

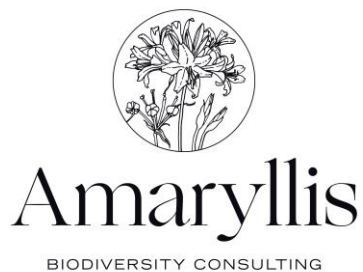
First Independent Audit of the Implementation of the Gamsberg Biodiversity Offset Agreement – Close-out Audit Report

A report prepared for the Gamsberg Biodiversity Offset Agreement Steering Committee

Prepared by Amaryllis Biodiversity Consulting

R.Smuts & M.Groenink

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Authors: Rowena Smuts and Melissa Groenink

Principal Author contact details: Rowena Smuts (MSc (UCT)); Amaryllis Biodiversity Consulting; 11 Kenwood Court Claremont Avenue, Claremont, 7708, Cape Town, South Africa; rowena.smuts@gmail.com; 064 769 3382

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Declaration: I am an independent specialist service provider that has been engaged in biodiversity consulting services, primarily in the mining sector, since 2002. I have no interest in Black Mountain Mining (Pty) Ltd. or its agents or operations and declare that I act independently and without influence from any party.

Rowena Smuts, 15 May 2020

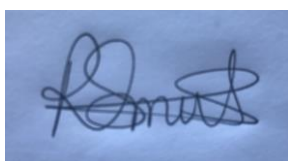
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Executive Summary

Background

Black Mountain Mining (Pty) Ltd (BMM) is located at Aggeneys in South Africa's Northern Cape Province, within an international biodiversity hotspot. BMM has developed the Gamsberg Zinc Mine, for which BMM received an Environmental Authorization (EA) from the Northern Cape Department of Environment and Nature Conservation (DENC) on 12 August 2013. Conditions 50 to 60 of the EA (Amendment 2) required that BMM should secure in perpetuity, through one or more of the following mechanisms provided for in Section 20 or 23 of the National Environmental Management Protected Areas Act, 2003 (Act No. 57 of 2003, as Amended) (NEM:PAA, 2003) areas and/or portions of which individually or collectively comprise at least the following areas of sustainably intact habitat that house the following vegetation types:

- At least 3 700ha of land comprising Aggeneys Gravel Vygieveld, including those component habitats supporting quartz gravel communities and those that are range restricted or which support localized and endemic plant species;
- At least 3 200ha of Bushmanland Inselberg Shrubland, including those habitat units supporting large succulent plants on the south facing aspects;
- At least 4 000ha of Bushmanland Arid Grassland, including those component habitats supporting calcrete gravel communities;
- At least 2 000ha of Azonal vegetation types comprising Bushmanland ephemeral river courses and outwash plains; and
- The land required to be secured by BMM shall be set aside and declared as a nature reserve and/or a protected environment in terms of sections 23 or 28 of the NEMPAA, respectively.

As a result, and in compliance with the EA (Amendment 2), a legal Agreement, namely the Biodiversity Offset Agreement (BOA) was signed between DENC and BMM (the implementing parties, IP) on 16 October 2014. In terms of the BOA (Clause 14.7), an independent review of the implementation of the BOA by an independent auditor or team of independent auditors should be undertaken every five years with the first review to be undertaken upon the expiry of the five years period calculated from the date of signature of the agreement). The first independent audit (IA), was undertaken from August 2019 to November 2019. The Initial IA report, submitted in December 2019, identified various implementation challenges and interpretation issues to be addressed by the IP. It was therefore agreed by the IP to conduct a follow-up (Close-out) IA in March 2020 to revisit work in progress regarding the closure of partially compliant and non-compliant findings of the IA conducted by Amaryllis Biodiversity Consulting (Pty) Ltd (Amaryllis) and the implementation of recommendations made by the Independent Reviewer (IR). The Close-out audit report was finalised in May 2020.

This summary report outlines the key findings of the first IA, incorporating results from both the Initial and Close-out audits. The report aims to inform external stakeholders about performance in key compliance areas and also outline agreement between the parties to improve future compliance performance.

Key findings

Highlighted below are key findings and outstanding compliance issues related to specific clauses of the BOA, along with agreed (by the IP) methods for moving these clauses towards full compliance in an efficient and timely manner.

Overall

Overall, 47 clauses of the BOA were assessed during the IR, 53 were not assessed as either they did not contain compliance obligations for either of the parties or they were not yet applicable at the time of the audit (due to the fact that timeframes had not yet been reached and work was still in progress to ensure completion within the specified timeframe). Out of the 47 clauses, the IR confirmed the IP were in full compliance (C) with 18 clauses. For 8 clauses, the IR confirmed completed but late (C-L), as actions were completed but not in accordance with the timing requirements of the BOA. For 14 clauses, the IP were assessed as being only partially compliant (PC), confirming that further actions were required from them to achieve full compliance. The IP were assessed as not compliant (N-C) with 7 clauses. Please refer to Table 2 of the “Close-out Audit Report”, 12 May 2020 for the summary of the compliance assessment and rationale for assessment categorization and a full explanation about the compliance assessment for each clause.

Overall, the IR observed commendable progress by the IP, in the steps they took to achieve compliance on a number of the BOA provisions. Furthermore, IR noted the IP had made a concerted effort to close non-compliances in the period between the submission of the Initial IA Report and the Close-out IA Report. The parties had devised a Work Plan to address non-compliances. IR acknowledged the requirements for a number of the clauses were in the process of being met. IR was convinced that many of the non-compliance gaps could easily be closed in the short to medium-term through ongoing effective, transparent, communication and cooperation between BMM and DENC.

Clause 3

In respect to Clause 3 (General duties of the parties), the parties were assessed as being largely C-L and P-C for most of the related obligations. Specifically, for clause 3.1, requiring the IP to cooperate in good faith regarding the implementation and execution of the BOA, the IP recognised the need for improvement as identified in the IR reports. Subsequent to the Initial IA Report the IP had developed new internal guidance and protocols to support more open, transparent, pro-active and effective communication amongst themselves, addressing the audit findings and with the aim to improve their compliance in this regard in the future.

Clause 5

The IR confirmed the status for Clause 5 (Protection of BMM properties) was mainly N-C. BMM had not demonstrated sufficient protection of the biodiversity and ecological functioning of the surface areas of the BMM properties (four set-aside areas) through appropriate provisions, restrictions and monitoring mechanisms as contained and/or to be contained in the EMP and/or BMP (Clause 5.1) delineated in the diagram attached as Annex “C” (Clause 5.2) of the BOA and managed and implemented through the EMP and/or BMP (Clause 5.3). This conclusion was based on:

- Lack of appropriate documentation to guide protection on set-aside properties;
- Absence of monitoring on set-aside areas; and
- Exploration on set-aside areas, including DMR’s requirement for the BOA to be amended and/or a new offset agreement to be developed to compensate for the impacts of the exploration activities. BMM set-asides still had exploration activities taking place on Gamsberg South & East and Big Syncline.

The IP considered Clause 5 as a high priority issue to address in terms of the overall BOA compliance. In addressing the 3 challenges (a, b and c) listed above; For point (a) BMM was committed to revise and fully implement its BMP and related documents to improve its compliance performance in relation to Clause 5. In terms of point (b) BMM would implement an integrated biodiversity monitoring system to address the findings in this regard. In relation to point (c) BMM was working on developing a broader strategy to address, in an integrated manner, the possible impacts on the set-aside areas, this strategy would be completed in 2020. This was identified as an area of concern that both parties wanted to address comprehensively.

Clause 6

In terms of Clause 6 (Declaration of additional land as protected environment and/or nature reserve) the IR confirmed the IP were mainly C-L and P-C. BMM secured three (3) of the Annex B1 Nearby Properties and one (1) of the Annex B2 Nearby Properties between 2015 and 2017 (so only 3 out of 4 of the properties were B1 properties as required by the BOA and in addition the properties were secured late compared to the envisaged BOA timeframes). The IR confirmed BMM had used its best efforts to purchase properties but was unable to convince some farmers to sell their properties. Although BMM had not secured all the required B1 properties, the IR acknowledged considerable portions of sensitive habitat had been secured. In 2017, BMM secured in excess of 12900 Ha. The IP agreed to extend the Second Time Period to 1 April 2024 for BMM to buy the three (3) remaining properties, to secure the remaining portions of sensitive habitats where these existed. At the time of conducting the First IA, BMM was in the process of trying to secure an additional B1 property, which had recently become available for purchase.

Clause 7

In terms of Clause 7, the IR confirmed all properties were formally presented to DENC together, via a letter on 4 October 2017, more than 6 months after two (2) of these properties had been secured (C-L). The properties were declared as the Gamsberg Nature Reserve in terms of section 23 of NEM:PAA (2003) on 5 August 2019 (Provincial Notice 80 in Provincial Gazette 2287 of 5 August 2019), it was done but not as soon as reasonably possible, so it was assessed as C-L. At the time of the First IA, the properties had not yet been transferred to the Northern Cape Department of Roads and Public Works (DRPW). However, the IR concluded BMM had taken all reasonable measures to enable the transfer of the land to the relevant government department to date. The properties had not yet been fenced by BMM, therefore this was recognised as N-C.

Clause 8

Clause 8 (Management Authority) was not assessed as it did not contain compliance obligations for the parties, it was only confirming that DENC would be the Management Authority (MA). Under NEM:PAA (2003), a nature reserve was only one that has been declared as such by notice in the Government Gazette. This occurred on 5 August 2019. Under section 38(2) of NEMPAA, the MEC must assign the management of a nature reserve in writing. The Gazette Notice records that the “Management Authority appointed in terms of section 38(2) – [is the] Northern Cape Department of Environment and Nature Conservation”. Given that assignment of the MA could only take place once the nature reserve was declared, the assignment took place concurrently with the declaration.

Clause 9

Clause 9 (Management Plan) was not assessed, as it was not yet applicable. DENC had an additional 12 months to prepare and submit the Management Plan since the declaration of the nature reserve on 5 August 2019.

Clause 10

In terms of Clause 10 (Financial Provisions), the Gamsberg Nature Reserve Trust was registered, with letters of authority issued on 6 March 2020 in terms of Section 6 (1) of the Trust Property Control Act, 1988 (Act No. 57 of 1988). This was in compliance with the requirement to establish mechanisms to ensure the use of all funds received were “ring-fenced” and traceable to the implementation objective for which they were utilised. The Trust bank account was opened on 20 March 2020. An amount of R 12 050 000.00, as required by Clause 10 of the BOA, was transferred into the Gamsberg Nature Reserve Trust Standard Bank account on 3 April 2020 (it was done as required by BOA but late, so C-L). Such amount did not include two years of vehicle servicing (since the vehicles were not yet in existence) and the provisions and operational costs for accommodation and offices (as there were no staff from DENC needing/using them during the period prior to the Close-out audit). Following the Initial IA Report, an Action Plan was compiled by the IP regarding payment requirements and timeframes as

per Clause 10 of the BOA to ensure any future payments required for additional farms that need to be purchased until 1 April 2024 would be done within the relevant timeframes.

Clause 11

In terms of Clause 11 (Suretyship), despite significant delay in providing the required suretyship, it was eventually provided in a form acceptable to DENC on 6 September 2019 (C).

Clause 12 and 13

Clauses 12 and 13 (Establishment of steering and liaison committee), both committees were established. However, the IR confirmed they did not operate as effectively as envisaged in the BOA (P-C). The IP took into consideration recommendations made by IR in its initial IA report (December 2019) and developed new procedural rules, prior to the Close-out audit, to improve the efficiency of both committees in the future.

Way forward to improve compliance with BOA

The IP recognised key performance areas they needed to focus their efforts for 2020/2021, including addressing the recommendations of the IR, included:

- For both parties to improve performance in terms of clause 3, to improve the implementation efficiency of the BOA;
- For both IP to resolve the non-compliance challenges in terms of Clause 5 (Management of protected areas);
- For BMM to carry on working towards full compliance with Clause 6 (Declaration of additional land as protected environment and/or nature reserve, buying 3 more properties and related obligations in terms of Clause 7 and 10);
- For BMM to ensure the fencing of the properties (Clause 7) to be fully implemented and executed;
- For DENC to ensure the transfer of properties as soon as reasonably possible (Clause 7);
- For DENC to ensure the sound management of the protected area, by effectively developing and implementing the Management Plan (Clause 9).
- For both parties to address the financial requirements in terms of Clause 10, regarding the costs for the vehicles' maintenance, the need for offices and accommodation when they become necessary;
- For both parties to ensure effective operation of the Gamsberg Nature Reserve Trust; and
- For both parties to work on the required amendments of the BOA and EA when and where required, especially based on the recommendations of the IR.

In this respect and to enable the stakeholders to follow progress in terms of compliance with the BOA, both IP have agreed to review the 5-year timeframes for independent audits, which had to be decided by the steering committee.

Both IP reiterated their commitment to continuous improvement to ensure compliance with the BOA.

ACCRONYMS & ABBREVIATIONS

BMM – Black Mountain Mining Pty Ltd

BMP – Biodiversity Management Plan

BPMP – Biodiversity Performance Monitoring Protocol

BOA – Biodiversity Offset Agreement

BOR – Biodiversity Offset Report

CAMP – Conservation Area Management Plan

DEA – Department of Environmental Affairs

DENC – Department of Environment and Nature Conservation, Northern Cape Province

DMR – Department of Mineral Resources

DRPW – Department of Roads and Public Works, Northern Cape Province

EA – Environmental Authorization

EIA – Environmental Impact Assessment

EMP – Environmental Management Plan

ESIA – Environmental and Social Impact Assessment

EMPr – Environmental Management Programme report

EWT – Endangered Wildlife Trust

FFI – Fauna and Flora International

GIIP – Good International Industry Practice

GMARR – Gamsberg Management Audit Response Report

HOD – Head of Department

IA – Independent Audit

IP – Implementing Parties (BMM and DENC)

IR – Independent Reviewer

IUCN – International Union for Conservation of Nature

LC – Liaison Committee

LOM – Life of Mine

MA – Management Authority

MEC – Member of Executive Committee Department Environment and Nature Conservation (DENC) Northern Cape Province

MP – Management Plan

NEM:PAA (2003) – National Environmental Management Protected Areas Act

NGO – Non-Governmental Organisation

ROD – Record of Decision

RVT – Recognized Vegetation Types

SC – Steering Committee

WUL – Water Use License

DEFINITIONS

The Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002) (MPRDA; 2002) defines prospecting as activities related to mining whilst exploration refers to drilling for oil offshore. IR understands that BMM uses the term exploration and has an Explorations Division and hence these terms are used interchangeably in this Report.

Final Regulatory Approval Date: 30 September 2014 (Approval of Gamsberg Water Use License)

First Time Period: 30 March 2016

Second Time Period: 30 September 2019, but amended by agreement by both parties on 12 September 2019, to extend the Second Time Period until 1 April 2024.

1 INTRODUCTION & PROJECT BACKGROUND

1.1 Requirement for an Independent Audit

The Biodiversity Offset Agreement (“BOA” or “the Agreement”), signed on the 16 October 2014, required a review of the implementation of the Agreement in terms of Clause 14.7 to 14.10 of The Agreement by an Independent Auditor or team of Independent Auditors. The Independent Audit (IA) was to be paid for by Black Mountain Mining (Pty.) Ltd. (hereafter referred to as BMM) and was required to be undertaken every five years with the first review to commence upon expiry of the five year period taken from the date of signature of the Agreement/BOA.

In response to this legal requirement IUCN issued a request for proposals on 25 May 2019 to conduct the first IA of the implementation of the BOA for the Black Mountain Mine: Gamsberg Zinc Mine (Gamsberg) in South Africa. Following an open tender process in 2019, the members of the BOA Steering Committee (SC) selected Amaryllis (Pty.) Ltd. (“Amaryllis”), to conduct the IA of the implementation of the BOA at BMM. The IA was undertaken over the period of September to November 2019 and the Initial IA Report submitted on 5 December 2019.

A number of report findings highlighted substantial implementation challenges and interpretation issues between the implementing parties (IP) of the BOA. In this context, the parties, under the guidance of the SC, required further assistance from the Independent Reviewer (IR), Amaryllis, to better understand non-compliances, implementation challenges and interpretation issues identified in the Initial IA Report.

IP subsequently requested a “Close-out Audit” to complement the Initial IA undertaken in 2019. Amaryllis was invited to submit a proposal for the Close-out Audit based on Terms of Reference provided by International Union for Conservation of Nature and Natural Resources (IUCN). Amaryllis submitted a proposal to IUCN on 21 January 2020. Further to discussions with IUCN and BMM the proposal was revised and resubmitted on 28 January 2020. On 30 January Amaryllis signed a contract with IUCN. It was agreed with IP and IUCN the Close-out Audit would comprise a stand-alone document that would make reference to the Initial IA Report submitted on 5 December 2019. The Close-out Audit was undertaken in February - April 2020 to update existing findings for publication, based on the latest resolutions reached between the IP, on specific clauses, to address the identified non-compliances. Since DENC would be required to cover the 12 months up to 31 March 2020 in its Annual Report 2019/20 it was agreed by the IP, IUCN and IR that DENC would utilise the Initial IA Report since the Close-out Audit Report would not be submitted in time due to outstanding documents from BMM (such as the Trust registration documents and the Trust bank account statements) that were required to complete the Close-out Report.

Readers of this Close-out Audit Report are encouraged to make reference to the stand-alone Initial IA Report.

IP organized a Biodiversity Workshop on 4 February 2020 to address some of the key implementation challenges and interpretation discrepancies identified in the Initial IA Report. Aside from BMM, DENC and IUCN attendees an additional seven technical biodiversity experts¹ participated in the workshop to provide the IP with the appropriate scientific support and data to inform their discussions. IR has incorporated the conclusions of the workshop into relevant sections of this report.

¹ Most of who had previously provided input to biodiversity conservation challenges at BMM.

1.2 BMM's requirement for a Biodiversity Offset Agreement (BOA)

The BOA was developed as a condition on the Environmental Authorization (EA) obtained from the Department of Environment and Nature Conservation, Northern Cape Province of South Africa (hereafter referred to as DENC) by BMM for its Gamsberg Zinc Mine (Gamsberg) on 12 August 2013. The BOA constitutes a legal agreement, signed between DENC and BMM.

Conditions 48 to 58 of the EA require BMM to secure protection of certain areas of habitat in perpetuity, through one or more of the mechanisms prescribed in Section 20 or 23 of the National Environmental Management Protected Areas Act, 2003 (Act No. 57 of 2003, as Amended hereafter referred to as NEM:PAA 2003). BMM was required to identify areas and/or portions of areas of land which individually or collectively comprise the following areas of sustainably intact habitat and vegetation types:

- a. At least 3 700 ha of land comprising Aggeneys Gravel Vygieveld, including those component habitats supporting quartz gravel communities and those that are range-restricted or which support localised and endemic plant species;
- b. At least 3 200 ha of Bushmanland Inselberg Shrubland, including those habitat units supporting large succulent plants on the south facing aspects;
- c. At least 4 000 ha of Bushmanland Arid Grassland, including those component habitats supporting calcrete gravel communities;
- d. At least 2 000 ha of Azonal vegetation types comprising Bushmanland ephemeral river courses and outwash plains; and
- e. The land required to be secured by BMM in terms of clause 6.1 of the BOA shall be set aside and declared as a nature reserve and/or a protected environment in terms of sections 23 or 28 of the NEM:PAA (2003), respectively.

1.3 Achieving ‘no net loss’ of biodiversity at BMM

It has to be recognised that the objective of no net loss (NNL)² as set out in the BOA could be questioned under strict application of internally recognised biodiversity offset related standards, since some of the sensitive habitats, specifically calcrete gravels and fine-grained quartzites, that would be impacted were irreplaceable. However, it has to be understood that such an approach and consensus³ was legally reached and approved through an extensive EIA process. The aim of this audit was not to assess the limitations of such an approach to NNL. It however seems important for the parties to develop a clear narrative of the scope of NNL adopted under the BOA to ensure clarity and transparency for the stakeholders and outline some of the limitations of the current approach if compared to international practices and their own internal policies. It is also strongly recommended for the parties to ensure alignment with good international industry practice (GIIP) for future offsets.

1.4 Scope of work and objectives of Independent Audit

Clauses 14.7 to 14.10, of the BOA, clearly define the scope of the IA, which focuses on implementation and execution of the Biodiversity Offset for the first five years.

The purpose of the review was to:

- Determine compliance with the provisions of the BOA by the IP;
- Determine the adequacy and efficiency of the implementation of the Biodiversity Offset in terms of the BOA; and
- Provide recommendations to the SC on *inter alia* improving and/or enhancing the implementation of the Biodiversity Offset, including recommendations to adjust the financial provisions in terms of Clause 10, where required.

The IR was required to submit a copy of the Audit Report (AR), including both the Initial Audit Report and the Close-out Audit Report, to the IP. The BOA obliged each party to make the AR available for inspection by the public by including a copy of the AR in the Annual Report to Shareholders (BMM) or to the provincial legislature (DENC) as required.

² “The purpose of the biodiversity offset is to ensure an equivalent or better biodiversity outcome to the sites where biodiversity values may be lost due to impacts that may be caused by Gamsberg; to improve the long-term protection and viability of the biodiversity and its associated habitats; and to ensure that the developed site is ecologically sustainable”.

³ During the Biodiversity Workshop held in February 2020 stakeholders, including representatives from IP, IUCN and technical experts, emphasised the BOA was the result of many biodiversity trade-offs and compromises in favour of Gamsberg proceeding. DENC and the technical experts highlighted that Gamsberg was situated in critically endangered and endemic biodiversity, with some species only occurring in this area. However, after consideration of the economic and social benefits of the project, a compromise was reached. One key condition which enabled that compromise, was the requirement for the development of a biodiversity offset and the commitment to protect selected BMM properties, containing key critically endangered species (Clause 5 of the BOA). It was also recognised that it would be almost impossible or too expensive for BMM to purchase sufficient properties to compensate for all the sub-habitats requirements (not just the broad habitats of Recognised Vegetation Types) as per the Gamsberg Biodiversity Offset Report (M Botha, P Desmet and S Brownlie, 2013). Therefore, via a negotiation process, a pragmatic compromise was captured in the BOA that required BMM to purchase seven farms from a list of 12. These 12 farms were pre-selected properties identified by independent specialists and DENC. Although not meeting strict like-for-like requirements, such a solution was deemed acceptable due to its specific contribution to supporting a landscape approach towards conservation in the Bushmanland landscape.

1.5 Report Limitations & Assumptions

As agreed with IUCN a number of components of the BOA were excluded from the original scope of work.

- The IA did not address on-going management and maintenance of the Protected Areas established through the Agreement; as the Management Plan (MP) had not yet been developed at the time of undertaking the First IA;
- Clauses not assessed (N-A) in the First IA included:
 - Clause 4 – since it only defined the Biodiversity Offset and roles and responsibilities of the IP. These were then assessed under the respective Clauses 5, 6, 7, 8 and 9. It did not include any implementation obligations for the IP;
 - Clause 5.5 - since BMM had not contracted any of the BMM properties into Protected Areas;
 - Clauses 6.8 to 6.10 - as Suitable Alternative Properties were not investigated by either IP;
 - Clause 9.2 to 9.4.7 - as the MP had not yet been developed;
 - Clause 12.2.2. – as it referred to receiving recommendations from the IR and Clause 12.2.3 as it referred to review of the IA recommendations; both of these actions would only take place following the IA. The parties would need to decide whether the recommendations of this IA prompted or required amendment(s)/variation(s) to BOA and, if so, these would need to be produced in writing and signed by both parties according to Clause 22;
 - Clause 12.2.4 – as it referred to recommendations made to the Managing Agent (MA) regarding deployment of revenue generated from the offset properties in line with the MP. Since the MA was only officially appointed on 5 August 2019 and the MP was only due for submission to the MEC by 5 August 2020 (according to Clause 9.1) Furthermore, no revenue had yet been generated from the offset properties during the initial five year implementation period and could therefore not be deployed. IR acknowledged discussions on the development of the MP and who should develop this document were held during numerous Steering Committee (SC) and Liaison Committee (LC) meetings (Refer to Section 4.5 for further details);
 - Clause 13 – referred to the establishment of the LC. As the MP had not been developed, at the time of the review, and the Biodiversity Offset was not yet operational the LC could not perform its duties in terms of reporting on the management and operation of the Biodiversity Offset. However, IR assessed how the LC reported to the SC on the implementation of the BOA as this was also defined as part of the Biodiversity Offset according to Clause 4;
 - Clauses 14.3 to 14.6. since IUCN and IP recognised the Biodiversity Offset was not yet completed at the time of undertaking the First IA and due to extension 1 April 2024 (Time period 2); and
 - Clauses 15 to 21 and Clause 24 as these were not applicable.

1.6 Report Structure

This Close-out Audit Report follows the same structure as the Initial IA Report. The report has been updated where new information was provided to the IR and/or refinement in methodology of assessment, as agreed by all parties, led to revised compliance categorisation stipulated in the Initial IA Report.

The report is divided into seven key sections:

- **Introduction and Project Background:** covers the project background, scope of work, objectives of the IA, limitations and assumptions;
- **Regulatory Framework:** provides a brief overview of applicable legislation and conditions of the Gamsberg EA relevant to the BOA;
- **Methodology and Approach:** outlines documents reviewed, interviews and discussions held, site visit undertaken, outline of compliance categories and assumptions regarding compliance categorisation;
- **Findings and Observations:** focuses on the IP compliance with each clause. The key findings are summarised in Table 2. Further discussion on select clauses is also covered in this section particularly where interviewees sometimes shared inconsistent perspectives and/or where further elaboration on a particular point was required. The Summary Compliance Table (Table 2) needs to be read in conjunction with the text;
- **Recommendations:** on improving and/or enhancing implementation of the BOA were captured for each clause and summarised in a Table in Appendix C. The IP developed a number of useful protocols and guidance documentation, some of which were developed in response to IR's recommendations, to close non-compliances. IR retained all recommendations made in the Initial IA Report until such time as on-the-ground implementation could be demonstrated. IR also included preliminary recommendations on revising the BOA following explorations activities on the set-aside properties although this activity needed to be addressed in more detail elsewhere as suggested;
- **Conclusions:** briefly summarises the findings and observations based on the IP compliance with the provisions of the BOA, provides IR's opinion on the adequacy and efficiency of execution and implementation and comments on the parties cooperation with the IR; and
- **The Way Forward:** outlines key activities the IP need to prioritise to facilitate closing compliance gaps identified.

2 REGULATORY FRAMEWORK

2.1 Applicable Legislation

The National Environmental Management Act, 107 of 1998 ("NEMA") is the primary framework legislation giving effect to the environmental right contained in section 24 of the Constitution of the Republic of South Africa, 1996. Amongst other things, NEMA includes a number of principles for environmental management (section 2) that apply to environmental decision-making. These include the "polluter pays" principle, the requirement to follow a "risk-averse and cautious approach" to decisions that may affect the environment and the requirement to remedy adverse impacts on the environment, including impacts on biodiversity. Section 24 requires that

environmental authorisation be obtained prior to the commencement of listed activities (such as prospecting, mining and associated activities) and section 28 places a general duty of care on all persons whose activities may cause significant pollution or environmental degradation. Section 24E of NEMA requires that every authorisation includes conditions relating to the ongoing management and monitoring of the impacts of the activity on the environment throughout the lifecycle of the activity. Furthermore, when granting authorisation, the competent authority is required to consider the ability of the applicant to implement mitigation measures and to comply with any conditions subject to which the authorisation is granted.

Although no formal legislated regime for offsets exists, at the intersection of the requirements referred to above lies some of the grounding principles for biodiversity offsetting. Furthermore, at a policy level, a draft national policy on offsets was developed in 2012, which was updated and published in 2017⁴. It has not yet been finalised. Guidelines exist for two provinces, being the Western Cape Guidelines on Biodiversity Offsets (revised 25 March 2015) and the Concise Guideline: Biodiversity Offsets in KwaZulu-Natal (February 2013). No guidelines for biodiversity offsets in the Northern Cape are known to the IR. Biodiversity offsets in South Africa are aimed at achieving no net loss in relation to conservation targets, thereby protecting vulnerable and endangered ecosystems.

Additionally, specific environmental management Acts, such as the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEM:BA 2004) and the NEM:PAA (2003), also guide the implementation of offset requirements prescribed through the conditions of authorisation, through the protected area framework (i.e. formal protection of identified areas as Protected Areas or protected environments) and the protection of specific ecosystems, vegetation types and individual species, including through stewardship arrangements.

The MPRDA (2002), governs prospecting and mining activities in the country. In terms of this Act, an EA is required prior to the commencement of prospecting or mining activities. A mining or prospecting right will be granted by the Minister of Mineral Resources (DMR) if, *inter alia*, “the mining will not result in unacceptable pollution, ecological degradation or damage to the environment and an environmental authorisation is issued”. The Minister of Mineral Resources and Energy is the responsible authority for implementing NEMA as it relates to prospecting and mining, and incidental activities.

2.2 Conditions of Environmental Authorisation

The requirement for the BOA arises from the conditions of authorisation granted to BMM for Gamsberg and associated infrastructure. Since the authorisation was issued on 13 August 2013, it has been amended twice, with the latest amendment dated 10 December 2014.

Clauses 50 to 60 of the EA Amendment 2 set out the requirements for the offset and the BOA. It requires that:

- BMM secures specified areas of vegetation types in perpetuity (condition 50) within 5 years of the commencement of the activities authorised in terms of the EA (condition 54);
- An agreement be prepared and signed by the parties within 1 year of the receipt of the EA (i.e. before 13 August 2014) (conditions 51, 55 and 57);
- BMM establish and provide operational support to a LC, to oversee the implementation and management of the agreement (condition 57);

⁴ Government Notice 276 in *Government Gazette* 40733 of 31 March 2017.

- BMM sets aside those natural portions of its own properties not being actively mined (condition 59); and
- BMM prepare a BMP, for approval by DENC (condition 59 and 60).

To give effect to these provisions, BMM and DENC entered into the BOA on 16 October 2014 (notably, more than one year after the original EA was issued). It is the BOA which forms the subject of this review.

3 METHODOLOGY & APPROACH

3.1 Document Review

BMM provided IR with documentation on a Data Sharefile. IR reviewed information during September to November 2019 to assess implementation of the BOA. Additional documentation was emailed to IA in March 2020 for the Close-out Audit. Documents broadly covered the following categories:

Documents reviewed in 2019:

- Environmental Authorization (EA) Amendment 2 (specifically items 50 to 60) relevant to the BOA requirements;
- Biodiversity Offset Agreement (BOA);
- Environmental and Social Impact Assessment (ESIA);
- Biodiversity Offset Report (BOR);
- Gamsberg Environmental Management Programme Report (EMPr) ;
- Biodiversity Management Plan (BMP);
- Conservation Area Management Plan (CAMP);
- Information considered in making the EA decision;
- Declaration of Gamsberg Nature Reserve;
- Sale and Lease agreements;
- Title Deeds;
- SC meeting minutes, agendas and registers;
- LC meeting minutes, agendas and registers;
- Trust documents;
- Suretyship Letter signed by IP;
- Monitoring Protocols;
- Dust Monitoring Reports;
- Regulatory Approvals;
- Letter regarding extension of Time Period Two signed by BMM & DENC;
- Dust monitoring scope of work;
- Correspondence to DENC relating to purchase of the REM of the farm Haramoep 53;
- Management fees calculation and proof of money secured by BMM;
- Letter to DENC about offset compliance (Sep 2018);
- Farmers engagement records to secure offset farms;
- Offsets property-wise contributions provided by Mark Botha;
- Survey Diagrams & offset properties;

- Offset recalculations for Gamsberg SE and Big Syncline;
- Vegetation Report with photographs of vegetation;
- ERM Monitoring Reports;
- Sitatunga documents;
- Wortel documents;
- Additional Haramoep documents;
- Vegetation monitoring sites (Excel spreadsheet);
- BMM Monitoring Protocol – final;
- Letter to DENC presenting properties and requesting compliance and transfer of money to DENC (4 October 2017);
- Offset calculations prepared by Andrew Caldwell (from ERM); and
- BMM appeals letters & forms & letter to DENC regarding EA provided on offset properties.

DENC provided IR with supporting documents on:

- Fencing requirements for offset properties;
- Nominations for SC and LC; and
- Email correspondence on appeals to DMR on Sitatunga EA for exploration on BMM offset properties.

Additional documents reviewed in March 2020:

- Gamsberg Management Audit Response Report (GMARR);
- Letter of authority: Gamsberg Nature Reserve Trust;
- BMM letter to DENC requesting confirmation and agreement that financial contribution calculations are correct for payment to the Gamsberg Nature Reserve Trust bank account once in place;
- Responding Letter from DENC to BMM confirming and agreeing on the financial contribution calculations for payment to the Gamsberg Nature Reserve Trust bank account once in place;
- Letter to DENC confirming deposit of R 12 050 000 in a short-term fixed deposit account for management fees in respect of BOA requirements pending activation of the Trust Bank Account (dated 12 March 2020);
- Proof of payment to Gamsberg Nature Reserve Trust bank account;
- Action Tracker: Steps and timeframes including financial provision, securing of properties, transferral, declaration, payment to ensure compliance with timeframes going forward;
- Biodiversity Workshop Report (held on 4 February 2020);
- BMM written correspondence to DENC regarding confirmation of the Gamsberg Nature Reserve fencing specifications as required by Clause 7.4 (7.4.1 – 7.4.3) of the BOA;
- Letter BMM and DENC - Extension of Second Time Period signed by both parties;
- Written response from DENC to BMM regarding confirmation of the Gamsberg Nature Reserve fencing specifications as required by Clause 7.4 (7.4.1 – 7.4.3) of the BOA;
- Letter to HoD of DENC, dated 16 March 2020, requesting clarification of the term “rehabilitation” contained in Clause 7.3;
- Letter from DENC to BMM, dated 9 March 2020, to clarify rehabilitation requirements;

- Responding letter from BMM to address time lines of rehabilitation requirements, rehabilitation schedule and costs for budgeting purposes going forward;
- Gamsberg Nature Reserve Trust Deed;
- Appointment of independent financial auditor;
- Status updated on recommendation by IA;
- Monitoring Protocol Implementation Schedule;
- Baseline dust information as determined by Dust Watch, dated 27 September 2015, and
- BMM letter to DENC dated 9 March 2020 regarding outcome of Clause 6 (7 farms), Workshop, extension of second time period and REM of Haramoep;
- BMM Scope of work document to address recommendation made by the IR during IA on the BOA for inclusion in the upgrade of the Conservation Area Management Plan (CAMP); and
- EkoTrust CC Proposal, dated 23 January 2020, to amend the existing Contract regarding the update of the CAMP.

3.2 Interviews and phone discussions

Meetings and phone discussions focused primarily on the BOA clauses. Table 1 provides a summary of organizations and individuals who provided input, written and verbal, to the IA. As outlined in Table 1 interviewees all had prior involvement in various biodiversity components of Gamsberg, including but not limited to:

- Drafting the EIA (ERM);
- Compiling the Biodiversity Offset Report (M.Botha);
- Undertaking EIA vegetation baseline studies (P.Desmet);
- Development of biodiversity management and monitoring plans (EndemicVision);
- Assistance with implementation of management and monitoring plans (via IUCN previously directly with EWT);
- Drafting the BOA (M.Botha);
- Compiling offset calculations for explorations activities on the BMM set-aside properties (M.Botha and P.Desmet);
- Participation in the Biodiversity Workshop held on 4 February 2020; and
- Revision of offset calculations further to explorations activity impacts on BMM set-aside properties.

As outlined in Table 1 written responses to selected BOA clauses were provided by Koos Smit (BMM), Elsabe Swart (DENC), Dewald Badenhorst (DENC), Nanine van Olmen (DENC), Rachel Asante Owusu (IUCN), Marie Parramon-Gurney (IUCN), Mark Botha (Independent Biodiversity Consultant) and Phil Desmet (Independent Biodiversity Consultant).

Phone calls were held with Andrew Cauldwell (ex-ERM now FFI), Shelley Lizzio (ex-EWT, now subcontracted via IUCN), Mark Botha, Phil Desmet, Chrizette Neethling (EndemicVision Environmental Services (Pty) Ltd, hereafter referred to as EndemicVision). Regular phone calls, approximately once a week, were held separately with IUCN and BMM.

Table 1: Summary of organisations and individuals who provided input, written and verbal, to the Independent Review.

Organisation	Name of interviewee	Job Title	Time period involved in Gamsberg/BOA implementation & specific involvement/role on project	Date & time of interview/discussion	Input provided on:
BMM Pty Ltd	Christo Witbooi	Manager of Corporate Affairs and Stakeholder Relations	Commenced employment on 1 March 2015	Tues 17h00 September 16h00	Purchase of offset properties as per SC & LC meeting minutes.
BMM Pty Ltd	Jacobus (Koos) Smit	Biodiversity Manager	Appointed 2 May 2017	Regular calls & discussions throughout IA, participated in site visit	All aspects of BOA.
BMM Pty Ltd	Peter Venter	Environmental manager for Black Mountain Complex (projects & exploration)	Managed Biodiversity 2012 -2017, part of project authorisation process and managed biodiversity during construction	Wed 9 October 12h45	LC and SC meeting minutes.
BMM Pty Ltd	Peter van Greunen	General Manager	Appointed July 2019	Fri 20 September 15h00	Close-out presentation following site visit (attached as Appendix D)
DENC	Dewald Badenhorst	Manager protected areas, Northern Cape	During implementation of BOA, Protected area management, LC member	Fri 13 September 09h00-11h00 Wed 2 October 09h30	Delays in establishment of Trust/ Agency; Agreement on office premises; Formal request from DENC to BMM for offset payments; DENC's role in delays in implementation; Functioning of LC and SC. Development of Management Plan for protected areas; Fencing of offset properties; Transfer of protected areas to Northern Cape Department of Roads and Public Works (NCDRPW).
DENC	Elsabe Swart	Scientific Manager GRB: Research and Development Support	During implementation of BOA, Advisory services for the development of offset agreement, implementation of the offset, LC member	Fri 13 September 09h00 Participated in site visit, Mon 16 & Tues 17 September	Delays in establishment of Trust/ Agency; Agreement on office premises; Formal request from DENC to BMM for offset payments; DENC's role in delays in implementation; Functioning of LC and SC. Visited set-aside properties; Exploration on set-aside properties. Follow-up on DENC's role in BMM's Basic Assessment Report (BAR) application for EA to prospect on set-asides.
DENC	Nanine van Olmen	Director: Environmental Policy, Planning and Coordination	During implementation of BOA, DENC coordination of implementation of the Offset Agreement,	Fri 13 September 09h00	Delays in establishment of Trust/ Agency; Agreement on office premises; Formal request from DENC to BMM for offset payments; DENC's

			SC member	Wed 16 October 15h20	role in delays in implementation; Functioning of LC and SC. Follow-up on outstanding email queries.
DENC	Bryan Fischer	Director: Environmental Quality Management (EIA) Acting Director: Biodiversity Management	During implementation of BOA, Environmental Authorisations, Biodiversity management, SC member	Fri 13 September 09h00	Delays in establishment of Trust/ Agency; Agreement on office premises; Formal request from DENC to BMM for offset payments; DENC's role in delays in implementation; Functioning of LC and SC.
Digby Wells via IUCN Previously EWT	Shelley Lizzio	Principal Biodiversity Consultant	2015-2019, implementation of BAP at BMM	Tues 8 October 09h15	Implementation of EMP, BAP, BMP, CAMP; Exploration on set-asides; BMM purchase of properties, Prospecting application on off-set property REM of farm Haramoep 53; Functioning of LC.
EndemicVision	Chrizette Neethling	Ecologist / Environmentalist (I hold dual professional registration for both sciences)	2006 – end 2009 employed by BMM (Anglo) as Environmental and Biodiversity Manager 2012 – 2019: employed by BMM (Vedanta): as free lance consultant	Tues 15 October 09h30	Development and implementation of EMP, BAP, BMP and CAMP; EIA approval, Prospecting on set-aside areas, Basic Assessment Reports for Big Syncline and Gamsberg East & South, Dust monitoring
Conservation, Strategy, Tactics & Insight	Mark Botha	Independent Biodiversity Consultant	Produced Biodiversity Offset Report. Participated in early stages of BOA development and negotiations.	Mon 7 October, Discussion 14h30, Tues 22 October 09h15	Commented on implementation of select Clauses 1-14, protection & exploration on BMM set-asides.
Independent Biodiversity Consultant	Phil Desmet (Dr)	Independent Biodiversity Consultant	Botanical Expert/ Regional Ecologist providing advisory support to BMM / Gamsberg and in Bushmanland Inselberg Region since 1998. Involved in EIAs, biodiversity management plans, Bushmanland Conservation Initiative, protected area development.	Wed 9 October 08h30	Development and implementation of BMP and CAMP. Exploration on set-aside properties; Protection of BMM properties.
IUCN	Marie Parramon Gurney (Dr)	Independent Consultant for IUCN	Became involved in May/June 2014 – BOA was already signed, EIA finalised & approved. BMM signed a formal agreement with IUCN in mid- 2015 to take account of biodiversity concerns on BMM landholding.	Thurs 3 October, Wed 9 October 10h30	Commented on implementation of Clauses 1-14
IUCN	Rachel Asante- Owusu (Dr)	Programme Officer, Global Business & Biodiversity Programme	Relationship with BMM since 2017	Thurs 3 October, Wed 9 October 10h30	Commented on implementation of Clauses 1-14

Vedanta Zinc International	Markus Schaefer	General Manager Explorations	Explorations Geologist	Tues 17 September 18h00 (informal discussion over dinner)	Exploration on set-aside areas.
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3.3 Site Visit

Rowena Smuts (Lead Biodiversity IA, Amaryllis) visited the mine site between Monday 16 and Wednesday 18 September 2019. Whilst on site she was accompanied by BMM's Biodiversity Manager Jacobus Smit, DENC's Scientific Manager (Elsabe Swart) and BMM's Niel MacDonald (Biodiversity Officer). The offset properties and set-aside areas were visited as well as the plateau above Gamsberg. Brief discussions were held with Christo Witbooi (Manager of Corporate Affairs & Stakeholder Relations at Vedanta) and Markus Schaefer (General Manager Explorations at Vedanta). Following the site visit a close-out presentation (See Appendix D) was made to Peter van Greunen (General Manager of BMM: Gamsberg Zinc Mine) via teleconference.

3.4 Compliance assessment

Each clause in the BOA was assessed according to the following categories:

- Compliant (C), all actions outlined in the clause were completed and where a specific timeframe was stipulated in the BOA activities were completed within the required timeframe. A clause was only assessed as compliant if the IP were fully compliant with the clause;
- Completed but Late (C-L), the objective of the clause was achieved and all necessary activities were completed. No further actions were required. However, the IP did not complete the required actions within the timeframe specified by the BOA. **Note: This category was added after the Initial IA Report was completed;*
- Partially Compliant (P-C), some of the activities in the clause had been completed but not all and further actions were required to achieve compliance. The IP were assessed as P-C with a clause if more than 50% of the requirements had been met and these were tangible. Since large areas of sensitive habitat had been secured clauses 6.3.1 to 6.3.4 were assessed as P-C. Where the IP had taken considerable steps to progress compliance this was noted in the report;
- Not Compliant (N-C), where the parties had made some progress in the right direction but there was still nothing tangible i.e. although the correct paperwork existed for fencing, no fencing had taken place on the ground yet so this was assessed as N-C. Where part of any clause was non-compliant the IR generally assessed the whole clause as not compliant;
- No Compliance Obligation (NCO), where clauses did not have compliance obligations; and
- Not Assessed (N-A), where there was no implementation obligation to either IP and/or information was missing preventing the clause from being assessed i.e. the MP could not be assessed since it had not yet been developed at the time of the Initial IA; or if a time frame had not yet been reached and therefore the clause could not yet be assessed.

4 FINDINGS & OBSERVATIONS

Compliance with each clause of the BOA and a brief rationale for the IR's conclusions is summarised in Table 2. Some of the findings were not straightforward and responses by different interviewees required further discussions on a particular issue; these clauses (denoted with an asterix (**)) in Table 2 were discussed in greater detail in this section of the report. Table 3 summarises where evidence was sourced such as reference documents, parties interviewed and cross-reference relating to each clause. The findings and observations described in this section of the report need to be read in conjunction with Table 2 and Table 3.

Compliance categories as per Table 2:

Compliant	C
Completed but Late	C-L
Partially Compliant	P-C
Not Compliant	N-C
Not Assessed	N-A
No Compliance Obligation	NCO

Table 2: Summary of compliance assessment and rationale for assessment categorization

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
3. GENERAL DUTIES OF THE PARTIES -			
*3.1	The Parties agree to cooperate in good faith regarding the implementation and execution of the Biodiversity Offset and with a view to ensuring the on-going ⁵ protection and maintenance of the areas of land contemplated in clause 5.	P-C	<ul style="list-style-type: none"> IR found the IP generally acted in good faith⁶ and did not specifically obstruct each other in implementation of the BOA. This finding was corroborated by the IP themselves during phone call discussions, external interviewees and IUCN observers. However, IR argued they had not always cooperated efficiently with each other to ensure timely implementation of the agreement. Both BMM and DENC contributed to delays in implementation and execution of the Biodiversity Offset. It was also argued they had not always communicated in a transparent manner, as outlined in the report. The IP recognised that their communication had not been the most effective and pro-active in the past. They acknowledged there was room for improvement in terms of their cooperation. Both IP were of the opinion that the findings highlighted by the Initial IA Report did not characterise “bad faith” in the sense that none of the parties ever acted with any malice or desire to defraud others. Communication might not have been sufficiently transparent but the IP were never dishonest or unfair. Following the Initial IA and in order to improve their compliance performance in terms of Clause 3.1 going forwards the IP developed additional measures to support more open, transparent, pro-active and effective communication amongst themselves. The Parties also developed new general rules/principles of engagement, roles and responsibilities that would be presented to the SC for approval and implementation in order to ensure transparency regarding the implementation of the BOA. Such rules of engagement would address the specific findings of the auditor in section 4.1 of the initial Audit Report. However these measures would still need to be implemented and assessed in future audits. Therefore cooperation of the IP regarding implementation and execution of the Biodiversity Offset was assessed as partially compliant with a number of actions required to bring this Clause to compliance. Furthermore, as discussed in Clause 5 below the parties did not cooperate well to ensure protection and maintenance of the BMM properties. Exploration was permitted on all four of the BMM set-aside areas but activities had only commenced on Big Syncline causing impacts to sensitive habitats that were supposed to be protected. This component of Clause 3.1 is therefore considered to be N-C. However, the protection of the BMM properties, or lack thereof, is addressed in detail under Clause 5. Therefore the IR considers addressing this issue here as duplication.

⁵ For the purposes of the IR “ongoing” was taken to mean during the initial five-year implementation period.

⁶ BMM and DENC have been and will continue to be committed to act in good faith regarding the implementation of the BOA. Good faith in this regard was defined as the honest communication and commitment with a sincere intention to deal fairly with others and encompassed a sincere belief or motive without any malice or the desire to defraud others.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
			<ul style="list-style-type: none"> See Report for examples of lack of cooperation. <p><i>* Assessed N-C during Initial IA Report.</i></p>
3.2	<p>BMM shall not be considered to be in breach of any of its obligations under this Agreement, if due to no fault of its own (i.e. where any such delays are beyond the direct control of BMM), the declaration of protected areas contemplated in clause 6 have not been finalised to the point where the requisite notices have been published in the <i>Gazette</i>. BMM shall provide documentary evidence to DENC (including but not limited to written offers to purchase and/or lease the properties and written rejections of such offers) in support of any such reliance on this clause.</p>	NCO	<ul style="list-style-type: none"> Declaration of the Gamsberg Nature Reserve was gazetted on 5 August 2019.
3.3	<p>BMM and DENC shall implement and execute the Biodiversity Offset in accordance with the relevant clauses of this Agreement and/or the provisions of the Management Plan (where applicable) to be prepared in terms of this Agreement.</p>	P-C	<ul style="list-style-type: none"> This Clause relates to general implementation of all Clauses in the BOA. During the Initial IA Report there were only four Clauses assessed as compliant, 11 as partially compliant, 26 as non-compliant and 43 clauses could not be assessed. Since then, as described in the Gamsberg Management Audit Response Report (GMARR), considerable progress had taken place, with a number of Clauses being reassessed as completed but late or partially compliant. Additionally for Clauses where compliance measures were more complicated (such as Clauses 5 and 6), IP had agreed on a way forward following the Biodiversity Workshop in February 2020. During the Close-out Audit 18 Clauses were assessed as compliant, 8 Clauses as completed but late, 14 Clauses as partially compliant, 7 Clauses as not compliant, 36 clauses could not be assessed and 17 Clauses had no compliance obligation. Based on the reduction in non-compliant Clauses IR assessed Clause 3.1 as partially compliant. This was justified based on the establishment of the Trust and payments made into the Gamsberg Nature Reserve Trust account (Standard Bank) that were critical to the implementation and execution of the Biodiversity Offset. Although recognising that numerous Clauses still require considerable actions by IP to bring them into compliance. See Report for further information. <p><i>* Assessed N-C during Initial IA Report.</i></p>
3.4	<p>The Parties shall have the right to appoint sub-contractors to assist them in the exercise of their performance in terms of this Agreement, provided that any appointment shall be with the concurrence of the other Party to this agreement, which consent shall not be unreasonably withheld.</p>	C	<ul style="list-style-type: none"> During the initial five-year implementation period BMM appointed a number of sub-contractors to assist with implementation of the BOA. IR was provided with evidence of BMM's expenditure on sub-contractors including: Ground water monitoring and water provision by GHT on the offset farms; Aquatic biomonitoring by The Biodiversity Company; Update of the BMP and compilation of Biodiversity Monitoring Protocols by EndemicVision; Windmill repairs on the offset properties; and Update of the CAMP by EkoTrust CC. BMM spent in excess of R 3 857 000 on sub-contractors for activities relating to implementation of the BOA (excluding the purchase of the four properties and financial contributions for management of the offset properties).

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
			<ul style="list-style-type: none"> • During the LC meeting held on 18 April 2018 IUCN recommended both parties consider appointing a third party expert (like a conservation trust or NGO) to manage the offset properties for an initial period (3 to 5 years), including their declaration as Protected Areas, undertake the necessary baseline studies and develop and implement the MP. This approach would have enabled the required management framework and required resources to be put in place in a timely manner, as well as assess whether the financial contributions prescribed by the Agreement were adequate. Management of the Protected Areas could then have been transferred to DENC at a later stage, when everything was in place and had been implemented/tested. These recommendations were supported by the LC. A presentation was subsequently made to DENC at the SC to appoint BMM as the Management Authority. This would have enabled BMM to appoint sub-contractors for the compilation of a MP, to undertake a Baseline Assessment of Offset Properties, expedite Declaration of the Protected Areas amongst other actions. However, DENC did not approve of this approach. • IR found DENC had chosen not to appoint sub-contractors to assist in performance of this Agreement. • Considering both IP had acknowledged a lack of capacity to implement the BOA it was the opinion of the IR that appointing third parties/sub-contractors could have assisted the parties, and specifically DENC, to fulfil their obligations in a timely manner, specifically with regards to declaration and management of the Protected Areas and development of the Protected Area MP. • Lack of capacity of both parties remains an ongoing concern for implementation of the Agreement. <p><i>* Assessed N-A during Initial IA Report.</i></p>
3.5	<p>All payments to be made by BMM in terms of this Agreement shall be paid into a dedicated account determined in writing by the Agency, in the event that the Agency has not been identified or established at the time when the first payment becomes due and payable in terms of this Agreement, to The Trust.</p>	C (for all payments made to-date)	<p>During the Initial independent Audit IR found:</p> <ul style="list-style-type: none"> • BMM to be N-C with Clause 3.5 based on when the payments were due. The offset properties were made available to DENC on 4 October 2017. The first payment was due within three months of having been presented to DENC (i.e. by 4 January 2018). • BMM had not made the required payments for the offset properties into The Trust at the time of undertaking the IA, as The Trust had not yet been established, although IR acknowledged BMM and DENC were in the process of establishing The Trust. • BMM paid an amount for the offset properties secured (purchased) into a dedicated bank account only on 22 August 2019. IR was not provided with an explanation as to why BMM did not make the required payments into a separate bank account sooner, whilst it was resolving the establishment of The Trust with DENC. • See responses to Clause 10 for additional information on establishment of The Trust and discussion on Agency. <p>During the Close-out Audit IR was provided with evidence of:</p>

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
			<ul style="list-style-type: none"> The full amount, R 12 050 000.00, as required by Clause 10 of the BOA, excluding two years of vehicle servicing (since the vehicles were not in existence) and operational costs for accommodation and offices, was transferred by BMM into the Gamsberg Nature Reserve Standard Bank Account on 3 April 2020. <p><i>* Assessed N-C during Initial IA Report.</i></p>
3.6	In so far as The Agency is identified or established only after The Trust has been formed, the Parties may elect, at their discretion, to dissolve The Trust and rather to rely on The Agency for the purposes of implementing the relevant aspects of this Agreement.	N-A	<ul style="list-style-type: none"> The Agency was never identified or established. This was based on DENC’s position. The Agency was not an option DENC was prepared to consider.
3.7	All payments to the Agency, or to The Trust as the case may be, shall be made in accordance with the provisions of this Agreement.	C (for all payments made to-date)	<p>During the Initial Independent Audit IR found:</p> <ul style="list-style-type: none"> BMM had not made the required payments for the offset properties into The Trust, because the Trust had not yet been established although IR acknowledged BMM was in the process of establishing The Trust. However, money could have been deposited into an attorney account until the establishment of The Trust, to ensure transparency as suggested by IUCN to BMM in November 2018. See Clause 10 for further details on the establishment of The Trust and discussion on The Agency. <p>During the Close-out Audit IR was provided with evidence of:</p> <ul style="list-style-type: none"> BMM having transferred the full amount, R 12 050 000.00, as required by Clause 10 of the BOA, excluding two years of vehicle servicing (since the vehicles were not in existence) and operational costs for accommodation and offices, into the Gamsberg Nature Reserve Standard Bank Account on 3 April 2020. <p><i>* Assessed N-C during Initial IA Report.</i></p>
3.8	DENC shall ensure that the Agency manages and utilises the financial contributions paid by BMM in terms of clause 3.5 in furtherance of implementing the objectives of this Agreement and for no other purposes whatsoever.	N-A	<ul style="list-style-type: none"> No Agency at time of undertaking the Initial IA, decision to rather establish the Trust. See response to Clause 3.6. No funds transferred to the Trust at the time of the Initial IA, as it had not yet been established. Therefore DENC was not yet required to manage utilisation of financial contributions paid by BMM. DENC’s responsibilities would only commence once the Trust had been established and the required payments had been transferred from BMM’s separate bank account (dated 22 August 2019). <p>During the Close-out Audit IR was provided with evidence of:</p> <ul style="list-style-type: none"> The full amount, R 12 050 000.00, as required by Clause 10 of the BOA, excluding two years of vehicle servicing (since the vehicles were not yet in existence) and operational costs for accommodation and

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
			offices were transferred by BMM into the Gamsberg Nature Reserve Trust Standard Bank account (Standard Bank) on 3 April 2020.
3.9	The Agency, and failing it The Trust (as the case may be), shall cause annual reports to be prepared regarding the allocation and use of funds paid by BMM to it in terms of this Agreement. Such annual reports shall be provided to BMM, DENC and to the Steering Committee within sixty (60) days from 28 February every year commencing on 1 March 2014.	N-C	<p>During the Initial IA IR found:</p> <ul style="list-style-type: none"> The IP were not compliant with this clause based on the date the Financial Annual Reports were due. Although IR acknowledged the Financial Annual Reports would only commence once funds had been transferred to the Trust. Neither the Agency nor the Trust had been established at the time of undertaking the Initial Independent Review. <p>During the Close-out Audit IR was provided with evidence of:</p> <ul style="list-style-type: none"> The full amount, R 12 050 000.00, as required by Clause 10 of the BOA, excluding two years of vehicle servicing (since the vehicles were not in existence) and operational costs for accommodation and offices were transferred by BMM into the Gamsberg Nature Reserve Trust account (Standard Bank) on 3 April 2020.
4. BIODIVERSITY OFFSET			
4.1	It is recorded that the Biodiversity Offset contemplated in this Agreement shall consist of the following components:	-	-
4.1.1	The agreement and consent by BMM to conserve and manage the BMM Properties as contemplated in clause 5.	NCO	<ul style="list-style-type: none"> Addressed in response to Clause 5.
4.1.2	The identification and securing by BMM of additional conservation-worthy land in terms of clause 6 and the declaration thereof as Protected Areas.	NCO	<ul style="list-style-type: none"> Addressed in response to Clause 6.
4.1.3	The transfer of all immovable property secured in terms of clause 6 to, and registration thereof, in the name of the “Northern Cape Provincial Government”.	NCO	<ul style="list-style-type: none"> Addressed in response to Clause 7.1.2.
4.1.4	The identification of a Management Authority for the protected areas declared pursuant to this Agreement.	NCO	<ul style="list-style-type: none"> Addressed in response to Clause 8.
4.1.5	The assignment of the responsibility for managing the protected areas to the Management Authority.	NCO	<ul style="list-style-type: none"> Addressed in response to Clause 8

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
4.1.6	The preparation by the Management Authority, and submission to the MEC for approval, of a Management Plan for the protected areas.	NCO	<ul style="list-style-type: none"> Addressed in response to Clause 9.
4.1.7	The ongoing protection and management of the protected areas.	NCO	<ul style="list-style-type: none"> Falls outside the scope of the First IA.
5. PROTECTION OF THE BMM PROPERTIES -			
*5.1	In accordance with the terms of this Agreement, BMM hereby agrees to protect the biodiversity and ecological functioning of the surface areas of the BMM Properties through appropriate provisions, restrictions and monitoring mechanisms as contained and/or to be contained in the EMP and/or the BMP.	N-C	<ul style="list-style-type: none"> IR concluded BMM had not demonstrated protection of the biodiversity and ecological functioning of the surface areas of the BMM properties (four set-aside areas) through appropriate provisions, restrictions and monitoring mechanisms as contained and/or to be contained in the EMP and/or BMP (Clause 5.1) as delineated in the diagram....attached as Annex "C" (Clause 5.2) of the BOA and managed and implemented through the EMP and/or BMP (Clause 5.3). This conclusion was based on: <ul style="list-style-type: none"> a) Lack of appropriate documentation to guide protection on set-aside properties; b) Absence of monitoring on set-aside areas; and c) Exploration on Big Syncline set-aside areas, started in 2016/2017. BMM set-asides still have explorations activities taking place on Big Syncline. No exploration activities have taken place at Gamsberg South and East; although an EA to undertake exploration was approved this is currently under appeal. DMR recommended the requirement for an additional BOA or for the existing BOA to be amended. The Biodiversity Offset Report was included by BMM during the ESIA process and BMM had committed to undertaking an additional Biodiversity Offset prior to the appeal process. See Report for further details.
*5.2	The surface areas of the BMM Properties that are required to be protected in terms of clause 5.1 are those delineated in the diagram prepared by Messrs. Friedlaender, Burger and Volkmann attached as Annex "C":	C	<ul style="list-style-type: none"> The BMM properties that were required to be protected were delineated in the diagram included as Annex C of the BOA; Also addressed in response to Clause 5.1. above; and See Report for further details.
*5.3	The Parties acknowledge and agree that the protection of the BMM Properties shall be managed and implemented through the EMP and/or the BMP.	N-C	<ul style="list-style-type: none"> Addressed in response to 5.1 & 5.2. See Report for further details.
5.4	BMM shall, at its sole and exclusive cost, protect and maintain the areas of the BMM Properties as contemplated in clause 5.1 for a period of at least the duration of mining operations of the Gamsberg Zinc Mine Project plus a further ten (10) year	N-C	<ul style="list-style-type: none"> See responses to 5.1-5.3.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	period after a closure certificate has been applied for from the relevant authorities for the Gamsberg Zinc Mine Project.		
5.5	Should BMM decide to contract any of the BMM Properties into a protected area in terms of the Protected Areas Act, the provisions of this Agreement shall not in any way detract from BMM’s rights as the owner of these BMM properties contracted into a protected area, otherwise to alienate and/or to encumber a particular BMM property. These rights will only be limited in so far as this does not affect or compromise the terms and conditions of any notarial deed registered against the title deed(s) of the land involved in terms of section 38 of the Protected Areas Act.	NCO	<ul style="list-style-type: none"> BMM informed IR it had no intention of converting the four set-asides into Protected Areas. BMM also informed IR that DMR were generally reluctant to sterilize mineral resources and since these set-aside properties were located inside BMM’s mining license areas DMR would likely not support their conversion to Protected Areas.
6. DECLARATION OF ADDITIONAL LAND AS A PROTECTED ENVIRONMENT AND/OR NATURE RESERVE			
6.1	In addition to clause 5, BMM shall secure, at its sole and exclusive cost, additional conservation-worthy land comprising of:		
6.1.1	At least seven (7) of the twelve (12) Nearby Properties ⁷ ; or	N-A	<ul style="list-style-type: none"> Due to the agreed extension of the Second Time Period, to 2024, the deadline had not yet been reached. At the time of the review, four of the seven Nearby Properties had been secured and declared as nature reserves in terms of NEM:PAA (2003). However, only three of the four were from Annex B1, whereas four are required by the BOA. See Report for further discussion.
6.1.2	Alternatively, 12 900 hectares of land containing the characteristics identified in clause 6.9.	N-A	<ul style="list-style-type: none"> This sub-Clause is not applicable, because BMM did not notify DENC within the prescribed time period that it wished to pursue the option of securing alternative properties, as required by Clause 6.7. See Report for further discussion.

⁷ A Biodiversity Workshop was held on 4th February 2020. During discussions at this workshop, stakeholders confirmed that to comply with Clause 6 of the BOA, BMM should purchase seven properties as per the BOA from a list of 12 farms. These 12 farms were pre-selected properties identified by external specialists and DENC. Although not meeting strict like for like requirements, such a solution was deemed acceptable due to its specific contribution to supporting a landscape approach towards conservation in the Bushmanland landscape. It was confirmed that the original intention of the parties was to aim for the seven farms. It was also considered possible for the parties to add two additional properties to Annex B2 of the BOA, as suggested by BMM during the Biodiversity Workshop, provided BMM could demonstrate that the biodiversity on these two properties was suitable and that the transfer of the properties could be conducted within the agreed timeframes. BMM submitted a letter to DENC confirming their commitment to comply with Clause 6.1 within the extension of Time Period 2 of the BOA and actions would be incorporated accordingly to secure the additional three properties by 1 April 2024. The Biodiversity Workshop participants agreed that the purchase of 12 900 Ha of land (i.e. implementation of Clause 6.1.2 rather than 6.1.1.) was not being pursued.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
6.2	The land required to be secured by BMM in terms of clause 6.1 shall be set aside and declared as a nature reserve and/or a protected environment in terms of sections 23 or 28 of the Protected Areas Act, respectively.	C	<ul style="list-style-type: none"> The four Nearby Properties that had been secured were declared as the Gamsberg Nature Reserves in terms of section 23 of NEM:PAA (2003) on 5 August 2019 (Provincial Notice 80 in <i>Provincial Gazette</i> 2287 of 5 August 2019).
6.3	BMM shall use its best endeavours to ensure that land required to be secured by BMM in terms of clause 6.1 shall include areas of land and/or properties and/or portions of properties which, either individually or collectively, comprise of at least the following areas of substantially intact habitat of Recognised Vegetation Types:	P-C	<ul style="list-style-type: none"> Farm purchases proceeded according to plan. BMM investigated purchase of land as soon as it was made aware farms (on Annex B1 & B2) were available for purchase (Willing buyer...willing seller). In 2017 BMM presented to DENC that it had secured in excess of 12 900 Ha. BMM then stopped purchasing land while it waited for DENC to confirm that it had met the requirements of the BOA for the First Time Period (Clause 6.4.1) as well as the requirements for Clause 6.1.2. Farm properties were secured to the best of BMM's abilities based on the properties available. Although BMM had not yet secured the exact areas required for each of the identified sensitive habitats IR acknowledged that considerable portions of sensitive habitat have been secured. See Report for detailed discussion on achieving conservation targets for Recognised Vegetation Types and identified sensitive habitats.
6.3.1	At least 3 700ha of land comprising Aggeneys Gravel Vygieveld, including those component habitats supporting quartz gravel communities and those that are range restricted or which support localised and endemic plant species;	P-C	<ul style="list-style-type: none"> Although the area required for the Recognised Vegetation Type was met by the four properties secured (8515.75 Ha secured) the area requirements agreed by the parties for the component habitats supporting range restricted, localised and endemic plant species had not been fully met yet. However, since a considerable portion of the sensitive habitats in this category had been secured this clause was assessed as P-C. As the Second Time Period was extended to 1 April 2024 BMM still had time to secure the remaining portions of sensitive habitats where these exist. See Report for discussion on achieving conservation targets for Recognised Vegetation Types and identified sensitive habitats.
6.3.2	At least 3 200ha of Bushmanland Inselberg Shrubland, including those habitat units supporting large succulent plants on the south facing aspects;	P-C	<ul style="list-style-type: none"> Although the areas required for the Recognised Vegetation Type was met by the four properties secured (3623.26 Ha secured) the area requirements agreed by the parties for the component habitats supporting range restricted, localised and endemic plant species had not been fully met yet. However, since a considerable portion of the sensitive habitats in this category had been secured this clause was assessed as P-C. As the Second Time Period was extended to 1 April 2024 BMM still has time to secure the remaining portions of sensitive habitats where these existed. See Report for discussion on achieving conservation targets for Recognised Vegetation Types and identified sensitive habitats.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
6.3.3	At least 4 000ha of Bushmanland Arid Grassland, including those component habitats supporting calcrete gravel communities; and	P-C	<ul style="list-style-type: none"> Although the areas required for the Recognised Vegetation Type was met by the four properties secured (7718.45 Ha secured) the area requirements agreed by the parties for the component habitats supporting range restricted localised and endemic plant species had not been fully met yet. However, since a considerable portion of the sensitive habitats in this category had been secured this clause was assessed as P-C. As the Second Time Period was extended to 1 April 2024 BMM still has time to secure the remaining portions of sensitive habitats where these existed. See Report for discussion on achieving conservation targets for Recognised Vegetation Types and identified sensitive habitats.
6.3.4	At least 2 000ha of azonal vegetation types comprising Bushmanland ephemeral river courses and outwash plains.	P-C	<ul style="list-style-type: none"> Although the areas required for the Recognised Vegetation Type was largely met by the four properties secured (1735.63 Ha and one spring at Achab secured) the area requirements agreed by the parties for the component habitats supporting range restricted localised and endemic plant species had not been fully met yet. However, since a considerable portion of the sensitive habitats in this category had been secured this clause was assessed as P-C. As the Second Time Period was extended to 1 April 2024 BMM still has time to secure the remaining portions of sensitive habitats where these existed. See Report for detailed discussion on achieving conservation targets for Recognised Vegetation Types and identified sensitive habitats.
6.4	With regard to the timing of the obligation in clause 6.1, BMM shall:		
6.4.1	Within the First Time Period, secure <u>at least</u> four (4) of the Nearby Properties listed in Annex "B1", and do all that is necessary in order to make those properties (or portions thereof, as the case may be) available to DENC for declaration by the MEC as protected areas; and	P-C (Only three properties secured from Annex B1. No Further Actions Required)	<ul style="list-style-type: none"> The BOA defined the First Time Period as 18 months calculated from the Final Regulatory Approval Date (last of mining right or water use licence, WUL). The First Time Period therefore commenced on 30 September 2014 and ended on 30 March 2016. Although four properties were purchased, three of these were from Annex B1 and one was from Annex B2. A fourth B1 Property was secured at the time, but the farmer subsequently withdrew the sale agreement – this was beyond BMM’s control. Despite the cancellation of the sale agreement, BMM managed to secure a fourth property from the B2 properties list. BMM demonstrated best efforts to secure the four B1 properties. BMM has therefore demonstrated that it did all that was necessary in order to make those properties (or portions thereof, as the case may be) available to DENC for declaration by the MEC as protected areas. In other cases, such as Haramoep, farmers retracted their offer to sell their farms. Therefore BMM was constrained by the availability of farms for purchase listed on Annex B1 and B2. IA and some stakeholders stated it was possible that, BMM could have leased the properties rather than purchased them. BMM stated this had not been possible according to the BOA since it required the properties to be transferred to the Northern Cape Department of Roads and Public Works (DRPW). The EA did not restrict the option of leasing rather than purchasing

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
			<p>properties but the BOA would need to be amended accordingly to enable leasing properties instead of purchasing them.</p> <ul style="list-style-type: none"> Interviews held by IA with parties other than the IP confirmed BMM had the intention to purchase the properties required by Clause 6 and had acted in good faith to comply with Clause 6.4.1. IR was also informed the job descriptions of key BMM staff included implementation of the BOA. IR was convinced BMM had made best efforts to purchase properties but was unable to convince some farmers to sell their properties. At the SC meeting held on 29 November 2016, the parties may have misinterpreted the requirements of clause 6.7 to mean the First Time Period was a period of 3 years, although this was not clear from the minutes. However, no written variation of the Agreement, as required by Clause 22, was signed by the parties to extend the First Time Period, and accordingly, the First Time Period remained a period of 18 months. IA acknowledged the misinterpretation by both parties suggested they were not aware that a written variation of the Agreement, as required by Clause 22, was required. Only one Nearby Property was secured (purchased) in the First Time Period, but it is acknowledged that three Nearby Properties from Annex B1 were purchased within three years from the Regulatory Approval Date. One Nearby Property from Annex B2 was purchased within three years from the Regulatory Approval Date. The Declaration of the Gamsberg Nature Reserve was completed on 5 August 2019. Although this activity was completed it was not undertaken within the timeframe specified by the BOA. See Report for further discussion. <p><i>* Assessed P-C during Initial IA Report.</i></p>
6.4.2	<p>Within the Second Time Period, secure <u>at least</u> three (3) of the Nearby Properties listed in Annex “B2” (i.e. in addition to those secured in terms of clause 6.4.1), or where this is not possible, <u>secure Suitable Alternative Properties</u> in terms of clauses 6.7 and 6.8 below, and do all that is necessary in order to make those properties (or portions thereof as the case may be) available to DENC for declaration by the MEC as protected areas.</p>	N-A	<ul style="list-style-type: none"> Due to the agreed amendment to the definition of Second Time Period, the due date (2024) for compliance has not yet been reached. Therefore the compliance obligation for this clause has not yet become applicable. Although IA acknowledges BMM have secured four of the seven properties within the first five years of implementation of the BOA. IA noted BMM was by implication not compliant with Clause 54 of the EA that made specific reference to the five year period for securing the requisite properties. The EA had not yet been amended according to the BOA Second Time Period amendment agreed by IP. See Report for further discussion.
6.5	<p>DENC shall, as soon as reasonably possible after the properties or portions thereof have been made available in terms of clause 6.4, cause those areas to be declared, by way of publication of the requisite notice in the <i>Gazette</i>, in terms of the</p>	C-L (No further Actions Required)	<ul style="list-style-type: none"> The four properties were presented to DENC on 4 October 2017, but the notice of intention to declare the Gamsberg Nature Reserve was only published in the Gazette on 26 November 2018, and finally declared in the Gazette on 5 August 2019. Although no specific timeframe requirement was stipulated by

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	Protected Areas Act as nature reserves or where same is not possible, protected environments, as the case may be.		<p>the BOA for this obligation IA found DENC did not meet the specified obligation of “as soon as reasonably possible”.</p> <ul style="list-style-type: none"> • IR found that DENC had not provided sufficient explanation for the delay in publishing the notice of intention to declare the properties, and therefore that it had not acted “as soon as reasonably possible” to cause the declaration. • Although DENC considered the timeframes for declaration as reasonable according to NEM:PAA (2003)/PFMA IA was not provided with sufficient evidence to support this conclusion. • Since the Initial IA Report the IP had compiled an Action Plan for future tracking of the three additional properties that need to be secured to ensure compliance to timeframes of presenting the properties to DENC, declaration by DENC, payment of financial contributions etc. Written communication between the parties would be implemented regarding any future properties including, but not limited, to the following: <ul style="list-style-type: none"> • BMM presenting / making the properties available for declaration; • Acknowledgement of receipt of letter from BMM presenting the properties for declaration by DENC, including the anticipated timeframes and steps for declaration of additional land as part of Gamsberg Nature Reserve; • Presentation of Properties at earliest SC Meeting; • Follow-up engagement and weekly update of the tracker to track progress (will be submitted to all SC and LC Members on weekly basis); and • Furthermore, actions/responsibilities of individual members would be tracked and DENC and BMM would hold each other accountable on a weekly basis. <p><i>* Assessed N-C during Initial IA Report.</i></p>
6.6	In giving effect to clause 6.1 BMM shall first do all that is necessary to secure seven (7) of the twelve (12) Nearby Properties in the manner contemplated in clause 6.4.	N-A	<ul style="list-style-type: none"> • BMM had not yet secured seven of the twelve Nearby Properties however the Second Time Period defined by which this needs to be achieved has been extended to 2024 therefore this clause has not been assessed. • See Report for further discussion.
6.7	Insofar as it becomes clear to BMM, within three (3) years of the Final Regulatory Approval Date despite its best endeavours, that fewer than seven (7) of the Nearby Properties can be secured in the manner contemplated in clause 6.4, BMM shall forthwith:	N-A	<ul style="list-style-type: none"> • BMM did not formally communicate, or provide required supporting documentation, to DENC within three (3) years of the Final Regulatory Approval Date (i.e. September 2017) that it would be unable to secure fewer than seven (7) of the nearby properties in the manner contemplated in Clause 6.4. The reason provided for this was that BMM was still applying Clause 6.6. i.e. trying to secure nearby properties. • See Report for further discussion.
6.7.1	Submit to DENC documentary evidence (as contemplated in clause 3.2) documenting all attempts by BMM to secure the Nearby Properties; and	N-A	<ul style="list-style-type: none"> • BMM did not initiate a process to secure Suitable Alternative Properties. The reason provided for this was that BMM was still applying Clause 6.6. i.e. trying to secure nearby properties.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
6.7.2	Identify and secure Suitable Alternative Properties in accordance with this clause, and in terms of the criteria in clause 6.9.	N-A	<ul style="list-style-type: none"> No Suitable Alternative Properties had been identified or secured at the time of the First IA. BMM had not provided any communications to DENC regarding its intention/desire to identify and/or secure Suitable Alternative Properties. The reason provided for this was that BMM was still applying Clause 6.6. i.e. trying to secure nearby properties.
6.8	In so far as BMM requires the assistance from DENC with the identification and/or selection of Suitable Alternative Properties, BMM shall request DENC, in writing, to identify such properties and DENC shall, within three (3) months of receipt of written request to do so, notify BMM, in writing, of the Suitable Alternative Properties.	N-A	<ul style="list-style-type: none"> BMM had not submitted a written request to DENC for assistance with identification and selection of Suitable Alternative Properties. The reason provided for this was that BMM was still applying Clause 6.6. i.e. trying to secure nearby properties. See response to 6.7.2.
6.9	In selecting Suitable Alternative Properties, BMM and/or DENC, as the case may be, shall have regard to the criteria in this clause. In order to qualify as Suitable Alternative Properties, the properties identified pursuant to clause 6.7.2 or 6.8 must:	N-A	<ul style="list-style-type: none"> See response to 6.7.2 and 6.8 above.
6.9.1	Contain samples of the vegetation types identified in clause 6.3 above; or	N-A	
6.9.2	Contain samples of any other endangered vegetation or other ecosystems in need of protection, as determined by DENC from time to time; and	N-A	
6.9.3	Be in good ecological condition as determined by DENC or a suitably qualified specialist appointed by the Parties for this purpose; and	N-A	
6.9.4	Be either contiguous with or form a cohesive management section of any existing protected area declared in terms of the Protected Areas Act; and	N-A	
6.9.5	Be available to be secured as a Nature Reserve in terms of section 23 of the Protected Areas Act.	N-A	
6.10	Any time period taken by DENC to identify the Suitable Alternative Properties, in terms of clause 6.8, shall be added to the Second Time Period.	N-A	<ul style="list-style-type: none"> The Second Time Period was extended to 1 April 2024 and therefore had not yet expired at the time of undertaking the First IA. DENC had not embarked on a process to identify Suitable Alternative Properties.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
6.11	Upon the expiry of the Second Time Period, and in so far as BMM has failed in its obligations to secure the conservation-worthy land contemplated in clause 6.1, the penalty provisions in clause 15.4 will apply.	N-A	<ul style="list-style-type: none"> The Second Time Period was extended to 1 April 2024 and therefore had not yet expired at the time of undertaking the audit.
7. REQUIREMENTS REGARDING THE PROPERTIES			
7.1.	Any Nearby Property and/or Suitable Alternative Property, or portion of such property, secured by BMM (either in terms of a lease agreement, sale agreement or otherwise) for the purposes of clause 6 shall be:		<ul style="list-style-type: none"> See Clauses 7.1.1 & 7.1.2
7.1.1.	Presented by BMM to DENC for management and declaration in terms of the Protected Areas Act within six (6) months of being so secured by BMM; and	C-L (No further actions required for existing secured properties)	<ul style="list-style-type: none"> BMM secured the Nearby Properties on 11 September 2015, 26 August 2016, 15 September 2017 and 26 June 2017 respectively. BMM officially "presented" the four Nearby Properties to DENC in a letter dated 4 October 2017. Therefore, two of the Nearby Properties were presented to DENC for declaration long after six months after they had been secured. BMM should have presented each property to DENC in accordance with the six month timeframe stipulated in BOA clause 7.1.1 once purchased. IR noted strict deadlines were not enforced during the LC and/or SC meetings. Although BMM provided DENC with an update on the securing of the two Rosynebosch properties at the SC meeting held on 26 Nov 2016 (page 4 of Minutes) IR did not consider this as official presentation of the properties to DENC for management and declaration. Similarly BMM mentioned its securing of the properties Achab and REM of Vogelstruishoek on 16 Oct 2017 SC (Minutes and Presentation) but this was also not considered official presentation of the properties to DENC for management and declaration. Although these properties were presented to DENC late their declaration in terms of the NEM:PAA (2003) was completed. Therefore this Clause was completed for the existing properties secured. Going forward, any new properties secured would be presented to DENC by BMM following the Action Plan compiled to ensure strict timeframes are implemented and implementation of the Action Plan tracker once additional properties were secured would ensure deadlines were met. <p><i>* Assessed N-C during Initial IA Report.</i></p>
7.1.2.	Transferred to the ownership of the Northern Cape Provincial Government as soon as reasonably possible after declaration of that property in terms of the Protected Areas Act.	N-A	<ul style="list-style-type: none"> The four secured Nearby Properties were declared as a Nature Reserve on 5 August 2019. At the time of the IA, they had not yet been transferred to the Northern Cape Department of Roads and Public Works (DRPW). Since the Initial IA started in August 2019 IR recognised there was insufficient time for the transfer of properties since their gazettment.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
			<ul style="list-style-type: none"> Various SC and LC meeting minutes, as well as interviews with the parties, indicated that the parties explored transferring the properties prior to declaration. However, various issues arose, such as uncertainty as to whom the properties should be transferred to, and to which government department the properties should be transferred. The IR concluded BMM had taken reasonable measures to enable the transfer of the land to the relevant government department to-date.
7.2.	All properties transferred in terms of this clause shall comply with the requirements of the Northern Cape Land Administration Act (Act No. 6 of 2002)	N-A	<ul style="list-style-type: none"> At the time of the IA Northern Cape DRPW still had to visit the properties to confirm that they complied with all government requirements before agreeing/approving transfer. IR could thus not assess whether the properties had complied with the Northern Cape Land Administration Act.
7.3	All properties, or portions thereof, secured by BMM for the purposes of clause 6 shall be adequately fenced by BMM as soon as reasonably possible after those properties have been secured by BMM. Such properties shall be fenced either as one area or individually, depending on the circumstances, and shall be otherwise rehabilitated at the sole and exclusive cost of BMM.	N-C	<p>During the Initial Independent Audit:</p> <ul style="list-style-type: none"> BMM confirmed the fencing process had been delayed. During 2017/18 DENC and BMM engaged SANPARKS to act as the Management Authority or to be contracted to do this. During the LC meeting held in Nov 2018, SANPARKS indicated that their specification for fencing differed from DENC requirements. Fencing was therefore put on hold (as noted in minutes of the SC, 17 April 2019). This issue was discussed in some of the Liaison and SC meetings. DENC confirmed, during the SC held in April 2019 that SANPARKS would not be involved. BMM subsequently submitted the scope of work and it was approved by DENC. Prior to the appointment of the Management Authority in August 2019 there was no certainty regarding the fencing requirements as it differed depending on whether the Management Authority would be SANPARKS or DENC. This created uncertainties regarding the fencing specification. For the reasons outlined above IR found BMM had delayed implementing this activity. The SC &/or LC should have insisted this activity be implemented timely. BMM informed IR fencing was a work in progress. BMM was in the process of appointing a service provider to conduct fencing according to government approved specifications. The fencing tender process had commenced and the site visit, by service providers, was conducted on 7 October 2019 with a presentation made by service providers to BMM on 8 Oct 2019. A proposal was due to be submitted by 18 October 2019 for a final review and adjudication process. IR acknowledged considerable progress had taken place, however, no fencing had been installed. Whilst this was an issue from a procedural perspective it is not perceived as a major issue from a conservation perspective. The main risks to the threatened plants were a) overstocking of game, b) foreign plant collectors, c) BMM's own explorations team and other mining company explorers, d) four by four tourists who drive over areas with high concentrations of threatened plants. Of these identified threats the four by four tourists were viewed as the biggest immediate threat, which could be addressed through appropriate fencing and access control.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
			<ul style="list-style-type: none"> • IR had not been provided with any correspondence between BMM and DENC, on rehabilitation measures to be implemented. The SC and LC meeting minutes also did not reflect any discussions relating to rehabilitation. <p>During the Close-out Audit IR found:</p> <ul style="list-style-type: none"> • Fencing of the offset properties had not yet commenced. • Various proposals had been received by BMM. • Evidence that fencing requirements had been resolved. • BMM had reviewed all tenders and had identified four external service providers. BMM would engage with Pakamani who would assist with implementation and identification of local companies' appointment. • Rehabilitation requirements were discussed at the meeting held on 5 February 2020 between the IP and DENC had submitted written clarifications regarding rehabilitation requirements. • Rehabilitation plans would be included in the Management Plan and associated costs would be provided as part of the Management Plan for the purpose of planning by BMM.
7.4	The specifications in respect of the fencing and rehabilitation measures to be implemented shall be communicated in writing beforehand to DENC. It is specifically agreed that any such fencing must:-	C	<p>During the Initial IA IR found:</p> <ul style="list-style-type: none"> • BMM had communicated fencing specifications in writing with DENC. Correspondence was shared with IR. BMM requested fencing specifications from DENC for the offset properties purchased so they could go out to tender for a fencing sub-contractor. DENC informed BMM that electric fencing probably wasn't necessary for the specific species in question but that farmers were worried about roaming animals and electric fencing might keep the peace between neighbours. Class 2 A, C or D (as per Annexes to the Northern Cape Nature Conservation Regulations) were proposed, which must also enable tortoises to move underneath. BMM sent a draft scope of works for fencing to DENC for comment and review. On 8 August 2019 DENC replied that it agreed with the specifications included in the scope of works (Class 2 fencing at 1.8m height and 9 strand) and the email included some discussion on electrical versus non-electrical fencing and the cost implications. DENC was also sent a bill of quantities for the fencing. Proposals were required to be submitted to DENC by 23 August 2019. (IR undertook a cursory review of the bill of quantities and Draft Scope of work for fencing of the two offset areas).
7.4.1	Be in compliance with the Northern Cape Nature Conservation Act (2009) and enhance the integrity of the management system;	C	<ul style="list-style-type: none"> • Fencing requirements as agreed between IP were aligned with NCNCA, 2009.
7.4.2	Be at least 1.8 metres in height; and	C	<ul style="list-style-type: none"> • Fencing specification was provided by DENC. BMM agreed to the fencing specification. This requirement has been taken into consideration by BMM and DENC.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
7.4.3	Should not unduly inhibit the free movement or dispersal of small animals	C	<ul style="list-style-type: none"> This requirement had been taken into consideration by BMM & DENC. See response to 7.4.1. Fencing specifications were provided by DENC. BMM intended to amend specifications for this clause. DENC recommended BMM installed electrical fencing to protect neighbouring farmer's livestock from predators but this would inhibit requirements of Clause 7.4.3 and therefore was excluded for implementation.
8. MANAGEMENT AUTHORITY			
8.1	The Parties agree that:		
*8.1.1	In respect of the properties identified in terms of clause 6, and subject to clause 8.1.3 below, there shall, be one Management Authority for the protected areas and to which responsibility shall be assigned by the MEC in terms of the Protected Areas Act ;	NCO	<ul style="list-style-type: none"> The MEC officially assigned DENC as the Management Authority (MA) in the Provincial Notice 80. of 5 August 2019. Under NEM:PAA (2003), a nature reserve is only one that has been declared as such by notice in the Government Gazette. This occurred on 5 August 2019. Under section 38(2) of NEM:PAA (2003), the MEC must assign the management of a nature reserve in writing. The Gazette Notice records that "Management Authority appointed in terms of section 38(2) – Northern Cape Department of Environment and Nature Conservation" (DENC). Given that assignment of the MA could only take place once the nature reserve was declared, the assignment took place concurrently with the declaration.
*8.1.2	DENC shall be the Management Authority to which the management of the protected areas shall be assigned; and	NCO	<ul style="list-style-type: none"> See Report for discussion on management of the offset properties/protected areas and roles and responsibilities of the MA.
*8.1.3	The Management Authority may enter into an agreement with a third party for the purpose of undertaking any other activity that may be required for the successful management of the protected areas.	NCO	<ul style="list-style-type: none"> DENC had not entered into an agreement with a third party for management of the protected areas during the first five years of implementation. See Report for additional discussion on capacity of the MA and third party agents.
8.2	To the extent required by law, BMM and DENC hereby record their consent to the assignment of the responsibility for managing the protected areas by the MEC in terms of the Protected Areas Act, in the terms set out in this clause 8.	NCO	<ul style="list-style-type: none"> Since management of the protected areas had not yet commenced it was not possible for this to be assessed.
8.3	To the extent that the protected areas includes a protected environment and/or a nature reserve declared in terms of sections 28 and 23 of the Protected Areas Act respectively, the Parties hereby acknowledge that consent to such assignment is required to be obtained from any landowner and/or lawful occupier of the land in question.	NCO	<ul style="list-style-type: none"> The landowners who sold the four farms to BMM were no longer occupying their land. They had sold their farms and moved on. Therefore no consent was required from these previous land owners. BMM was the current land owner until the land was transferred to government. The four properties had already been declared as protected areas. See responses to Clauses 8.1 and 8.2.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
8.4	BMM shall use their best endeavours to obtain the consent envisaged in clause 8.3. In so far as same is not possible, the particular property, portion thereof or area of land shall not be considered as land for the purposes of clause 6.1 above.	NCO	<ul style="list-style-type: none"> See response to Clause 8.3.
9 MANAGEMENT PLAN			
*9.1	In respect of the properties to be identified in terms of clause 6.1, the Management Authority, shall prepare and submit the Management Plan to the MEC, for approval in terms of the Protected Areas Act, within twelve (12) months of being assigned as the Management Authority of the protected areas.	N-A	<ul style="list-style-type: none"> Outside timeframe of First Independent Audit; DENC have 12 months to prepare and submit the Management Plan from 5 August 2019. See response to Clause 8.1. above; and See Report for further details.
9.2	The object of the Management Plan shall be to ensure the protection, conservation and management of the protected areas in a manner which is consistent with the objectives of the Protected Areas Act and the purpose for which the area was declared.	N-A	
9.3	The Management Plan must be compiled in consultation with interested parties including, for example, the Khai-ma Municipality; any organs of state interested in or affected by the declaration; local communities and BMM.	N-A	
9.4	The Management Plan referred to above shall, where appropriate, contain the following information:	N-A	
9.4.1	the terms and conditions of any applicable biodiversity management plan;	N-A	
9.4.2	the planning measures, controls and performance criteria as may be prescribed by the Management Authority;	N-A	
9.4.3	a programme for the implementation of the Management Plan and its costing;	N-A	
9.4.4	the zoning of the different land areas indicating what activities may take place in different sections of the protected areas (and the conservation objectives of each of those sections);	N-A	

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
9.4.5	any financial and other support/mechanisms to ensure effective administration and implementation of the Management Plan and/or any co-management agreement entered into by the Management Authority, and/or any spending of revenue generated from the protected areas;	N-A	
9.4.6	schedules setting out the anticipated timing for the implementation and completion of any component of the Biodiversity Offset; and	N-A	
9.4.7	Anticipated costs and budgets associated with the implementation of the Biodiversity Offset and on-going management of the protected areas.	N-A	
10 FINANCIAL PROVISIONS			
10.1	All payments made by BMM in connection with the implementation and execution of the Biodiversity Offset shall be made in accordance with this clause and, where applicable, the requirements of the Public Finance Management Act (Act No. 1 of 1999).	N-A	<ul style="list-style-type: none"> As the Trust will be utilised as the body to receive and administer payments, payments are not subject to the requirements of the Public Finance Management Act.
10.2	All payments made in terms of this Agreement shall be made to the Agency and failing its establishment, to The Trust.	C	<ul style="list-style-type: none"> The Gamsberg Nature Reserve Trust was registered, with letters of authority issued on 6 March 2020 in terms of Section 6 (1) of the Trust Property Control Act, 1988 (Act No. 57 of 1988). The full amount, R 12 050 000.00, as required by Clause 10 of the BOA, excluding two years of vehicle servicing (since the vehicles were not in existence) and operational costs for accommodation and offices were transferred by BMM into the Gamsberg Nature Reserve Trust Bank account (Standard Bank) on 3 April 2020. Following the Initial IA Report an Action Plan was compiled regarding payment requirements and timeframes as per Clause 10 of the BOA to ensure any future payments required for additional farms that needed to be purchased until 1 April 2024 would be done within the relevant timeframes. The Gamsberg Nature Reserve Trust Bank account was opened on 20 March 2020, all future payments must be done in accordance with Clause 10 and within the required timeframes to ensure compliance. See Report for further discussion. <p><i>*Assessed N-C in Initial IA Report</i></p>
10.3	In order to ensure transparency and to provide for appropriate monitoring in respect of the utilisation of the funds received in terms of this Agreement, The Agency, or The Trust, as the case may be, shall put in place accounting mechanisms	C	<ul style="list-style-type: none"> The Gamsberg Nature Reserve Trust was registered, with letters of authority issued on 6 March 2020 in terms of Section 6 (1) of the Trust Property Control Act, 1988 (Act No. 57 of 1988).

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	necessary to ensure that the use of all funds received are “ring-fenced” and traceable to the implementation objective for which they were utilised.		<ul style="list-style-type: none"> • All funds required by Clause 10, aside from the two years vehicle servicing and operational costs for offices and accommodation units, were paid into the Gamsberg Nature Reserve Trust’s account (Standard Bank) on 3 April 2020 and guided by the Trust Deed. • An independent financial auditor was identified and appointed to act as Auditor / Accountant for the Gamsberg Nature Reserve Trust. • The first financial audit would be prepared by February 2021. • Clauses 5.1, 6 (and particularly 6.4) together established mechanisms to ensure the use of all funds received were “ring-fenced” and traceable to the implementation objective for which they were utilised. <p><i>*Assessed N-C in Initial Audit Report.</i></p>
10.4	Any and all payments in respect of this Agreement shall be paid by BMM into an account detailed in writing for this purpose by either the Agency or The Trust, as the case may be, for the exclusive purposes of furthering the objectives contained in this Agreement.	C	<ul style="list-style-type: none"> • See 10.2 above. • The Gamsberg Nature Reserve Trust bank account (Standard Bank) was opened on 20 March 2020 and money transferred 3 April 2020. • The IR was satisfied that the Trust Deed provided for sufficient mechanisms, theoretically, to ensure the use of funds would be for the exclusive purpose of furthering the objectives on the BOA. • However, given that at the date of compiling the Close-out Audit report, no funds had yet been utilised, the IR was unable to comment on the implementation of such mechanisms. Subsequent IA would need to consider the actual use of funds. <p><i>*Assessed N-C in Initial IA Report.</i></p>
Payments in respect of maintenance and operation of the Biodiversity Offset			
10.5	In addition to any costs that may be incurred by BMM in securing the properties contemplated in clause 6.1, the following financial contributions shall be made by BMM in respect of the maintenance and operational costs of the Protected Areas.	NCO	
10.6	During the initial five (5) year period calculated from the Final Regulatory Approval Date, alternatively until all the properties or portions thereof referred thereto in clause 6.1 have been made available to DENC for declaration (whichever is the earlier), payment in respect of maintenance and operational costs of the Protected Areas shall be made by BMM to The Agency or The Trust, as the case may be, as follows:	NCO	<ul style="list-style-type: none"> • See 10.2. <p><i>* Assessed N-C in Initial IA Report.</i></p>

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
10.6.1	The first payment shall be made within three (3) months of the first property (ies) or portion(s) thereof being made available to DENC for declaration in terms of clause 6. The first payment shall be in the amount of Five Hundred Thousand Rand (R500,000.00) per property or portion thereof presented for declaration;	C-L (Actions completed for existing secured properties)	<ul style="list-style-type: none"> Although no payments were made within three months of the properties being made available to DENC (as no Agency nor Trust had been established at the time), BMM did make a payment into the Gamsberg Nature Reserve Standard Bank account on 3 April 2020. BMM and DENC have agreed in writing that the total amount of R 2 000 000.00 (R500 000.00 for each of the four properties) was required for payment. Payment of R 2 000 000.00 for the four properties secured to-date was transferred by BMM into the Gamsberg Nature Reserve Bank Account 3 April 2020. The IR noted the Action Plan provided for payment in respect of any future properties secured to be made within three months. <p><i>* Assessed N-C in Initial Audit Report.</i></p>
10.6.2	thereafter, and within three (3) months of each subsequent property(ies) or portion(s) thereof being made available to DENC for declaration in terms of clause 6 an amount of Five Hundred Thousand Rand (R500,000.00) per additional property or portion thereof shall be paid by BMM to the Agency; and	C-L (Actions completed for existing secured properties)	<ul style="list-style-type: none"> As above.
10.6.3	in addition to clause 10.6.2 an amount of Five Hundred Thousand Rand (R500,000.00) per property or portion thereof shall be paid by BMM to the Agency on or before 28 February of each subsequent year in respect of each property or portion thereof which had previously been made available to DENC for declaration and/or has been declared a protected area.	C-L (Actions completed for existing secured properties)	<p>During the Initial Audit Report IR found:</p> <ul style="list-style-type: none"> No annual payments had been made after the properties were made available to DENC. BMM had put aside an amount in a separate back account, but its calculations in respect of this payment were flawed. <p>During the Close-out Audit IR found:</p> <ul style="list-style-type: none"> The Gamsberg Nature Reserve Trust was registered and its Bank Account was opened on 20 March 2020. An amount of R 4 000 000.00 was transferred by BMM into the Gamsberg Nature Reserve Bank Account on 3 April 2020. <p><i>* Assessed N-A during Initial IA Report.</i></p>
10.7	Upon the expiry of the five (5) year period, alternatively upon the presentation of the last of the properties or portion(s) thereof being made available to DENC for declaration in terms of clause 6 (whichever is the earlier), BMM shall make an	C	<p>Although this obligation was not yet applicable at the time of the Initial Audit Report, the payment due date had been reached at the time of the Close-out Audit:</p> <ul style="list-style-type: none"> Payment was due on or before 28 February 2020; and

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	Annual Payment on or before 28 February of each subsequent year as set out below:		<ul style="list-style-type: none"> The agreed amount, was transferred by BMM into the Gamsberg Nature Reserve Bank account on 3 April 2020. <p><i>* Assessed N-A during Initial IA Report.</i></p>
10.7.1	The Annual Payment shall be in the amount of Three Million Five Hundred Thousand Rand (R 3 500 000.00) per annum; and	C	<ul style="list-style-type: none"> Same as above. Payment due on or before 28 February 2020. A total amount of R 3 500 000.00 was transferred by BMM into the Gamsberg Nature Reserve Bank account on 3 April 2020. <p><i>* Assessed as N-A during Initial IA Report.</i></p>
10.7.2	The Annual Payment shall increase annually by six per centum (6%) or Consumer Price Index (“CPIX”), whichever is the lower in any given year, on the previous year’s amount.	N-A	<ul style="list-style-type: none"> This obligation had not yet become applicable. <p><i>* Assessed as N-A during Initial IA Report.</i></p>
10.8	BMM shall make the Annual Payments for a period of at least the duration of the mining operations at the Gamsberg Zinc Mine Project plus an additional ten (10) year period after a closure certificate has been applied for.	C	<ul style="list-style-type: none"> See Above. The first annual payment was made. <p><i>* Incorrectly assessed as N-C during Initial IA Report.</i></p>
10.9	In addition to the above, BMM shall, within three (3) months after making available to DENC the first property for declaration, and for the duration of the mining operations at the Gamsberg Zinc Mine Project plus an additional ten (10) year period after a closure certificate at the Gamsberg Zinc Mine Project has been applied for (and subject to increase in accordance with the CPIX) provide for the following to be utilised by the Management Authority:-	P-C	<ul style="list-style-type: none"> The requirements below were not met within the specified 3-month time frame. These requirements had still not been met at the time of undertaking the Close-out Audit. The Management Authority was only established when the Gamsberg Nature Reserve was declared on 5 August 2019. No resources were available from DENC and no office units or accommodation units were used/required for occupation by DENC during the period prior to the Initial Audit Report or the Close-out Audit. Provision of office and accommodation units and the operational costs for 2020 must be calculated by DENC/DRPW and submitted to BMM for review and if agreed, by both parties for payment. Information such as layout plans of infrastructure, boreholes, dams, BVI reports were submitted to DRPW. DRPW requested as built drawings of houses and buildings, as these were non-existent, BMM was in the process of getting the as built drawings finalised. It was anticipated the as built drawings will be finalised by mid-April 2020. To-date no office nor accommodation units were used, as no resources had been made available by DENC as communicated to DENC.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
			<ul style="list-style-type: none"> BMM was awaiting confirmation of operational costs in order to transfer money and had made provision for operational costs in its 2020-2021 Budget Planning. <p><i>* Assessed N-C during Initial IA Report.</i></p>
10.9.1	The provision of and operating costs of two (2) office units within the town of Aggeneys or another site to be agreed by the Parties;	N-C	<p>During the Initial Audit Report IR found:</p> <ul style="list-style-type: none"> Requirements not met within the specified three-month timeframe. See above. Sites for office units had been earmarked and these were discussed during the SC meeting held on 10 April 2019 (see minutes). They were located on the farm Achab. At the time of the Initial Audit Report the office units had not yet been confirmed in writing as DRPW still needed to conduct a site visit to inspect the infrastructure on site as well as the cost calculation for the operation units of the office. DENC informed IR it could not agree with BMM on whether the office premises were suitable. This would be done by DRPW during their upcoming site visit. <p>During the Close-out Audit IR found:</p> <ul style="list-style-type: none"> DRPW and DENC had undertaken a site visit on 26 & 27 November 2019. No office units or accommodation units were used/required for occupation by DENC during the period prior to the Initial Audit Report or the Close-out Audit. No resources had been made available by DENC as communicated by BMM to DENC. DENC was waiting on DRPW to conduct a conditional assessment and provide cost estimates of restoration and renovation of properties (garages, workshops, storage & office facilities and staff accoms). So the exact amount to be transferred was pending this conditional assessment by DRPW. Financial provisions for office and accommodation units and their operational costs for 2020 still needed to be calculated by DENC/DRPW and submitted to BMM for review and if agreed, by both parties, paid into the Trust account. BMM had submitted to DRPW information such as layout plans of infrastructure, boreholes, dams and BVI reports. DRPW had also requested as built drawings of houses and buildings as these were non-existent. BMM's Daughtsman anticipated built drawings and anticipated their completion by mid-April 2020. BMM was awaiting confirmation of operational costs in order to transfer money to the Trust Account and had made provision for operational costs in its 2020-2021 Budget Planning.
10.9.2	The provision of and operating costs of three (3) accommodation units to house employees responsible for the day to day management of the Protected Areas; and	N-C	<ul style="list-style-type: none"> See 10.9 and 10.9.1 above. Requirements were not met within the specified three-month timeframe. During the site visit BMM showed IR accommodation units that had been earmarked. At the time of the Initial Audit Report or the Close-out Audit BMM had not made any payments or set-aside money in BMM's separate bank account for the necessary upgrade of the accommodation units to ensure they would be inhabitable.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
10.9.3	The servicing of motor vehicles to enable DENC, as the Management Authority properly to perform its functions, which amount shall be limited to Fifty Thousand Rand (R50 000.00) per annum from the date contemplated in clause 10.9 and shall increase annually by six per centum (6%) or CPIX, whichever is the lower in any given year, on the previous year's amount.	C	<ul style="list-style-type: none"> See 10.9 above. At the time of the Initial Audit Report BMM had not made any payments to the Trust in respect of the servicing of motor vehicles. IR acknowledged that an amount of R 50 000.00 had been set aside in BMM's separate bank account, but the amount should have been R 150 000.00 (excluding calculated 6% or CPIX) as the requirement was for R50 000 per annum. <p>During the Close-out Audit IR found:</p> <ul style="list-style-type: none"> BMM had made provision of R 50 000.00 for servicing of vehicles for 2020-2021 financial year and had communicated this in writing to DENC. The R 50 000.00 was transferred to the Gamsberg Nature Reserve Trust bank account on 3 April 2020. BMM argued the payment of services for non-existing vehicles would expose it during a financial audit and therefore stated this amount could not be paid. Although IR acknowledged the vehicles did not yet exist at the time of the Initial &/or Close-out Audits, however, this did not affect the BOA requirement for BMM to have made financial provisions for the servicing of vehicles as per the stipulated date requirement (clause 9: "3 months after making available to DENC the first property for declaration" and thereafter annually). IR acknowledged BMM was not unwilling to pay the amount but rather the BOA clause should have stipulated this only needed to take place once the vehicles had been purchased/existed. However, the requirements of the BOA meant that IR assessed BMM as being non-compliant with this clause. IR accepted that given the inherent flaws in applying Clause 10.9, that DENC was not formally assigned as the Management Authority until August 2019, and that the vehicles were not in existence for at least the first two years after the properties were presented to DENC and accordingly that DENC could not have utilised the funds for its purpose, that BMM could not be held liable for the payment of servicing of vehicles that did not yet exist. <p><i>* Assessed N-C during Initial IA Report.</i></p>
Payment of Capital Costs for establishment of the Protected Area			
10.10	The Capital Costs for the establishment of the Protected Area shall be the capped amount of Two Million Five Hundred Thousand Rand (R2,500,000.00) payable by BMM to the Agency, or to The Trust as the case may be, as follows:-	C-L (Actions completed)	<ul style="list-style-type: none"> Payment was made by BMM to the Gamsberg Nature Reserve Trust on 3 April 2020. BMM and DENC agreed the total Financial Provision to-date, as per the full amount required by Clause 10 of the BOA, with exception of the operational cost for the office and accommodation and provision for servicing of vehicles (2 years payments). The agreed amount of R 2 500 000.00 was transferred by BMM into the Gamsberg Nature Reserve Bank Account on 3 April 2020.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
			<ul style="list-style-type: none"> Since the Initial Audit Report BMM compiled an Action Plan regarding payment requirements and timeframes defined in Clause 10 of the BOA to ensure any future payments required for additional farms that need to be purchased from now until 1 April 2024 would be done within the relevant timeframes. As the Trust is registered and the bank account opened, all future payments must be done in accordance with Clause 10 and within the required timeframes to ensure compliance. <p><i>* Assessed N-C during Initial IA Report.</i></p>
10.10.1	the first payment of Five Hundred Thousand Rand (R500,000.00) shall commence on the Final Regulatory Approval Date and be due and payable annually thereafter on 1 March of each subsequent year;	C-L (No further actions required)	<ul style="list-style-type: none"> See response to Clause 10.10. BMM included the capped costs of R2 500 000.00 in financial provisions calculations and communicated this to DENC whereafter DENC agreed. This included R 500 000.00 per annum x 5 years. No further payment was required on 1 March 2020. The agreed amount (R 2 500 000.00) was transferred by BMM into the Gamsberg Nature Reserve bank account on 3 April 2020. <p><i>* Assessed N-C during Initial IA Report.</i></p>
10.10.2	Payment shall be in the sum of Five Hundred Thousand Rand (R500 000.00) per annum for the total period of five (5) years from the Final Regulatory Approval Date.	C-L (No further actions required)	<ul style="list-style-type: none"> See response to Clause 10.10. BMM and DENC agreed on the total Financial Provision to date and the full amount required, as per Clause 10 of the BOA, with the exception of the operating cost for the office and accommodation and provision for servicing of vehicles (2 years payments). BMM transferred the agreed amount of R 2 500 000.00 into the Gamsberg Nature Reserve bank account on 3 April 2020.
10.11	The Agency or The Trust, as the case may be, shall decide how the Capital Costs received in terms of this clause are to be allocated in order to secure the establishment of the Protected Area and the implementation of any relevant parts of the Management Plan in accordance with this Agreement.	N-A	<ul style="list-style-type: none"> At the time of undertaking the Close-out Audit the Capital Costs received had not yet been allocated therefore it was not possible for IR to assess compliance with this obligation.
11 SURETYSHIP			
11.1	This Agreement shall be of no force or effect until BMM has furnished to DENC a deed of suretyship signed by Vedanta in a form acceptable to DENC. This clause is inserted solely for the benefit of DENC who may waive it in part or in whole as DENC may deem fit	C	<ul style="list-style-type: none"> DENC had not waived the requirement for suretyship. Despite significant delay in providing the required suretyship, it was eventually provided in a form acceptable to DENC on 6 September 2019.
12 ESTABLISHMENT OF A STEERING COMMITTEE			

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
*12.1	The Parties agree that a Steering Committee shall be established with the purpose of enabling the Parties jointly to oversee and to co-ordinate the implementation of the Biodiversity Offset in terms of this Agreement.	C	<ul style="list-style-type: none"> DENC nominated representatives to participate in the SC and LC on 15 August 2016. It was unclear why there was such a long delay, approximately two years after signing the BOA, in establishing the SC by the IPs. The first meeting was held in NovFember 2016. See Report for further details.
12.2	The Steering Committee shall meet twice per annum (unless otherwise agreed by the Steering Committee in writing). It shall <i>inter alia</i> :-	P-C	<ul style="list-style-type: none"> Over the five year implementation period six SC meetings were held. The SC met once in 2016 (29 November), once in 2017 (16 October), twice in 2018 (26 June and 23 November) and twice in 2019 (10 April and 17 April). Although meetings did not take place twice a year meetings were held.
*12.2.1	Oversee the implementation of the Agreement including the adequacy of the biodiversity outcomes, and effective management thereof;	P-C	<ul style="list-style-type: none"> See Report for discussion on role of SC. Not fully effective however some oversight took place. Some progress was made on various aspects.
*12.2.2	Receive recommendations from the Independent Auditor, the Liaison Committee or other body regarding the adequacy of the implementation of the Agreement, including the adequacy of the financial provisions, biodiversity outcomes and management effectiveness;	P-C	<ul style="list-style-type: none"> Whether the SC received recommendations from the IA was not assessed. This will need to happen after the audit/ during the next audit. See Report for discussion on recommendations received from LC.
12.2.3	Review the recommendations of the Independent Auditor contemplated in clause 14.8.3, every five (5) years and to advise the Parties so that the Parties may exercise their discretion as to whether or not an amendment and/or variation of the Agreement in accordance with those recommendations is required; and	N-A	<ul style="list-style-type: none"> This would take place following the audit. SC to advise implementing parties following review of recommendations of First IA. Parties needed to decide on whether recommendations of the IR required amendment(s)/variation(s) to BOA and if so these would need to be produced in writing and signed by both parties according to Clause 22.
12.2.4	Make recommendations to the Management Authority on the deployment of any revenue generated from the properties secured in terms of clause 6.1, in line with the Management Plan, so as to further the objectives of this Agreement.	N-A	<ul style="list-style-type: none"> MA officially appointed on 5 August 2019 (government gazette, Clause 6.5). MP only due for submission to MEC by 5 August 2020 (Clause 9.1). No revenue had been generated from the offset properties during the initial five year implementation period and could therefore not be deployed (Clause 10). This clause overlaps with the requirements of the Trust.
13 ESTABLISHMENT OF A LIAISON COMMITTEE			

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
*13.1	The Parties agree that a Liaison Committee shall be established. The Liaison Committee shall have such responsibilities as are described in the Management Plan to be prepared in terms of this Agreement, including management and operational issues relating to the Biodiversity Offset and to participate in the periodic review by the Independent Auditor in accordance with clause 14.7–14.10 of this Agreement.	P-C	<ul style="list-style-type: none"> • MP had not developed yet therefore the role of LC was assessed according to its definition provided in Clause 12.2.2: “LC to provide recommendations to SC regarding the adequacy of the implementation of the Agreement, including the adequacy of the financial provisions, biodiversity outcomes and management effectiveness”. • Recommendations on the adequacy of the financial provisions was not possible yet as no payments had been made to the Trust as described previously. • Role of LC in Clause 14 would only take place following IA and therefore had not been assessed. • See Report for assessment on roles and responsibilities of the LC.
*13.2	The Liaison Committee shall report to the Steering Committee, in writing, regarding the management and operation of the Biodiversity Offset, and the performance of the Liaison Committee’s functions in terms of the Management Plan.	P-C	<ul style="list-style-type: none"> • MP not in place yet therefore LC role not defined by MP but rather by Clause 12.2.2. (See 3.1 above). • LC did not report in writing to the SC until 2019 when it began sending formal letters to the SC. However, concerns were raised with implementation of Biodiversity Offset and the SC was informed of these concerns following each LC meeting. • See Report for assessment of the LC performance in terms of reporting to the SC.

Table 3: Summary of documents reviewed, organisations and individuals who provided input and cross-references for each of the BOA clauses.

Clause	Description	Documentary Evidence/Reference (per Clause)	Input provided by	Cross Reference Clauses
3. GENERAL DUTIES OF THE PARTIES				
*3.1	The Parties agree to cooperate in good faith regarding the implementation and execution of the Biodiversity Offset and with a view to ensuring the ongoing protection and maintenance of the areas of land contemplated in Clause 5 .	5: EMP; BMP; CAMP; 6 & 7: gazette documents; correspondence between BMM & DENC; 8: LC & SC meeting minutes; 10, 12 & 13: SC and LC meeting documents; 22: Surety documents and meeting minutes; Gamsberg Management Audit Response Report (GMARR).	BMM, DENC, IUCN, Conservation Strategy, Tactics & Insight, EndemicVision	5; 6; 7; 8; 9; 10; 11; 12; 13; 22
3.2	BMM shall not be considered to be in breach of any of its obligations under this Agreement, if due to no fault of its own (i.e. where any such delays are beyond the direct control of BMM), the declaration of Protected Areas contemplated in Clause 6 have not been finalised to the point where the requisite notices have been published in the <i>Gazette</i> . BMM shall provide documentary evidence to DENC (including but not limited to written offers to purchase and/or lease the properties and written rejections of such offers) in support of any such reliance on this clause.	Gazette document; Discussions and correspondence between BMM & DENC.	BMM, DENC, IUCN,	6
3.3	BMM and DENC shall implement and execute the Biodiversity Offset in accordance with the relevant clauses of this Agreement and/or the provisions of the Management Plan (where applicable) to be prepared in terms of this Agreement.	GMARR.	BMM, Conservation Strategy, Tactics & Insight, DENC, IUCN, EndemicVision	All Clauses, 3.1
3.4	The Parties shall have the right to appoint sub-contractors to assist them in the exercise of their performance in terms of this Agreement, provided that any appointment shall be with the concurrence of the other Party to this agreement, which consent shall not be unreasonably withheld.	SC meeting minutes; LC meeting minutes; Discussions; Summary evidence sheet of contractors appointed by BMM and work conducted, including contract budgets, in relation to implementation of the BOA.	BMM, DENC, IUCN, Conservation Strategy, Tactics & Insight	5, 6, 8, 9, 10
3.5	All payments to be made by BMM in terms of this Agreement shall be paid into a dedicated account determined in writing by the Agency, in the event that the Agency has not been identified or established at the time when the first payment becomes due and payable in terms of this Agreement, to The Trust.	SC & LC meeting minutes; Discussions; Letter of authority: Gamsberg Nature Reserve Trust; Letter from BMM to DENC and confirmation letter from DENC to BMM regarding financial contributions (payments required) on 28 Feb 2020; Proof of payment to Gamsberg Nature Reserve Trust bank account; and steps & timeframes including financial provision, securing of properties, transferal, declaration, payment to ensure compliance to timeframes going forward..	BMM, IUCN, Conservation Strategy, Tactics & Insight	10 22
3.6	In so far as the Agency is identified or established only after The Trust been formed, the Parties may elect, at their discretion, to dissolve The Trust and rather to rely on the Agency for the purposes of implementing the relevant aspects of this Agreement.	SC & LC meeting minutes; Discussions.	BMM, DENC, IUCN	10

3.7	All payments to the Agency, or to The Trust as the case may be, shall be made in accordance with the provisions of this Agreement.	SC & LC meeting minutes; Discussions; BMM bank account statement; Letter of authority: Gamsberg Nature Reserve Trust; Letter from BMM to DENC and confirmation letter from DENC to BMM regarding financial contributions (payments required) on 28 Feb 2020; Proof of payment to Gamsberg Nature Reserve Trust bank account; and steps & timeframes including financial provision, securing of properties, transferal, declaration, payment to ensure compliance to timeframes going forward.	BMM, IUCN, Conservation Strategy, Tactics & Insight	10
3.8	DENC shall ensure that the Agency manages and utilises the financial contributions paid by BMM in terms of clause 3.5 in furtherance of implementing the objectives of this Agreement and for no other purposes whatsoever.	N-A.	-	-
3.9	The Agency, and failing it The Trust (as the case may be), shall cause annual reports to be prepared regarding the allocation and use of funds paid by BMM to it in terms of this Agreement. Such annual reports shall be provided to BMM, DENC and to the Steering Committee within sixty (60) days from 28 February every year commencing on 1 March 2014.	N-A.	-	-
4. BIODIVERSITY OFFSET				
4.1	It is recorded that the Biodiversity Offset contemplated in this Agreement shall consist of the following components:			
4.1.1	The agreement and consent by BMM to conserve and manage the BMM Properties as contemplated in clause 5. - Assessed under Clause 5.	-	-	3.1, 5
4.1.2	The identification and securing by BMM of additional conservation-worthy land in terms of clause 6 and the declaration thereof as Protected Areas. - Assessed under Clause 6.	-	-	3.1, 6
4.1.3	The transfer of all immovable property secured in terms of clause 6 to, and registration thereof, in the name of the "Northern Cape Provincial Government". - Assessed under Clause 6.	-	-	6, 7
4.1.4	The identification of a Management Authority for the Protected Areas declared pursuant to this Agreement. - Assessed under Clause 8.	-	-	8
4.1.5	The assignment of the responsibility for managing the Protected Areas to the Management Authority. - Assessed under Clause 8.	-	-	8
4.1.6	The preparation by the Management Authority, and submission to the MEC for approval, of a Management Plan for the Protected Areas. - Assessed under Clause 9.	-	-	9
4.1.7	The ongoing protection and management of the Protected Areas.	-	-	3.1, 5, 6, 8, 9
*5. PROTECTION OF THE BMM PROPERTIES				

5.1	In accordance with the terms of this Agreement, BMM hereby agrees to protect the biodiversity and ecological functioning of the surface areas of the BMM Properties through appropriate provisions, restrictions and monitoring mechanisms as contained and/or to be contained in the EMP and/or the BMP.	EMP; BMP; CAMP; BOA & Annexes; Botha & Desmet (2018a); Botha & Desmet (2018b); EA; GMARR; BMM Scope of work document to address recommendation made by the IR during IA on the BOA for inclusion in the upgrade of the CAMP; EkoTrust CC Proposal, dated 23 January 2020, to update the CAMP.	BMM; Conservation Strategy, Tactics & Insight; DENC; EndemicVision; IUCN; P.Desmet	3.1, 5.2, 5.3
5.2	The surface areas of the BMM Properties that are required to be protected in terms of clause 5.1 are those delineated in the diagram prepared by Messrs. Friedlaender, Burger and Volkmann attached as Annex “C”:	EMP; BMP; CAMP; BOA & Annexes; GMARR; BMM Scope of work document to address recommendation made by the IR during IA on the BOA for inclusion in the upgrade of the CAMP; EkoTrust CC Proposal, dated 23 January 2020, to update the CAMP.	BMM; Conservation Strategy, Tactics & Insight; DENC; EndemicVision; IUCN; P.Desmet	5.1, 5.3
5.3	The Parties acknowledge and agree that the protection of the BMM Properties shall be managed and implemented through the EMP and/or the BMP.	EMP; BMP; CAMP; BOA & Annexes; GMARR; BMM Scope of work document to address recommendation made by the IR during IA on the BOA for inclusion in the upgrade of the CAMP; EkoTrust CC Proposal, dated 23 January 2020, to update the CAMP.	BMM; Conservation Strategy, Tactics & Insight; DENC; EndemicVision; IUCN; P.Desmet	5.1, 5.2
5.4	BMM shall, at its sole and exclusive cost, protect and maintain the areas of the BMM Properties as contemplated in clause 5.1 for a period of at least the duration of mining operations of the Gamsberg Zinc Mine Project plus a further ten (10) year period after a closure certificate has been applied for from the relevant authorities for the Gamsberg Zinc Mine Project.	BMP; CAMP; EMP; GMARR; BMM Scope of work document to address recommendation made by the IR during IA on the BOA for inclusion in the upgrade of the CAMP; EkoTrust CC Proposal, dated 23 January 2020, to update the CAMP.	BMM; Conservation Strategy, Tactics & Insight; DENC; P.Desmet	
5.5	Should BMM decide to contract any of the BMM Properties into a protected area in terms of the Protected Areas Act, the provisions of this Agreement shall not in any way detract from BMM’s rights as the owner of these BMM properties contracted into a protected area, otherwise to alienate and/or to encumber a particular BMM property. These rights will only be limited in so far as this does not affect or compromise the terms and conditions of any notarial deed registered against the title deed(s) of the land involved in terms of section 38 of the Protected Areas Act. - Not Assessed.	-	-	-
*6. DECLARATION OF ADDITIONAL LAND AS A PROTECTED ENVIRONMENT AND/OR NATURE RESERVE				
6.1	In addition to clause 5, BMM shall secure, at its sole and exclusive cost, additional conservation-worthy land comprising of:	SC & LC meeting minutes; Discussions; Sale agreements, deeds of transfer; Document entitled “record of farm visits”; presentation entitled “Offset Properties” dated 02.08.2017; Letter from BMM to DENC dated 4 October 2017; Letter from BMM (Vedanta) to DENC re Haramoep dated 11 September 2019; Letter from DENC dated 1 November 2018.	BMM; DENC	6.4, 6.6
6.1.1	At least seven (7) of the twelve (12) Nearby Properties; or	As above.	BMM; DENC	6.4, 6.6
6.1.2	Alternatively, 12 900 hectares of land containing the characteristics identified in clause 6.9.	As above.	BMM; DENC	6.4, 6.6

6.2	The land required to be secured by BMM in terms of clause 6.1 shall be set aside and declared as a nature reserve and/or a protected environment in terms of sections 23 or 28 of the Protected Areas Act, respectively.	Internal Memorandum dated 7 November 2018 regarding intention to declare as Nature Reserve; Internal Memorandum dated 8 July 2019 regarding Declaration as Nature Reserve; example of consultation letter. Northern Cape Provincial Government Gazette - 26 November 2018 and 5 August 2019.	DENC	7.1
6.3	BMM shall use its best endeavours to ensure that land required to be secured by BMM in terms of clause 6.1 shall include areas of land and/or properties and/or portions of properties which, either individually or collectively, comprise of at least the following areas of substantially intact habitat of Recognised Vegetation Types:-		BMM; DENC	
6.3.1	At least 3 700ha of land comprising Aggeneys Gravel Vygieveld, including those component habitats supporting quartz gravel communities and those that are range restricted or which support localised and endemic plant species;	Biodiversity Workshop Report; BMM letter to DENC dated 9 March 2020 regarding outcome of Workshop, extension of second time period and REM of Haramoep; Letter - Extension of Second time period; Section 4.3 of GMARR.	BMM; DENC	
6.3.2	At least 3 200ha of Bushmanland Inselberg Shrubland, including those habitat units supporting large succulent plants on the south facing aspects;	As above.	BMM; DENC	
6.3.3	At least 4 000ha of Bushmanland Arid Grassland, including those component habitats supporting calcrete gravel communities; and	As above.	BMM; DENC	
6.3.4	At least 2 000ha of azonal vegetation types comprising Bushmanland ephemeral river courses and outwash plains.	As above.	BMM; DENC	
6.4	With regard to the timing of the obligation in clause 6.1, BMM shall:		BMM; DENC	
6.4.1	within the First Time Period, secure <u>at least</u> four (4) of the Nearby Properties listed in Annex "B1", and do all that is necessary in order to make those properties (or portions thereof, as the case may be) available to DENC for declaration by the MEC as Protected Areas; and	SC & LC meeting minutes; Discussions; Sale agreements; deeds of transfer; Document entitled "record of farm visits"; presentation entitled "Offset Properties" dated 02.08.2017; Letter from BMM to DENC dated 4 October 2017; Letter from BMM (Vedanta) to DENC re Haramoep dated 11 September 2019; Letter from DENC dated 1 November 2018.	BMM; DENC	6.1
6.4.2	Within the Second Time Period, secure <u>at least</u> three (3) of the Nearby Properties listed in Annex "B2" (i.e. in addition to those secured in terms of clause 6.4.1), or where this is not possible, <u>secure Suitable Alternative Properties</u> in terms of clauses 6.7 and 6.8 below, and do all that is necessary in order to make those properties (or portions thereof as the case may be) available to DENC for declaration by the MEC as Protected Areas.	Letter from BMM to DENC dated 11 September 2019, signed by both parties.	BMM	6.1
6.5	DENC shall, as soon as reasonably possible after the properties or portions thereof have been made available in terms of clause 6.4, cause those areas to be declared, by way of publication of the requisite notice in the <i>Gazette</i> , in terms of the Protected Areas Act as nature reserves or where same is not possible, protected environments, as the case may be.	Internal Memorandum dated 7 November 2018 regarding intention to declare as nature reserve; Internal Memorandum dated 8 July 2019 regarding Declaration as nature reserve; example of consultation letter; Provincial Notice 129 in Provincial Gazette	DENC	

		2226 of 26 November 2018; Provincial Notice 80 in Provincial Gazette 2287 of 5 August 2019.		
6.6	In giving effect to clause 6.1 BMM shall first do all that is necessary to secure seven (7) of the twelve (12) Nearby Properties in the manner contemplated in clause 6.4.	SC & LC meeting minutes, discussions, sale agreements, deeds of transfer; Document entitled “record of farm visits”; presentation entitled “Offset Properties” dated 02.08.2017; Letter from BMM to DENC dated 4 October 2017; letter from BMM (Vedanta) to DENC re Haramoep dated 11 September 2019; Letter from DENC dated 1 November 2018.	BMM; DENC	6.1
6.7	Insofar as it becomes clear to BMM, within three (3) years of the Final Regulatory Approval Date despite its best endeavours, that fewer than seven (7) of the Nearby Properties can be secured in the manner contemplated in clause 6.4, BMM shall forthwith:	SC & LC meeting minutes; Discussions; Sale agreements; deeds of transfer; Document entitled “record of farm visits”; presentation entitled “Offset Properties” dated 02.08.2017; Letter from BMM to DENC dated 4 October 2017; letter from BMM (Vedanta) to DENC re Haramoep dated 11 September 2019; Letter from DENC dated 1 November 2018.	BMM	
6.7.1	Submit to DENC documentary evidence (as contemplated in clause 3.2) documenting all attempts by BMM to secure the Nearby Properties; and	-	-	
6.7.2	Identify and secure Suitable Alternative Properties in accordance with this clause, and in terms of the criteria in clause 6.9.	-	-	
6.8	In so far as BMM requires the assistance from DENC with the identification and/or selection of Suitable Alternative Properties, BMM shall request DENC, in writing, to identify such properties and DENC shall, within three (3) months of receipt of written request to do so, notify BMM, in writing, of the Suitable Alternative Properties.	-	-	
6.9	In selecting Suitable Alternative Properties, BMM and/or DENC, as the case may be, shall have regard to the criteria in this clause. In order to qualify as Suitable Alternative Properties, the properties identified pursuant to clause 6.7.2 or 6.8 must:	-	-	
6.9.1	Contain samples of the vegetation types identified in clause 6.3 above; or	-	-	
6.9.2	Contain samples of any other endangered vegetation or other ecosystems in need of protection, as determined by DENC from time to time; and	-	-	
6.9.3	Be in good ecological condition as determined by DENC or a suitably qualified specialist appointed by the Parties for this purpose; and	-	-	
6.9.4	Be either contiguous with or form a cohesive management section of any existing protected area declared in terms of the Protected Areas Act; and	-	-	
6.9.5	Be available to be secured as a Nature Reserve in terms of section 23 of the Protected Areas Act.	-	-	

6.10	Any time period taken by DENC to identify the Suitable Alternative Properties, in terms of clause 6.8, shall be added to the Second Time Period.	-	-	
6.11	Upon the expiry of the Second Time Period, and in so far as BMM has failed in its obligations to secure the conservation-worthy land contemplated in clause 6.1, the penalty provisions in clause 15.4 will apply.	-	-	6.1, 15.4
*7. REQUIREMENTS REGARDING THE PROPERTIES				
7.1.	Any Nearby Property and/or Suitable Alternative Property, or portion of such property, secured by BMM (either in terms of a lease agreement, sale agreement or otherwise) for the purposes of clause 6 shall be:	-		
7.1.1.	Presented by BMM to DENC for management and declaration in terms of the Protected Areas Act within six (6) months of being so secured by BMM; and	Letter dated 4 October 2017; Provincial Notice 129 in Provincial Gazette 2226 of 26 November 2018; Provincial Notice 80 in Provincial Gazette 2287 of 5 August 2019; Deeds of Sale for four offset properties; Offer to purchase for four offset properties, SC meeting minutes 16 September 2017; Action Tracker: Steps & timeframes including financial provision, securing of properties, transferal, declaration, payment to ensure compliance to timeframes going forward.	BMM; DENC; IUCN; P.Desmet	
7.1.2.	Transferred to the ownership of the Northern Cape Provincial Government as soon as reasonably possible after declaration of that property in terms of the Protected Areas Act.	BMM Round Robin Resolution dated 30 July 2018; ENS Certificate for a transfer from a company, Trustman affidavits of 23.08.2018, Factual Findngs Report, Instruction to Register Transfer, datasheet for SARS, Power of Attorney to pass transfer; SC Meeting Minutes of 17 April 2019.	BMM; DENC	
7.2.	All properties transferred in terms of this clause shall comply with the requirements of the Northern Cape Land Administration Act (Act No. 6 of 2002) - Not Assessed	-	-	-
7.3	All properties, or portions thereof, secured by BMM for the purposes of clause 6 shall be adequately fenced by BMM as soon as reasonably possible after those properties have been secured by BMM. Such properties shall be fenced either as one area or individually, depending on the circumstances, and shall be otherwise rehabilitated at the sole and exclusive cost of BMM.	Correspondence between BMM & DENC; Fencing requirements for Protected Areas; Written correspondence by BMM to DENC confirming the fencing specifications; Written response from DENC to BMM regarding confirmation of the Gamsberg Nature Reserve fencing specifications as required by Clause 7.4 (7.4.1 – 7.4.3) of the BOA; Letter from DENC to BMM to clarify rehabilitation requirements; and Responding letter from BMM to address time lines of rehabilitation requirements and budget.	BMM; DENC; IUCN	
7.4	The specifications in respect of the fencing and rehabilitation measures to be implemented shall be communicated in writing beforehand to DENC. It is specifically agreed that any such fencing must:-	Bill of quantities for fencing offset properties; Email correspondence between DENC and BMM on fencing; ToR for fencing of biodiversity properties; Fencing specifications - NCNCA regulations Annex 1-11-2011; Letter from DENC to BMM to clarify rehabilitation requirements; Responding letter from BMM to address time lines of rehabilitation requirements and budget; BMM written correspondence to DENC regarding confirmation of the Gamsberg Nature Reserve fencing specifications as required by Clause 7.4 (7.4.1 – 7.4.3) of the BOA; Written response from DENC	BMM; Conservation Strategy, Tactics & Insight; DENC; IUCN	

		to BMM regarding confirmation of the Gamsberg Nature Reserve fencing specifications as required by Clause 7.4; Letter from DENC to BMM to clarify rehabilitation requirements.		
7.4.1	Be in compliance with the Northern Cape Nature Conservation Act (2009) and enhance the integrity of the management system;	Correspondence between BMM & DENC; BMM written correspondence to DENC regarding confirmation of the Gamsberg Nature Reserve fencing specifications as required by Clause 7.4 (7.4.1 – 7.4.3) of the BOA; Written response from DENC to BMM regarding confirmation of the Gamsberg Nature Reserve fencing specifications as required by Clause 7.4; Letter from DENC to BMM to clarify rehabilitation requirements and discussions.	BMM; DENC	
7.4.2	Be at least 1.8 metres in height; and	Correspondence between BMM & DENC; BMM written correspondence to DENC regarding confirmation of the Gamsberg Nature Reserve fencing specifications as required by Clause 7.4 (7.4.1 – 7.4.3) of the BOA; Written response from DENC to BMM regarding confirmation of the Gamsberg Nature Reserve fencing specifications as required by Clause 7.4; Letter from DENC to BMM to clarify rehabilitation requirements and discussions.	BMM; DENC	
7.4.3	Should not unduly inhibit the free movement or dispersal of small animals	Correspondence between BMM & DENC; BMM written correspondence to DENC regarding confirmation of the Gamsberg Nature Reserve fencing specifications as required by Clause 7.4 (7.4.1 – 7.4.3) of the BOA; Written response from DENC to BMM regarding confirmation of the Gamsberg Nature Reserve fencing specifications as required by Clause 7.4; Letter from DENC to BMM to clarify rehabilitation requirements and discussions.	BMM; DENC	
*8. MANAGEMENT AUTHORITY				
8.1	The Parties agree that:			
*8.1.1	in respect of the properties identified in terms of clause 6, and subject to clause 8.1.3 below, there shall, be one Management Authority for the Protected Areas and to which responsibility shall be assigned by the MEC in terms of the Protected Areas Act;	Provincial Notice 80 in Provincial Gazette 2287 of 5 August 2019.		9
*8.1.2	DENC shall be the Management Authority to which the management of the Protected Areas shall be assigned; and	Provincial Notice 80 in Provincial Gazette 2287 of 5 August 2019.	DENC; P.Desmet	8.1.1
*8.1.3	The Management Authority, may enter into an agreement with a third party for the purpose of undertaking any other activity that may be required for the successful management of the Protected Areas.	SC & LC meeting minutes.	BMM; Conservation Strategy, Tactics & Insight; DENC; IUCN	

8.2	To the extent required by law, BMM and DENC hereby record their consent to the assignment of the responsibility for managing the Protected Areas by the MEC in terms of the Protected Areas Act, in the terms set out in this clause 8. - Not Assessed (Agrees to Clause 8.1.2)	-	-	8.1.2
8.3	To the extent that the Protected Areas includes a protected environment and/or a nature reserve declared in terms of sections 28 and 23 of the Protected Areas Act respectively, the Parties hereby acknowledge that consent to such assignment is required to be obtained from any landowner and/or lawful occupier of the land in question.	Discussions; Farm Title Deeds; Provincial Notice 80 in Provincial Gazette 2287 of 5 August 2019.	BMM	
8.4	BMM shall use their best endeavours to obtain the consent envisaged in clause 8.3. In so far as same is not possible, the particular property, portion thereof or area of land shall not be considered as land for the purposes of clause 6.1 above.	Discussions; Farm Title Deeds; Provincial Notice 80 in Provincial Gazette 2287 of 5 August 2019.	BMM	
9 MANAGEMENT PLAN			BMM; DENC; IUCN	
*9.1	In respect of the properties to be identified in terms of clause 6.1, the Management Authority, shall prepare and submit the Management Plan to the MEC, for approval in terms of the Protected Areas Act, within twelve (12) months of being assigned as the Management Authority of the Protected Areas.	SC & LC meeting minutes, Draft Framework Management Plan	BMM; DENC; P.Desmet	
9.2	The object of the Management Plan shall be to ensure the protection, conservation and management of the Protected Areas in a manner which is consistent with the objectives of the Protected Areas Act and the purpose for which the area was declared. - Not Assessed.	-	-	-
9.3	The Management Plan must be compiled in consultation with interested parties including, for example, the Khai-ma Municipality; any organs of state interested in or affected by the declaration; local communities and BMM. - Not Assessed	-	-	-
9.4	The Management Plan referred to above shall, where appropriate, contain the following information: - Not Assessed	-	-	-
9.4.1	The terms and conditions of any applicable biodiversity management plan;	-	-	-
9.4.2	The planning measures, controls and performance criteria as may be prescribed by the Management Authority;	-	-	-
9.4.3	A programme for the implementation of the Management Plan and its costing;	-	-	-
9.4.4	The zoning of the different land areas indicating what activities may take place in different sections of the Protected Areas (and the conservation objectives of each of those sections);	-	-	-

9.4.5	Any financial and other support/mechanisms to ensure effective administration and implementation of the Management Plan and/or any co-management agreement entered into by the Management Authority, and/or any spending of revenue generated from the Protected Areas;	-	-	-
9.4.6	Schedules setting out the anticipated timing for the implementation and completion of any component of the Biodiversity Offset; and	-	-	-
9.4.7	Anticipated costs and budgets associated with the implementation of the Biodiversity Offset and ongoing management of the Protected Areas.	-	-	-
*10 FINANCIAL PROVISIONS				
10.1	All payments made by BMM in connection with the implementation and execution of the Biodiversity Offset shall be made in accordance with this clause and, where applicable, the requirements of the Public Finance Management Act (Act No. 1 of 1999).	Letter to DENC confirming deposit of R 12 050 000 in short-term fixed deposit account for management fees in respect of BOA pending activation of Trust Bank Account.		
10.2	All payments made in terms of this Agreement shall be made to the Agency and failing its establishment, to the Trust.	Cost Calculations prepared by BMM; Standard Bank letter indicating deposit date 22 August 2019; DENC Powerpoint presentation to SC dated 17 April 2019; Word document titled “Annex E Financial Provisions”; SC Meeting Minutes of 17 April 2019; Trust Deed of the Gamsberg Nature Reserve Trust signed by Willem Louw; Acceptance of trusteeships notices; Letter of authority: Gamsberg Nature Reserve Trust; Letter from BMM to DENC and confirmation letter from DENC to BMM regarding Financial Contributions (payments required) on 28 Feb 2020); Proof of payment to Gamsberg Nature Reserve Trust bank account; Action Tracker: Steps and timeframes including financial provision, securing of properties, transferal, declaration, payment to ensure compliance to timeframes going forward.	BMM; DENC	
10.3	In order to ensure transparency and to provide for appropriate monitoring in respect of the utilisation of the funds received in terms of this Agreement, the Agency, or the Trust, as the case may be, shall put in place accounting mechanisms necessary to ensure that the use of all funds received are “ring-fenced” and traceable to the implementation objective for which they were utilised.	Letter of authority: Gamsberg Nature Reserve Trust; Letter from BMM to DENC and confirmation letter from DENC to BMM regarding Financial Contributions (payments required) on 28 Feb 2020); Proof of payment to Gamsberg Nature Reserve Trust bank account; Action Tracker: Steps and timeframes including financial provision, securing of properties, transferral, declaration, payment to ensure compliance to timeframes going forward; Gamsberg Nature Reserve Trust Deed; and Appointment of independent financial auditor.	-	-
10.4	Any and all payments in respect of this Agreement shall be paid by BMM into an account detailed in writing for this purpose by either the Agency or the Trust, as the case may be, for the exclusive purposes of furthering the objectives contained in this Agreement.	Letter of authority: Gamsberg Nature Reserve Trust; Letter from BMM to DENC and confirmation letter from DENC to BMM regarding financial contributions (payments required) on 28 Feb 2020); Proof of payment to Gamsberg Nature Reserve Trust bank account; Action Tracker: Steps and timeframes including financial provision, securing of properties, transferal, declaration, payment to ensure compliance to timeframes going forward.	-	-

Payments in respect of maintenance and operation of the Biodiversity Offset				
10.5	In addition to any costs that may be incurred by BMM in securing the properties contemplated in clause 6.1, the following financial contributions shall be made by BMM in respect of the maintenance and operational costs of the Protected Areas.			
10.6	During the initial five (5) year period calculated from the Final Regulatory Approval Date, alternatively until all the properties or portions thereof referred thereto in clause 6.1 have been made available to DENC for declaration (whichever is the earlier), payment in respect of maintenance and operational costs of the Protected Areas shall be made by BMM to the Agency or the Trust, as the case may be, as follows:	Cost Calculations prepared by BMM; Standard Bank letter indicating deposit date 22 August 2019; DENC Powerpoint presentation to SC dated 17 April 2019; Word document titled "Annex E Financial Provisions"; SC Meeting Minutes of 17 April 2019; Letter of authority: Gamsberg Nature Reserve Trust; Letter from BMM to DENC and confirmation letter from DENC to BMM regarding financial contributions (payments required) on 28 Feb 2020); Proof of payment to Gamsberg Nature Reserve Trust bank account; and Action Tracker: Steps and timeframes including financial provision, securing of properties, transferral, declaration, payment to ensure compliance to timeframes going forward.	BMM	6.1, 6.4
10.6.1	The first payment shall be made within three (3) months of the first property(ies) or portion(s) thereof being made available to DENC for declaration in terms of clause 6. The first payment shall be in the amount of Five Hundred Thousand Rand (R500 000.00) per property or portion thereof presented for declaration;	See 10.6 above.	BMM	6.1, 6.4
10.6.2	Thereafter, and within three (3) months of each subsequent property(ies) or portion(s) thereof being made available to DENC for declaration in terms of clause 6 an amount of Five Hundred Thousand Rand (R500,000.00) per additional property or portion thereof shall be paid by BMM to the Agency; and	Action Tracker: Steps and timeframes including financial provision, securing of properties, transferral, declaration, payment to ensure compliance to timeframes going forward.	BMM	6.1, 6.4
10.6.3	In addition to clause 10.6.2 an amount of Five Hundred Thousand Rand (R500 000.00) per property or portion thereof shall be paid by BMM to the Agency on or before 28 February of each subsequent year in respect of each property or portion thereof which had previously been made available to DENC for declaration and/or has been declared a protected area.	Cost Calculations prepared by BMM; Standard Bank letter indicating deposit date 22 August 2019; DENC Powerpoint presentation to SC dated 17 April 2019; Word document titled "Annex E Financial Provisions"; SC meeting minutes of 17 April 2019. See 10.6 above.	BMM	10, 6.2
10.7	Upon the expiry of the five (5) year period, alternatively upon the presentation of the last of the properties or portion(s) thereof being made available to DENC for declaration in terms of clause 6 (whichever is the earlier), BMM shall make an Annual Payment on or before 28 February of each subsequent year as set out below:	Cost Calculations prepared by BMM; Standard Bank letter indicating deposit date 22 August 2019; DENC Powerpoint presentation to SC dated 17 April 2019; Word document titled "Annex E Financial Provisions"; SC meeting minutes of 17 April 2019. See 10.6 above.	BMM	6.1, 6.4
10.7.1	The Annual Payment shall be in the amount of Three Million Five Hundred Thousand Rand (R3 500,000.00) per annum; and	Cost Calculations prepared by BMM; Standard Bank letter indicating deposit date 22 August 2019; DENC Powerpoint presentation to SC dated 17 April 2019; Word document titled "Annex E Financial Provisions"; SC meeting minutes of 17 April 2019	BMM	

10.7.2	The Annual Payment shall increase annually by six per centum (6%) or Consumer Price Index (“CPIX”), whichever is the lower in any given year, on the previous year’s amount.	Cost Calculations prepared by BMM; Standard Bank letter indicating deposit date 22 August 2019; DENC Powerpoint presentation to SC dated 17 April 2019; Word document titled “Annex E Financial Provisions”; SC meeting minutes of 17 April 2019. See 10.6 above.	BMM	
10.8	BMM shall make the Annual Payments for a period of at least the duration of the mining operations at the Gamsberg Zinc Mine Project plus an additional ten (10) year period after a closure certificate has been applied for.	Cost Calculations prepared by BMM, Standard Bank letter indicating deposit date 22 August 2019; DENC Powerpoint presentation to SC dated 17 April 2019; Word document titled “Annex E Financial Provisions”; SC meeting minutes of 17 April 2019	BMM	
10.9	In addition to the above, BMM shall, within three (3) months after making available to DENC the first property for declaration, and for the duration of the mining operations at the Gamsberg Zinc Mine Project plus an additional ten (10) year period after the Gamsberg Zinc Mine Project has been applied for (and subject to increase in accordance with the CPIX) provide for the following to be utilised by the Management Authority:-	Cost Calculations prepared by BMM; Standard Bank letter indicating deposit date 22 August 2019; DENC Powerpoint presentation to SC dated 17 April 2019; Word document titled “Annex E Financial Provisions”; SC meeting minutes of 17 April 2019; DENC’s response regarding operational costs of accommodation and office units.	BMM	
10.9.1	The provision of and operating costs of two (2) office units within the town of Aggeneys or another site to be agreed by the Parties;	As above.	BMM	
10.9.2	The provision of and operating costs of three (3) accommodation units to house employees responsible for the day to day management of the Protected Areas; and	As above.	BMM	
10.9.3	The servicing of motor vehicles to enable DENC, as the Management Authority properly to perform its functions, which amount shall be limited to Fifty Thousand Rand (R50 000.00) per annum from the date contemplated in clause 10.9 and shall increase annually by six per centum (6%) or CPIX, whichever is the lower in any given year, on the previous year’s amount.	Cost Calculations prepared by BMM; Standard Bank letter indicating deposit date 22 August 2019; DENC Powerpoint presentation to SC dated 17 April 2019; Word document titled “Annex E Financial Provisions”; SC meeting minutes of 17 April 2019; Letter of authority: Gamsberg Nature Reserve Trust; Letter from BMM to DENC and confirmation letter from DENC to BMM regarding Financial Contributions (payments required) on 28 Feb 2020); Proof of payment to Gamsberg Nature Reserve Trust.	BMM	
Payment of Capital Costs for establishment of the Protected Area				
10.10	The Capital Costs for the establishment of the Protected Area shall be the capped amount of Two Million Five Hundred Thousand Rand (R2 500,000.00) payable by BMM to the Agency, or to the Trust as the case may be, as follows:-	Cost Calculations prepared by BMM; Standard Bank letter indicating deposit date 22 August 2019; DENC Powerpoint presentation to SC dated 17 April 2019; Word document entitled “Annex E Financial Provisions”; SC Meeting Minutes of 17 April 2019; Letter of authority: Gamsberg Nature Reserve Trust; Letter from BMM to DENC and confirmation letter from DENC to BMM regarding financial contributions (payments required) on 28 Feb 2020); Proof of payment to Gamsberg Nature Reserve Trust.	BMM	
10.10.1	The first payment of Five Hundred Thousand Rand (R500,000.00) shall commence on the Final Regulatory Approval Date and be due and payable annually thereafter on 1 March of each subsequent year;	As above. Letter of authority: Gamsberg Nature Reserve Trust; Letter from BMM to DENC and confirmation letter from DENC to BMM regarding financial contributions (payments required) on 28 Feb 2020); Proof of payment to Gamsberg Nature Reserve Trust.	BMM	

10.10.2	Payment shall be in the sum of Five Hundred Thousand Rand (R500,000.00) per annum for the total period of five (5) years from the Final Regulatory Approval Date.	As above. Letter of authority: Gamsberg Nature Reserve Trust; Letter from BMM to DENC and confirmation letter from DENC to BMM regarding financial contributions (payments required) on 28 Feb 2020); Proof of payment to Gamsberg Nature Reserve Trust.	BMM	
10.11	The Agency or the Trust, as the case may be, shall decide how the Capital Costs received in terms of this clause are to be allocated in order to secure the establishment of the Protected Area and the implementation of any relevant parts of the Management Plan in accordance with this Agreement.	Cost Calculations prepared by BMM; Standard Bank letter indicating deposit date 22 August 2019; DENC Powerpoint presentation to SC dated 17 April 2019; Word document entitled "Annex E Financial Provisions"; SC meeting minutes of 17 April 2019.	BMM	
*11 SURETYSHIP				
11.1	This Agreement shall be of no force or effect until BMM has furnished to DENC a deed of suretyship signed by Vedanta in a form acceptable to DENC. This clause is inserted solely for the benefit of DENC who may waive it in part or in whole as DENC may deem fit	Email response from J Smit dated 28 October 2019; Letter from THL Zinc Ltd dated 3 September 2019 countersigned by DENC MEC on 6 September 2019; Excel spreadsheet showing group structure.	BMM	
*12 ESTABLISHMENT OF A STEERING COMMITTEE				
12.1	The Parties agree that a Steering Committee shall be established with the purpose of enabling the Parties jointly to oversee and to co-ordinate the implementation of the Biodiversity Offset in terms of this Agreement.		BMM; DENC; IUCN	Clause 3. General duties of parties
12.2	The Steering Committee shall meet twice per annum (unless otherwise agreed by the Steering Committee in writing). It shall <i>inter alia</i> :-	SC meeting documents.	BMM; DENC; IUCN	
12.2.1	oversee the implementation of the Agreement including the adequacy of the biodiversity outcomes, and effective management thereof;	SC & LC meeting minutes; Discussions.	BMM; DENC; IUCN	13
12.2.2.	receive recommendations from the Independent Auditor, the Liaison Committee or other body regarding the adequacy of the implementation of the Agreement, including the adequacy of the financial provisions, biodiversity outcomes and management effectiveness;	LC meeting minutes; Discussions.	BMM; DENC; IUCN	13
12.2.3	review the recommendations of the Independent Auditor contemplated in clause 14.8.3, every five (5) years and to advise the Parties so that the Parties may exercise their discretion as to whether or not an amendment and/or variation of the Agreement in accordance with those recommendations is required; and - Not Assessed	-	-	22

12.2.4	make recommendations to the Management Authority on the deployment of any revenue generated from the properties secured in terms of clause 6.1, in line with the Management Plan, so as to further the objectives of this Agreement. - Not Assessed.	-	-	6.5, 9.1, 10
13 ESTABLISHMENT OF A LIAISON COMMITTEE				
*13.1	The Parties agree that a Liaison Committee shall be established. The Liaison Committee shall have such responsibilities as are described in the Management Plan to be prepared in terms of this Agreement, including management and operational issues relating to the Biodiversity Offset and to participate in the periodic review by the Independent Auditor in accordance with clause 14.7–14.10 of this Agreement.	SC meeting documents; Discussions.	BMM; DENC; IUCN	4. 9. 12.2.2, 14
*13.2	The Liaison Committee shall report to the Steering Committee, in writing, regarding the management and operation of the Biodiversity Offset, and the performance of the Liaison Committee’s functions in terms of the Management Plan.	SC & LC meeting documents; Discussions.	BMM; DENC; IUCN	4, 9, 12.2.2

4.1 General Duties of the Parties (Clause 3)

Clause 3 refers to the general duties of the implementing parties namely DENC and BMM. Clause 3.1 requires the parties to cooperate in good faith towards a) the implementation and execution of the Biodiversity Offset and b) ensuring the ongoing protection and maintenance of the BMM set-aside properties described in Clause 5. These two issues were dealt with separately.

4.1.1 Cooperation between parties to implement the Biodiversity Offset

- Lack of efficient cooperation and consistent, transparent communication between the IP meant that both parties contributed to delays in execution and implementation of the BOA to some extent. Some of the reasons identified included:
 - As the first agreement of its kind both parties experienced a steep learning curve;
 - Minutes of SC and LC meetings were often not signed by both parties. This made it difficult to move forward based on agreed conclusions and next steps;
 - The audit process highlighted:
 - DENC senior leaders and decision makers were frequently replaced (approximately every 18 months). The MEC changed four times;
 - Changes in DENC's Senior Leadership led to inefficiencies in implementation;
 - Both implementing parties lacked capacity and competing priorities led to the BOA implementation not being prioritised in some instances;
 - BMM's Senior Leadership, responsible for negotiating the BOA, had not effectively communicated and/or handed over BMM's responsibilities to its successors;
 - DENC delayed confirming BMM's compliance with Clause 6.4.1. for 6 months.
 - DENC delayed producing a MP and/or contracting an external party to develop it and/or permitting BMM to develop said plan and/or contract an external party to develop it;
 - The IP had not cooperated to establish the requisite entities by the time the first payment for the secured offset properties was due. Neither the Agency nor the Trust had been established and accordingly no account existed for payments to be made. Both the creation of the separate bank account and the establishment of the Trust should have been prioritised prior to the commencement of the Initial IA. IR found there had been much deliberation on whether to proceed with an Agency which had delayed progress. BMM should have made the required payments into a separate auditors account at the time the payments were due; and
 - At the time of the Close-out Audit the amount of R 12 050 000.00 had been transferred to the Gamsberg Nature Reserve Trust Account (Standard Bank).

As outlined in Table 2 the IP had developed a number of measures, following the Initial IA, to address non-compliance issues identified and improve their compliance performance in terms of clause 3.1 going forwards. The implementation of these measures would need to be assessed during the next IA.

4.1.2 Cooperation between DENC & BMM towards protection and maintenance of BMM set-aside properties

The exploration activities undertaken on Big Syncline set aside area as well as submission of the ESIA for prospecting activities at Gamsberg South and East set aside areas demonstrated a lack of cooperation between DENC and BMM in ensuring the maintenance and protection of the BMM set-aside properties. See also Section 4.2 for additional discussion on protection of the BMM properties.

The Initial IA Report found:

- Although DENC was consulted as part of the EA processes during the BAR for Big Syncline (2015 and 2017) as well as the ESIA for Gamsberg South and East (SE) (2017/18) proposed exploration activities, IR found no written evidence of BMM having informed DENC (its implementing partner on the BOA) directly of its intention to submit the above application to DMR for EA to explore on the set-aside properties. This demonstrated a lack of open communications between implementing partners of the Agreement. IR was informed this was partly due to poor communications between BMM Explorations and Environmental Department but that steps had been taken to improve communications in 2017;
- DENC raised its concerns over the Gamsberg SE Amendment at the LC meeting held on 15 November 2017. However, no written comments was submitted to the EAP during ESIA Process;
- IR was not provided with any further formal correspondence between DENC & BMM on this matter;
- EndemicVision confirmed DENC had received a copy of the DBAR for Big Syncline and the ESIA for Gamsberg SE but had not submitted formal comments for either application;
- Although DENC drafted an appeal to the EA for Gamsberg SE it could not provide evidence of formal submission to DEA. BMM confirmed it had also not received an appeal from DENC although it had received an appeal from The Mesembryanthemaceae Study Group based in the United Kingdom;
- Poor communications between EndemicVision and BMM regarding disclosure of sensitive information that highlighted sensitive sites.

Exploration on the set-aside properties at Big Syncline is potentially a non-compliance of the EA for Gamsberg as some of the natural portions of the properties stipulated in Clause 59 might not be protected. This potentially constituted a breach of the BOA as per Clause 15. IR was of the opinion that this issue should have triggered a special SC meeting with additional input from external biodiversity and legal specialists. It appeared that neither party took this issue seriously. This was of concern as the adequacy of the offsets identified in the BOA was predicated on residual impacts being as anticipated with effective set-asides in place. This issue was addressed and discussed between the IP, IUCN and external specialists during the Biodiversity Workshop held in February 2020.

Following the Biodiversity Offset Workshop, held in February 2020, a number of additional measures were identified and developed to improve cooperation between the parties in protecting and maintaining the BMM properties. The implementation of these measures would need to be assessed during future IAs.

Offset recalculation

Following review of the Gamsberg SE Basic Assessment by BMM's Biodiversity Manager in 2017 BMM realised the proposed exploration activities on the set-aside properties at Gamsberg SE required offsets to be recalculated. BMM appointed EndemicVision through whom external specialists (Botha & Desmet) undertook an

offset recalculation as part of the the Gamsberg South and East EIA application submission. IR reviewed the Gamsberg SE offset recalculation report. EndemicVision provided IR with evidence of the inclusion of the offset recalculations in the ESIA submission (Appendix G - Gamsberg Offset Recalculation V01-2018-05-31). DMR did not include specific requirements for augmentation of the original offset agreement or how this should be undertaken in the EA for Gamsberg SE. The EA simply stated that a biodiversity specialist must be appointed to develop and spatially design a biodiversity offset and areas with habitat having a high concentration of fauna and flora must be avoided. During this EA process, all documents were submitted to all authorities, including DENC, for their review, comments and inputs. However, no commens, inputs or recommendations was made by DENC to the EAP and BMM during this process.

In 2015 BMM submitted a Basic Assessment for prospecting on Big Syncline on the set-aside property Aggeneys 56 Ptn 1 and this was approved by DMR. In 2017 BMM adjusted the exploration plan and expanded its activities and resubmitted the Big Syncline Basic Assessment and DMR granted EA. DMR did not require an offset to be calculated or for the existing BOA to be amended as part of the conditions of approval. During this EA process, all documents were submitted to all authorities, including DENC, for their review, comments and inputs. However, no commens, inputs or recommendations was made by DENC to the EAP and BMM during this process.

During the recalculation of the Gamsberg SE Biodiversity Offset Recalculation EndemicVision advised BMM they needed to undertake a recalculation to include the impacts of Big Syncline in the BOA offset calculations as this was not included in the 2015 and 2017 BAR applications for which EAs was granted. Specialist biodiversity consultants (Botha & Desmet) were requested to update the Gamsberg SE Offset recalculation to include offset calculation for impacts on biodiversity related to exploration activities that had been approved without the inclusion of provision for offset. Botha & Desmet subsequently undertook a further offset recalculation for the Big Syncline prospecting activities. IR reviewed the Big Syncline offset recalculation report. The Biodiversity Offset Recalculation Report (including both Big Syncline and Gamsberg SE) was submitted to DENC by BMM.

The areas of intact habitat of the Four Recognised Vegetation Types required to be secured by BMM (Clause 6.3) had taken into consideration of the explorations impacts on these Recognised Vegetation Types. The areas that BMM was required to secure therefore needed to be revised following the offset recalculations undertaken by Botha and Desmet and the BOA amended accordingly. IR noted BMM was in the process of adjusting the areas required to be secured during the Initial IA but this activity was beyond the scope of the Initial IA.

4.1.3 Cooperation of parties in implementing protection and management of offset properties

BMM and DENC both demonstrated commitment to the protection of the purchased offset properties prior to their gazettelement. As both parties submitted separate appeals to DMR who had issued prospecting rights over all the original Gamsberg offset properties to a competitor company (Sitatunga Resources).

4.2 Protection of BMM properties (Clause 5)

IR addressed clauses 5.1, 5.2 and 5.3 together whilst clauses 5.4 and 5.5 were dealt with separately.

IR identified four key potential threats to sensitive plant species⁸ on BMM’s set-aside properties in discussions with independent biodiversity consultants, and BMM and DENC during the site visit. IR was not provided with convincing evidence during the Initial IA that BMM had been managing these threats on the set-aside properties.

IR concluded BMM misunderstood the nature and intent of protection of the set-aside properties and had not demonstrated protection of *the biodiversity and ecological functioning of the surface areas of the BMM properties (four set-aside areas) through appropriate provisions, restrictions and monitoring mechanisms as contained and/or to be contained in the EMP and/or BMP (as prescribed in Clause 5.1) and delineated in the diagram....attached as Annex “C” (as per Clause 5.2) and managed and implemented through the EMP and/or BMP (Clause 5.3).* This conclusion was based on:

- a) Lack of appropriate management and monitoring plans to guide protection and implementation of these plans;
- b) Absence of on-the-ground monitoring; and
- c) Exploration having been permitted on the areas set aside for protection.

4.2.1 Lack of appropriate management and monitoring plans to guide protection on set-aside properties and implementation of plans

According to Clause 5.1 the EMP and BMP were required to guide protection of the set-aside areas. The implementation of the BMP was a condition of the record of decision (ROD) for the EA. During the Initial IA IR concluded the appropriate provisions, restrictions and monitoring mechanisms required for protection of the set-aside areas were absent from the EMP and BMP⁹. The specific management and monitoring programmes required for protection and maintenance of the conservation areas had not yet been developed and where they did exist they had not been adequately implemented.

During the Initial Audit IR reviewed the BMP (V. 4., dated 2015) and found this plan included mainly generic commitments reiterated from the BOA¹⁰. IR assessed progress on implementation of specific BMP management commitments, to be implemented in conservation areas prior to commencement of construction (See Appendix A). The IR found:

⁸ 1. Four by four tourists who gain access to set-aside areas and drive over areas where threatened plants are located. These people are sometime poaching for meat. Fencing and access control is required to prevent access to 4x4 drivers.
 2. Foreign plant collectors needed to be prevented from accessing sensitive areas through access control and fencing. Although it was recognised a risk of thieving may still remain.
 3. BMM's explorations team active in the conservation areas.
 4. Overstocking of game. The large herds of springbok need to be kept out of areas that contain high concentrations of threatened plant species - this is also achieved through access control and fencing. Game Management needs to ensure the numbers of game on the properties are controlled as per a management plan that defines suitable stocking rates.

⁹ EndemicVision developed the BAP in 2014 and then incorporated it into the BMP in 2015. The BMP was updated a number of times by EndemicVision. The BMP initially functioned to support implementation of ISO 14001 which wasn't being implemented at BMM at the time. IR was informed that BMM had not provided EndemicVision with the map of the set-aside areas as it was considered confidential information at the time. EWT and subsequently Digby Wells had provided BMM with support and guidance on implementation of the BAP and later BMP between 2015 to 2019. The 2015 BMP was considered to be complicated and not user-friendly by some of the interviewees. IR was not provided with a copy of the BMP V.5 for review during the Initial Independent Audit. During the Initial IA IR was informed the updated BMP (V. 5., dated July 2019) had captured key actions from specialist studies for all BMM properties but had not addressed specific management actions required on the set-aside areas. The BMP took into consideration the conditions of EA and had been compiled into a “biodiversity tracker” for implementation by BMM.

¹⁰ a) Such as: “Protect the biodiversity and ecological functioning of the surface areas of the BMM Properties through appropriate provisions, restrictions and monitoring mechanisms as contained and/or to be contained in the EMP and/or the BMP”.
 b) “Audit implementation and performance of BMP” (EMP audited in terms of EIA).
 c) “Compile management and monitoring programmes of surface areas of the BMM Properties to protect and maintain conservation areas for LoM + 10 years after Closure certificate has been obtained”.

- Demarcation had generally been undertaken adequately;
- The set-aside areas were not being managed and resources and responsibilities had not been appropriately allocated;
- No monitoring was being implemented;
- Access control required improvement; and
- There were also some basic management failures that could easily have been corrected through better communications with an ecologist. BMM agreed there was an absence of ecologists on the mine between 2015 – 2017. In 2017 a Biodiversity Manager was appointed to address this issue.

IR was informed by both BMM and external consultants assisting with implementation of the BMP & CAMP, that management actions on the set-aside areas had not been prioritised particularly with regards to the CAMP. This was considered to be due to a) a lack of capacity within BMM; and b) the absence of specific actions having been clearly defined for these areas in the BMP, CAMP and/or other guidance documentation. IR was informed by external parties that although BMM had good intentions there was a lack of capacity and this translated into lack of management effectiveness on site.

During the Close-out Audit IR reviewed the updated BMP (V. 5., dated July 2019). Although it had addressed some of the gaps identified in the Initial IA Report, the implementation of these revised actions would still need to be assessed on the ground, by a biodiversity specialist, prior to the next IA.

Some key additions to BMP V.5 included:

- An updated risk map including extended areas around BMM and increased granularity around the risk zones;
- A revised risk profile, previously only 3 categories, now 5 including the offset properties;
- New objectives and targets including a complete revision of the BMP Action Tracker. Including any requirements completed as of 1 February 2019.

IR found the updated BMP (V.5) was still lacking in various regards and did not provide the sufficient level of detail required for practical implementation of BOA clauses and BMM/Vedanta policy commitments.

IR identified the following gaps in the BMP V.5:

- A clear biodiversity objective: the terms “no net loss” (NNL) (referred to in BOA), “net positive effect”(referred to in the Biodiversity Management Policy) and “net positive impact” (referred to in PS6) were used interchangeably making it confusing as to what the end goal for BMM/Vedanta was;
- Alignment with IFC’s PS6: some terminology seemed to have been added but the BMP had not been adequately integrated with IFC’s objectives and terms;
- Appropriate prioritisation of BOA commitments and the specific level of detail required for their implementation in terms of protecting key sensitive habitats defined in the BOA; and
- Inclusion of new approved EMP’s for mining and prospecting since the last BMP on all properties held by BMM.

Therefore, many of the gaps identified by IR during the Initial IA still remained in the updated BMP. The BMP is regularly updated and IR were informed it would be updated in 2020-2021.

Adequacy of the Conservation Area Management Plan

The Conservation Area¹¹ Management Plan (CAMP, V3, 2015, Appendix B in the BMP) developed by EndemicVision provided practical guidance on implementation of the mitigation hierarchy for nature conservation management on BMM. BP05 of the BMP (V.4., dated 2015) stated conservation area management was applicable to the BMM set-aside properties and the CAMP should have been translated to other areas held by BMM. According to the Endangered Wildlife Trust (EWT), who was responsible for advising with implementation of the BMP, the CAMP was supposed to address management actions on the set-aside areas. IR was not provided with convincing evidence that the CAMP had been sufficiently updated to incorporate specific management measures. External consultants reported the CAMP was not being implemented. IR identified a number of gaps in the CAMP (See Appendix B for details). BMM agreed the CAMP was outdated. The commercial process to update the CAMP due to shortcomings identified by BMM Biodiversity Manager and IUCN have commenced prior to commencement of the IA and an external specialist was already appointed to update the CAMP to address these gaps. The contract for updating the CAMP had been amended to include implementation of IA recommendations.

The CAMP was in the process of being updated at the time of the Close-out Audit and was not available for review.

IR found the large number of different documents guiding management and monitoring (EMP, BMP and CAMP) and various versions of these documents created considerable confusion for implementation of priority conservation commitments on the set-aside properties. Whilst IR was informed this had been addressed in the updated BMP (2019, not reviewed during IR) and Monitoring Protocols had been compiled to address this in 2018; IR did not concur with this view (see discussion above).

4.2.2 Absence of dust monitoring on set-aside areas

An ecological dust monitoring programme, according to the Flora Monitoring Protocol, should have commenced prior to construction (June 2015). This was still not in place five years after implementation of the BOA commenced and 4.5 years since construction began. As a result, BMM still had no dust monitoring reports on sensitive vegetation and habitats available for review at the time of the IA.

Clause 5.1 refers to monitoring contained in the EMP &/or BMP as one of the mechanisms to ensure biodiversity and ecological functioning of the surface areas of BMM properties. The impacts of dust on sensitive vegetation formed a significant component of the calculated residual impacts and the subsequent offset required for Gamsberg. To verify the accuracy of the residual impact BMM needed to assess the baseline dust conditions prior to construction, then undertake regular dust monitoring, combined with monitoring of ecological functioning and health of sensitive receptors (such as the Recognised Vegetation Types and sensitive habitats).

Relevant monitoring commitments in the BMP (Version IV, 2015) required BMM to monitor:

- Ecological dust impacts on sensitive habitats and sensitive ecological receptors (monthly);
- Residual dust impacts as per Biodiversity Offset Plan 2013 (half yearly);
- Vegetation condition (annual surveys undertaken by a botanical specialist);
- Condition of IUCN Red List species and national conservation species on site (annual); and

¹¹ Conservation Area is not defined in the CAMP but it is defined in the BMP (V.4 dated 2015) "as where the risk map and mine agreed land use is conservation. It is not a formally declared conservation area".

- Offset impacts in terms of dust fallout and groundwater (annual).

The Monitoring Protocols were developed in 2018 and monitoring points were identified on the set-aside properties. However, the effects of mine related dust on sensitive vegetation had not yet been collected. Without dust monitoring data it was difficult to assess whether BMM had been adequately protecting the biodiversity and ecological function of the surface areas on its set-aside properties.

During the Initial IA BMM informed IR it was trying to improve its monitoring of residual impacts specifically with regards to dust impacts. The Integrated Biodiversity Monitoring Protocol (dated November 2018) identified a total of 58 dust buckets that were required to be installed to correlate impacts with biological monitoring data. During the audit BMM informed IR a preferential service provider had been accepted by BMM's commercial department, to conduct monitoring, and was in the process of being appointed ¹².

The residual impact adopted a worst-case scenario for dust impacts on Recognised Vegetation Types based on modelling. But monitoring still needed to assess whether dust impacts were as bad as anticipated in the EIA or worse or better. External specialists were of the opinion that dust impacts in the ESIA may have been underestimated based on significant mortality on stem-photosynthesising species such as *Sarcostemma* and *Euphorbia* growing in the vicinity of Gamsberg. However, in the absence of dust monitoring on sensitive plant species and habitats it was impossible to quantify the impacts of mining related dust on these sensitive plant species and sensitive habitats.

4.2.3 Exploration on set-aside areas for protection

IR acknowledged the potential conflict of interest that exists between exploration and mining and biodiversity conservation objectives particularly since a number of BMM's set-aside properties (including Aggeneys and Gams) were located inside BMM's mine license areas. This required strong cooperation within BMM's exploration, mining and environmental departments to ensure conservation objectives were met. IR also understood that where potentially considerable ore reserves underlay potential conservation areas DMR might be reluctant to sterilize mineral rights given potential benefits that could be accrued to local communities and government through mining revenues.

BMM's exploration on the set-aside property Aggeneys 56 (as outlined in 4.1.2) triggered a non-compliance with Clause 5.1 for two key reasons:

- Firstly, undertaking prospecting activities on the set-aside properties was contradictory to the intended purpose to "protect the biodiversity and ecological functioning of the surface areas of the BMM properties" as explicitly stated in Clause 5.1. The EA, BMP (2015) and BMM's own monitoring protocols (BPMP¹³) committed it not to pursue mining on the set-aside areas; While the BOA did not specifically stipulate that prospecting may not take place on the set-aside areas this was inferred by "BMM hereby agrees to protect the biodiversity and ecological functioning of the surface areas of BMM properties"; and

¹² During the Initial Audit Report BMM informed IR the first monitoring reports were expected in March 2020. Drones would be used to assess dust and soil condition on an annual basis. Dust buckets would assess dust fall-out and undertake bi-annual microscans on dust to assess whether dust was mining related dust or natural dust. A trend analysis would also be undertaken on an annual basis. During the Close-out Audit IR was informed the Monitoring contract was in place and the kick-off meeting had been scheduled for March 2020. BMM shared a Monitoring Protocol Implementation schedule with IR.

¹³ Under ROD obligations of the BPMP (dated November 2018, Appendix 1, data sheets) special conditions of biodiversity off-set conditions it is stated "the Applicant agrees to set aside those natural portions of their own properties (i.e. BMM properties Bloemhoek 61, Gams 60, Aggeneys 56 RE, Aroams 57 RE and Uitkyk 889) not being actively being mined, on which mining will not be pursued under the current application, and specifically to consent to their declaration as a Protected Environment under Section 28 of NEM:PAA".

- Secondly, prospecting activities undertaken on Big Syncline, located on Aggeneys 56 Ptn 1 set aside Farm, post 2012 drill sites as depicted on Figure 2 of the Recalculation for the Gamsberg Biodiversity Offset Report (Botha & Desmet, 2018)¹⁴ showed that Bushmanland Inselberg Shrubland (one of the four Recognised Vegetation Types) was impacted on. This impact demonstrated that BMM failed to protect and potentially detrimentally harmed the biodiversity and ecological functioning on this set-aside property. BMM would need to demonstrate, through specialist studies, that its prospecting activities have not impacted on the ecological functioning of the surface areas for it to be considered compliant with Clause 5.1. Such an assessment is beyond the scope of the current IR.
- Thirdly, DMR's requirement for BMM to update the existing BOA and/or provide an additional offset agreement as part of the conditions of approval of the ESIA for Gamsberg SE in itself demonstrated non-compliance with Clause 5.1, 5.2 and 5.3. of the BOA. Particularly since offsets were considered a last resort in terms of implementation of the Mitigation Hierarchy when project induced impacts could not be appropriately avoided, minimised and mitigated. External biodiversity experts were required to undertake botanical surveys, prior to exploration drilling, to verify that explorations activities would not result in a larger residual impact requiring additional areas to be offset to achieve no net loss. BMM informed IR the Drill Plan was revised following input from biodiversity specialists to minimise impacts as far as possible and ensure explorations only took place on already disturbed sites. This is evident in the Recalculation Report as compiled by Desmet and Botha in 2018.

IR held informal discussions with BMM explorations personnel whilst on-site. These established poor internal communications between BMM's Explorations, Projects and Operations Divisions with regards to explorations activities that took place on Big Syncline (2016/17). It was explained to IR that "protection of BMM properties" had not been appropriately defined in the BOA. BMM Explorations Division had always intended to explore the set-aside properties and they were not aware that prospecting was not permitted on these areas. While Senior Management had signed the BOA as part of BMM's EA requirement, the implications and restrictions, in terms of permitted activities on the set-asides, had reportedly not been adequately communicated to BMM's Explorations Division until December 2017. IR's discussions with EndemicVision further confirmed that BMM's Explorations Division had not been properly briefed about the implications of offsets and set-asides and their conservation objectives which excluded prospecting and mining activities prior to 2017. BMM's two divergent agendas of exploration and conservation required a concerted team effort within the company to achieve implementation of the BOA. During the Close-out Audit IA was informed that BMM had recently made concerted efforts to align BMM's potentially divergent agendas of exploration and conservation. BMM's Exploration personnel had participated in various biodiversity workshops in 2019 and 2020. The Explorations team had received a copy of the BMP (2015) and 2019 and had attended a training session on the BMP tracker in September 2019.

The Biodiversity Workshop had addressed these concerns and additional measures have to be developed to avoid and where not possible carefully manage any future permitted explorations activities on the set-aside areas. The implementation of these additional measures would need to be assessed during future IAs.

Rational as to why the BOA inadequately addressed protection of BMM properties

The BOA was signed on 16 October 2014, before the first amendment to the EA, dated 10 December 2014. This amendment to condition 58 of the original EA, which stated "Further to the requirements set out under point 1, the Applicant agrees to set aside those natural portions of their own properties (i.e. BMM properties Bloemhoek 61, Gams 60, Aggeneys 56 RE, Aroams 57 RE and Uitkyk 889) not being actively mined, on which mining will not

¹⁴ Version 1 of the offset report was only applicable to the Gamsberg EIA, Version 2 of the report was updated to include impacts on Big Syncline together with impacts on Gamsberg.

be pursued under the current application, and specifically to consent to their declaration as a Protected Environment under Section 28 of NEM:PAA, removed the following from the condition:

“on which mining will not be pursued under the current application, and specifically to consent to their declaration as Protected Environment under section 28 of NEM:PAA (2003)”.

The effect of this was to remove the automatic protection of the set-asides as a protected environment under NEM:PAA (2003). Section 48(1)(b) required the written permission of the national Ministers responsible for environmental affairs and for mineral resources to conduct prospecting or mining in a protected environment. By removing this part of the condition, Ministerial permission was no longer required to prospect or mine on these areas.

The BOA did not deal extensively with the protection of the set-asides, presumably on the basis that this was to be declared a protected environment in terms of the authorisation. The effect of the amendment to the authorisation was therefore significant, as it created a lacuna regarding the protection of the set-asides.

However, it was prudent for the parties to ensure continued protection of the set-asides through appropriate amendments to the BOA. Certainly, a special meeting to discuss the effects of such an amendment should have been called and minuted.

Notably, the SC and the LC were only established two years after the amendment to the EA, which watered-down the legal protection of the set-asides. Accordingly, it is unknown to what extent the IP had considered the effect of the amendment, or consulted relevant stakeholders.

We note further that the amendment to the EA was considered a non-substantive amendment, which the IR found to be untrue. IR would need to assess relevant legal requirements at that time but this was beyond the scope of the first IA.

Clause 5.4 refers to BMM's *sole and exclusive* responsibility for the *cost*, protection and maintenance of the properties as contemplated in Clause 5.1. BMM provided IR with evidence that it had spent in excess of ZAR 3 857 000 on sub-contractors for activities relating to implementation of the BOA.

Clause 5.5 referred to BMM's option/decision to contract any of the BMM Properties into Protected Area in terms of NEM:PAA (2003). BMM informed IR it had no intention of converting these set-aside areas to Protected Areas. BMM also informed IR DMR is generally reluctant to authorise the creation of Protected Areas where Mining Rights existed (as shared by Mark Botha during his presentation at the Biodiversity Workshop held on 4 February 2020). However, in the absence of proclaiming these areas as protected BMM urgently needed to demonstrate improved protection of its set-aside properties. This would likely require a concerted effort amongst relevant stakeholders, both within and between government agencies as well as cooperation between different divisions of BMM, including Explorations, Projects and Operations.

During the Biodiversity Workshop, held on 4 February 2020, all stakeholders expressed the need to protect the irreplaceable biodiversity and key ecosystems features present on the BMM properties and focus discussions on future activities, rather than those that had already undergone EIA processes. In terms of future mining and/or exploration activities on the listed BMM properties in Clause 5, the technical experts recognized that some mining or/and exploration activities might be proposed under strict conditions as outlined in their presentations. DENC insisted that due to their legal mandate and role as biodiversity custodian, they could not, legally, approve any activities, whether exploration or mining, that might impact on irreplaceable biodiversity occurring on the set aside areas. However, they indicated that BMM could elevate the discussion to national level with the DEA and the DMR to seek their approval. Such an approval would have to be informed by a broader socio-economic

and biodiversity strategy developed by BMM. This strategy would have to incorporate all planned projects and related impacts from BMM expansion in the region, taking a cumulative and integrated approach. Furthermore, it would have to outline the proposed commitments of BMM to address such impacts, through the mitigation hierarchy and the full suite of compensation measures. Such a strategy, if accepted by national government, could inform the need for further biodiversity offsets to facilitate BMM's proposed activities in the region.

During the workshop it was recorded that any new impacts on the calcrete gravel patches and fine grain quartz gravel (including on the set aside areas of the mine) should trigger a new offset.

4.3 Securing the properties for formal protection (Clauses 6 and 7)

Interpretation of BMM's obligations

Clause 6 defined the BOA requirements for securing additional land for the purposes of declaration as a protected environment and/or nature reserve. Specifically, clause 6.1 required that either 7 Nearby Properties (as defined), or 12 900 hectares of land containing identified characteristics, were secured by BMM. This clause must however be read with clause 6.6, which stated that:

“In giving effect to clause 6.1 BMM shall first do all that is necessary to secure seven (7) of the twelve (12) Nearby Properties in the manner contemplated in 6.4.” (own emphasis).

Clause 6.4 defined the requirements for which properties must be secured within which time period. In terms of clause 6.4.1 read with clause 7, BMM was required:

- i) To secure¹⁵ at least 4 Nearby Properties listed in Annex B1 within the First Time Period (i.e. by 30 March 2016)¹⁶;
- ii) To secure at least 3 Nearby Properties listed in Annex B2 within the Second Time Period (i.e. by 1 April 2024),¹⁷
- iii) Do all that is necessary in order to make those properties available to DENC for declaration within 6 months of being secured; and
- iv) Fence and rehabilitate the properties as soon as reasonably possible after they have been secured, in accordance with the requirements of clauses 7.3 and 7.4.

In the event that it was foreseen that this could not be achieved, despite BMM's best endeavors, then clauses 6.7 to 6.10 came into play, in order to achieve the alternative objective of clause 6.1.2 (i.e. 12 900 Ha of land containing the characteristics identified in Clause 6.9). The procedure to be followed was detailed in these clauses, but summarized as:

- i) Within 3 years of the final regulatory approval date (i.e. before 30 September 2017), BMM shall provide DENC with documentary evidence documenting all attempts by BMM to secure the Nearby Properties, including but not limited to written offers to purchase and/or lease the properties and written rejections of such offers);
- ii) BMM to identify Suitable Alternative Properties in the manner set out in clause 6.9;
- iii) BMM to, if required, request in writing that DENC assist it with identifying Suitable Alternative Properties;

¹⁵ Read with clause 7.1, means “either in terms of a lease agreement, sale agreement or otherwise”.

¹⁶ See definition of “First Time Period”.

¹⁷ See definition of “Second Time Period” read with the amendment dated 12 September 2019.

- iv) Within 3 months of any such request, DENC to notify BMM of Suitable Alternative Properties.

In the event that this procedure was invoked by BMM, within the time period, then the time period for BMM to secure the properties would be extended as contemplated in clause 6.10.

As soon as possible after declaration of the Nearby Properties as a nature reserve, the ownership thereof was required by clause 7.1.2 to be transferred to the Northern Cape Provincial Government, as per the requirements of the Northern Cape Land Administration Act, 6 of 2002.

Compliance by BMM

There was no evidence that BMM invoked clause 6.1.2 by notifying DENC as required by clause 6.7. Accordingly, BMM was bound to secure the Nearby Properties in the manner contemplated in clause 6.4.

Table 4: BMM secured the following Nearby Properties:

	Property Description	Annex	Date property secured ¹⁸	Date of transfer to BMM	Date made available to DENC for declaration
A.	Remainder of Farm Rozynbosch 41	B1 and B2	11 September 2015	4 December 2015 (T70536/2015)	4 October 2017
B.	Portion 2 of Farm Rozynbosch 41	B2	26 August 2016	7 November 2016 (T68144/2016)	4 October 2017
C.	Remainder of Farm Vogelstruis Hoek No. 88	B1 and B2	15 September 2017	25 October 2017 (T4602/2017)	4 October 2017
D.	Farm Achab No. 59	B1	26 June 2017	19 November 2017 (T4850/2017)	4 October 2017

As set out in the Table 4 above, BMM secured 3 of the Annex B1 Nearby Properties and 1 Annex B2 Nearby Properties between 2015 and 2017. They were all formally presented to DENC together¹⁹, via letter of 4 October 2017, more than 6 months after 2 of these properties had been secured. They were then presented during the SC meeting of 16 October 2017.

From a legal perspective BMM had only partially complied with clause 6.4.1. Since only one (Remainder of Farm Rozynbosch 41) rather than four of the Nearby Properties were secured (purchased) in the First Time Period BMM was not compliant with the timing of obligation 6.4.1. Three of the Nearby Properties from Annex A1 and one Nearby Property from Annex B2 were purchased within three years from the Regulatory Approval date (Water Use License, WUL on 30 September 2014), incorrectly understood by both parties to be the new agreed date for completion. IR acknowledged BMM had made efforts to secure four Nearby Properties from Annex B1 but due to one of the farmers withdrawing the sales agreement this had not been possible. However, on 1

¹⁸ Date of sale agreement.

¹⁹ BMM updated the Steering Committee during the meeting held in November 2016 of it having secured two 2 Rozynbosch Properties. The SC was updated on the Achab and Vogelstruishoek properties secured in the October 2017 meeting. However IR did not view these SC meetings as a formal presentation of the properties for management and declaration in terms of the protected Areas act as per the requirements of Clause 7.1.1.

November 2018, DENC issued a letter to BMM “certifying” that it was satisfied that BMM was compliant with clause 6.4.1 of the Biodiversity Offset Agreement in that BMM had secured three farms from Annex B1 as well as one, additional property from Annex B2. This letter was issued despite not being legally or technically accurate. In the SC meeting of April 2019, it appeared to have been accepted that the letter was inaccurate, and that BMM had not yet fully complied with the Clause 6.4.1, which resulted in an agreement and thereafter-formal amendment of the BOA to extend the Second Time Period.

This letter further indicated that DENC was satisfied that BMM had made sufficient effort to secure a further property from Annex B1, but that the fourth property was later retracted by the owner. Interviews held with parties other than the implementing parties confirmed that BMM had desired to purchase the properties required by Clause 6 and had acted in good faith to comply with this clause. IR was informed that the job description of key BMM staff included implementation of the BOA. IR was convinced that BMM had made best efforts to purchase properties but was unable to convince some farmers to sell their properties. In other cases, such as Haramoep, farmers retracted their offer to sell their farms. Therefore BMM was constrained by the availability of farms for purchase listed on Annex B1 & B2. It was possible that, BMM could have leased the properties rather than purchased them. South Africa’s draft National Biodiversity Offset Policy did not require purchase of properties as long as relevant biodiversity values were protected and secured into perpetuity. Stewardship was also recognized as a good option if a farmer did not want to sell as it massively simplified implementation of the offset. The BOA itself also provided for the Nearby Properties to be secured in terms of “a lease agreement, sale agreement, or otherwise” (Clause 7.1). Although the idea of Stewardship Agreements was raised during committee meetings DENC stated that it did not wish to manage land where the landowners remained on the property. IR found no evidence that leasing land was discussed as an option for the protection of the offset properties. IR was informed the one of the MEC’s had not been in favour of Stewardship. Furthermore, since the BOA required the properties to be transferred to the Northern Cape Provincial Government (DRPW) BMM understood it needed to purchase the properties. Alternatively the BOA would have needed to be amended.

The IP agreed to amend the definition of “Second Time Period”²⁰ whilst the review was ongoing, [the amendment was agreed in 17 April 2019 but the amendment letter was only signed on 11 Sept 2019] extending the specified time period for securing 7 of the 12 Nearby Properties according to Clause 6.4.2. However, IR noted that condition 54 of the EA stated “the applicant (BMM) will secure areas or properties, and the requisite consent for the declaration to be obtained by the DENC, within 5 years of the commencement of the activities authorized in the declaration”. Accordingly, whilst the extension of the Second Time Period may have provided BMM with some leeway in terms of the BOA, it was partially-compliant with the EA (based on IR’s categorization but not on the 5-yr timeframe requirement). During the Close-out Audit BMM shared Bowman’s legal opinion on the matter with IR however further comments on this matter is beyond the scope of the IA. Should the parties wish to amend the EA, in terms of the stipulated five-year timeframe and reference to hectares protected rather than sensitive habitats relevant processes prescribed in the EIA Regulations would need to be followed.

IR was aware that the timeframe for the First Time Period was considered during the first SC meeting on 29 November 2016. Notably, it was reflected in the minutes of this meeting that:

- It was acknowledged that BMM was already in non-compliance by failing to secure the B1 properties within the 18-month timeframe;
- BMM had requested an extension of time from DENC, but there were no “permissions formally in place for extending the timeframe”;

²⁰ See definition of “Second Time Period” read with the amendment dated 12 September 2019.

- It was acknowledged that the sections relating to Alternative Properties could only be triggered once BMM could not secure 7 of the Nearby Properties; and
- Members of the committee interpreted clause 6.7 of the BOA to mean that BMM had 3 years to acquire properties (it is not clear exactly which properties are referred to here), and therefore that no extension was required.

It was a misinterpretation of the BOA if the parties believed that BMM had 3 years within which to acquire the B1 properties. The BOA was clear that the First Time Period provided for an 18-month period within which the **four Annex B1 Nearby Properties** were to be secured. Clause 6.7 referred to a 3-year period within which if it became clear that **7 Nearby Properties** could not be secured, and provided for a specified procedure to be followed. This clause did not extend the time period for BMM to secure the B1 Nearby Properties. IR was provided with no evidence that the clause 6.7 procedure was triggered at any time prior to the expiry of the 3-year period.

Given that the BOA did not make provision for DENC to extend any time periods specified in the Agreement, in the event that an extension was required, this could only have been done via an express, written variation of the BOA, signed by both parties.

Accordingly, BMM was found to have only partially complied with Clause 6.4.1, because only three of the four secured properties were from Annex B1, and these properties were not secured within the First Time Period. IR acknowledged that BMM had tried its best to secure four properties from Annex B1 but due to the fourth B1 property being withdrawn by the landowner it had not been able to achieve this objective.

BMM has furthermore failed to comply with:

- Clause 7.1.1, because it presented all four Nearby Properties to DENC on 4 October 2017, this being more than 6 months after Nearby Properties A and B were secured; and
- Clauses 7.3 because they had not yet been fenced or rehabilitated the secured properties, despite a number of years having elapsed since the properties were secured.

Interpretation of DENC's obligations

DENC's obligations in respect of the Nearby Properties stem from Clause 6.5, which required it to:

“as soon as reasonably possible after the properties or portions thereof have been made available in terms of clause 6.4, cause those areas to be declared, by way of publication of the requisite notice in the *Gazette*, in terms of the Protected Areas Act as nature reserves or where same is not possible, protected environments, as the case may be.”

Together with BMM, DENC would also be responsible for ensuring that the properties were transferred to the Northern Cape Provincial Government. The properties had not yet been transferred at the time of undertaking the Close-out Audit.

Compliance by DENC

The four secured Nearby Properties were made available to DENC for declaration on 4 October 2017, as per letter of the same date from BMM, and confirmed to the IR by DENC.

The Intention to Declare the Gamsberg Nature Reserve was gazetted on 26 November 2018 (Provincial Notice 129 in Provincial Gazette 2226 of 26 November 2018). After public consultation processes were completed, the

Declaration of the Gamsberg Nature Reserve was published on 5 August 2019 (Provincial Notice 80 in Provincial Gazette 2287 of 5 August 2019).

IR was provided with a copy of the “Intention Memo” dated 7 November 2018 and the “Declaration Memo” dated 8 July 2019, whereupon the notice in gazette was approved. However, DENC failed to explain the delay from the date the properties were made available to DENC for declaration, to publication of the intention to declare the nature reserve on 26 November 2018, being more than a year.

Accordingly, DENC had not complied with the requirement of clause 6.5 to cause the property to be declared as a protected area “as soon as reasonably possible”.

Compliance by BMM and DENC regarding the transfer of properties

IR noted that various discussions took place during SC and LC meetings regarding the transfer of the properties to the Northern Cape Provincial Government (NCPG) prior to the Gamsberg Nature Reserve Declaration. As per IUCN's presentation during the LC meeting held on 18 April 2018, BMM had engaged lawyers regarding transfer of the secured offset properties to the NCPG. The expected date for final preparations and sign-off of all documents was anticipated to be the end of May 2018. DENC sent a letter to the Office of the Premier (OTP) on 31 May 2018 requesting advice on who would be responsible to sign off on the transfer documents for the four properties and received a response on 4 June 2018. The response was clear that the Premier assigned the power in relation to immovable assets to the MEC responsible for Public Works with effect from 3 September 2010 (in terms of the Government Immovable Asset Management Act, 2007 (Act No.19 of 2007)). A formal invitation for a meeting on 1 February 2019 was sent from the HOD of DENC to the HOD of DRPW on 28 January 2019. This meeting took place on said date. The main discussion points were the background and content of the offset agreement between DENC and BMM and the need for the transfer of these properties to Provincial government. DRPW and DENC held a follow up meeting in February 2019 to discuss the requirements and the process of the transfer of the properties.

The HOD of DENC sent a formal request for the transfer of properties to the HOD of DRPW on 5 April 2019. This was followed by a site visit by DRPW by two officials of the Kimberley office (May/June 2019), and further meetings in August and September 2019. It is understood that DRPW now needs to undertake an assessment of the properties, through a site visit, planned for the beginning of November 2019.

Whilst IR was of the opinion that the transfer of the properties from BMM to DENC was not adequately prioritized by the implementing parties, it was acknowledged that the BOA only required transfer to take place after declaration, and that numerous steps had been taken since August 2019 to transfer the properties. Accordingly, IR was satisfied that the requirement of Clause 7.1.2 was in the process of being met. The timeframes for transfer were not provided to IR. This was also considered out of scope and would be addressed in the next IA.

Penalty Provisions (Clauses 6.11 and 15.4)

The BOA made provision for penalties to be imposed by DENC in the event that the offset properties were not secured within the stipulated timeframe. However, the limited BOA amendment signed by the parties on 12 September 2019 (“the Amendment”) gave rise to interpretational discrepancies in applying the penalty provisions.

The clauses that deal with the penalty provisions were as follows:

- 6.11. Upon the expiry of the Second Time Period, and in so far as BMM has failed in its obligations to secure the conservation-worthy land contemplated in clause 6.1, the penalty provisions in clause 15.4 will apply.
- 15.4 In so far as the requisite properties referred to in clause 6.1 have not been secured by BMM within five (5) years of the Final Regulatory Approval Date, then...

Prior to the Amendment, these clauses aligned in that the expiry of the Second Time Period was also five years after the Final Regulatory Approval Date. However, the Final Regulatory Approval Date had been amended to 1 April 2024. Whilst clause 15.4 could operate independently of clause 6.11, the difficulty would arise in the steps to be taken, specifically, in DENC calling upon BMM to remedy their breach within 60 days.

In light of the above, when read together and within the context of the whole agreement, the Amendment and the intention of the parties expressed through the Amendment, clause 15.4 must also be interpreted as becoming applicable upon the expiry of the Second Time Period only²¹.

4.3.1 Securing the Four Recognised Vegetation Types (Clause 6.3)

BMM's purchase of the four farms and their gazettelement as Protected Areas resulted in BMM successfully having secured in excess of the required areas for the four Recognised Vegetation Types as per Clause 6.3:

- Aggeneys Gravel Vygieveld: Required Area – 3700 Ha, Secured Area – 8515.75 Ha
- Bushmanland Inselberg Shrubland: Required Area – 3200 Ha, Secured Area – 3623.26 Ha
- Bushmanland Arid Grassland: Required Area – 4000 Ha, Secured Area – 7718.46 Ha
- Azonal Vegetation Types: Required Area – 2000 Ha, Secured Area – 1735.63 Ha and one spring at Achab

However, there remained a shortfall of sensitive habitats²²:

- 536.5 ha of Mountains Plateau (constrained, VU);
- 217.3 ha of Plains Gravel Quartz Plateau;
- 276.6 ha of irreplaceable Southern slopes (VU);
- 1509 ha Calcrete Gravel Plains (irreplaceable, EN); and
- 521.4 ha of Azonal Vegetation Types (Washes).
- 942.08 ha of Plains Gravel Quartz

These “sensitive habitat shortfalls” were based on calculations undertaken by biodiversity specialists M.Botha and P.Desmet, however, they differed from the values calculated by ERM. At the Biodiversity Workshop, held on 4 February 2020, participants agreed to use the values calculated by M.Botha and P.Desmet rather than ERM. Following the workshop BMM submitted terms of reference to these specialists to re-assess the calculations to

²¹ See *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18: “Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.”

See also *Educated Risk Investments 165 (Pty) Ltd and Others v Ekurhuleni Metropolitan Municipality and Others* [2016] 3 All SA 18 (SCA) at para 19: “The position in law is that “the words must be taken as the starting point and construed in light of their context and purpose”

See also *V v V* (A5021/12) [2016] ZAGPJHC 311 (24 November 2016) para 16: “while the object is to determine the meaning to be given to the words used, it remains the primary function of the court to gather the intention of the parties or the legislature by reference to those words, and this can only occur if the object and purpose of the contract or legislation ... are brought into consideration when examining the works use in the context of both the document as a whole and the context or factual matrix in which the document came to be produced”.

²² The fine-scale habitat types included in the Biodiversity Offset Report were developed by P.Desmet for SKEP's fine-scale conservation planning. During the audit IR was informed of some contention surrounding these habitat units. However, IR understood that although the BOA did not include the specific habitat requirements these had been accepted as required to be conserved by both BMM and DENC. IR therefore did not further investigate the validity of the area requirement for conservation of the individual sensitive habitats as opposed to the specified “Recognised Vegetation Types”.

establish why there were discrepancies in the values obtained between the two sets of calculations undertaken and to include the two additional properties and update the tables based on any additional properties purchased in the future. These updated calculations would then be presented to the IP for agreement and sign-off going forward.

At the time of the audit BMM informed IR it was in the process of trying to secure Haramoep²³ to cover the shortfall of “Recognised Vegetation Types”, and their component sensitive habitats that supported range restricted, localised and endemic plant species, that were required to be secured according to Clause 6.3.1.

BMM calculated the contribution of “Representative Vegetation Types” and sensitive habitats of the REM of the farm Haramoep No. 53 and submitted this information to DENC on 28 June 2019. The purchase of Haramoep would eliminate the shortfall on washes as Haramoep would contribute 1574 ha and would leave a shortfall of only 15.6 ha of southern slopes following a contribution of 261 ha.

However, following this farm purchase BMM would still have a habitat shortfall for two habitat types namely “Plains Gravel Quartz Plateau” (193Ha) and “Calcrete Gravel Plains irreplaceable” (EN) (256 ha) that the implementing parties were aware could not be achieved, even if BMM were to secure at least 7 of the 12 Nearby Properties due to the unavailability / scarcity of these habitat types. These irreplaceable habitats were acknowledged at the time of drafting the BOA however the inability to ensure>NNL of these sensitive habitats should perhaps have been specifically stipulated in the BOA since this does affect BMM/Vedantas’s company-wide biodiversity commitment.

Further to these acknowledged limitations of the Agreement, BMM had submitted a letter to the MEC of DENC on 11 September 2019 to secure the Remainder of Farm Haramoep No. 53 to close the shortfall and had requested confirmation²⁴ that this purchase would make BMM 100% compliant with the BOA requirements of Clause 6.

In the letter BMM also requested DENC to confirm whether the Halfmens population located on REM of the farm Haramoep 53 could be used as a biodiversity compensation against the shortfall of available fine grain quartz gravels and calcrete gravels as recommended in 2013 Biodiversity Offset Report²⁵. At the time of the Initial IA BMM was awaiting a response from DENC as authority in this regard. During discussions with ERM some questions were raised regarding the conservation value of Haramoep. Recommendations made by ERM were included in Section 6.

During the Close-out Audit BMM provided IR with a copy of DENC’s letter of response, dated 20 November 2019, that stated:

²³ Both Annex B1 & B2 include Remainder of Farm Haramoep No.53 and Portion 1 of Farm Haramoep No. 53. BMM entered into a sale agreement with the owner of the REM of the Farm Haramoep No. 53. In December 2016 but the landowner elected to cancel the sale agreement due to personal reasons. The landowner did, however, agree to give BMM the right of first refusal should the property become available for sale within five years. In June 2019 the owner approached BMM with first option to purchase the land.

²⁴ A solar development has also been earmarked on the south-western part of the REM of the farm Haramoep 53 by a third party. BMM therefore required confirmation from DENC to proceed with the procurement of Haramoep notwithstanding the proposed solar development to ensure this development would not hinder the chance of securing the property as a Nature Reserve in terms of section 23 of the Protected Areas Act (Clause 6.9.5). IR’s discussions with the DENC team indicated that the proposed solar development area could easily be fenced off from the rest of the farm and would not impact on the Four ‘Recognised Vegetation Types’ and component sensitive ‘Habitats’. Revenue generated by means of a lease agreement entered into with the developer could also potentially generate an additional income for management of the Gamsberg Nature Reserves going forward. The solar development had not been constructed yet and was currently in the public consultation process.

²⁵ The Report made provision for compensation for impacts on habitats where residual impacts that were in fact ‘non-offsettable’. The Report indicated that “The residual impacts on the terrestrial habitat units (Calcrete Gravel Patches and Fine-grain Plateau Quartz Patches of the Aggeney’s Gravel Vygieveld) that could not be technically offset could be compensated for by securing the largest known population of Halfmens (*Pachypodium namaquanum*), an iconic, large, showy succulent species, and the emblem of the Northern Cape, found in the region (unless already conserved through the offset)”.

- Following BMM having secured the four properties and these subsequently having been declared as Protected Areas, a shortfall of 309 ha of Gravel Quartz Plateau, 1830 ha of Plains Gravel Quartz, 886 ha of Bushmanland Inselberg Southern Slopes and 1732 ha of Bushmanland Inselberg Plains Gravel Calcrete remained;
- The acquisition of the Remainder of Farm Haramoep No 53., whilst contributing to achieving the conservation outcomes as intended in Clause 6.3 and the added advantage of protecting a population of halfmens *Pachypodium namaquanum*, cannot be used as a trade-up/compensation against the shortfall of fine grain quartz gravels or calcrete gravels since the property already forms part of the nearby offset properties listed in both Appendix B1 and B2;
- It approved the acquisition of the REM of the farm Haramoep 53 on the basis of its inclusion in the aforementioned Appendices and on the basis that BMM's complied with its stipulated mitigation measures (fencing, reducing of footprint and avoidance of washes) proposed for the solar property;
- BMM still needed to acquire a further two nearby properties in line with the requirements of clause 6.1.1. including and four properties from Annex B1 and any three properties from Annex B2;
- BMM was encouraged to purchase Portion 1 of Farm Wortel 42 and Portion 1 of Farm Haramoep 53 to ensure conservation of *Pachypodium namaquanum* as part of the Haramoep Inselberg ecological unit. If BMM was unsuccessful in securing the aforementioned properties it would be acceptable for it to purchase any two properties listed in Annex B2 but preferably properties adjacent to the Protected Area; and
- DENC confirmed that the annual management fees were to be paid from January 2020 and that the request for waiver from the suretyhip requirement was no longer required.

BMM responded to DENC, on 6 March 2020, its intention to add two additional properties to Annex B2 of the BOA, provided it was able to demonstrate the biodiversity on these two properties was suitable.

See Section 4.10 for further discussion on accomplishment of conservation objectives.

4.4 Management Authority (Clause 8)

There seems to have been some confusion amongst the IP and IUCN observers as to when the responsibilities of the MA actually commenced, in particular regarding responsibility for management and protection of the offset properties prior to their gazettment as Protected Areas. The BOA made provision for DENC to be assigned as the MA. The MA could only be assigned in terms of Section 38(2) of NEM:PAA (2003). DENC was only officially assigned the responsibility of MA on 5 August 2019 as per the Provincial Notice 80. This was 22 months after the properties were presented to DENC and almost five years after the BOA was signed.

BMM was clearly responsible for the secured offset properties until they were declared as a Nature Reserve. Prior to the commencement of the IA DENC was not actively involved in management and/or protection of the offset properties. However, during various SC and LC meetings discussions were held on the actions DENC was anticipated to undertake during the first five years of implementation. BMM had not implemented specific conservation management measures on these properties prior to their gazettelement. Both IP recognized a lack of capacity to manage Protected Areas. During the LC meeting held on 23 February 2017 DENC stated they were short-staffed for protected area management. DENC subsequently proposed that BMM function as the MA for the offset properties due to lack of capacity within DENC to fulfill this role. Even though DENC was admittedly short-staffed it advised that the new provincial nature reserve would be managed by staff from the Goegap Nature Reserve in the interim. Clause 7.1.1 stated that all the offset properties should be presented to DENC for management and declaration therefore legally DENC was responsible for management of the offset properties

once they had been officially presented by BMM. However Clause 8.1.2 states that management of these properties shall be assigned to DENC once it is declared the MA by the MEC (August 2019).

The option to bring SANPARKS on board as the MA was discussed during the LC meeting held on 14 November 2017. DENC did investigate the option of SANPARKS becoming the MA for the offset properties but, following SANPARKS's visit to the sites they decided not to undertake this role primarily because the two areas were not connected and did not form one contiguous unit.

During the LC meeting held in April 2018, IUCN recommended that BMM should take on responsibility for declaration of the offset properties and MA for the Protected Areas instead of DENC. IUCN also proposed appointing a Third Party such as Wilderness Foundation or African Parks. This Third Party could be responsible for managing declaration of the Protected Areas, compiling outstanding baseline assessments, compiling the MP for the Protected Areas, presenting this to the LC and SC and executing and implementing the MP. These recommendations were raised again in the SC meeting held on 26 June 2018. DENC decided, during this SC Meeting that they would remain the MA, but that in the meantime, BMM should manage the properties.

Evidence gathered from meeting minutes and discussions with the implementing parties, external observers and external biodiversity specialists all corroborated this lack of capacity. Roles and responsibilities of the MA were further constrained by the absence of the MP (See responses to Clause 9). Although DENC has been assigned responsibility as the MA, IR remains concerned as to DENC's capacity and ability to implement conservation management and protection measures on these Protected Areas at present.

4.5 Management Plan (Clause 9)

IR noted during the LC meeting held on 23 February 2017 that DENC had undertaken to compile a Draft MP for approval by the HOD. However, DENC did not follow-up on this actioned item. This explained why some parties (such as IUCN) were surprised to discover DENC still had 12 months to compile an approved MP following gazettment of the PA, as the production of the MP had already been discussed for a number of years. The discussions held in 2017 and subsequent lack of follow-up by DENC suggested a lack of capacity.

DENC provided IR with a Strategic Management Plan (SMP) comprising a generic framework developed for management of the other six Nature Reserves in the Northern Cape. The document required substantial editing to make it specific for the Gamsberg Protected Areas. During a phone call with IR DENC confirmed the MP would be completed within the legislated timeframe. DENC outlined the likely steps required to complete the MP:

- A Reserve Planning Team (RPT), as determined in DENC's SMP's for Provincial Nature Reserves, would be formed for Gamsberg before the end of March 2020 (Financial Year 2019/2020);
- It was anticipated two or three workshops or meetings would be required to assess the state of the properties, identify their unique biodiversity features and carry out specific management activities as required; and
- Once a site-specific Draft had been developed it would be submitted for public comment.

During the LC meeting held in April 2018, IUCN had recommended appointing a Third Party to compile, implement and execute the MP. However, some parties within DENC considered there to be sufficient staff for DENC to manage these two areas. DENC was aware of the risk of the Gamsberg Protected Areas not being appropriately managed in the time period prior to the approval of the MP and prior to transfer of the land to government. BMM informed DENC of the problem of communal farmers coming onto Rozybosch. DENC had subsequently been informed that BMM's Environmental Manager subsequently undertook regular checks on the

Protected Areas properties to avoid this being repeated. DENC was aware that BMM had not been appointed to manage the offset properties and was not in the business of managing conservation properties. DENC planned to involve the reserve managers of Nababiep and Goegap to assist with Management of these Protected Areas prior to the finalisation of the MP. However, DENC highlighted that there were challenges to appointing staff prior to the establishment of the Trust. DENC was unable to spend money on these offset properties until the land had been transferred to government otherwise this would lead to queries from their auditors.

4.6 Financial obligations (Clauses 10)

Establishment of the Agency or Trust

All payments to be made by BMM under the BOA were required in terms of clause 10.2 to be made to the Agency, or failing its establishment, the Trust, into an account detailed in writing by the Agency or Trust. Accounting mechanisms were then required to be put in place to ensure transparency and monitoring.

As at the end of the Initial IA period, neither the Agency nor the Trust had been constituted. As noted in the SC minutes of November 2016, DENC confirmed that an Agency would not be established and that “whatever funds would be paid over to DENC by BMM would be earmarked for conservation purposes in terms of this Agreement”. SC minutes from June 2018 indicated that a Trust was “in the process of being finalized”, and that once established, money would be paid to the Trust. However, as at the date of the Initial IA, the Trust had not yet been registered, though there are some indications that it is in the process of being registered.

Whilst the definition of the “Trust”, read together with Annex D, provided for the establishment of the Trust and its objectives, the BOA did not explicitly state when the Trust should have been established. However, it stated:

“... In the event that the Agency is not identified or established by the date upon which the first payment in terms of this Agreement becomes due and payable then any reference to the Agency must be read as being a reference to the Trust”.

This meant that the Trust must have been established by the time that the first payment fell due – being three months after the first Nearby Property was presented to DENC for declaration (as per Clause 10.6.1)²⁶. IR noted the establishment of the Trust as an alternative to the Agency obligated both parties to proactively take steps to establish the Trust. Whilst the establishment of the Trust was discussed during the LC meeting of April 2018 and the Trust process had commenced and was anticipated by the Implementing Parties to be established by July 2018, it had not yet been established at the time of review.

At the time of the IA, IR noted that steps had been taken to register the Trust for the purposes of the BOA. In particular:

- Acceptance of Trusteeship was signed by all five Trustees (two DENC - 5 June 2019 & 4 August 2019; two BMM - 7 & 8 August 2019, and an Independent Trustee from SANPARKS - 10 June 2019);
- The Trust Deed had been signed by BMM (24 July 2019), DENC (25 July 2019) & SANPARKS (Independent Trustee counterpart, 1 Aug);
- Certified copies of ID documents of the five Trustees were shared with IR; and
- An independent financial auditor for the Trust was being sourced by BMM Legal Department and would be presented to Trustees and once accepted by all, the identified independent financial auditor signed

²⁶ Properties were due to be presented to DENC within 6 months of being secured (as per Clause 7.1.1)

Trustee documents would be submitted with all documentation and the appointed financial auditor to the Master of the High Court, for registration of the Trust.

Subsequently, the Gamsberg Nature Reserve Trust was registered, and letters of authority were issued to the Trustees on 6 March 2020, in terms of the Trust Property Control Act, 1988 (Act No. 57 of 1988).

Interpretation of BMM's obligations

Clause 10 sets out a number of payments to be made by BMM to The Trust or The Agency. The Table below depicts each required payment, as the BOA currently reads, and the calculated amounts due as at the date of this report, as follows:

Clause	Payment detail	Time Period	Amount	Calculated totals
Maintenance and operational costs				
10.6.1 10.6.2	For each property secured	Within 3 months of being presented to DENC	R 500 000.00 per property	R 2 000 000.00 (4 properties x R500 000.00)
10.6.3	Annual payment for each property	On or before 28 February of each subsequent year after property presented to DENC	R 500 000.00 per property	R4 000 000.00 (2 years x 4 properties x R500 000.00 Without definition, "year" means calendar year. Therefore payment fell due on 28 February 2018 and 28 February 2019. This does not take into account any shortfall that arises from the delayed presentation to DENC of 2 of the properties.)
10.7	End of period payment	On or before 28 February 2020	R 3 500 000.00 annually, increased by 6% or CPIX (whichever is the lower amount)	R 3 500 000
10.9.1	2 office unit within the Aggeney's town or other agreed site (provision for and operating costs) ²⁷	Within 3 months of making the first property available to DENC for declaration, thereafter annually before 28 February	Actual cost	Actual cost
10.9.2	3 accommodation units to house employees ²⁸	Within 3 months of making the first property available to DENC for declaration, thereafter annually before 28 February	Actual cost	Actual cost

²⁷ BMM is waiting on DENC to provide these costs before funds can be transferred to the Trust Bank Account.

²⁸ BMM is waiting on DENC to provide these costs before funds can be transferred to the Trust Bank Account.

Clause	Payment detail	Time Period	Amount	Calculated totals
10.9.3	Cost of servicing motor vehicles	Within 3 months of making the first property available to DENC for declaration, thereafter annually before 28 February	R 50 000.00 annually, increased by 6% or CPIX (whichever is the lower amount)	R 50 000.00 (IR accepts that BMM could not be held liable to pay for the servicing of vehicles that did not exist.)
Capital costs				
10.10	First capital payment	On Final Regulatory Approval Date (30 September 2014) and thereafter annually on 1 March	R 500 000.00 per annum (capped at R2 500 000.00)	R 2 500 000.00 (Cap reached)
			TOTAL:	R 12 050 000.00 PLUS actual costs of offices and accommodation units

Compliance by BMM

At the time of the Initial IA, no payments had been made by BMM to the Agency or the Trust, due to neither the Agency nor the Trust having been established when these payments fell due. However, it was also noted with concern that the payment amounts were also not kept in a separate ear-marked account, or other mechanism (such as an attorney’s trust account) until after the review had already commenced. The amount required at the time of the Initial IA was calculated as **R 8 650 000.00, plus actual costs of offices and accommodation units.**²⁹

IR did consider a deposit confirmation of **R 6 550 000.00** into a Standard Bank account, dated 22 August 2019, which covered the firm amount due at the time of the Initial IA, but, provision for offices and accommodation as required by clause 10.9.1 and clause 10.9.2 had not been calculated by the parties. IR understood that sites for office units had been earmarked on the Farm Achab (as discussed during the SC meeting of 10 April 2019). However, at the time of the Initial IA, the provision of the office units had not been finalized, and the proposed site was awaiting inspection by DRPW. IR noted that neither the SC minutes nor other communications reflected acceptance of calculated amounts.

At the time of the Initial IA, no expenditure arising from clause 10 had been incurred, and neither the Agency nor the Trust had been established. Accordingly, there were no records or reports to reflect on the use of the funds to manage the properties, and as a result, the IR was unable to provide recommendations relating to the use of the funds, or the sufficiency thereof.

However, it was noted that at the SC meeting of February 2019, DENC requested BMM to consider increasing the annual fees for the management of the offset properties indicated in the BOA. In response to this request BMM included in a letter to DENC (dated 11 September 2019) that an increase in the management fees from R 500 000.00 to R 700 000.00 per property was acceptable to BMM, thus raising the annual fees to R 3 500 000.00 for the five offset properties (assuming Haramoep is also secured). This increase in management fees was

²⁹ It is accepted that in the Initial IA, an amount of R 3 500 000.00 required in terms of clause 10.7, payable at 28 February 2020, was incorrectly included in the payment calculations. This amount had fallen due.

conditional on DENC confirming that BMM had secured all the relevant Recognised Vegetation Types and Habitats and that no further offset properties would have to be acquired by BMM under the BOA. BMM subsequently informed IR that management fees as stipulated by the BOA would be followed therefore BMM paid R 2 000 000 for management fees of properties secured to-date, as agreed with DENC. IR queried the validity of the annual payment in relation to property purchase rather than size of property to be managed.

Accordingly, IR found that, although some money had now been set-aside, BMM had failed to comply with the whole of clause 10 of the BOA.

Subsequently, during the Close-out Audit IR confirmed the Trust has been established, and a Trust Bank account opened on 20 March 2020. An amount R 12 050 000.00 excluding operational costs for accommodation and offices and servicing of vehicles were transferred by BMM into the Gamsberg Nature Reserve bank account on 3 April 2020. Although clause 10.9 stated the first payments were to be made within 3 months of presenting the first property to DENC, the clause was inherently problematic, because it also contemplated that the money should be available to be utilised by the MA, which was only formally assigned and declared in August 2019. Further, the vehicles contemplated in clause 10.9.3 were not in existence for at least the first two years after the Properties were presented to DENC and accordingly DENC could not have utilised the funds for its purpose.

Accordingly, the amount only fell short in respect of the actual costs contemplated in 10.9.1 and 10.9.2 for the offices and accommodation units. IR found that, except for the operational costs for accommodation and office units, all financial provisions were paid and therefore BMM was Compliant.

Compliance by DENC

Whilst clause 10 of the BOA did not place any specific obligations on DENC, the establishment of the Agency was within its purview. It was only in November 2016 (more than two years after the BOA was signed) that DENC confirmed a dedicated Agency would not be established. At this meeting, it also stated Treasury would not receive the funds earmarked for conservation purposes. However, it appeared this arrangement was abandoned. Furthermore, given that the Trust was to be set up by both parties, DENC also had an obligation to work with BMM to establish the Trust before the first payment fell due. It failed to do so.

However, as set out above, the Gamsberg Nature Reserve Trust had now been established.

Mechanisms of the Gamsberg Nature Reserve Trust

A copy of the Trust Deed was provided to the IR, and contained the following clauses relevant to clause 10 of the BOA:

- Clause 5.1 provided for the use of funds solely and exclusively for the implementation and execution of the Biodiversity Offset as stipulated in Clause 10 of the BOA, and for the establishment of accounting mechanisms to ensure that the use of funds were ring-fenced and traceable to the implementation objective for which they are utilized;
- Clause 6.4 of the Trust Deed required that the Trustees ensured that appropriate security procedures and accounting mechanisms were put in place to minimise the risk of fraud and misappropriation of the Trust Fund, and to ensure that use of all Trust Funds received were ring-fenced and traceable to the Trust objective;
- In Clause 6, the Trust Deed established procedures for the MA to access and utilise funds, as well as monitoring and reporting mechanisms, and signing off by the auditors; and
- Clause 17 of the Trust Deed established procedures for the keeping of books of account.

The IR was satisfied the Trust Deed provided for sufficient mechanisms, theoretically, to ensure that the use of funds would be for the exclusive purpose of furthering the objectives on the BOA. However, given that at the date of this Close-out Audit report, no funds had yet been utilised, the IR was unable to comment on the implementation of such mechanisms. Subsequent audits would need to consider the actual use of funds.

4.7 Suretyship (Clause 11)

Clause 11 of the BOA stated:

“This Agreement shall be of no force or effect until BMM has furnished to DENC a deed of suretyship signed by Vedanta in a form acceptable to DENC. This clause is inserted solely for the benefit of DENC who may waive it in part or in whole as DENC may deem fit.”

IR noted that the requirement for suretyship was not specifically included as a suspensive condition envisaged by Clause 20 and must be interpreted in this context. Suspensive conditions suspend the operation of an agreement until such time as specified conditions are met. The intent of the wording of clause 11 was therefore unclear.

The BMP (Version IV, 2015) referred to the need to secure and submit suretyship to DENC, and the need for action to be undertaken was also raised in numerous SC and LC meeting minutes. DENC confirmed that it had not waived any requirements relating to suretyship (email from N van Olmen, 7 October 2019).

IR was provided with a copy of a letter titled “Security for BMM’s performance under the Biodiversity Offset Agreement” in which THL Zinc Limited (“THL”), a 69.6% shareholder of BMM, guaranteed the punctual payment and discharge of all BMM’s obligations under the BOA. It furthermore stated at Clause 5 that “By its countersignature to this letter, DENC hereby accepts this Letter as fulfillment of Clause 11 of the Biodiversity Offset Agreement”. The letter was signed by the MEC of DENC on 6 September 2019. By implication, DENC accepted the letter as an acceptable form of suretyship, and the agreement was now of full force and effect.

IR noted that this suretyship was not provided by Vedanta, as required by Clause 11, but by a separate legal entity, THL. Vedanta was defined in the BOA as “Vedanta Resources plc, an entity registered in the United Kingdom, with its head office situated at 16 Berkeley Street, London, United Kingdom W1J 8DZ”. IR was advised (J. Smit, email, 28 October 2019) that Vedanta has since been delisted. Further, IR was advised that BMM is 69.6% owned by its parent company THL Zinc Limited. THL Zinc Limited is in turn 100% owned by THL Zinc Ventures Limited, which in turn was 100% owned by Vedanta Limited.

Given the flexibility of the wording of the Clause, specifically “in a form acceptable to DENC”, and taking into account legal precedent regarding the interpretation of contracts,³⁰ and that DENC accepted the letter in fulfillment of clause 11, the IR found that this Clause had now been fulfilled.

³⁰ See *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18: “Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.”

See also *Educated Risk Investments 165 (Pty) Ltd and Others v Ekurhuleni Metropolitan Municipality and Others* [2016] 3 All SA 18 (SCA) at para 19: “The position in law is that “the words must be taken as the starting point and construed in light of their context and purpose”

See also *V v V* (A5021/12) [2016] ZAGPJHC 311 (24 November 2016) para 16: “while the object is to determine the meaning to be given to the words used, it remains the primary function of the court to gather the intention of the parties or the legislature by reference to those words, and this can only occur if the object and purpose of the contract or legislation ... are brought into consideration when examining the works use in the context of both the document as a whole and the context or factual matrix in which the document came to be produced”.

Given this, the Agreement was of no force or effect until 6 September 2019 (in that neither part could have enforced its terms). However, despite the unexplained significant delay in BMM providing the suretyship, the BOA was operational, and could be enforced between the parties.

IR noted that BMM’s letter to DENC of 11 September 2019 requested DENC to waive the requirement for suretyship once the offset properties have been transferred and the management fees had been paid into the Trust bank account. However, the suretyship could only have been waived prior to it being provided, and accordingly, this was not possible.

4.8 Establishment of a Steering Committee (Clause 12)

The purpose of the SC was to enable the parties jointly to oversee and co-ordinate implementation of the Biodiversity Offset in terms of the BOA (Clause 12.1) including adequacy of the biodiversity outcomes and effective management thereof (clause 12.2.1). The SC was required to receive recommendations from the LC, or other body, regarding adequacy of implementation of the agreement, including the adequacy of financial provisions, biodiversity outcomes and management effectiveness (Clause 12.2.2). The SC was required to meet twice a year (unless agreed otherwise by the SC in writing) (Clause 12.2).

Steering Committee Establishment

The BOA provided no guidance on when the SC was supposed to be established. Conceivably it should have been established in time to hold two meetings within the first year. DENC sent its SC and LC nominations to BMM on 15 August 2017 following a meeting held on 10 August; almost two years after the BOA was signed. It was unclear why it took such a long time to establish this committee. The first meeting was held in November 2016.

Regular meetings of the Steering Committee (Clause 12.2)

Over the five year implementation period six SC meetings were held. As shown in

Table 5 the SC met once in 2016 (29 November), once in 2017 (16 October), twice in 2018 (26 June, 23 November) and twice in 2019 (10 April, 17 April). The implementing parties were therefore partially-compliant in terms of the BOA requirement of two meetings per year (assumed to commence from once the BOA was signed). The SC had not agreed in writing to hold less than the required meetings or amended the BOA.

Table 5: Dates of Steering Committee and Liaison Committee meetings

Date of Steering Committee (SC) meeting	Date of LC meeting
29 November 2016	
	23 February 2017
16 October 2017	14 November 2017
26 June 2018	18 April 2018
23 November 2018	
10 April 2019	5 February 2019
17 April 2019	

Role & functioning of the Steering Committee (Clause 12.1, 12.2.1 and 12.2.2)

The SC was required to oversee coordination and implementation of the BOA including the adequacy of the biodiversity outcomes and effective management thereof. IR noted an overlap in roles of the SC and LC who were both required to assess adequacy of biodiversity outcomes and effective management thereof. This duplication

of roles should have been clarified and addressed and the BOA amended shortly after the two committees were established.

Since the LC meetings began after the SC meetings this made it difficult for the LC to report to the SC on problems and non-compliances it had identified. This would only have been possible timewise in 2017 between the 23 February LC meeting and the 16 October SC meeting and in 2018 between the 18 April LC meeting and 26 June SC meeting. Based on review of the 16 October 2017 SC meeting minutes no summary presentation was provided of the prior LC meeting issues raised and outcomes (e.g. fencing, management and management plan for the offset properties). Some of the issues discussed in the SC meeting were raised as if this was the first time they had been mentioned at the SC meeting with no reference to former discussions in the LC meeting. The LC meeting minutes should have been circulated to SC if the summary was not presented.

BMM's SC participant during the initial two to three years of the BOA implementation, BMM, informed IR the SC had not been functioning properly in 2017. The same issues were discussed at every meeting (e.g. development of MP, establishment of the Trust etc.) with little progress made and parties explained it was difficult to move forward for various reasons. At the initial 2016 SC meeting BMM sought guidance on whether it was on track to meeting its offset commitments in terms of the farms it had already purchased. The necessity for properties to be transferred to government and the establishment of an Agency were also raised at this initial meeting. The fact that a number of these issues had still not been resolved prior to the commencement of the audit in August 2019 suggests that the committee was not fulfilling its role of oversight of the BOA. If additional specialist expertise were required, which it appears it was, e.g. legal and/or specialist biodiversity expertise this should have been flagged during the meetings and responsibility allocated to BMM/DENC representatives to follow-up on these issues prior to the next meeting. Reference was made to the establishment of Task Team but IR found no evidence of it having been established.

The SC was viewed by some interviewees as primarily a political entity and this was evident in the first meeting minutes (29 November 2016) which focused on the role the mine would play in the region including references to social and labour plans and housing development projects rather than elaborating on the role of the SC in implementation of the BOA. According to IUCN's observations it was considered a political and decision making body and nothing really happened in between meetings, especially from DENC's side. The SC did not really "lead" the discussions.

DENC reported it was challenging for the SC to be chaired by the MEC as he/she had limited availability making it difficult to schedule meeting dates. The MEC's participation was considered unsustainable in the medium to long-term especially as the number of biodiversity offset agreements in the Northern Cape potentially increased. Whilst the Gamsberg mining project provided opportunities for enormous job creation in the Northern Cape this specific agreement was therefore of strategic interest to the MEC. However, from a purely conservation perspective it probably didn't make sense for the MEC to dedicate an entire day, twice a year, to the implementation of a single offset agreement. Although having the MEC involved did provide him/her with the opportunity to effect their vision for the province.

DENC responded this was the first time they were implementing such an agreement and it had therefore been a steep learning curve for both parties. DENC admitted that regular changes to the MEC and HOD had impacted on the functionality of the SC and resulted in significant delays in implementation. There had been three MECs since the first SC and the HOD had changed three times. The Director for Biodiversity Management had three different Acting Directors. The challenges of constant staff changes had led to changes in decisions, visions,

direction and approach to implementation (e.g. stewardship was suggested as an option by DENC in LC meeting minutes 23 February 2017) and initially supported but then later rejected as noted in SC meeting minutes.

The 26 June 2018 SC meeting Agenda refers to minutes of the LC meeting held on 18 April 2018. During this meeting the key priorities for consideration from the previous SC meeting were raised indicating a better flow of information between the two committees.

Some interviewees recommended a paid independent secretariat could have assisted with taking minutes, following up with parties and flagging delays as soon as they happened. The implementing parties could potentially have appointed a third party (from DEA/independent) to provide oversight and alert both parties timely of delays.

Although DENC informed IR that it was performing its role other stakeholders interviewed were of the opinion that DENC had inserted complications and misdirections into the process. The oversight role by the SC was not considered to have been adequately undertaken.

IR concluded from review of SC and LC meeting minutes that the two implementing parties had not held each other to account.

4.9 Establishment of a Liaison Committee (Clause 13)

The responsibilities of the LC were supposed to be described in the MP (Clause 13.1) including management and operational issues relating to the Biodiversity Offset³¹. In the absence of the MP, required to be submitted by 5 August 2020, as per Clause 9.1³², the role of the LC was not clearly defined for the initial five year implementation of the BOA.

The LC was required to report to the SC, in writing regarding the management and operation of the Biodiversity Offset, and the performance of the LC's functions in terms of the MP (Clause 13.2). The LC shall provide recommendations to the SC regarding adequacy of implementation of the BOA, including adequacy of financial provisions, biodiversity outcomes and management effectiveness (Clause 12.2.2). As already mentioned in Section 4.8 there was overlap in roles.

³¹ Defined in Section 1. Interpretations and Definitions of BOA. Biodiversity Offset shall mean the land conservation initiatives specified in Clause 4 of this Agreement and the financial contributions specified in clause 10 to be implemented by BMM in accordance with the Environmental Authorisation for the Gamsberg Zinc Mine Project as well as the preamble to the agreement. The Biodiversity Offset is also outlined in Clause 4 of the BOA and encompasses *protection of the BMM properties i.e. set-asides (Clause 4.1.1, Clause 5), identification and securing of additional conservation-worthy land... and declaration thereof as a Protected area (Clause 4.1.2. Clause 6), transfer of.. property secured... to the Northern Cape Provincial Government (Clause 4.1.3), identification of a Management Authority and assignment of responsibility for managing the Protected Areas (Clause 4.1.4 and Clause 4.1.5, Clause 8), preparation of Management Plan by Management Authority and submission to MEC for approval (Clause 4.1.6, Clause 9) and the ongoing protection and management of the Protected Areas (Clause 4.1.7).*

³² The Management Authority shall prepare and submit The Management Plan to the MEC, for approval, in terms of the Protected Areas Act, within 12 months of being assigned as the Management Authority of the Protected Areas.

Functioning of Liaison Committee

The BOA did not stipulate the frequency of LC meetings. Four LC meetings were held³³ during the five year period prior to the Independent Audit (See Table 5). The LC agreed to simultaneously serve as the Management Committee providing oversight for the management of the offset properties with DENC responsible for appointing a day-to-day manager. IR was not aware that such a day-to-day manager was appointed during the initial five years of implementation. The LC focused on managing offset properties in accordance with BOA. IR concluded the offset properties were not appropriately managed prior to their gazettment. Whilst IUCN raised concerns regarding implementation of the BOA and management of the offset properties during LC meetings the recommendations were not taken on board by either party.

DENC and BMM both informed IR the LC had not been functioning as effectively as it could have. DENC stated this was partially due to the lack of proper participation by DENC participants. DENC anticipated this would improve going forward as DENC would play an important role in implementation as the MA responsible for implementing the MP. BMM mentioned that it might have been more effective to only have had the LC and omitted the SC; as the SC had a more political agenda rather than focusing specifically on implementation of the BOA. In 2017 the LC was also functioning as the SC inappropriately, perhaps explained by the lack of clarity of roles of the two entities. BMM's representative on the LC changed from February to November 2017.

The role of the LC was not clearly defined in the BOA as on the one hand it was supposed to provide oversight on the practical implementation of the Biodiversity Offset (namely the PA properties) and this was clearly not fully achievable until gazettment of these areas on 5 August 2019 and completion of the MP which suggested the LC should only have been established following the completion of these two activities. However concurrently, according to the BOA's definition of Biodiversity Offset (Clause 4) and Clause 12.2.2 the LC was also responsible for guiding the SC's implementation of the agreement. IR found the LC had only partially performed its role of guiding the SC on implementation of the BOA. Clearly the LC could not provide guidance on the adequacy of financial provisions, biodiversity outcomes and management effectiveness as these components of the offset agreement had not been implemented yet. However the LC could provide guidance on the procedure required to achieve these various outcomes. Since the LC was responsible for guiding the SC's implementation of the BOA it was remiss of DENC to have submitted nominations for the LC on 15 August 2016 almost two years after the BOA came into effect.

Some interviewees responded that the LC was just not working from DENC's side, interviewees noted issues with DENC's capacity even just to attend the meetings with only the Scientific Manager able to participate on a regular basis. IUCN suggested a liaison technical committee or working group was required to guide the SC. The SC did not seem to have been taken this recommendation on board.

Reporting to Steering Committee

Issues of concern regarding delays in implementation of the BOA were raised by the LC but IR was not convinced this information was always appropriately and timeously transmitted to the SC meeting members. See Section 4.8 above for reasons why SC was unable to resolve concerns and/or shift forwards timeously on implementation of actions. Minutes from LC meeting dated 23 February 2017 and 14 November 2017 were not signed. BMM informed IR the LC reported to the SC via meeting minutes. However, in November 2017 the LC meeting minutes weren't sent to SC only LC. The Chair of the LC usually provided feedback to the SC members in the form of one

³³ 23 Feb 2017 – meeting focused on set-aside management, management of offset properties, Management Plan and frequency of Management plan performance audits; 14 Nov 2017 – meeting focused on BMM prospecting and role of SANPARKS, 18 April 2018 – meeting focused on Suretyship, non-compliances, Trust establishment and Transfer of property, 5 Feb 2019.

or two powerpoint slides, if there had been an LC meeting prior to the SC meeting. However, review of meeting minutes found this not to be the case in several instances (See Section 4.8). In 2019 the LC sent letters addressed to SC regarding items addressed during LC meeting.

IR concluded the LC was not reporting to the SC appropriately, namely in writing as required by BOA, for the first five years of the agreement. Formal feedback from the LC to the SC could have been improved. Each SC meeting was also not preceded by a LC meeting whereby negating the role of the LC to guide the SC. Formal correspondence between LC and SC was implemented in 2019 and IR understood this systematic approach would continue going forward. Some stakeholders commented that BMM could possibly have been more proactive in confirming meeting attendance by DENC and DENC could similarly have been more proactive in confirming their participation with BMM. The LC did not seem to have fulfilled its purpose for the initial five year implementation period.

A presentation made by IUCN on the challenges, and priorities in terms of performance against the offset agreement, suggested the appointment of external parties to assist with expediting a number of components of the BOA that were not being implemented timeously. IR was unclear as to why these recommendations were not taken on board by either DENC or BMM.

At the April 2018 LC meeting issues raised included the need to confirm compliance with the First Term, transfer of offset properties to government – expected to sign docs by end May 2018, transfer of money for the offset properties, establishment of the Trust (expected by July 2018), Suretyship decision expected by June 2018 with the intention to waive it once the Trust had been established & money transferred. Strategy for the Second Time Period was discussed with a suggestion to look at alternative properties, investigate Stewardship options and start buying portions of farms. Although these issues were raised during the meeting IR was not provided with any evidence that these actions were expedited.

Delays in implementing BOA Clauses were sometimes caused by lack of understanding and/or differences of opinion in how to proceed with implementing a particular clause. Some examples included:

- **Transfer of offset properties to government:** DENC reportedly did not initially understand that the offset properties had to be transferred to DRPW. During the June 2018 LC meeting DENC confirmed with the office of the Premier that the MEC DRPW was the custodian of immovable assets; and
- **Financial Provisions:** In 2016 BMM proposed using an existing account, already established for the BMM Game Camp, to transfer funds for management of the offset properties. DENC however had a problem with the expenditure from a separate account external to BMM operations. However, DENC did itself not have a separate bank account where BMM could transfer the funds. Funds could only be paid into treasury which could not then be ring-fenced. This clearly created an impasse as to how to proceed with transfer of funds for offset property management in the absence of the Trust having been established.

Lack of follow-up by both implementing parties

IR concluded that a number of items raised during the LC meetings were often just not followed up by either implementing party. Some examples are highlighted:

- During the LC meeting held on 23 February 2017 DENC undertook to compile a Draft MP for approval by HOD. This action was never undertaken by DENC despite numerous discussions of getting the MP compiled at later SC & LC meetings. IR did not find any evidence of this idea having been abandoned by agreement between the IP.

- This meeting also discussed BMM taking responsibility for maintenance of windmills and fences and game management on the offset properties all viewed as priority activities but requiring internal approval of expenditure from BMM and approval from the SC. BMM was responsible for writing a written proposal to BMM HOD requesting approval for maintenance of the offset properties. BMM (P.Venter, *pers.comms.*) did not follow up on this action.
- Similarly BMM did not follow-up (with corporate office) on the tax incentives that BMM could have obtained from the land procured.
- During the LC meeting held on 18 April 2018 BMM requested from DENC whether it was compliant following the purchase of the four properties. DENC only confirmed this compliance in a letter to BMM on 1 November 2018, 6 months after BMM's request.

In this way both parties contributed towards delays in implementation and the LC & SC did not effectively chase up individuals to deliver on their promises.

Neither the LC nor the SC seems to have given much consideration to the set-asides. It appears that they both misunderstood their roles to be limited to Protected Areas. Since they were both responsible for implementation of the BO and the BO includes protection of the BMM properties this is a specific gap in both of their responsibilities.

4.10 Accomplishing the conservation objectives

It was not possible to assess whether BMM had accomplished its conservation objectives as required by the BOA during this First IA. Additional information was required, as elaborated elsewhere in the report, to answer questions such as:

- Were the biodiversity impacts and losses as initially anticipated?
- Had the planned biodiversity offsets been delivered?

A further concern with the BOA was that the offset was not currently meeting BMM's own Biodiversity Management Policy commitment of "net positive effect". It was only meeting the regulatory requirements.

5 CONCLUSIONS

5.1 Overview

The Independent Reviewer confirmed 18 clauses as compliant (C)³⁴, 8 as completed but late (C-L)³⁵, 14 as partially compliant (PC)³⁶ and 7 as not compliant (N-C)³⁷. Seventeen of the clauses had no compliance obligations (NCO)³⁸. A total of 36 clauses were not assessed (N-A)³⁹ due to activities not having been completed at the time of the First Independent Audit.

³⁴ Compliant (C) clauses: 3.4., 3.5., 3.7., 5.2., 6.2., 7.4., 7.4.1., 7.4.2., 7.4.3., 10.2., 10.3., 10.4, 10.7, 10.7.1., 10.8., 10.9.3., 11.1, 12.1.

³⁵ Compliant but Late clauses: 6.5., 7.1.1., 10.6.1., 10.6.2., 10.6.3., 10.10., 10.10.1., 10.10.2.

³⁶ Partially Compliant (PC) clauses: 3.1., 3.3., 6.3., 6.3.1., 6.3.2., 6.3.3., 6.3.4., 6.4.1., 10.9., 12.2., 12.2.1., 12.2.2., 13.1., 13.2.

³⁷ Non compliant (N-C) clauses: 3.9., 5.1., 5.3., 5.4., 7.3., 10.9.1., 10.9.2.,

³⁸ No compliance obligation (NCO) clauses: 3.2., 4.1.1. – 4.1.7., 5.5., 8.1.-8.4., 10.5., 10.6.

³⁹ Not assessed (N-A): 3.6., 3.8., 6.1.1., 6.1.2., 6.4.2., 6.6., 6.7., 6.7.1., 6.7.2., 6.8., 6.9., 6.9.1-6.9.5., 6.10., 6.11., 7.1.2., 7.2., 9.1., 9.2., 9.3., 9.3., 9.4., 9.4.1 – 9.4.7., 10.1., 10.7.2., 10.11., 12.2.3., 12.3.4.

5.2 Compliance with provisions of the BOA

Overview

Overall, the IR observed commendable progress by the parties, in the steps they took to achieve compliance on a number of the BOA provisions. Furthermore, IR noted the IP had made a concerted effort to close non-compliances in the period between the submission of the Initial IA and the Close-out Audit. The parties had devised a Work Plan to address non-compliances. IR acknowledged that the requirements for a number of the clauses were in the process of being met. IR was convinced many of the non-compliance gaps could easily be closed in the short to medium-term through ongoing effective and transparent, communication and cooperation between BMM and DENC. IR provided recommendations on how the IP could improve execution and implementation of the BOA and close identified gaps in Section 6.

Legal

The Auditors recognised that some of the legal provisions had possibly been misunderstood by both of the implementing parties and IUCN observers and this had impacted on implementation of the BOA.

Procedural

Although communications amongst the implementing parties was found to be reasonable, BMM and DENC both contributed to delays in implementation and execution of the Biodiversity Offset. This was partially caused by a lack of transparent communications and efficient cooperation. Whilst the parties demonstrated an in-principle commitment to implementation of the BOA an acknowledged lack of capacity within both parties had obstructed efficient and timely implementation. The appointment of sub-contractors to assist DENC specifically with proclamation of the Protected Areas and development of the MP could have assisted the IP with implementation and execution of the BOA. IR acknowledged BMM had employed a number of sub-contractors to assist with certain activities relating to implementation of the BOA. Review of correspondence between the parties and meeting minutes found the parties had only partially fulfilled their responsibilities in terms of oversight, implementation and management of areas set-aside for conservation. Some of the management plans were lacking in the appropriate level of detail and the necessary monitoring was virtually absent. The Parties were found to be partially compliant with their general duties.

Financial

An amount of R 12 050 000.00 was deposited into the Gamsberg Nature Reserve Trust bank account (Standard Bank) on 3 April 2020. This covered the full amount that needed to be paid; aside from two years of vehicle servicing costs (since the vehicles did not exist) and renovations and operational costs for office and accommodation units as this information was required by DRPW and DENC.

Biodiversity conservation outcomes

Protection of BMM properties

IR found that BMM had not demonstrated appropriate protection of the biodiversity and ecological functioning of the BMM properties (four set-aside areas). Lack of appropriate documentation, inadequate implementation of the BMP and staff shortages had all contributed to this. The impact of mining related dust on sensitive habitats and their ecological functioning had not been assessed and the baseline condition had not been established prior to construction. Prospecting activities had impacted on some of the sensitive habitats. The DMR required BMM to amend the BOA or develop a new offset agreement to take cognisance of additional residual impacts associated with prospecting on Gamsberg South and East set-aside properties.

Gazettement and protection of offset properties

BMM only secured (purchased) one rather than four of the Nearby Properties in the First Time Period and three additional properties after the required time period with a total of four properties secured. The deadline (Second Time Period) for securing seven of the twelve Nearby Properties was appropriately extended to 2024. IR found BMM had used its best endeavours to ensure the land secured comprised the required areas of Recognised Vegetation Types. However, the agreed areas of the component sensitive habitats that supported range restricted, localised and endemic plant species had not been secured in full. BMM was in the process of trying to secure an additional property (Haramoep) at the time of the Initial IA to close the gaps. No Suitable Alternative Properties were investigated since the timeframe to secure the seven properties had been extended to 2024.

Since BMM officially "presented" all four Nearby Properties to DENC simultaneously, this meant that two of the secured properties were presented long after the required six-months.

The four Nearby Properties secured by BMM were effectively declared as the Gamsberg Nature Reserves prior to commencement of the IR and BMM kept DENC appropriately informed. Although DENC had not declared the secured offset properties as Protected Areas "as soon as was reasonably possible" after they were presented by BMM. DENC had not provided sufficient explanation for the 22-month delay in publishing the notice of intention to declare the properties.

The properties secured by BMM were effectively proclaimed as Protected Areas as per the requirements of the BOA.

The MEC officially assigned DENC as the MA in the Provincial Notice 80 in Provincial Gazette 2287 of 5 August 2019. The MA was required to submit a Management Plan to the MEC for approval within twelve months of being assigned. Protection of the recently proclaimed Gamsberg Protected Areas was therefore not yet being formally implemented.

IR found BMM had taken reasonable measures to enable the transfer of land to the relevant government department to-date. Fencing and rehabilitation on the offset properties had not taken place.

BMM needed to monitor its residual biodiversity impacts and update the offset requirements accordingly. It was not possible to assess whether BMM was accomplishing its conservation objectives during this First IA. Some of the gaps would need to be closed before this assessment could be undertaken.

5.3 Cooperation of parties with Auditors

The IP provided IR with all the necessary information including documentation as requested, phone call discussions and also assisted in scheduling discussions with external parties where appropriate. BMM's Biodiversity Principal was particularly helpful and was required to respond to numerous queries and document requests throughout the audit period. These were responded to promptly. DENC provided information as requested although there was frequently a considerable delay between email queries and responses submitted to the IR. The IR experienced satisfactory cooperation from both implementing parties throughout the First IA.

6 RECOMMENDATIONS

According to Clause 14.8.3 of the BOA the IR was required to provide the SC with recommendations on improving and/or enhancing implementation of the Biodiversity Offset including recommendations to adjust the financial provisions in terms of Clause 10 where required. Recommendations were captured for each clause and have been summarised in Table 7 (Appendix C).

A few key recommendations included:

- Consider revising the IA interval to annually rather than every five years to highlight non-conformances as these arise;
- Hire additional staff to assist with implementation of the BOA where lack of capacity is recognised by IP;
- Revise MPs, such as CAMP, to include specific actions to ensure protection of set-aside properties;
- Implement dust monitoring program and revise residual impacts based on dust monitoring results;
- Amend BOA to better manage prospecting on set-aside areas;
- Consider appointing sub-contractors where lack of capacity was recognised by IP for example to compile Protected Area MP, to manage Protected Areas etc.;
- Assess the need to purchase additional properties; and
- Further investigate the conservation value of Haramoep before purchasing it.

IR also included preliminary recommendations on revising the BOA following explorations activities on the set-aside properties although these activities may need to be addressed in more detail in a separate study. IR considered further discussions amongst key stakeholders necessary before it can be decided whether the existing offset be amended or an entirely new BOA be developed.

During the Close-out Audit IR found BMM had taken on-board many of the recommendations identified during the Initial IA Report and incorporated them into plans as outlined in the Management Audit Response Report. However, their implementation would still need to be assessed during the next Independent Audit. BMM had also stated its intention to work with the legal firm Bowman Gilfillan to update the BOA in 2020. BMM was also in the process of being investigating the necessity for an additional biodiversity offset to address the impacts of explorations activities on the set-aside areas. Where it was possible to update recommendations IR edited these but in most instances the recommendations identified during the Initial Independent Audit were retained in the Close-out Audit Report.

7 THE WAY FORWARD

The parties recognised key performance areas they needed to focus their efforts for 2020/2021, in addition to addressing IR's recommendations, included:

- For both parties to resolve the non-compliance challenges in terms of Clause 5 (Management of protected areas);
- For both parties to improve performance in terms of clause 3, to improve the implementation efficiency of the BOA;
- For BMM to carry on working towards full compliance with Clause 6 (Declaration of additional land as protected environment and/or nature reserve, buying three more properties and related obligations in terms of Clause 7 and 10).
- For BMM to ensure the fencing of the properties (Clause 7) to be fully implemented and executed;
- For DENC to ensure the transfer of properties as soon as reasonably possible (Clause 7).
- For DENC to ensure the sound management of the protected area, by effectively developing and implementing the Management Plan (Clause 9); and
- For both parties to address the financial requirements in terms of Clause 10, regarding the costs for the vehicles' maintenance, the need for offices and accommodation when they became necessary;

- For both parties to ensure effective operation of the Gamsberg Nature Reserve Trust; and
- For both parties to work on the required amendments of the BOA and EA when and where required especially based on the recommendations of the IR.

In this respect and to enable the stakeholders to follow progress in terms of compliance with the BOA, both parties agreed to review the 5-year timeframes for independent audits. A revised audit timeframe would need to be decided by the SC.

During the workshop held in February 2020 both parties have reiterated their commitment to continuous improvement to ensure compliance with the BOA.

During the Close-out Audit IR was informed that BMM was in the process of actioning DENC and other biodiversity experts recommendations made during the Biodiversity workshop held in February 2020 to consolidate the cumulative impacts of all its current and future operations (including for the Smelter, Gamsberg South and East, Strategic Economic Zone, Big Syncline and the Swartberg Expansion Project). In particular to develop a biodiversity management strategy that would have to incorporate all planned projects and related impacts from BMM expansion in the region, taking a cumulative and integrated approach, through the mitigation hierarchy and the full suite of compensation measures. Such a strategy could inform the need for further biodiversity offsets to facilitate BMM's proposed activities in the region.

APPENDIX A:

IMPLEMENTATION OF RELEVANT

BMP COMMITMENTS

Table 6: Summary of relevant BMP commitments and progress on their implementation

BMP Management Commitments (BP06 pgs 82-84)	Actions implemented on the ground (P.Desmet, email 28 October 2019)
<ul style="list-style-type: none"> “The necessity for mine plan delineation by means of adequate physical barriers to prevent any ingress to critical biodiversity areas”. 	<ul style="list-style-type: none"> On the mine site setbacks were mostly done electronically through the vehicle GPS systems (called a geo-wall). This was very effective. There were also some fences constructed to demarcate setbacks. On the mine site this was successful. This delineation was in the mine planning CAD/GIS databases so at the very highest levels managers were aware of the development setbacks.
<ul style="list-style-type: none"> “The set-aside of properties described in Clause 5”. 	<ul style="list-style-type: none"> Not all BMM set-aside areas had been fenced. Some sites were well demarcated (photographic evidence was provided to IR). Access control to the set-asides on Big Syncline was weak. Regular checking was required to maintain access control. A dedicated land manager was required for the offset and set aside sites.
<ul style="list-style-type: none"> “Fencing off protected species populations of <i>Conophytum burgerii</i>⁴⁰ on Big Syncline”. 	<ul style="list-style-type: none"> P.Desmet provided BMM with recommendations of additional access control for the <i>C.burgerii</i> population but was unable to provide IR of evidence of whether BMM had implemented these. IR was provided with photographic evidence of explorations having left open the main access gate from Aggeneys to the <i>C.burgerii</i> population after hours. Failure in access control is a big threat to management of the site.
<ul style="list-style-type: none"> “Fencing off protected species populations of <i>Lithops olivaceae newbrowonii</i>”. 	<ul style="list-style-type: none"> BMM constructed a fence around the <i>Lithops olivaceae newbrowonii</i> population next to Aggeneys town as per the recommendations of P.Desmet to control vehicle access to the site. However, BMM did not implement the design (6-strand farm fence with gate parallel to the main road) and location recommended by P.Desmet (as per Maanhaarkop Fencing Recommendations outlined on pg. 57 of the Biodiversity Compliance Flora Report, Draft 2, dated May 2018) but instead constructed a huge security fenced enclosure that subsequently accidentally divided the population into two sub-populations. In response to the fencing deviation a meeting was held on site in September 2018 with participation by P.Desmet, BMM and EndemicVision to discuss how such incidents might be avoided in the future. It is beyond the scope of the audit to verify whether the recommendation was made before or after the fence was installed. Communications with P.Desmet or EndemicVision prior to construction could have saved BMM considerable expense and prevented a target conservation species from being destroyed by the fence construction. This is an example of the necessity for better communication between an ecologist and BMM’s biodiversity management.

⁴⁰ *C.burgerii* is located on in a remote location but 4x4 tourists choose to drive over this flat area to make doughnut shapes on the ground. There is only one population in existence and it takes decades to reach this size (P.Desmet, pers.comms).

<ul style="list-style-type: none"> • “Marking and demarcation of sensitive habitats as specified by Dr Desmet to prevent disturbance by contractors”. 	<ul style="list-style-type: none"> • This was generally done well everywhere but access control needed to be improved dramatically. IR was provided with photographic evidence of good implementation of demarcation around an exploration rig. The exploration sites were generally considered to be well demarcated and minimised disturbance to the smallest area possible.
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APPENDIX B:

GAPS IDENTIFIED IN

THE CONSERVATION AREA

MANAGEMENT PLAN (CAMP)

The IR identified a number of gaps in the CAMP:

- It did not adequately define protection of the set-asides and what was needed to protect the set-asides.
- It did not adequately address conservation of the Four ‘Recognised Vegetation Types’, defined in Clause 6 of the BOA, and their associated sensitive habitats as defined by P.Desmet in the set-aside areas.⁴¹
- The plan focused strongly on wildlife and game management rather than on the sensitive vegetation types that require protection.
- The vegetation types described in the CAMP do not concur with P.Desmet vegetation types.
- The description of important habitats did not list the threatened plant species found in quartzite and calcrete patches and should describe all sensitive habitats as per P.Desmet (possibly in an Appendix).
- The BMM set-aside areas were not clearly delineated in any of the Figures depicting vegetation including Figure 9, 11, 16 & 17.
- None of the abovementioned figures demarcated fenced off conservation areas.
- Figure 9 referred to Anglo Properties which is outdated.
- Figure 16: Vegetation monitoring map did not depict monitoring of each of the sensitive habitats in the set-aside areas, sites of special concern and the 18 critical plant populations.
- Game stocking rates in set-aside areas did not take cognisance of sensitive habitats and whether the game in question will impact on populations of threatened plant species. The Game Camp is primarily grassy but Springbok don't eat grass they eat shrubs. Springbok, in large numbers, are considered a threat to *Conophytum* species (P.Desmet, *pers.comms*). Therefore their numbers need to be managed on the set-asides (P.Desmet. *pers.comms*). However, IR was informed by BMM that other specialists do not consider the Springbok a threat to *Conophytum* species.
- Road construction and maintenance did not include specific precautions regarding protection of and avoidance of impacts on ‘Recognised Vegetation Types’, associated sensitive habitats and threatened plant species.
- Specific dust monitoring of sensitive habitats and the 18 critical plant populations found on set-aside areas were absent from the CAMP although IR was informed this had been included in the updated BMP (version 2019) not reviewed during IA.

⁴¹ Although Clause 5 of the BOA does not explicitly state that BMM needs to protect the ‘Recognised Vegetation Types’ mentioned in Clause 6 (and their associated sensitive habitats described by P.Desmet) these set-aside areas are included in the residual impact calculations used to define the biodiversity offset required for the ‘Recognised Vegetation Types’. Therefore it is assumed that BMM would do everything possible to protect these vegetation and habitat units whereby minimizing its residual impact and therefore extent of biodiversity offset required.

APPENDIX C:

RECOMMENDATIONS

Table 7: Summary of recommendations per clause of BOA

Clause 3	<p>General duties of the parties</p> <ul style="list-style-type: none"> DENC to consider appointing sub-contractors to manage the Protected Areas and to assist with development of the Protected Area Management Plan.
Clause 4	<p>Biodiversity Offset</p> <ul style="list-style-type: none"> The implications of the magnitude of residual impacts to be offset need to be confirmed by external biodiversity specialists to confirm alignment of the BOA no net loss (NNL) commitment with BMM/Vedanta’s Biodiversity Management Policy⁴² commitment of “achieving net positive effect⁴³ on biodiversity through minimizing negative impacts and contributing to conservation”. Align BMM/Vedanta’s Biodiversity Management Policy and BOA with the International Finance Corporations (IFC)’s Performance Standard (PS) 6 requirements. PS 6 would likely require a net positive impact (NPI) to be demonstrated for the Gamsberg Zinc Mine. Clearly define no net loss, net positive impact and net positive effect and define the specific timeframe by which BMM intended to achieve these biodiversity commitments.
Clause 5	<p>Management of set-aside properties:</p> <ul style="list-style-type: none"> Revise BMP BMM risk management and land use maps to delineate BMM set-aside properties. This activity was completed in BMP V.5. Risk maps were revised. Revise BMP and EMP to specify priority management and monitoring activities for the four set-aside properties and to clarify constraints on activities that would affect their biodiversity. This has been partially undertaken by BMP V.5 but additional details are still missing. BMM to appoint additional staff (such as a dedicated Land Manager) to ensure effective management of the set-aside areas. Action to be assessed during next IA. Allocate more resources to improve implementation of the directives in the management plans. Action to be assessed during next IA. Ensure regular and timely communications between BMM management and ecologists to ensure protection of sensitive species and habitats. This is an on-going requirement. Implement fencing of set-aside properties where stronger access control is required. Action needs to be assessed during next IA. Prioritise management actions on set-aside properties. Action to be assessed during next IA. Improve access control of set-aside areas and specifically of <i>C.burgenii</i> area. Action to be assessed during next IA. <p><i>*Note: The updated BMP (V.5, dated 2019) has incorporated most of these recommendations. However, the implementation of these recommendations on the ground would still need to be assessed during the next Independent Audit.</i></p> <p>Revise CAMP to:</p>

⁴² Dated 24-10-2018 in the footer although the version provided to IR to review was neither officially signed nor dated.

⁴³ “Net positive effect” was not specifically defined in BMM/Vedanta’s Biodiversity Management Policy, net positive impact (NPI) is the term more commonly used.

	<ul style="list-style-type: none"> • Delineate set-aside areas and fenced conservation areas on all figures. • Depict monitoring sites on the 18 critical plant populations and on each of the sensitive habitat types on the set-aside areas. • Ensure game stocking rates in set-aside areas take cognisance of the sensitive habitats and whether the game in question will impact on small populations of sensitive plant species. • Ensure road construction and road maintenance includes specific precautions regarding protection of and avoidance of impacts to the Four ‘Recognised Vegetation Types’ and their associated sensitive habitats; include dust monitoring on the sensitive habitat types and 18 critical plant populations on the set-aside areas. • Address all gaps identified in this Review (Appendix B). • Increase BMM presence on-site to deter rare plant collectors. • Align with Management Plan for Protected Areas. <p>*Note: the CAMP was in the process of being updated at the time of undertaking the Close-out Audit. BMM provided IR with a copy of the Scope of Work (SoW) prepared to update the CAMP to incorporate recommendations made by IA in the Initial Independent Audit Report. IR also reviewed a copy of the Proposal prepared by EkoTrust CC and submitted to BMM on 23 January 2020 which described the activities and associated budget required to include IR recommendations in the existing SoW that commenced on 1 August 2019.</p> <p>Monitoring:</p> <ul style="list-style-type: none"> • Streamline document management. • Consider hiring a land manager to oversee and implement monitoring actions on the set-aside properties. • Allocate resources and responsibilities to implement dust monitoring program. • Gather dust monitoring data as per requirements of Vegetation and Dust Monitoring Protocol. • Produce Annual/Bi-annual Dust Monitoring Reports. • Update dust impact footprint and residual impact based on dust monitoring results. • Incorporate dust monitoring results into activities focused on protection of BMM properties and adapt monitoring programmes to align with changes. <p>Amend the BOA to:</p> <ul style="list-style-type: none"> • Include clear definition for “protection of biodiversity and ecological functioning of the surface areas of the BMM properties” (set-asides) to clarify conservation commitments on these areas. • Restrict further prospecting on BMM set-asides without written agreement by both implementing parties. • Amend BOA to state that BMM needs to formally notify DENC when it intends to submit an application for EA to prospect or mine on any of its set-aside areas. • Include commitment to undertake specialist studies that demonstrate prospecting activities will not negatively impact on the ecological functioning of sensitive biodiversity on the BMM set-aside areas as part of BAR submissions in advance of applications for EA. • BMM to appoint a specialist team including appropriate biodiversity and legal expertise to assess the necessity for an additional BOA versus an amendment to the existing BOA to address prospecting on set-aside areas for Gamsberg South and East and Big Syncline properties. This was a condition of the exploration EA. • BMM needs to educate its mining and explorations staff on the biodiversity importance of the set-aside areas and appropriate environmental work-place etiquette as per its own competency and training requirements of the Biodiversity Performance Monitoring Protocol (Appendix 1, data sheets). If BMM’s staff were
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	<p>unclear as to what activities were required to protect the BMM properties it should have contracted on external biodiversity advisors (either suitably qualified NGO's or biodiversity consultants) to as its exploitist with informing its explorations staff appropriately.</p> <ul style="list-style-type: none"> • Organise a workshop in Q4 2019 with relevant stakeholders identified by the implementing parties from DENC and BMM including representatives of Digby Wells, EndemicVision, specialist biodiversity consultants with knowledge of the BOA such as Mark Botha and/or Phil Desmet amongst others as considered necessary to: <ul style="list-style-type: none"> • Clearly define & agree on the conservation implications and restrictions of the four set-aside properties particularly in terms of future prospecting (and/or mining) activities. • Develop priority activities to be undertaken on these properties to assist with protection, management and monitoring of the properties and update the EMP & BMP to include agreed actions/activities. • Agree roles and responsibilities for the protection, management and monitoring of the properties. If BMM does not have the capacity to implement identified activities it needs contract additional staff/resources to accomplish the objectives of protecting these properties. • This workshop took place in February 2020 and the report was submitted to IR for review during the Close-out Audit. • Amend the BOA accordingly. • Conduct an Annual External Audit of the “Protection of BMM Properties”. • Assess impacts of explorations activities on set-asides (Big Syncline). Ensure that Gams sandy plains and calcrete patches sensitive habitats, that were already the receiving environment for species from the concentrator and rock dump (CAMP, 2015), will not be impacted by proposed explorations activities. Namely ensure that species of special concern that have already been disturbed and relocated will not be further disturbed by exploration activities.
<p>Clauses 6 & 7</p>	<p>6. Declaration of additional land as a protected environment and/or nature reserve</p> <p>7. Requirements regarding the properties</p> <ul style="list-style-type: none"> • Technical compliance around conservation objectives of the BOA requires input from technical experts within DENC and BMM otherwise appropriate external technical experts need to be sub-contracted to provide input in the decision regarding compliance with Clause 6.3. • Amend BOA to allow properties to have been purchased from Annex B1 or B2 during the First Time Period to avoid BMM being non-compliant due to requirement to purchase properties only from Annex B1 during the First Time Period. This, however will not alter the fact that properties were not purchased within the First Term Period. • The parties must consider whether the desired offset can be met through the purchase of the remaining Annex B Nearby Properties by the end of the Second Time Period, and if so, amend the BOA to reflect the new agreement as to which Nearby Properties from which Annex will be secured. • If the parties agree that BMM will not be able to secure 3 additional Nearby Properties from Annex B2, amend the BOA to allow BMM to embark on a process to secure Alternative Properties that meet defined criteria. <p>Meeting the conservation objectives:</p> <ul style="list-style-type: none"> • Prior to purchasing REM portion of farm Haramoep 53, BMM should enter into discussions with DENC and/or other suitable specialists to confirm: a) if the Halfmens population is viable, healthy and demonstrates evidence of recruitment, b) obtain an estimate of Halfmens population numbers and c) establish the unique contribution this population could make to SA conservation. During the Close-out Audit BMM informed IA that these recommendations had been included in Scope change and contract amendent with EkoTrust as part of their work to update the CAMP.

	<ul style="list-style-type: none"> The next IA needs to focus on whether BMM is accomplishing its conservation objectives.
Clause 8	<p>Management Authority</p> <ul style="list-style-type: none"> DENC to consider appointing an external party to assist with management of the Protected Areas where internal staff capacity is recognised to be lacking.
Clause 9	<p>Management Plan</p> <ul style="list-style-type: none"> DENC to consider appointing an external party to assist in compiling the MP where internal staff shortages may hinder accomplishment of objectives. DENC could still be responsible for approving the MP. During the Close-out audit DENC informed IR it did not have funds for the appointment of sub-contractors/consultants and furthermore that government did not encourage the appointment of sub-contractors. Alternatively, DENC needed to assess resource and capacity constraints and undertake the necessary capacity building to ensure the requirements of the BOA were met; specifically with regards to compiling the MP by August 2020. Include commitments for the management of BMM’s set-aside areas in the Protected Area MP. Undertake an External Review of the MP prior to its due date on 5 August 2020.
Clause 10	<p>Financial Provisions</p> <ul style="list-style-type: none"> We note that clauses 10.6 and 10.7 refer to the “five year period” in respect of which payments are due. If by amending the Second Time Period, the parties also intended to amend clauses that refer to a “five year period”, then it is recommended that the parties amend the BOA to reflect their intention. Prioritize registration of the Trust. This was completed prior to submission of the Close-out Audit report. Transfer outstanding payments to The Trust account of the attorneys instructed to attend to the creation of The Trust, who should thereafter be instructed to transfer the funds to the bank account of The Trust, once it has been created. This is to ensure that money remains ring-fenced pending the establishment of the Trust. Completed aside from office and accommodation units. Edit BOA Clause 10.9 to stipulate that payments are only required following formal appointment of Management Authority for practical reasons. Consider whether BOA should be amended to take size of properties to be managed into consideration regarding annual payments rather than assume each property to be managed as requiring the same amount of financial resources irrespective of property size (in hectares).
Clause 12	<p>Establishment of Steering Committee</p> <ul style="list-style-type: none"> Increase number of SC meetings to three to four times per year to address non-compliance issues as they arise. Reconsider structure of SC to facilitate decision-making and follow-up on actions and responsibilities of the implementing parties. Amend the BOA to clarify distinct roles of LC and SC so that their functions are non-overlapping. Consider amending the BOA to include additional punitive conditions where obligations have not been met. Schedule a special SC meeting following receipt of the Final Independent Audit Report to incorporate recommendations into the BOA. This would be preferable to waiting six months i.e. when the next SC is due to take place.
Clause 13	<p>Establishment of Liaison Committee</p>

	<ul style="list-style-type: none"> • Actions raised during the LC must be prioritised by implementing parties. One way of ensuring this would be to follow up on accomplishment of these objectives in the future LC meeting as well as future SC meetings and hold individuals to account. The individuals would also need to have these actions included in their Key Performance Indicators to ensure the actions weren't sidelined by other more pressing tasks described in their respective job descriptions. • LC needs to give particular consideration to conservation and management of the BMM set-aside properties. • Consider strategies to improve follow-up in between meetings. • Consider including legal and/or technical experts where committee members cannot understand the BOA and implementation requirements.
<p>Clause 15</p>	<p>Breach and Penalties</p> <ul style="list-style-type: none"> • Amend the BOA clause 15.4 to reflect the intentions of the parties and avoid conflicting interpretations.
<p>Clause 23</p>	<p>Proposed Revisions to the Offset Agreement and implementation/execution thereof:</p> <ul style="list-style-type: none"> • Revise Independent Audit interval to annually rather than every five years to highlight non-conformances as these arise. • Include clear definitions of terms such as: 'biodiversity offset', 'protected area', and 'set-aside areas'. • Revise the offset requirement in BOA if necessary in terms of 'Recognised Vegetation Types' and sensitive habitats based on residual impact assessments including the impacts on Big Syncline and Gamsberg South and East. • Revisit the offset requirements if monitoring highlights significant changes in impact predictions. (& update BMP). • Include appropriate specialists/consultants in offset implementation when technical discrepancies arise. • Include cumulative impacts in residual impact assessment and subsequent conservation objectives. The BOA only relates to the impacts associated with the Gamsberg pit. It is recommended that the offset is looked at in a more holistic, integrated way, taking consideration of all Vedanta's mining developments in the region including the Swartberg mine, the proposed Smelter and the proposed prospecting activities at the Eastern & Southern portions of Gamsberg and Big Syncline and cumulative impacts <p>Requirement for impacts of set-aside activities to be incorporated in offset requirements</p> <p>IR was requested to provide recommendations on whether the existing BOA should be amended or a new BOA developed to address the offset requirements of the exploration activities on the set-aside properties. IR considered this activity as beyond the scope of the current Independent Audit. However, some initial considerations/recommendations have been provided should the implementing parties decide to amend the existing agreement:</p> <ul style="list-style-type: none"> • Include new definitions clearly defining protection of the set-aside properties. • Update Clause 5 to stipulate activities permitted on the set-aside properties and agreements required between the implementing parties prior to submission of Basic Assessments for future prospecting applications. • Update conservation requirements for the "Recognised Vegetation Types" based on the recalculations undertaken, residual impacts calculated and revised offset requirements developed by biodiversity specialists and/or reviewed by external biodiversity specialists. • Revise the mechanism of implementation for the additional offset • Revise timeframe requirements to achieve the additional offset and the consequences of the additional offset. • Undertake a workshop with relevant stakeholders to revise the approach to conservation and protection of the set-asides and agree a way forward.

	<ul style="list-style-type: none">• Include requirement for additional oversight by biodiversity specialists.• The additional offset may require a separate Management Agent, Management Plan and Financial Provisions.• Additional special provisions would be required to address permissions required for exploration and/or mining on the set-aside properties in the absence of declaration of these areas as formally protected under the Protected Areas Act.
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APPENDIX D:

CLOSE-OUT PRESENTATION

CLOSE OUT PRESENTATION

To Peter van Greunen by Rowena Smuts (Amaryllis) (Powerpoint Slides via teleconference).

Following the site visit and BMM interviews undertaken between 16 to 18 September for the First Independent Audit of the Gamsberg Biodiversity Offset Agreement (BOA)

SLIDE 1:

Mon 16 – Offsets (PAs gazetted)

- ✓ Koos, Neil, Elsabe & Rowena visited offset properties
- ✓ Saw threatened plant species (e.g. *Conophytum*)
- ✓ Discussed purchase of four properties & fencing requirements
- ✓ Visited Haramoep & Halfmens colony

Tues 17 – On-site set-asides and mine area

- ✓ Visited Achab
- ✓ Saw threatened plant species (*Cheiridopsis*, *Conophytum*, *Avonia*)
- ✓ Visited exploration site on set-aside area, discussed requirement for variation according to BOA
- ✓ Visited plateaus & kloof area
- ✓ Met with C.Witbooi to discuss purchase of properties and financial provisions

SLIDE 2:

Wed 18 – discussion and visit to nursery (Findings)

Financial Provisions (Clause 10):

- needed to be assessed in relation to when “properties were presented to DENC” – Sep/Oct 2017

Protection of BMM Properties (Clause 5):

- Map of threatened plants & exploration sites on set-asides
- Contribution of set-asides to target areas of vegetation categories to be conserved

Suretyship (Clause 11):

- need to discuss waiver with DENC

Nursery:

- good basis on which to build but requires financial resources & capacity

SLIDE 3:

Next steps:

- Draft Report
- Present Draft Report to SC Meeting – end October
- DENC & BMM submit consolidated comments
- Comments incorporated into report
- Final Report (early November?)
- Pieter (GM) asked what 3 risks were:
- Rowena responded – IR was looking at 2 aspects:
 1. implementation of offset agreement - & report would raise concerns of items in BOA that were non-compliant
 2. conservation of biodiversity: risks = exploring & mining in set-aside areas, cumulative impacts in area, yes- suretyship was an issue but this needed to be resolved quickly with DENC
- J.Smit mentioned the report would be made public. Pieter said this was a good thing. Rowena commented that this BOA was pioneering work with regards to a mining company implementing a biodiversity offset even at the international level & that even if certain components of the BOA were non-compliant BMM/Vedanta still needed to be commended for their undertaking.

