



## **BACKGROUND INFORMATION DOCUMENT (BID)**

**SECTION 40 (onwards), NATIONAL WATER ACT, ACT 36/1998 (as amended)**

**WATER USE LICENCE APPLICATION (Including NEMA remarks) 8 August 2018:**

### **"BYEVANGER DAM"**

**BYEVANGER DAM LOCATED ON PORTION 3, FARM 36, BUFFELSFONTEIN IN THE LADISMITH REGISTRATION DISTRICT,  
BGCMA - QUATERNARY CATCHMENT J11J, WESTERN CAPE PROVINCE**

### **1. Introduction**

**Gorra Water** has been appointed as the independent water use facilitator and Approved Professional Person ("APP") for Dam Safety to submit the compulsory Water Use License Application ("WULA") to the National Water Act, Act 36 of 1998 (as amended) and to provide inputs for the legally required Section 24G application<sup>1</sup> processes in terms of the National Environmental Act (NEMA), Act 107 of 1998 (as amended) and related Regulations for the **Byevanger Dam**.

The above on behalf of the Applicant, **Johannes Gerhardus Nel Familietrust ("JGNF")**. **Trust no. 4444/97. Duly represented by Stephanus Nel, ID no. 5504255088086 as per POA on record.**

In contravention of Section 32 of the NWA, the Applicant commenced with the construction of the Byevanger Dam, without the necessary water use authorisations (nor the environmental authorisations). Johannes Gerhardus Nel Familietrust is now applying for the authorisation of water uses to:

- a. The *Taking of Water* Section 21(a)
- b. The *Storing of Water* Section 21(b)
- c. The *Impeding and Diverting of a Water Course* Section 21(c)
- d. The *Altering of the banks of a Water Course* Section 21(i)

The competent authority for the water uses in this case is the Breede-Gouritz CMA ("BGCMA") for the authorisation of the unlawful construction of storage and other sections of the National Water Act.

In addition to the National Water Act sections, a Section 40 Water Use License Application is being submitted. The latter informed by NEMA, Act 107 of

1998 and the National Heritage and Resources Act (Act 25 of 1999).

### **2. Water Uses undertaken without authorisation**

The Applicant has commenced with the construction of the **Byevanger Dam** on Portion 3 of the Farm Buffelsfontein (C042-036-003 and abutting on Portion C042-042-066 in Quaternary J11J) in the Ladismith Registration District without the necessary authorisation. The following construction was executed:

- a. A Full Supply Volume ("FSV") of 149 621.62 m<sup>3</sup>.
- b. A Full Supply Area ("FSA") of 3.1 ha.
- c. The dam wall height of 10.7 meters.
- d. The dam wall length of approximately 208 meters.

No further activities are planned for the dam except for the compulsory Dam Safety obligations when inspections to of Chapter 12 of the NWA demand safety related actions – this to be included in a Maintenance and Management Plan ("MMP") authorised to NEMA.

The following other technical specialist studies is being undertaken to inform the WULA process:

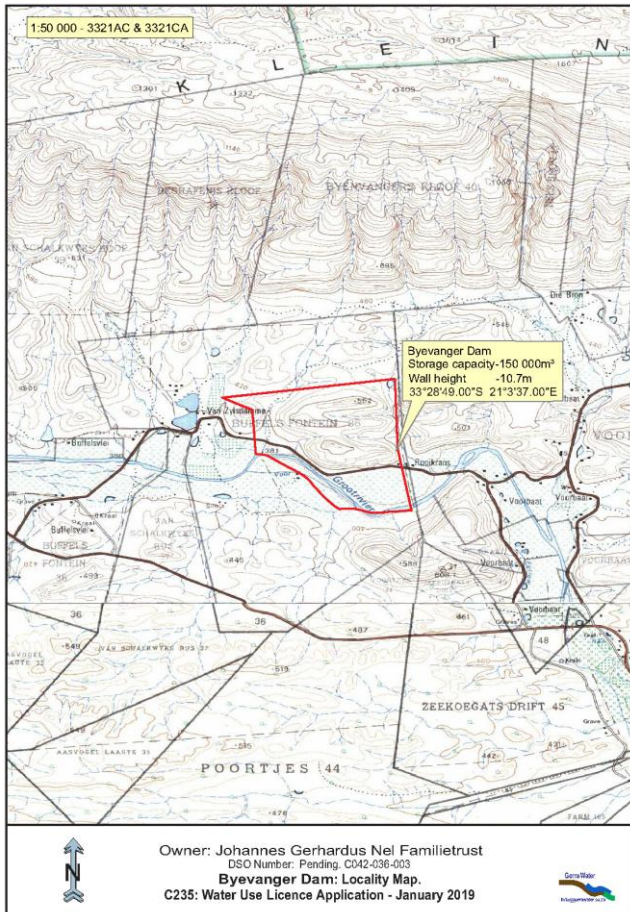
- a. Socio Economic Impact Assessment
- b. Fresh Water Impact Assessment
- c. Heritage related Assessment
- d. At this stage the Dam Safety Study for the Byevanger Dam, was initiated and the dam is Registered, and Classified as a **Category 2 Medium Sized Dam, with a Significant** risk. The dam safety reference number as listed at the Dam Safety Office is **12/2/J331/50**.

<sup>1</sup> BACKGROUND INFORMATION DOCUMENT (BID), Cape-EAPrac, Section 24G Application for *ex post facto* Environmental Authorisation, 28 January 2018 (?), author Marie-Louise Van Zyl (?)



### 3. Locality and Site context

See the attached Locality Plan C235.01/1



This tract is the water course upstream of the Byevanger Dam. This Tract A is not impacted and is not addressed in this BID document except for flood and yield calculations as required for the WULA and dam safety.

#### **Tract B – The locality, siting and footprint of the Byevanger Dam.**

This involves the following properties:

In the Ladismith RD:

- Farm 36 Portion 03 (C042-036-003)
- Farm 42 Portion 66 (C042-042-066)

#### **Tract C – Byevanger Dam to the Groot River**

This involves the following properties.

In the Ladismith RD:

- Farm 36 Portion 03 (C042-036-003)
- Farm 42 Portion 66 (C042-042-066)
- Farm 42 Portion 71 (C042-042-071)

### 4. National Water Act context

Farm 36, Portion 3 of Buffelsfontein (CO42-036-003) is located in the J11J quaternary catchment. Authorisations for water use, e.g. the construction of storage is allowed to only 2 000 m<sup>3</sup> ito Sec.39 General Authorisations, and any increase in storage may therefore be executed only under the authorisation of the National Department of Water Affairs through Section 40 onwards.

A WULA is required for the construction of the storage of 149 621.62 m<sup>3</sup> (*a Section 53 directive may be issued by the Dam Safety Office of DWS, limiting the storage in the enlarged Byevanger Dam to the historic Section 32 volume*). This dam is now also a “Dam Safety Dam” with the obvious requirements to comply with Chapter 12 of the NWA. This additional Storage is now also subject to Section 21(c) and Section 21(i) scrutiny and BGCMA requires this to be reflected in the WULA.

#### **Section 27 of the NWA obligations:**

- a. The Reserve of Section 18 has not been determined; neither imposed and must be considered in this WULA.
- b. This is also true for Section 27(b) of the NWA where sufficient proof must be given that the “..historic, gender and racial..” issues are addressed and rectified ito the NWA. An agreement (JGNF / Byevanger Pty Ltd) to this effect is being negotiated through a report which will include a proposed signed contract prepared by the Social Impact Assessors, MK & Associates.



The Water Uses are considered in a down stream direction.

#### **Tract A – Watershed to the impending location of the Byevanger Dam.**

**Section 35 Verification of ELU’s** was started by the CSIR and this quaternary catchment J11J is also subject to this scrutiny, but is not yet completed. The

final Section 35(4) determination for the JGNF is expected during the later part of 2019.

**Section 126 onwards, Servitudes**, are in place and no further actions are planned or required for this item.

**Section 41(5)** - Finally the compulsory coordination between the WULA and NEMA process is complied with as required ito of the NWA.

## **5. What is the purpose of this document?**

The main purpose of this Water Use **Background Information Document** ("BID") is to:

- a. Provide potential "Interested and Affected Parties" (I&APs) and Stakeholders with information regarding the water uses related to the construction of the dam and actions which commenced without authorization;
- b. Explain the way forward for the combined WULA and the Section 24G NEMA environmental process.

## **6. The WULA Section 40 (onwards) documentation and the NEMA Section 24G Environmental Impact Report**

As stated in paragraphs above (in a downstream order), the construction of the 'Byevanger Dam' must be the subject of a NWA authorization and also triggered listed activities in terms of NEMA, all adhering to the applicable Notices published in terms of these two Acts:

### **a. NEMA - Listing Notice 1; 19:**

The **infilling or depositing** of any material or more than 10 cubic meters into, **or the dredging, excavation, removal or moving of soil**, sand, shells, shell grit, pebbles or rock of **more than 10 cubic meters from a watercourse**. ***This Listed Activity is considered in the NWA, Section 21(b), Section 21(c) and Section 21(i) chapters of the WULA.***

### **b. NEMA - Listing Notice 1; 48:**

The **expansion of (i) infrastructure or structures** where the **physical footprint** is expanded by **100 square meters or more**; or (ii) **dams or weirs**, where the dam or weir, including infrastructure and **water surface area**, is **expanded by 100 meters or more** - where such expansion occurs - (a) **within a watercourse** ***This Listed Activity is considered in the NWA, Section 21(b), Section 21 (c) and Section 21(l) sections of the WULA.***

### **c. NEMA - Listing Notice 1; 50:**

The **expansion of facilities or infrastructure** for the in-stream **storage of water, including dams** and reservoirs, where the combined capacity will be increased by 50 000 cubic meters or more. ***This Listed Activity is considered in the NWA, Section 21(b) sections of the WULA.***

### **d. NEMA - Listing Notice 1; 66:**

The **expansion of a dam** where - (i) the **highest part of the dam wall**, as measured from the outside toe of the wall to the highest part of the wall, was originally 5 meters or higher and where the height of the wall is **increased by 2.5 meters or more**; and (ii) where the **high-water mark of the dam will be increased with 10 hectares or more**. ***This Listed Activity is considered in the NWA, Section 21(b) section of the WULA.***

The procedures set out for the WULA will also be done in conjunction with the EIA Regulations to seek a retrospective Water Use and Environmental Authorisation for the commenced water uses and listed activities.

## **7. Stakeholder Engagement**

A pre-application public participation process (PPP) will be followed allowing neighboring property owners and key stakeholders the opportunity to register as 'Interested & Affected Parties (I&APs)' and consider / comment on the construction of the Byevanger Dam.

Going forward, registered I&APs will be provided an opportunity to review & comment on the Section 40 NWA WULA and the Section 24G NEMA Impact Assessment Report and Environmental Management Maintenance Program (EMMP) when they become available. Input/comments received during the process will be considered and responded to in the final report, to be submitted to the competent authority for review and decision-making.

The following steps, amongst others, will be undertaken as part of the combined WULA and Environmental Process:

- a. Identifying potential Interested and Affected Parties ("I&AP's");
- b. **Advertising** a 'Call for Registration of Interested & Affected Parties (I&APs)' in a local newspaper (*Oudtshoorn Courant*) with a registration period of 30-days
- c. Placement of a **Site Notice** at the entrance to the property calling for Registration of I&APs;
- d. Make available the **Background Information Document (BID)** for distribution to potential I&APs and neighboring land owners, briefly



- explaining the process and project (**also** this document);
- e. Open and maintain a **Registered Stakeholder database**;
  - f. Undertaking of specialist impact assessments and project team reports (if necessary);
  - g. Submission to BGCMA of the WULA
  - h. Compilation and public availability of the WULA and Section **24G** Impact Assessment Report and EMMPr
  - i. Respond with accepting or rejecting the conditions of the WULA (if authorized with conditions or refusal).
  - j. Should the WULA be refused, consider lodging an appeal with the Water Tribunal
  - j. **Submit** the final reports to DEA&DP for **decision making** (authorisation with conditions, or refusal);
  - k. Notification of registered I&APs and Stakeholders of the WULA and **Environmental Decision**, and details of appeal process / period.

that you **may be affected** by the construction of the Byevanger Dam and related activities, you are invited to **register** as an I&AP for the WULA and NEMA environmental process, within the 30-day registration.

The registration as an I&AP for both the NWA and the NEMA processes through Cape-EAPrac and the contact person is Mrs. Marie-Louise Van Zyl at telephone 044 874 0365 and e-mail [sian@cape-eaprac.co.za](mailto:sian@cape-eaprac.co.za).

Water Use and WULA related questions can also be addressed to Retief Kleynhans Pr Eng at telephone 044 8743866, cell number 0832777422 or email [retief@gorrawater.co.za](mailto:retief@gorrawater.co.za).

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## **8. Issues & Concerns**

The following issues and concerns were raised in consultation with the project team, key authorities and/or specialists:

- a. **Proximity to the Groot River** & potential impact on downstream water users;
- b. **Potential siltation** of surface run-off due to earthmoving activities and/or erosion;
- c. **Potential impact on 'sense-of-place'** due to increased height of dam wall, as **visible** to neighboring land portions;
- d. **Need & Desirability** of the construction of the dam;

## **9. Why and how should you get involved?**

Names and details of members of the public who respond to the legal advert & notices (calling for Interested & Affected Parties (I&APs) to register) will be captured on the project **Stakeholder Register**. All written comments provided will also be recorded. According to the Guidelines on Public Participation, only those parties that submit their full contact details for registration purposes &/or who submit comment, will be registered. Documentation containing incomplete, or no contact details, may not be considered.

In the event that you (or any other party you may be aware of) have an **interest** in the WULA and/or NEMA Section 24G environmental process, or feel