power producer, hoping to supply Eskom with electricity, generally would not qualify.

But when a national state of disaster was declared in March 2020, in response to the Covid-19 pandemic, Karpowership had its emergency.

Emergency situation

Under section 30A of Nema, a national state of disaster counts as an emergency situation and gives the environmental minister the power to override ordinary provisions of the Act.

"In terms of section 30A, the Minister ... and Provincial Authorities may ... issue a verbal or written directive to carry out activities without obtaining an environmental authorisation," lawyers from Webber Wentzel wrote in a March 2020 newsletter. This



included building "emergency infrastructure projects to help curb the effects of Covid-19", such as temporary hospitals or cemeteries.

But would powerships count?

The day after his conversation with Mabunda, Bapela gave Karpowership the go-ahead to bring in as many ships as it wanted into the ports of Coega, Richards Bay, Saldanha and Durban – no environmental permits required.

Powerships are more like power plants than cargo ships: critics have warned that the potential harm to fish, birds and red-list species could be severe. These environmental costs may be unavoidable in an emergency. But, in July 2020, Karpowership was far from persuading Eskom to buy its electricity.

When Daily Maverick's Tony Carnie raised the alarm that Karpowership may be abusing its 30A exemption, sales director Patrick O'Driscoll responded: "Although the energy crisis is not new, the need for a reliable and sustainable power supply is required to safeguard critical infrastructure and maintain industry, such as the manufacturers and industries that support the medical fields."

If Karpowership was asked, he said, it could start supplying power within eight to 10 weeks: "This potential project will assist the government in its efforts to ameliorate the impact of Covid-19, which will have the overall effect of saving lives during the pandemic. It is also vital for post-Covid-19 national recovery strategies."

DFFE's Modise told us that, of the 12 applications for section 30A exemptions received since the start of the national disaster, only two cited the Covid-19 pandemic as the cause of the emergency. One came from the Department of Public Works, which asked for permission to build "military-type bailey bridges", so that ambulances could access rural areas; the other from Karpowership.

'We were misled'

On 24 August 2020, the Department of Mineral Resources and Energy released the RMI4P tender, the multibillion-rand procurement to supply Eskom with power for the next 20 years.

The next day, DFFE sent out a press release, saying that it had withdrawn Karpowership's 30A exemption, essentially because the company did not disclose that it



wanted the emergency permits for its proposed RMI4P projects, which would likely only start supplying power in 2022.

"When the company had initially submitted their request it had indicated that the country's electricity supply was under threat because of the increased pressure on the healthcare system as a result of the Covid-19 outbreak.

"It has subsequently emerged that the company had applied for the verbal directive ... in preparation for the possible implementation of the [RMI4P]. This information was not disclosed to the department [and] it has now emerged that there was in fact no emergency situation", the release said.

"[I]t will be fair to say the department was misled," spokesperson Modise recently told amaBhungane.

He explained: "The department already concluded that there was a reasonable belief that the circumstances pertaining to the emergency situation were materially different from what was indicated in the oral request/written confirmation of the oral request. Accordingly, the section 30A directive was revoked."

In other words, what Mabunda told the department, in that 25 June meeting, allegedly did not match the reality on the ground. That was enough to withdraw the 30A exemption.

What the Green Scorpions are now investigating is whether Karpowership, Mabunda or Triplo4 Sustainable Solution, the firm of environmental assessment practitioners doing the consortium's EIAs, intentionally deceived DFFE in order to secure these valuable exemptions.

Degrees of deception

In 2015, the government gazetted new regulations that apply to verbal requests for section 30A exemptions:

- In terms of regulation 12, an official can "amend, suspend or revoke" the exemption if "having assessed the scene of the emergency situation or disaster" they have a "reasonable belief" that the circumstances on the ground are "materially different" to what was described in the verbal request. **This is why the department revoked Karpowership's exemption. Karpowership did not challenge the decision.**



- In terms of regulation 15, it is an offence for anyone to "wilfully, knowingly or negligently, provide incorrect or misleading information" to the department in an attempt to secure an exemption. Regulation 16 says that anyone found guilty of this offence is liable for a fine of up to R10 million and/or jail time of up to 10 years. **This is what the Green Scorpions are investigating.**
Karpowership denies that it is guilty of this offence.

Environmental assessment practitioners, like Triplo4, are required to be independent, not paid shills for their clients. If they are found to be complicit in the bogus 30A applications, the new EIAs they have prepared for Karpowership that are now awaiting DFFE approval could be rejected – which could sink the consortium's R225 billion deal.

"[W]e are investigating the professional conduct of the persons who are alleged to have submitted false and misleading information as this would compromise their independence and objectivity. The findings will be brought to the attention of the unit responsible for assessing the current Environmental Impact Assessment applications," Modise confirmed.

Hantie Plomp, the sole director of Triplo4 and Karpowership's lead EIA consultant, declined to answer our detailed questions: "[W]e deny any wrongdoing and advise that a full response cannot be provided as the matters are *sub judice*," she said via email.

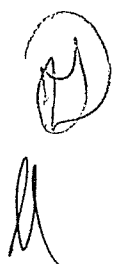
Mabunda's role, and that of his company, Nselenduna Consulting, appears to be more diverse. Mabunda told us that he is "assisting Triplo4 with the Karpowership project", but letters attached to court papers show that he also assisted Karpowership to obtain another valuable exemption from the Department of Trade, Industry and Competition. This helped Karpowership to bypass the RMI4P's 40% local content rule.

Asked about his apparent ability to secure valuable exemptions from the government, Mabunda was coy: "I've been advised by my counsel ... not to respond to any of your questions at this stage as they constitute a greater part of the pending DFFE investigation. The matter is *sub judice* at the moment."

Landowner consent

After the department yanked Karpowership's 30A exemption in August 2020, it had no choice but to follow the long, tedious process of applying for an environmental permit.

But it was running out of time to meet the November 2020 deadline to submit its RMI4P bid.

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On 17 September, DFFE officials met with Karpowership and its consultants to outline the standard process it would now have to follow to get environmental authorisation for its proposed projects in the ports of Richards Bay, Coega and Saldanha.

The officials reminded the consultants that one of the documents it would need was written permission from the landowner – in this case, TNPA.

Although the powerships will only be moored in Transnet's harbours, there is other infrastructure – pipelines, pylons, etc. – that will need to be built on Transnet land. And without big-picture planning, projects like these could disrupt traffic or hamper port expansion plans.

Faced with this roadblock, Karpowership tried a different tactic.

On 5 October 2020, Jason van der Poel, Karpowership's attorney from law firm Webber Wentzel, produced a legal opinion arguing that the company did not need landowner consent because it was a "strategic integrated project", and therefore exempt.

Section 39(1) of Nema says that anyone wanting an environmental permit must first get the landowner's consent to carry out their proposed project. One of the few exceptions is if it is a strategic integrated project (SIP), a gazetted list of projects deemed to be in the national interest.

Because the RMI4P is such a project, Van der Poel argued that any project applying to the RMI4P should be deemed one too.

The department's response was a firm "no".

Sabelo Malaza, the department's chief director of integrated environmental authorisations, responded that he "noted" Webber Wentzel's legal opinion, but that Karpowership "must, as advised ... submit signed landowner consent".

The most Transnet was willing to provide was a letter giving Karpowership permission to carry out its environmental impact assessments, although it was careful to remind Karpowership that this should not be construed as Transnet giving the go-ahead for the projects.

Another golden loophole

What happened next is now the subject of a legal review.



There is a simple rule when applying for an environmental permit: first make sure you get permission from the owner of the land to carry out your project. Nema regulation 16(1), which imposes the obligation to attach landowner consent to an EIA application, is so unremarkable that it does not bother to spell out what the department should do if a company turns up without landowner consent.

Instead, officials are simply told to "check whether the application ... is properly completed" and accompanied by the required documents.

When Karpowership submitted its application on 8 October 2020, it did not have landowner consent. Instead of being turned away, it was simply warned to submit landowner consent when it came back with its final environmental scoping report.

"Failure to provide the above-mentioned information will result in your application for Environmental Authorisation being refused," an official from Malaza's department warned in an email.

Asked why the department had not rejected Karpowership's application upfront, the department said that the regulations do not give any explicit instruction to reject an application that is incomplete.

"It is only after a detailed evaluation is done that the failure to submit critical documents will be assessed," Modise noted.

But when Karpowership came back with its final scoping reports in mid-November, still without landowner consent, the department let it slide.

"Following a review ... the findings were such that the department can accept the final Scoping Reports with particular conditions," the department told us.

One of those conditions was that Karpowership would now need to submit landowner consent with its final environmental impact assessment reports in April.

The ruling was a stroke of luck for Karpowership, which had just put up R183 million in bid guarantees. If it turned out that its bids were non-compliant, it could be forced to forfeit that money to the Department of Mineral Resources and Energy.

But other bidders for the RMI4P were more risk-averse. One rival bidder, who spoke to amaBhungane on condition of anonymity, said his firm had decided not to submit an

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RMI4P bid because they knew they could not obtain Transnet consent beforehand. A second company, that did submit a bid, said it opted for a more expensive fuel source because the same landowner consent issue would hamper its ability to import LNG.

The leeway from DFFE was just long enough for Karpowership: in March, it was selected as an RMI4P preferred bidder. Its projects were now undeniably strategic integrated projects, like the RMI4P itself.

This meant that to get its EIA approval from DFFE, Karpowership no longer needs landowner consent. It does, however, still need landowner consent from TNPA as a separate requirement of the tender.

DFFE is emphatic that it did not give Karpowership special treatment, but has commissioned an external legal review: "In light of the numerous queries received on this issue, the [department] ... wanted to provide assurance that all relevant legislative provisions were correctly interpreted and implemented," Modise said.

The clock is ticking

Karpowership is now waiting to find out if the department will approve its final EIA reports for its projects in the ports of Richards Bay, Coega and Saldanha.

It is facing an uphill battle: a complaint has been laid against Triplo4's Plomp, Karpowership's chief environmental consultant, alleging that she ran a sub-standard public participation process and produced biased and flawed environmental reports. The Environmental Assessment Practitioners Association of South Africa, the regulatory body for environmental consultants, is reviewing the complaint and has yet to say whether it will investigate.

DFFE has also received a formal complaint about the EIA at Saldanha over Triplo4's failure to conduct a study on the powerships' impact on sealife, which could have knock-on effects for the local fishing industry.

DFFE's Modise, meanwhile, told amaBhungane that the Green Scorpions' investigation is being prioritised: "The relevant findings will be taken into consideration prior to the EIA application being finalised. The EIA application is expected to be finalised by not later than 25 June 2021."

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Karpowership has, via its bid bonds, placed a R183 million bet that it can clinch the environmental permits it needs before the end of July 2020. The odds are stacked against it. But it appears serenely confident that it can clear any regulatory hurdle.

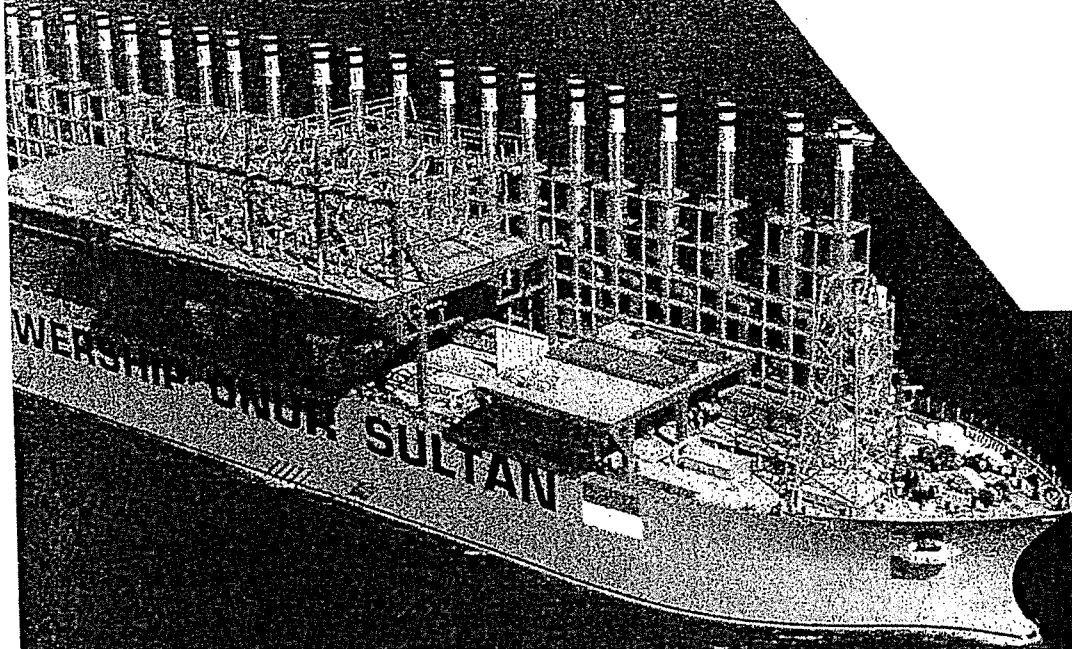
Based on the evidence, it has reason to be confident: government officials have made concessions at every stage. And now that it is deemed to be in the "national interest" for Karpowership's bid to succeed, is anyone going to stand in its way?



OUTA

ORGANISATION UNDOING TAX ABUSE

"FA11"



13 August 2021

Karpowerships: No permits, no clarity, no value, no thanks

Response to applications by Karpowership for generation licences for floating power plants at Richards Bay, Coega and Saldanha Bay

Submission by the Organisation Undoing Tax Abuse to the National Energy Regulator of South Africa

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1. Prelude

- 1.1 The Organisation Undoing Tax Abuse (OUTA) hereby makes its submission in response to the National Energy Regulator of South Africa's (NERSA) call for public comment in respect of applications by Karpowership, its subsidiaries and/or associate companies for three generation licences.
- 1.2 The applications in question relate to three floating power plants (power ships) and associated floating storage and regasification units (FSRUs) at Richards Bay, Coega and Saldanha Bay.
- 1.3 The projects, which have still not achieved financial closure, would be procured in terms the Risk Mitigation Independent Power Producer (RMIPPP) programme of the Department of Mineral Resources and Energy (DMRE).

2. Contextual background

- 2.1 By way of introduction, OUTA is a proudly South African non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. We envision a prosperous country, with an organised, engaged and empowered civil society that ensures responsible use of tax revenues.
- 2.2 Part and parcel to OUTA's mission is the challenging of legislation and regulatory environment, this includes participating and engaging with government where public interest is concerned, as is the case with Karpowership's pending applications.

OUTA strongly opposes the applications by Karpowership, its subsidiaries and/or associate companies for generation licences for floating storage and regasification units at Richards Bay, Coega and Saldanha Bay

3. OUTA's position on Karpowership's generation licence applications

- 3.1 OUTA strongly opposes the applications by Karpowership, its subsidiaries and/or associate companies for generation licences for the three FSRUs at Richards Bay, Coega and Saldanha Bay, for the reasons detailed herein.
- 3.2 The choice of energy mix and subsequent determinations in terms of Section 34 of the Electricity Regulation Act, 2006 (ERA) including the projects that make up the so-called emergency RMIPPP programme of the DMRE will impact the lives of South Africans today and in future generations.
- 3.3 OUTA therefore submits that the premature consideration of the Karpowership project licence applications through these public hearings and/or the granting of generation licences for these projects by NERSA in these circumstances would be irregular and may result in any decision taken by NERSA to be potentially reviewable in terms of the Promotion of Administrative Justice Act, 2000 (PAJA). OUTA appreciates that NERSA is obligated to consider such applications as prescribed by section 4 of the ERA. However, such obligation should not be seen with disregard to NERSA's mandate as set out in section 2 of the ERA.
- 3.4 Should NERSA make the wrong decisions by not applying its mind by prematurely considering and/or granting the generation licences sought by Karpowership, and the matter is not challenged, South Africans will be burdened with expensive and time-consuming litigation and/or electricity generation sources for two decades. This will impact negatively on the electricity price in South Africa, and on climate change, air pollution, water pollution and noise pollution in sensitive coastal eco-systems.
- 3.5 While OUTA's submission will primarily focus on the Karpowership projects of the RMIPPP programme, other submissions will focus on the irrationality of the fundamental approach and specification of the whole RMIPPP programme in its entirety.
- 3.6 In particular, OUTA supports the submission by Clyde Mallinson to this call for public comment and input in respect of generation licences for the RMIPPP programme, in which he explains that the fundamental and whole approach taken by the RMIPPP programme was irrational, technically lacking and not in the interests of electricity customers and South Africa as a country.



4. Environmental authorisation for the three Karpowership projects has been denied

- 4.1 It is common cause that the applications for environmental authorisation by Karpowership for the three projects in question have been rejected and denied by the Department of Forestry, Fisheries and the Environment (DFFE).
- 4.2 The three applications for environmental authorisation by Karpowership, together with a number of objections raised by various civil society organisations, the subsequent rejection of the Karpowership applications for environmental authorisation by DFFE and its reasons for decision, are all in the public domain and available to NERSA and will therefore not be repeated here. OUTA cautions NERSA to take this critical information into consideration when making a decision on Karpowership's applications. OUTA reiterates that should this relevant information not be taken into consideration, any subsequent decisions taken may be potentially reviewable in terms of PAJA.
- 4.3 It is noted that Karpowership and other parties have lodged internal appeals against the denial by DFFE to grant environmental authorisation for the Karpowership projects. However, there is no indication at this stage of when the internal appeal by DFFE will be heard, or when the final outcome from DFFE will be announced. Furthermore, whatever the final ruling of DFFE, it is inevitable that the matter will be taken on review in the courts. Again, OUTA submits that the entertainment of the applications in question are premature in the absence of an outcome to the aforementioned process.
- 4.4 It is thus clear that environmental authorisation of the Karpowership projects will continue indefinitely.

Karpowership was refused environmental authorisations for all three projects



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- 4.5 The public and affected stakeholders require the final decision by DFFE and/or the courts, and the reasons for their final decisions, in order to understand the issues and to enable meaningful comment and input in relation to environmental implications of these projects. In the absence of a final outcome to the aforementioned processes, NERSA's call for public comment on Karpowership's applications borders on a mere tick-box exercise.
- 4.6 In light of the above alone, it is therefore irrational and superfluous for NERSA to consider and/or grant the Karpowership generation licence applications at this premature stage, including through this public participation process.
- 4.7 Even if NERSA's contends that the public participation process is justified, a situation is created whereby all inputs received from the public will lack reference to the crucial information that impacts NERSA's ultimate decision. Thus, the relevant information will not be subjected to public scrutiny, thereby rendering NERSA's decision and any ancillary public participation processes procedurally unfair.

5. Evidence of port authority permits is not included in Karpowership licence applications


- 5.1 The Karpowership project generation licence applications do not include evidence that the relevant port authorities have agreed or will agree to provide permits for the mooring of floating powerships and FSRUs in the harbours of Richards Bay, Coega and Saldanha Bay for the next 20 years.
- 5.2 NERSA's own generation licensing procedures require that evidence of such permits or port authorisations should be included with such applications for generation licences.
- 5.3 Furthermore, there are significant differing legal opinions in the public domain by major legal companies such as Webber Wentzel and Pinsent Masons as to the powers of the Transnet National Ports Authority (TNPA) as a subsidiary of Transnet to grant such permits or authorisations.



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- 5.4 It is clear that any such port authorisations to Karpowership will face a barrage of legal challenges, and that this matter will only be finally clarified in the courts. Therefore, NERSA cannot assume that the lack of such authorisations is permissible in the absence of legal clarity.
- 5.5 The public and affected stakeholders require clarity in respect of port authorisations in order to understand the issues and to enable meaningful comment and input to NERSA on the economic and other impacts and implications of mooring the floating powerships and FSRUs in South African harbours for 20 years.
- 5.6 In light of the above alone, it is therefore irrational superfluous for NERSA to consider and/or grant the Karpowership generation licence applications at this premature stage, including through this public participation process.

6. Proof of gas pipeline authorisation is not included in the Karpowership licence applications

- 6.1 The Karpowership project generation licence applications do not include evidence that NERSA, as the gas pipeline regulator, has agreed or will agree to provide licences or permits for pipelines to transport liquified natural gas (LNG) from shipping tankers to the FSRUs, and to transport gas from the FSRUs to the floating powerships in South African waters.
- 6.2 NERSA's own generation licensing procedures require that evidence of such gas pipeline permits, licences or authorisations should be included with such applications for generation licences.
- 6.3 The public and affected stakeholders require clarity in respect of gas pipeline authorisations in order to understand the issues and to enable meaningful comment and input to NERSA on the impacts and implications of such gas pipelines in South African waters for 20 years.



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- 6.4 In light of the above alone, it is therefore irrational and superfluous for NERSA to consider and/or grant the Karpowership generation licence applications at this premature stage, including through this public participation process.

7. Evidence that Eskom's board will agree to PPAs is not included in Karpowership licence applications

- 7.1 The Karpowership project generation licence applications do not include evidence that the Eskom board has agreed or will agree to enter into power purchase agreements (PPAs) between the Karpowership IPPs as generators, and Eskom as off-taker for the electricity generated, for 20 years.

- 7.2 On the contrary, reports indicate that Eskom is expressing deep reservations about entering into PPAs with the Karpowership IPPs for the next 20 years. In this regard, OUTA wishes to emphasise NERSA's role as per section 2(b), (e) and (g) of the ERA, which reads as follows:

"(b) ... [To] ensure that the interests and needs of present and future electricity customers and end users are safeguarded and met, having regard to the governance, efficiency, effectiveness and long-term sustainability of the electricity supply industry within the broader context of economic energy regulation in the Republic.

...

(e) promote the use of diverse energy sources and energy efficiency;

...

(g) facilitate a fair balance between the interests of customers and end users, licensees, investors in the electricity supply industry and the public."

- 7.3 By not taking the absence of clarity on PPAs into consideration, NERSA will effectively disregard its own mandate should a decision be taken to grant the licences in question.

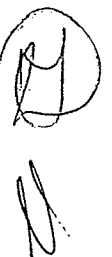
- 7.4 NERSA's own generation licensing procedures require that evidence of PPAs, or at least agreement by the Eskom board that Eskom as off-taker will enter into such PPAs, should be included with such applications for generation licences.

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- 7.5 The public and affected stakeholders require clarity in respect of Eskom's agreement or refusal to enter into such PPAs, together with Eskom's reasons, in order to understand the issues and to enable meaningful comment and input to NERSA on the economic, contractual and other implications of such PPAs with Eskom, as the national electricity utility, for 20 years.
- 7.6 In light of the above alone, it is therefore irrational, premature and unnecessary for NERSA to consider and/or grant the Karpowership generation licence applications at this stage, including through this public participation process.

***Who will buy the Karpowership electricity?
There's no power purchase agreement with Eskom,
and Eskom doesn't seem keen to sign up even if it
could afford it***

8. Criminal investigation by DFFE of Karpowership environmental authorisation application

- 8.1 It has been widely reported and is in the public domain that the Green Scorpions at the DFFE are investigating potentially criminal conduct relating to the extraordinary environmental authorisation granted to Karpowership in June 2020.
- 8.2 This authorisation, just before the RMIPPP tender was announced, exempted Karpowership under an emergency provision of National Environmental Management Act, 1998 (NEMA) from having to undertake environmental impact assessments (EIAs) for its projects, purportedly because it would provide emergency power to combat Covid-19.



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- 8.3 DFFE subsequently revoked the exemption on the basis that the Department had been misled. This forced Karpowership to reapply, this time with complete EIAs for all three of its RMIPPP projects. But DFFE has since refused to grant environmental authorisation sought in respect of these applications.
- 8.4 The public and affected stakeholders require clarity in respect of the subject and outcome of the investigation by the Green Scorpions, and any resulting criminal charges that may arise, in order to understand the issues and legalities, and to make meaningful comment and input to NERSA on the behaviour and actions of Karpowership, its subsidiaries and/or associate companies.
- 8.5 While this investigation is in progress, which may lead to criminal prosecution, it is therefore irrational and premature for NERSA to consider and/or grant the Karpowership generation licence applications at this stage, including through this public participation process.

9. Legal challenge by DNG Energy disputing award of preferred bidder status to Karpowership

- 9.1 It has been widely reported and is in the public domain that DNG Energy is conducting a legal action against the award of preferred bidder status to the three Karpowership projects under the RMIPPP programme.
- 9.2 DNG Energy alleges in its court papers that procedural irregularities, conflicts of interest and corrupt activities resulted in the improper award of preferred bidder status to the three projects to Karpowership, its subsidiaries and/or associate companies.
- 9.3 DNG Energy is seeking to have itself substituted as the preferred bidder for the three projects in place of Karpowership, its subsidiaries and/or associate companies. The court hearing was set down for mid July 2021 but was delayed and is now set down for 9, 10 and 13 September 2021.

DNG Energy says the tender process had procedural irregularities, conflicts of interest and was corrupt, so the preferred bidder award was improper

- 9.4 The public and affected stakeholders require clarity in respect of the subject and outcome of this court action by DNG Energy in order to understand the issues and legalities, and to enable meaningful comment and input to NERSA on the award of preferred bidder status of Karpowership, its subsidiaries and/or associate companies.
- 9.5 In light of the above alone, while this court action is in progress and while judgement has yet to be made, it is therefore irrational and premature for NERSA to consider and/or grant the Karpowership generation licence applications at this stage, including through this public participation process.

10. Investigation by Portfolio Committee on Mineral Resources and Energy

- 10.1 It has been widely reported and is in the public domain that the parliamentary Portfolio Committee on Mineral Resources and Energy has taken legal opinion on its right to initiate a parliamentary inquiry into the award of preferred bidder status to the three Karpowership projects under the RMIPPP programme, and other issues arising.
- 10.2 It has also been widely reported and in the public domain that Parliament's legal advisors have indicated that the parliamentary Portfolio Committee on Mineral Resources and Energy does indeed have this right and intends to conduct such an investigation.
- 10.3 The public and affected stakeholders require clarity in respect of the subject and outcome of the inquiry by the Portfolio Committee on Mineral Resources and Energy in order to understand the details, and to make meaningful comment and input to NERSA on the licence applications for the three Karpowership projects.



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- 10.4 In light of the above alone, until the investigation by the Portfolio Committee on Mineral Resources and Energy is completed, it is therefore irrational and premature for NERSA to consider and/or grant the Karpowership generation licence applications at this stage, including through this public participation process.

11. Financial closure of the Karpowership projects has not and may never be reached

- 11.1 During the announcement of the preferred bidders for the RMIPPP programme by the Mineral Resources and Energy Minister Gwede Mantashe on 18 March 2021, the Minister indicated a *“non-negotiable”* date for financial closure of the RMIPPP projects, including the Karpowership projects, of 31 July 2021.
- 11.2 Under these circumstances, the date of 19 August 2021 would have been perfectly appropriate for public hearings to consider the generation licence applications of the successful bidders under the RMIPPP programme.
- 11.3 However, in the event, for many of the reasons indicated above, none of the successful bidders and projects announced by the Minister on 18 March 2021, including the three Karpowership projects, achieved financial closure by the deadline of 31 July 2021. The deadline date for financial closure has thus been extended to 30 September 2021 by the IPP Office of the DMRE.
- 11.4 Despite financial closure now being required by 30 September 2021, there is a likelihood that the date for financial closure of the Karpowership projects will be further extended, in due course, well beyond the revised deadline date. Indeed, it is quite likely that financial closure may in fact never be achieved for the Karpowership projects.

It is quite likely that financial closure may never be achieved for the Karpowership projects

- 11.5 In these circumstances, and until financial closure is achieved, it makes no sense, and it is irrational and premature for NERSA to consider and/or grant the Karpowership generation licence applications at this stage, including through this public participation process.

12. The business case, tariff rates and price variation of the Karpowership projects

- 12.1 It is noted that the tariff rates bid by Karpowership, its subsidiaries and/or associate companies, for electricity to be delivered into the Eskom grid by these three projects in the RMIPPP programme, were not the lowest, nor were they significantly different from those of several of the other bidders at the date of bid.
- 12.2 However, there is a very significant difference in the cost price variation that will be applicable to the three Karpowership projects as compared to that any of the other projects of the RMIPPP programme, over the 20-year contract period.
- 12.3 For all the non-Karpowership projects of the RMIPPP programme, imported fuel costs (LNG, diesel, etc.) form a very low percentage of the tariff rate. The tariff rate is therefore largely indexed only to the South African consumer price index (CPI) over the 20-year contract and is therefore essentially fixed in real terms over this period.
- 12.4 The Karpowership projects, on the other hand, use fully imported LNG fuel, which makes up an estimated 60% of the tariff rate. Similarly, the powerships themselves are leased from the

Turkish Karpowership holding company, with the associated lease costs thus being another fully imported cost component, making up an estimated further 25% of the tariff rate.

- 12.5 Thus, an estimated 60% of the tariff rate is indexed to US Dollar market price of LNG, the US Dollar to ZA Rand exchange rate and the carbon price, with massive upside potential of the tariff rate over the next 20 years. A further estimated 25% of the tariff rate is likely to be indexed to one or other foreign currency, with little or no transparency as to the details.
- 12.6 Very significant portions of the three Karpowership licence applications, particularly those portions disclosing details and make-up of the business case, tariff rates and price adjustment formulae described above, have been redacted and are not available to the public or affected stakeholders.
- 12.7 However, it is clear that the Karpowership project bid tariff rates, which are quite close to those of the non-Karpowership projects at the date of bid, may be significantly different (i.e., higher) than those of the non-Karpowership projects over the course of the 20-year contract period.

Karpowership is not the cheapest option and we may find that it becomes unaffordably expensive, as 60% of the tariff is linked to the US dollar price of gas

- 12.8 Yet there is no information available to the public and affected stakeholders as to how the DMRE and its IPP Office evaluated the impact of price variations of the tariff rates bid for the three Karpowership projects over the 20-year contract period, or the business case of these projects.
- 12.9 OUTA has noted that documentation made available to the public, which to some extent relate to the business case, has been provided in a redacted form. OUTA contends that any inputs made concerning redacted documentation is meaningless.
- 12.10 Thus, details of the tariff rate variation formulae and business case of the Karpowership projects over the 20-year contract, and the how the IPP Office accounted for the differences in tariff rate variations between Karpowership and non-Karpowership projects, is neither transparent nor visible.



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- 12.11 In these circumstances, it is impossible and irrational for NERSA to expect the public and affected stakeholders to make any meaningful comment and input on the business case and its evaluation by the IPP Office, and therefor on the generation licence applications themselves, for the Karpowership projects, through this public participation process.

How did the Department of Mineral Resources and Energy evaluate the impact of price variations on the tariffs?

13. Conclusion

- 13.1. Any one of the many objections detailed above would stand to disqualify consideration by NERSA of the generation licence applications for the Karpowership projects, including the commencement by NERSA of this public participation process.
- 13.2. Considering the totality of all the objections detailed above collectively, it is indeed astounding that NERSA is seen to be entertaining the Karpowership project generation licence applications, notwithstanding section 4 of the ERA.
- 13.3. The announcement and holding of this public participation process by NERSA to consider the generation licence applications for the Karpowership projects is inconsistent with NERSA's own processes and past practices, where only complete licence applications are considered.
- 13.4. The Karpowership project generation licence applications are far from complete and/or adequate, and many processes detailed above are still underway before any such generation licence application can or should be considered by NERSA.

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- 13.5. The three Karpowership project generation licence applications should therefore be rejected and returned to the applicant(s) pending the completion of the many outstanding and incomplete permissions and processes that are currently underway in respect of these projects.

***The Karpowership licence applications are incomplete,
so NERSA should not even be considering them***

***OUTA calls on NERSA to reject the Karpowership licence
applications***