

# Final Second Independent Audit of the Implementation of the Gamsberg Biodiversity Offset Agreement

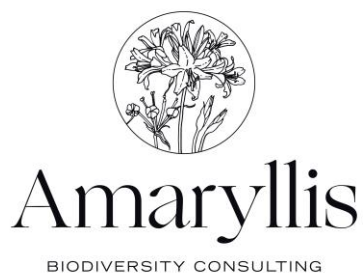
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A report prepared for the Gamsberg Biodiversity Offset Agreement Steering Committee

Prepared by Amaryllis Biodiversity Consulting

R.Smuts

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

Rowena Smuts, 12 December 2023

A handwritten signature in blue ink, appearing to read 'Rowena Smuts', is displayed on a light blue background.

## Table of Contents

|  |           |
|--|-----------|
| <b>Executive summary</b> .....   | <b>1</b>  |
| <b>Acronyms and abbreviations</b> .....  | <b>1</b>  |
| <b>Definitions</b> .....   | <b>2</b>  |
| <b>1. Introduction and project background</b> .....  | <b>3</b>  |
| 1.1 Requirement for an independent audit .....   | 3         |
| 1.2 BMM’s requirement for a Biodiversity Offset Agreement (BOA).....                               | 3         |
| 1.3 Scope of work and objectives of an independent audit.....                                      | 4         |
| 1.4 Report limitations and assumptions.....  | 4         |
| 1.5 Report structure .....   | 5         |
| <b>2. Regulatory framework</b> .....   | <b>5</b>  |
| 2.1 Applicable legislation.....  | 5         |
| 2.2 Conditions of environmental authorisation .....  | 6         |
| <b>3. Methodology and approach</b> .....   | <b>7</b>  |
| 3.1 Document review .....  | 7         |
| 3.2 Independent Audit Framework .....  | 7         |
| 3.3 Site visit.....  | 8         |
| 3.4 Compliance assessment .....  | 8         |
| <b>4. Findings and observations</b> .....  | <b>10</b> |
| <b>5. Discussion</b> .....   | <b>47</b> |
| 5.1 Alignment of the IMP with the BOA (Clause 9) .....   | 47        |
| 5.2 Publicising the findings of the Audit Reports (Clause 14.10) .....                             | 48        |
| 5.3 Accomplishing the conservation objectives (Clause 14.8.2) .....                                | 49        |
| <b>6. Conclusions</b> .....  | <b>50</b> |
| <b>7. Recommendations</b> .....  | <b>52</b> |
| Appendix A: Documents reviewed .....   | 54        |
| Appendix B: A record of BMM’s progress made on Clause 5 since FIA.....                             | 62        |
| Appendix C: A record of BMM’s attempts to purchase additional properties between FIA and SIA ..... | 72        |
| Appendix D: Details on the structure and functioning of the Working Committee.....                 | 76        |
| Appendix E: Update on recommendations made in FIA.....   | 78        |

## List of tables

|   |    |
|---|----|
| Table 1: Key concerns and recommended actions .....   | 2  |
| Table 2: Compliance categories .....  | 10 |
| Table 3: Summary of compliance assessment and rationale for assessment categorization .....   | 11 |
| Table 4: BMM’s response to gaps identified in the CAMP (2019) in the Close-out Report as per revised CAMP (2022).....                                     | 64 |
| Table 5: Dust monitoring commitments identified in the BMP and progress made by BMM since the FIA. ....   | 68 |
| Table 6: Summary of recommendations per clause of BOA (some of outstanding recs from FIA have been carried over and new ones added – not added yet) ..... | 79 |

## Executive summary

### Background

Black Mountain Mining (Pty) Ltd (BMM) is located at Aggeneys in South Africa's Northern Cape Province, within an international biodiversity hotspot. BMM has developed the Gamsberg Zinc Mine, for which it received an Environmental Authorization (EA) from the Northern Cape Department of Agriculture, Environmental Affairs, Rural Development and Land Reform (previously DENC, now DAERL) on 12 August 2013. Conditions 50 to 60 of the EA (Amendment 2) required BMM to secure into perpetuity, as per the requirements of the National Environmental Management Protected Areas Act, 2003 (Act No. 57 of 2003, as Amended) (NEM:PAA, 2003), areas and/or portions which individually or collectively comprise at least the following areas of sustainably intact habitat that contain the following vegetation types:

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

As a result, and in compliance with the EA (Amendment 2), a legal Agreement, namely the Biodiversity Offset Agreement (BOA) was signed between DAERL and BMM (the implementing parties (IPs)) on 16 October 2014. In terms of the BOA (Clause 14.7), an independent review of the implementation of the BOA by an independent auditor or team of independent auditors was required. Amaryllis Biodiversity Consulting (Pty) Ltd (Amaryllis) conducted the First Independent Audit (FIA), comprising both the Initial Independent Audit (IIA) report, submitted in December 2019, and the Close-out Independent Audit Report (CIA), submitted in May 2020. The IP subsequently agreed to undertake the audit every 2 years. The Second Independent Audit (SIA) was undertaken by Amaryllis (Independent Reviewer (IR)) between October 2022 to February 2023. The Final Draft SIA Report was submitted on 24 February 2023. The Final SIA Report incorporating comments from the IPs was submitted to the IPs on 12 December 2023. This summary report outlines the key findings of the SIA. The report aims to inform external stakeholders about performance in key compliance areas and provide key recommendations to improve future compliance performance, with regards to implementation of the BOA which ends on 1 April 2024. The IA shall verify completion of the Biodiversity Offset (14.3) on 1 April 2024. "The term "completion" when used in this clause shall mean the implementation and execution of the Biodiversity Offset, but excludes the continued management and maintenance of the Protected Area thereafter" (Clause 14.4). Further management would fall under the responsibility of the Management Plan (Clause 9) and the Management Authority (Clause 8).

**Key concerns and recommended actions**

The BOA, a condition of BMM’s EA, was achieving many of its conservation objectives and the IPs had demonstrated considerable progress since the FIA however some areas of improvement were identified. Table 1 summarises key concerns and recommended actions for accomplishing the BOA’s objectives

**Table 1: Key concerns and recommended actions**

| Key concerns   | Relevant BOA Clause | Recommendations  |
|--|---------------------|--|
| 1. BMM’s ability to protect sensitive biodiversity on its properties, specifically the genus <i>Conophytum</i> <sup>1</sup> , threatened by on-going poaching rampant throughout the Northern Cape. Particularly since some species have extremely limited distribution ranges with only a single point location on BMM’s land and found nowhere else in the world. This coupled with a shortage of human resources for implementation and management of the set-aside and offset areas <sup>2</sup> . | Clause 5            | <ul style="list-style-type: none"> <li>DAERL to sign off on the Biodiversity Management Plan (BMP, 2019) and Conservation Area Management Plan (CAMP) within three weeks of receiving the final SIA so BMM can proceed with implementation of management plans. On 13 November 2023 DAERL informed IR it had concluded the review of BMP and CAMP. IR needs to verify this during the next IA.</li> <li>BMM to appoint an external contractor to review adequacy of implementation of management and monitoring plans in set-aside areas before end 2023. On 13 November 2023 IR was informed that DAERL had reviewed the BMM and CAMP and additional comments additional conditions were incorporated. IR needs to verify this during the next IA.</li> <li>IPs to implement long-term strategies to protect BMM properties from poaching in collaboration with Provincial and National government. DAERL informed IR the National Response Strategy and Action Plan to Address the Illegal Trade in South African Succulent Flora had been developed. DAERL needs to customize the key elements of the national strategy for its long-term implementation in the Northern Cape context. On 13 November IR was informed Monitoring Protocols had been updated. This would need to be verified during the next audit.</li> </ul> |
| 2. BMM’s ability to purchase and secure the two remaining offset properties before 1 April 2024 (the end of the amended Second Term).  | Clause 6            | <ul style="list-style-type: none"> <li>BMM to prioritise purchasing and securing the two remaining properties.</li> </ul>  |
| 3. DAERL’s ability to declare the additional three properties, once secured and presented by BMM, as Protected Areas before 1 April 2024.  | Clause 7            | <ul style="list-style-type: none"> <li>DAERL to prioritise declaring and transferring additional offset properties once secured and presented by BMM.</li> </ul>   |
| 4. DAERL’s lack of implementation of the Integrated Management Plan (IMP) as the appointed Managing Agent (MA) of the Gamsberg Nature Reserve (GNR).   | Clause 8 & 9        | <ul style="list-style-type: none"> <li>DAERL, as the appointed MA of the GNR, to appoint a Reserve Manager responsible for the implementation of the IMP and game rangers to assist the Reserve Manager in implementation. Following submission of the Draft SIA a Reserve Manager, Mr Ralph van der Poll, was appointed and commenced his duties as GNR Reserve Manager on 1 March 2023 with a visit to all offset</li> </ul>   |

<sup>1</sup> The IR acknowledged significant efforts by BMM, in response to *Conophytum* poaching, such as the installation of surveillance cameras and the appointment of six additional security personal and recognised that these efforts had reduced poaching events considerably.

<sup>2</sup> Note: the implementation of the BOA on the offset properties – namely the Gamsberg Nature Reserve Protected Area - is not assessed by the BOA. Should the IP wish the BOA to assess implementation on the PA’s the BOA would need to be revised and signed by IPs accordingly. See Clause 14.4 pf BOA which states “completion” means implementation and execution of BOA but excludes continued management and maintenance of the PA thereafter.

|   |                     |  |
|---|---------------------|--|
|   |                     | <p>properties. Four Rangers were also appointed and Mr vd Poll met with them on 1 March 2023.</p> <ul style="list-style-type: none"> <li>• A site visit was conducted with the Biodiversity Manager of BMM and GNR Reserve Manager to obtain keys and access to offset farms and to look at accommodation and office space as per BOA.</li> <li>• MA to revise IMP to incorporate KPAs and KPIs that fulfil the original intent (purpose) of the PA as described in BOA.</li> <li>• Although the approved IMP is accompanied by an annual plan of operation which stipulates KPAs, KPIs and budgets aimed at fulfilling the original intent of the BOA. MA should provide an Action Plan/Annual workplan to the Steering Committee focusing on actions that align the IMP with the BOA objectives.</li> </ul>      |
| <p>5. Previous Audit reports were not publicised by Vedanta in their Annual Report to Shareholders as specifically required by the BOA nor made available to the public by DAERL. This could suggest both IPs had a). not given biodiversity risks the necessary attention as specified in the BOA and b). demonstrated a lack of transparency to stakeholders.</p> | <p>Clause 14.10</p> | <ul style="list-style-type: none"> <li>• Vedanta to include the SIA in its Annual Report to Shareholders. Whilst the FIA and CIA were available on Vedanta Zinc International (VZI’s) website. IR was not provide with evidence of BMM or VZI having included either the reports (FIA &amp; CIA) and/or Executive Summaries of either reports in Vedanta’s Annual Report to Shareholders.</li> <li>• DAERL to make the Audit Reports “available for inspection by the public” as specified by the BOA. Although Clause 14.10 states the Audit reports should be included in the provincial legislature this was not required since an Agency was not established. The parties should therefore consider revising the BOA to reflect this. DAERL needs to make the reports available for public comment.</li> </ul> |

**Overall**

The SIA assessed a total of 61 BOA clauses; 38 were not assessed as either they did not contain compliance obligations (28) for either of the parties or they were not yet applicable at the time of the audit (as timeframes had not yet been reached and work was still in progress to ensure completion within the specified timeframe) or decisions had been taken which resulted in them no longer requiring assessment (10). Of the 61 clauses assessed during the SIA, 28 were compliant (C), 17 were compliant but late (C-L), 15 were only partially compliant (P-C), one clause was assessed as non-compliant (N-C). Clauses italicised and highlighted in grey in Table 3 were not assessed.

Overall, the IR observed considerable progress by the IP in steps taken to achieve compliance on a number of the BOA provisions. BMM had made a concerted effort to improve protection of the set-aside properties through improved management plans and monitoring programmes incorporating many of IR’s recommendations; however, some of these still required DAERL sign-off and implementation. BMM and DAERL had demonstrated good cooperation and rapid responses to poaching. This good cooperation was evidenced in numerous clauses that had shifted closer to compliance status since the FIA. However there was still considerable work to be done to achieve the BOA’s intended conservation objectives.

**Clause 3: General Duties of the Parties**

| Compliant (C)      | Compliant-Late (C-L) | Partially Compliant (P-C) | Not Compliant (N-C) | Not Assessed (N-A) | No Compliance obligation (NCO) |
|--------------------|----------------------|---------------------------|---------------------|--------------------|--------------------------------|
| 3.1, 3.4; 3.5; 3.7 | 3.9                  | 3.3                       |                     | 3.6; 3.8           | 3.2                            |

The IR found that the IPs had cooperated well on implementation of the BOA. Formal communications between the IPs had improved and they had acted in good faith. However, there were still some examples where efficient cooperation could have been improved. The IPs found that there were lengthy delays in DAERL compiling the Gamsberg Nature Reserve (GNR) IMP<sup>3</sup>, confirming the provisions required for the accommodation and office units in the GNR, implementing the IMP and signing off documents such as the Biodiversity Management Plan (BMP) and CAMP. Delays from BMM’s side included finalization and implementation of management plans and purchase of offset properties, both actions were reliant on other parties which had hindered progress.

**Clause 5: Protection of the BMM Properties**

| Compliant (C) | Compliant-Late (C-L) | Partially Compliant (P-C) | Not Compliant (N-C) | Not Assessed (N-A) | No Compliance obligation (NCO) |
|---------------|----------------------|---------------------------|---------------------|--------------------|--------------------------------|
| 5.2           |                      | 5.1; 5.3; 5.4             |                     |                    | 5.5                            |

Poaching in the Northern Cape had become rampant since the FIA, particularly of succulents and more specifically the genus *Conophytum*. Some incredibly rare and threatened species found only on BMM set-aside and offset properties, and nowhere else in the world, had been severely impacted by poaching incidents. BMM had demonstrated good cooperation with DAERL and other parties in responding to poaching incidents. BMM had installed an extensive network of surveillance cameras in the region and had implemented anti-poaching measures which seem to have stalled poaching incidents on BMM’s properties aside from at the Nursery. The IR found BMM had made considerable improvements to its Management Plans, particularly the CAMP. The BMP (2015) had been updated but had not yet incorporated the CAMP. Although BMM informed IR was DAERL’s had signed-off on both documents and incorporated additional conditions this would need to be verified by IR in the next Audit. Previous exploration activities on the set-aside properties meant the clause would remain partially-compliant.

**Clause 6: Declaration of additional land as protected environment and/or nature reserve**

| Compliant (C) | Compliant-Late (C-L) | Partially Compliant (P-C)              | Not Compliant (N-C) | Not Assessed (N-A)             | No Compliance obligation (NCO)                                       |
|---------------|----------------------|--|---------------------|--------------------------------|--|
| 6.2           | 6.5                  | 6.3; 6.3.1; 6.3.2; 6.3.3; 6.3.4; 6.4.1 |                     | 6.1.1; 6.1.2; 6.4.2; 6.6; 6.11 | 6.7; 6.7.1; 6.7.2; 6.8; 6.9; 6.9.1; 6.9.2; 6.9.3; 6.9.4; 6.9.5; 6.10 |

IR noted that BMM has been trying, over the past two and a half years, to secure additional properties, namely Portion 1 (Hotson) of Wortel 42 and REM of Haramoep 53. Ptn 1 of Wortel had been secured and transfer was in progress. However, IR remained concerned whether BMM would be able to secure the two additional properties required before 1 April 2024.

**Clause 7: Requirements regarding the properties**

| Compliant (C)                 | Compliant-Late (C-L) | Partially Compliant (P-C) | Not Compliant (N-C) | Not Assessed (N-A) | No Compliance obligation (NCO) |
|-------------------------------|----------------------|---------------------------|---------------------|--------------------|--------------------------------|
| 7.2; 7.4; 7.4.1; 7.4.2; 7.4.3 | 7.1.1; 7.1.2         | 7.3                       |                     |                    |                                |

No additional properties had been transferred since the FIA, therefore no additional properties could have been proclaimed as part of the PA. The IR remained concerned DAERL would be able to declare additional properties,

<sup>3</sup> IA recognizes some of these delays were related to COVID.

once secured by BMM, as part of the GNR before 1 April 2024. Clause 7.3 dealt with fencing of the Biodiversity Offset Farms. BMM had spent over R7m and all materials had been delivered since November 2022. However, fencing only commenced at the time of submission of the Draft SIA. By the 28 Feb 2022 approx. 6km of fencing had been complete. Therefore, the rating for this was Clause was revised to partially compliant, work in progress.

**Clause 8: Management Authority**

| Compliant (C) | Compliant-Late (C-L) | Partially Compliant (P-C) | Not Compliant (N-C) | Not Assessed (N-A) | No Compliance obligation (NCO)     |
|---------------|----------------------|---------------------------|---------------------|--------------------|------------------------------------|
|               |                      |                           |                     |                    | 8.1.1; 8.1.2; 8.1.3; 8.2; 8.3; 8.4 |

Although the MA was assigned on 5 August 2019, the IR concurs with BMM’s concerns regarding lack of implementation of the IMP. IR acknowledges the appointment of the Reserve Manager and Field Rangers, after submission of the Final Draft SIA , effective from 01 March 2023 would go a long way to ensuring implementation of the IMP.

**Clause 9: Management Plan**

| Compliant (C)                                   | Compliant-Late (C-L) | Partially Compliant (P-C) | Not Compliant (N-C) | Not Assessed (N-A) | No Compliance obligation (NCO) |
|---|----------------------|---------------------------|---------------------|--------------------|--------------------------------|
| 9.4.2; 9.4.2; 9.4.3; 9.4.4; 9.4.5; 9.4.6; 9.4.7 | 9.1; 9.3             | 9.2                       |                     |                    |                                |

The GNR IMP was approved by the MEC of DAERL on 1 September 2021. It was submitted two years after the MA was appointed, just over a year after its due date. The IR found that the objectives of the IMP, namely to ensure protection, conservation and management of the PAs, were consistent with the objectives of the National Environmental Management Protected Areas Act, 2003 (Act No. 57 of 2003). However, the nuances required to ensure protection of the BOA’s specific habitats and vegetation types and ensure alignment with the specific conservation objectives stipulated in the BOA were found to be lacking. IR was informed this concern would be addressed during the review of the document in Q1 2024. Interested parties were consulted prior to its finalisation but not within the legislated 12-month period. The main concern was that the IMP had not begun to be implemented, leaving the protected area exposed.

**Clause 10: Financial Provisions**

| Compliant (C)                          | Compliant-Late (C-L)  | Partially Compliant (P-C) | Not Compliant (N-C) | Not Assessed (N-A) | No Compliance obligation (NCO) |
|--|---|---------------------------|---------------------|--------------------|--------------------------------|
| 10.2; 10.3; 10.4; 10.7.2; 10.8; 10.11; | 10.6.1; 10.6.2; 10.7; 10.7.1; 10.9; 10.9.1; 10.9.2; 10.9.3; 10.10; 10.10.1; 10.10.2 |                           |                     | 10.1; 10.11        | 10.5; 10.6.                    |

All payments required by BMM had been made into the Trust, including payments for two offices, three accommodation units and servicing of vehicles, none of which were in use yet. Since the IMP had not yet been implemented, the IR could not assess whether provisions made for implementation and operation of the Biodiversity Offset were sufficient.

**Clause 12: Steering Committee**

| Compliant (C)         | Compliant-Late (C-L) | Partially Compliant (P-C) | Not Compliant (N-C) | Not Assessed (N-A) | No Compliance obligation (NCO) |
|-----------------------|----------------------|---------------------------|---------------------|--------------------|--------------------------------|
| 12.1; 12.2.2; 12.2.3. |                      | 12.2; 12.2.1.             |                     | 12.2.4.            |                                |

The Steering Committee (SC) was found to be functioning more effectively than in the FIA. Meetings were being held, although not twice a year as required. Since the IMP had not been implemented, the SC could not oversee or co-ordinate its implementation or adequacy of the biodiversity outcomes and/or effective management thereof. IRs recommendations were well received by the IPs and IR noted many had been taken on-board.



**Clause 13: Liaison Committee**

| Compliant (C) | Compliant-Late (C-L) | Partially Compliant (P-C) | Not Compliant (N-C) | Not Assessed (N-A) | No Compliance obligation (NCO) |
|---------------|----------------------|---------------------------|---------------------|--------------------|--------------------------------|
|               |                      | 13.1; 13.2.               |                     |                    |                                |

Following the FIA the IPs found duplication of functions in various committees. To avoid this it was recommended that committees be rationalized and instead of an LC an Advisory Committee (AC) be established in line with the requirements of the NEM:PAA 2003. The AC was included on page 32 of the IMP. Therefore, instead of a LC being established a Working Committee (WC) was established which basically fulfilled the same functions as the LC. The WC had a terms of reference and was chaired by IUCN. Going forwards the LC would be replaced by the Advisory Committee. The BOA therefore needed to be amended to stipulate that the LC was made redundant and had been replaced by the AC.

**Clause 14: Monitoring and reporting**

| Compliant (C) | Compliant-Late (C-L) | Partially Compliant (P-C) | Not Compliant (N-C) | Not Assessed (N-A) | No Compliance obligation (NCO) |
|---------------|----------------------|---------------------------|---------------------|--------------------|--------------------------------|
|               |                      |                           | 14.10               |                    |                                |

BMM/ and/or Vedanta had not fulfilled the specific requirement of the BOA namely to include the Audit Reports (IIA & CIA together comprising the FIA) in its Annual Report to shareholders. Although IR acknowledged both reports had been uploaded on the VZI website<sup>4</sup>.

DAERL had not made either of the reports “available for inspection by the public” as specified in the BOA.

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<sup>4</sup> Close-out Independent Audit Report: [https://vedanta-zincinternational.com/wp-content/uploads/2021/04/Gamsberg-Close-out-Independent-Audit-Report\\_FINAL\\_Amaryllis\\_15-May-2020.pdf](https://vedanta-zincinternational.com/wp-content/uploads/2021/04/Gamsberg-Close-out-Independent-Audit-Report_FINAL_Amaryllis_15-May-2020.pdf);  
 First Independent Audit Report: [https://vedanta-zincinternational.com/wp-content/uploads/2021/04/Final-Gamsberg-Independent-Audit\\_Amaryllis\\_5-December-2019.pdf](https://vedanta-zincinternational.com/wp-content/uploads/2021/04/Final-Gamsberg-Independent-Audit_Amaryllis_5-December-2019.pdf)

## Acronyms and abbreviations

|                |   |
|----------------|---|
| AC             | – Advisory Committee  |
| BMM            | – Black Mountain Mining Pty Ltd   |
| BMP            | – Biodiversity Management Plan  |
| BPMP           | – Biodiversity Performance Monitoring Protocol  |
| BOA            | – Biodiversity Offset Agreement   |
| BOR            | – Biodiversity Offset Report  |
| CAMP           | – Conservation Area Management Plan   |
| CIA            | – Close-out Independent Audit   |
| DEA            | – Department of Environmental Affairs   |
| DAERL          | – Department of Agriculture, Environmental Affairs, Rural Development and Land Reform (previously DENC as stipulated in BOA)                    |
| DMR            | – Department of Mineral Resources   |
| DRPW           | – Department of Roads and Public Works, Northern Cape Province  |
| EA             | – Environmental Authorization   |
| EIA            | – Environmental Impact Assessment   |
| EMP            | – Environmental Management Plan   |
| ENS            | – Edward, Nathan and Sonnenberg Africa  |
| ESIA           | – Environmental and Social Impact Assessment  |
| EMPr           | – Environmental Management Programme report   |
| EWT            | – Endangered Wildlife Trust   |
| FFI            | – Fauna and Flora International   |
| FIA            | – First Independent Audit   |
| GIIP           | – Good International Industry Practice  |
| GMARR          | – Gamsberg Management Audit Response Report   |
| HOD            | – Head of Department  |
| IA             | – Independent Audit   |
| IIA            | – Initial Independent Audit   |
| IMP            | – Integrated Management Plan  |
| IP             | – Implementing Parties (BMM and DAERL)  |
| IR             | – Independent Reviewer  |
| IUCN           | – International Union for Conservation of Nature  |
| LC             | – Liaison Committee   |
| LOM            | – Life of Mine  |
| MA             | – Management Authority  |
| MEC            | – Member of Executive Committee Department Agriculture, Environmental Affairs, Rural Development and Land Reform (DAERL) Northern Cape Province |
| MP             | – Management Plan   |
| MPRDA          | – Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)  |
| NEM:PAA (2003) | – National Environmental Management Protected Areas Act, 2003 (Act No 57 of 2003)   |
| NGO            | – Non-Governmental Organisation   |
| ROD            | – Record of Decision  |
| RVT            | – Recognized Vegetation Types   |
| SC             | – Steering Committee  |

SIA – Second Independent Audit  
WC – Working Committee  
WUL – Water Use License  
VZI – Vedanta Zinc International

## Definitions

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

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

First Time Period: 30 March 2016

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

## 1. Introduction and project background

### 1.1 Requirement for an independent audit

A Biodiversity Offset Agreement (“BOA” or “the Agreement”) between Black Mountain Mining Ltd (hereafter referred to as BMM) and the Department of Agriculture, Environmental Affairs, Rural Development and Land Reform (previously DENC, hereafter referred to as “DAERL”) was signed on the 16 October 2014. The BOA required a review of the implementation of the Agreement in terms of Clause 14.3 to 14.10 of The Agreement by an Independent Auditor or team of Independent Auditors. The Independent Audit (IA) was required to be undertaken every five years with the first review to commence upon expiry of the five-year period taken from the date of signature of the Agreement/BOA.

In response to this legal requirement, International Union for Conservation of Nature and Natural Resources (IUCN) as the independent party responsible for managing the commercial appointment process for BMM, appointed Amaryllis Biodiversity Consulting (Pty.) Ltd. (“Amaryllis”) to undertake the First Independent Audit (FIA). The FIA comprised the Initial Independent Audit (IIA) submitted to DAERL and BMM on 5 December 2019 and the subsequent “Close-out Independent Audit” (CIA), a stand-alone document that made reference to the IIA, submitted to DAERL and BMM on 15 May 2020.

Although the BOA requirement was for an IA every five years the IA recommended audits rather be undertaken every two years. This recommendation was accepted by both Implementing Parties (IP) (BMM and DAERL). IUCN subsequently notified Amaryllis, via email, of the call for interest for the Second Independent Audit (SIA) of the Gamsberg BOA for the Black Mountain Mine: Gamsberg Zinc Mine (Gamsberg) in South Africa. Following an open tender process in 2022, the members of the BOA Steering Committee (SC) selected Amaryllis to conduct the SIA of the implementation of the BOA at BMM. Amaryllis submitted a technical and financial proposal to IUCN on 5 April 2022 based on the Terms of Reference provided by IUCN. On 15 September 2022 Amaryllis signed a contract with IUCN. The SIA, building on the findings and methodology of the FIA, was undertaken over the period of October 2022 to February 2023 and the Draft SIA Report was submitted to representatives of the IP reporting to the Gamsberg Biodiversity Offset Agreement Steering Committee on 24 February 2023 for their review and comments.

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

The BOA was developed as a condition of the Environmental Authorization (EA) BMM obtained from DAERL for its Gamsberg Zinc Mine (Gamsberg) on 12 August 2013. The BOA constitutes a legal agreement, signed between DAERL and BMM.

Conditions 49 of the EA require BMM to secure protection of certain areas of habitat in perpetuity, through one or more of the mechanisms prescribed in Section 20 or 23 of the National Environmental Management Protected Areas Act, 2003 (Act No. 57 of 2003, as Amended hereafter referred to as NEM:PAA 2003). BMM was required to identify areas and/or portions of areas of land which individually or collectively comprise the following areas of sustainably intact habitats that house the following vegetation types (as defined by Mucina L and Rutherford MC (eds) 2006):

- At least 3 700 ha of land comprising Aggeneys Gravel Vygieveld, including those component habitats supporting quartz gravel communities and those that are range-restricted or which support localised and endemic plant species;
- At least 3 200 ha of Bushmanland Inselberg Shrubland, including those habitat units supporting large succulent plants on the south facing aspects;

- At least 4 000 ha of Bushmanland Arid Grassland, including those component habitats supporting calcrete gravel communities;
- At least 2 000 ha of Azonal vegetation types compromising Bushmanland ephemeral river courses and outwash plains; and
- The land required to be secured by BMM in terms of clause 6.1 of the BOA shall be set aside and declared as a nature reserve and/or a protected environment in terms of sections 23 or 28 of the NEM:PAA (2003), respectively.

### 1.3 Scope of work and objectives of an independent audit

Clauses 14.7 to 14.10, of the BOA clearly defined the scope of the IR, which focused on implementation and execution of the Biodiversity Offset. The purpose of the Second Independent Audit was to:

- Determine compliance progress with the provisions of the BOA by The Parties (BMM and DAERDLR) building on the findings of the CIA<sup>5</sup>. The review focused on: the 14 clauses for which the parties were identified as being partially compliant; the 7 clauses assessed as non-compliant in the CIA; any updates on clauses previously assessed as compliant (including clauses 3.3, 3.5, 3.7, 3.9, 5.3, 5.4, 6, 7.3, 8, 9, update on clause 10 for payments since last review, update review on clause 12 and 13 since last review), in addition to clauses that could previously not be assessed during the FIA due to the fact that timeframes had not yet been reached and work was still in progress to ensure completion within the specified timeframe;
- Determine alignment with recommendations from the FIA;
- 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 require the IA to issue a certificate of compliance confirming completion of the Biodiversity Offset as specified in the BOA. Should the IA conclude that any aspect of the Biodiversity Offset has not been completed it shall provide the Steering Committee with written reasons for this opinion and provide recommendations regarding actions to be taken to achieve completion as described in the Audit Report.

The IA was required to submit a copy of the Audit Report to DAERL and BMM. Each party was subsequently required, as stipulated in Clause 14.10 of the BOA, to 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 (DAERL) as required”.

### 1.4 Report limitations and assumptions

As agreed with IP a number of components of the BOA were excluded from the scope of work. Clauses not assessed (N-A) during the FIA or SIA included:

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<sup>5</sup> As per the Close-out Audit: 47 clauses of the BOA were assessed and 53 were not assessed. Of the 47 clauses assessed 18 were compliant (C), eight were completed but late (C-L), 14 clauses were partially compliant (PC) and 7 clauses were not compliant (N-C).

- Clause 4 – since it only defined the Biodiversity Offset and roles and responsibilities of the IP and did not include any implementation obligations for the IP. These were then assessed under the respective Clauses 5, 6, 7, 8 and 9;
- Clauses 6.8 to 6.10 - as Suitable Alternative Properties were not investigated by either IP;
- 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. No revenue had been generated from the offset properties since the implementation of the BOA and could therefore not be deployed;
- Clauses 14.3 to 14.6. since IUCN and IP recognised the Biodiversity Offset was not yet completed at the time of undertaking the FIA and due to the extension of the Second Time Period to 1 April 2024;
- Clause 14.8 required an assessment of whether the financial contributions of Clause 10.7 (Annual payment of R 3,500,000.00 for maintenance and operation of the Biodiversity Offset) were sufficient for maintenance and operation of the seven properties comprising the PAs. It was not possible to assess yet since the IMP was not being implemented; and
- Clauses 15 to 21 and Clause 24 as these were not applicable.

Clauses 5.5; 9.2 to 9.4.; 12.2.2; 12.2.3 and 13 were not assessed during the FIA but were assessed during the SIA.

## 1.5 Report structure

The SIA followed the same structure and methodology as the FIA Report. The report is divided into seven key sections:

- **Introduction and Project Background:** covers the project background, scope of work, objectives of the IA, limitations and assumptions;
- **Regulatory Framework:** provides a brief overview of applicable legislation and conditions of the Gamsberg EA relevant to the BOA;
- **Methodology and Approach:** outlines documents reviewed, interviews and discussions held, site visit undertaken, outline of compliance categories and assumptions regarding compliance categorisation;
- **Findings and Observations:** focuses on the IP compliance with each clause. The key findings are summarised in Table 3.
- **Discussion:** provides additional consideration and elaboration on key issues;
- **Recommendations:** highlights key recommendations to achieve implementation of the biodiversity offset according to the BOA;
- **Conclusions:** briefly summarises the findings and observations based on the IP compliance with the provisions of the BOA.

## 2. Regulatory framework

### 2.1 Applicable legislation

The National Environmental Management Act, 1998 (Act No. 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 (Act No. 108 of 1996). Amongst other things, NEMA includes a number of principles for environmental management (section 2) that apply to environmental decision-making. These include the “polluter pays” principle, the requirement to follow a “risk-averse and cautious approach” to decisions that may affect the environment and the requirement to remedy adverse impacts on the environment, including impacts on biodiversity. Section 24 requires that environmental authorisation be obtained prior to the commencement of

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

Although no formal legislated regime for offsets exists, at the intersection of the requirements referred to above lies some of the grounding principles for biodiversity offsetting. Furthermore, at a policy level, a draft national policy on offsets was developed in 2012, which was updated and published in 2017<sup>6</sup>. It has not yet been finalised. Guidelines exist for two provinces, being the Western Cape Guidelines on Biodiversity Offsets (revised 25 March 2015) and the Concise Guideline: Biodiversity Offsets in KwaZulu-Natal (February 2013). No guidelines for biodiversity offsets in the Northern Cape are known to the IR. Biodiversity offsets in South Africa are aimed at achieving no net loss in relation to conservation targets, thereby protecting vulnerable and endangered ecosystems.

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

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

## 2.2 Conditions of environmental authorisation

The requirement for the BOA arises from the conditions of authorisation granted to BMM for Gamsberg and associated infrastructure. Since the authorisation was issued on 13 August 2013, it has been amended twice, with the latest amendment dated 2 December 2014.

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

- BMM secures specified areas of vegetation types in perpetuity (condition 50) within 5 years of the commencement of the activities authorised in terms of the EA (condition 54);
- An agreement be prepared and signed by the parties within 1 year of the receipt of the EA (i.e. before 13 August 2014) (conditions 51, 55 and 57);
- BMM establish and provide operational support to a LC, to oversee the implementation and management of the agreement (condition 57);
- BMM sets aside those natural portions of its own properties not being actively mined (condition 59); and
- BMM prepare a BMP, for approval by DAERL (condition 59 and 60).

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<sup>6</sup> Government Notice 276 in *Government Gazette* 40733 of 31 March 2017.

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

### 3. Methodology and approach

#### 3.1 Document review

IP provided IR with documentation on a Data Sharefile. All documents reviewed during the IIA, CIA and SIA are listed in Appendix A. Documents reviewed during the SIA are listed under the relevant Clause which lead to Table 2, included in the CIA report, being omitted from the SIA.

#### 3.2 Independent Audit Framework

Building on the findings of the FIA the review framework included the following key steps or tasks:

- a) **Document review:** Review of documentation, as outlined in Section **Error! Reference source not found.**, including the two reports (Initial and Close-out) comprising the FIA and subsequent management response report compiled by the parties.
- b) **Effectiveness of implementing parties:** Assessment of the general duties of the implementing parties since the FIA and whether recommendations made in the First Audit were taken on-board by the parties to improve collaboration, communication and BOA implementation.
- c) **Protection of the BMM properties:** Further to the findings of the FIA the IA will assess the protection of the biodiversity and ecological functioning of the surface areas of the BMM properties (two set-aside areas). IA will assess revision and implementation of the Biodiversity Management Plan (BMP), implementation of the integrated biodiversity monitoring system and implementation of a broader strategy to assess impacts on the set-aside areas. Assess the management of the BMM properties in accordance with the requirements of the Environmental Management Plan (EMP) and/or BMP.
- d) **Protection of Gazetted Nature Reserve:** Review of progress in protecting the gazetted Gamsberg Nature Reserve properties since the FIA. The IA will assess whether these properties have been fenced and how they have been managed since the FIA.
- e) **Purchase of required properties for protection:** The Parties (DAERL & BMM) agreed to extend the Second Time Period to 1 April 2024 for BMM to buy the three (3) remaining properties, to secure the remaining portions of sensitive habitats where these existed. At the time of conducting the FIA, BMM was in the process of trying to secure an additional B1 property, which had recently become available for purchase. Based on the findings of the FIA the IA will assess whether BMM has identified and/or conserved any additional 'conservation-worthy' properties as stipulated in the BOA.
- f) **Protected Area Management Authority and Management Plans:** Assess whether the Management Authority has been performing its duties as per the specified requirements of the BOA and whether the Management Plans were submitted and presented to MEC for approval as required, and have been implemented since the FIR.
- g) **Financial provisions:** Assess whether payments in respect of maintenance and operation of the biodiversity offset were made in accordance with requirements of the BOA and whether any outstanding payments for the capital costs for establishment of the protected area were made. Following the FIA, an Action Plan was compiled by The Parties regarding payment requirements and timeframes as per Clause 10 of the BOA to ensure any future payments required for additional farms that need to be purchased until 1 April 2024 would be done within the relevant timeframes. The IA will assess whether this Action Plan has been implemented.
- h) **Steering Committee and Liaison Committee:** Review documentation to assess effectiveness of the Steering Committee and Liaison Committee in progressing implementation of the BOA, since the FIA, and verify



appropriate reporting and monitoring has been taking place. Also assess whether new procedural rules, developed prior to the Close-out audit, to improve the efficiency of both committees have been implemented.

The document review built on the findings of the FIA and focused on the following key questions, with further supporting evidence to be sought through site visits and discussions:

- Has implementation since the FIA followed the relevant plans and agreements?
- Have stakeholders or key players met their responsibilities and improved effective cooperation and implementation where challenges were identified during the FIA?
- Have there been any delays in implementation of the requirements specified in the BOA and/or recommended actions since the FIA?
- Have the appropriate sums of money been invested and/or spent?
- Have ecosystems and biodiversity developed in line with expectations?
- Have there been any additional shortcomings since the FIA?

In addition, the IA would focus on whether recommendations made during the Close-out Report were implemented effectively and would assess available evidence to demonstrate this, including but not limited to:

- Have both parties improved implementation efficiency of the BOA?
- Has management of the Protected Areas improved?
- Has there been declaration of additional land as protected environment and/or nature reserve? If Yes, has DAERL ensured transfer of properties as soon as reasonably possible?
- Have the properties been fenced?
- Has DAERL effectively developed and implemented the Management Plan?
- Have both parties addressed the financial requirements regarding the costs for the vehicles' maintenance and the need for offices and accommodation when they become necessary?
- Has the Gamsberg Nature Reserve Trust been operational?
- Have both parties worked on the required amendments of the BOA and EA when and where required?

Written submission of clarification questions was sent to IP and responses were provided in writing.

### 3.3 Site visit

Rowena Smuts (Amaryllis' Lead IA) visited the mine site between Tuesday 29 November and Saturday 3 December 2022. Whilst on site she was accompanied by BMM's Biodiversity Manager Jacobus Smit, and Biodiversity Officer Niel McDonald, DAERL's Production Scientist: Grade A District Ecologist Peter Cloete, Dr Rachel Asante-Owusu (Program Manager at IUCN) and Dr Marie Parramon Gurney (Independent Consultant at IUCN).

### 3.4 Compliance assessment

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

- Compliant (C), all actions outlined in the clause were completed and where a specific timeframe was stipulated in the BOA activities were completed within the required timeframe. A clause was only assessed as compliant if the IP were fully compliant with the clause;
- Compliant but Late (C-L), the objective of the clause was achieved and all necessary activities were completed. No further actions were required. However, the IP did not complete the required actions within

the timeframe specified by the BOA. \*Note: This category was added after the Initial IA Report was completed;

- Partially Compliant (P-C), some of the activities in the clause had been completed but not all and further actions were required to achieve compliance. The IP were assessed as P-C with a clause if more than 50% of the requirements had been met and these were tangible. Since large areas of sensitive habitat had been secured clauses 6.3.1 to 6.3.4 were assessed as P-C. Where the IP had taken considerable steps to progress compliance this was noted in the report;
- Not Compliant (N-C), where the parties had made some progress in the right direction but there was still nothing tangible. Where part of any clause was non-compliant the IR generally assessed the whole clause as not compliant;
- No Compliance Obligation (NCO), where clauses did not have compliance obligations; and
- Not Assessed (N-A), where there was no implementation obligation to either IP and/or information was missing preventing the clause from being assessed i.e. the MP could not be assessed since it had not yet been developed at the time of the Initial IA; or if a time frame had not yet been reached and therefore the clause could not yet be assessed.

## 4. Findings and observations

Compliance with each clause of the BOA and a brief rationale for the IR's conclusions is summarised in Table 3.

**Table 2: Compliance categories**

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

**Table 3: Summary of compliance assessment and rationale for assessment categorization**

| Clause                                    | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
|---|--|--|--|
| <b>3. GENERAL DUTIES OF THE PARTIES -</b> |  |  |  |
| *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 <sup>7</sup> protection and maintenance of the areas of land contemplated in clause 5. | C  | <ul style="list-style-type: none"> <li>• Following the FIA the IA found the IP’s took the IR recommendations seriously and responded constructively to most of these.</li> <li>• The IP’s responded to the IAs recommendations by developing an “Improvement Plan” (providing guidance on: Document Control, Rules of Engagement, SC &amp; LC meetings, Meeting Agendas &amp; Structure).                             <ul style="list-style-type: none"> <li>○ Document Control improved since the FIA.</li> <li>○ Although a dedicated secretariat with clear roles and responsibilities was not appointed; key personnel from BMM and DAERL assisted with streamlining meeting processes. See Section <b>Error! Reference source not found.</b> of Report and responses to Clause 12 (SC). During the SC meeting held on Oct 2022 the Personal Assistant of BMM’s COO was proposed as the secretariat going forwards. Formal communications between the IPs were observed to have improved since the FIA: all correspondence was done in formal letters between BMM and DAERL and managed by K Smit and A Abrahams. However, responses were not always within the specified 72 hrs<sup>8</sup>. This short response-time was considered unrealistic by the IPs and may require revision. Response time could still be improved.</li> <li>○ A Working Committee was established at the request of the MEC. Although not a formal requirement of the BOA this assisted with effective implementation of the BOA. See Section <b>Error! Reference source not found.</b> of Report and responses to Clause 12 (SC).</li> </ul> </li> </ul> |

<sup>7</sup> For the purposes of the IR “ongoing” was taken to mean during the initial five-year implementation period.

<sup>8</sup> IA noted response times of two weeks to a month: i.e. BMM’s letter to DAERDRL submitted on 14 January 2022 was replied to on 26 January 2022; BMM’s letter on 1 February 2022 was replied to by DENC on 28 February 2022.

| Clause | Description | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
|--------|-------------|--|---|
|        |             |  | <ul style="list-style-type: none"> <li>○ Actions were being effectively undertaken with appropriate follow-up.</li> <li>● Evidence of the IP’s cooperating in good faith is demonstrated by the establishment of a Working Committee (WC), including representatives of BMM and DAERL, which meets regularly and is reportedly working well. Record keeping of communications between the IP’s seems to have improved through this platform.</li> <li>● IR found the IP generally acted in good faith<sup>9</sup> and had not obstructed each other in implementation of the BOA. IR found transparent communications had ensued between the IPs.</li> <li>● However, IR found they had not always cooperated efficiently with each other to ensure timely implementation of the agreement. Both BMM and DAERL contributed to delays in implementation and execution of the Biodiversity Offset. Some examples include:                         <ul style="list-style-type: none"> <li>○ DAERL, acting in its role as MA, had delayed the completion of the IMP (See also responses to Clause 9).</li> <li>○ DAERL, acting in its role as MA, had not commenced implementation of the IMP (See also responses to Clause 9);</li> <li>○ DAERL had delayed responding to BMM regarding provisions required for accommodation and office units in the GNR.</li> <li>○ Transfer of the PA properties to DRPW had taken an extraordinary amount of time.</li> </ul> </li> <li>● BMM and DAERL had demonstrated good cooperation in how they had dealt with succulent poaching.</li> <li>● The protection and maintenance of the BMM set-aside properties is addressed in detail under Clause 5.</li> </ul> |

<sup>9</sup> BMM and DAERL have been and will continue to be committed to act in good faith regarding the implementation of the BOA. Good faith in this regard was defined as the honest communication and commitment with a sincere intention to deal fairly with others and encompassed a sincere belief or motive without any malice or the desire to defraud others.

| Clause | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
|--------|---|--|--|
| 3.2    | <p>BMM shall not be considered to be in breach of any of its obligations under this Agreement, if due to no fault of its own (i.e. where any such delays are beyond the direct control of BMM), the declaration of protected areas contemplated in clause 6 have not been finalised to the point where the requisite notices have been published in the <i>Gazette</i>. BMM shall provide documentary evidence to DAERL (including but not limited to written offers to purchase and/or lease the properties and written rejections of such offers) in support of any such reliance on this clause.</p> | NCO  | <ul style="list-style-type: none"> <li>• Since the Gamsberg Nature Reserve was gazetted on 5 August 2019 no additional properties have been added to the Nature Reserve.</li> <li>• IR confirmed BMM had provided written documentary evidence to DAERL regarding written offers to purchase additional farms and rejections of such offers:                         <ul style="list-style-type: none"> <li>○ In a letter dated 11 September 2019 BMM provided DAERDRL with an update on the status of the Biodiversity Offset implementation: Farms purchased, proposed farms to purchase, shortfalls in vegetation types and how the proposed farm purchases would address these shortfalls.</li> <li>○ In the letter dated 12 January 2022 BMM requests DAERDRL’s confirmation of the proposed purchase of REM farm Haramoep 53 and Portion 1 of Farm Wortel 42.</li> <li>○ At the time of undertaking the SIA BMM’s Offer to Purchase for Portion 1 of the farm Wortel 42 had been signed by BMM and the landowner and the transferral of the property was in progress from the landowner. IR was also provided with evidence of BMM’s letter, dated 29 July 2022, notifying DAERL of its offer to purchase. The transferral of Ptn 1 of Wortel 42 was in progress.</li> <li>○ BMM has not yet formally notified DAERL of its recent discussions with landowners of: a) Namies North 146 and Remainder of Farm Namies North 146, on 4 November 2022 and b) Portion 1 of Farm Haramoep, on 5 December 2022, as it is awaiting counter signature of notes of the meeting before submitting to DAERL.</li> </ul> </li> <li>• Based on communications presented to IR the IPs were appropriately implementing the Action Plan<sup>10</sup>.</li> </ul> |

<sup>10</sup> Following the Initial IA Report the IP compiled an Action Plan for future tracking of the three additional properties that need to be secured to ensure compliance to timeframes of presenting the properties to DAERL, declaration by DAERL, payment of financial contributions etc. Written communication between the parties would be implemented regarding any future properties including, but not limited, to the following:

| Clause | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
|--------|--|--|--|
|        |  |  | <ul style="list-style-type: none"> <li>See Clause 6.4.2 and Section <b>Error! Reference source not found.</b> of Report for additional detail.</li> </ul>  |
| 3.3    | BMM and DAERL shall implement and execute the Biodiversity Offset in accordance with the relevant clauses of this Agreement and/or the provisions of the Management Plan (where applicable) to be prepared in terms of this Agreement. | P-C  | <ul style="list-style-type: none"> <li>This Clause relates to general implementation of all Clauses in the BOA.</li> <li>Summary of Compliance Assessment for SIA<sup>11</sup>: C – 28, C-L – 17, P-C – 9, N-C – 8, Not assessed – 21, NCO – 17.</li> <li>Summary of Compliance assessment for Close-out Independent Audit: C – 18, C-L – 8, P-C – 14, N-C – 7, Not assessed – 36, NCO – 17. (Included for ease of Reference)</li> <li>Summary of Compliance Assessment for Initial Independent Audit: C – 4, P-C – 11, N-C – 26, Not Assessed – 43. (Included for ease of Reference)</li> <li>The increase in compliant clauses, from 18 to 26, is primarily due to the Management Plan having been completed. Some of the C-L and P-C clauses cannot be shifted to C (e.g. Clause 6.3.4) irrespective of what additional activities BMM/DAERL undertake. Clause 6 has a number of clauses (6.1 – 6.6) that might still attain compliance in the next Audit after Second Time Period has been reached.</li> </ul> |

- BMM presenting / making the properties available for declaration;
- Acknowledgement of receipt of letter from BMM presenting the properties for declaration by DAERL, including the anticipated timeframes and steps for declaration of additional land as part of Gamsberg Nature Reserve;
- Presentation of Properties at earliest SC Meeting;
- Follow-up engagement and weekly update of the tracker to track progress (will be submitted to all SC and LC Members on weekly basis); and
- Furthermore, actions/responsibilities of individual members would be tracked and DAERL and BMM would hold each other accountable on a weekly basis.

<sup>11</sup> Summary of Compliance assessment of all Clauses assessed in BOA:

C: 3.4; 3.5; 3.7; 5.2;6.2; 7.2; 7.4; 7.4.1; 7.4.2; 7.4.3; 9.4.2; 9.4.2; 9.4.3; 9.4.4; 9.4.5; 9.4.6; 9.4.7; 10.2; 10.3; 10.4; 10.7.2; 10.8; 10.11; 11.1; 12.1; 12.2.2; 12.2.3. (27)

C-L: 3.9; 6.5; 7.1.1; 7.1.2; 9.1; 9.3; 10.6.1; 10.6.2; 10.7; 10.7.1; 10.9; 10.9.1; 10.9.2; 10.9.3; 10.10; 10.10.1; 10.10.2 (16)

P-C: 3.1; 3.3; 5.1; 5.3; 5.4; 6.3; 6.3.1; 6.3.2; 6.3.3; 6.3.4; 6.4.1; 9.2; 12.2; 12.2.1; 13.1; 13.2. (15)

N-C: 7.3. (1)

N-A: 3.6; 3.8; 6.1.1; 6.1.2; 6.4.2; 6.6; 6.7; 6.7.1; 6.7.2; 6.8; 6.9; 6.9.1; 6.9.2; 6.9.3; 6.9.4; 6.9.5; 6.10; 6.11; 10.1; 10.11; 12.2.4. (21)

NCO: 3.2; 4.1.1; 4.1.2; 4.1.3; 4.1.4; 4.1.5; 4.1.6; 4.1.7; 5.5; 8.1.1; 8.1.2; 8.1.3; 8.2; 8.3; 8.4; 10.5; 10.6. (17)

| Clause | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
|--------|--|--|--|
| 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.                | C  | <ul style="list-style-type: none"> <li>IR did not find any evidence of either IP having withheld consent for the other party to appoint subcontractors to assist in fulfilling obligations of the BOA.</li> <li>IR was provided with a list of sub-contractors appointed by BMM, these included: a) EkoTrust – updated and revised the CAMP including various Independent Auditor recommendations; b) EkoInfo – implementation of the Biodiversity Monitoring Protocols (sub-contracted various other specialist); c) Biodiversity specialists P Desmet and M Botha updated the Gamsberg SE Specialist studies on Gamsberg SE Exploration Optimization; d) Khaimah Containers – breaking down of inner fences and outer fences on the Offset Farms; e) SANBI – nursery training, seed collection and training; DMR (Daisy Mining Resources) – establishment of fire breaks in conservation areas; f) GHT – Groundwater and surface water monitoring; g) Spec Africa – Fencing of Offset farms; Fidelity – surveillance cameras: provision, installation, monitoring and maintenance of surveillance cameras network over 24 months; h) GHG – Groundwater and Surface water Monitoring with BMC and adjacent farms; and i) Dust Watch – Dust monitoring.</li> </ul> |
| 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. | C  | <ul style="list-style-type: none"> <li>All payments made by BMM to-date have been paid to The Trust.</li> </ul>  |
| *3.6   | In so far as The Agency is identified or established only after The Trust has been formed, the Parties may elect, at their discretion, to dissolve The Trust and rather to rely on The Agency for the purposes of implementing the relevant aspects of this Agreement.   | N-A  | <ul style="list-style-type: none"> <li>The Agency was never identified or established. This was based on DAERL’s position. The Agency was not an option DAERL was prepared to consider.</li> </ul>   |
| 3.7    | All payments to the Agency, or to The Trust as the case may be, shall be made in accordance with the provisions of this Agreement.   | C  | <ul style="list-style-type: none"> <li>All payments to the Trust were made in accordance with provisions of Agreement. However payments made at time of undertaking the SIA were made late.</li> </ul>   |
| 3.8    | DAERL shall ensure that the Agency manages and utilises the financial contributions paid by BMM in terms of clause 3.5 in furtherance of   | N-A  | <ul style="list-style-type: none"> <li>There is no Agency therefore this Clause was not assessed.</li> </ul>   |



| Clause | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
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|        | implementing the objectives of this Agreement and for no other purposes whatsoever.   |  |  |
| 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, DAERL and to the Steering Committee within sixty (60) days from 28 February every year commencing on 1 March 2014. | C-L  | <ul style="list-style-type: none"> <li>• Although Clause 3.9 stipulates this requirement was due to start on 1 March 2014 “Annual Reports” (Audited Financial Statements) could only be produced once The Trust was established. Since the Gamsberg Nature Reserve Trust was only registered on 6 March 2020 this Clause could only come into effect on 1 March 2021. The Trust was therefore required to provide Annual Reports to BMM, DAERL and the SC at the beginning of May 2021 and 2022.</li> <li>• The Audited Financial statements for year ended 28 February 2021 (FY 2020/21) reflected an amount of R 12, 158, 271 in the Gamsberg Nature Reserve Trust bank account. However, they were only signed by the Independent Auditor (HP Roesch) on 31 August 2022.</li> <li>• The Audited Financial statements for year ended 28 February 2022 (FY 2021/22) reflected an amount of R 16,561,212 in the Gamsberg Nature Reserve Trust bank account. However, they were signed by the Independent Auditor (HP Roesch) on 2 September 2022.</li> <li>• No money was spent, and money was invested. Both Financial audit reports were clean – although conducted late.</li> <li>• IR did not find evidence that the FY 2020/2021 Audited Financial Statements had been presented at the SC meetings held in either March or September of 2021.</li> <li>• Results of the FY 2020/2021 and FY 2021/2022 Audited Financial Audits were presented at the 5 October 2022 SC meeting. So, although this information was presented to the SC it was not done so within the specified 3-month timeOfame. The SC was also presented with a copy of a Bank statement (Standard Bank) for BMM’s payment of R 4,311, 767.74 to the GNRT.</li> <li>• BMM provided IR with information on the functioning of the Trust:             <ul style="list-style-type: none"> <li>○ Administrators (Stone &amp; Associates) had been appointed to the Board of Trustees in October 2021.</li> <li>○ Quarterly Board of Trustee Meetings were held since October 2021.</li> <li>○ The Trust was considered fully functional and compliant to requirements of legislation.</li> </ul> </li> </ul> |

| Clause                        | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
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|                               |   |  | <ul style="list-style-type: none"> <li>○ The financial provisions paid on an annual basis had been invested in three investment accounts to ensure maximum return on investment as well as a call account for easy access should money be required.</li> <li>○ Financial Audits for FY 2020/2021 and 2021/2022 had been completed.</li> <li>○ The Trust Account Balance was R 12, 158, 271.00 in 2021 and R 16, 561,212.00. 3.3% CPIX 2021, 5.9% CPIX in 2022.</li> </ul> |
| <b>4. BIODIVERSITY OFFSET</b> |   |  |   |
| *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"> <li>● Addressed in response to Clause 5.</li> </ul>  |
| *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"> <li>● Addressed in response to Clause 6.</li> </ul>  |
| *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"> <li>● Addressed in response to Clause 7.1.2.</li> </ul>  |
| *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"> <li>● Addressed in response to Clause 8.</li> </ul>  |
| *4.1.5                        | The assignment of the responsibility for managing the protected areas to the Management Authority.  | NCO  | <ul style="list-style-type: none"> <li>● Addressed in response to Clause 8</li> </ul>   |
| *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"> <li>● Addressed in response to Clause 9.</li> </ul>  |

| Clause                                       | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
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| *4.1.7                                       | The ongoing protection and management of the protected areas.   | NCO  | <ul style="list-style-type: none"> <li>Not addressed as the BOA does not require assessment of implementation of the IMP Should the IP’s wish the BOA to extend beyond the specified date namely for IR to continue to assess implementation of the PAs the BOA needs to be revised accordingly and the amendment signed by both IPs.</li> </ul>   |
| <b>5. PROTECTION OF THE BMM PROPERTIES -</b> |   |  |  |
| 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. | P-C  | <ul style="list-style-type: none"> <li>During the FIA IR found BMM to be negligent in terms of the protection of the BMM properties with the added concern of two exploration boreholes having been drilled at Big Syncline in the set-aside area (2017-2019).</li> <li>No additional exploration activities occurred within the set-a-side areas since the previous audit. This was supported by IR’s site visit to these areas. Exploration activities, at Gamsberg SE, shown to IA during the December 2022 site visit fall outside the set-a-side areas<sup>12</sup>.</li> <li>See Section <b>Error! Reference source not found.</b> of the report for a discussion on BMM’s response to gaps identified in the BMP and CAMP during the FIA and dust and water monitoring activities being undertaken on the set-aside areas.</li> <li>Plant poaching of numerous, highly threatened and incredibly rare <i>Conophytum</i> species has become rampant in the region since the last audit and is currently viewed as the single greatest threat to succulent species of conservation concern. Some of these species are only found in a single location in the world. See Section 0 for additional details on this issue.</li> <li>BMM demonstrated its commitment to combatting poaching through the increase of security measures and the establishment of BMM Plant Protection Group that would engage with communities, farmers, SAPS, and other key role-players in the region.</li> </ul> |

<sup>12</sup> However, an EA was granted for Gamsberg SE Exploration optimization in consultation with E Swart/P Cloete/P Desmet/M Botha during the new Gamsberg SE Exploration Optimization (a previous EA was granted in 2019 and appealed. This is the EMP that was approved by DMR which triggered new offsets. However, through avoiding sensitive areas and reducing the exploration sites to only 21 drill sites which are located within previously disturbed areas where historical exploration took place. By optimizing the drilling plan to only 21 sites and avoiding all sensitive areas no offsets were triggered and EA was approved.

| Clause | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
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|        |   |  | <ul style="list-style-type: none"> <li>IR recognises that BMM has made some considerable improvements since the FIA but the Clause remains P-C due to exploration activities already undertaken and future planned explorations.</li> <li>See Appendix B for a record of BMM's progress on Clause 5.</li> </ul>  |
| *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"> <li>The BMM properties that were required to be protected were delineated in the diagram included as Annex C of the BOA;</li> <li>See FIA.</li> </ul>   |
| 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.  | P-C  | <ul style="list-style-type: none"> <li>Although IUCN informed IR the BMP had been updated it has not yet incorporated the updated CAMP (2022) and both documents still need to be signed off-by DAERL before they can be implemented. The updated BMP is therefore not being approved by DAERL and implemented yet. However, 90% of the 2015 BMP had been implemented and all requirements of the 2015 BMP had been Incorporated In the 2019 BMP, while the 2019 BMP had also incorporated the BOA requirements that were implemented. This would need to be verified by IR during the next Audit. Projects included in the CAMP had been actioned and terms of reference submitted to the market for eradication of alien Invader plants and the commercial process commenced in 2022 and proposal received for Impementation of Alien Invader Species as according to Management Plan compiled by DAERL on offset farms and the infield assessment and compilation of Management Plan for Implemtation in FY 2024.</li> <li>See Section <b>Error! Reference source not found.</b> of Report for a discussion on how BMM addressed IR's gaps identified in the BMP and CAMP.</li> </ul> |
| 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. | P-C  | <ul style="list-style-type: none"> <li>IR recognises BMM has spent considerable money in development and revision of management and monitoring plans, however a number of these are not yet being implemented (See Clauses 5.1- 5.3).</li> <li>The poaching of threatened <i>Conophytums</i> has also not been prevented under BMM's custodianship although IR recognises that considerable sums have been spent on responding to poaching incidents.</li> <li>IR therefore concludes that the set-asides have not been protected.</li> </ul>  |

| Clause  | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
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| *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"> <li>• BMM informed IR it had no intention of converting the four set-asides into Protected Areas. BMM also informed IR that DMR were generally reluctant to sterilize mineral resources and since these set-aside properties were located inside BMM’s mining license areas DMR would likely not support their conversion to Protected Areas.</li> </ul>  |
| <b>6. DECLARATION OF ADDITIONAL LAND AS A PROTECTED ENVIRONMENT AND/OR NATURE RESERVE</b> |  |  |  |
| 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"> <li>• Due to the agreed extension of the Second Time Period, to 1 April 2024, the deadline had not yet been reached.</li> <li>• Four of the seven Nearby Properties had been secured and declared as nature reserves in terms of NEM:PAA (2003) at the time of the FIA. Three of the four were from Annex B1, whereas four are required by the BOA.</li> <li>• No additional properties have been purchased since the FIA.</li> <li>• At the time of undertaking the SIA BMM was in the process of purchasing Portion 1 of Wortel, listed as a B1 priority farm in Annexe B1, to the BOA from the land owner:                         <ul style="list-style-type: none"> <li>○ BMM notified DAERL of its offer to purchase in a letter dated 29 July 2022;</li> <li>○ IR was provided evidence of a signed offer to purchase for Wortel Farm, dated 15 June 2022, and a Bank guarantee from First National Bank for purchase of Portion 1 (Hotson) of Farm Wortel No. 42, dated 8 August 2022.</li> </ul> </li> </ul> |

| Clause | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
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|        |  |  | <ul style="list-style-type: none"> <li>○ IA was presented with a certificate of transfer, signed and dated 21 September 2022, from the previous owner of Ptn 1 of the farm Wortel 42 to BMM as well as a date sheet for SARS, dated 21 September 2022.</li> <li>○ However, transfer to BMM had not yet been completed. BMM were due to submit a copy of the Title Deeds to IR once received.</li> <li>● See Section <b>Error! Reference source not found.</b> of Report for further discussion on BMM’s attempts to purchase additional properties listed in Annex B1 and Annex B2.</li> </ul>  |
| *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"> <li>● This sub-Clause is not applicable, because BMM did not notify DAERL within the prescribed time period that it wished to pursue the option of securing alternative properties, as required by Clause 6.7.</li> </ul>  |
| 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"> <li>● The four Nearby Properties that had been secured were declared as the Gamsberg Nature Reserves in terms of section 23 of NEM:PAA (2003) on 5 August 2019 (Provincial Notice 80 in Provincial Gazette 2287 of 5 August 2019).</li> <li>● In a letter, dated 29 July 2022, BMM notified DAERL of its offer to purchase Ptn 1 of the farm Wortel 42. The sale still needed to be finalised, the property transferred to DAERL and declared as part of the GNR. This had not yet taken place at the time of SIA. Hence no change since the last audit. BMM were awaiting confirmation from ENSA Africa and a copy of the Title Deeds to be transferred to BMM.</li> </ul>  |
| 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                     | P-C  | <ul style="list-style-type: none"> <li>● Since the FIA only one additional property is in the process of being secured. IR was provided evidence of a signed offer to purchase for Wortel Farm (dated 15 June 2022) and a Bank guarantee from First National Bank for purchase of Portion 1 (Hotson) of Farm Wortel No. 42 (dated 8 August 2022).</li> <li>● Considering 2.5 years have passed and no further properties have been purchased the IA would like to raise its concern regarding the fact that only one year remains to purchase the three additional required properties.</li> <li>● Although BMM had not yet secured the exact areas required for each of the identified sensitive habitats IR acknowledged considerable portions of sensitive habitat have been secured.</li> </ul> |

| Clause | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
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|        | individually or collectively, comprise of at least the following areas of substantially intact habitat of Recognised Vegetation Types <sup>13</sup> :   |  |   |
| 6.3.1  | 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; | P-C  | <ul style="list-style-type: none"> <li>• Although the area required for the Recognised Vegetation Type was met by the four properties secured (8515.75 Ha secured) the area requirements agreed by the parties for the component habitats supporting range restricted, localised and endemic plant species had not been fully met yet. However, since a considerable portion of the sensitive habitats in this category had been secured this clause was assessed as P-C.</li> <li>• Once Ptn 1 of the farm Wortel 42 has been transferred it will contribute an additional 485 Ha of Aggeneys Gravel Vygiveld. Of this Vygiveld 85 Ha comprises fine grain quartz plateau only.</li> <li>• As the Second Time Period was extended to 1 April 2024 BMM still had time to secure the remaining portions of sensitive habitats where these exist.</li> <li>• See FIA for discussion on achieving conservation targets for Recognised Vegetation Types and identified sensitive habitats.</li> </ul> |
| 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"> <li>• Although the areas required for the Recognised Vegetation Type was met by the four properties secured (3623.26 Ha secured) the area requirements agreed by the parties for the component habitats supporting range restricted, localised and endemic plant species had not been fully met yet. However, since a considerable portion of the sensitive habitats in this category had been secured this clause was assessed as P-C.</li> <li>• Once Ptn 1 of the farm Wortel 42 has been successfully transferred it will contribute an additional 3276 Ha of this vegetation type.</li> </ul>   |

<sup>13</sup> The FIA highlighted a residual habitat shortfall would remain for two habitat types namely “Plains Gravel Quartz Plateau” (193Ha) and “Calcrete Gravel Plains irreplaceable” (EN) (256 ha). The implementing parties were aware the conservation objectives could not be achieved, even if BMM were to secure at least 7 of the 12 Nearby Properties due to the unavailability / scarcity of these habitat types. These irreplaceable habitats were acknowledged at the time of drafting the BOA however the inability to ensure>NNL of these sensitive habitats should perhaps have been specifically stipulated in the BOA since this does affect BMM/Vedantas’s company-wide NPI biodiversity commitment.

| Clause | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
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|        |  |  | <ul style="list-style-type: none"> <li>As the Second Time Period was extended to 1 April 2024 BMM still has time to secure the remaining portions of sensitive habitats where these existed.</li> <li>See FIA for discussion on achieving conservation targets for Recognised Vegetation Types and identified sensitive habitats.</li> </ul>  |
| 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"> <li>Although the areas required for the Recognised Vegetation Type was met by the four properties secured (7718.45 Ha secured) the area requirements agreed by the parties for the component habitats supporting range restricted localised and endemic plant species had not been fully met yet. However, since a considerable portion of the sensitive habitats in this category had been secured this clause was assessed as P-C.</li> <li>Once Ptn 1 of the farm Wortel 42 has been successfully transferred it will contribute an additional 67 Ha of this vegetation type.</li> <li>As the Second Time Period was extended to 1 April 2024 BMM still has time to secure the remaining portions of sensitive habitats where these existed.</li> <li>See FIA for discussion on achieving conservation targets for Recognised Vegetation Types and identified sensitive habitats.</li> </ul>  |
| 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"> <li>Although the areas required for the Recognised Vegetation Type was largely met by the four properties secured (1735.63 Ha and one spring at Achab secured) the area requirements agreed by the parties for the component habitats supporting range restricted localised and endemic plant species had not been fully met yet. However, since a considerable portion of the sensitive habitats in this category had been secured this clause was assessed as P-C.</li> <li>A shortfall of 264,37 Ha of washes remains. The FIA highlighted the shortfall of Plains Gravel Veld and Plains Gravel Quartz which will remain even if 7 of the 12 nearby properties are secured.</li> <li>Once Ptn 1 of the farm Wortel 42 has been successfully transferred it will contribute an additional 530 Ha of this vegetation type and the above shortfall will be addressed.</li> <li>As the Second Time Period was extended to 1 April 2024 BMM still has time to secure the remaining portions of sensitive habitats where these existed.</li> </ul> |



| Clause | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
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|        |   |  | <ul style="list-style-type: none"> <li>See FIA for detailed discussion on achieving conservation targets for Recognised Vegetation Types and identified sensitive habitats.</li> </ul>  |
| 6.4    | With regard to the timing of the obligation in clause 6.1, BMM shall:   |  |   |
| 6.4.1  | <i>Within the First Time Period, secure <u>at least 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 DAERL for declaration by the MEC as protected areas; and</u></i>  | P-C  | <ul style="list-style-type: none"> <li>See FIA Report.</li> <li>Only three properties secured from Annex B1 within the First Time Period. No further actions required. However, at least one additional property needs to be purchased from Annex B1. Once Ptn 1 of the farm Wortel 42 has been successfully transferred this Clause will be compliant but late with all four properties having been secured.</li> </ul>  |
| 6.4.2  | Within the Second Time Period, secure <u>at least three (3) of the Nearby Properties listed in Annex “B2”</u> (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 DAERL for declaration by the MEC as protected areas. | N-A (To be assessed after 1 April 2024)            | <ul style="list-style-type: none"> <li>See FIA Report.</li> <li>Due to the agreed amendment to the definition of Second Time Period, the due date (1 April 2024) for compliance has not yet been reached. Therefore, the compliance obligation for this clause has not yet become applicable.</li> <li>In the FIA IA acknowledged BMM had secured four of the seven properties within the first five years of implementation of the BOA. BMM needs to secure an additional property from Annex B1 and two additional properties from Annex B2.</li> <li>Since the FIA, 2.5 years ago, no additional properties have been secured from Annexe B1 or B2. The Second Time Period ends in slightly over a year. IA wishes to raise its concern regarding the securing of three additional properties in just over one year. BMM responded to this concern that there had not been any delays from its perspective. It was a case of willing buyer/willing seller, solar development, budgetary constraints and issues regarding subdivision. See Appendix C for a record of BMM’s attempts to purchase additional properties between the FIA and the SIA.</li> <li>IA was provided with considerable written evidence, including correspondence between BMM and DAERL and between BMM and farm owners, of BMM’s concerted efforts to purchase: 1) the REM of farm Haramoep 53 and 2) Portion 1 (Hotson) of Farm Wortel No. 42. Although these mainly seem to have taken place in 2022 rather than 2019 and 2021. At the time of undertaking the SIA none of these properties had been secured. See Appendix B for additional details of BMM’s attempted purchases to-date.</li> </ul> |

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|        |   |  | <ul style="list-style-type: none"> <li>Other properties BMM has investigated purchasing included: a) the Remainder of Farm Namies North 146, b) Portion 1 of Farm Namies North 146, c) Portion 1 of Farm Haramoep 53. However, at the time of the SIA none of these farm owners were willing to sell their properties to BMM. See Appendix B for additional details of attempted purchases to-date.</li> <li>IA noted BMM was by implication not compliant with Clause 54 of the EA that made specific reference to the five-year period for securing the requisite properties. The EA had not yet been amended according to the BOA Second Time Period amendment agreed by IP. IR was not provided with an update on this issue.</li> <li>See Section <b>Error! Reference source not found.</b> for additional information on the process followed to try to secure additional properties and correspondence on this issue between BMM and DAERL.</li> </ul> |
| 6.5    | DAERL 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. | C-L (for properties declared as the GNR)           | <ul style="list-style-type: none"> <li>See FIA Report.</li> <li>No additional properties have been made available to DAERL since the FIA as no additional properties have been secured yet.</li> </ul>  |
| *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 (Assess after 1 April 2024)                    | <ul style="list-style-type: none"> <li>See FIA Report.</li> <li>Clause will be assessed after 1 April 2024.</li> </ul>  |
| *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:  | NCO  | <ul style="list-style-type: none"> <li>See FIA Report.</li> <li>BMM did not formally communicate, or provide required supporting documentation, to DAERL 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.</li> </ul>  |

| Clause | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
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| *6.7.1 | Submit to DAERL documentary evidence (as contemplated in clause 3.2) documenting all attempts by BMM to secure the Nearby Properties; and  | NCO  | <ul style="list-style-type: none"> <li>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.</li> </ul>   |
| *6.7.2 | Identify and secure Suitable Alternative Properties in accordance with this clause, and in terms of the criteria in clause 6.9.  | NCO  | <ul style="list-style-type: none"> <li>No Suitable Alternative Properties had been identified or secured at the time of the First IA. BMM had not provided any communications to DAERL 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.</li> </ul> |
| *6.8   | In so far as BMM requires the assistance from DAERL with the identification and/or selection of Suitable Alternative Properties, BMM shall request DAERL, in writing, to identify such properties and DAERL shall, within three (3) months of receipt of written request to do so, notify BMM, in writing, of the Suitable Alternative Properties. | NCO  | <ul style="list-style-type: none"> <li>BMM had not submitted a written request to DAERL 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.</li> <li>See response to 6.7.2.</li> </ul>   |
| *6.9   | In selecting Suitable Alternative Properties, BMM and/or DAERL, 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:  | NCO  | <ul style="list-style-type: none"> <li>See response to 6.7.2 and 6.8 above.</li> <li>Not relevant following FIA as BMM did not explore Suitable Alternative Properties option.</li> </ul>   |
| *6.9.1 | Contain samples of the vegetation types identified in clause 6.3 above; or   | NCO  | <ul style="list-style-type: none"> <li>Not relevant following FIA as BMM did not explore Suitable Alternative Properties option.</li> </ul>   |
| *6.9.2 | Contain samples of any other endangered vegetation or other ecosystems in need of protection, as determined by DAERL from time to time; and  | NCO  | <ul style="list-style-type: none"> <li>Not relevant following FIA as BMM did not explore Suitable Alternative Properties option.</li> </ul>   |
| *6.9.3 | Be in good ecological condition as determined by DAERL or a suitably qualified specialist appointed by the Parties for this purpose; and   | NCO  | <ul style="list-style-type: none"> <li>Not relevant following FIA as BMM did not explore Suitable Alternative Properties option.</li> </ul>   |

| Clause  | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
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| *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   | NCO  | <ul style="list-style-type: none"> <li>Not relevant following FIA as BMM did not explore Suitable Alternative Properties option.</li> </ul>   |
| *6.9.5  | Be available to be secured as a Nature Reserve in terms of section 23 of the Protected Areas Act.  | NCO  | <ul style="list-style-type: none"> <li>Not relevant following FIA as BMM did not explore Suitable Alternative Properties option.</li> </ul>   |
| *6.10   | Any time period taken by DAERL to identify the Suitable Alternative Properties, in terms of clause 6.8, shall be added to the Second Time Period.  | NCO  | <ul style="list-style-type: none"> <li>The Second Time Period was extended to 1 April 2024 and therefore had not yet expired at the time of undertaking the First IA. DAERL had not embarked on a process to identify Suitable Alternative Properties.</li> </ul>   |
| *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 (Assess after 1 April 2024)                    | <ul style="list-style-type: none"> <li>The Second Time Period was extended to 1 April 2024 and therefore had not yet expired at the time of undertaking the audit.</li> </ul>   |
| <b>7. REQUIREMENTS REGARDING THE PROPERTIES</b> |  |  |   |
| 7.1.  | Any Nearby Property and/or Suitable Alternative Property, or portion of such property, secured by BMM (either in terms of a lease agreement, sale agreement or otherwise) for the purposes of clause 6 shall be:   |  | <ul style="list-style-type: none"> <li>See Clauses 7.1.1 &amp; 7.1.2</li> </ul>   |
| 7.1.1.  | Presented by BMM to DAERL for management and declaration in terms of the Protected Areas Act within six (6) months of being so secured by BMM; and   | C-L  | <ul style="list-style-type: none"> <li>See FIA Report. No additional properites have been presented to BMM.</li> <li>Since Ptn 1 of the farm Wortel 42 has been officially purchased (secured) BMM needs to formally notify (“present”) DAERL of its purchase, within six months, for the property’s declaration and inclusion in the Gamsberg Nature Reserve.</li> </ul> |

| Clause | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
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| 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.   | C-L  | <ul style="list-style-type: none"> <li>• Transfer of the four previously purchased properties had not yet taken place at the time of undertaking the FIA.</li> <li>• All four secured and declared properties namely Ptn 2 of Rozybosch 41, REM of Rozybosch 41, Achab 59 and REM of Vogelstruishoek were transferred from BMM to DRPW on 13 May 2022.</li> <li>• Since the properties were declared as the GNR on 5 August 2019 date this means it took almost three years for them to be transferred to DRPW. IR does not consider transfer to have taken place ‘as soon as reasonably possible’.</li> <li>• The reasons provided by the IPs for this extensive delay included: a). Loss of original Title Deeds by BMM; b). Rates and Taxes delay by Municipality etc.; c). Required renewal of rates and taxes certificate due to delays from Transferal of properties; d). Delays from Public Works to sign the required documents.</li> <li>• BMM submitted a letter to DAERL, on 23 May 2022, and to the HoD DRPW, on 29 July 2022, notifying them both of the transfer and hence their compliance with BOA Clauses 4.1.3 and 7.1.2.</li> <li>• IR was provided with evidence of copies of Title deeds of transferal. Original Title Deeds were subsequently submitted to DRPW as per signed off delivery note.</li> </ul> |
| 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)   | C  | <ul style="list-style-type: none"> <li>• As confirmed by DAERL the properties were transferred in line with the prescripts of the Northern Cape Land Administration Act (Act No. 6 of 2002). Transfer took place with the full authorization of the MEC for DRPW who is the delegated authority dealing with property matters. Completed and Original Title Deeds for transfer were submitted to DRPW. IR has not explicitly assessed compliance of the properties with the Act.</li> </ul>   |
| 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. | P-C  | <ul style="list-style-type: none"> <li>• SPEC Africa had been appointed to commence fencing.</li> <li>• However, fencing of the offset properties had not yet commenced at the time of undertaking the SIA. During the site visit IA was shown some of the fencing that had been purchased and was awaiting installation.</li> <li>• As stated in the FIA, the lack of fencing was considered an issue from a procedural perspective but IA did not perceive it as a major issue from a conservation perspective.</li> </ul>  |

| Clause | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
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|        |   |  | <ul style="list-style-type: none"> <li>During the site visit BMM informed IR approximately two million rand had already been spent on fencing and an anticipated R40M would be spent in total. IR questioned whilst on-site whether this was the best use of funds for conservation of the target biodiversity (specific the vegetation types and habitats in question).</li> <li>During the FIA the main risks to the threatened plants were identified as: 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. During the FIA the four by four tourists were viewed as the biggest immediate threat, which could be addressed through appropriate fencing and access control. However, in the two years since the FIA poaching has become a critical concern. See Section 0 for further information on this issue.</li> <li>Following submission of the Draft SIA approximately 6 km of fencing were completed. This Clause was therefore changed to P-C due to work in progress and financial commitments which demonstrated BMM's commitment to implementation of the fencing program.</li> </ul> |
| *7.4   | The specifications in respect of the fencing and rehabilitation measures to be implemented shall be communicated in writing beforehand to DAERL. It is specifically agreed that any such fencing must:- | C  | <ul style="list-style-type: none"> <li>See FIA.</li> </ul>  |
| *7.4.1 | Be in compliance with the Northern Cape Nature Conservation Act (2009) and enhance the integrity of the management system;  | C  | <ul style="list-style-type: none"> <li>Fencing requirements as agreed between IP were aligned with NCNCA, 2009.</li> </ul>  |
| *7.4.2 | Be at least 1.8 metres in height; and   | C  | <ul style="list-style-type: none"> <li>Fencing specification was provided by DAERL. BMM agreed to the fencing specification. This requirement has been taken into consideration by BMM and DAERL.</li> </ul>  |
| *7.4.3 | Should not unduly inhibit the free movement or dispersal of small animals   | C  | <ul style="list-style-type: none"> <li>This requirement had been taken into consideration by BMM &amp; DAERL. See response to 7.4.1. Fencing specifications were provided by DAERL. BMM intended to amend specifications for this clause. DAERL recommended BMM installed electrical fencing to protect neighbouring farmer's livestock from predators but this would inhibit requirements of Clause 7.4.3 and therefore was excluded for implementation.</li> </ul>  |

| Clause                         | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
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| <b>8. MANAGEMENT AUTHORITY</b> |   |  |   |
| 8.1                            | The Parties agree that:   |  |   |
| *8.1.1                         | In respect of the properties identified in terms of clause 6, and subject to clause 8.1.3 below, there shall, be one Management Authority for the protected areas and to which responsibility shall be assigned by the MEC in terms of the Protected Areas Act;   | NCO  | <ul style="list-style-type: none"> <li>The MEC officially assigned DAERL as the Management Authority (MA) in the Provincial Notice 80. of 5 August 2019. (No. 2287)</li> <li>Under NEM:PAA (2003), a nature reserve is only one that has been declared as such by notice in the Government Gazette. This occurred on 5 August 2019. Under section 38(2) of NEM:PAA (2003), the MEC must assign the management of a nature reserve in writing. The Gazette Notice records that “Management Authority appointed in terms of section 38(2) – Northern Cape Department of Environment and Nature Conservation” (DAERL). Given that assignment of the MA could only take place once the nature reserve was declared, the assignment took place concurrently with the declaration.</li> </ul> |
| *8.1.2                         | DAERL shall be the Management Authority to which the management of the protected areas shall be assigned; and   | NCO  | <ul style="list-style-type: none"> <li>See FIA.</li> </ul>  |
| *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"> <li>DAERL has not entered into an agreement with a third party for management of the protected areas.</li> </ul>   |
| *8.2                           | To the extent required by law, BMM and DAERL 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"> <li>Since management of the protected areas has still not commenced it was not possible for this to be assessed.</li> </ul>  |
| *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 | NCO  | <ul style="list-style-type: none"> <li>All four secured and declared properties namely Ptn 2 of Rozybosch 41, REM of Rozybosch 41, Achab 59 and REM of Vogelstruishoek were transferred from BMM to DRPW on 13 May 2022.</li> </ul>   |

| Clause                   | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
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|                          | obtained from any landowner and/or lawful occupier of the land in question.  |  |  |
| *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"> <li>See response to Clause 8.3.</li> </ul>  |
| <b>9 MANAGEMENT PLAN</b> |  |  |  |
| *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.             | C-L  | <ul style="list-style-type: none"> <li>DAERL was appointed MA, by the MEC of DAERL, during the declaration of the Gamsberg Nature Reserve on 5 August 2019.</li> <li>The Gamsberg Nature Reserve (GNR) Integrated Management Plan (IMP) was approved by the MEC of DAERL on 1 September 2021.</li> <li>The IMP was therefore submitted just over two years after the MA was appointed.</li> <li>This Clause was therefore completed just over a year after its due date.</li> </ul>  |
| 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 National Environmental Management : Protected Areas Act, 2003 (Act No. 57 of 2003) and the purpose for which the area was declared. | P-C  | <ul style="list-style-type: none"> <li>IR found the objectives of the MP, namely to ensure protection, conservation and management of the PAs, was consistent with the objectives of the NEM:PAA (2003).</li> <li>However, IR found the detailed nuances required in the IMP to ensure protection of the specific habitats and vegetation types for which the BOA was devised were lacking.</li> <li>See Report Section 0 for IR's critique on certain aspects of the purpose of the MP.</li> </ul>  |
| 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.  | C-L  | <ul style="list-style-type: none"> <li>The Integrated Management Plan (IMP) was compiled and in terms of Section 39(3) of the National Environmental Management: Protected Areas Act, 2003 (No. 57 of 2003 there must be consultation with municipalities, other organs of state, local communities and other affected parties who have an interest in the area.</li> <li>The SMP was not sent out for public comment within the legislated 12-month period i.e. within 12 months of the declaration of the GMR on 5 August 2019.</li> </ul> |



| Clause | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
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|        |  |  | <ul style="list-style-type: none"> <li>An email from DAERL, on 18 September 2020, requested comments on the SMP (dated final_30 June 2022) be submitted to this email address before 2 October 2022.</li> <li>Comments were requested from numerous National Government Departments including: Agriculture, Land Reform and Rural Development; Environment, Forestry and Fisheries; Mineral Resources; Sports, Art and Culture; Tourism; Water and Sanitation; Parastatals including: SAHRA, SANBI and SANPARKS; Local/Provincial government including: Namkwa District Municipality, Nama-Khoi (Springbok), Khai-Ma (Pofadder); NGOs: Birdlife SA and Worldwildlife Fund SA; Private Consultants: DBass, Digby Wells, Ecologist (Spothill), Ecodolgis, Ecotrust, IUCN, Adjacent Landowner, Origin8, SirConsulting, Uvuna, BBN.</li> <li>An advert was placed in "Die Plattelander" on 18 September 2020 and posters placed in Namakwa District Municipality in Springbok, Aggeneys Post Office, Aggeneys Library, Aggeneys OK General Store, Co-op in Springbok, Co-op in Pofadder, and hard copies at the Namaqwa District Municipality, Pofadder Municipality and Pofadder Library.</li> <li>Comments were received from SAHRA, Private Environmental Consultant, DENC Research and Development Unit, Wilderness Foundation Africa, BMM. Comments were evaluated and where relevant the SMP was edited. Most comments were cosmetic but some important comments were incorporated.</li> </ul> |
| 9.4    | The Management Plan referred to above shall, where appropriate, contain the following information:         | NCO  | <ul style="list-style-type: none"> <li>A detailed review of the contents of the IMP for the GNR is beyond the scope of this Review.</li> </ul>   |
| 9.4.1  | the terms and conditions of any applicable biodiversity management plan;                                   | C  | <ul style="list-style-type: none"> <li>The IMP appears to conform to the Norms, Standards and Indicators required for the Management of Protected Areas in SA in general. Although IR has not undertaken a detailed review of the IMP. Items like 'law enforcement of the boundary', 'effective implementation', 'human resources supporting implementation', 'infrastructure and equipment in place' are due to take place but have not begun to be implemented yet. It is assumed that since DAERL regularly produces such documents that they comply with the legal requirements.</li> </ul>  |
| 9.4.2  | the planning measures, controls and performance criteria as may be prescribed by the Management Authority; | C  | <ul style="list-style-type: none"> <li>Annexure 2 of the IMP includes Key Performance Areas and specific objectives under which specified Management Actions, Management Targets, Key Performance Indicators (Mett-SA), general timelines and general costings are included.</li> <li>See Section 0 of the Report for comments on KPAs and Clause 9.2 above.</li> </ul>  |

| Clause | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
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| 9.4.3  | a programme for the implementation of the Management Plan and its costing; | C  | <ul style="list-style-type: none"> <li>• Annexure 2 of the IMP includes Key Performance Areas and specific objectives under which specified Management Actions, Management Targets, Key Performance Indicators (Mett-SA), general timelines and general costings are included.</li> <li>• IA noted a considerable delay in implementation of the IMP. Both BMM and The Trust have written to DAERL, as the appointed MA, repeatedly insisting that the required resources (human and financial) are urgently allocated to implementation of the IMP and protection of the GNR. IA is concerned that although the structures are in place: MA appointed, IMP compiled and Trust functioning that the Biodiversity Offset is not actually being implemented.</li> <li>• In a letter to DENC, dated 9 February 2022, BMM stated its deep concern regarding the lack of appointment of human resources and commencement of implementation of the GNR IMP approved by the MEC of DAERL on 1 September 2021.</li> <li>• In BMM’s abovementioned letter to DAERL, dated 23 May 2022, BMM stated since the Gamsberg Nature Reserve Integrated Management Plan had been approved by the MEC of DAERL on 1 September 2021 the strategic management of the Gamsberg Nature Reserve needed to be implemented, by the MA (DAERL), as a matter of urgency. The following actions were highlighted as urgent:               <ul style="list-style-type: none"> <li>○ A Reserve Manager, responsible for the implementation of the Integrated Management Plan (IMP), was appointed and commenced duties on 1 March 2023;</li> <li>○ One Senior Game Ranger and three Junior Game Rangers were appointed and commenced duties on 1 March 2023;</li> <li>○ Submission of a response letter to BMM on the letter dated 9 February as emailed on 15 February to Mr A Abrahams regarding financial requirements for the implementation of the Annual Plan of Operations for financial year 1 according to the IMP budget.</li> <li>○ Response to the letter drafted by the Board of Trustees and signed by the Chairman submitted to Mr A Abrahams regarding financial requirements of DAERL as MA for implementation of the GNR IMP.</li> <li>○ Payment of R 2,5m was paid by the Gamsberg Nature Reserve Trust.</li> </ul> </li> </ul> |

| Clause                         | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
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| 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);  | C  | <ul style="list-style-type: none"> <li>Nine different zones have been included in the IMP. Activities permitted in each of these zones have been outlined.</li> </ul>  |
| 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; | C  | <ul style="list-style-type: none"> <li>IA did not identify any co-management agreement for the IMP.</li> </ul>   |
| 9.4.6                          | schedules setting out the anticipated timing for the implementation and completion of any component of the Biodiversity Offset; and   | C  | <ul style="list-style-type: none"> <li>The Annexure 2 of the IMP includes a very broad schedule, just showing years, of when the various activities will be implemented. A more detailed Annual Workplan/schedule is required.</li> </ul>  |
| 9.4.7                          | Anticipated costs and budgets associated with the implementation of the Biodiversity Offset and on-going management of the protected areas.   | C  | <ul style="list-style-type: none"> <li>Annexure 2 includes costs associated with each of the Management Actions and specifies which year they are expected to take place.</li> <li>DAERL informed BMM in its letter, dated 28 February 2022, the recruitment and selection process of the reserve manager and four field managers had been undertaken and they were confident that appointments would be done in the first quarter of the 2022/23 financial year. A budget allocation of R 4 million was required to fund these posts and commence implementation of the IMP.</li> </ul> |
| <b>10 FINANCIAL PROVISIONS</b> |   |  |  |
| *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"> <li>As the Trust will be utilised as the body to receive and administer payments, payments are not subject to the requirements of the Public Finance Management Act.</li> </ul>   |
| 10.2                           | All payments made in terms of this Agreement shall be made to the Agency and failing its establishment, to The Trust.   | C  | <ul style="list-style-type: none"> <li>All additional payments made since FIA were made to the Trust. As per Clause 10.4 and Clause 10.7. IR was provided with proof of payments (Standard Bank) of BMM having transferred the</li> </ul>  |

| Clause   | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
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|  |   |  | required annual payments of: 1) R 3,788,166.00 to The Gamsberg Nature Reserve Trust on 30 August 2021; and 2) R 4,311,767.74 on 16 September 2022.   |
| 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.                               | C  | <ul style="list-style-type: none"> <li>See FIA Report.</li> <li>Clauses 5.1, 6 (and particularly 6.4) together established mechanisms to ensure the use of all funds received were “ring-fenced” and traceable to the implementation objective for which they were utilised.</li> </ul>  |
| 10.4   | Any and all payments in respect of this Agreement shall be paid by BMM into an account detailed in writing for this purpose by either the Agency or The Trust, as the case may be, for the exclusive purposes of furthering the objectives contained in this Agreement.   | C  | <ul style="list-style-type: none"> <li>All payments required by BMM since FIA were made to The Trust.</li> <li>As per Clause 10.7. IR was provided with proof of payments (Standard Bank) of BMM having transferred the required annual payments of : 1) R 3,788,166.00 to The Gamsberg Nature Reserve Trust on 30 August 2021; and 2) R 4,311,767.74 on 16 September 2022.</li> </ul> |
| <i>Payments in respect of maintenance and operation of the Biodiversity Offset</i> |   |  |  |
| *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 DAERL for declaration (whichever is the earlier), payment in respect of maintenance and operational costs of the Protected Areas shall be made by BMM to The Agency or The Trust, as the case may be, as follows: | NCO  | <ul style="list-style-type: none"> <li>See 10.2.</li> </ul>  |

| Clause  | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO)      | Brief Rationale for compliance assessment conclusion   |
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| *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 DAERL for declaration in terms of clause 6. The first payment shall be in the amount of Five Hundred Thousand Rand (R500,000.00) per property or portion thereof presented for declaration;                                       | C-L (Actions completed for existing secured properties) | <ul style="list-style-type: none"> <li>• See FIA.</li> <li>• Payment of R 12 000 050.00, for the four properties secured to-date, was transferred by BMM into the Gamsberg Nature Reserve Bank Account on 3 April 2020, but not within the required three months time period. Actions completed for existing secured properties.</li> </ul>  |
| 10.6.2  | thereafter, and within three (3) months of each subsequent property(ies) or portion(s) thereof being made available to DAERL for declaration in terms of clause 6 an amount of Five Hundred Thousand Rand (R500,000.00) per additional property or portion thereof shall be paid by BMM to the Agency; and  | C-L (Actions completed for existing secured properties) | <ul style="list-style-type: none"> <li>• As above.</li> <li>• No additional properties have been made available to DAERL since the FIA.</li> <li>• IR noted that Ptn 1 of the farm Wortel 42 had been secured by BMM and was in the process of being transferred and had therefore not yet been made available to DAERL for declaration as part of the Gamsberg Nature Reserve, the R 500,000.00 required to be paid for this property was not yet due at the time of conducting the SIA.</li> <li>• According to the current phrasing of Clause 10.6 and 10.6.2 BMM is not required to make any further payments for maintenance and operation of the additional three properties still to be purchased for the Protected Area. One way to rectify this oversight would be to extend the payment period to align with the extension of the Second Time Period. However, since extending the five year period would have numerous ramifications for the rest of the BOA IR proposed alternatively for the IP’s to include in the BOA Addendum that they agree to pay an additional R 500,000.00 for each additional property purchased.</li> </ul> |
| 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 DAERL for declaration and/or has been declared a protected area. | C-L (Actions completed for existing secured properties) | <ul style="list-style-type: none"> <li>• No additional payments were required according to the stipulated five year period which has already passed, as stated in Clause 10.6.</li> </ul>  |
| 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 DAERL for declaration in terms of clause 6   | C-L   | <ul style="list-style-type: none"> <li>• In the FIA Report this Clause was incorrectly assessed as Compliant.</li> </ul>   |

| Clause | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
|--------|---|--|--|
|        | (whichever is the earlier), BMM shall make an Annual Payment on or before 28 February of each subsequent year as set out below: |  | <ul style="list-style-type: none"> <li>• Payment was due on or before 28 February 2020. However, BMM transferred the agreed amount (R 3 500 000.00) into the Gamsberg Nature Reserve Bank account on 3 April 2020. Therefore this Clause should have been assessed Compliant-but-late.</li> <li>• Two years have passed since this initial payment and payments were therefore due or before 28 February 2021 and 28 February 2022 respectively (taking into consideration the requirements of Clauses 10.7.1 and 10.7.2).</li> <li>• The payment of R 3,734,811.50 was due on or before 28 February 2021. IR was provided with proof of payment (Standard Bank) of R 3,788,166.00 having been made to The Gamsberg Nature Reserve Trust on 30 August 2021.</li> <li>• The payment of R 3,955,165.38 was due on or before 28 February 2022. IR was provided with proof of payment (Standard Bank) of R 4,311,767.74 having been made to The Gamsberg Nature Reserve Trust on 16 September 2022.</li> <li>• The cost calculation required R 4 311 667,74 to be paid but the Proof of Payment was for R 4 311 767,74. BMM informed IR the additional R100 difference between the amount required and the amount paid was an oversight identified by Gamsberg Nature Reserve Trust financial auditor: an amount of R 100 was payable when the Gamsberg Nature Reserve Trust Standard Bank Current account was opened. This was an oversight by the Trustees and hence the R100 was included in payment done in 2022.</li> <li>• IR concluded, since the IMP has not begun to be implemented yet, it cannot confirm whether the R 3,500,000.00 (+CPIX) annual payment is sufficient for maintenance and operation of the Biodiversity Offset. IR would need to revisit these financial contributions once the IMP is implemented, presumably in the next audit.</li> </ul> |
| 10.7.1 | The Annual Payment shall be in the amount of Three Million Five Hundred Thousand Rand (R 3 500 000.00) per annum; and           | C-L  | <ul style="list-style-type: none"> <li>• As per the findings of the FIA, and Clause 10.7, the initial payment of R 3 500 000.00 due on or before the 28 February 2020 but was only made on 3 April 2020. Therefore this Clause should have been assessed C-L in the FIA.</li> <li>• The payment of R 3,734,811.50 was due on or before 28 February 2021. IR was provided with proof of payment (Standard Bank) of R 3,788,166.00 having been made to The Gamsberg Nature Reserve Trust on 30 August 2021. The difference is due to the payment of R 53, 354.45 for servicing of vehicles as per Clause 10.9.3.</li> <li>• The payment of R 3,955,165.38 was due on or before 28 February 2022. IR was provided with proof of payment (Standard Bank) of R 4,311,767.74 having been made to The Gamsberg</li> </ul>   |

| Clause | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
|--------|--|--|---|
|        |  |  | Nature Reserve Trust on 16 September 2022. The difference is due to the payment of R 56 502.36 for servicing of vehicles as per Clause 10.9.3.  |
| 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.   | C  | <ul style="list-style-type: none"> <li>The required payments with CPIX were made by BMM for 2021 and 2022.</li> <li>The payment of R 3,734,811.50 was due on or before 28 February 2021. IR was provided with proof of payment (Standard Bank) of R 3,788,166.00 having been made to The Gamsberg Nature Reserve Trust on 30 August 2021. The difference is due to the payment of R 53, 354.45 for servicing of vehicles as per Clause 10.9.3.</li> <li>The payment of R 3,955,165.38 was due on or before 28 February 2022. IR was provided with proof of payment (Standard Bank) of R 4,311,767.74 having been made to The Gamsberg Nature Reserve Trust on 16 September 2022. The difference is due to the payment of R 56 502.36 for servicing of vehicles as per Clause 10.9.3.</li> </ul> |
| 10.8   | BMM shall make the Annual Payments for a period of at least the duration of the mining operations at the Gamsberg Zinc Mine Project plus an additional ten (10) year period after a closure certificate has been applied for.  | C  | <ul style="list-style-type: none"> <li>See 10.7.2.</li> <li>The payments for 2021 and 2022 were made by BMM.</li> </ul>   |
| 10.9   | In addition to the above, BMM shall, within three (3) months after making available to DAERL 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:- | C-L  | * <i>Note: This Clause was incorrectly assessed as P-C during the Close-out Audit report despite Clause 10.9.1 and 10.9.2 being assessed as N-C.</i>  |

| Clause | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
|--------|---|--|---|
| 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; | C-L  | <ul style="list-style-type: none"> <li>• During the FIA IR assessed this Clause as N-C since the requirements were not met within the specified timeframe, three months after making the properties available to DAERL, namely 4 October 2017, according to Clause 10.9. BMM was awaiting DAERL’s response. DAERL was awaiting DRPW’s provisional assessment and provision of cost estimates for renovation and restoration of the properties. DRPW and DENC undertook a site visit on 26 and 27 November 2019. The FIA stated BMM was awaiting confirmation of operational costs in order to transfer money and had made provisions for operational costs in its 2020-2021 Budget Planning.</li> <li>• In a letter to DENC, dated 7 February 2022, over two years since the site-visit was undertaken BMM again requests confirmation of the costs for the accommodation and office units and stated its concern regarding the missing costs for these units since the provisions were due to be paid by 4 January 2019. BMM had therefore explicitly excluded these costs from its overall cost calculations for 2022/2023 since these were still required from DAERL/DRPW.</li> <li>• In BMM’s email to DAERL, dated 15 February 2022, it again states it is awaiting the operation cost for the two office units and three accommodation Units.</li> <li>• In DAERDRL’s letter to BMM, dated 28 February 2022, it confirmed the existing buildings on the offset properties, upon restoration and renovation, would be used for offices and accommodation. DAERL confirmed, in consultation with DRPW, a provision of R 300, 000.00 would be required.</li> <li>• This information was also presented at the SC meeting on 5 Oct 2022.</li> <li>• IR noted more than a three year delay in DAERL/DRPW’s confirmation of the operating costs for the two office units.</li> <li>• Therefore, although the previous non-compliance related to BMM’s responsibilities, according to the BOA Clause, IR concluded the fault actually lay with DAERL/DENC in renegeing on its provision of the required information and protracting its response over a lengthy three year period.</li> <li>• Although the three accommodation and two office units have not been in use BMM included a R 300,000.00 payment in the R 4,311,767.74 payment to GNRT made on 16 September 2022 (Standard Bank proof of payment provided to IR).</li> </ul> |



| Clause  | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
|---|--|--|---|
| 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   | C-L  | <ul style="list-style-type: none"> <li>See Clause 10.9.2 above.</li> <li>In the letter to DRPW, dated 29 July 2022, BMM requested the use of the farm buildings on Farm Achab 59 and Remainder of extension Vogelstruishoek 88 for the duration of three years (until 13 July 2024) due to the shortage of accommodation in the town of Aggeneys. BMM requested that should DRPW approve this request a lease agreement was required.</li> <li>This request for use of the buildings was simultaneously put to DAERL as the landowners and officially appointed MA of the PA. BMM submitted a letter to DAERL, in July 2022, regarding the shortage of housing and the subsequent request to renovate the existing house on Achab Farm to provide accommodation to Basil Read Mining management for three years. Once the house was transferred to DRPW BMM would be willing to pay rent.</li> <li>Transferral of the properties to DRPW took place on 13 May 2022.</li> <li>Although the three accommodation and two office units have not been in use BMM included a R 300,000.00 payment in the R 4,311,767.74 payment to GNRT made on 16 September 2022 (Standard Bank proof of payment provided to IR).</li> </ul> |
| 10.9.3  | The servicing of motor vehicles to enable DAERL, 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 cent (6%) or CPIX, whichever is the lower in any given year, on the previous year's amount. | C-L  | <ul style="list-style-type: none"> <li>BMM made two payments for servicing of motor vehicles: R 53, 354.45 on 30 August 2021 and R 56 502.36 on 16 September 2022. IR was provided with evidence of the Standard Bank proof of payments.</li> <li>IR noted although BMM had fulfilled its obligation these vehicles were still not in existence since the PA staff had not been appointed, the office and accommodation units were not in use and the IMP had not begun to be implemented. Therefore, paying the service fees for non-existent vehicles was non-sensical as already highlighted by BMM during the FIA.</li> </ul>   |
| <i>Payment of Capital Costs for establishment of the Protected Area</i> |  |  |   |
| *10.10  | The Capital Costs for the establishment of the Protected Area shall be the capped amount of Two Million Five Hundred Thousand Rand (R2,500,000.00) payable by BMM to the Agency, or to The Trust as the case may be, as follows:-  | C-L (Actions completed)                            | <ul style="list-style-type: none"> <li>The agreed amount of R 2 500 000.00 was transferred by BMM into the Gamsberg Nature Reserve Bank Account on 3 April 2020.</li> <li>BMM and DAERL agreed the total Financial Provision to-date, as per the full amount required by Clause 10 of the BOA, with exception of the operational cost for the office and accommodation and provision for servicing of vehicles (2 years payments).</li> </ul>   |

| Clause               | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
|----------------------|--|--|--|
| *10.10.1             | the first payment of Five Hundred Thousand Rand (R500,000.00) shall commence on the Final Regulatory Approval Date and be due and payable annually thereafter on 1 March of each subsequent year;  | C-L (No further actions required)                  | <ul style="list-style-type: none"> <li>• See response to Clause 10.10.</li> <li>• BMM transferred the agreed amount of R 2 500 000.00 into the Gamsberg Nature Reserve bank account on 3 April 2020.</li> </ul>  |
| *10.10.2             | Payment shall be in the sum of Five Hundred Thousand Rand (R500 000.00) per annum for the total period of five (5) years from the Final Regulatory Approval Date.  | C-L (No further actions required)                  | <ul style="list-style-type: none"> <li>• See response to Clause 10.10.</li> <li>• BMM transferred the agreed amount of R 2 500 000.00 into the Gamsberg Nature Reserve bank account on 3 April 2020.</li> </ul>  |
| 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. | C  | <ul style="list-style-type: none"> <li>• IR was provided with evidence of the first payment from the Trust to DAERL to commence implementation of the IMP. The chain of correspondence included: <ul style="list-style-type: none"> <li>○ a) A letter from DAERL to the GNRT, dated 10 October 2022, requesting payment of the financial provisions (R 4,191,006.19) for implementation of the IMP, as per the detailed itemized budget submitted as an Annexure to the IMP, on 4 July 2022 for the 2022/2023.</li> <li>○ b) A letter of response from GNRT's Trustees on 14 Dec 2022, following the Board of Trustees meeting held on 24 November 2022, requesting: - clarification on the list of expenses, - funds required for the 2022/23 financial year, - date these funds were required, and the Audited Financial Statements for the year ending 28 February 2023; and</li> <li>○ c) An E-mail of proof of payment for 50% (R 2,095,504.00) of the requested amount submitted to NCPG PMG: Agric &amp; Environ Affairs DAERL on 15 December 2022 (payment was done on 14 Dec 2022).</li> </ul> </li> <li>• See also responses to Clause 3.9 and 9.4.3.</li> </ul> |
| <b>11 SURETYSHIP</b> |  |  |  |
| *11.1                | This Agreement shall be of no force or effect until BMM has furnished to DAERL a deed of suretyship signed by Vedanta in a form acceptable to DAERL. This clause is inserted solely for the benefit of DAERL who may waive it in part or in whole as DAERL may deem fit                                | C  | <ul style="list-style-type: none"> <li>• DAERL had not waived the requirement for suretyship.</li> <li>• Despite significant delay in providing the required suretyship, it was eventually provided in a form acceptable to DAERL on 6 September 2019.</li> </ul>  |

| Clause  | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
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| <b>12 ESTABLISHMENT OF A STEERING COMMITTEE</b> |  |  |  |
| *12.1   | The Parties agree that a Steering Committee shall be established with the purpose of enabling the Parties jointly to oversee and to coordinate the implementation of the Biodiversity Offset in terms of this Agreement. | C  | <ul style="list-style-type: none"> <li>See FIA.</li> </ul>   |
| 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"> <li>Since the FIA four SC meetings were held instead of five: 1) 14 Sept 2020; 2) 19 March 2021; 3) 2 Sept 2021; 4) The SC meeting proposed for March/April 2022 was cancelled; and 5) 5 October 2022.</li> <li>In the FIA IR had recommended increasing the number of SC meetings from two to three annually to address non-compliance issues as they arose. The MEC subsequently recommended quarterly SC meetings and these were approved by the SC.</li> <li>BMM reported securing dates for the SC had been challenging.</li> <li>IA noted the Final Draft Addendum, yet to be signed, had revised the definition of the SC<sup>14</sup> where the presence of the MEC is not required to participate in meetings, this might facilitate securing future meeting dates.</li> </ul> |

<sup>14</sup> 1.1.35 “Steering Committee” shall mean a body to be established by the Parties comprising of representatives of the Parties and which may include: The Head of Department, Senior Manager responsible for biodiversity and/or protected areas, and the Senior Manager responsible for compliance at DAERL” and the following representatives from BMM:

1.1.35.2 “The General Manager of BMM: Gamsberg Mine Operation;

1.1.35.3 The Head of Health, Safety and Environment and the Manager Sustainability of BMM; and

1.1.35.4 Any other authorised representative from BMM and DAERL”.

| Clause  | Description  | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion  |
|---------|--|--|---|
| *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"> <li>• IR found the SC was functioning more effectively than in the FIA. Meetings were being held, although not twice a year as required by Clause 12.2.</li> <li>• Following review of the five SC Meeting minutes and presentations, since the FIA, IA found:               <ul style="list-style-type: none"> <li>○ The IPs were holding each other accountable;</li> <li>○ The proposed timelines were being enforced by document controls;</li> <li>○ Progress reports on each action item were being provided as per the Agendas and Minutes; and</li> <li>○ Progress on the implementation of the BOA amendment and addressing of IA findings and recommendations was given at each meeting as well as updates on the Strategic Management Plan and GNRT.</li> </ul> </li> <li>• IA concluded that communications between DAERL and BMM had improved since the last audit.</li> <li>• The establishment of the Working Committee (See Section <b>Error! Reference source not found.</b> of Report for further discussion on its establishment and purpose), intended to improve the efficiency of the SC, had assisted with communications and follow-up of actions between the IP's.</li> <li>• IR also found the Improvement Plan was being implemented.</li> <li>• However, the IMP has not been implemented despite the MA having been officially appointed on 5 August 2019 (government gazette, Clause 6.5) and the IMP having been approved by the MEC of DAERL on 1 September 2021 (Clause 9.1).</li> <li>• Since the IMP is not yet being implemented the SC can neither oversee nor co-ordinate its implementation. Hence the SC cannot oversee adequacy of the biodiversity outcomes and/or effective management thereof.</li> <li>• Although the SC cannot itself implement the IMP it could have formally 'nudged' the DAERL, as the MA, to commence implementation. IR was not provided with any written evidence of the SC having written to the MA insisting the IMP be implemented.</li> <li>• IR noted BMM had, on numerous occasions, implored DAERL to begin implementation of the IMP and deploy the requisite resources (both human and financial) required for</li> </ul> |

| Clause  | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
|---------|---|--|--|
|         |   |  | <p>implementation. In BMM’s letter to DAERL, dated 23 May 2022, BMM stated “since the GNR IMP had been approved by the MEC of DAERL on 1 September 2021 the strategic management of the Gamsberg Nature Reserve needed to be implemented, by the MA (DAERL), as a matter of urgency”. The following actions were highlighted as urgent:</p> <ul style="list-style-type: none"> <li>○ Appointment of a Reserve Manager responsible for the implementation of the IMP;</li> <li>○ Appointment of Game Rangers to assist the Reserve Manager in implementation;</li> <li>○ Submission of a response letter to BMM on the letter dated 9 February as emailed on 15 February to Mr A Abrahams regarding financial requirements for the implementation of the Annual Plan of Operations for financial year 1 according to the IMP budget.</li> <li>○ Response to the letter drafted by the Board of Trustees and signed by the Chairman submitted to Mr A Abrahamse regarding financial requirements of DAERL as MA for implementation of the GNR IMP.</li> </ul> <ul style="list-style-type: none"> <li>● IR therefore found BMM had made recommendations to the MA on deployment of revenue required to expedite implementation of the IMP. However, the MA had not yet acted on these recommendations.</li> </ul> |
| *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;  | C  | <ul style="list-style-type: none"> <li>● IP received detailed recommendations from the IA during the FIA and decisions was made at the SC meeting held on 14 September 2020 as to whether to adopt these recommendations or not.</li> <li>● The Working Committee assisted in follow-up of these recommendations. See Appendix D for details on the structure and functioning of the Working Committee.</li> <li>● No recommendations were received from the LC but this non-compliance is covered in Clause 13.</li> </ul>  |
| 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 | C  | <ul style="list-style-type: none"> <li>● During the SIA IA was provided with a summary of decisions made at the SC meeting and proposed next steps for discussion/revision and action at the first WC meeting.</li> <li>● IR was provided an Excel Table of 27 recommendations; a number of the original recommendations made during the FIA were not included in this list. 11 of the 27 recommendations were accepted by the SC and acted upon. The remainder either had no</li> </ul>   |

| Clause   | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
|--|---|--|--|
|  |   |  | decision made and/or have not been acted upon. IA noted that the WC assisted in addressing some of the recommendations relating to the SC and LC. <ul style="list-style-type: none"> <li>• IA was presented with a Final Draft Addendum to the BOA, dated 2021, but at the time of undertaking the SIA it was unsigned by the IPs. The Addendum mainly contained definitions.</li> </ul>   |
| 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"> <li>• No revenue generated therefore this Clause was not assessed.</li> </ul>   |
| <b>13 ESTABLISHMENT OF A LIAISON COMMITTEE</b> |   |  |  |
| *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"> <li>• Following previous Audits the IPs found duplication of functions in various committees. To avoid this it was recommended that committees be rationalized and instead of an LC an Advisory Committee (AC) be established in line with the requirements of the NEM:PAA 2003. The AC was included on page 32 of the IMP. Therefore, instead of a LC being established a Working Committee (WC) was established which basically fulfilled the same functions as the LC. The WC had a terms of reference and was chaired by IUCN. However, moving forwards the LC would be replaced by the AC.</li> <li>• The BOA therefore urgently needed to be revised to stipulate that the LC had been made redundant and replaced by the AC.</li> <li>• The GNR IMP was approved by the MEC of DAERL on 1 September 2021.</li> <li>• The implementation of the GNR IMP has not yet commenced.</li> </ul> |
| *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"> <li>• IR noted that the Advisory Committee would replace the SC and the Working Committee had effectively fulfilled the role of the SC in the interim. Although the BOA needed to be amended to state the replacement of the LC with AC.</li> <li>• The BOA does not require the audit to assess implementation of the IMP. The LC is supposed to do this. Furthermore, the BOA Clause 8: MA has no obligation clauses. The LC, replaced by</li> </ul>  |

| Clause                             | Description   | Compliance Assessment (C, N-C, C-L, P-C, N-A, NCO) | Brief Rationale for compliance assessment conclusion   |
|------------------------------------|---|--|--|
|                                    |   |  | <p>the AC, were responsible for monitoring and progressing means the implementation of the IMP.</p> <ul style="list-style-type: none"> <li>The implementation of the GNR IMP had not yet commenced.</li> </ul>   |
| <b>14 REPORTING AND MONITORING</b> |   |  |  |
| <b>14.9</b>                        | The Parties shall cooperate in good faith with the Independent Auditor or team of Independent Auditors in order to enable the Auditors to achieve the objectives of Clause 14.8.  | C  | <ul style="list-style-type: none"> <li>BMM cooperated effectively with the Auditor to provide the required information and responded to requests timeously and in sufficient detail.</li> </ul>  |
| <b>14.10</b>                       | A copy of the Audit Report to be prepared by the Independent Auditor pursuant to each review, shall be submitted by the Independent Auditor to DAERL and BMM and made available for inspection by the public by each party including a copy thereof in its Annual Report to shareholders or to the Provincial Legislature as the case may be. | N-C  | <ul style="list-style-type: none"> <li>BMM did not include a copy of either the Initial Audit Report and/or the Close-out Audit Report in its Annual Report to shareholders. Although these two reports were both publicised on the internet. See Section 0 for additional details following IR’s review of Vedanta’s Annual Reports (2020-2022).</li> <li>DAERL informed IR the report was not published as part of its departmental annual report and/or submitted to their Portfolio Committee. DAERL understood that this was not required given that an agency wasn’t established, but a trust instead.</li> <li>DAERL published the report on its intranet site, available only to DAERL staff internally. Therefore the report was not made publicly available by DAERL.</li> </ul> |

## 5. Discussion

The IR identified three key concerns, considered critical to achieving the Biodiversity Offset outcomes, that required further consideration:

- The alignment of the IMP with the BOA (Clause 9);
- Publicising the findings of the Audit reports (Clause 14.10); and
- Assessment of adequacy of implementation of Biodiversity Offset (Clause 14.8.2).

### 5.1 Alignment of the IMP with the BOA (Clause 9)

Clause 9.2 states the Management Plan needs to address the purpose for which the PA was declared. Following a cursory review of the IMP IR found certain key elements were missing:

- The IMP was not aligned with the objectives of the BOA, it didn't mention vegetation and habitat types: Nowhere in the 'Biodiversity and Heritage' Excel spreadsheet were the species, habitats and/or vegetation types of special concern, as defined by the BOA, mentioned. This is a critical gap since these are the primary biodiversity components that the PA is trying to conserve and yet they are not highlighted in the IMP. Whilst vegetation types were detailed under point 4.2.7 and Figure 11 and BoA targets under chapter 2 and species of special concern highlighted in tables 6 to 10. There was not a specific focus on conservation of the vegetation types and species of concern highlighted in the BOA. IR was confident these gaps between the two documents (BOA and IMP) could be closed during the 2024 review of the IMP.
- Key performance activities (KPAs) were vague and non-measurable: KPAs, outlined in O3 Annexure 2 of the MPKPA1 on Biodiversity and Heritage, included actions such as: a) 'relationship with researchers' and b) 'biodiversity knowledge of understanding'. These actions were not quantifiable and non-specific. Strategic objectives were measurable according to SMART principles, with detailed management actions, targets and key Indicators and costed. These objectives were then grouped under KPA's. However, closer alignment needs to be achieved with the specific BOA conservation objectives during the 2024 review.
- The IMP didn't incorporate existing knowledge and/or focus on critical biodiversity components relevant to the BOA: Management Action No. 1 states: "Identify and prioritise biodiversity management requirements (targets) for Protected Area baseline monitoring". However, in the meantime critically endangered species are being poached. Surely the conservation priorities for the PA in question have already been defined; namely they are the recognised habitats and vegetation types of special concern. Surely additional research is not required to establish the conservation priorities but rather to monitor the priorities that have already been established, as BMM has already been doing in a number of instances. IR is confident that DAERL will be able to better align the IMP and BOA specific conservation objectives in the 2024 review.
- The IMP was generic and had not been tailored to meet specific requirements of the BOA: In KPA 1, Objective 1.7 "Audit achievement of biodiversity targets" IR found no mention of the threatened species the BOA was trying to conserve, namely two of the *Conophytum* species that were each only found in one location on earth. If conservation efforts of these species fail this would have serious implications for BMM's Biodiversity Policy commitment and the EA. BMM clearly understood this risk and had already spent considerable resources on surveillance cameras and anti-poaching activities in the region. However, the IMP did not incorporate these concerns. The Plan requires updating in line with recent developments. DAERL informed IR that the IMP was due for review in early 2024 which would provide



an opportunity for better alignment of the IMP with the BOA. IR was further informed that since IMPs are required to match the 5-yr Strategic Plan of the Department and that timing of approvals and appointments had not matched the IMP.

- In the Section on “Enforcement, Security and Access Control” the desired conservation objectives were not being achieved due to poaching. Specific ant-poaching activities needed to be incorporated into this section. The appointment of the Reserve Manager and three Field Rangers would enable further detailing of amongst others objectives 3.2 and 3.3.

Comments on the IMP Executive Summary:

- The main purpose (vision) for the creation of the PAs, as per the requirements of the BOA, was not mentioned in the IMP Executive Summary – in the first 30 pages of the document.
- Critical habitat and vegetation types requiring protection were not mentioned in the Executive Summary.
- Although Inselbergs are mentioned on Pg 11 of the IMP there was no mention of the necessity to protect Inselbergs as a priority.

## 5.2 Publicising the findings of the Audit Reports (Clause 14.10)

### Compliance by BMM

IR reviewed Vedanta’s Interim Annual Reports published on 4 Jan 2020, 27 Sep 2020, 4 Jan 2021 and 27 Sep 2021. No evidence was found of BMM having published either the Executive Summary and/or the entire Final Report, for either the FIA or the CIA, in Vedanta’s Annual Report to its shareholders. Furthermore, there was virtually no mention of Biodiversity in the Annual Reports let alone the Biodiversity Offset Agreement or the Independent Audit thereof:

- In Vedanta’s FY 2020 Annual Report dated 4 Oct 2020 biodiversity is only mentioned four times, three in relation to their India operations and one in a photo caption “biodiversity at Gamsberg”.
- In Vedanta’s 4 Jan 2021 Interim Report under the section on Zinc International there is mention of the Biodiversity workshop that took place and a statement that implementation of the Biodiversity Monitoring Protocol had commenced.
- In Vedanta’s 27 Sep 2021 Annual Report entitled “Integrated Report and Annual Accounts 2020-2021” Biodiversity is mentioned eight times<sup>15</sup> however of relevance to BMM is mention of the Management Plan and BMM’s intention to purchase additional farms for its BOA.

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<sup>15</sup> 1. Under the Sustainability and ESG Section (pg 60) there is no mention of Biodiversity. IR noted a Section on Social Performance and Social License to Operate however such a section was missing for the Environment. Biodiversity is only mentioned on pg 63 as a high material issue (M5). No further mention of Biodiversity is made in this ESG section. 2. On pg 58 (60): Reference is made to the Biodiversity Policy. 3. On pg 65 (67): the word biodiversity is mentioned under the Water Management heading and included in the UN SDG’s and Target linkages: “Target: 15.9 – Introduce biodiversity management and planning into development processes”. 3. On pg 91 (93): “Protecting and enhancing biodiversity throughout the Life Cycle”. 4. On Pg 92 (94): “As part of our commitment towards biodiversity conservation the Company is now a member of IUCN ‘Leader for Nature initiative’. 5. On pg 98 (100): “The draft Gamsberg Nature Reserve Strategic Management Plan has been prepared and submitted for public comments. The final Management Plan will be submitted to MEC for approval. BMM is in negotiations to secure additional farms to be include in the Gamsberg Nature Reserve to ensure compliance to the Biodiversity Offset Agreement”. 6. On pg 102 (104): Biodiversity Conservation is mentioned under the Oil & Gas Section of Vedanta’s Business.

- Vedanta’s Annual Report FY22, dated 1 August 2022, includes 10 mentions of biodiversity<sup>16</sup>. Reference is made to the final IMP, transfer of properties to DRPW and a campaign to spread awareness of biodiversity and endangered species of the region.

Since the finalisation of the IIA and CIA BMM had three opportunities to publicise the BOA Audit findings and/or include a link in Vedanta’s Annual/Interim Report to its shareholders. This would have demonstrated: a) transparent communication to Vedanta’s shareholders and b) BMM’s awareness that biodiversity is a high material issue (M5), as stated in its 2021 Annual Report, and that BMM was already well advanced in identifying biodiversity risks, as per the KPI mentioned in the FY22 Annual Report, and was focused on addressing them and constantly improving its management of biodiversity risks.

The IR found both the IIA and CIA had been publicised:

- The Final First Independent Audit Report, dated 5 December 2019, was published on Vedanta’s website in April 2021: [https://vedanta-zincinternational.com/wp-content/uploads/2021/04/Final-Gamsberg-Independent-Audit\\_Amaryllis\\_5-December-2019.pdf](https://vedanta-zincinternational.com/wp-content/uploads/2021/04/Final-Gamsberg-Independent-Audit_Amaryllis_5-December-2019.pdf); and
- The Final Close-out Audit Report, dated 15 May 2020, was published on Vedanta’s website in April 2021: [https://vedanta-zincinternational.com/wp-content/uploads/2021/04/Gamsberg-Close-out-Independent-Audit-Report\\_FINAL\\_Amaryllis\\_15-May-2020.pdf](https://vedanta-zincinternational.com/wp-content/uploads/2021/04/Gamsberg-Close-out-Independent-Audit-Report_FINAL_Amaryllis_15-May-2020.pdf)

The IR noted both reports were publicised on the internet at the same time, namely in April 2021, hence 16 months after completion of the FIA and 11 months after the CIA.

### Compliance by DAERL

- DAERL informed IR the report was not published as part of its departmental annual report and/or submitted to their Portfolio Committee. DAERL understood this was not required given that an agency wasn't established, but a Trust instead.
- DAERL published the report on its intranet site only available to internal staff. Therefore the report was not made publicly available by DAERL.

### 5.3 Accomplishing the conservation objectives (Clause 14.8.2)

IR found it was not possible to determine the adequacy of implementation of the Biodiversity Offset and hence assess whether IP had accomplished the conservation objectives as required by the BOA during the SIA. Additional information was required to answer questions such as:

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

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<sup>16</sup> 1. pg 30: “ESG: Policy: Biodiversity”; 2. Pg 32: “Top material Topics: High: Biodiversity”; 3. Pg 33: “Innovations for greener business model: KPIs: Biodiversity Risk: Review of Biodiversity Risks across all locations”; 4. Pg 46: “3 years Engagement with IUCN will help in development of Biodiversity Management Plan focusing No Net Loss approach to achieve Sustainability Goal 2025”; 5. Pg 46: “RDM Biodiversity Park”, 6. Pg 48: “The Gamsberg Nature Reserve Strategic Management Plan has approved, and the properties transferred to Department Roads and Public Works. A major campaign saw the collaboration between the South African police force, Department Environment Nature conservation and SANBI, to spread awareness of biodiversity and endangered species of the Region; 7. & 8. Pg 55 and Pg 59.

The lack of implementation of the IMP and rampant poaching in the region were obstructing conservation efforts on both the set-aside properties and in the PA. See Appendix B.

## 6. Conclusions

Based on recommendations made during the CIA IR found:

- Both IPs had cooperated to improve implementation of the BOA although there were still areas of improvement required by BMM and DAERL.
- The PA management (DAERL) had not improved as the IMP was not yet being implemented by DAERL.
- No additional land had been declared as protected environment and/or nature reserve (DAERL to declared Property secured after BMM have presented to DAERL).
- The properties have begun to be fenced - work in progress.
- DAERL developed the IMP but implementation had not commenced. The detailed nuances required to ensure protection of the specific habitats and vegetation types for which the BOA was devised were lacking.
- Both parties had addressed the financial requirements regarding the costs for the vehicles' maintenance and the need for offices and accommodation although none of these facilities were in use.
- Both parties had ensured effective operation of the Gamsberg Nature Reserve Trust.
- DAERL had not worked on the required amendments of the BOA and EA. A draft BOA, including primarily definitions, had been compiled but not signed-off by the parties and the EA had not been amended.
- Implementation since the FIA had not followed the relevant plans and agreements since some of these documents still required sign-off by DAERL.
- There had been numerous delays by DAERL in implementation of the requirements specified in the BOA and/or recommended actions since the FIA.
- Whilst the appropriate sums of money have been invested they have not yet been spent due to lack of implementation of the IMP by DAERL.
- Certain key biodiversity components had not been protected on BMM's set-aside and offset properties since the FIA due to rampant poaching which was out of BMM's control. However, BMM had responded rapidly and appropriately.
- The MA (DAERL) was not performing its duty of implementing the IMP. This was exacerbated by the fact that there were no compliance obligations for Clause 8: MA.

During the SIA IR assessed 61 clauses of the BOA<sup>17</sup>. IR confirmed 28 clauses as compliant (C), 17 as completed but late (C-L), 13 as partially compliant (P-C) and three as non-compliant (N-C). Clauses that had not changed

<sup>17</sup> Summary of Compliance assessment of all Clauses assessed in BOA:

C: 3.4; 3.5; 3.7; 5.2;6.2; 7.2; 7.4; 7.4.1; 7.4.2; 7.4.3; 9.4.1; 9.4.2; 9.4.2; 9.4.3; 9.4.4; 9.4.5; 9.4.6; 9.4.7; 10.2; 10.3; 10.4; 10.7.2; 10.8; 10.11; 11.1; 12.1; 12.2.2; 12.2.3. (28)

C-L: 3.9; 6.5; 7.1.1; 7.1.2; 9.1; 9.3; 10.6.1; 10.6.2; 10.7; 10.7.1; 10.9; 10.9.1; 10.9.2; 10.9.3; 10.10; 10.10.1; 10.10.2 (17)

P-C: 3.1; 3.3; 5.1; 5.3; 5.4; 6.3; 6.3.1; 6.3.2; 6.3.3; 6.3.4; 6.4.1; 7.3; 9.2; 12.2; 12.2.1; 13.1; 13.2,. (15)

N-C: 14.10, (1)

N-A: 3.6; 3.8; 6.1.1; 6.1.2; 6.4.2; 6.6; 6.11; 10.1; 10.11; 12.2.4. (10)

NCO: 3.2; 4.1.1; 4.1.2; 4.1.3; 4.1.4; 4.1.5; 4.1.6; 4.1.7; 5.5; 6.7; 6.7.1; 6.7.2; 6.8; 6.9; 6.9.1; 6.9.2; 6.9.3; 6.9.4; 6.9.5; 6.10; 8.1.1; 8.1.2; 8.1.3; 8.2; 8.3; 8.4; 10.5; 10.6. (28)

since the last Audit were denoted with an Asterix\*. A total of 38 were not assessed (N-A). No compliance obligations (NCO) existed for 28 clauses. Ten clauses were not yet applicable at the time of the audit due to the fact that timeframes had not yet been reached and work was still in progress to ensure completion within the specified timeframe; or decisions had been taken which resulted in them no longer requiring assessment.

Since the FIA IR found considerable improvements in: cooperation between the IPs (Clause 3) particularly with regards to record-keeping; management and maintenance documentation guiding protection of the set-aside areas and implementation of monitoring (Clause 5) as well as the IPs operation of The Trust and payment of all financial requirements for the PAs.

IR found less than expected progress from BMM with regards to securing additional properties (Clause 6) and fencing the PA properties (Clause 7). IR found DAERL had delayed transfer of the secured properties to DRPW as this was not done “as soon as reasonably possible” (Clause 7).

Although the IMP had been developed DAERL, in its appointed capacity as MA, was not yet implementing it. The BOA did not require the audit to assess implementation. The Liaison Committee was supposed to do this but had not been established. IR noted it had would be replaced by the Advisory Committee and the Working Committee had been operating as the LC in the interim. However, the BOA needed to be revised to indicate that the LC had been made redundant. According to the BOA Clause 8 had no obligation clauses for the MA.

BMM had not yet consolidated the cumulative impacts of all its current and future operations and developed the biodiversity management strategy recommended during the FIA. During the FIA DMR required BMM to amend the BOA or develop a new offset agreement to take cognisance of additional residual impacts associated with prospecting on Gamsberg South and East set-aside properties. IR was not provided any evidence of progress on this issue. There was still room for improvement regarding efficient communications between the IPs so that activities did not get obstructed from being implemented due to one party stalling progress based on slow responses.

Although very rare succulents had been poached from BMM’s set-aside and offset properties IR recognized this was not BMM’s fault. IR acknowledged BMM’s commitment to conservation through its rapid responses to poaching incidents, cooperation with a multitude of parties in the region to prevent this happening and considerable financial investment in surveillance cameras and anti-poaching patrols which seem to have curbed poaching incidents in the vicinity of the mine.

IR found scant mention of biodiversity in Vedanta’s Annual Report to Shareholders between 2020-2022. This was concerning since it suggests biodiversity was not considered a serious risk across the company and Vedanta was not being transparent with its shareholders. There is a rising prominence of biodiversity and nature as discrete areas of focus amongst global policymakers, investors and corporates. As understanding of the relationship between natural capital and financial markets continues to grow, business is highly likely to experience greater pressure from investors, regulators and other stakeholders to disclose their nature-related risks and impacts and to set goals in line with the ambitions of the Target 15 of the Montreal - Cuning Global Biodiversity Framework (GBF).

(<https://www.kirkland.com/publications/article/2023/01/un-conference-signals-swell-in-private-sector-green-efforts>)

DAERL did not publicise the previous Audit Reports.

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

## 7. Recommendations

According to Clause 14.8.3 of the BOA the IR was required to provide the SC with recommendations on improving and/or enhancing implementation of the Biodiversity Offset including recommendations to adjust the financial provisions in terms of Clause 10 where required. During the FIA IR developed detailed recommendations for many clauses and undertook a thorough review of many of BMM's biodiversity management procedures and protocols including Vedanta's Biodiversity Policy, the CAMP and the BMP (Appendix E). This previous review went beyond the scope of the Audit requirements. During the SIA IR found many of the recommendations had been taken on-board by the IP's. However, a number of the recommendations still needed to be actioned. A detailed assessment of implementation of recommendations made during the FIA was considered beyond the scope of the SIA. During the FIA BMM stated its intention to work with the legal firm Bowman Gilfillan to update the BOA in 2020. During the SIA IR noted only minor changes had been made to the Final Draft BOA, mainly with regards to definition of terms.

Key recommendations identified during the SIA:

### Clause 5

- DAERL to provide comments on the BMP and CAMP and in writing confirm that the BMP and CAMP meet the requirements. This needs to be done within three weeks of receiving the final SIA so BMM can proceed with implementation of management plans. IR was informed on 13 Nov 2023 this had been done. IR would need to verify during the next Audit.
- BMM to appoint an external contractor to review adequacy of implementation of management and monitoring procedures and plans in set-aside areas before end 2023.
- IP to implement long-term strategies to protect BMM properties from poaching.

### Clause 6

- BMM to prioritise purchasing and securing the three remaining properties.
- BMM needs to provide a map depicting where the prospecting/mining permit for sillimanite will be located on Wortel property and all the vegetation types and habitat types of conservation concern (according to BOA) and also any special species distributions e.g. *Conophytums*, *Pachypodiums* etc. – in relation to the prospecting/mining permit.

### Clause 7

- DAERL to prioritise declaring and transferring additional offset properties once secured and presented by BMM.

### Clause 8 & 9

- Employ a third party to assist MA if structure and implementation of IMP is not in place within three months of completion of the SIA.
- MA to revise IMP to incorporate KPAs and KPIs that fulfil the original intent (purpose) of the PA as described in BOA.
- MA to provide an Action Plan/Annual workplan to the Steering Committee.
- DAERL needs to develop a Northern Cape implementation plan for anti-poaching across the province (including in the GNR and on BMM properties).

**Clause 14.10**

- Vedanta to include the SIA in its Annual Report to Shareholders.
- DAERL to publicise the SIA on its website which is accessible to external stakeholders.

**General**

- IP to consider amending the BOA to assess implementation of the IMP (“on-going maintenance and management of the PAs”).
- IP to consider conducting an IA in 2024 once the Second Time Period has lapsed.
- Amend the BOA Addendum to ensure an additional R 500,000.00 is paid for each additional property purchased. Clause 10.6.2 (Payment of R 500,000.00 for maintenance and operational costs of additional properties to be purchased for the Protected Areas) only covers the first four properties purchased.

# Appendix A:

## Documents reviewed

**Documents reviewed in 2019 (IIA):**

- Environmental Authorization (EA) Amendment 2 (specifically items 50 to 60) relevant to the BOA requirements;
- Biodiversity Offset Agreement (BOA);
- Environmental and Social Impact Assessment (ESIA);
- Biodiversity Offset Report (BOR);
- Gamsberg Environmental Management Programme Report (EMPr) ;
- Biodiversity Management Plan (BMP);
- Conservation Area Management Plan (CAMP);
- Information considered in making the EA decision;
- Declaration of Gamsberg Nature Reserve;
- Sale and Lease agreements;
- Title Deeds;
- SC meeting minutes, agendas and registers;
- LC meeting minutes, agendas and registers;
- Trust documents;
- Suretyship Letter signed by IP;
- Monitoring Protocols;
- Dust Monitoring Reports;
- Regulatory Approvals;
- Letter regarding extension of Time Period Two signed by BMM & DAERL;
- Dust monitoring scope of work;
- Correspondence to DAERL relating to purchase of the REM of the farm Haramoep 53;
- Management fees calculation and proof of money secured by BMM;
- Letter to DAERL 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 DAERL presenting properties and requesting compliance and transfer of money to DAERL (4 October 2017);
- Offset calculations prepared by Andrew Cauldwell (from ERM); and
- BMM appeals letters & forms & letter to DAERL regarding EA provided on offset properties.

DAERL provided IR with supporting documents on:

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

**Additional documents reviewed in March 2020 (CIA):**

- Gamsberg Management Audit Response Report (GMARR);
- Letter of authority: Gamsberg Nature Reserve Trust;
- BMM letter to DAERL requesting confirmation and agreement that financial contribution calculations are correct for payment to the Gamsberg Nature Reserve Trust bank account once in place;
- Responding Letter from DAERL to BMM confirming and agreeing on the financial contribution calculations for payment to the Gamsberg Nature Reserve Trust bank account once in place;
- Letter to DAERL confirming deposit of R 12 050 000 in a short-term fixed deposit account for management fees in respect of BOA requirements pending activation of the Trust Bank Account (dated 12 March 2020);
- Proof of payment to Gamsberg Nature Reserve Trust bank account;
- Action Tracker: Steps and timeframes including financial provision, securing of properties, transferral, declaration, payment to ensure compliance with timeframes going forward;
- Biodiversity Workshop Report (held on 4 February 2020);
- BMM written correspondence to DAERL regarding confirmation of the Gamsberg Nature Reserve fencing specifications as required by Clause 7.4 (7.4.1 – 7.4.3) of the BOA;
- Letter BMM and DAERL - Extension of Second Time Period signed by both parties;
- Written response from DAERL to BMM regarding confirmation of the Gamsberg Nature Reserve fencing specifications as required by Clause 7.4 (7.4.1 – 7.4.3) of the BOA;
- Letter to HoD of DAERL, dated 16 March 2020, requesting clarification of the term “rehabilitation” contained in Clause 7.3;
- Letter from DAERL to BMM, dated 9 March 2020, to clarify rehabilitation requirements;
- Responding letter from BMM to address time lines of rehabilitation requirements, rehabilitation schedule and costs for budgeting purposes going forward;
- Gamsberg Nature Reserve Trust Deed;
- Appointment of independent financial auditor;
- Status updated on recommendation by IA;
- Monitoring Protocol Implementation Schedule;
- Baseline dust information as determined by Dust Watch, dated 27 September 2015, and

- BMM letter to DAERL dated 9 March 2020 regarding outcome of Clause 6 (7 farms), Workshop, extension of second time period and REM of Haramoep;
- BMM Scope of work document to address recommendation made by the IR during IA on the BOA for inclusion in the upgrade of the Conservation Area Management Plan (CAMP); and
- EkoTrust CC Proposal, dated 23 January 2020, to amend the existing Contract regarding the update of the CAMP.

### **Additional Documents reviewed in 2022/2023 (SIA)**

Gamsberg Second independent Audit\_ Questions for IP\_10 Jan 23\_Final Draft Response.docx

### **Clause 3: General Duties of the Parties (As per folder 8. on the BMM Sharefile link)**

#### a. Letters from BMM

- BMM Letter DEARDLR rental of ACahab and Vogelstruishoek houses\_final for PvG signature.pdf
- BMM letter to DAERL\_Burger Onion letter for record and status update on Surveillance Camera Network\_submitted.pdf
- BMM Letter to DENC Regarding ESIA process undertaken by BMM and Others in surrounding areas\_Final submitted.pdf
- BMM Letter to DENC\_12 June 2020\_DENC nominations of Trsutee member to replacement NvO.pdf
- BMM Letter to DENC\_12 June 2020\_Updated Status on As built drawings and wayforward on Transferal of Properties.pdf
- BMM Letter to DENC\_Fencing Specification confirmation \_signed by GM.pdf
- BMM Responding Letter to DENC\_Rehabilitation Clarification\_16 March 2020\_Draft for comments.docx.pdf
- Letter for DAERL \_2 Feb 22.\_Final\_.pdf
- Letter to DAERL transferal of Offset Farms to DRPW\_27 May 2022.pdf
- Letter to DAERL\_OTP signed to secure Ptn1 of Wortel 42 as fitht Biodiversity Offset Property.pdf
- Plant Protection Signage (003).pdf
- Responding Letter DAERL Goegap Nature Reserve PLant Dinations and assistance.pdf
- Terms of reference for the fening of Biodiversity Offset Properties\_Final as approved by DENC to commercial.pdf
- Title deeds\_Transfer from BMM to DRPW\_Copy.pdf
- Annexure\_B1&2\_Nearbyproperty\_description.doc
- BMM Letter to DAERL\_Status Update additional farms confirmation request addressing Melissa Comments\_Final submitted fo PvG signature\_correction Ptn 1 of farm W.pdf
- BMM Letter to DENC\_11 September 2019\_HARAMOEP\_Final\_Signed.pdf
- NC NS 11 Option Agreement\_Haramoep Boerdery\_21102021.pd
- Securing remainder of farm Haramoep 53\_DENC responding letter.pdf

#### b. Letters to BMM

- BMM Timeframe 2nd time period extension 20190911 signed.pdf
- DAERL objection against Horomelas Propsecting Application\_3 March 2022.pdf

- DAERL responding letter on Financial provision\_operational costs office and accomodation.pdf
- DENC responding letter on Fencing and Rehabilitation\_March 2020.pdf
- DENC Responding Letter regarding Financial Provision.pdf
- DENC Response on Letter regarding confirmation of Financial Provision\_11 March 2020.pdf
- Request for assistanc HMSG - Gamsberg nursery.pdf
- Responding letter from DAERL regarding securing REM Haramoep 53.pdf
- Responding Letter from DAERL regarding purchase of Ptn 1 of Wortel 41\_28 Feb 2022.pdf
- Responding letter\_ Haramoep\_Clause 6 and Complince to Clause 6.1.1.\_7 properties\_Signed.pdf
- D1-Response from DAERL Acquisition of properties.pdf
- DAEARDL Letter 28 Feb 2022 response to BMM letter 14 Feb\_ Clause 10.pdf
- DAERL letter \_28 Feb 2022\_Purchase of Wortel.pdf
- DAERL- BANKING DETAILS.pdf
- DENC\_Financ\_Prov\_signed PvG\_9 Feb 2022.pdf
- DENC\_Financ\_Prov\_signed PvG.pdf

**Clause 5: Protection of the BMM Properties (As per folder 6. on the BMM Sharefile link)**

*Folder 1. Management of BMM Properties through EMP (not reviewed)*

*Folder 2. Management of BMM Properties through BMP Implementation (empty folder)*

Folder 3. Management of BMM Properties through New CAMP

- *Annexure L\_Biodiversity Protocol Evaluation BMM\_BP08\_Search Rescue and Translocation.pdf (not reviewed)*
- Annexure M1\_Poaching awareness flyer - FINAL (1)\_printed.pdf
- Annexure M2\_Antipoaching Campaign Programme.doc

Folder 4: surveillance cameras (As per folders c., d. and e.)

- Eastern layout of 7 surveillance cameras.png
- Location of 16 surveillance cameras – Excel spreadsheet
- Overall layout of surveillance cameras. Png
- Purchase order for surveillance camera.
- Summary of plant poaching incidents and associated stats & costs.
- Western layout of surveillance cameras
- Western layout of surveillance cameras-moving cameras.
- Final letter to SANBI\_illegal plant harvest and request to obtain plants confiscated for care and maintenance and seed production as mother stock.pdf
- Statement by Black Mountain Mining revised\_KS
- Statement by Black Mountain Mining\_Revised
- Steering Committee Feedback\_10 Dec 2021\_Draft.pptx

Folder 5. Locust Control

- Locust Outbreak.ppt
- Locust records.all.xls
- Annexure M3\_Locust records\_all.xlsx
- Copy of seedling propagation list\_August 2022

*Folder 6. Surface and Groundwater monitoring (not reviewed)*

- *Annexure M4\_Rainfall at Gamsberg\_30 Nov 2022.xlsx (not reviewed)*

*Folder 7. Biodiversity monitoring protocol and implementation (empty folder)**Folder 8. Nursery Management*

- As per folders a. Monthly propagation sheets, b. Monthly plant numbers and mortalities, c. Seed records in seed bank, and d. Rainfall monitoring data.
- Gamsberg Nursery Management Plan FINAL 12 6 18.pdf

*Folder 9. Gamsberg SE EA and Optimization of Exploration avoiding sensitive areas (not reviewed)*

- *Annexure K1\_Gamsberg East South Prospecting Reassessment Addendum DRAFTv3 20Oct2020.pdf (not reviewed)*
- *Annexure K2\_Gamsberg SE Exploration OPTimization approved EA.pdf (not reviewed)*

*Folder 10. Andrew Young Comments on Gamsberg SE and site visit at various threatened species (not reviewed)*

- *Annexure N\_Workshop Report Gamsberg Offset 4 Feb 2020 final draft - 12 March 2020\_Final Report.pdf (not reviewed)*
- *Annexure O\_Vegetation Map.pdf (not reviewed)*

**Clause 6: Declaration of additional land as protected environment and/or nature reserve**

- BMM letter to DENC\_11 September 2019\_Haramoep\_final\_signed.
- BMM Letter to DAERL\_status update additional farms confirmation update addressing Mellisa Comments\_Final submitted to PvG\_Correction Ptn 1 of W. (dated 1 February 2022)
- Securing remainder of Farm Haramoep 53\_DENC responding letter (dated 20 September 2019)
- NC NS 11 Option Agreement\_Haramoep Boerdery\_ 21102021
- Copy of Bank Guarantee\_Wortel\_Bank guarantee (dated 8 August 2022) (also Annexure E7\_41890\_copy of guarantee)
- Offer to Purchase Wortel Farm\_signed (dated 15 June 2022)
- Annexure D1d\_Responding letter from DAERLD after Wortel letter was corrected (dated 28 February 2022)
- Annexure D1e\_BMM Letter regarding Offer to Purchase of Ptn1 of Wortel 42
- Letter to DAERL\_OTP signed to secure Ptn1 of Wortel 42 as 5<sup>th</sup> Biodiversity offset property (dated 29 July 2022)
- Annexure E1\_company certificate\_Transferee\_signed\_PvG, signed 21 September 2022
- Annexure E2\_data sheet for SARS, signed 21 September, 2022
- Annexure E3\_Transferee Company Affidavit\_Black Mountain Mining Propriety Limited\_PvG\_Final (signed 21 September 2022).
- Annexure E4 Transferee Company insolvensee Affidavit\_Black Mountain Mining Propriety Limited\_final signed PvG. (signed 21 September 2022)
- Annexure E5\_Transferee FICA Affidavit\_Black Mountain Mining Propriety Limited\_final signed PvG.
- Annexure E6\_Transferee\_POPIA Consent\_Black Mountain Mining Propriety Limited\_final signed PvG. (signed 21 September 2022)
- Annexure P\_Property contributions to offset targets

**Clause 7: Requirements regarding the properties**

- BMM letter to DRPW-Transferral of properties to DRPW\_signed\_(letter dated 29 July 2022)
- Letter to DAERL transferral of offset farms to DRPW\_27 May 2022 (letter dated 23 May 2022)
- Title Deeds Transfer from BMM to DRPW\_copy (lots of different dates on document...?)
- Letter to DAERL requesting assistance with transfer of properties to DRPW\_(dated 2 Feb 2022)
- Letter from DAERL to BMM on 28 February 2022 in response to BMM's letter of 14 February 2022\_ Clause 10
- Annexure D\_securing remainder of Farm Haramoep 53\_DAERL responding letter
- Annexure D1a\_BMM letter to DAERL status update (dated 14 January 2022)
- Annexure D1c\_Resubmission of letter with corrected farm number RE Acquisition of Gamsberg Offset Properties
- D1b\_Responding letter from DAERL RE: Acquisition of Gamsberg Offset Properties (dated 26 January 2022)
- Responding letter from DAERL regarding purchase of Ptn 1 Wortel 41\_28 February 2022
- Annexure G1\_Summary of engagement Mr G Visser Ptn 1 and REM Namies South 146 (dated 4 December 2022)
- Annexure G2\_Summary of enagement scan\_jmarais\_2023\_01\_12\_11\_22\_08

**Clause 8: Management Plan (As per Folder 9. on the BMM Sharefile link)**

- 03 Annexure 2 GBNR APO 19-23 .xlsx
- GAMSBERG IMP - ADVERTISEMENT.pdf
- Gamsberg IMP Final 21 June 2021.pdf
- GBNR IMP Consultation 2020.pdf
- GNR DECLARATION.pdf
- Norms and Standards for the Management of Protected Areas in South Africa:  
[https://www.dffe.gov.za/sites/default/files/gazetted\\_notices/nempa\\_protectedares\\_normsstandards\\_g39878\\_gon382\\_0.pdf](https://www.dffe.gov.za/sites/default/files/gazetted_notices/nempa_protectedares_normsstandards_g39878_gon382_0.pdf)

**Clause 10: Financial Provisions (As per Folder 4. & 5.)**

- 20220916 GAMBERG NATURE RESERVE POP.\_Proof of Payment\_Sep 22.pdf
- Annexure A1\_ Proof of payment Financial fees up to 2019.pdf
- Annexure B\_BMM Letter to DENC\_Managment Fees confirmation\_7 February 2020\_Final Letter\_signed P v G.pdf
- Annexure B1\_Proof of payment Financial fees 2021.pdf
- Annexure C\_Proof of payment 2021\_GMB Biodiversity Transfer -R3.7M - 20210830 (003).pdf
- Annexure C1\_Proof of payment 2022 Financial Fees.pdf
- Annexure C2\_Cost calculation BOA Clause 10 for review\_2 February 2022 excluding operational costs for accomodation and housing.xlsx
- Annexure C3\_Cost calculations Financial Provision including operational costs accomodation and office submitted by DAERLD2022.xlsx

- Annexure C6\_Letter from DAERLD regarding Financial provision approval and operational costs accomodation and office.pdf
- Annexure D\_Proof of payment of financials provision Offsets to Gamsberg Nature Reserve Trust Account\_April 2020.pdf
- BMM letter to DAERL- Financial Provision FY22\_23.eml (not reviewed, couldn't access)
- BMM Letter to DENC\_Managment Fees confirmation\_Final submitted for signature PvG.docx
- DENC\_Financ\_Prov\_signed PvG.pdf
- Financial Contribution Clarifications.docx
- TS 7 Biodiversity Management Final V3 (1)\_AV\_20221130\_20221216.docx – not reviewed
- Vedanta Biodiversity Policy\_AV\_20221130\_20221219.docx – not reviewed
- BMM Letter to DENC\_Managment Fees confirmation\_7 February 2020\_Final Letter\_signed P v G (003)\_7 Feb 2020.pdf
- DENC Response on Letter regarding confirmation of Financial Provision\_11 March 2020.pdf
- GMB Trust POP.pdf
- 4. Gamsberg Nature Reserve Trust Financial Statements 2022 - signed.pdf
- Gamsberg Nature Reserve Trust Financial Statements 2021 - FINAL.pdf
- Letter from Standard Bank confirming DAERL Banking Details and Account No. (dated 24 August 2022)
- Annexure H1\_DAERL Financial Requirements for Gamsberg Nature Reserve
- Annexure H2\_Gamsberg Nature Reserve Responding letter to DAERLD\_Re Financial Requirements Gamsberg Game Reserve
- Annexure I\_Proof of payment submitted to DAERL FW Reference Number MNM09122200022 Biodiversity - Request for payment
- Annexure J1\_Gamsberg Nature Reserve Trust Financial Statements 2021\_final (dated 31 August 2022)
- Annexure J2\_Gamsberg Nature Reserve Trust Financial Statements 2022 - signed.pdf

**Clause 12: Establishment of Steering Committee (As per Folder 3. on the BMM Sharefile link)**

- Agendas, Attendance Registers, Power Point Presentations and Meeting Minutes for meetings held on: 29 November 2016, 23 Feb 2017, 16 October 2017, 26 June 2018, 10 April 2019, 17 April 2019, 14 September 2020, March 2021, 2 Sept 2021, 5 October 2022
- Annexure A\_Working Committee Terms of Reference

**Clause 13: Establishment of Liaison Committee (As per Folder 2. on the BMM Sharefile link)**

- Agendas, Attendance Registers, Power Point Presentations and Meeting Minutes for meetings held on: 23 February 2017, 15 November 2017, 18 April 2018, 5 February 2019

**Clause 14:**

- Draft Addendum to BOA, dated 2021, but unsigned by the IPs.

**Appendix B:**  
**A record of BMM’s progress made on Clause 5**  
**since FIA**

During the Initial IA and Close-out Audits IR concluded non-compliance for Clause 5 for numerous reasons:

- IR explained how the amendment to condition 58 of the original EA had removed the automatic protection of the set-asides as a protected environment under NEMPAA and had recommended amending the BOA to cover this lacuna.
- BMM had not protected its set-aside properties due to:
  - Exploration activities undertaken on the set-aside areas;
  - Lack of appropriate management and monitoring plans to guide protection and implementation of these plans; and
  - Absence of on-the-ground monitoring.

Following the site visit and document review IR concluded:

- The BOA had not been amended to address the EA amendment concern.
- No additional exploration activities had occurred within the set-aside areas. However, IR was informed of future approved explorations activities that would not impact on sensitive habitats<sup>18</sup>.
- The BMP had not been updated and was therefore not being implemented<sup>19</sup>. As stated in the FIA IR reiterates that the implementation of the BMP is a condition of the record of decision (ROD) for the EA.
- The revised Conservation Area<sup>20</sup> Management Plan (CAMP, V5, 2022) had addressed most of the gaps identified in the FIA as outlined in **Error! Reference source not found.** Although the final CAMP was submitted to DAERL in February 2022 and two engagement meetings were held with DAERL (in February and August 2022 to assist with review and clarification) BMM was awaiting DAERL's comments before the CAMP could be finalised.

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<sup>18</sup> BMM had been granted an EA for Gamsberg SE Exploration optimization in consultation with E Swart/P Cloete/P Desmet/M Botha during the new Gamsberg SE Exploration Optimization. A previous EA granted in 2019 was appealed. This is the same EMP approved by DMR which triggered the requirement for additional biodiversity offsets. However, BMM had demonstrated through avoiding sensitive areas and reducing the exploration sites to only 21 drill sites, located within previously disturbed areas where historical exploration had taken place, no offsets were triggered and the EA was subsequently approved.

<sup>19</sup> However, many of IAs recommendations and DAERL's comments on the BMP had been included in the revised CAMP 2022. BMM informed IR once it had received DAERL's comments on the latest CAMP 2022, both the BMP (version V, 2022) and the CAMP (version IV, 2022) would be finalized and resubmitted for approval and implementation in 2023 to 2025.

<sup>20</sup> 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".



**Table 4: BMM’s response to gaps identified in the CAMP (2019) in the Close-out Report as per revised CAMP (2022).**

| Item No. | Gaps identified in CAMP (2019)  | Revisions included in CAMP (2022)   |
|----------|---|---|
| 1.       | CAMP was not being implemented. This was considered to be due to a) a lack of capacity within BMM that translated into a lack of management effectiveness on site; and b) the absence of specific actions having been clearly defined for these areas in the BMP, CAMP and/or other guidance documentation. |   |
| 2.       | Alignment of documents guiding management and monitoring (EMP, BMP and CAMP).   | <i>BMP still needed to be updated once commens were received from DAERL on CAMP 2022.</i>   |
| 3.       | Management activities required to protect the set-aside areas were missing.   | <i>Included in updated CAMP</i>   |
| 4.       | Inadequately addressed 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. <sup>21</sup>   | <i>Although Figure 12 referred to the Four Recognised Vegetation Types these were not highlighted and this map also lacked a Legend.</i>                                |
| 5.       | The plan focused strongly on wildlife and game management rather than on the sensitive vegetation types that require protection.  | Focus on sensitive vegetation types was strengthened.   |
| 6.       | The vegetation types described in the CAMP do not concur with P.Desmet vegetation types.  | P.Desmet’s (2013) fine-scale <i>habitats/vegetation types</i> were incorporated into CAMP 2022 as Figure 14 (Page 13) and accompanying descriptions were also included. |
| 7.       | 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).   | A sensitivity map and map of IUCN Red Data species was included.  |

<sup>21</sup> 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.

| Item No. | Gaps identified in CAMP (2019)  | Revisions included in CAMP (2022)   |
|----------|---|---|
| 8.       | The BMM set-aside areas were not clearly delineated in any of the Figures depicting vegetation including Figure 9, 11, 16 & 17. | <p>Set-a-side / No-go areas were included on the revised maps:</p> <ul style="list-style-type: none"> <li>• Figure 14 (page 13) - while set-aside and mine license areas are shown in turquoise these need to be included in the Legend.</li> <li>• Figure 23c (page 42) depicts the Aggeneys set-aside and Gamsberg set-aside areas. However, in Figure 23b there appears to be an overlap between the Gamsberg set-aside and the Farming zone and the Gamsberg set-aside and the 'mining rights areas', 'mining infrastructure' and 'prospecting activities' – 23b and 23c depict potentially conflicting land-uses on the same areas.</li> <li>• Figure 23d (page 43) – incorrectly labelled as 23c in the document.</li> <li>• Figure 26 (page 53) and Figure 35 (page 87 – summarizing all existing fences and recommendations going forward). This includes the fencing in of the set-as-side areas with a 1,8m fence.</li> </ul> |
| 9.       | None of the abovementioned figures demarcated fenced off conservation areas.  | <p>Proposed fences are shown on:</p> <ul style="list-style-type: none"> <li>• Figure 26 (Page 53) although for the Aggeneys set-aside two alternative fenced-off areas are shown: hence IR noted the set-aside areas configuration may change considerably; and</li> <li>• Figure 35 (Page 87).</li> </ul> <p>The additional fencing recommendations, if approved by BMM management, would be implemented in the field. Provisions had been included in the 2022/23 (R1,2 m) and 2022/23 (R1,0 m) Budgets for execution and alignment with fencing recommendations.</p> <p>During the site visit IR was shown the set-a-side areas fenced out of the mining and mining development areas (Lemoenplaas / Kokerboom Reservoir at Big Syncline area and Conservation area entrance).</p>   |
| 10.      | Figure 9 referred to Anglo Properties which is outdated.  | Removed from document.  |

| Item No. | Gaps identified in CAMP (2019)  | Revisions included in CAMP (2022)  |
|----------|---|--|
| 11.      | 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.  | <i>This was a map of vegetation plot monitoring in the BMP and would still need to be updated in BMP version V.</i>  |
| 12.      | 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 <i>Conophytum</i> species (P.Desmet, pers.comms). Therefore their numbers need to be managed on the set-asides (P.Desmet. pers.comms). | BMM informed IR the Gamsberg set-aside are had no Springbok only Klipspringer. The Aggeney's set-aside had Kudu and Springbok. The proposed 1.8m fences might stop Springbok from accessing the set-aside areas but would not stop Kudu. Springbok did not eat the <i>Conophytums</i> but there was the risk of them trampling these rare and threatened species. BMM informed IR (verbally) that BMM had not specifically stocked the Game Camp with wildlife since May 2017 however, stocking had taken place prior to this and wild springbok had also moved across from neighbouring properties. The Game Camp had Gemsbok and Red Haartebees.<br><br>BMM had maps showing the location of threatened species, but these were not included in the CAMP and were not shared with IR in the sharefolder. |
| 13.      | 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  | BMM informed IR (verbally) that the Standard Operation Procedure (SOP) required a Biodiversity Clearance Certificate to be issued for any new development according to EA approved layout plans. This involved overlaying the approved EA infrastructure layout plan with existing vegetation types and screening if any sensitive vegetation would be impacted on. If yes, a search and rescue needed to be undertaken and transplanting protocol implemented, if a Integrated Flora Permit and/or Protected Tree Permit for the layout areas has been approved by DAERLD .   |
| 14.      | <b>BMP Management commitments (BP06 pgs 82-84)</b>  | <b>Follow-up of actions implemented on the ground since FIA</b><br><b>Physical ingress to prevent ingress on</b>   |
| 14.1     | <b>Physical barriers to prevent ingress on Critical Biodiversity Areas</b>  | Shown on a map in CAMP   |
|          | "The set-aside of properties described in Clause 5"   | <ul style="list-style-type: none"> <li>• The original fences are still in place</li> <li>• Since the FIA access control to the set-aside properties on Big Syncline has improved:</li> </ul>   |

| Item No. | Gaps identified in CAMP (2019) | Revisions included in CAMP (2022)   |
|----------|--------------------------------|---|
|          |                                | <ul style="list-style-type: none"><li>• Locks and cameras have been installed at Lemoenplaas. This has mainly been in response to <i>Conophytum</i> poaching incidents.</li><li>• The entire Big Syncline set-aside areas had been fenced.</li><li>• A dedicated land manager is still required for the offset and set aside sites, this has not been addressed since the FIA. The Biodiversity Manager cannot be expected to fill this role as an additional responsibility.</li></ul> |

### Dust monitoring on the Gamsberg set-aside areas

During the FIA IR highlighted the necessity for an ecological dust monitoring programme to be implemented. During the SIA IR was shown the soil analysis report of dust fallout prepared by EcoInfo & Associates and submitted to BMM in August 2022. The purpose of this study was to: a) asses the dust footprint area around the Gamsberg Mine, specifically the extent of the dust plume, b) assess the chemical composition of the dust and c) align the dust buckets and soil sampling sites with fauna and flora specialist studies. Ten sampling sites were included in the Gamsberg set-aside area. BMM informed IR this monitoring would be conducted annually going forwards. The results of these analyses were being used: a) to guide future fauna and flora monitoring and b) to compare the predicted impacts of dust on sensitive vegetation with actual dust impacts in order to verify the accuracy of the residual impact used to calculate the Gamsberg offset. IR noted since dust monitoring only commenced in 2022 a baseline scenario was missing for the Gamsberg set-aside areas. During the FIA BMM stated it expected the first dust monitoring report in March 2022.

The dust specialist report found the dust monitoring protocol had underestimated the impact of dust on the soils of the set-aside areas. There were a number of reasons for this: i. dust monitoring was not aimed at assessing the effect of dust on the soil environment – it dealt mainly with human health, ii. not enough dust buckets were monitored on a regular basis at Gamsberg, iii. the microscan method, although inexpensive and valuable in its own right, when utilised for the dust monitoring protocol, was neither accurate nor comprehensive enough to replace chemical analyses of the dust samples, and iv. dust samples were not sent for chemical analysis often enough. It was advised the position of dust buckets and the number of dust buckets be re-evaluated on a monthly basis and samples from strategically placed buckets be send for chemical analysis on a more regular basis (at least twice a year) if the dust monitoring protocol was to accurately inform the soil contamination status. An alternative option was to conduct a land contamination study.

The assessment of dust plumes/dust chemical analysis based on soil analysis taken from historical fall out dust reports, microscans and detailed soil analysis into consideration was undertaken for Gamsberg where opencast mining occurred and on the set-a-sides areas in close proximity to sensitive vegetation. The assessment was not conducted at BMM set-a-side areas as no opencast mining had taken place in close proximity of the set-a-side area. Fall out dust was sampled at 8 locations at BMM in close proximity to dust sources.

During the FIA a number of dust monitoring requirements were identified in the BMP. BMM has actioned these requirements as summarised in **Error! Reference source not found.**

**Table 5: Dust monitoring commitments identified in the BMP and progress made by BMM since the FIA.**

| Relevant monitoring commitments in the BMP (Version IV, 2015) required BMM to monitor as per FIA. | Progress made by BMM since FIA   |
|---|--|
| Ecological dust impacts on sensitive habitats and sensitive ecological receptors (monthly).       | A total of 56 dust buckets, 48 at Gamsberg and 8 at BMM, were conducted as part of monthly monitoring sites. In addition to detailed soil analysis as part PS Rossouws / EcoInfo implementation of the Flora Monitoring Report focusing on fall out dust/microscan reports historically and detailed soil analysis surrounding Gamsberg Mining and set-a-side areas. |
| Residual dust impacts as per Biodiversity Offset Plan 2013 (half yearly).                         | Microscan analysis of dust, soil analysis and dust plumes were conducted 6 monthly.  |

<sup>22</sup> 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.

|  |  |
|--|--|
| Vegetation condition (annual surveys undertaken by a botanical specialist).            | Conducted as part of Biodiversity Monitoring Protocol 4_Flora.   |
| Condition of IUCN Red List species and national conservation species on site (annual). | Conducted as part of Biodiversity Monitoring Protocol 4_Flora.   |
| Offset impacts in terms of dust fallout and groundwater (annual).                      | Report on dust plumes as determined and based on soil analysis – Groundwater Report indicates no impact on water levels and therefore drawn down curve of water to date. |

### Implementation of BMM’s monitoring and management measures

Since the FIA BMM implemented a number of commendable management measures including:

- Nursery Upgrade: Agarob Nursery was appointed in Sept 2022 to Implement the Nursery Management Plan and conduct monthly monitoring. Propagation of plants commenced in 2019 and plant numbers increased from ~ 17000 to 86 000. The upgrade of the Nursery was completed in 2021 by Silo and Son to double the Nursery Capacity, shade netting was replaced according to Nursery Management Plan, Reverse Osmosis plant was installed. Propagating unit and hardening areas were build and installed. Monthly search, rescue and transplanting as per ad hoc basis as pit expansion.
- Anti-poaching Campaign: by BMM and DAEARDL – involving other key role players such as SAPS, SANBI, SANPARKS – this was conducted between 7 to 9 Dec 2021.
- Locust control: a total of 352 swarms of brown locusts were managed by BMM Biodiversity Department covering an area of 30 000 ha with an estimated locust cover of 750 ha. The Brown locust control measures were implemented on BMM properties, Offset farms and adjacent landowners to support surrounding farmers.
- Fire Breaks: Due to good rains vegetation, especially grass cover in the areas, with special reference to the Game Camp established and became a fire hazard and therefore Daisy Mining Resources was appointed to assist with creation of fire breaks along fences along the N14 and adjacent properties.
- Rainfall monitoring
- Implementation of Biodiversity Monitoring Protocols and Reports
- Alien Invader Management Plan: of Offset farms as compiled by DAERLD. Infield assessment and development of detailed APO for eradication of Alien Invader Plants with CAMP commercial process completed for commencement.

### Poaching of *Conophytums*

The success of the Biodiversity Offset is potentially jeopardised by poaching of succulents on BMM’s set-aside areas and in the PA. Although IR recognises that it is not the responsibility of BMM to combat this organised

crime. IR furthermore acknowledges that BMM joined forces with landowners, SAPS and all other roleplayers and had already invested over R2M.

Plant poaching of numerous, highly threatened and incredibly rare *Conophytum* species has become rampant<sup>23</sup> in the region since the last audit and is viewed as the single greatest threat to succulent species of conservation concern. Some of these species are only found in a single location in the world. This activity has escalated significantly since the FIA and poaching incidents have taken place on BMM's set-aside properties, in the GNR and in various other locations throughout the greater Northern Cape region around the Gamsberg Mine.

IR was provided with considerable detailed evidence of the nature of poaching incidents and BMM's responses to these incidents. However, due to the sensitivity of this information details on the species, including their locations, numbers poached and remaining have not been included in this audit report.

BMM and DAERL have been cooperating to respond to poaching of plant species on the mine sites as well as in the Northern Cape region.

BMM has taken the poaching issues seriously and reacted promptly after each poaching incident<sup>24</sup>. BMM's responses included:

- Reporting and liaising with relevant authorities in the Northern Cape Province.
- Installation of 16 surveillance cameras, costing approximately R 2.2M during this period, at sites of special concern, both on and off the mine properties. IR was driven around to see the cameras installed, many outside the Mine License Area at road intersection points known to be only access and escape routes for poachers. A circular route of 420 km was covered by surveillance cameras to address poaching in the region.
- Monitoring and maintenance of surveillance cameras costing R 30 K per month.
- Security Patrols along access routes to sensitive plants within BMM and Offset farms between May to November: R 80K was spent taking into account only travel costs. Patrols involved 5-6 BMM staff on a daily basis as well as SAPS staff for an average of 4 hrs daily and for an estimated 90 days over this period.
- Establishment of the BMM Plant Protection Group. BMM security appointed an additional six people to assist with this initiative, adding SAPS, DAERL, adjacent farmers and Fidelity on BMM Plant Protection Group on WhatsApp to create antipoaching group for quick responses and actions teams.
- Establishment of Telegram Groups with access to surveillance Cameras by SAPS, BMM, Security and Fidelity to observe and respond to cameras and suspected vehicles with SAPS.
- An application for an emergency permit was requested from and issued by DAEAL on 26 May 2021, one day after the poaching incident was reported, to collect and donate plants to different South African

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<sup>23</sup> On 17 September 2022 five poachers were arrested by farmers, on the same date another five suspected poachers were offloaded but these got away and no arrests were made. On 23 September 2022 a further two of four poachers were arrested; they had been offloaded beneath surveillance cameras so easily spotted. The poachers were arrested and taken to SAPS but released due to a pending High Court Appeal case. Observations by land owners suggest poachers are dropped off by a courier outside the surveillance network, poachers walk long distances and drop bags next to the road, bags with poached plants are picked up by couriers and poachers move back. BMM reported illegal activities of plant collectors on 25 and 26 June 2021 and again on 9 July 2021 to SAPS in Aggeneys and Pofadder. The incidents had also been reported to Captain Carel du Toit of the Springbok Livestock and Endangered Species Unit. Arrests were made of four people on 26 June and three on 9 July.

<sup>24</sup> Following the first poaching incident on 25 and 26 June 2021, BMM reiterated its commitment to conserving biodiversity within the areas in the Northern Cape where VZI operates. It stated the poaching incident was seen as a great threat to conservation of biodiversity in the area. The incident was reported to the SAPS and was under investigation by the Springbok Stock Theft Unit who usually investigated the poaching of threatened species. BMM also informed the Northern Cape Department of Agriculture, Environmental Affairs, Land Reform, and Rural Development's (DAERL).

Botanical Gardens. The plants were collected from the site and donated to three Botanical Gardens to ensure the ex-situ conservation of this species.

- Regular contact with numerous organisations regarding poaching incidents and on-going investigation.
- Compiling a status report, for submission to DAERL, on remaining populations of the species impacted through the illegal collection, including additional measures to safeguard the threatened and protected species within BMM's areas of operation.
- Promptly increasing security measures in the area of the remaining population where the incident occurred.
- Displaying Posters stating it was illegal to collect, cultivate, transport or export plants without a valid permit in accordance with the Northern Cape Nature Conservation Act, 2009, the surveillance cameras were mentioned and a BMM contact number was provided for reporting any suspicious activity.

During this period seven successful arrests were made, seven criminals escaped. An estimated 3500 plants were confiscated and 750 plants were removed in the case of no arrest.

Since BMM installed the surveillance cameras there have been installed there have been no further poaching incidents on the mine. Poachers moved out of the surveillance network to the East & South.

BMM sent a letter to the Curator of Kirstenbosch National Botanical Gardens on 13 July 2021. In the letter BMM requested that some of the plants that had been confiscated and sent to Kirstenbosch for safe-keeping be returned to BMM for propagation in their Aggeneys nursery to be used as mother stock for seed collections and once harvested donated to the Millenium seedbank with surplus seed also used for reseeding within the affected areas on Achab mountain. BMM stated they were committed to safeguard this species within the BMM surface areas and in the Gamsberg Nature Reserve to ensure its survival for future generations. BMM engaged SANBI in a Service Level Agreement to assist with seed harvesting, propagation and tracking of plant numbers.



**Appendix C:**  
**A record of BMM’s attempts to purchase  
additional properties between FIA and SIA**

BMM targeted two properties for purchase in FY2022/23, namely REM Haramoep 53 and Ptn 1 of Wortel 42. However, since the FIA (the Final Close-out Audit Report was submitted in May 2020), namely over the past 2.5 years, BMM has not secured any additional properties to contribute to the GNR. However, at the time of undertaking the SIA BMM was in the process of securing Portion 1 of Wortel 42. The rationale for delays in purchase of additional properties is described below.

### Steps involved in purchasing Portion 1 of Wortel 42 and Portion 1 of Farm Haramoep 53

#### Portion 1 Wortel 42

- BMM submitted a status update on land purchases to DAERL on 14 January 2022.
- DAERL approved the purchase of REM of Haramoep 53, on the condition that mitigation measures are implemented, but not Ptn 1 of Wortel 41 in a letter dated 26 January 2022. This was due to a typo error where reference was made to Ptn 1 of Wortel 41 instead of Ptn 1 of Wortel 42.
- BMM corrected the typo and resubmitted the letter to DAERL on 1 February 2022 and made reference to its historic correspondence<sup>25</sup> on farm purchases.
- In a letter, dated 28 February 2022, DAERL approved the purchase of Portion 1 of the farm Wortel 42 but highlighted the prospecting license that might impact on conservation objectives<sup>26</sup>.
- BMM notified DAERL of its offer to purchase the fifth offset property and requested their approval in a letter dated 29 July 2022.
- IA was provided with evidence of a signed offer to purchase for Portion 1 of the farm Wortel 42, dated 15 June 2022, and a First National Bank guarantee, dated 8 August 2022. BMM also formally notified DAERL of the Offer to Purchase.
- ENS Africa were appointed as transferal authority and commenced with the transfer of Portion 1 of the farm Wortel 42 into BMM's name.
- All Transferal documents were subsequently submitted to ENSA Africa and BMM anticipated Ptn 1 of Wortel 42 to be transferred to BMM by the end of Dec 2022.

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<sup>25</sup> Reference is made to a letter dated 11 September 2019 providing an update on the status of the Biodiversity Offset implementation: Farms purchased, proposed farms to purchase, shortfalls in vegetation types and how the proposed farm purchases would address these shortfalls. DAERL's response to BMM on 20 September 2019 supports the purchase of Rem of Haramoep 53 but requires implementation of mitigation measures: namely fencing, reduction of footprint and avoidance of the washes for the solar development (Veld Nama Sun Pty Ltd) in the SW portion of the property. In this letter BMM encourages BMM to purchase Portion 1 of Haramoep Farm 53 and Portion 1 of Wortel as this will secure the population of *Pachypodium namaquanum* as part of the Haramoep Inselberg Ecological unit.

<sup>26</sup> In the letter, dated 12 January 2022, BMM states that Farm Wortel 41 has a mining permit on 5 Ha with various older mining permit disturbed areas. A new 15 Ha mining permit was approved in 2021 and an application (dated 28 February 2022) for further prospecting was applied for in 2021. This information as well as the objection against the application was shared with Ms Elsabe Swart, Mr Abe Abrahamse and Mr Peter Cloete of DENC via emails on 17 June 2021. BMM had submitted an objection against the prospecting application on 18 May 2021 to Ms Christine Fouche of Greenmind Environmental who was the independent environmental practitioner for the environmental authorization associated with the prospecting application. DAERL stated it would enter into further discussions with DMRE and requests BMM's support in dealing with this conflict of interest.

- In January 2023 ENS Africa informed BMM the transport courier had been hijacked in December 2022 and the transferal documents, title deeds etc. needed to be reprocessed which would delay the transferal until mid-February 2023.
- Prospecting application on Portion 1 of the farm Wortel 42 (dated 28 February 2022) was objected by DAERL:
- Ptn 1 of Wortel 42 was also presented to DAERL at the Steering Committee meeting held on 5 October 2022.

IR noted a long delay, over one year, from the offer to purchase Pprtion 1 of the farm Wortel 42 on 15 June 2022 to obtaining the bank guarantee on 8 August 2022.

### **REM of the farm Haramoep 53**

- The advantages of purchasing Haramoep were discussed in considerable detail in the FIA. REM of the farm Haramoep 53 links to Portion 1 of the farm Wortel 42 and REM and Portion 2 of the farm Rozybosch properties already purchased hence providing a contiguous tract of land for conservation.
- In a letter dated 20 Nov 2019 DENC recommended BMM secure REM of Farm Haramoep 53 as this would ensure the conservation of *Pachypodium namaquanum* as part of the Haramoep Inselberg Ecological Unit.
- In the letter dated 12 January 2022 BMM requests DAERL's confirmation of the proposed purchase of the REM of the farm Haramoep 53 and Portion 1 of Farm Wortel 42. BMM mentions that part of REM of the farm Haramoep 53 has been earmarked for a potential solar farm development. The proposed solar farm could easily be fenced-off from the rest of the farm, as a mitigation measure, and would not have any impact on the sensitive vegetation types. IR noted more than a two-year delay in this correspondence with regards to purchase of REM of Haramoep 53. This was mainly due to the landowners who changes his mind and who did not want to sell the entire farm anymore. The Landowner was diagnosed with cancers and passed away. The spouse of the deceased landowner engaged with BMM three months after his death and requested if BMM was still interested in buying the land.
- In the SC meeting powerpoint presentation (dated 5 October 2022) feedback is provided on the implementation of the Biodiversity Offset Purchase Plan: Regarding the purchase of REM Haramoep 53: BMM/DAERL met on 28 September 2022 and are aligned regarding rezoning and subdivision of this property. A further meeting to discuss the way forward was scheduled for 30 September 2022. Once sub-divided and rezoned BMM would engage with the landowner to secure the remainder of Farm Haramoep as it's 5th/6th offset property.
- Engagement regarding the purchase of REM of Haramoep 53 was well advanced when BMM were informed a solar developer had signed an Agreement with the Landowners and the Solar Developer wanted to enter into Notarial Lease agreement for 20 years.
- BMM subsequently withdrew its offer to purchase and shifted to secure Ptn 1 of Wortel 42 instead as the declaration of REM of Haramoep 53 was considered problematic with a Notarial Lease and proposed solar developer. BMM informed the landowner that once sub-division and rezoning were completed it would still be interested to purchase the farm.
- The solar developer engaged DAERLD regarding sub-division and re-zoning.
- A combined meeting between BMM, VZI Legal, DAERLD and MR Jason Cope of Solar Development was held on 5 October 2022 to discuss sub-division of land and rezoning of REM Haramoep 53.
- The IPs agree once the sub-division was completed, and rezoning executed, BMM would proceed to secure REM of Haramoep 53, should the landowner still be willing to sell.

- Further engagement with the landowner of REM and Ptn 1 of Haramoep 53 was scheduled to take place in Jan 2023. The Solar developer received consent from DAERLD to sub-divide the REM of Haramoep 53 and further discussions on the way forward were scheduled for Jan 2023.

#### **Additional Farm purchases currently under investigation**

- In a letter to DAERL, dated 29 July 2022, BMM stated it had requested ENS to conduct a search of any endorsements, new prospecting and/or mining applications, or any EIA processes for any renewable energy projects on the remaining 6 (of the 12) Annexe B1 and B2 Priority properties. The outcome would direct BMM to the remaining two farms to engage landowners who were willing sellers to meet the requirement of two additional farm purchases before 1 April 2024. IA noted the findings of this investigation would be critical to guiding any further attempted purchases.
- BMM representatives visited Mr G.Visser, the farm owner of the farms Namies North 146 (8576,509 Ha) and Remainder of Farm Namies North 146 ( 8547,5620 Ha) on 4 November 2022 (letter dated 4 December 2022) to discuss whether they were willing to sell the farms to BMM. They responded they were not considering selling either of the two farms now or in the future. BMM are awaiting counter-signage of the notes of the meeting. Once these are received these would be submitted to DAERL. Namies links to Vogelstruishoek and Achab properties already purchased providing a contiguous tract of land for conservation.
- BMM also visited Mr. B Agenbag and his family, the owners, of Portion 1 of Farm Haramoep 53 (4915, 1678 Ha) on 5 December 2022 to discuss whether they might be willing to sell the farm. Based on the discussion whereby BMM explained that the agricultural value of the farm was used to determine its value the owner responded that due to the drought the land value would be too low and therefore they were currently not willing to sell. BMM are awaiting counter-signage of notes of the meeting and once received it will be submitted DAERL.

# **Appendix D:**

## **Details on the structure and functioning of the Working Committee**

During the Steering Committee (SC) Meeting held on 14 September 2020, it was agreed a Working Committee (WC), including two representatives of BMM, two of DAERL and two representatives of IUCN, should be constituted to support the SC in ensuring the timely implementation of the BOA. The WC intended to meet once a month commencing in the week of 28 September 2020. The WC aimed to:

- Oversee implementation of action plans by BMM and DAERL;
- Address compliance challenges and make recommendations on how to address these challenges;
- Recommend amendments to the BOA;
- Follow-up on actions agreed during SC meetings; and
- Prepare feedback on progress and provide recommendations to SC for approval when required.

According to BMM the SC has been functioning better than prior to the FIA with an improvement in meetings, feedback, discussions and interactions during meetings. However, the frequency of the meetings remains a challenge due to the availability of the Chairperson.

Although a dedicated secretariat with clear roles and responsibilities was not appointed key personnel from BMM and DAERL have assisted in streamlining the meeting processes:

- Minutes of meetings were managed by K. Smit (BMM) and A. Abrahams (DAERL);
- Scheduling of meetings, preparations of agendas, minutes, presentations supporting documents etc. were managed by K Smit (BMM) and A Abrahams (DAERL) with inputs and support from IUCN.
- Pieter van Greunen of BMM offered that his PA would assist with SC and meetings going forward during SC meeting held on 5 October 2022.

The Working Committee (WC) assisted with effective implementation of the BOA by:

- Supporting the SC in ensuring timely implementation of the BOA by both parties;
- Overseeing implementation of the obligations of the parties, as per the BOA and actions agreed in the SC meetings;
- Reporting back to the steering committee on progress;
- Developing recommendations to the SC for approval when required;
- Managing responses to IA's comments from the FIA; and
- Managing Addendum of BOA and presentation to SC and legal teams.

Notes of the WC meetings were circulated after each meeting.

# **Appendix E:**

## **Update on recommendations made in FIA**

**Table 6: Summary of recommendations per clause of BOA (some of outstanding reccs from FIA have been carried over and new ones added – not added yet)**

| Clause   | IR Recommendation during FIA ( <i>Assessment during SIA</i> )   |
|----------|---|
| Clause 3 | <p><b>General duties of the parties</b></p> <ul style="list-style-type: none"> <li>DAERL to consider appointing sub-contractors to assist in implementation of the IMP. <b>Not actioned.</b></li> </ul>   |
| Clause 4 | <p><b>Biodiversity Offset – Assessing alignment of BMM and Vedanta’s policies and all biodiversity related documentation falls outside the scope of the Audit.</b></p> <ul style="list-style-type: none"> <li>The implications of the magnitude of residual impacts to be offset need to be confirmed by external biodiversity specialists to confirm alignment of the BOA no net loss (NNL) commitment with BMM/Vedanta’s Biodiversity Management Policy<sup>27</sup> commitment of “achieving net positive effect<sup>28</sup> on biodiversity through minimizing negative impacts and contributing to conservation”.</li> <li>Align BMM/Vedanta’s Biodiversity Management Policy and BOA with the International Finance Corporations (IFC)’s Performance Standard (PS) 6 requirements. PS 6 would likely require a net positive impact (NPI) to be demonstrated for the Gamsberg Zinc Mine.</li> <li>Clearly define no net loss, net positive impact and net positive effect and define the specific timeframe by which BMM intended to achieve these biodiversity commitments.</li> </ul>   |
| Clause 5 | <p><b>Management of set-aside properties:</b></p> <ul style="list-style-type: none"> <li>Revise BMP BMM risk management and land use maps to delineate BMM set-aside properties. This activity was completed in BMP V.5. Risk maps were revised. <b>Completed for CAMP (2022). EMP and BMP were revised and recommendations made by IA were incorporated in the CAMP. It was therefore only required to update and finalize the BMP 2019 and include all recommendations that were addressed as part of CAMP and submit the final document .</b></li> <li>Revise BMP and EMP to specify priority management and monitoring activities for the four set-aside properties and to clarify constraints on activities that would affect their biodiversity. This has been partially undertaken by BMP V.5 but additional details are still missing. Was addressed as part of he updated CAMP and needs to be incorporated in BMP.</li> <li>BMM to appoint additional staff (such as a dedicated Land Manager) to ensure effective management of the set-aside areas. Action to be assessed during next IA. <b>No additional staff appointed.</b></li> <li>Allocate more resources to improve implementation of the directives in the management plans. Action to be assessed during next IA.</li> <li>Ensure regular and timely communications between BMM management and ecologists to ensure protection of sensitive species and habitats. This is an on-going requirement. <b>No additional staff appointed. However external consultants Dr Phil Desmet and Mark Botha were consulted.</b></li> <li>Implement fencing of set-aside properties where stronger access control is required. Action needs to be assessed during next IA. Fencing has commenced and over R 8m worth material was delivered and fencing was in progress but not completed.</li> <li>Prioritise management actions on set-aside properties by means of implementation of updated and revised CAMP and BMP. Action to be assessed during next IA.</li> </ul> |

<sup>27</sup> Dated 24-10-2018 in the footer although the version provided to IR to review was neither officially signed nor dated.

<sup>28</sup> “Net positive effect” was not specifically defined in BMM/Vedanta’s Biodiversity Management Policy, net positive impact (NPI) is the term more commonly used.



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|  | <ul style="list-style-type: none"> <li>• Improve access control of set-aside areas. Action to be assessed during next IA. <b>Action completed. Access control improved but poaching remained a problem.</b></li> </ul> <p>*Note: The updated BMP (V.5, dated 2019) has incorporated most of these recommendations. However, the implementation of these recommendations on the ground would still need to be assessed during the next Independent Audit. <b>BMP still needed to be updated to incorporate the recommendations addressed as part of CAMP update and implementation would need to be assessed in the next Audit.</b></p> <p><b>Revise CAMP to:</b></p> <ul style="list-style-type: none"> <li>• Delineate set-aside areas and fenced conservation areas on all figures. <b>Completed.</b></li> <li>• Depict monitoring sites on the 18 critical plant populations and on each of the sensitive habitat types on the set-aside areas. Included in Monitoring Protocols and BMP. Incorporated in the revised and final monitoring protocols in final <b>updated BMP.</b></li> <li>• 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. No game stocking is taking place on the BMM set-asides. Game was only introduced historically in the Game Camp and Conservation areas at BMM mining right areas. No introduction of any game species at Gamsberg Mining and Conservation areas.</li> <li>• 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. <b>No additional road construction since FIA.</b></li> <li>• Address all gaps identified in this Review (Appendix B). Completed. See <b>Error! Reference source not found.</b></li> <li>• Increase BMM presence on-site to deter rare plant collectors. Not actioned. But following a single poaching Incident, poaching patrols and surveillance cameras were increased and considerable resources spent to deter succulent poachers.</li> <li>• Align with Management Plan for Protected Areas. Not assessed by IR. May require a separate review.</li> </ul> <p>FIA noted the CAMP was due to be updated on 1 August 2019 however, due to COVID restrictions the infield assessment could only be done in September 2020. <b>IR was presented with the revised copy dated 2022.</b></p> <p><b>Monitoring:</b></p> <ul style="list-style-type: none"> <li>• Streamline document management. <b>Still to be undertaken.</b></li> <li>• Consider hiring a land manager to oversee and implement monitoring actions on the set-aside properties. <b>Not actioned.</b></li> <li>• Allocate resources and responsibilities to implement dust monitoring program. <b>Completed. First report submitted August 2022.</b></li> <li>• Gather dust monitoring data as per requirements of Vegetation and Dust Monitoring Protocol. <b>Completed.</b></li> <li>• Produce Annual/Bi-annual Dust Monitoring Reports. <b>First Annual Report completed, August 2022.</b></li> <li>• Update dust impact footprint and residual impact based on dust monitoring results. <b>Not actioned yet.</b></li> <li>• Incorporate dust monitoring results into activities focused on protection of BMM properties and adapt monitoring programmes to align with changes. Recommendations after a test year would be incorporated in the revised and updated Monitoring Protocol for long-term monitoring.</li> </ul> <p><b>Amend the BOA to:</b></p> <ul style="list-style-type: none"> <li>• 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. <b>Not done.</b></li> <li>• Restrict further prospecting on BMM set-asides without written agreement by both implementing parties. <b>No further prospecting undertaken since FIA.</b></li> </ul> |
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|                          | <ul style="list-style-type: none"> <li>• Amend BOA to state that BMM needs to formally notify DAERL when it intends to submit an application for EA to prospect or mine on any of its set-aside areas.</li> <li>• 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. <b>Completed. But on-going requirement.</b></li> <li>• BMM to appoint a specialist team including appropriate biodiversity and legal expertise to assess the necessity for an additional BOA versus an amendment to the existing BOA to address prospecting on set-aside areas for Gamsberg South and East and Big Syncline properties. This was a condition of the exploration EA. <b>This was addressed during the workshop. IR did not assess detailed documentation.</b></li> <li>• 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 external biodiversity advisors (either suitably qualified NGO’s or biodiversity consultants) to inform its explorations staff appropriately. This was addressed through bi-weekly Biodiversity SC meetings with Management (Including COO, GM of Gamsberg, GM of BMM, Mining Manager, Exploration Manager and Team, HSE ESG Director since 2019 and are also incorporated in any mine planning sessions and medium- and long-term projects discussions.</li> <li>• A workshop was held with relevant stakeholders identified by the implementing parties from DAERL and BMM including representatives of Digby Wells, EndemicVision, specialist biodiversity consultants with knowledge of the BOA such as Mark Botha and/or Phil Desmet amongst others as considered necessary to:             <ul style="list-style-type: none"> <li>• Clearly define &amp; agree on the conservation implications and restrictions of the four set-aside properties particularly in terms of future prospecting (and/or mining) activities.</li> <li>• Develop priority activities to be undertaken on these properties to assist with protection, management and monitoring of the properties and update the EMP &amp; BMP to include agreed actions/activities.</li> <li>• 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. <b>BMM needs to investigate allocating additional human and financial resources.</b></li> <li>• This workshop took place in February 2020 and the report was submitted to IR for review during the Close-out Audit.</li> <li>• <b>Amend the BOA</b> accordingly.</li> </ul> </li> <li>• Conduct an Annual External Audit of the “Protection of BMM Properties”. <b>Covered in specialist workshop.</b></li> </ul> <p>Assess impacts of explorations activities on set-asides (Big Syncline). Ensure that Gams sandy plains and calcrete patches sensitive habitats, that were already the receiving environment for species from the concentrator and rock dump (CAMP, 2015), will not be impacted by proposed explorations activities. Namely ensure that species of special concern that have already been disturbed and relocated will not be further disturbed by exploration activities. <b>No additional exploration activities took place since FIA.</b></p> |
| <p>Clauses 6 &amp; 7</p> | <p><b>6. Declaration of additional land as a protected environment and/or nature reserve</b></p> <p><b>7. Requirements regarding the properties</b></p> <ul style="list-style-type: none"> <li>• Technical compliance around conservation objectives of the BOA requires input from technical experts within DAERL and BMM otherwise appropriate external technical experts need to be sub-contracted to provide input in the decision regarding compliance with Clause 6.3. <b>Completed. But on-going requirement.</b></li> <li>• 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. <b>BOA amended but not signed by IP.</b></li> </ul>   |

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|                  | <ul style="list-style-type: none"> <li>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. <b>BOA amended but not signed by IP.</b></li> <li>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. <b>BOA amended but not signed by IP.</b></li> </ul> <p>Meeting the conservation objectives:</p> <ul style="list-style-type: none"> <li>Prior to purchasing REM portion of farm Haramoep 53, BMM should enter into discussions with DAERL and/or other suitable specialists to confirm: a) if the Halfmens population is viable, healthy and demonstrates evidence of recruitment, b) obtain an estimate of Halfmens population numbers and c) establish the unique contribution this population could make to SA conservation. During the Close-out Audit BMM informed IA that these recommendations had been included in Scope change and contract amendment with EkoTrust as part of their work to update the CAMP. <b>IR to review study during Final Audit.</b></li> <li>The next IA needs to specifically focus on whether BMM is accomplishing its conservation objectives according to BMP (2019) &amp; CAMP.</li> </ul> |
| <p>Clause 8</p>  | <p><b>Management Authority</b></p> <p>DAERL to consider appointing an external party(ies) to assist with management of the Protected Areas where internal staff capacity is recognised to be lacking particularly with regards to implementation of the IMP. <b>No action taken.</b></p>   |
| <p>Clause 9</p>  | <p><b>Management Plan</b></p> <ul style="list-style-type: none"> <li>During the Close-out Audit DAERL informed IR it did not have funds to appointment sub-contractors or consultants and furthermore government did not encourage the appointment of sub-contractors. However, IR is concerned by the delay in implementation of the IMP. As per the FIA, IR recommends DAERL assess its resource and capacity constraints and undertake the necessary capacity building to ensure the requirements of the BOA are met; specifically with regards to implementation of the MP. <b>IMP completed. Implementation of IMP not yet commenced.</b></li> <li>In the FIA IR suggested including commitments for the management of BMM’s set-aside areas in the IMP – the in-depth review required to assess if this has taken place is beyond the scope of the Audit and may require sub-contracting a specialist consultant. <b>Not assessed.</b></li> <li>Sub-contract an expert in drafting and implementing PA Management Plans (this may require two different sub-contractors) to review the IMP and undertake a gap analysis to assess alignment with the requirements and intention of the Gamsberg BOA. <b>This is different to Public Consultation undertaken by BMM. No evidence provided to IR that an expert in Management Plans reviewed the IMP prior to its finalisation.</b></li> </ul>   |
| <p>Clause 10</p> | <p><b>Financial Provisions</b></p> <ul style="list-style-type: none"> <li>IR noted 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 <b>amend the BOA</b> to reflect their intention. <b>BOA amended to extend the Second Time Period only.</b></li> <li>Prioritize registration of the Trust. This was completed prior to submission of the Close-out Audit report.</li> <li>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. <b>Completed aside from office and accomodation units.</b></li> <li>Consider whether BOA should be amended to take size of properties to be managed into consideration regarding annual payments rather than assume each property to be managed as requiring the same amount of financial resources irrespective of property size (in hectares). <b>No action taken yet.</b></li> </ul>  |
| <p>Clause 12</p> | <p><b>Steering Committee</b></p>   |

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|                  | <ul style="list-style-type: none"> <li>• Increase number of SC meetings to three to four times per year to address non-compliance issues as they arise. <b>Agreed, twice per year.</b></li> <li>• Reconsider structure of SC to facilitate decision-making and follow-up on actions and responsibilities of the implementing parties. <b>Completed.</b></li> <li>• <b>Amend the BOA</b> to clarify distinct roles of LC and SC so that their functions are non-overlapping. <b>Not completed.</b></li> <li>• Consider <b>amending the BOA</b> to include additional punitive conditions where obligations have not been met. <b>No action taken yet.</b></li> <li>• Schedule a special SC meeting following receipt of the Final Independent Audit Report to incorporate recommendations into the BOA. This would be preferable to waiting six months i.e. when the next SC is due to take place. <b>Meeting held.</b></li> </ul>   |
| <p>Clause 13</p> | <p><b>Establishment of Liaison Committee</b></p> <ul style="list-style-type: none"> <li>• The Advisory Committee would replace the LC. The Working Committee had been operating as the LC in the interim.</li> <li>• AC/WC needs to give particular consideration to conservation and management of the BMM set-aside properties.</li> <li>• Consider strategies to improve follow-up in between meetings.</li> <li>• Consider including legal and/or technical experts where committee members cannot understand the BOA and implementation requirements.</li> </ul>   |
| <p>Clause 15</p> | <p><b>Breach and Penalties</b></p> <p><b>Amend the BOA</b> clause 15.4 to reflect the intentions of the parties and avoid conflicting interpretations. <b>No change.</b></p>  |
| <p>Clause 23</p> | <p><b>Proposed Revisions to the Offset Agreement and implementation/execution thereof:</b></p> <ul style="list-style-type: none"> <li>• Revise Independent Audit interval to annually rather than every five years to highlight non-conformances as these arise. <b>SC agreed every 2 years.</b></li> <li>• Include clear definitions of terms such as: ‘biodiversity offset’, ‘protected area’, and ‘set-aside areas’. <b>No action.</b></li> <li>• 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 Gamseberg South and East. <b>Not completed.</b></li> <li>• Revisit the offset requirements if monitoring highlights significant changes in impact predictions. (&amp; update BMP). <b>Ongoing as monitoring results did not highlight significant changes.</b></li> <li>• Include appropriate specialists/consultants in offset implementation when technical discrepancies arise. Implemented and ongoing as required .</li> <li>• 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 &amp; Southern portions of Gamsberg and Big Syncline and cumulative impacts. It was informed the Gamsberg Open Cast Mine had triggered a BOA. All future projects would be included in a cumulative impact assessment.</li> </ul> <p><b>Requirement for impacts of set-aside activities to be incorporated in offset requirements – Not assessed.</b></p> <p>During the FIA IR was requested to provide recommendations on whether the existing BOA should be amended or a new BOA developed to address the offset requirements of the exploration activities on the set-aside properties. IR considered this activity as beyond the scope of the current Independent Audit. However, some initial considerations/recommendations have been provided should the implementing parties decide to amend the existing agreement:</p> |

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|  | <ul style="list-style-type: none"> <li>• Include new definitions clearly defining protection of the set-aside properties.</li> <li>• Update Clause 5 to stipulate activities permitted on the set-aside properties and agreements required between IPs prior to submission of Basic Assessments for future prospecting applications.</li> <li>• 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.</li> <li>• Revise the mechanism of implementation for the additional offset.</li> <li>• Revise timeframe requirements to achieve the additional offset and the consequences of the additional offset.</li> <li>• Include requirement for additional oversight by biodiversity specialists.</li> <li>• The additional offset may require a separate Management Agent, Management Plan and Financial Provisions.</li> </ul> <p>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.</p> <p>BMM informed IR the exploration conditions were appealed and BMM has revisited the exploration.</p> |
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