

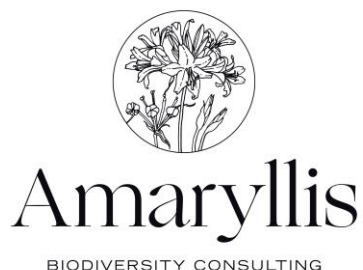
First Independent Audit of the Implementation of the Gamsberg Biodiversity Offset Agreement

A report prepared for the Gamsberg Biodiversity Offset Agreement Steering Committee

Prepared by Amaryllis Biodiversity Consulting

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Executive Summary

The Gamsberg Mining Project (Gamsberg) is located in the Northern Cape Province of South Africa. As a condition of the Gamsberg's environmental authorisation (EA), obtained from the Northern Cape Department of Environment and Nature Conservation (DENC), it was required to develop a Biodiversity Offset Agreement (BOA). The BOA is a legal agreement that was signed between Black Mountain Mine Pty Ltd (BMM) and DENC on 16 October 2014. The BOA requires verification of the completion of the Biodiversity Offset, in terms of Clause 14.1 and 14.7 of the Agreement, by an Independent Auditor or team of independent auditors. The International Union for the Conservation of Nature (IUCN) awarded Amaryllis Biodiversity Consulting Pty Ltd (Amaryllis) the contract to undertake an Independent Audit (IA) of the implementation of the Agreement after five years.

The Amaryllis team (hereafter referred to as the Independent Reviewer, IR) reviewed available documentation provided by BMM, undertook a site visit to the Gamsberg mine accompanied by BMM and DENC representatives and interviewed select biodiversity stakeholders. All interviewees had historically been involved in some aspect of biodiversity on Gamsberg. Some interviewees had participated in the development of the BOA, others had undertaken the Environmental and Social Impact Assessment (ESIA) or baseline vegetation studies and/or developed the Environmental Management Plan (EMP) and/or Biodiversity Management Plan (BMP) whilst others had assisted with the implementation of biodiversity management and monitoring plans.

Compliance with clauses of BOA

IR was required to assess compliance of both implementing parties, namely BMM and DENC, with the requirements of the BOA. In summary IR confirmed four clauses as compliant, 11 as partially compliant and 26 as non compliant. Sixteen of the clauses had no compliance obligations. A total of 43 clauses were not assessed (N-A) due to activities not having been completed at the time of the Independent Audit. IR's assessment for each clause is summarised hereunder.

General duties of the parties (Clause 3)

The Parties were found to be predominantly non-compliant with their general duties (Clause 3). Although the implementing parties tried to act in good faith and did not specifically obstruct each other in implementation of the BOA, IR found they had not always cooperated efficiently and transparently 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. (Clause 3.1). This lack of efficient and transparent cooperation between the parties had implications for protection of the set-aside and offset properties. Both parties met the requirements of Clause 3.2 as the offset properties that had been secured had already been gazetted prior to the commencement of the IR. The parties were found to not have implemented and executed the Biodiversity Offset in accordance with the relevant clauses of the Agreement (Clause 3.3). IR was not able to assess three of the Clauses (N-A) as sub-contractors were not appointed during the initial five-year period aside from the repair of windmills on the offset properties (Clause 3.4). IR concluded both DENC and BMM undermined the execution and implementation of the Agreement by not appointing sub-contractors particularly considering their acknowledged lack of capacity. IR was of the

opinion that appointing third parties could have assisted the parties fulfil their obligations in a timely manner. Lack of capacity of both parties remains an on-going concern for implementation of the Agreement. The Agency was never identified or established (Clause 3.6) and payments to and from The Trust could not be assessed (Clause 3.8), as The Trust had not been established at the time of the IA. Payments to The Trust had not been made in accordance with provisions of this Agreement (Clause 3.5 and 3.7) and annual financial reports had therefore not been provided on the specified date (Clause 3.9). DENC's responsibilities regarding management of the financial contributions paid by BMM would only commence once The Trust has been established and required payments have been transferred from BMM's separate bank account.

Biodiversity Offset (Clause 4)

There were no compliance obligations for Clause 4 as it defined the components comprising the Biodiversity Offset.

Protection of the BMM properties (Clause 5)

BMM had not demonstrated protection of the biodiversity and ecological functioning of the surface areas of the Big Syncline set-aside area through appropriate provisions, restrictions and monitoring mechanisms as contained and/or to be contained in the Environmental Management Plan (EMP) and/or Biodiversity Management Plan (BMP). There was a lack of appropriate documentation to guide protection on set-aside properties. IR identified considerable gaps in the Conservation Area Management Plan (CAMP) regarding specific management measures required for protection of biodiversity occurring on the set-aside properties. The impact of mining related dust on sensitive habitats and their ecological functioning had not been assessed. Prospecting activities undertaken on the set-aside property Big Syncline was found to be contradictory to the intended purpose to protect the biodiversity and ecological functioning of the surface areas of the BMM properties and these activities had impacted on sensitive habitats. The Department of Mineral Resources (DMR)'s required the BOA to be amended and/or a new offset agreement developed to compensate for proposed prospecting activities on set-asides. IR established that revisions to the Environmental Authorisation and subsequent revisions to the BOA had resulted in the set-aside properties being inadequately protected in the final signed BOA. Therefore BMM was found to be non-compliant with Clauses 5.1, 5.3 and 5.4. Clause 5.5 had no compliance obligation; BMM had not decided to contract any of these BMM set aside properties into a Protected Area in terms of the Protected Areas Act.

Declaration of additional land as protected environment and/or nature reserve (Clause 6)

Clause 6.1 was not assessed, as the deadline for securing seven of the twelve Nearby Properties had not been reached due to the agreed extension of the Second Time Period. However, at the time of the IA BMM was not yet complying with this clause. The Parties complied with Clause 6.2 since the four Nearby Properties that were secured were declared as the Gamsberg Nature Reserves in terms of section 23 of NEMPAA on 5 August 2019 (Provincial Notice 80 in Provincial Gazette 2287 of 5 August 2019). IR found BMM had used its best endeavours (Clause 6.3) to ensure that the land secured (in terms of Clause 6.1) comprised the required areas of Recognised Vegetation Types according to Clause 6.3.1 – 6.3.4. Although, the total agreed areas of the component habitats that supported range restricted, localised and endemic plant species had not been secured considerable areas of most sensitive habitats had been secured thus making BMM partially compliant with requirements of 6.3.1-6.3.4. BMM was aware of the gaps in securing certain sensitive habitat types and was in the process of trying to secure an additional property (Haramoep) at the

time of the IA to close these gaps. Since only one 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. However, IR acknowledged 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 Annexe B1 but due to one of the farmers withdrawing the sales agreement this had not been possible. Due to the agreed amendment to the definition of the Second Time period, the due date for compliance of Clause 6.4.2. had not been reached yet at the time of undertaking the Independent Audit. However, at the time of the IA BMM was not yet in compliance with requirements of the Second Time Period. IR concluded DENC had not declared the secured offset properties as Protected Areas "as soon as was reasonably possible" after BMM had presented them to DENC on 4 October 2017. As the notice of intention to declare the Gamsberg Nature Reserve was only published in the Gazette on 26 November 2019, and finally declared in the Gazette on 5 August 2019. IR found that DENC had not provided sufficient explanation for the delay in publishing the notice of intention to declare the properties (Clause 6.5). Clauses 6.6 to 6.11 were not assessed as the Second Time Period was extended to 2024 and therefore had not expired at the time of undertaking the IR.

Requirements regarding the properties (Clause 7)

BMM was not compliant with Clause 7.1.1 since it officially "presented" all four Nearby Properties to DENC simultaneously in a letter dated 4 October 2017. Two of the Nearby Properties secured were thus presented to DENC long after the required six-months after they had been secured. BMM should have officially presented each property to DENC in accordance with the six-month timeframe specified in the BOA clause 7.1.1 once purchased. IR noted strict deadlines were not enforced during the Liaison Committee and/or Steering Committee meetings. Clause 7.1.2 was not assessed as the four secured Nearby Properties were only declared as Nature Reserves on 5 August 2019 at the commencement of the Independent Audit. Thus providing insufficient time for their transfer to the Northern Cape Department of Roads and Public Works prior to the start of the IA in August 2019. IR acknowledged BMM had taken reasonable measures to enable the transfer of land to the relevant government department to-date. Clause 7.2 was not assessed since the properties had not yet been transferred. At the time of the IA the Northern Cape Department of Roads and Public Works (DRPW) still had to visit the properties to confirm they complied with all government requirements before agreeing/approving their transfer. BMM was not compliant with Clause 7.3 since fencing had not yet taken place at the time of the audit. IR was of the opinion BMM had delayed installing fencing. It was acknowledged measures had been taken to expedite fencing and BMM was in the process of appointing a fencing contractor during the audit. IR was not provided with any correspondence between BMM and DENC on rehabilitation measures to be implemented. The Steering Committee and Liaison Committee meeting minutes also did not reflect any discussions relating to rehabilitation. Clause 7.4 was not assessed since fencing had not yet been implemented at the time of the IA. IR assessed correspondence between BMM and DENC regarding the intended fencing specifications and found specifications were in accordance with BOA as agreed between DENC and BMM.

Management Authority (Clause 8)

There were no compliance obligations for the activities outlined in Clause 8 as this clause outlined what the parties had agreed to. The MEC had officially assigned DENC as the Management Authority (MA) in the Provincial Notice 80 of 5 August 2019.

Management Plan (Clause 9)

The Management Plan (MP) was not assessed during the IA as it had not yet been prepared. The Management Authority was only required to prepare and submit a MP to the MEC for approval, in terms of the Protected Areas Act, within twelve months of being assigned as the MA. Hence the completion of the MP falls outside the timeframe of the current audit.

Financial Provisions (Clause 10)

Clause 10.1 was not assessed since no payments had been made to the Agency or Trust (as they did not yet exist) and therefore it was not possible to assess whether payments had been made in accordance with the Public Finance Management Act. The parties were not compliant with Clause 10.2 as they had failed to establish the requisite entities by the time the first payment was due. The parties were not compliant with clause 10.2 as an independent financial auditor was still to be appointed. The parties were not compliant with Clause 10.4 as neither the Agency nor Trust had been established and accordingly no account existed for payments to be made. BMM had also failed to make alternative arrangements to hold the money until such time as the review had commenced. Clause 10.5 had no compliance obligation. BMM was not compliant with Clause 10.6 as no payments had been made to the Trust or Agency within three months of the properties having been made available to DENC. Although, IR acknowledged BMM had set aside a sum of money in a separate bank account, for maintenance and operational costs of the Protected Areas. BMM was not compliant with Clauses 10.7 and 10.8 as the annual payment had not been made into BMM's separate bank account at the expiry of the five-year period. BMM was not compliant with Clause 10.9.1 as the two office units had not yet been agreed upon and/or provided for use to the Management Authority. BMM was not compliant with Clause 10.9.2 as although accommodation units had been earmarked the payments for the operating costs of said units had not been made or set-aside in BMM's separate bank account. BMM was not compliant with clause 10.9.3 as it had not made the specified R 150 000 payment for servicing of motor vehicles. BMM was non-compliant with Clause 10.10 as no payments had been made into The Trust. However IR acknowledged an amount of R 2.5 M had been set aside in BMM's bank account for this purpose. IR acknowledged an amount of R 50 000 had been paid possibly towards this requirement. IR could not assess appropriate use of Capital Costs (Clause 10.11) as The Trust had not yet been established and no payments had accordingly been made either to or from The Trust.

The failure to implement some clauses of the agreement had knock on effects for other clauses, meaning that they could not be assessed. For example, since neither the Agency nor the Trust were timeously established, the required payments were not made, and accordingly, the IR could not review how revenue had been deployed. These failures have had a significant effect on achieving the outcomes of the BOA.

Suretyship (Clause 11)

DENC did not waive the requirement for suretyship. Despite a significant delay in providing the required suretyship it was eventually provided, in a form acceptable to DENC, on 6 September 2019. IR assessed BMM as compliant with this clause.

Establishment of the Steering Committee (Clause 12)

The parties were compliant with Clause 12.1 as the Steering Committee was established and the first meeting was held in November 2016. DENC was not provided with any evidence of why there was a two-year delay before it was established. Although the Steering Committee did not meet twice a year it did meet at least annually therefore the parties were only partially compliant with Clause 12.2. The Steering Committee only partially oversaw implementation of the Agreement including the biodiversity outcomes and effective management thereof (Clause 12.2.1). It was considered only partially compliant in receiving recommendations from the Liaison Committee. Clause 12.2.3 was not assessed, as this would take place following the IA. Clause 12.2.4 could not be assessed, because no revenue has been generated to date (as a result of the parties failure to establish the Agency or Trust.)

Establishment of a Liaison Committee (Clause 13)

The Liaison Committee was found to be only partially compliant in its responsibilities including the reporting in writing to the Steering Committee.

Recommendations

IR provided a number of recommendations to guide actions required to improve the implementation of the Agreement. A few key recommendations included:

- Undertaking Annual Independent Audits rather than only every five years to highlight non-conformances as these arose.
- Hiring additional staff to assist implementation of the BOA where lack of capacity was recognised by the implementing parties.
- Revising Management Plans, such as CAMP, to ensure protection of set-aside properties.
- Implementing dust monitoring programs and revising residual impacts based on dust monitoring results.
- Amending the BOA to improve management of prospecting on the set-aside areas.
- Appointing sub-contractors where a lack of capacity was recognised by the implementing parties.
- Assessing the need to purchase additional properties.
- Investigating the conservation value of Haramoep before purchasing it.

IR also included preliminary recommendations on revising the BOA to include the impacts of explorations activities on the set-aside properties. IR considered further discussions amongst key stakeholders necessary before it could be decided whether the existing offset be amended or an entirely new offset Agreement be developed.

The Way Forward

Although IR concluded the BOA had not been adequately and efficiently implemented by the implementing parties during the first five years of the BOA, IR observed commendable progress by BMM, in the steps it took to achieve compliance on a number of the BOA provisions, from the start of the IA to the submission of the Draft Report (August to 8 November 2019). IR therefore acknowledges that the requirements for a number of the clauses are in the process of being met. IR is therefore convinced that many of the non-compliance gaps can easily be closed in the short to medium-term through a concerted effort between BMM and DENC. The parties should devise a work plan to address non-compliances and consider

undertaking another Audit in six months time. The findings of the second Audit could potentially be included as an amendment to this Report.

ACCRONYMS & ABBREVIATIONS

BMM – Black Mountain Mine Pty Ltd

BMP – Biodiversity Management Plan

BPMP - BOA – Biodiversity Offset Agreement

BOR – Biodiversity Offset Report

CAMP – Conservation Area Management Plan (CAMP)

DENC – Department of Environment and Nature Conservation

DMR – Department of Mineral Resources

DRPW – Department of Roads and Public Works

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

HOD – Head of Department

IA – Independent Audit

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

MP – Management Plan

NEMPAA – National Environmental Management Protected Areas Act

NGO – Non Governmental Organisation

ROD – Record of Decision

RVT – Recognized Vegetation Types

SC – Steering Committee

DEFINITIONS

The MPRDA 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

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.

The Parties or The Implementing Parties means DENC and BMM.

1 INTRODUCTION

1.1 Project Background

The Biodiversity Offset Agreement (BOA), signed on the 16 October 2014, required verification of the completion of the Biodiversity Offset in terms of Clause 14.1 and 14.7 of this agreement by an Independent Auditor or team of Independent Auditors. The Independent Audit (IA) was to be paid for by Black Mountain Mine 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'.

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 Gamsberg Biodiversity Offset Agreement (hereafter referred to as BOA) for the Gamsberg Mining Project in South Africa. Following a formal tender process Amaryllis Pty Ltd (Amaryllis) was awarded the contract by IUCN to undertake this work.

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 Mining Project (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 NEMPAA). 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 700ha of land comprising Aggeneys Gravel Vygiveld, 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 200ha of Bushmanland Inselberg Shrubland, including those habitat units supporting large succulent plants on the south facing aspects;
- c. At least 4 000ha of Bushmanland Arid Grassland, including those component habitats supporting calcrete gravel communities;
- d. At least 2 000ha 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 NEMPAA, respectively.

1.2 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 Parties (BMM and DENC);
- Determine the adequacy and efficiency of the implementation of the Biodiversity Offset in terms of the BOA; and
- Provide recommendations to the Steering Committee (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.

Clauses 14.5 and 14.6 of the BOA required the IA to issue a "certificate of compliance" confirming "completion", defined as the implementation and execution, of the Biodiversity Offset as specified in the BOA regarding activities that should have been undertaken during the first five years. Should the IA conclude that any aspect of the Biodiversity Offset had not been completed it was required to provide the Steering Committee with written reasons for this opinion and recommendations regarding actions to be taken to achieve completion.

The IR was required to submit a copy of the Audit Report to DENC and BMM. Each party would then make the report available for inspection by the public by including a copy of the Audit Report in the Annual Report to Shareholders (BMM) or to the provincial legislature (DENC) as required.

1.3 Report Limitations & Assumptions

As agreed with IUCN a number of components of the BOA were later 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.
- IUCN waived the necessity for a "certificate of compliance", further to acknowledging in advance that the considerable number of non-compliances would make it impossible to issue such a certificate.
- Clauses not assessed (N-A) in the first Independent Audit included:
 - Clause 3.8 - since DENC had not yet received the payments from BMM.
 - Clause 3.9 - since The Trust had not yet received funds and the Annual Reports had therefore not been prepared.

- Clause 4 – since it defined the Biodiversity Offset and roles and responsibilities. These are then assessed under the respective Clauses 5, 6, 7, 8 & 9.
- 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 implementing party.
- Clause 7.2 - as the offset properties had not yet been transferred to government at the time of the IA.
- Clause 9.2 to 9.4.7 - as the Management Plan (MP) had not yet been compiled at the time of undertaking the IA.
- 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 and Liaison Committee meetings (Refer to Section 4.5 for further details).
- Clause 13 – referred to the Establishment of the Liaison Committee: As the MP had not been developed, at the time of the review, and the Biodiversity Offset was not yet operational the Liaison Committee could not perform its duties in terms of reporting on the management and operation of Biodiversity Offset. However, IR assessed how the Liaison Committee reported to the Steering Committee on the implementation of the BOA as this was also defined as part of the Biodiversity Offset according to Clause 4.
- Clauses 15 to 21.
- Clause 24.

1.4 Report Structure

The report is divided into seven key sections:

- **Introduction:** covers the project background, scope of work and objectives of the IA, limitations and assumptions.
- **Regulatory Framework:** provides a brief overview of applicable legislation and conditions of the Gamsberg Environmental Authorisation.
- **Methodology and Approach:** outlines the documents that were reviewed, interviews and discussions held, site visit undertaken and how compliance was assessed.
- **Findings and Observations:** focuses on the implementing parties 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 contradictory perspectives and/or where further elaboration on a particular point was required. The Summary Compliance Table needs to be read in conjunction with the text. Detailed information obtained from interviewees regarding dates of documents received and submitted and email correspondence between implementing parties and other interviewees are captured in Endnotes at the end of the report.
- **Recommendations:** on improving and/or enhancing implementation of the Biodiversity Offset were captured for each clause and summarised in a table in Appendix C. IR also included preliminary recommendations on revising the BOA following explorations activities on the set-aside properties although this activity needs to be addressed in more detail elsewhere as suggested.
- **Conclusions:** briefly summarises the findings and observations based on the implementing parties 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 IA.
- **The Way Forward:** notes that the parties should seek to close the gaps identified and this is not considered impossible.

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 the 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 2017¹. 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, 10 of 2004, and the National Environmental Management: Protected Areas Act, 57 of 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 Mineral and Petroleum Resources Development Act, 28 of 2002, governs prospecting and mining activities in the country. In terms of this Act, an environmental authorisation 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 (MR) 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 MR Minister 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 the Gamsberg Zinc Mine and associated infrastructure. Since the authorisation was issued on

¹ Government Notice 276 in *Government Gazette* 40733 of 31 March 2017.

13 August 2013, it has been amended twice, with the latest amendment dated 10 December 2014.

Clauses 50 to 60 of the amended EA 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 liaison committee, to oversee the implementation and management of the agreement (condition 57); and
- 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 environmental authorisation was issued). It is the BOA which forms the subject of this review.

3 METHODOLOGY & APPROACH

3.1 Document Review

Documentation was provided by BMM on a sharefile portal and reviewed by the Amaryllis team, to assess implementation of the BOA. Documents broadly covered the following categories:

- Environmental Authorization (specifically items 49 to 60)
- 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
- Steering Committee meeting minutes, agendas and registers
- Liaison Committee meeting minutes, agendas and registers
- Trust documents

- Suretyship Letter signed by BMM & DENC
- 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 Haramoep
- 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 transferal of money to DENC (4 October 2017)
- Offset calculations prepared by Andrew Cauldwell
- 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 Steering Committee and Liaison Committee
- Email correspondence on appeals to DMR on Sitatunga EA for exploration on BMM offset properties.

3.2 Interviews and telephonic 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 Independent Audit. As outlined in Table 1 interviewees all had prior involvement in various biodiversity components of the Gamsberg Project, 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 (Endemic Vision);

- Assistance with implementation of management and monitoring plans (via IUCN previously directly with EWT);
- Drafting the BOA (M.Botha); and
- Compiling offset calculations for explorations activities on the BMM set-aside properties (M.Botha and P.Desmet).

As outlined in Table 1 written responses to selected BOA clauses were provided by Jacobus 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 (Endemic Vision). 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.
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	Liaison Committee and Steering Committee.
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, Liaison Committee 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 Liaison and Steering Committees. Development of Management Plan for protected areas; Fencing of offset properties; Transfer of protected areas to Northern Cape Department of Roads and Public Works.
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, Liaison Committee 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 Liaison and Steering Committees. Visited set-aside properties; Exploration on set-aside properties. Follow-up on DENC's role in BMM's Basic Assessment Report application for

					Environmental Authorisation 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, Steering Committee member	Fri 13 September 09h00 Wed 16 October 15h20	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 Liaison and Steering Committees. 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, Steering Committee 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 Liaison and Steering Committees.
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 on off-set property Haramoep; Functioning of Liaison Committee.
Endemic Vision	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 at 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	Independent	Became involved in May/June	Thurs 3 October, Wed 9	Commented on implementation of

	Parramon Gurney (Dr)	Consutant for IUCN	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.	October 10h30	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.

3.3 Site Visit

Rowena Smuts (Amaryllis) visited the mine site between Sunday 15 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 mine. 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 Manger of Vedanta Gamsberg) via teleconference.

3.4 Compliance assessment

Each clause in the BOA was assessed as compliant (C), partially compliant (P-C) or not compliant (N-C). Where clauses did not have compliance obligations this was stated as no compliance obligation (NCO). Where information was missing preventing the clause from being assessed or if a time frame had not yet been reached the clause was not assessed (N-A). A clause was only assessed as compliant if the implementing party(ies) were fully compliant with the clause. Where the parties had made some progress in the right direction but there was still nothing tangible the clause was assessed as non-compliant. Where part of any clause was non-compliant the auditors generally assessed the whole clause as non-compliant. The implementing parties were assessed as partially compliant with a clause if more than 50% of the requirements had been met and these were tangible. i.e. although the correct paperwork existed for fencing, no fencing had taken place on the ground yet so this was not assessed as partially compliant. Since large areas of sensitive habitat had been secured clauses 6.3.1 to 6.3.4 were assessed as partially compliant. Where the parties took considerable steps to progress compliance this was noted in the report i.e. steps taken to establish The Trust although this was still assessed as N-C since The Trust had not yet been established at the time of the audit.

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 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 needs to be read in conjunction with Table 2 and Table 3.

Compliance categories as per Table 2:

Compliant	C
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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 ² protection and maintenance of the areas of land contemplated in clause 5.	N-C	<ul style="list-style-type: none"> Although the implementing parties tried to act in good faith and did not specifically obstruct each other in implementation of the BOA, 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. See Report for examples of lack of co-operation.
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.	NCO	<ul style="list-style-type: none"> Notices to declare the secured offset properties as a Nature Reserve had already been gazetted prior to the commencement of the IA.
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.	N-C	<ul style="list-style-type: none"> Non-compliant based on numerous non-compliances identified throughout the BOA. See Report for further information.
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	N-A	<ul style="list-style-type: none"> During the initial five-year implementation period BMM had not appointed sub-contractors aside from the repair of windmills on the offset properties³.

² For the purposes of the IR "ongoing" was taken to mean during the initial five-year implementation period.

³ BMM sent an email to IR outlining additional expenditure however since this information was only received on 7 November it was not included in the Draft Report.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	concurrence of the other Party to this agreement, which consent shall not be unreasonably withheld.		<ul style="list-style-type: none"> • DENC had not appointed sub-contractors to assist in performance of this Agreement. • However, IR concluded both DENC and BMM undermined the execution and implementation of the Agreement by not appointing sub-contractors particularly considering their acknowledged lack of capacity. It is the opinion of the IR that appointing third parties would have assisted the parties to fulfil their obligations in a timely manner. • During the Liaison Committee 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. • Lack of capacity of both parties remains an ongoing concern for implementation of the Agreement.
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.	N-C	<ul style="list-style-type: none"> • 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. • The Trust had not been established at the time of undertaking the IA 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.
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	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.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	of implementing the relevant aspects of this Agreement.		
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.	N-C	<ul style="list-style-type: none"> BMM had not made the required payments for the offset properties into The Trust at the time of undertaking the Review, because the The Trust had not been established at the time of undertaking the Review 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.
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 Review, decision to rather establish The Trust. See response to Clause 3.6. No funds transferred to The Trust, 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 will only commence once The Trust has been established and required payments have been transferred from BMM's separate bank account (dated 22 August 2019).
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	<ul style="list-style-type: none"> Based on the date that the Financial Annual Reports were due. Although IR acknowledged the Financial Annual Reports would only commence once funds have been transferred to The Trust. Neither The Agency nor The Trust had been established at the time of undertaking the Review.
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.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
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
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 audit.
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: <ol style="list-style-type: none"> 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 explorations activities. BMM set-asides still have explorations activities taking place on Gamsberg South & East & Big Syncline.

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 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. 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 period after a closure certificate has been applied for from the relevant authorities for the Gamsberg Zinc Mine Project.	N-C	<ul style="list-style-type: none"> See responses to 5.1-5.3.
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.
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; or	N-A	<ul style="list-style-type: none"> Due to the agreed extension of the Second Time Period, the deadline had not yet been reached. At the time of the Review, however, BMM was not yet complying with

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
			<p>this clause.</p> <ul style="list-style-type: none"> At the time of the review, four of the seven Nearby Properties had been secured and declared as nature reserves in terms of NEMPAA. 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.
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 NEMPAA 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 12900 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 done to the best of BMM's abilities based on the properties available. Although BMM has 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 has 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.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
			<ul style="list-style-type: none"> As the Second Time Period was extended to 2024 BMM still has 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 has 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 2024 BMM still has 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.
6.3.3	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 has 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 2024 BMM still has 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.
6.3.4	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 has 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 2024 BMM still has time to secure the remaining portions of sensitive habitats where these exist. See Report for detailed 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
6.4	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	<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 4 B1 properties. At the Steering Committee meeting held on 29 November 2016, the parties may have misinterpreted the requirements of clause 6.7. to mean that the First Time Period was a period of 3 years, although this is 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. 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. See Report for further discussion.
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.	N-A	<ul style="list-style-type: none"> Due to the agreed amendment to the definition of Second Time Period, the due date for compliance has not yet been reached. However, at this stage, BMM is not yet in compliance. We note that BMM is by implication non-compliant with clause 54 of the EA. See Report for further discussion.
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	N-C	<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 <i>Gazette</i> on 26 November 2019, and finally declared in the <i>Gazette</i> on 5 August 2019. 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 did not act "as

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	environments, as the case may be.		<p>soon as reasonably possible" to cause the declaration.</p> <ul style="list-style-type: none"> Although DENC considered the timeframes for declaration as reasonable according to NEMPAA/PFMA IA was not provided with sufficient evidence to support this conclusion.
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. However at the time of the IA BMM could be considered P-C with this clause. 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.
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 Review. 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	N-A	<ul style="list-style-type: none"> See response to 6.7.2 & 6.8 above.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	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	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 2024 and therefore had not yet expired at the time of undertaking the audit. DENC had not embarked on a process to identify Suitable Alternative Properties.
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 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		<ul style="list-style-type: none"> See Clauses 7.1.1 & 7.1.2

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	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	N-C	<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 Liaison Committee and/or Steering Committee meetings. • Although BMM provided DENC with an update on the securing of the two Rosynebosch properties at the Steering Committee 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 Steering Committee (Minutes and Presentation) but this was also not considered official presentation of the properties to DENC for management and declaration.
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 Review, they had not yet been transferred to the Northern Cape Department of Roads and Public Works (DRPW). • Since the Independent Audit started in August 2019 IR recognised there was insufficient time for the transfer of properties since their gazettelement. • Various Steercom and Liaison Committee 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.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
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	<ul style="list-style-type: none"> Fencing of the offset properties had not taken place at the time of the site visit. BMM confirmed the 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 Liaison Committee meeting held in Nov 2018, SANPARKS indicated that their specification for fencing differed from DENCs requirements. Fencing was therefore put on hold (as noted in minutes of Steering Committee, 17 April 2019). This issue was discussed in some of the Liaison and Steering Committee meetings. DENC confirmed, during the Steering Committee 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. IR was of the opinion BMM delayed implementing this activity. The Steering Committee &/or Liaison Committee 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 would be submitted by 18 October 2019 for a final review and adjudication process. Whilst IR acknowledged considerable progress had taken place no fencing had been installed at the time of undertaking the audit. 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 are seen as the biggest immediate threat, which can be addressed through appropriate fencing and access control. IR has not been provided with any correspondence between BMM & DENC, on rehabilitation measures to be implemented. The SC and LC meeting minutes also did not reflect any discussions relating to rehabilitation.
7.4	The specifications in respect of the fencing and rehabilitation	N-A	<ul style="list-style-type: none"> BMM communicated fencing specifications in writing with DENC. Correspondence was shared with IR. BMM requested fencing specifications from DENC for the offset

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	measures to be implemented shall be communicated in writing beforehand to DENC. It is specifically agreed that any such fencing must:-		<p>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 Annexures 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).</p> <ul style="list-style-type: none"> Fencing had not been implemented yet. IR recommended this be audited during the next audit proposed for six months time.
7.4.1	be in compliance with the Northern Cape Nature Conservation Act (2009) and enhance the integrity of the management system;	N-A	<ul style="list-style-type: none"> As above. See response to 7.4.
7.4.2	be at least 1.8 metres in height; and	N-A	<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. However, since the fencing had not been implemented at the time of the audit only the proposed fencing could be assessed. See response to 7.4.
7.4.3	should not unduly inhibit the free movement or dispersal of small animals	N-A	<ul style="list-style-type: none"> This requirement had been taken into consideration by BMM & DENC. However, since the fencing had not been implemented at the time of the audit only the proposed fencing could be assessed. 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 farmers livestock from predators but this would inhibit requirements of clause 7.4.3.
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	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.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	be assigned by the MEC in terms of the Protected Areas Act;		<ul style="list-style-type: none"> Under NEMPAA, 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 NEMPAA, 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". 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 has 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.
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			

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
*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 audit. • DENC have 12 months to prepare and submit the Management Plan from 5 August 2019. See response to Clause 8.1. above. • 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	<ul style="list-style-type: none"> • After the Draft Management Plan has been completed it will be workshopped and interested parties will be consulted.
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	
9.4.5	any financial and other support/mechanisms to ensure effective	N-A	

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	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	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"> No payments had been made to-date in accordance with this clause, and accordingly the IR was unable to assess whether these had been made in accordance with 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.	N-C	<ul style="list-style-type: none"> Neither The Agency nor The Trust had been established at the time of the review. IR concluded that both parties had failed to comply with this clause, by failing to establish the requisite entities by the time that the first payment was due. See Report for further discussion.
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.	N-C	<ul style="list-style-type: none"> At the time of the review, an independent financial auditor was still to be appointed. IR noted BMM was in the [process of appointing the auditor at the time of the Review.
10.4	Any and all payments in respect of this Agreement shall be paid by	N-C	<ul style="list-style-type: none"> Neither the Agency nor The Trust had been established at the time of the review, and

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	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.		<p>accordingly no Agency or Trust account existed for payment to be made. BMM however also failed to make alternative arrangements to hold the money until such time as the review had commenced.</p> <ul style="list-style-type: none"> IR found that both parties had failed to comply with this clause, by failing to establish the requisite entities by the time that the first payment was due. See Report for further discussion.
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:	N-C	<ul style="list-style-type: none"> Since neither the Agency nor the Trust had been established BMM could not make payments into these entities. However, since BMM had set money aside, supposedly for the maintenance and operation, of the Protected Areas in a separate bank account IR assessed BMM's compliance regarding the amounts set aside. See detailed discussion in the Report.
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;	N-C	<ul style="list-style-type: none"> No payments were made within threemonths of the properties being made available to DENC, but IR acknowledged BMM had made a payment into a separate bank account.
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	N-C	<ul style="list-style-type: none"> No payments were made within three months of the properties having been made available to DENC, but IR acknowledged the BMM made a payment into a separate back account.

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
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.	N-C	<ul style="list-style-type: none"> No annual payments were made after the properties were made available to DENC. IR acknowledged BMM had put aside an amount in a separate back account, but its calculations in respect of this payment were flawed.
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:	N-A	<ul style="list-style-type: none"> This obligation had not yet become applicable. Payment due on or before 28 February 2020.
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	N-A	<ul style="list-style-type: none"> This obligation had not yet become applicable. Payment due on or before 28 February 2020.
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.
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.	N-C	<ul style="list-style-type: none"> No annual payment had been made due to neither the Trust nor Agency having been set up.
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:-	N-C	<ul style="list-style-type: none"> The requirements below were not met within the specified 3-month time frame.
10.9.1	the provision of and operating costs of two (2) office units within	N-C	<ul style="list-style-type: none"> Sites for office units had been earmarked and these were discussed in the Steering Committee meeting held on 10 April 2019 (see minutes). They were located on the farm

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	the town of Aggeneys or another site to be agreed by the Parties;		Achab. At the time of the Review 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.
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"> During the site visit BMM showed IR accommodation units that had been earmarked but IR was not aware of any payments having been made or set-aside in BMM's separate bank account for the necessary upgrade of the accommodation units to ensure they would be inhabitable..
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.	N-C	<ul style="list-style-type: none"> BMM had not made any payments 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.
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:-	N-C	<ul style="list-style-type: none"> BMM had not made any of the Capital Costs required by this clause, although IR acknowledged that an amount of R2 500 000.00 has been set aside in BMM's separate bank account for this purpose.
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;	N-C	<ul style="list-style-type: none"> See response to Clause 10.10.
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.	N-C	<ul style="list-style-type: none"> See response to Clause 10.10.
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	N-A	<ul style="list-style-type: none"> IR could not assess how any payments had been utilised, since neither The Agency nor The Trust had been established at the time of the review, and no payments had

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	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.		accordingly been made.
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			
*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 Steering Committee and Liaison Committee on 15 August 2016. It was unclear why there was such a long delay, approximately two years after signing the BOA, in establishing the Steering Committee. The first meeting was held in November 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 Steering Committee meetings were held. The Steering Committee 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 Steering Committee. 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	P-C	<ul style="list-style-type: none"> Whether the Steering Committee received recommendations from the IA was not

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
	implementation of the Agreement, including the adequacy of the financial provisions, biodiversity outcomes and management effectiveness;		<p>assessed. This will need to happen after the audit/ during the next audit.</p> <ul style="list-style-type: none"> See Report for discussion on recommendations received from Liaison Committee.
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. Steering Committee to advise implementing parties following review of recommendations of Independent Review. 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			
*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"> Management Plan had not developed yet therefore the role of Liaison Committee was assessed according to its definition provided in Clause 12.2.2: "Liaison Committee to provide recommendations to Steering Committee 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 Liaison Committee in Clause 14 would only take place following Independent Review and therefore had not been assessed. See Report for assessment on roles and responsibilities of the Liaison Committee.
*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"> Management Plan not in place yet therefore Liaison Committee role not defined by Management Plan but rather by Clause 12.2.2. (See 3.1 above). Liaison Committee did not report in writing to the Steering Committee until 2019 when it began sending formal letters to the Steering Committee. However, concerns were raised with implementation of Biodiversity Offset and the Steering Committee was

Clause	Description	Compliance Assessment (C, N-C, P-C, N-A, NCO)	Brief Rationale for compliance assessment conclusion
			<p>informed of these concerns following each Liaison Committee meeting.</p> <ul style="list-style-type: none"> • See Report for assessment of the Liaison Committee performance in terms of reporting to the Steering Committee.

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 - gazettement documents, correspondence between BMM & DENC; 8 - LC & SC meeting minutes; 10 - 12 & 13 - Steering Committee and Liaison Committee meeting documents; 22 - Surety documents and meeting minutes	BMM, DENC, IUCN, Conservation Strategy, Tactics & Insight, Endemic Vision	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.	Gazettement 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.		BMM, Conservation Strategy, Tactics & Insight, DENC, IUCN, Endemic Vision	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.	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.	BMM, IUCN, Conservation Strategy, Tactics & Insight	10 22
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.	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.	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	BMM; Conservation Strategy, Tactics & Insight; DENC; Endemic Vision; 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	BMM; Conservation Strategy, Tactics & Insight; DENC; Endemic Vision; 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	BMM; Conservation Strategy, Tactics & Insight; DENC; Endemic Vision; 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, EMP	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;	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;		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;		BMM; DENC	
6.3.3	At least 4 000ha of Bushmanland Arid Grassland, including those component habitats supporting calcrete gravel communities; and		BMM; DENC	
6.3.4	At least 2 000ha of azonal vegetation types comprising Bushmanland ephemeral river courses and outwash plains.		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 2226 of 26 November 2018; Provincial Notice 80 in Provincial Gazette 2287 of 5 August 2019	DENC	
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	BMM; DENC	6.1

		dated 4 October 2017; letter from BMM (Vedanta) to DENC re Haramoep dated 11 September 2019; Letter from DENC dated 1 November 2018		
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.	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, Trystman affidavits of 23.08.2018, Factual Findings 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.	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:-	1. Copy of Annexure A - bill of quantities for fencing offset properties; 2. Email comms between DENC and BMM on fencing; 3.ToR for fencing of biodiversity properties; 4. Fencing specifications - NCNCA regulations Annexure 1-11-2011+	BMM; Conservation Strategy, Tactics & Insight; DENC; IUCN
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, discussions	BMM; DENC
7.4.2	be at least 1.8 metres in height; and	Correspondence between BMM & DENC, discussions	BMM; DENC
7.4.3	should not unduly inhibit the free movement or dispersal of small animals	Correspondence between BMM & DENC, 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).			
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;	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.	-	-	-
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.	-	-	-
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	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;	As 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	As above	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	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	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	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 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:-	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	
10.9.1	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	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 titled "Annex E Financial Provisions"; SC Meeting Minutes of 17 April 2019	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	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	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 titled "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 ongoing⁴ protection and maintenance of the BMM set-aside properties described in Clause 5. These two issues are dealt with separately.

4.1.1 Cooperation between parties to implement the Biodiversity Offset

IR found The Parties had tried to act in good faith and neither party had specifically obstructed the other party with regards to implementation of the BOA. Both implementing parties, external interviewees and IUCN observers, corroborated this finding. However, as noted elsewhere in the report, lack of efficient cooperation and consistent transparent communication between the implementing parties 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 Steering and Liaison Committee 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 lead 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 his successors.
- DENC delayed confirming BMM's compliance with Clause 6.4.1. for 6 months⁵.
- DENC delayed producing a Management Plan (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 implementing parties had not cooperated to establish the requisite entities by the time the first payment for the secured offset properties was due. Neither The Agency

⁴ For the purposes of the Independent Review 'ongoing' is taken to mean during the initial 5-yr implementation period.

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 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.

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

The exploration activities undertaken on the set aside property (Aggenys) demonstrated a lack of cooperation between DENC and BMM in ensuring the maintenance and protection of the BMM set-aside properties.

The review found:

- No written evidence of BMM having informed DENC (its implementing partner on the BOA) directly of its intention to submit a Basic Assessment Report (BAR) 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 during 2014 and 2015 but that steps had been taken to improve communications in 2017.
- DENC raised its concerns over the Gamsberg Amendment East & South at the Liaison Committee meeting held on 15 November 2017ⁱ.
- IR was not provided with any further formal correspondence between DENC & BMM on this matter.
- Endemic Vision confirmed DENC had received a copy of the DBAR but had not submitted formal comments.
- Although DENC drafted an appeal to the EA it could not confirm whether this appeal had been formally submitted to DEAⁱⁱ.
- Endemic Vision informed IR that BMM withheld important information pertaining to its legal conservation obligations associated with the set-aside properties and the restrictions on prospecting & mining activities linked to the mine's EAⁱⁱⁱ. Specifically BMM did not share Annexe C delineating the four set-aside properties. It was beyond the scope of this IA to further establish whether the consultant was also at fault for not requiring BMM to provide the necessary information. BMM explained the properties delineated in Annex B1 and B2 were sensitive information at that stage. Endemic Vision had compiled the BAP (2013 and 2014) which included reference to the set-aside areas but admittedly did not include the maps.

Exploration on the set-aside properties triggered a non-compliance of the EA as it demonstrated the natural portions of the properties stipulated in Clause 59 had not been set aside and 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 Steering Committee 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.

Offset recalculation

Proposed exploration activities on the set-aside properties required offset recalculations. BMM and Endemic Vision appointed external specialists (Botha & Desmet) to undertake an offset recalculation as part of the the Gamsberg South and East EIA application submission. IR was not able to verify the inclusion of these offset recalculations as part of the BAR submissions during the audit although IR the did review the Gamsberg S & E offset recalculation report.

In 2015 BMM submitted a Basic Assessment for prospecting on Big Syncline on the set-aside property Aggenys 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. DMR did not include specific requirements for augmentation of the original offset agreement or how this should be undertaken in the EA for Gams S & E. 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. Endemic Vision however advised BMM they needed to undertake a recalculation to include the impacts of Big Syncline in the BOA offset calculations. Specialist biodiversity consultants (Botha & Desmet) subsequently undertook a further offset recalculation for the Big Syncline prospecting activities. IR was not able to verify the inclusion of these offset recalculations as part of the BAR submissions during the audit although IR did review the Big Syncline offset recalculation report.

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 audit but this activity was beyond the scope of the First IA.

The offset recalculations still need to be included in the BOA. The implications of the magnitude of residual impacts to be offset also need to be confirmed by external biodiversity specialists to demonstrate the offset commitments will achieve no net loss (NNL).

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^{iv} 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)

Clauses 5.1, 5.2 and 5.3 are discussed together thereafter Clause 5.4 and 5.5 are dealt with separately.

IR identified four key potential threats to sensitive plant species⁶ 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 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 is 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. IR concluded the appropriate provisions, restrictions and monitoring mechanisms required for protection of the set-aside areas were absent from the EMP and BMP⁷. The specific

⁶ 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.

⁷ Endemic Vision developed the BAP in 2014 and then incorporated it into the BMP in 2015. The BMP was updated a number of times by Endemic Vision. 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 Endemic Vision 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 updated BMP was considered to be complicated and not user-friendly by some of the interviewees. The updated BMP (V. 5., dated July 2019) captured key actions from specialist studies for all BMM properties but did not address 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. IR was not provided with a copy of the BMP V.5 for review during the IR.

management and monitoring programmes required for protection and maintenance of the conservation areas had not yet been developed and where they do exist they have not been adequately implemented.

IR found the current BMP (V. 4., dated 2015⁸) included mainly generic commitments reiterated from the BOA^v. 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:

- 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.
- 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 their biodiversity advisor, on 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.

Adequacy of the Conservation Area Management Plan (CAMP)

The Conservation Area⁹ Management Plan (CAMP, V3, 2015, Appendix B in the BMP) developed by Endemic Vision 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 aside from the Game Camp. According to 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 convinced the CAMP had been sufficiently updated to incorporate specific management activities for the set-aside properties. 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 and had appointed an external specialist to update the CAMP to address gaps. The contract for updating the CAMP would be amended to include implementation of IA recommendations.

⁸ IR was subsequently informed that the 2019 version of BMP had been updated to include additional commitments but IR did not review the 2019 version during the audit.

⁹ 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".

IR found that 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. 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.

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
- 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, data for monitoring the baseline dust condition for vegetation and 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 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 ¹⁰.

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 under-estimated based on significant mortality on stem-photosynthesising species such as *Sarcostemma* and *Euphorbia* growing in the vicinity of Gamsberg. However, in the absence of baseline dust monitoring it was impossible to quantify the impacts of mining related dust on sensitive plant species.

4.2.3 Exploration on set-aside areas for protection

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

- Firstly, undertaking prospecting activities on the set-aside properties is 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 (BPMP) commit it not to pursue mining on the set-aside areas¹¹; While the BOA does not specifically stipulate that prospecting may not take place on the set-aside areas this is inferred by "BMM hereby agrees to protect the biodiversity and ecological functioning of the surface areas of BMM properties"; and
- Secondly, prospecting activities undertaken on Big Syncline, located on Aggenys 56 Ptn 1 set aside Farm, post 2012 as per Figure 2 of the Recalculation for the Gamsberg Biodiversity Offset Report (Botha & Desmet, 2018) 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 in itself demonstrated non-compliance with Clause 5.1, 5.2 and 5.3. 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.

¹⁰ 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 will be undertaken on an annual basis.

¹¹ 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, Aggenys 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 NEMPA".

External experts need to verify that explorations activities would not result in a larger residual impact requiring additional areas to be offset to achieve no net loss.

IR held informal discussions with BMM explorations personnel whilst on-site. These established poor internal communications between BMM's Explorations, Projects and Operations Divisions. 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. IR's discussions with Endemic Vision 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. BMM's two divergent agendas of exploration and conservation require a concerted team effort within the company to achieve implementation of the BOA.

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

The BOA was signed 16 October 2014, before the first amendment to the EA, dated 10 December 2014. This amendment to condition 58 of the original EA, which states "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 be pursued under the current application, and specifically to consent to their declaration as a Protected Environment under Section 28 of NEMPA, 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 NEMPA".

The effect of this was to remove the automatic protection of the set-asides as a protected environment under NEMPAA. Section 48(1)(b) requires 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 does 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 Steering Committee and the Liaison Committee 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 the extent to which the parties 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 is 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 informed IR it had spent ZAR 270,000 on repairing windmills on offset properties, specifically Achab¹².

Clause 5.5 refers to BMM's option/decision *to contract any of the BMM Properties into protected area in terms of the Protected Areas Act*. BMM informed IR it had no intention of converting these set-aside areas to Protected Areas. However, in the absence of proclaiming these areas as protected BMM urgently needs 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.

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 secure¹³ at least 4 Nearby Properties listed in Annex B1 within the First Time Period (i.e. by 30 March 2016)¹⁴;
- ii) to secure at least 3 Nearby Properties listed in Annex B2 within the Second Time Period (i.e. by 1 April 2024),¹⁵
- 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.

¹² BMM shared information regarding additional expenditure on the set-aside properties with IR on 7 November, one day prior to submission of the Draft Report. Since this information was submitted outside the document review period it was not reviewed by IR.

¹³ Read with clause 7.1, means "either in terms of a lease agreement, sale agreement or otherwise".

¹⁴ See definition of "First Time Period".

¹⁵ See definition of "Second Time Period" read with the amendment dated 12 September 2019.

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;
- 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 secured¹⁶	Date of transfer to BMM	Date made available to DENC for declaration
A.	Remainder of Farm Rozybosch 41	B1 and B2	11 September 2015	4 December 2015 (T70536/2015)	4 October 2017
B.	Portion 2 of Farm Rozybosch 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

¹⁶ Date of sale agreement.

D.	Farm Achab No. 59	B1	26 June 2017	19 November 2017 (T4850/2017)	4 October 2017
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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 together¹⁷, via letter of 4 October 2017, more than 6 months after 2 of these properties had been secured. They were then discussed during the Steercom 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 Rozybosch 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 November 2018, DENC issued a letter to BMM "certifying" that it was satisfied that BMM is 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 Annexure 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 doesn't require purchase of properties so long as relevant biodiversity values are protected and secured into perpetuity. Stewardship is also recognized as a good option if a farmer doesn't want to sell as it massively simplified implementation of the offset. The BOA itself also provides for the Nearby Properties to be secured in terms of "a

¹⁷ BMM updated the Steering Committee during the meeting held in November 2016 of it having secured two 2 Rozybosch Properties. The Steering Committee was updated on the Achab and Vogelstruishoek properties secured in the October 2017 meeting. However IR did not view these Steering Committee 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.

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.

In the event that the Parties had not agreed to amend the definition of "Second Time Period"¹⁸ whilst the review was ongoing, BMM would also have been found to be in non-compliance with Clause 6.4.2 for failing to secure 7 of the 12 Nearby Properties within the specified time period. IR noted further that condition 54 of the EA required BMM to secure all properties, and the requisite consent for the declaration to be obtained, within 5 years of the commencement of the authorized activities. Accordingly, whilst the extension of the Second Time Period may have provided BMM with some leeway in terms of the BOA, it was non-compliant with the EA, which could have serious repercussions (such as criminal liability) in terms of NEMA. Should the parties wish to amend the EA, relevant processes prescribed in the Environmental Impact Assessment Regulations would need to be followed.

IR was aware that the timeframe for the First Time Period was considered during the first Steering Committee 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";
- 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 is clear that the First Time Period provided for an 18-month period within which the **4 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.

BMM has furthermore failed to comply with:

¹⁸ See definition of "Second Time Period" read with the amendment dated 12 September 2019.

- 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 and 7.4, 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.

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 notes 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, 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 discussions points were the background and content of the offset agreement between DENC and BMM and the need for the transfer these properties to Provincial government. A follow up meeting was held between DRPW and DENC in February 2019 where the requirements and the process of the transfer of the properties was discussed.

A formal request for the transfer of properties was sent by the HOD of DENC 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") gives rise to interpretational discrepancies in applying the penalty provisions.

The clauses that deal with the penalty provisions are 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 only¹⁹.

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:

- Aggenys 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 habitats²⁰:

- 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

At the time of the audit BMM informed IR it was in the process of trying to secure Haramoep²¹ 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.

¹⁹ 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".

²⁰ 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".

²¹ Both Annex B1 & B2 include Remainder of Haramoep No.53 and Portion 1 of 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.

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 confirmation²² that this purchase would make BMM 100% compliant with the BOA requirements of Clause 6.

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) (256H 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.

Further to these acknowledged limitations of the Agreement, BMM requested DENC to confirm whether the Halfmens population located on Haramoep 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 Report. The Report made provision for compensation for impacts on habitats where residual impacts that were in fact 'non-offsetable'. The Report indicated that "The residual impacts on the terrestrial habitat units (Calcrete Gravel Patches and Fine-grain Plateau Quartz Patches of the Aggeneys 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)". At the time of the 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.

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 implementing parties and IUCN observers as to when the responsibilities of the Management Authority (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 Management Authority. The MA could only be assigned in terms

²² A solar development has also been earmarked on the south-western part of Haramoep 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.

of Section 38(2) of NEMPAA. 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 gazettement. Both implementing parties 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 Management Authority 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 Management Agency 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 Management Plan (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 Liaison Committee 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 explains 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 Management Plan (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).
- 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.
- 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 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 IA period, neither The Agency nor The Trust had been constituted. It was further noted in the Steering Committee minutes of November 2016, that DENC confirmed that an Agency would not be established and that “whatever funds will be paid over to DENC by BMM will be earmarked for conservation purposes in terms of this Agreement”. Steering Committee minutes from June 2018 indicate that a Trust is “in the process of being finalized”, and that once established, money would be paid to Trust. However, as at the date of the review, 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, provides for the establishment of the Trust and its objectives, the BOA is not explicit regarding the date by which the Trust should have been established. However, it is 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 means 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)²³. It is noted that 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 Liaison Committee 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.

IR noted that steps have been taken to register The Trust for the purposes of the BOA. In particular:

- acceptance of Trusteeship was signed by all 5 Trustees (2 DENC - 5 June 2019 & 4 August 2019; 2 BMM - 7 & 8 August 2019, and Independent Trustee from SANPARKS - 10 June 2019);
- the Trust Deed has been signed by BMM (24 July 2019), DENC (25 July 2019) & SANPARKS (Independent Trustee counterpart, 1 Aug);
- certified copies of ID documents of the 5 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 Trustee documents would be submitted in November 2019 with all documentation and appointed financial auditor to the Master of the High Court, for registration of The Trust.

²³ Properties were due to be presented to DENC within 6 months of being secured (as per Clause 7.1.1)

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 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	R500 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	R500 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	R3 500 000.00 annually, increased by 6% or CPIX (whichever is the lower amount)	R3 500 000
10.9.1	2 office unit within the Aggeney's town or other agreed site (provision for and operating costs)	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	Within 3 months of making the first property available to DENC for declaration, thereafter annually before 28 February	Actual cost	Actual cost
10.9.3	Cost of servicing motor vehicles	Within 3 months of making the first property available to DENC for declaration,	R50 000.00 annually, increased by 6% or CPIX (whichever is the	R150 000.00 (After first payment, annual payments fell

		thereafter annually before 28 February	lower amount)	due on 28 February 2018 and 38 February 2019.)
Capital costs				
10.10	First capital payment	On Final Regulatory Approval Date (30 September 2014) and thereafter annually on 1 March	R500 000.00 per annum (capped at R2 500 000.00)	R2 500 000.00 (Cap reached)
			TOTAL:	R8 650 000.00 PLUS actual costs of offices and accommodation units

Compliance by BMM

No payments have been made to date by BMM to the Agency or the Trust, due to neither the Agency nor the Trust having been established when these payments fell due. IR was therefore unable to establish whether payments had been made in accordance with the Public Finance Management Act. 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.

IR has viewed a deposit confirmation of **R6 550 000.00** into a Standard Bank account, dated 22 August 2019. Given the calculations above, this falls far short of the amount that should have been paid to date to the Agency or Trust. Furthermore, provision for offices and accommodation as required by clause 10.9.1 and clause 10.9.2 has not been met. IR understood that sites for office units have been earmarked on the Farm Achab (as discussed in Steering Committee meeting of 10 April 2019). However, at the time of the review, the provision of the office units had not been finalized, and the proposed site was awaiting inspection by the Department of Public Works. IR noted that neither the Steering Committee minutes nor other communications reflected acceptance of calculated amounts.

At the time of the audit, 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 this request BMM included in a letter to DENC (dated 11 September 2019) that an increase in the management fees from R500,000 to R700,000 per property was acceptable to BMM, thus raising the annual fees to R3,500 000.00 for the five offset properties (assuming Haramoep is also secured). This increase in management fees was 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. However, given the extension to acquire additional properties, it was not clear what the status of this proposal would be going forward. If the parties are still of the view that the R500 000.00 per property per annum was insufficient, then the BOA should have been amended to reflect a new agreed amount.

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

Compliance by DENC

Whilst clause 10 of the BOA does 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 that a dedicated Agency would not be established. At this meeting, it also stated that Treasury would receive the funds and 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.

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 is 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,²⁴ and that DENC accepted the letter in fulfillment of clause 11, the IR found that this clause had now been fulfilled.

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 Steering Committee (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

²⁴ 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 words used in the context of both the document as a whole and the context or factual matrix in which the document came to be produced".

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 Liaison Committee (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 Steering Committee 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 Steering Committee meeting Agenda refers to minutes of the Liaison Committee 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 & 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 Liaison Committee (LC) were supposed to be described in the Management Plan (Clause 13.1) including management and operational issues relating to the Biodiversity Offset²⁵. In the absence of the Management Plan (MP), likely only to be submitted by 5 August 2020, as per Clause 9.1²⁶, the role of the LC was not clearly defined for the initial five year implementation of the BOA.

The Liaison Committee was required to report to the Steering Committee, in writing regarding the management and operation of the Biodiversity Offset, and the performance of the LC's functions in terms of the Management Plan (Clause 13.2). The Liaison Committee shall provide recommendations to the Steering Committee 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.

²⁵ 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).*

²⁶ 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 Liaison Committee meetings. Four LC meetings were held²⁷ 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 Liaison Committee 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 participating regularly. IUCN suggested a liaison technical

²⁷ 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.

committee or working group was required to guide the Steering Committee. The SC does 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 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, 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 include:

- **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.
- **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 (D.Badenhorst) 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 parties.
- 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 (J.Erasmus was responsible according to P.Venter, *pers.comms.*) 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 Independent Audit. 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 being delivered?

According to IRs discussion with external biodiversity consultants it had not been possible to achieve no net loss from the outset for each of the categories as some vegetation types just weren't available in sufficient amounts to meet the offset requirements. Although these limitations were stated upfront they had been inadequately reflected in the BOA.

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. BMM possibly needed to provide more detail on what it meant by no net loss, net positive impact and net positive effect and define the specific timeframe by which it planned to achieve these biodiversity commitments.

5 CONCLUSIONS

5.1 Overview

The Independent Reviewer confirmed four clauses as compliant (C)²⁸, 11 as partially compliant (P-C)²⁹ and 26 as non compliant (N-C)³⁰. Sixteen of the clauses had no compliance obligations (NCO)³¹. A total of 43 clauses were not assessed (N-A)³² due to activities not having been completed at the time of the Independent Audit.

5.2 Compliance with provisions of the BOA

Overview

Overall the Auditors found the BOA had not been adequately and efficiently executed and implemented. Some suggestions for how to close the gaps are discussed in The Way Forward (Section 6).

²⁸ Compliant (C) clauses: 5.2., 6.2., 11.1., 12.1.

²⁹ Partially compliant (P-C) clauses: 6.3., 6.3.1., 6.3.2., 6.3.3., 6.3.4., 6.4.1., 12.2, 12.2.1., 12.2.2., 13.1., 13.2.

³⁰ Non compliant (N-C) clauses: 3.1., 3.3., 3.5., 3.7., 3.9.; 5.1., 5.3., 5.4.; 6.5., 7.1.1., 7.3.; 10.2., 10.3., 10.4., 10.6., 10.6.1., 10.6.2., 10.6.3., 10.8., 10.9.1., 10.9.2., 10.9.3, 10.10., 10.10.1., 10.10.2.;

³¹ No compliance obligation (NCO) clauses: 3.2., 4.1.1. – 4.1.7., 8.1.-8.4., 10.5.

³² Not assessed (N-A): 3.4., 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., 6.9.1-5., 6.10., 6.11., 7.1.2., 7.2., 7.4., 7.4.1-7.4.3., 9.1., 9.2., 9.3., 9.3., 9.4.1 – 9.4.7., 10.1., 10.7., 10.7.1, 10.7.2., 10.11., 12.2.2., 12.3.4.

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 could have assisted. 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 predominantly non-compliant with their general duties.

Financial

Since the Trust had not been established the appropriate funds could not be deposited. The R 6 500 000 that BMM had deposited into a separate bank account was found to be considerably less than what was required by the BOA, according to IR's calculations.

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 BMM's 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. 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 IA to close the gaps. This required buy-in from DENC regarding the concept of compensation. 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 Management Authority (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 Independent Audit. Some of the gaps would need to be closed before this assessment could be undertaken.

5.3 Co-operation of parties with Auditors

The implementing parties provided the IR with all the necessary information including documentation as requested, phone call discussions and also assisted in scheduling discussions with external parties were 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. However, some of the information provided towards the end of the IA period, prior to completion of the Draft Report, was not reviewed by IR due to the late receipt of this information. DENC provided information as requested although there was frequently a considerable delay between email queries and responses submitted to the IR. The Auditors found that both implementing parties cooperated satisfactorily with the Team of Auditors throughout the Independent Audit.

6 RECCOMENDATIONS

According to Clause 14.8.3 of the BOA the IR was required to provide the Steering Committee 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 Independent Audit 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 implementing parties.
- Revise Management Plans, 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 is recognised by implementing parties for example to compile Protected Area Management Plan, to manage Protected Areas etc.
- Assess the need to purchase additional properties.
- 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 considers further discussions amongst key stakeholders necessary before it can be decided whether the existing offset be amended or an entirely new offset Agreement be developed.

7 THE WAY FORWARD

IR observed commendable progress by BMM, in the steps it took to achieve compliance on a number of the BOA provisions, from the start of the IA to the submission of the Draft Report (August to 8 November 2019). IR therefore acknowledges that the requirements for a number of the clauses are in the process of being met. IR is therefore convinced that many of the non-compliance gaps can easily be closed in the short to medium-term through a concerted effort between BMM and DENC. The parties should devise a work plan to address non-compliances and consider undertaking another Audit in six months time. The findings of the second Audit could potentially be included as an amendment to this Report.

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>³³ 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 Aggenys 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 Aggeney's 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 but instead constructed a huge security fenced enclosure that subsequently accidentally divided the population into two sub-populations. • Communications with P.Desmet or Endemic Vision 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.

³³ *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.³⁴
- 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*).
- 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.

³⁴ 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

<p>Clause 3</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 Management Plan.
<p>Clause 5</p>	<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. • 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. • BMM to appoint additional staff (such as a dedicated Land Manager) to ensure effective management of the set-aside areas. • Allocate more resources to improve implementation of the directives in the management plans. • Improve communications between BMM management and ecologists. • Implement fencing of set-aside properties where stronger access control is required. • Prioritise management actions on set-aside properties. • Improve access control of set-aside areas and specifically of <i>C.burgerii</i> area. <p>Revise CAMP to:</p> <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. • Ensure the Agency responsible for managing the set-aside properties uses the same Management Plan as for the Protected Areas. <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.

	<ul style="list-style-type: none"> • 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. <ul style="list-style-type: none"> • 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 SE 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 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 assist with informing its explorations staff appropriately. • Organise a workshop in Q4 2019 with relevant stakeholders identified by the implementing parties from DENC and BMM including representatives of Digby Wells, Endemic Vision, 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. • 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
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	<p>relocated will not be further disturbed by exploration activities.</p>
<p>Clauses 6 & 7</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 Haramoep, 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. • The next IA needs to focus on whether BMM is accomplishing its conservation objectives.
<p>Clause 8</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.
<p>Clause 9</p>	<ul style="list-style-type: none"> • DENC to consider appointing an external party to assist in compiling the Management Plan where internal staff shortages may hinder accomplishment of objectives. DENC could still be resobile for aproving the MP. • Include commitments for the management of BMM's set-aside areas in the Protected Area Management Plan. • Undertake an External Review of the Management Plan prior to its due date on 5 August 2020.
<p>Clause 10</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. • 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. • Edit BOA Clause 10.9 to stipulate that payments are only required following formal appointment of Management Authority for practical

	reasons.
Clause 12	<ul style="list-style-type: none"> • Increase number of Steering Committee meetings to three to four times per year to address non-compliance issues as they arise. • Reconsider structure of Steering Committee to facilitate decision-making and follow-up on actions and responsibilities of the implementing parties. • Amend the BOA to clarify distinct roles of Liaison and Steering Committees 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 Steering Committee 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 Steering Committee is due to take place.
Clause 13	<ul style="list-style-type: none"> • Actions raised during the Liaison Committee 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 Steering Committee 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. • Liaison Committee 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.
Clause 15	<ul style="list-style-type: none"> • Amend the BOA clause 15.4 to reflect the intentions of the parties and avoid conflicting interpretations.
Clause 23	<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</p>

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:

- 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.
- 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.

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 Steering Committee 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.

ENDNOTES

ⁱ On 18 October 2017 DENC exchanged correspondence with Endemic Vision requesting a copy of the Draft BAR for review. In discussions with IR DENC was unable to confirm whether it had received a copy of the DBAR and if so when exactly. DENC was certain it had not received the DBAR for review from either BMM or DMR. However, Endemic Vision informed IR that DENC first received notification of the DBAR 01 for Gams SE on 4 August 2017 and an electronic copy had been provided to DENC in person on this date. Endemic Vision shared email correspondence between itself and DENC with IR. The correspondence, dated 28 June 2018, stated that the SAMRAD application for a Section 102 amendment was logged on 22 August 2017. The DBAR was shared with DENC on 10 October 2017 and a reminder to comment sent to DENC's team on 17 October. The commenting period for the DBAR ended on 24 November 2017 and numerous responses were received. Stakeholder concerns were addressed by appointing different specialists in January 2018. The revised DBAR (version 02) and specialist reports for the Gamsberg South and East Environmental Authorisation Application was made available for review on 28 June 2018. A hard copy of the report had been couriered to DENC as well as emailed. As a stakeholder DENC was invited to comment within 30 days of receiving the documentation. The Final BAR was submitted on 14 August 2018 and an sms notification was sent to all stakeholders. Upon finalising the decision DMR requested Endemic Vision to formally engage DENC to obtain their input. The formal request, from Endemic Vision to DENC, dated 1 November 2018, was shared with IR. Endemic Vision received no correspondence from stakeholders. Endemic Vision stated they had not received any comments from DENC during the process and neither had DMR. The authorisation decision was communicated to everyone via email on 11 March 2019. DENC responded to Endemic Vision on 11 March 2019 requesting a copy of the EA and stating that if an additional offset had not been included in the EA DENC would have to appeal as an amendment might be a fatal flaw under NEMA and the offset principles. Endemic Vision sent the EA to DENC on the same day. To-date Endemic Vision has still not received any input from DENC. This trail of evidence demonstrates that DENC did not take responsibility to comment on the DBAR within the appropriate time period. In response to an email from DEA to DENC requesting a copy of the EIA, DENC responded that it had not seen the EIA and had only received notice of the EA after it had been issued.

ⁱⁱ On 19 February 2019, an Environmental Authorisation (EA) was issued by DMR for exploration on Gamsberg South & East (Portion 1 of Farm Gams No. 60). On 19 February 2019 DENC prepared a Draft appeal to DEA for this EA, this document was shared with IR. DENC was not able to provide IR with a copy of the official signed appeal and therefore could not confirm whether it had been submitted to DMR and if so by what date. DENC also sent an informal communication to REMDENC alerting them to the possibility for an appeal submission by DENC. On 11 March 2019 an external consultant sent an email to DENC and DEA notifying them that the set-aside areas had been included in the EA despite the fact that the BOA was predicated on them being protected. The consultant requested whether the EA could be appealed within the 20 day appeal period. DENC did not notify the consultant that it was already in the process of drafting an appeal.

ⁱⁱⁱ Endemic Vision informed IR that BMM had not acted in good faith with regards to protection of the set aside areas. Endemic Vision compiled the BARs for BMM's prospecting applications to DMR on the set-aside areas including for Big Syncline located on Aggenys 50 Ptn 1. BMM reportedly did not provide Endemic Vision with the BOA Annex C map showing these properties were set-asides and could not be prospected. Endemic Vision informed IR the BOA was considered to be confidential information at the time and the map of the set-asides was not public knowledge; however it was known to BMM and the EA was public information and the BOA as a legal agreement was also a public document.

^{iv} BMM immediately submitted an appealiv form (on 15 January 2019) and an appeal letter (on 14 February 2019) to the Minister of Environmental Affairs against the granting of four Environmental Authorisations by DMR to Sitatunga Resources (Pty) Ltd to refuse the decision of environmental authorisation on all four offset properties. DENC also submitted a letter of appeal to DMR regarding licenses issued for the offset properties on 6 February 2019.

- ^v 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".