

Melissa Mackay

From: Shafeeq Mallick <Shafeeq.Mallick@westerncape.gov.za>
Sent: Thursday, 22 July 2021 3:21 PM
To: Melissa Mackay; Nabeelah Khan
Cc: M Nel; faniene132@gmail.com
Subject: RE: 14/2/4/1/D3/8/0027/19 Byevanger Dam on Portion 3 of 36 Buffelsfontein & Portion 42 of 66 Voorbaat, Ladismith

Good afternoon Melissa

The contents of the below email is noted, and the revised project programme is hereby acknowledged.

Thank you,

Shafeeq Mallick

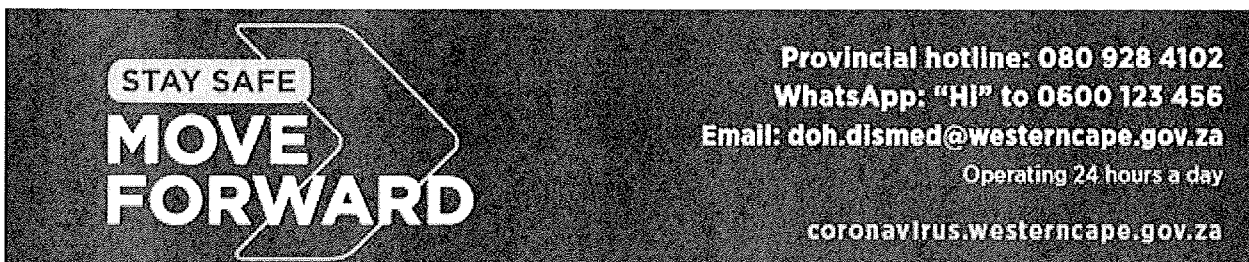
Specialised Environmental Officer
Sub- Directorate: Rectification
Directorate: Environmental Governance
Department of Environmental Affairs and Development Planning

1st Floor, 1 Dorp Street, Leeusig Building, Cape Town, 8001

Telephone : 021 483 8339
Facsimile : 021 483 4033
Email : Shafeeq.mallick@westerncape.gov.za
Website : www.westerncape.gov.za/eadp



BETTER TOGETHER.



STAY SAFE
MOVE FORWARD

Provincial hotline: 080 928 4102
WhatsApp: "HI" to 0600 123 456
Email: doh.dismed@westerncape.gov.za
Operating 24 hours a day
coronavirus.westerncape.gov.za

From: Melissa Mackay <mel@cape-eaprac.co.za>
Sent: Thursday, July 22, 2021 10:33 AM
To: Shafeeq Mallick <Shafeeq.Mallick@westerncape.gov.za>; Nabeelah Khan <Nabeelah.Khan@westerncape.gov.za>
Cc: M Nel <mdoknel@outlook.com>; faniemel32@gmail.com
Subject: 14/2/4/1/D3/8/0027/19 Byevanger Dam on Portion 3 of 36 Buffelsfontein & Portion 42 of 66 Voorbaat, Ladismith

Good morning Shafeeq

RE: DRAFT 24G IMPACT REPORT FOR THE BYEVANGER DAM ON PORTION 3 OF 36 BUFFELSFONTEIN & PORTION 42 OF 66 VOORBAAT, LADISMITH

The Draft 24G Impact Report for the above mentioned project has reference. Please find attached a copy of the revised project programme. This office was notified by Mr Retief Kleynhans on 30 June 2021 that he had finalised the WULA application. This means that this process can now continue.

Thank you for your patience in this matter.

Regards

Melissa Mackay | 084 584 7419
SENIOR CONSULTANT | ECO | GIS
BTech Nat. Con. (NMMU)

T: 044 874 0365
F: 044 874 0432
17 Progress Street, George
PO Box 2070, George 6530




Cape EAPrac




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COVID -19 Operational Notice

 **Our office is fully operational**

 **We confirm that we comply with the government's guidance on managing the risk of Covid-19**

Melissa Mackay

From: Melissa Mackay
Sent: Thursday, 22 July 2021 10:33 AM
To: Shafeeq Mallick; Nabeelah Khan
Cc: M Nel; faniene132@gmail.com
Subject: 14/2/4/1/D3/8/0027/19 Byevanger Dam on Portion 3 of 36 Buffelsfontein & Portion 42 of 66 Voorbaat, Ladismith
Attachments: KAN557 Project Programme 22Jul21.pdf

Good morning Shafeeq

RE: DRAFT 24G IMPACT REPORT FOR THE BYEVANGER DAM ON PORTION 3 OF 36 BUFFELSFONTEIN & PORTION 42 OF 66 VOORBAAT, LADISMITH

The Draft 24G Impact Report for the above mentioned project has reference. Please find attached a copy of the revised project programme. This office was notified by Mr Retief Kleynhans on 30 June 2021 that he had finalised the WULA application. This means that this process can now continue.

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Our office is fully operational



We confirm that we comply with the government's guidance on managing the risk of Covid-19



REFERENCE: 14/2/4/1/D3/8/0027/19
ENQUIRIES: Shafeeq Mallick

The Trustees
JG Nel Familie Trust
P. O. Box 6
LADISMITH
6655

Tel: (087) 941 7562

Email: fanie@wispernet.co.za

Attention: Fanie Nel

STATUS OF SUBMISSION OF THE SECTION 24G APPLICATION FOR THE CONSEQUENCES OF UNLAWFUL COMMENCEMENT OF A LISTED ACTIVITY: UNLAWFUL CONSTRUCTION OF THE BYEVANGER DAM WITHIN THE GROOTRIVER ON PORTION 3 OF 36 BUFFELSFONTEIN AND PORTION 66 OF 42, LADISMITH

1. The consultation form dated 15 October 2019 as received by this Department on 16 October 2019 and the response thereto in the section 24G application information requirements letter dated 01 January 2020, has reference.
2. Please be reminded that the section 24G application is still outstanding and the Department awaits the submission thereof. Kindly advise as to the anticipated date for submission of the application.
3. Note that the continued operation, conduct or undertaking of the activity or activities will remain unlawful. Should an environmental authorisation be issued at the conclusion of the section 24G application process, it shall only take effect from the date on which it has been issued.
4. Please be advised that submission of a 24G application shall in no way derogate from an investigation of any transgression in terms of the *National Environmental Management Act, 1998* ("NEMA"), nor from the National Prosecuting Authority's legal authority to institute criminal proceedings.

Mrs Z Toefy
Head of Rectification
Directorate: Environmental Governance

CC: (1) Ms Melissa Mackay (EAP)

Email: mel@cape-eaprac.co.za



REFERENCE: 14/1/1/E3/6/2/3/L961/18

ENQUIRIES: D Mouton

BY EMAIL

Mr Fanie Nel

Email: faniene132@gmail.com

JG Nel Family Trust

PO Box 6

Ladismith

6655

Dear Sir

**ALLEGED UNLAWFUL CONSTRUCTION OF A DAM ON BUFFELSFONTEIN 36/3 AND FARM
VOORBAAT 42/66 LADISMITH (THE PROPERTY)**

1. The above matter refers.
2. The Department's Directorate: Environmental Law Enforcement ("this Directorate") wishes to inform you that the above matter has been referred to the Department's Sub-directorate: Rectification, to ensure compliance with the s24G Project Schedule as stipulated in the Department's Compliance Notice, dated 31 October 2019, and for further processing of the s24G application procedure.

3. Kindly be advised that the Directorate's administrative enforcement investigation into this matter has been concluded and the file has been closed.
4. Furthermore, failure to comply with the Department's Compliance Notice (dated 31 October 2019) or the abandonment of the s24G application process, will result in the matter being referred to the Department's Criminal Investigation component to institute the necessary criminal action.
5. This Directorate wishes to thank you for your continuous co-operation in this regard.



Achmad Bassier

Director: Environmental Law Enforcement

Date: 29/06/2020

CC:

Ms Melissa Mackay (Cape EAPrac) Email: mel@cape-eaprac.co.za

Ms Louise-Mari van Zyl (Cape EAPrac) Email: louise@cape-eaprac.co.za



REFERENCE: 14/2/4/1/D3/8/0027/19

ENQUIRIES: Shafeeq Mallick

The Trustees
JG Nel Familie Trust
P. O. Box 6
LADISMITH
6655

Tel: (087) 941 7562

Email: fanie@wispernet.co.za

Attention: Fanie Nel

Dear Sir

INFORMATION REQUIREMENTS OF THE POTENTIAL SECTION 24G APPLICATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA") FOR THE UNLAWFUL COMMENCEMENT OF LISTED ACTIVITIES: UNLAWFUL CONSTRUCTION OF THE BYEVANGER DAM WITHIN THE GROOTRIVER ON PORTION 3 OF 36 BUFFELSFONTEIN AND PORTION 66 OF 42, LADISMITH

1. The abovementioned consultation form dated 15 October 2019 as received by this Department on the 16 October 2019, has reference.
2. Please be advised that the *Section 24G Fine Regulations (GN. No. 698 of 20 July 2017* (hereafter referred to as "the fine regulations") were published on 20 July 2017. The fine regulations require that public participation be conducted prior to the submission of an application and that an application must include the representations as set out in Annexure A of the fine regulations.
3. Please be advised that submission of a section 24G application shall in no way derogate from an investigation of any transgression in terms of the *National Environmental Management Act, 1998 (Act 107 OF 1998)* ("NEMA") nor from the National Prosecuting Authority's legal authority to institute criminal proceedings.
4. A section 24G application is only relevant to listed that have commenced without the pre-requisite environmental authorisation. Only those activities applied for will be considered for environmental authorisation.
5. The applicant is thus required to ensure that all the applicable listed activities are included in the application to be submitted. In this regard, the timeframe of commencement of the listed activity/ies and the relevant Environmental Impact Assessment legislative period/regime is of particular importance.
6. Please also ensure that the similarly listed activities in terms of the current *Environmental Impact Assessment Regulations, 2014* (as amended) are applied for should the listed activities not have commenced within this period.
7. The appointed Environmental Assessment Practitioner is required to provide a detailed explanation as to why the unlawfully commenced activity is still similarly listed in terms of the NEMA.
8. You are reminded that section 24G is an application for environmental authorisation and thus an applicant must comply with the requirements of the NEMA in relation to the submission of an application for environmental authorisation and any other relevant information (section 24(1A)(e)

of the NEMA). Section 24(4)(a) of the NEMA specifies the "procedures for the investigation, assessment and communication of the potential consequences or impacts of the activities on the environment" that every application for environmental authorisation must comply with.

9. Taking the above into consideration, together with the information requirements of Annexure A, Section C, Part 1 of the fine regulations related to the environmental impacts and representations to be completed by an Environmental Assessment Practitioner ("EAP"); and to be submitted together with the section 24G application; you are hereby advised that the application be informed by an environmental impact assessment.
10. When conducting such environmental impact assessment, the applicant/EAP must take into account the applicable guidelines developed by the Department, which may be downloaded from the Department's website (see above). In particular, the following are applicable:
 - 10.1. Guideline for Environmental Management Plans (June 2005);
 - 10.2. Guideline on Public Participation
 - 10.3. Guideline on Alternatives
 - 10.4. Guideline on Need and Desirability
 - 10.5. Departmental guideline series for involving specialist assessments, 2005
 - 10.6. Information Document for the Development of a Maintenance Management Plan for a Watercourse, July 2017
11. Having considered the information contained in the consultation form, this Department hereby advises that a freshwater specialist be considered for appointment to assess the impacts the dam has on the river system.
12. Preliminary Advertisement
 - 12.1. Kindly note the requirements of Annexure A, Section D of the fine regulations which stipulate that when submitting an application form, the applicant must attach proof that the application has been advertised in at least one local newspaper in circulation in the area in which the activity was commenced, and on the applicant's website, if any.
 - 12.2. Please note further that the advertisement must state that the applicant commenced a listed/ specified/ waste management activity(ies) without the necessary environmental authorisation and/or waste management licence and is now applying for *ex post facto* approval. The advertisement **must** include (a) the date, (b) the location, (c) the applicable legislative provision contravened, (d) and the listed activity(ies) commenced with without the required authorisation.
 - 12.3. Interested and affected parties (I&APs) must be provided with the details of where they can register as an I&APs and submit their comment. Please be advised that at least 20 days must be provided in which to do so.
 - 12.4. Should you decide to compile a draft section 24G Application and of your own accord make it available for comment, it is recommended that the draft section 24G Application report be made available simultaneously with the Preliminary Advertisement requirement.
 - 12.5. However, kindly note that any public participation undertaken **prior to submission of the final section 24G Application** report, does not exempt from compliance with section 24O of the NEMA which obligates the competent authority when considering an application; to consult with every State department that administers a law relating to a matter affecting the environment.
13. It is noted that your activity/development requires a water use licence. Please provide proof of submission of the application to the relevant authority together with your section 24G application form.
14. Two printed copies as well as two electronic copies (saved on CD/DVD) of the Application must be submitted to the Department.

15. You are reminded that it is an offence in terms of section 49A of the NEMA to commence with a listed activity unless the competent authority has granted environmental authorisation for the undertaking of the activity and it is an offence to fail to comply with a directive issued in terms of NEMA. A person convicted of an offence is liable to a fine not exceeding **R10 million** or **imprisonment for a period not exceeding 10 years**, or to both such fine and imprisonment.
16. Kindly quote the abovementioned reference number in any future correspondence in respect of this consultation form.



Mr S Mallick
Acting Head of Rectification
Directorate: Environmental Governance

Date: 2020 -01- 17

CC: (1) Melissa Mackay (EAP)

Email: mel@cape-eaprac.co.za

Fax: (044) 874 0432



Cape EA Prac

Cape Environmental Assessment Practitioners (Pty) Ltd

Reg. No. 2008/004627/07
VAT No 4720248386



Telephone: (044) 874 0365
Facsimile: (044) 874 0432

Web: www.cape-eaprac.co.za

17 Progress Street, George
PO Box 2070, George 6530

19 July 2019

Our Ref: KAN557/02

DEA&DP Ref: 14/1/1/E3/6/2/3/L961/18

Attention: Ms Diana Mouton
Department of Environmental Affairs & Development Planning
Directorate: Law Enforcement

VIA: Email (Diana.Mouton@westerncape.gov.za)

RE: CONFIRMATION OF 24G RECTIFICATION PROCESS FOR THE UNLAWFUL DAM ON PORTION 3 OF 36 BUFFELSFONTEIN, LADISMITH

Your correspondence dated 25 June 2019 and email correspondence with Mr Eckart Brand of Brand & Van Der Bergh on behalf of Mr Fanie Nel, dated 11 July 2019 has reference.

Please be advised that Mr Nel intends to proceed with a 24G Rectification process for the unlawful dam on Portion 3 of 36 Buffelsfontein. In light of this, a 24G Consultation Application is being prepared and will be submitted to the 24G Directorate. We are awaiting the completion of the Socio-Economic Impact Assessment Report which will be included in the 24G Impact Report and the Water Use License Application.

The 24G Impact Report / Application will be made available to the public and other stakeholders for comment for a period of 30 days prior to it being submitted to the 24G Directorate. Please advise if this procedure has changed in any way.

A revised timeframe will be submitted for your attention as soon as the outstanding report authors can provide this office with the dates.

Kind regards,

Ms Melissa Mackay
SNR CONSULTANT

Cc:

Mr Eckert Brand
Mr Retief Kleynhans
Ms Zaidah Toefy

Brand & Van Der Bergh
Gorra Water
DEA&DP: 24G Directorate

brand@bvdblegal.co.za
retief@gorrawater.co.za
Zaidah.Toefy@westerncape.gov.za



REFERENCE: 14/1/1/E3/6/2/3/L961/18

ENQUIRIES: D Mouton

BY EMAIL

Mr Fanie Nel

Email: faniene132@gmail.com

JG Nel Family Trust

PO Box 6

Ladismith

6655

COMPLIANCE NOTICE

Dear Sir

COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998

1. I refer to the following:

- 1.1. The Department's Pre-Compliance Notice dated 28 June 2018;
- 1.2. The follow-up site inspection dated 11 July 2018;
- 1.3. The meeting held with the Directorate: Environmental Law Enforcement (this Directorate) dated 2 August 2018;
- 1.4. The representation received from your appointed Environmental Assessment Practitioner (EAP) Cape-EAPrac, dated 27 August 2018;

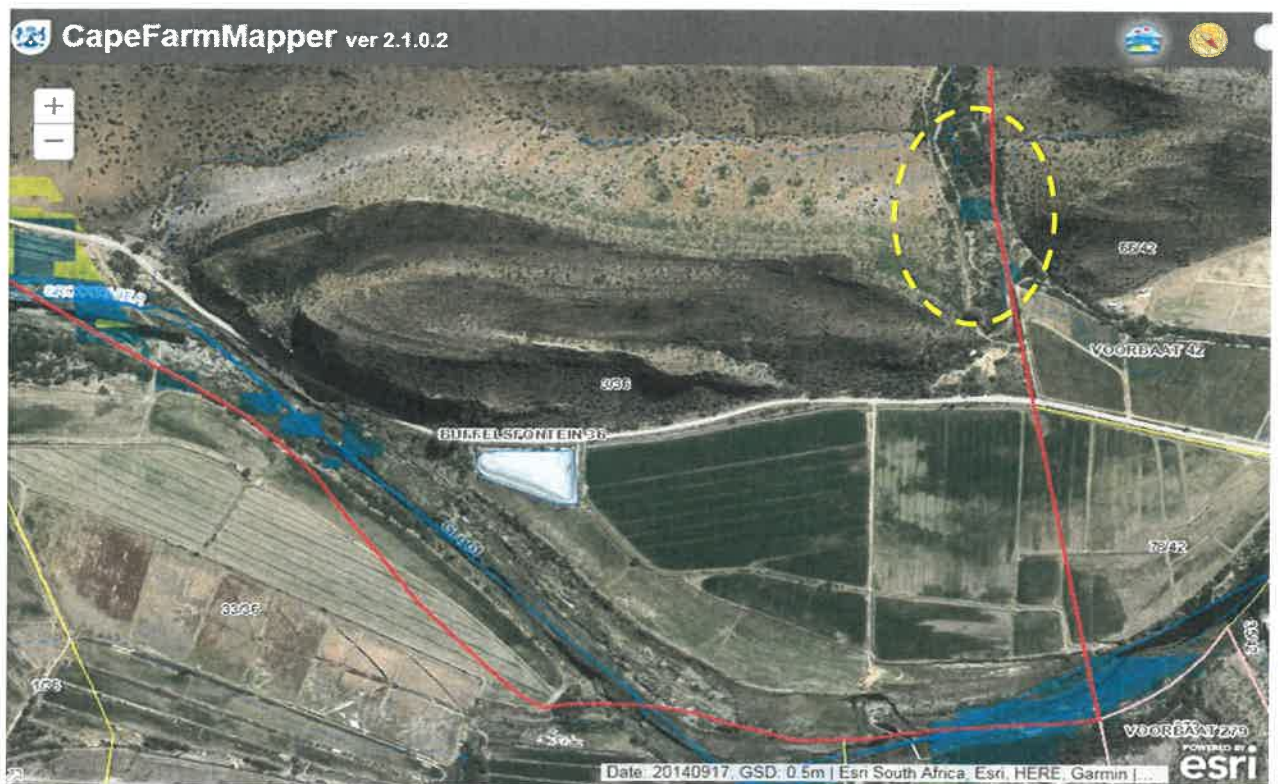
- 1.5. The preliminary S24G project schedule received from your appointed EAP on 29 January 2019; and
 - 1.6. The 2nd meeting held with this Directorate dated 13 May 2019.
2. Having considered your representations, I, Achmad Bassier, in my capacity as an Environmental Management Inspector Grade 1, hereby issue Mr Fanie Nel representing the JG Nel Family Trust with a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 ("NEMA").
 3. This Compliance Notice relates to non-compliance with the provisions of section 24F of the NEMA. No activity listed in the Environmental Impact Assessment ("EIA") Regulations Listing Notice 1 of 2014 may commence without environmental authorisation from the competent authority.

Details of conduct constituting non-compliance

4. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the NEMA, a site inspection was conducted at Farm Buffelsfontein 36/3, Ladismith by an Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement on 24 May 2018 and it was confirmed that you have commenced with the construction and or expansion of an in-stream dam, excavation, removal of sand from a watercourse and vegetation clearing of more than 1 ha of indigenous vegetation on the property without environmental authorisation.



Map 1: Location of the construction of the in-stream dam, excavation and alleged unlawful vegetation clearing that are undertaken on the property.



Map 2: Indication of the watercourse and tributary streams that are impacted upon with the construction of the in-stream dam on the property.

Directorate: Environmental Law Enforcement
 4th Floor, York Park Building, York Street, George, 6530
 tel: +27 044 8058625 fax: +27 044 8746431

Diana.Mouton@westerncape.gov.za
 Private Bag X6509, George, 6530
 www.westerncape.gov.za/eoad



Map 3: Indication of a dam servitude on the property, such servitude does not exclude the obtainment of environmental authorisation prior to construction of such a dam.

5. On considering the evidence before me there are reasonable grounds to believe that you have commenced the following activities without environmental authorisation:

EIA Regulations Listing Notice 1 of 2014:

Activity no. 12:

The development of—

- (i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or***
- (ii) infrastructure or structures with a physical footprint of 100 square metres or more;***

where such development occurs—

(a) within a watercourse;

(b) in front of a development setback; or

(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse

Activity no. 19:

The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse

Activity no. 27:

The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—

- (i) the undertaking of a linear activity; or*
- (ii) maintenance purposes undertaken in accordance with a maintenance management plan.*



Photo 1: View of the construction of a new dam wall within a watercourse on the property.



Photo 2: View (taken from the newly constructed dam wall) of the construction of the new dam within a watercourse with associated vegetation clearing and excavation of soil evidently taking place on the property.



Photo 3: View of the destruction of vegetation cleared and topsoil disturbance within a watercourse with the construction of the new dam on the property.

6. You are hereby instructed to:

- 6.1 Immediately cease the above listed activities;
- 6.2 submit to the Department within **30 (thirty) calendar days** of receipt of this Compliance Notice a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
 - 6.3 assessment and evaluation of the impact on the environment;
 - identification of proposed remedial and/or mitigation measures
7. Approval of the plan by the Department does not remedy the unlawful commencement of the above activities, which remain unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.
8. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
9. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.
10. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.

Varying this Compliance Notice

11. If you would like me to vary this Compliance Notice or extend the period to which it relates, you may make representations to me, in writing, to do so.

Failure to comply with this Compliance Notice (section 31N of the NEMA) and related offences in terms of the NEMA

12. In terms of section 49A(1)(a) of the NEMA it is an offence to commence a listed activity without environmental authorisation. A person convicted of such an offence is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

13. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of such an offence is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.

14. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:

14.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or

14.2 take any steps necessary to ensure compliance with the provisions of the law, permit or authorisation to which this Compliance Notice relates and recover from you the cost of doing so.

Procedure for lodging an objection to this Compliance Notice (section 31L and 31M of the NEMA)

15. If you wish to lodge an objection to this Compliance Notice, you may do so by making representations, in writing, to the Provincial Minister of Environmental Affairs and Development Planning ("the Minister") within 30 days of receipt of this Compliance Notice.

16. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.

17. The objection must be in writing and forwarded to the Appeal Administrator, Mr Jaap de Villiers at the contact details below and must be accompanied by a statement detailing the grounds of the objection and supporting documentation, if any.

By post: Western Cape Ministry of Local Government, Environmental
Affairs and Development Planning
Private Bag X9186
CAPE TOWN
8000

By facsimile: (021) 483 4174

By hand: Attention: Mr Jaap de Villiers (Tel: 021 483 3721)
Room 809
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: Jaap.DeVilliers@westerncape.gov.za

18. Irrespective of any representations you may make to me or to the Minister, you must comply with this Compliance Notice within the time period stated

in the Compliance Notice, unless the Minister agrees to suspend the operation of this Compliance Notice.



Achmad Bassier

Director: Environmental Law Enforcement

Grade 1 Environmental Management Inspector

Date: 25/04/2019

Cc:

Ms Melissa Mackay (Cape-EAPrac)

Email: mel@cape-eaprac.co.za

Mr Retief Kleynhans (Gorrawater)

Email: retief@gorrawater.co.za

Mr Eckert Brand (Brand & van der Bergh)

Email: brand@bvdblegal.co.za

Ms Zama Mbunquka (BGCMA)

Email: cabrahams@bgcma.co.za

Ms Zaidah Toefy (Directorate: Rectification) Email: Zaidah.Toefy@westerncape.gov.za



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

Private Bag X313, PRETORIA, 0001. Sedibeng Building 185, Francis Baard Street, PRETORIA, 0001.
Tel: +27 12 336 7500 www.dws.gov.za

modisel@dws.gov.za

✉ Ms L A Modise
☎ (012) 336-7758
📁 12/2/J331/55

Trustee
Johannes Gerhardus Nel Familie Trust
P O Box 6
LADISMITH
6885

ATTENTION: MR FANIE NEL (Email: fanie@wispernet.co.za)

Sir

CLASSIFICATION AND REGISTRATION OF DAM WITH A SAFETY RISK IN TERMS OF CHAPTER 12 OF THE NATIONAL WATER ACT, 1998 (ACT 36 OF 1998) READ WITH REGULATIONS 2, 3 AND 37 OF THE REGULATIONS PUBLISHED IN GOVERNMENT NOTICE R. 139 OF 24 FEBRUARY 2012: BYEVANGER DAM SITUATED ON PORTION 3 OF THE FARM 36, DIVISION OF LADISMITH

A. APPLICATION

Your applications from Mr Kleynhans, dated 09 January 2019, refer.

B. CLASSIFICATION

1. The classification of **Byevanger Dam** is as follows:

Vertical wall height	10.7 metres
Storage capacity	150 000 cubic metres
Size classification	Small
Hazard potential rating	Significant
Category	II

2. The classification is based on available information. If you have any information on the basis of which you feel the classification is incorrect, you should submit a substantiated application in writing for its revision.

C. REGISTRATION FOR DAM SAFETY PURPOSES

It is hereby confirmed that **Byevanger Dam** has been registered for dam safety purposes in terms of section 120 of the National Water Act, 1998 in your name. A printout reflecting information on the dam as stored on computer database at this Department is attached. Please check the correctness of the information shown and inform the Dam Safety Regulation of this Department in writing of any errors.



12/2/J331/55

D. THIS LETTER SHALL NOT BE CONSTRUED AS CONFERRING EXEMPTION FROM COMPLIANCE WITH THE FOLLOWING:

1. The provisions of Chapter 4 of the National Water Act, 1998 pertaining to the lawful water use. Address enquiries and applications in this regard to the following address:

Chief Director: Western Cape
Department of Water and Sanitation
Private Bag X16

SANLAMHOF
7532

Tel: (021) 941 6000

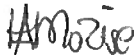
Fax: (021) 941 6100

2. The provisions and regulations of the National Environmental Management Act, 1998 (Act No. 107 of 1998) regarding control over activities which may have a detrimental effect on the environment.

E. GENERAL

Your attention is also invited to the fact that the first dam safety inspection of the dam by an approved professional person must be carried out within a period determined by the Department. The instruction in this regard will be issued to you by this Department.

Yours faithfully



Ms L A Modise

Designation: Senior Administration Clerk: Dam Safety Regulation

Date: 13 August 2019

Copy to: Email: vzd@mweb.co.za

Enclosure: Registration information

Department of Water and Sanitation - Dam Safety Office

Registration Details of a Dam Registered in terms of Dam Safety Legislation of Chapter 12 of the National Water Act (Act No. 36 of 1998)

(Please note that registration for dam safety legislation is not an entitlement for water use in terms of Chapter 4 of the National Water Act)

Departmental File No. : 12/2/	J331/55	WARMS Dam ID:	0
Water management area	8	Dam Status:	REG
Name of dam	BYEVANGER DAM	Drainage Nr:	J33A
Latitude	33 28 49	Longitude	21 3 37
Town nearest:	LADISMITH	Lat sec:	49.00
Distance from town (km)	25	Long sec:	37.00
Name of farm	FARM 36 PTN 3	WMA	Breede-Gouritz
Magisterial District	LADISMITH		
Province:	WESTERN CAPE	Water Management Region:	WESTERN CAPE
Date of completion			
Raising or Alteration Date			
River	GROOTRIVIER TR.		
Wall type	EARTHFILL		
Wall height (m)	10.7		
Crest length (m)	200		
Spillway	SIDE CHANNEL		
Capacity (1000 cub. m)	150		
Surface area of water (ha)	3.1	Catchment area (sq km)	0
Purpose	IRRIGATION		
Owner	Person in Control (if not the same as the owner)		
TRUSTEE	MR		
JOHANNES GERHARDUS NEL FAMILIE TR	NEL F.		
P.O BOX 6			
LADISMITH			
6885			
Tel no.		Tel no.	
Cell no.	087 941-7592	Cell no.	083 381-7293
Email / Fax	vzd@mweb.co.za	Email / Fax	fanie@wispnet.co.za
Designer	Contractor		
Registration date:	2019-03-22	Status	Dam Registered as a Dam with a Safety Risk
Size	Small	Hazard Rating:	Significant
Classification date:	2019-03-14	Category	2
Date Completion Report:		Date Last DSE	
		Number Last DSE:	0



REFERENCE: 14/1/1/E3/6/2/3/L961/18
ENQUIRIES: D Mouton

BY EMAIL

Mr Fanie Nel
JG Nel Family Trust
PO Box 6

Ladismith

6655

Email: fanie@wispernet.co.za

PRE-COMPLIANCE NOTICE

Dear Sir

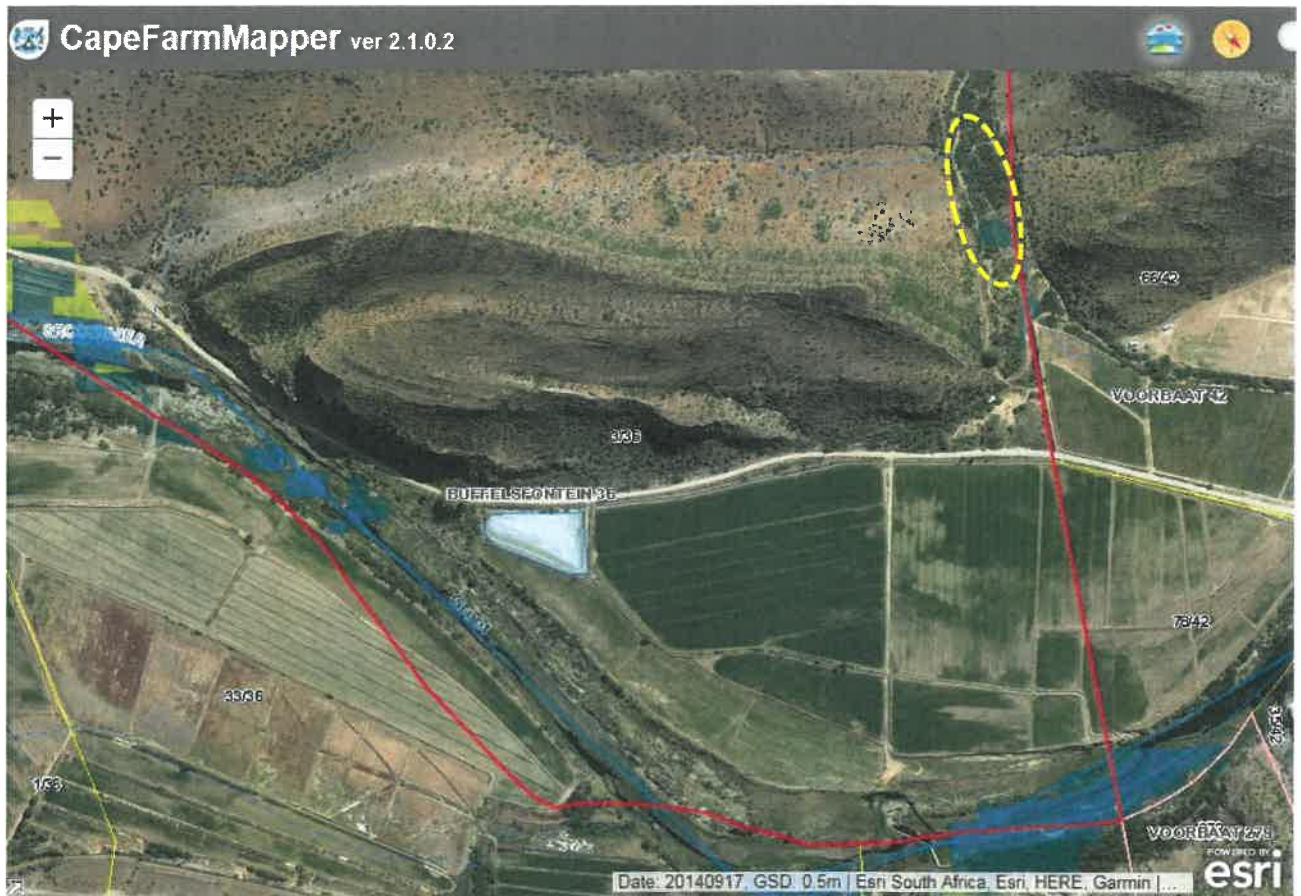
**INTENTION TO ISSUE A COMPLIANCE NOTICE IN TERMS OF SECTION 31L
OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998**

1. During an investigation into allegations of the commencement of listed activities in contravention of section 24F of the National Environmental Management Act, 1998 ("NEMA") a site inspection was conducted at Farm Buffelsfontein 36/3, Ladismith by Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement on 24 May 2018 and it was confirmed that you have commenced with the construction

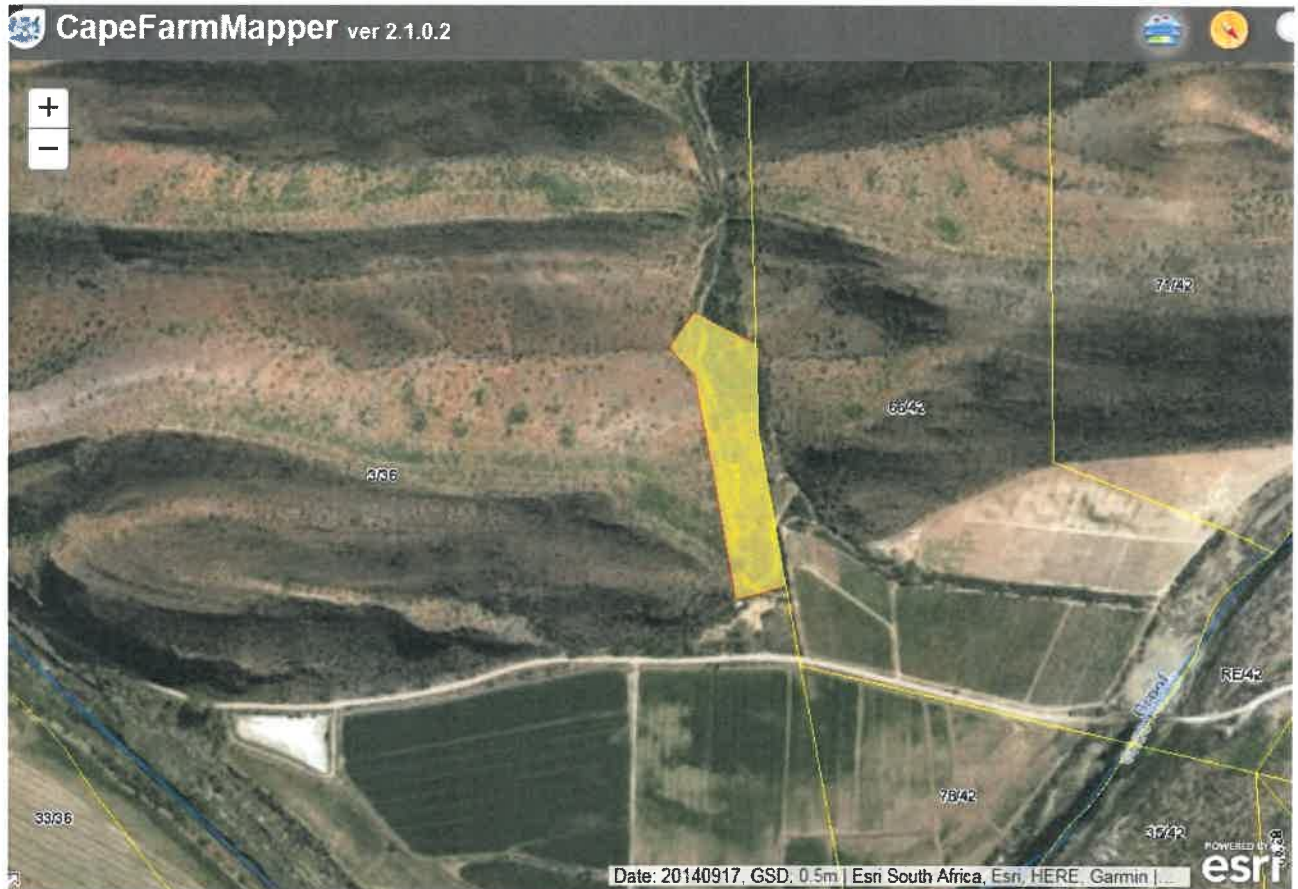
and or expansion of an in-stream dam, excavation, removal of sand from a watercourse and vegetation clearing of more than 1 ha of indigenous vegetation on the property without environmental authorisation.



Map 1: Location of the construction of the in-stream dam, excavation and alleged unlawful vegetation clearing that are undertaken on the property.



Map 2: Indication of the watercourse and tributary streams that are impacted upon with the construction of the in-stream dam on the property.



Map 3: Indication of a dam servitude on the property, such servitude does not exclude the obtainment of environmental authorisation prior to construction of such a dam.

2. In terms of section 24F of the NEMA, no activity listed in the Environmental Impact Assessment ("EIA") Regulations Listing Notice 1 of 2014 may commence without environmental authorisation from the competent authority.

3. On considering the evidence before me, there are reasonable grounds to believe that you have commenced the following listed activities without environmental authorisation:

EIA Regulations Listing Notice 1 of 2014:

Activity no. 12:

The development of—

- (i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or*
- (ii) infrastructure or structures with a physical footprint of 100 square metres or more;*

where such development occurs—

- (a) within a watercourse;*
- (b) in front of a development setback; or*
- (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse*

Activity no. 19:

The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse

Activity no. 27:

The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—

- (i) the undertaking of a linear activity; or*

(ii) maintenance purposes undertaken in accordance with a maintenance management plan.



Photo 1: View of the construction of a new dam wall within a watercourse on the property.



Photo 2: View (taken from the newly constructed dam wall) of the construction of the new dam within a watercourse with associated vegetation clearing and excavation of soil evidently taking place on the property.



Photo 3: View of the destruction of vegetation cleared and topsoil disturbance within a watercourse with the construction of the new dam on the property.

4. In terms of section 49A of the NEMA it is an offence to commence a listed activity without environmental authorisation. A person convicted of such an offence is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

5. As such, you are hereby given notice of the Department's intention to issue you with a Compliance Notice in terms of section 31L of the NEMA, which will instruct you to:
 - 5.1 immediately cease the above listed activities;
 - 5.2 investigate, assess and evaluate the impact that the listed activity has / has had on the environment;
 - 5.3 rehabilitate the entire site to its original condition;
 - 5.4 carry out any other measure necessary to rectify the effects of the unlawful activity.

6. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of failing to comply with a Compliance Notice is liable to a maximum fine of R5 million or 5 years' imprisonment or both such fine and such imprisonment.
7. You are afforded a period of **7 (seven) calendar days** from the date of receipt of this Pre-Compliance Notice to make written representations to the Department as to why a Compliance Notice should not be issued.
8. If you inform the Department, in respect of paragraph 7 above that you intend to rectify the non-compliance, you must cease the above listed activities and submit to the Department for approval, **within 30 (thirty) calendar days** of receipt of this Pre-Compliance Notice, a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
 - 8.1 assessment and evaluation of the impact on the environment;
 - 8.2 identification of proposed remedial and/or mitigation measures.
9. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
10. Approval of the above report by the Department does not remedy the unlawful commencement of the above activity, which remains unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.
11. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.

12. Notwithstanding the section 24G application, the Department may issue a Compliance Notice and/or commence criminal proceedings should circumstances so require.



Dr E Palmer

Director: Environmental Law Enforcement

Grade 1 Environmental Management Inspector

Date: 28/6/2018
