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OTHER EFFECTIVE AREA-BASED CONSERVATION MEASURES LEGAL REVIEW – SOUTH AFRICA

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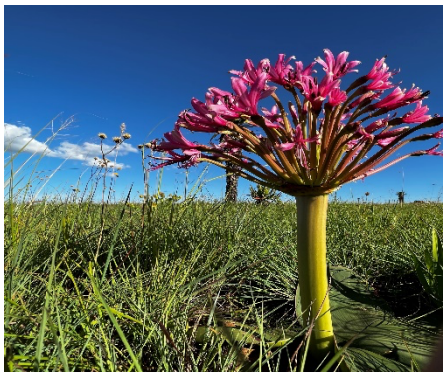

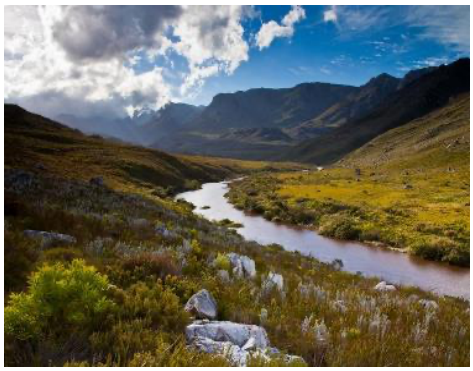

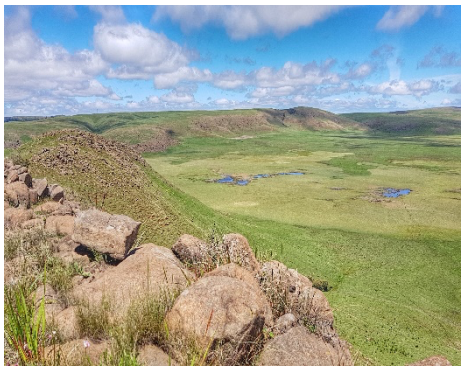

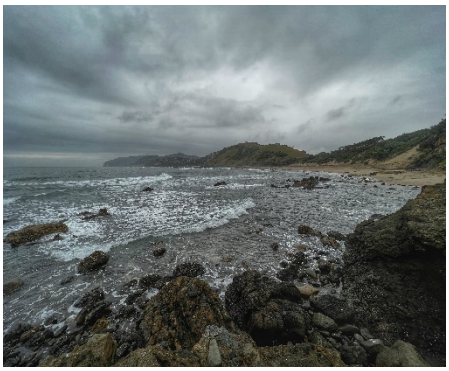

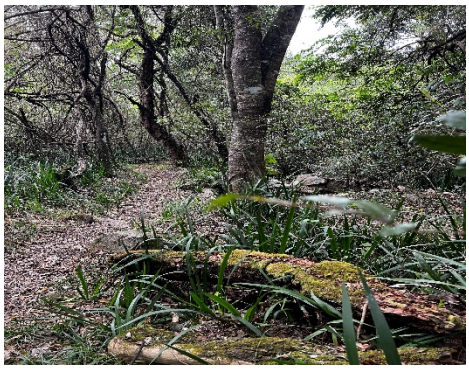

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Marine OECM Mechanisms

1. Introduction

1.1 Background

This Legal Review comprises part of the WWF Nedbank Green Trust funded *Formalising and Advancing Contributions to South Africa's Conservation Estate Using OECMS Project*, currently being implemented by BirdLife South Africa and Conservation Outcomes. It generally seeks to contribute towards the Project's Key Objective 5, namely:

> Ensure that OECMs receive improved recognition through strengthening their legal recognition, which has the advantage of regulating, or creating a standard for an OECM, beyond 2030. The regularisation of OECMs will also drive an increased willingness from landowners who value the recognition of the conservation efforts that they perform, which have largely gone unnoticed in the past.

It more specifically seeks to fulfill the Project's Outcome 3, namely "exploring mechanisms to strengthen the formal security of OECMs, including potential legal mechanisms or similar".

It is founded upon the following three key premises, as endorsed by the Project Advisory Committee:

- *Premise 1 – "It is imperative that the national government ensure that OECMs are underpinned by strong, statutory interventions … to ensure certainty, clarity and consistency within the identification, assessment and reporting of OECMs…".*[1]
    - This premise draws from wording in the Final Report of the initial WWF Nedbank Green Trust Western Cape Pilot Project Final Report (2023).
    - It emphasizes the key potential role and influence of law in ensuring **certainty, clarity and consistency** in relation to the identification, assessment, recognition, monitoring and reporting of OECMs.

- *Premise 2 – With OECMs and protected areas counting towards the same global target, subjecting them to comparable regulation would promote the credibility of the global target and the equivalence of its respective constituent components counting towards it.*
    - This premise recognises that the Convention on Biological Diversity's Kunming-Montreal Global Biodiversity Framework's Target 3 comprises of two forms of area-based measures, namely protected areas and OECMs.
    - With both forms of area-based measures contributing to the same Target, it emphasises the importance of subjecting them to some degree of comparable regulation to ensure equivalence in the treatment of the two area-based measures counting towards it.
    - A failure to ensure such **comparability and equivalence** between the two forms of area-based mechanisms may undermine the **credibility** of Target

[1] G Murison, S Hulley, B Maree, K McCann, G Boothway, A Wheeler, B Escott & M Whitecross *Western Cape OECM Pilot Project Technical Review* (2023) 91.

3, something which would naturally not have been the case if separate targets had been set for each form of area-based measure.

- *Premise 3 – Given that the requirement for OECMs is to achieve positive and sustained long-term outcomes for biodiversity conservation, this comparable regulation should encompass the initial process to recognise them and the ongoing process to support, monitor, secure and protect them post recognition.*
    - This premise recognises that OECMs must achieve **positive and sustained long-term outcomes** for biodiversity conservation and proposes that any form of **comparable regulation** should accordingly span both their initial recognition, and other processes aimed at supporting, monitoring, securing and protecting them following their recognition.
    - A failure to do so may undermine their potential to continue achieving **positive and sustained long-term outcomes** for biodiversity conservation post their initial recognition.

Aware of current efforts of the Department of Forestry, Fisheries and the Environment (DFFE) to explore and formulate some form of legal reform relating to OECMs in the next two-year timeframe, it seeks to inform and feed-in to these efforts, by focusing on the following four main objectives:

- Building understanding of the potential influence and role of law in the context of OECMs.
- Providing a high-level overview and review of the domestic law relevant to OECMs.
- Identifying potential legal gaps and issues requiring legal reform.
- Highlighting the possible form, nature and content of this legal reform.

1.2 Nature, Scope, Structure & Methodology

The nature and scope of this Legal Review is naturally informed by the nature and scope of the project brief. It constitutes a high-level review aimed at informing and contributing to DFFE's anticipated future legal reform relating to OECMs. This Legal Review focuses on selected potential OECM mechanisms from a national legal perspective, spanning both the terrestrial and marine context. These potential OECM mechanisms have been predominantly identified through prior South African studies[2] as meeting (green) or almost meeting (orange) the internationally prescribed OECM criteria. As this is a legal review, only those potential OECMs with some clear legal mechanism underpinning them are considered. The complete list of potential OECM mechanisms included within the remit of this Legal Review is reflected below, divided into the terrestrial and marine context and according to whether conservation is the primary, secondary or ancillary management objective:

[2] These studies are: D Marnewick, C Stevens, R Antrobus-Wuth, N Theron, N Wilson, K Naude and H Jonas Assessing the Extent of OECMs in South Africa: Final Project Report (2020) BirdLife South Africa; G Murison, S Hulley, B Maree, K McCann, G Boothway, A Wheller, B Escott & M Whitecross *Western Cape OECM Pilot Project Technical Review* (2023) WWF Nedbank Green Trust; DFFE Other Effective Area-Based Conservation Measures (OECMs) in Marine and Coastal Ecosystems in South Africa – Criteria and Exploration of Potential Mechanisms (March 2024).

Potential National Terrestrial OECMs	
Primary Management Objective	**Underpinning Type of Law**
• Biodiversity Management Agreement	• National Legislation
• Biodiversity Agreement (no title deed condition)	• Common Law (Contract)
• Biodiversity Agreement (with title deed condition)	• Common Law (Contract & Property) & National Legislation
• Conservation Servitude	• Common Law (Contract & Property) & National Legislation
• Landowner Association (with title deed condition)	• Common Law (Contract & Property) & National Legislation
• National Botanical Garden	• National Legislation
• Controlled Natural Forest	• National Legislation
• Protected Woodland	• National Legislation
• Ramsar Site	• International Law
Secondary Management Objective	**Underpinning Type of Law**
• Conservation Champion Agreement	• Common Law (Contract)
• Municipal Zoning Scheme & Overlays	• National, Provincial & Municipal Legislation
• Coastal Planning Scheme	• National, Provincial & Municipal Legislation
• Special Management Area	• National Legislation
Ancillary Management Objective	**Underpinning Type of Law**
• SANDF Land (General)	• National Legislation
• SANDF Training Areas	• National Legislation
• Heritage Site	• National Legislation
Potential National Marine OECMs	
Primary Management Objective	**Underpinning Type of Law**
• Fisheries Closed Area	• National Legislation
• Fisheries Exclusion Zone	• National Legislation
• Biodiversity Conservation Area	• National Legislation
• Protected Islands & Rocks	• National Legislation
Secondary Management Objective	**Underpinning Type of Law**
• Estuarine Management Plan	• National Legislation
• Special Management Area	• National Legislation
• Small-Scale Fishing Zones (S 19 MLRA)	• National Legislation
Ancillary Management Objective	**Underpinning Type of Law**
• Military Practice Zones	• National Legislation
• Exclusion Zone (Wreck)	• National Legislation

While it is acknowledged that there are several potentially relevant terrestrial OECM mechanisms provided for in provincial legislation (excluding those areas or any parts thereof subsequently recognised as nature reserves and protected environments following the commencement of the National Environmental Management Protected Areas Act 57 of 2003), these, listed in the interests of completeness below, fall outside the scope of this Legal Review:

Potential Provincial Terrestrial Statutory OECMs
Eastern Cape
• Wildlife Reserve (Transkei Environmental Conservation Decree 9 of 1992) • Conservancy (Eastern Cape Environmental Management Act 2 of 2024 - yet to commence) • Biosphere Reserve (Eastern Cape Environmental Management Act 2 of 2024 - yet to commence)
Free State
• Game Reserve (Bophuthatswana Nature Conservation Act 3 of 1973)
Kwazulu-Natal
• Game Reserve (KwaZulu-Natal Nature Conservation Act 29 of 1992) • Controlled Hunting Area (KwaZulu-Natal Nature Conservation Act 29 of 1992) • Forest Reserve (KwaZulu-Natal Nature Conservation Act 29 of 1992) • Tribal Game Reserve (KwaZulu-Natal Nature Conservation Act 29 of 1992) • Community Conservation Area (KwaZulu-Natal Nature Conservation Act 29 of 1992) • Wilderness Area (KwaZulu-Natal Nature Conservation Act 29 of 1992) • Biosphere Reserve (KwaZulu-Natal Nature Conservation Act 29 of 1992)
Limpopo
• Sites of Ecological Importance (Limpopo Environmental Management Act 7 of 2003) • Natural Resource Area (Limpopo Environmental Management Act 7 of 2003)
Mpumalanga
• Conservancy (Mpumalanga Nature Conservation Act 10 of 1998)
North West
• Game Reserve (Bophuthatswana Nature Conservation Act 3 of 1973)
Western Cape
• Mountain Catchment Area (Western Cape Biodiversity Act 6 of 2021) • Biodiversity Stewardship Area (Western Cape Biodiversity Act 6 of 2021) • Biosphere Reserve (Western Cape Biodiversity Act 6 of 2021)

With a view to achieving the four main objectives outlined above, the Legal Review is divided into 4 main parts:

- *Understanding Law in the Context of OECMs (Part 2)*
  - It looks at law from first principles – not focusing on SA law specifically.
  - It begins by seeking to build broad appreciation of the nature, role, importance, constraints and influence of law in the context of OECMs generally.
  - Thereafter, aligning with the eight criteria embedded within the three-stage process contained in the IUCN Site-Level Tool for Identifying Other Effective Area-Based Conservation Measures (2023),[3] it builds a Legal Assessment Matrix that distils a set of legal issues (phrased as questions) highlighting the potential role or influence of law in the context of each criterion. This

[3] H Jonas, K MacKinnon, D Marnewick and P Wood *Site-level Tool for Identifying Other Effective Area-Based Conservation Measures* (OECM) (2023) IUCN.

aims to deepen understanding of the potential role and influence of law in the context of the internationally promoted criteria underpinning OECMs.
    - This Legal Assessment Matrix is then drawn upon in the context of the Legal Assessment of selected potential OECM mechanisms in South Africa undertaken in Part 4 of the Legal Review.

- *Overview of South Africa's Legal and Policy Framework of Relevance to OECMs (Part 3)*
    - It identifies and provides a brief broad description of the main domestic laws and policies of central relevance to OECMs, focusing on these from a national and not provincial and local perspective.
    - It aims to build an appreciation of the broad array of nationally applicable laws and policies of relevance to OECMs, to ensure that any future national legal reform relating to OECMs considers, complements and aligns with them.
    - It comprises of basic text linked to tables in which the main nationally applicable laws and policies of relevance to OECMs are identified and their potential relevance to OECMs briefly explained.
    - It does not purport to provide an extensive analysis and explanation of the relevance of each law and policy as this falls outside the scope of this Legal Review.

- *Legal Assessment of Current Role and Influence of South African Law on Key Potential OECMs (Part 4)*
    - It draws from Legal Assessment Matrix developed in Part 2 that highlights the potential role or influence of law in the context of each eight criteria embedded within the three-stage process contained in the IUCN Site-Level Tool for Identifying Other Effective Area-Based Conservation Measures (2023).
    - Using a colour-rating scale embedded in a Legal Assessment Table, it highlights the extent to which the existing law relevant to each of the selected potential OECM mechanisms falling within the remit of this Legal Review provides for and/or addresses these legal issues.
    - The purpose behind this methodology is to highlight whether the existing law linked to each selected potential OECM mechanism addresses these legal issues, to then be able to identify potential legal strengths, legal gaps and opportunities any future legal reform could address.
    - The Legal Assessment Table is supplemented by a brief explanatory summary linked to each potential selected OECM mechanism falling within the remit of this Legal Review, which briefly outlines the legal foundation of each potential OECM mechanism and justification for the relevant rating. The explanatory summary is contained in Annexure A.

- *Recommendations for the Way Forward (Part 5)*
    - Based on the outcomes of the Legal Assessment undertaken in Part 4, it seeks to identify general legal gaps and issues requiring potential future legal reform.
    - It then scopes potential options for this future legal reform, focusing on both the possible form and nature of the legal reform, and possible key content it needs to address.

As instructed, this Legal Review is purposely written in a non-technical manner to ensure that it is accessible to the broad range of current and potential future stakeholders with a role to play in OECMs.

2. Understanding Law in the Context of OECMS

A prerequisite to undertaking any detailed legal review in any specific context, is firstly understanding the general nature and role of law, the theoretical benefits it provides and the general constraints it poses. Thereafter, one is better placed to reflect on its potential theoretical role (its direct impact in enabling or regulating something) and influence (its indirect impact upon something) in a specific context, such as OECMs. Building this theoretical understanding in any novel context forms an essential and necessary foundation of understanding to then critically consider the merits of a country's specific legal framework, such as that relevant to OECMs. The former is the purpose of this section of the Legal Review and given the current dearth of specific global guidance on the role and influence of law on OECMs, it is based on first principles.

2.1 Nature, Role & Influence of Law

2.1.1 What is Law?

Law in its simplest sense is the body of rules that regulates the relationship between governments, the government and its citizens, and between the citizens themselves. These rules can create both rights (which are legally enforceable against others) and obligations (which create duties legally owed to others). The geographic scope of application of these rules is diverse as they can span the international, regional, national, provincial, local and/or municipal levels/spheres. Their substantive focus varies with often different laws administered by different government departments governing many issues potentially relevant to OECMs such as: constitutional issues; land issues; conservation issues; natural resource issues; environmental management and developmental control issues; spatial planning issues; extractive (minerals, oil and gas) issues; marine and coastal issues; climate change issues; and fiscal issues.

2.1.2 Sources of Law

The source of these rules is diverse and can include:

- *Treaties/Conventions* – that create rights and obligations between countries through agreements concluded between them. These rights and obligations are then given domestic effect to through domestic legislation enacted by governments.
- *Legislation* (also known as statutes or Acts) – that create rights and obligations between the state and its citizens, and between citizens; and which can be enacted by different spheres of government (national, provincial and local/municipal) in respect of issues and territory over which they exercise jurisdiction.

- *Subordinate legislation* (also known as regulations and notices) – rules made under legislation with the key distinction being that:
  - Regulations generally impose an additional set of rules in the form of rights and obligations linked to issues dealt with in the main legislation under which they are published.
  - Notices generally contain additional information linked to issues dealt with in the main legislation under which they are published, but do not generally impose additional rules in the form of rights and obligations.
- *Court decisions* – rulings by the judiciary on particularly matters brought before it for adjudication, which then create precedent in the context of similar issues subsequently brought before the judiciary.
- *Common law* – rules predominantly stemming from colonial Roman-Dutch legal principles as interpreted and applied through court decisions (commonly applicable to the rules regulating land, contracts and other forms of personal obligations).
- *Customary law and practice* – rules embedded in customary law and practice, which are generally unwritten and orally conveyed from one generation to the next.

2.1.3 Law vs Policy

Law is often accompanied by policy (inclusive of strategies, action plans, guidelines, etc). While the content of law and policy may deal with similar issues, they are distinct:

- *Law* is normative – it creates rights and obligations and therefore controls actions and decisions.
- *Policy* is generally informative – it does not create rights and obligations but rather guides and informs actions and decisions.

2.1.4 Role of Law

Notwithstanding their varied substantive focus and the diversity of legal sources, laws often contain common legal mechanisms of potential relevance to OECMs such as: recognising rights (inclusive of land, resource and procedural rights); providing for principles and objectives to inform decision-making; enabling planning (including land-use, spatial, conservation and management planning); recognising existing or setting up new institutions and detailing their composition, functions and powers; providing for environmental assessments; identifying permitted and prohibited activities; outlining qualification criteria and safeguards linked to incentives; clarifying monitoring and reporting requirements; and providing for compliance and enforcement mechanisms.

Implicit in these common legal mechanisms of potential relevance to OECMs, are two broad potential roles for law, namely an enabling function and a regulatory function.

- *Law as an Enabler* – law can enable, empower and recognise by, for example:
  - Protecting rights.
  - Clarifying key objectives underlying the law.
  - Defining key terms thereby creating clarity and potential linkages across laws.

- Targeting action linked to strategic planning and priorities.
- Establishing new and recognising existing institutions.
- Providing formal acknowledgement for existing measures.
- Facilitating additional action by enabling novel measures.
- Promoting and entrenching long-term commitments.
- Facilitating diverse governance and management arrangements.
- Providing legal security for linking incentives and investment.
- Building credibility and support.

- *Law as a Regulator* – law can regulate, control and sanction by, for example*:*
  - Prescribing mechanisms and minimum durations for securing areas long term.
  - Identifying key principles that must be considered by all when implementing the relevant the legal framework.
  - Entrenching procedures ensuring inclusivity, openness and transparency in decision-making.
  - Prescribing mandatory and discretionary management objectives and actions.
  - Outlining and regulating the powers and functions of institutions.
  - Providing for proper and consistent monitoring and reporting.
  - Holding management authorities to account where they fail to meet these management objectives, implement management actions and fulfil monitoring and reporting requirements.
  - Regulating issues like access and use.
  - Protecting areas against competing land-use.
  - Imposing sanctions in the case of non-compliance.

2.1.5 Benefits & Constraints of Law

In realising this role as both an enabler and regulator, it is recognised that law can bring both potential benefits and constraints. The design of any legal reform relating to OECMs needs to seek to optimise these benefits and minimise these constraints.

- *Potential Benefits* include:
  - Certainty – creating certainty for the regulator and regulated community, thereby potentially building support and buy-in.
  - Clarity – building clarity for the regulator and regulated community thereby potentially building support and buy-in.
  - Consistency – promoting consistency in the treatment of the regulated community and the OECM instruments thereby promoting the coherence of the overall OECM regime.
  - Comparability – guaranteeing some degree of comparability and equivalence in the treatment of area-based measures (between protected areas and OECMs, and between different types of OECMs).
  - Credibility – promoting the credibility of domestic and international efforts to realise Target 3.
  - Security and linkages – ensuring satisfactory secure mechanisms for then linking associated legal instruments (such as fiscal incentives) and investment opportunities

- *Potential Constraints* include:
  - Vague/partial regulation (introducing regulation lacking in detail (rights/obligations, powers/responsibilities or timeframes or only regulating certain key issues and not others) – potentially undermining implementation and discouraging participation of important actors/partners/stakeholders.
  - Over regulation (creating too many unnecessary rules) – potentially discouraging participation of important actors/partners/stakeholders.
  - Fragmented regulation (introducing differing regulation across regions and institutions or failing to adequately harmonise/integrate any new legal reform with/within the existing legal framework) – potentially leading to inconsistencies and confusion among the regulators and the regulated community.
  - Inconsistent regulation (creating inconsistent regulation of area-based instruments) – potentially undermining the credibility of the regime and leading to confusion among the regulators and the regulated community.
  - Unrealistic regulation (failing to factor in reality and capacity constraints) – potentially leading to a flawed and unviable regulatory framework.
  - Unfunded regulation (failing to factor in implementation costs, appropriate budgets and creating unfunded mandates) – potentially undermining implementation.
  - Costly regulation (imposing high participation or compliance costs on the regulated community in the absence of meaningful associated incentives) – potentially discouraging the participation of important actors/partners/stakeholders.

2.2 The Potential Role & Influence of Law on OECMs

Having broadly outlined the general nature and role of law, the theoretical benefits and the general constraints it poses, the purpose of this part of the Legal Review is to build/bolster general understanding of the theoretical role and influence of law in the context of OECMs. Building/bolstering this general understanding is a prerequisite to be able to coherently frame any new domestic legal reform relating to OECMs. To do so, this part of the Legal Review draws upon the available array of key relevant international guidelines and technical notes relating to OECMs, namely:

- IUCN-WCPA Task Force on OECMs *Recognising and Reporting Other Effective Area-Based Conservation Measures* (2018) IUCN.
- H Jonas, K MacKinnon, D Marnewick and P Wood *Site-Level Tool for Identifying Other Effective Area-Based Conservation Measures* (2023) First Edition, IUCN WCPA Technical Report Series No. 6, IUCN.
- D Dalton, V Berger, H Kirchmeir, V Adams, J Botha, S Halloy, R Hart, V Svara, K Torres Ribeiro, S Chaudhary and M Jungmeier *A Framework for Monitoring Biodiversity in Protected Areas and Other Effective Area-Based Conservation Measures: Concepts, Methods and Technologies* (2024) IUCN WCPA Technical Report Series No. 7, IUCN.
- J Fitzsimons, S Stolton, N Dudley and B Mitchell *Defining 'Long-term' for Protected Areas and Other Effective Are-Based Conservation Measures* (2024) IUCN WCPA Technical Note, IUCN.

The *Site-Level Tool for Identifying Other Effective Area-Based Conservation Measures* outlines eight screening criteria built into a three-step process. It is currently central in the domestic identification and recognition of OECMs. It will therefore be used as a broad frame to build/bolster this understanding. Additional guidance relating to these criteria and process can be distilled from the abovementioned additional contemporary international guidelines and technical notes. However, what these guidelines and technical notes largely fail to outline, is the key potential role and influence of law relating to each of these criteria and the process as a whole.

To fill this apparent void, this component of the Legal Review builds a Legal Assessment Matrix reflecting the following for each of the eight screening criteria embedded within the three-step process:

- Guidance relating to the criterion distilled from the above contemporary available guidance. This is not a perfect science as the international guidelines adopt slightly nuanced approaches when distilling and describing the key definitional elements/criterion characterising OECMs and the criterion for identifying them. Effort has been made to reconcile these nuances and include relevant additional guidance where it appears most logical and relevant for the context of this Legal Review.
- Key legal issues relating to each of the criteria and three-stage process as a whole. It is acknowledged that this list of key legal issues may not be exhaustive, but to make the Legal Review manageable, it seeks to highlight what could be regarded as key high-level relevant legal issues.

OECM Criteria & Guidance	**Relevant Legal Issues**
Step 1 – Screening	
Criterion 1 – The site is not a protected area.	
• A site/any part thereof recognised as a PA is not a OECM. • A proposed but yet to be formally recognised PA can be an OECM. • Areas subject to certain governance types (private governance or governance by indigenous peoples and local communities) which meet the definition of a PA should be regarded and reported as PAs.	1. Does the law clearly define what is a protected area and what is an OECM to clearly distinguish the two? 2. Does the law prescribe a process for first assessing if the site meets the requirements of protected area before considering it for recognition as an OECM, and outline the form and nature of this process (inclusive of who is responsible/empowered to undertake it)?
Criterion 2 – There is a reasonable likelihood that the site supports important biodiversity values.	

• There must be a reasonable likelihood that the site supports important biological values.
• "Reasonable likelihood" can mean:
  • Reports of important biological values.
  • Analysis suggests that important biological resources are present.
	1. Does the law prescribe a set of information/criteria that must be considered to determine if there is a reasonable likelihood that the area supports important biological values?
	2. Does the law prescribe the form and nature of this initial assessment process and who may/must undertake it?

• A site already recognised under an international biodiversity designation (eg KBA) can be assumed to support important biological values	3. Does the law set out what constitutes the "reasonable likelihood" threshold within this initial assessment process? 4. Does the law contain measures to ensure openness and transparency during this initial assessment process?
Step 2 – Securing Consent	
• Where the initial assessment is not done by the site's governing authority, its written consent is required. • Where the site is used, owned or claimed by an indigenous people or local community, their free, prior and informed consent must be secured • The document recording this consent should include certain specific details.	**Note:** While consent in the context of the OECM Screening Tool largely refers to consent to undertake the full assessment, consent here is considered more broadly – in the form of general consent both for the full assessment and for subsequent possible recognition of the area as an OECM. 1. Does the law set out who is responsible for securing this consent and from whom it must be obtained? 2. Does the law set out what procedures should be followed and what form the consent should take? 3. Does the law contain measures to ensure openness and transparency during this process? 4. Does the law clarify how to deal with situations where consent needs to be obtained from different organisations, groups or individuals who own the area or who hold rights in relation to it? 5. In the case of sites used, owned or claimed by an indigenous people or local communities, does the law provide sufficient legal certainty relating to land tenure/communal resource rights and institutions?
Step 3 – Full Assessment	
Criterion 3 – The site is a geographically defined area.	
• The area must be capable of spatial delineation. • The area must have agreed and demarcated boundaries. • These boundaries can include land, inland waters, marine and coastal areas, or any combination of these. • In exceptional circumstances, the boundaries may be defined by physical features that move over time (eg river banks, high water mark). • Geographical space has three dimensions – requiring any governance or management regime for a two dimensional area also to account for the third (vertical) dimension (air	1. Does the law prescribe requirements and a process for clearly and legally demarcating the area's boundaries? 2. Where a terrestrial OECM spans part of a property/area, does the law enable its specific size and location to be legally demarcated on the property's title deed? 3. Where a terrestrial site spans two or more properties, does the law enable its specific size and location to be legally demarcated on all relevant properties' title deeds? 4. Does the legal demarcation process recognise and deal with the three-dimensional nature of potentially applicable rights when demarcating the

space, water column, terrestrial substrata). • The area should be of "sufficient size" to achieve sustained long-term in-situ conservation of biodiversity.	area's boundaries (surface and sub-surface rights)?
Criterion 4 – The site is confirmed to support important biodiversity values.	

• Important biological values include:
  • Rare, threatened or endangered species/ecosystem.
  • Natural ecosystems underrepresented in PA network.
  • High level of ecological integrity/intactness.
  • Significant population/extent of endemic or range-restricted species/ecosystem.
  • Important species spawning, breeding or feeding areas.
  • Important for ecological connectivity/part of network of sites.
• Importance should be distilled from credible reports/reliable sources.
• Areas subject to significant restoration may be an OECM.
• Ecosystem services and local economic values are not criteria for identifying an OECM.
	• Does the law prescribe a set of information/criteria that must be considered to confirm that the area supports important biological values?
	• Does the law prescribe the form and nature of this full assessment process and who may/must undertake it.
	• Does the law provide for some form of formal legal recognition to be accorded to the area by some government authority?
	• Does the law contain measures to ensure openness and transparency during this full assessment process?

Criterion 5 – Institutions or mechanisms exist to govern and manage the site.	
• The site should be under the authority of a specified entity or combination of entities. • An OECM can be governed under any of the four recognised governance types: • An OECM should be managed in a way that achieves positive and sustained biodiversity conservation outcomes. • Relevant authorities, rightsholders and stakeholder should be identified and involved in management. • An OECM does not require a primary objective of conservation, but there must be a direct causal link between the area's overall objective and management and the in-situ conservation of biodiversity over the long-term. • Management of OECMs should be consistent with the ecosystem	1. Does the law allow for/enable all four recognised governance types for the area? 2. Does the law prescribe mandatory and/ or discretionary management objectives linked to the identified important biodiversity values for the area, ensure that these are legally recorded for the site, and are clearly and consistently formulated across sites of a similar nature? 3. Does the law provide for some form of authority to be formally appointed/ recognised to manage the area and a legal process for appointing/ recognising it/them (including who is responsible or empowered to appoint/recognise it/them)? 4. Does the law impose an obligation on the appointed/recognised authority to prepare some form of management plan for the area to realise the area's management objectives; outline

approach and be able to adapt and manage emerging threats. • Integrated management across the landscape should be encouraged.	mandatory/ discretionary content to be included in such a plan; and a process to approve the plan (including who is responsible or empowered to approve it)? 5. Where the management authority is not the governance authority, does the law enable co-management? 6. Does the law contain measures to ensure openness and transparency during these management processes?
Criterion 6 – Governance and management of the site achieve or are expected to achieve the in situ conservation of important biodiversity values.	
• The governance and management of the OECM should effectively mitigate pressures and prevent threats to the site's biodiversity values (such as those associated with environmentally-damaging industrial activities undertaken within or adjacent to the OECM). • The governance and management of the OECM should effectively conserve the sites biodiversity values. • Practical steps should be in place for monitoring and reporting on effectiveness.	1. Does the law contain mechanisms to regulate/restrict land-uses (eg mining, prospecting, reconnaissance, exploration, large-scale infrastructure, industrial/urban development, forestry, fishing, agriculture) that may threaten the area's management objectives? 2. Does the law provide for monitoring performance against the areas' management objectives, including: who must undertake the monitoring, the form of monitoring, about what and when? 3. Does the law provide for temporal reporting of performance against the site's management objectives including: who must report, on what, to whom and when? 4. Does the law prescribe a process for reviewing the governance and management regime on a temporal or ad hoc basis (including who is responsible or empowered to undertake and approve it)? 5. Does the law contain measures to ensure openness and transparency during the above processes?
Criterion 7 – In situ conservation of important biodiversity values is expected to be in the long term.	

• There should be a reasonable likelihood that the important biological values for which the site is identified will be conserved in situ in the long-term, through, for example:
  • a secure legal or other form of recognition, that cannot be reversed or eliminated.
  • sustained governance and management arrangements.
	1. Does the law clearly outline what is long-term (matching the international guidance relating to this term)?
	2. Does the law contain mechanisms for ensuring that the area's conservation objectives are secured in the long term?

• arrangements that can be expected to effectively respond to future threats. • Long-term refers to the idea that an OECM is expected to deliver in situ conservation of biodiversity in perpetuity (proven for at least 25 years with accompanied intent in perpetuity). • Short-term/temporary/conditional management strategies insufficient. • Seasonal measures that are part of a long-term overall management regime may be sufficient. • Short-term regulatory measures continuously renewed may be sufficient.	
Criterion 8 – Governance and management arrangements address equity considerations.	
• Issues of equity arise where there is more than one group of stakeholders linked to the OECM. • Equity is dynamic and context-specific and there is no universal standard. • A site should demonstrate the potential for positive progress towards equity. • There should be no reports of ongoing/recent abuse of human rights of any stakeholders.	1. Does the law address and promote equity issues within the area's governance and management arrangements? 2. Does the law provide mechanisms to enable appropriate forms of equitable participation, access to, use and enjoyment of the area and the resources located within it? 3. Does the law contain measures to ensure openness and transparency during the negotiation and determination of these issues. 4. Does the law provide for dispute resolution procedures should disputes over these issues arise?

These legal issues are issues that may need to be addressed in any future domestic legal reform relating to OECMs. They therefore also provide a potentially useful framework through which to critically assess whether an existing domestic legal framework adequately addresses these legal issues, and if not, what future legal reform is required. For example:

- If the current legal framework adequately addresses these legal issues, then no additional future legal reform aimed at supporting and securing OECMs may be necessary.
- If the current legal framework does not adequately address these legal issues, then additional future legal reform aimed at supporting and strengthening OECMs may be necessary.
- If the current legal framework partially addresses some of the legal issues and not others, it may help clarify which specific legal issues may need to form the target of additional future legal reform aimed at supporting and strengthening OECMs.

This subsequent assessment of South Africa's existing legal framework relevant to the array of potential OECM mechanisms falling within the scope of this Legal Review forms the focus of Part 4 below. Prior to undertaking this specific assessment, it is necessary to identify and scope the broad array of domestic laws and policies potentially relevant to OECMs.

3. Overview of South Africa's National Legal & Policy Framework Relevant to OECMs

Any future potential domestic legal reform specifically relating to OECMs would need to align with and complement existing domestic laws and policies relevant to OECMs. This part of the Legal Review therefore seeks to build an appreciation of the broad array of existing national domestic laws and policies of relevance to OECMs. It comprises of basic text providing a broad overview of the potentially relevant domestic legal framework. It then in tabular format identifies the key nationally applicable laws and policies of potential relevance to OECMs, with their general relevance emphasised using key phrases. Potentially relevant provincial[4] and local/municipal[5] law and policy are not canvassed as they fall outside the scope of this Legal Review.

3.1 Constitution

The Constitution of the Republic of South Africa, 1998, is the supreme law of South Africa and all law or conduct inconsistent with it is invalid, and all obligations imposed by it must be fulfilled. It is of potential relevance to future legal reform relating to OECMs for four main reasons. *Firstly*, the Constitution prescribes an array of rights of potential relevance to OECMs, including the following reflected in the Bill of Rights: equality; human dignity; environment; property; language and culture; cultural,

[4] Potentially key relevant provincial legislation includes in ascending chronological order: Nature Conservation Ordinance (OFS) 8 of 1969; Townships Ordinance (OFS) 9 of 1969; Bophuthatswana Nature Conservation Act (3 of 1973); Nature Conservation Ordinance (Cape) 19 of 1974; Nature Conservation Ordinance (Transvaal) 12 of 1983; Land Use Planning Ordinance (Cape) 15 of 1985; Town-planning and Townships Ordinance (Transvaal) 15 of 1986; Nature Conservation Act (Ciskei) 10 of 1987; Transkei Environmental Conservation Decree 9 of 1992; KwaZulu-Natal Nature Conservation Act 29 of 1992; Gauteng Removal of Restrictions Act 3 of 1996; KwaZulu-Natal Nature Conservation Management Act 9 of 1997; Northern Cape Planning and Development Act 7 of 1998; Mpumalanga Nature Conservation Act 10 of 1998; KwaZulu-Natal Nature Conservation Management Amendment Act 5 of 1999 (yet to commence); Gauteng Planning and Development Act 3 of 2003 (yet to commence); Limpopo Environmental Management Act 7 of 2003; Mpumalanga Tourism and Parks Agency Act 5 of 2005; Kwazulu-Natal Planning and Development Act 6 of 2008; Limpopo Tourism Act 2 of 2009; Northern Cape Nature Conservation Act 9 of 2009; Eastern Cape Parks and Tourism Agency Act 2 of 2010; Northern Cape Heritage Resources Authority Act 9 of 2013; Western Cape Land Use Planning Act 3 of 2014; North West Biodiversity Management Act 4 of 2016 (yet to commence); Western Cape Biodiversity Act 6 of 2021; North West Parks and Tourism Board Act 2 of 2022; Eastern Cape Parks and Tourism Agency Act 3 of 2024 (yet to commence). Potentially relevant provincial policies are too numerous to include here but would include those relevant to spatial planning, land-use management, environmental management, development control, and biodiversity conservation generally.

[5] Potentially relevant municipal legislation is too vast to include here but would include by-laws relating to environmental management, development control, spatial planning, land-use management, coastal management, etc. Potentially relevant municipal policies are similarly too numerous to include here but would include those relevant to spatial planning, land-use management, environmental management, development control, biodiversity conservation, property tax, etc.

religious and linguistic communities; access to information; and just administrative action. Any future legal reform relating to OECMs must seek to promote and not undermine these rights. *Secondly*, the Constitution acknowledges legal pluralism (the existence of multiple legal systems within one society) by expressly recognising common law, customary law and legislation as relevant legal sources of law on condition that they are consistent with the rights reflected in the Bill of Rights. This is relevant in context of any future legal reform relating to OECMs as the legal foundation of an OECM could be based in legislation, the common law or customary law. *Thirdly*, the Constitution sets out the structure and composition of Government (in the national, provincial and local sphere), and outlines the competence of these spheres to make and administer law over various issues. The latter would inform which sphere of government is competent to make and administer law over OECMs, and with the "environment" predominantly falling to the national and provincial spheres of government, they would have competence to make and administer laws relating to OECMs in so far as they relate to the environment. *Fourthly*, the Constitution, while recognising that the Government is constituted as three spheres which are distinct, interdependent and interrelated, compels them to cooperate in their governance effort. The formulation and implementation of any future legal reform relating to OECMs would need to give effect to the constitutional imperative of cooperative governance.

3.2 National Legislation & Policy

Given the nature of OECMs, a broad array of national laws regulating a broad array of issues are of potential relevance to them. These issues include: property; environmental management and development control; land/use/marine planning; conservation and natural resource management; and tax. Some of these national laws provide for the legal mechanisms underpinning potential OECMs. Some prescribe important legal principles that could/should guide and inform the recognition, management and protection of OECMs. Some provide for important planning frameworks to target action and inform decision-making. Some establish and regulate the state, private and communal institutions of relevance to governing, managing, monitoring and/or reporting on them. Some regulate the types of activities and development that could take place on/in them and manage the potential/actual impacts associated with it. Some provide for the conservation and management of various natural resources that could be situated within an OECM. Some provide for fiscal incentives of potential relevance to OECMs.

What the table below seeks to achieve is identify the broad array of potential national laws of direct and indirect relevance to OECMs, grouped into the broad issues they mainly deal with. For each law it briefly outlines the main focus on the law and their key potential relevance to OECMs. It does not purport to provide an extensive analysis and explanation of the relevance of each law as this falls outside the scope of this Legal Review. It is however hoped that this table provides an important starting reference point for those tasked with formulating any future legal reform on OECMs, as such legal reform would need to ensure that it aligns with and complements this national legislative context.

National Legislation	Relevance to OECMs
Property	
Government Immovable Asset Management Act 19 of 2007	• Provides for a uniform framework for the management of state-owned land held or used by a national or provincial department, and to ensure that its use is coordinated with the relevant department's service delivery objectives. • Imposes an obligation on the state entity holding or using the state-owned land to prepare and implement an immovable asset management plan. This plan guides and informs all decisions relating to the management of the state property. • It would be relevant where the OECM relates to state-owned land as this management plan could feasibly include provisions aimed at managing state-owned land as an OECM.
Defence Act 42 of 2002	• Provides for the administration, leasing and disposal of state-owned land falling under the control of the South African National Defence Force (SANDF). • Enables the SANDF to designate state-owned land and non-state-owned land as an area in which it may conduct military exercises and take measures to regulate access to and control the area for the duration of these exercises. • It would be relevant where land falling under the administration of the SANDF is recognised as an OECM.
Trust Property Control Act 57 of 1998	• Regulates the control of property held by a trust. • It would be relevant where an OECM mechanism relates to land held by a trust.
Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998	• Provides for the prohibition of unlawful eviction from land and prescribes procedures regulating the eviction of unlawful occupiers of land. • It would be relevant where any OECM mechanism relates to evicting persons unlawfully occupying the land subject to the mechanism.
Extension of Security of Tenure Act 62 of 1997	• Provides for measures to facilitate long-term security of land tenure; to regulate the conditions of residence on certain land; to regulate the conditions on and circumstances under which the right of persons to reside on land may be terminated; and to regulate the conditions and circumstances under which persons, whose right of residence has been terminated, may be evicted from land. • It would be relevant where any OECM mechanism relates to land occupied by persons or communities failing within the scope of the Act.

Interim Protection of Informal Land Rights Act 31 of 1996	• Provides for the temporary protection of certain rights to and interests in land which are not otherwise adequately protected by law. • It would be relevant where any OECM mechanism relates to land occupied by persons or communities failing within the scope of the Act.
Communal Property Associations Act 28 of 1996	• Enables communities to form communal property associations (CPA) in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution. • It would be relevant where any OECM mechanism relates to communal land acquired, held and managed by a CPA.
Restitution of Land Rights Act 22 of 1994	• Provides for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices. • It establishes the Commission on Restitution of Land Rights and a Land Claims Court to regulate the restitution process and deal with disputes that may arise respectively. • It would be relevant in the context of OECMs recognised on land subject to past or current land restitution claims.
Kwazulu-Natal Ingonyama Trust Act 3KZ of 1994	• Provides for the establishment of the Ingonyama Trust and for the management of land held in trust by the Trust. • It would be relevant where an OECM mechanism relates to communal land held in trust by the Trust.
Upgrading of Land Tenure Rights Act 112 of 1991	• Provides for the upgrading and conversion into ownership of certain rights granted in respect of land; and for the transfer of tribal land in full ownership to tribes. • It would be relevant where any OECM mechanism relates to land, rights and communities falling within the scope of this Act.
Mining Titles Registration Act 16 of 1967	• Regulates the registration of mining titles, other rights connected with prospecting and mining, stand titles and certain other deeds and documents relating to land subject to these types of activities. • It would be relevant where any OECM mechanism relates to land subject to these types of prospecting and mining activities.
State Land Disposal Act 48 of 1961	• Provides for the disposal of certain state-owned land and the imposition and withdraw of title deed restrictions/conditions relating to such land.

	• It would be relevant if the OECM involved the disposal of state-owned land to a non-state entity for inclusion in an OECM. • It would also be relevant if the OECM involved the imposition/withdraw of title deed restrictions/conditions on state-owned land, such as through a conservation servitude or land-use conditions/restrictions aimed at promoting biodiversity conservation. Once registered, they would be binding on subsequent owners of the property.
Deed Registries Act 47 of 1937	• Establishes the Deeds Registry and sets out the powers and functions of the Registrar of Deeds. • Regulates what types of transactions can be registered against the title deed of a property. • It would be relevant in the context of OECM mechanisms such as a conservation servitude or land-use condition/restriction aimed at promoting biodiversity conservation as these would be registered against the title deed of the property. • Once registered, they would be binding on subsequent owners of the property.
Environmental Management & Development Control	
National Environmental Management Act 107 of 1998 (NEMA)	• South Africa's framework environmental law and broadly provides for mechanisms and institutions to promote cooperative environmental governance, procedures promoting integrated environmental management, and compliance with and enforcement of environmental laws. • Prescribes a series of environmental management principles that would apply to the actions of all government authorities when dealing with OECMs. • Compels various government authorities to prepare environmental implementation and management plans aimed at facilitating cooperative environmental governance, which could in the future extend to deal with the coordinated recognition, management and protection of OECMs between national and provincial authorities. • Together with its suite of EIA Regulations and Listing Notices, provides for an extensive EIA and authorisation process, which would apply to listed activities undertaken within OECMs. • Together with its EMF Regulations, provides for the preparation of environmental management frameworks which provide an important planning tool for potentially identifying priority areas for inclusion in OECMs and informing their management in the future. • Enables certain government authorities to prohibit certain activities within certain areas, which could

	feasibly in the future be used to preclude certain types of listed activities being undertaken within OECMs. • Compels the Minister to report to Parliament once a year on the implementation of environmental agreements to which the country is a party, which would include commitments under the CBD relating to OECMs. • Contains detailed compliance and enforcement measures, which would be triggered in the case of non-compliance.
Environment Conservation Act 73 of 1989 (ECA)	• South Africa's old framework environmental law and provides generally for the effective protection and controlled use of the environment. • Enables certain government authorities to declare limited development areas and regulate activities undertaken in these areas, which provide a potential OECM mechanism. • Provides for various compliance and enforcement mechanisms in the case of non-compliance.
Infrastructure Development Act 23 of 2014 (IDA)	• Provides for the facilitation and co-ordination of large-scale public infrastructure development, which is of significant economic or social importance to South Africa. • Aims to ensure that this infrastructure is given priority in planning, approval and implementation processes. • Identifies 18 strategic integrated projects (SIPs), which would ordinarily trigger scoping and full assessment procedures and securing an environmental authorisation under NEMA, read together with its EIA Regulations and Listing Notices. These EIA processes have been significantly watered down for several SIPs undertaken in certain identified strategic corridors and zones by way of exclusions and fast-track EIA processes introduced under NEMA. • It would be relevant where any OECM initiative overlaps with one of these strategic corridors and/or zones as the construction of large-scale strategic public infrastructure within an OECM without prior scoping, full assessment process and the imposition of mitigation conditions if granted an environmental authorisation, may undermine its continued or subsequent viability.

Land Use / Marine Planning	
Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA)	• Creates a framework for spatial planning and land-use management in South Africa. • Prescribes a set of development principles that apply to the actions of all government authorities implementing national, provincial and local legislation, including that applicable to/in OECMs. • Provides for the preparation and implementation of national, provincial, regional and municipal spatial development frameworks, which provide an important planning tool for potentially identifying priority terrestrial areas for inclusion in OECMs, informing land-use decisions relating to them and their management in the future • Compels municipalities to adopt, implement and enforce land use schemes, which can include potential OECM mechanisms such as zoning and overlay zones, which regulate land use within the area to which they are applicable.
Marine Spatial Planning Act 16 of 2018 (MSPA)	• Creates a framework for marine spatial planning in South Africa. • Provides for a set of principles to inform marine spatial planning, which would apply to the actions of all government authorities when dealing with OECMs in the marine context. • Provides for the preparation and implementation of a marine spatial planning framework and marine sector plans, which could be an important planning tool for potentially identifying priority marine areas for inclusion in OECMs and informing decisions relating to them and their management in the future. • It enables identified government authorities to prepare and implement marine area plans which could constitute a potential OECM mechanism.
Conservation & Natural Resource Management	
NEM: Biodiversity Act 10 of 2004 (NEMBA)	• Broadly provides for the management and conservation of South Africa's biodiversity; the protection of species and ecosystems that warrant national protection; the sustainable use of indigenous biological resources; and the fair and equitable sharing of benefits arising from bioprospecting involving indigenous biological resources. • Provides for the establishment and functions of SANBI, which has a central role to play in the recognition, monitoring and reporting on OECMs. • Creates an extensive biodiversity planning framework, which is an important planning tool for potentially identifying priority areas for inclusion in OECMs and informing decisions relating to them and their management in the future, inclusive of:

	• National Biodiversity Framework. • Bioregional Plans. • Biodiversity Management Plans. • Provides for certain potential OECM mechanisms, notably: • National botanical gardens. • Biodiversity management agreements • Provides for various permitting, compliance and enforcement measures which may be relevant to activities undertaken in any OECMs.
NEM: Protected Areas Act 57 of 2003 (NEMPAA)	• Provides for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes within various types of protected areas. • Sets out what are protected areas and regulates the establishment, disestablishment, boundary amendments, management, access and use of biological resources within certain types of protected areas. • Provides for the continued existence of SANParks and sets out its powers and functions. • Plays valuable role in outlining what are regarded as protected areas in South Africa, which by their very nature cannot constitute OECMs.
NEM: Integrated Coastal Management Act 24 of 2008 (NEMICMA)	• Outlines what is the coastal zone and establishes a system of integrated coastal and estuarine management for it, inclusive of rights and obligations linked to the different components of the coastal zone. • Outlines a comprehensive coastal management planning framework, which is an important planning tool for potentially identifying priority areas for inclusion in OECMs and informing decisions relating to them and their management in the future, inclusive of: • National Coastal Management Programme. • Provincial Coastal Management Programmes. • Municipal Coastal Management Programmes. • National Estuarine Management Protocol. • Outlines an array of institutions that have a potential role to play in relation to coastal OECMs in the future, including: • National coastal committee. • Provincial coastal committees. • Municipal coastal committees. • Provides for certain potential OECM mechanisms, notably: • Coastal planning schemes. • Estuarine management plans.

	• Special management areas. • Provides for various permitting, compliance and enforcement measures, which may be relevant to activities undertaken in OECMs located in the coastal/marine environment.
National Forests Act 84 of 1998 (NFA)	• Provides for sustainable forest management in South Africa, special measures to protect forests and trees, access to and the use of state forests, the powers and functions of various forest institutions and an array of compliance and enforcement measures. • Some types of forest protected areas recognised under the Act (namely specially protected forest areas, forest nature reserves and forest wilderness areas) are expressly deemed to be types of protected areas under NEMPAA, and cannot accordingly constitute OECMs. • Provides for certain potential OECM mechanisms relating to forests, notably: • Controlled natural forests. • Protected woodlands. • Prescribes a set of principles to promote the sustainable management of forests, which would apply to forests situated within any OECMs.
National Water Act 36 of 1998 (NWA)	• Provides for planning, the management of, and use and protection of South Africa's water resources. • Outlines a comprehensive water planning framework, which may be an important planning tool for potentially identifying priority fresh-water ecosystems for inclusion in OECMs and informing decisions relating to them and their management in the future, inclusive of: • National water resources strategy. • Catchment management strategies. • Water classification and reserve determinations. • Outlines an array of water institutions, which have a potential role to play in relation to OECMs spanning fresh-water ecosystems in the future, including: • Catchment management agencies. • Water user associations. • Provides for various permitting, compliance and enforcement measures that may be relevant to activities undertaken in OECMs located in fresh-water ecosystems. • While the Act does not currently contain any specific potential OECM mechanism, proposed amendments reflected in the National Water Amendment Bill (2023) anticipate the recognition and protection of water source areas, which if they come to fruition, may constitute a potentially

	valuable OECM mechanism in the context of fresh-water ecosystems.
Conservation of Agricultural Resources Act 43 of 1983 (CARA)	• Provides for control over the use of the natural agricultural resources to promote the conservation of the soil, the water sources and the vegetation, and the combating of weeds and invader plants. • Prescribes an array of legal measures to promote the above objectives and in so far as these would apply to an area recognised as an OECM, the Act would be relevant.

Marine Living Resources Act 18 of 1998 (MLRA)	• Provides for the conservation of the marine ecosystem, the long-term sustainable use of marine living resources and the orderly access to exploitation, use and protection of certain marine living resources.
	• Read together with its regulations, it provides for three potential OECM mechanisms in the marine context, namely:
	  • Closed areas.
	  • Closed seasons.
	  • Imposition of exclusions relating to areas, species or seasons by way of right allocations and permit conditions.

World Heritage Convention Act 49 of 1999 (WHCA)	• Provides for the incorporation of the World Heritage Convention into South African law, and the recognition and management of world heritage sites. • World heritage sites are expressly deemed to be a type of protected area under NEMPAA, and cannot accordingly constitute OECMs.

National Heritage Resources Act 25 of 1999 (NHRA)	• Introduces an integrated and interactive system for the management of South Africa's national heritage resources (places and objects).
	• Provides for certain potential OECM mechanisms, notably:
	  • Heritage sites.
	  • Exclusion zones (wrecks).
	• Prescribes a set of principles to promote the management of national heritage resources, which would be applicable if any heritage sites or exclusion zones (wrecks) are recognised as OECMs.
	• Regulates access, use and development in heritage sites and exclusion zones (wrecks), which would be relevant is these areas were recognised as OECMs.

Mountain Catchment Areas Act 63 of 1970 (MCAA)	• Provide for the conservation, use, management and control of land situated in mountain catchment areas. • Mountain catchment areas are expressly deemed to be a type of protected area under NEMPAA, and cannot accordingly constitute OECMs.

Sea Birds and Seals Protection Act 46 of 1973 (SBSPA)	• Provides for the control over certain islands and rocks, and for the protection and the control of the capture and killing of sea birds and seals situated on these islands and rocks. • These protected islands and rocks constitute a potential OECM mechanism. • Regulates various activities undertaken on these protected islands and rocks, which would be relevant in so far as these are recognised as OECMs.
Tax	
Income Tax Act 58 of 1962	• Provides for the taxation of income and donations in South Africa. • Provides for various tax incentives in the context of protected areas which could be extended to OECMs in the future. • Provides for limited tax incentives for certain potential OECM mechanisms, namely biodiversity management agreements.
Local Government Municipal Property Rates Act 6 of 2004 (Property Rates Act)	• Regulate the power of a municipality to impose rates on property. • Prohibits the imposition of property tax on land falling within some forms of protected areas, which could be extended to OECMs in the future. • Enables municipalities through differential rating, rebates and exemptions, to encourage biodiversity conservation, which could be extended to OECMs in the future.
Carbon Tax Act 15 of 2019	• Provides for the imposition of a tax on the carbon dioxide equivalent of greenhouse gas emissions. • Allows for the deduction of carbon tax offsets in the context of carbon tax, and given the breadth of potential projects falling within the realm of carbon offsets, these could provide a potential financing mechanism for OECMs in the future.

These national laws are supported by an array of national statutory biodiversity-related policies (legislation compels a government authority to prepare them) and non-statutory biodiversity-related policies (prepared by government authorities in the absence of legislation compelling them to do so) of direct and indirect relevance to OECMs. While many national biodiversity-related policies may be of general relevance to OECMs,[6] the table below outlines only those which directly refer to OECMs in descending chronological order. As in the above context, it does not purport to provide

[6] Key national biodiversity-related policies of potential relevance to OECMs, but which do not expressly refer to them (or conservation areas) include in descending chronological order: DFFE *Policy Position on the Conservation and Sustainable Use of Elephant, Lion, Leopard and Rhinoceros* (2024); DFFE *Game Meat Strategy for South Africa* (2023); DEFF *National Botanical Garden Expansion Strategy* (2019-2030); DEA *National Biodiversity Economy Strategy* (2016); and DEA *National Co- Management Framework* (2010).

an extensive analysis and explanation of the potential relevance of all components of each policy as this falls outside the scope of this Legal Review. It is however hoped that this table provides an important starting reference point for those tasked with formulating any future legal reform relating to OECMs, as such legal reform would need to ensure that it aligns with and complements this national policy context. What the table below also highlights is the rather sporadic approach to dealing with OECMs, which may lean towards the Government ideally adopting a more clear and consistent policy response to directly deal with OECMs in the future and embedding this either within subsequent revisions to these policies or preparing a stand-alone policy instrument for OECMs.

National Policy	Relevance to OECMs
DFFE *Draft Revised National Biodiversity Economy Strategy* (March 2024)	• The Impact Statement under Goal 1 proposes growing sustainable and inclusive eco-tourism-based businesses by 10% per annum through marine-based ecotourism activities and the expansion of the conservation estate from 20 million ha to 34 million ha by 2040 (4,2 million ha from declared protected areas and 10 million ha from OECMs). • It also contains several references to conservation areas throughout the document without clearly outlining what these are and how they differ from OECMs.
DFFE *National Biodiversity Offset Guideline* (2023)	• It expressly recognises the call of many countries to protect and conserve 30% of land and sea areas through well-connected systems of protected areas and OECMs by 2030. • Against this context, it recommends that in the consideration of the appropriateness of a biodiversity offset, that an activity that would have a significant negative impact on biodiversity in identified ecosystem types are not authorised; but, if they are authorised in exceptional circumstances, a high punitive ratio of 30:1 be applied to them in the interests of strengthening the mitigation hierarchy. • It defines a “conservation area” as an area with a conservation designation that is effective at achieving *in situ* conservation of biodiversity outside of protected areas in the long term. • It expressly refers to the use of certain identified potential OECM mechanisms as forming the foundation of a biodiversity offset, such as a conservation servitude. • The biodiversity offset mechanism itself (inclusive of the NEMA EA conditions, biodiversity offset management plan and biodiversity offset implementation agreement) could be explored as a future potential OECM mechanism.
DFFE *White Paper on Conservation and Sustainable*	• It references the international definition of an OECM but provides nothing further.

Use of South Africa's Biodiversity (2023)	

DFFE Revised National Biodiversity Framework (2019-2024)	• While not expressly referring to OECMs, it refers to the term conservation areas.
	• It does not define the term conservation area but appears to use it as a synonym for OECMs.
	• With reference to the NBSAPs SO1 (Outcome 1.1) it highlights the following as high priority activities and identifies various acceleration measures to realise these activities:
	  • Expand the network of conservation areas through mechanisms under the Biodiversity Act.
	  • Strengthen capacity for Biodiversity Stewardship Programmes.

DEA *National Protected Areas Expansion Strategy* (2018)	• It expressly refers to OECMs and acknowledges their role in protecting biodiversity. • It indicates that OECMs could include conservation areas not formally protected by law but informally protected by the current owners and users and managed at least partly for biodiversity conservation, with the range of potential mechanisms including: intact and conservation zoned areas in biospheres reserves; buffer zones to world heritage sites; areas protected by spatial planning laws (such as zoning for conservation use); areas protected by servitudes; and specially zoned fishery management areas. • It calls on the Government to evaluate and possibly include OECMs in the assessment of the country's achievement against area-based targets. • However, prior to doing so, it indicates that robust criteria need to be established to ensure that only intact, well-managed areas with long-term security of biodiversity are included. • It furthermore indicates that, where legally binding measures that require effective management are absent, OECMs may not provide sufficient protection to warrant inclusion in coverage targets. • However, it indicates that once OECMs have been effectively secured (through legal measures), are effectively managed, verified and monitored, they may well warrant consideration in determining the country's coverage targets.
SANBI *National Biodiversity Assessment* (2018)	• It defines the term "conservation area" as areas of land not formally protected by law but informally protected by the current owners and users and managed at least partly for biodiversity conservation.

	• It highlights that because there is no long-term security associated with conservation areas, they are not considered a strong form of protection. • It only contains one specific reference to OECMs, recognising that they can play an essential role in ensuring the long-term integrity and recovery of marine resources and the ecosystems that support them.
DEA & SANBI *Biodiversity Stewardship Guideline* (2018)	• While not expressly referring to the term OECM, Biodiversity Stewardship Category 2 (Conservation Areas) and Category 3 (Partnership Areas) have formed the focus of contemporary domestic studies relating to potential OECMs. • Potential OECM mechanisms falling under Category 2 (Conservation Areas) are: biodiversity management agreement; biodiversity agreement; conservation servitude; business, industry and biodiversity initiative; conservation agreement. • Potential OECM mechanisms falling under Category 3 (Partnership Area) are: conservancies; biosphere reserve buffer and transition zones; sites of conservation significance; community conserved areas. • The Guidelines detail: the nature of these mechanisms; the relevant legal, policy. institutional and procedural framework relating to them; and various support mechanisms.
DEA *South African Strategy for the Biosphere Reserve Programme* (2016-2020)	• While not expressly referring to OECMs, it recognises biosphere reserves as an important form of conservation area. • It does not define the term conservation area and only indicates that these areas are not formally protected.
DEA *National Biodiversity Strategy & Action Plan* (2015-2025)	• Its Strategic Objective 1 identifies a network of protected areas and conservation areas including a representative sample of ecosystems and species, managed coherently and effectively as a strategic outcome (Outcome 1.1). • While not expressly referring to OECMs, the term conservation area appears to again be used as a synonym for OECMs as they are referred to as areas that are not formally protected by NEMPAA but are nevertheless managed at least partly for biodiversity conservation and contribute to the broader conservation estate. • Key activities associated with realising this Outcome 1.1 relating to these conserved areas include: • Expanding the network of conservation areas through mechanisms under NEMBA, contract law and other informal agreement between the landowner and conservation authority.

	• Strengthening the institutional capacity of biodiversity stewardship programmes and the suite of incentives (such as access to technical expertise) to enhance their contribution to conservation area expansion, including through implementation of the Biodiversity Stewardship Business Case. • Strengthening and monitoring effectiveness in conservation areas with emphasis on biodiversity objectives, socio-economic benefits and climate change resilience. • Strengthening inter-agency cooperation in the management of conservation areas within South Africa.
DEA *National Buffer Zone Strategy for National Parks* (2012)	• While not expressly referring to either the term OECM or conservation area, it does specifically refer to some potential OECM mechanisms (like voluntary conservation areas and those areas under a biodiversity management agreement) as potential buffers.

3.3 Common Law

As has been highlighted above, the Constitution recognises the common law as a valid legal sources of law in South Africa. The common law is a body of law that continues to develop overtime, with its origins stemming from Roman-Dutch legal principles "inherited" from those who initially colonised South Africa, that has been applied and subsequently developed by the courts through its decisions. It is recorded in court decisions and reflected in academic writing.

In the context of OECMs, the common law rules are predominantly relevant in two respects. Firstly, it regulates contractual relations between people and between them and juristic (non-human) entities like government departments, companies and NGOs. It is accordingly relevant to OECMs where the legal mechanism underpinning them is founded on a contract. Secondly, it regulates transactions relating to property, and notably servitudes which can create rights and obligations relating to land. It is accordingly relevant to OECMs where the legal mechanism underpinning them is founded on a servitude registered over the land.

3.4 Customary Law

The Constitution accords customary law the same legal status as the common law. It is accordingly also an independent source of law in South Africa. It is a system of law, often unwritten, known to a community, practiced by them and passed on from one generation to the next. It regulates a diverse array of issues within a community, develops overtime and varies between different communities.

Given many communities' close relationship to the land and nature in general, it can regulate a community's relationship to and use of the natural resources. Where the common law achieves the effective and sustained long-term conservation of nature in an area, it can constitute the legal mechanism underpinning an OECM. Potential

examples of this could include sacred forests and traditional fishing areas. While the scope of this Legal Review does not extend to canvas OECM mechanisms founded in customary law, this in no way denies its key potential relevance and the need for any future legal reform relating to OECMs to recognise and support its role in the future.

4. Legal Assessment of the Current Role and Influence of South African Law on Key Potential OECMs

With the above national legal and policy framework in mind, this part of the Legal Review seeks to outline legal strengths and constraints linked to the array of potential OECM mechanisms that have formed the focus of prior domestic studies, and which fall within the scope of this Legal Review.

Drawing on the Legal Assessment Matrix developed in Part 2, it broadly assesses whether the law itself (and not the practice) currently relevant to each of these potential OECM mechanisms adequately deals with the key legal issues relating to the eight criteria embedded into the three-stage process outlined in the *Site-Level Tool for Identifying Other Effective Area-Based Conservation Measures*. The purpose of this assessment is to determine what key legal issues any potential future legal reform relating to OECMs may/would need to address, if any. For example:

- If the relevant current law addresses these legal issues, then no additional future legal reform relating to the potential OECM mechanism, specifically aimed at strengthening and supporting it, may be necessary.
- If the relevant current law does not adequately address these legal issues, then additional future legal reform relating to the OECM mechanism, specifically aimed at strengthening and supporting it, may be necessary.
- If the relevant law partially addresses some of the legal issues and not others, it may help clarify which specific legal issues may need to form the target of additional future legal reform relating to the OECM mechanism, specifically aimed at strengthening and supporting it.

The Legal Assessment Table below summarises the outcome of this broad assessment. Each of the potential OECM mechanisms falling within the scope of this Legal Review are reflected on the vertical axis. Each of the eight criteria embedded into the three-stage process outlined in the *Site-Level Tool for Identifying Other Effective Area-Based Conservation Measures* (2023) are reflected on the horizontal access. The colouring in each block in the Legal Assessment Table reflects a rating of the extent to which the current law relevant to each of the potential OECM mechanisms adequately addresses the key legal issues linked to the above. The colour-rating scale used in the Assessment Table reflects the following:

Very Weak	Weak	Average	Good	Very Good
Fails to adequately address any of the legal issues	Addresses less than half the legal issues adequately	Addresses about half the legal issues adequately	Addresses more than half the legal issues but not all of then	Addresses all the legal issues adequately

The Legal Assessment Table below is complemented by supporting narrative text (contained in Annexure A) that highlights the following in respect of each of the assessed potential terrestrial and marine OECM mechanisms:

- Conservation management objective (primary, secondary, ancillary).
- Identification of relevant legal framework.
- Brief explanation of relevant legal framework.
- Justification for the ratings contained in the Legal Assessment Table.

It is emphasised that the Legal Assessment Table together with the supporting narrative text contained in Annexure A, do not pass judgment on the extent to which each of the identified potential OECM mechanisms meet the requirements of an OECM, as these aspects have been canvassed in other prior domestic studies. It solely seeks to analyse whether the law relevant to each potential OECM mechanism adequately address the range of legal issues highlighted in the Legal Assessment Matrix

Terrestrial OECM Mechanisms

Conservation Management Objective	Criterion 1	Criterion 2	Securing Consent	Criterion 3	Criterion 4	Criterion 5	Criterion 6	Criterion 7	Criterion 8
Primary									
Biodiversity Management Agreement									
Biodiversity Agreement (no title deed condition)									
Biodiversity Agreement (with title deed condition)									
Conservation Servitude									
Landowner Association (with title deed condition)									
National Botanical Garden									
Controlled Natural Forest									
Protected Woodland									
Ramsar Site									
Secondary									
Conservation Champion Agreement									
Municipal Zoning Scheme & Overlays									
Coastal Planning Scheme									
Special Management Area									

Ancillary									
SANDF Land (General)									
SANDF Training Areas									
Heritage Site									

Marine OECM Mechanisms									
Conservation Management Objective	**Criterion 1**	**Criterion 2**	**Securing Consent**	**Criterion 3**	**Criterion 4**	**Criterion 5**	**Criterion 6**	**Criterion 7**	**Criterion 8**
Primary									
Fisheries Closed Area									
Fisheries Exclusion Zone									
Biodiversity Conservation Area									
Protected Islands & Rocks									
Secondary									
Estuarine Management Plan									
Special Management Area									
Small-Scale Fishing Zone									
Ancillary									
Military Practice Zone									
Exclusion Zone (Wreck)									

5. Recommendations for the Way Forward

What is generally evident from the Legal Assessment Table above is the following:

- None of the potential OECM mechanisms rate very good (address all legal issues adequately) across all rating criteria.
- The performance of the potential OECM mechanisms generally varies widely across the different rating criteria.
- Some rating commonalities are evident between potential OECM mechanisms founded in statute (with underpinning legislation) and those founded in the common law (contractual arrangements).
- Examples of very weak ratings for a potential OECM mechanism identify potential issues for future legal reform aimed at supporting and strengthening them.
- Examples of very good ratings for a potential OECM mechanism provide potential examples of good legal practice for future application to other potential OECM mechanisms through future legal reform aimed at supporting and strengthening them.

Within this context, the purpose of this section of the Legal Review is three-fold, relating specifically to developing an overarching/generally applicable legal framework spanning all forms of potential OECM mechanisms (ie not legal reform focusing on particular legal frameworks relevant to specific potential OECM measures). Firstly, it seeks to identify common legal gaps and issues that could be targeted through future legal reform aimed at supporting and strengthening OECMs. Secondly, it seeks to broadly outline the potential type, form and nature this legal reform could take. Thirdly, it broadly outlines the potential content to include in such legal reform.

5.1 Identification of Key Potential Legal Gaps and Issues Requiring Reform

As highlighted above, the performance of the potential OECM mechanisms generally varies widely across the different rating criteria. The purpose here is not to interrogate further key legal gaps and issues particular to each of the different potential OECM mechanisms, but rather to distil common legal gaps and issues that could be targeted through future overarching/generally applicable domestic legal reform aimed at supporting and strengthening all potential OECM mechanisms. In the interests of trying to promote consistency and coherence, these are divided using the same structural divisions reflected in the Legal Assessment Matrix and Legal Assessment Table, namely the eight screening criteria embedded within the three-step process.

5.1.1 The Site is Not a Protected Area (Criterion 1)

International instruments define what are protected areas and OECMs. While the domestic national statutory framework (namely NEMPAA) clearly defines what is a protected area, there is no similar domestic legal clarity regarding what constitutes an OECM. While the *White Paper on Conservation and Sustainable Use of South Africa's Biodiversity* (2023) repeats the international definition, it contains no additional clarity and only constitutes policy, not law. Furthermore, while the domestic statutory framework outlines a clear process for proposing and declaring protected areas, no similar domestic legal clarity exists relating to the process for identifying and recognising OECMs. Given the absence of the latter, there is no clear process for informing decisions regarding whether an area should be declared a protected area or recognised as an OECM (most relevant where a potential OECM has conservation as its primary objective). As a result, most potential OECM mechanisms rated poorly on this criterion. The above range of issues reduces legal clarity, certainty, consistency, comparability and potential credibility when it comes to understanding what are OECMs and which areas should be regarded and reported as protected areas and not OECMs. They could form the focus of future domestic legal reform aimed at supporting and strengthening OECMs.

5.1.2 There is a Reasonable Likelihood that the Site Supports Important Biodiversity Values (Criterion 2)

The rating of potential OECM mechanisms varied widely on this criterion. The range of information, criteria and/or thresholds that currently inform decisions about the location, formulation, recognition and/or declaration of potential OECM mechanisms is very diverse. The law applicable to some of them prescribe clear criteria, thresholds and the mandatory consideration of the broad range of domestic statutory and non-

statutory plans relevant to identifying key areas for conserving biodiversity. The law applicable to some of them make limited provision for this. The law applicable to some of them make no provision for this (particularly the case in the context of those based on the common law). The range of processes preceding decisions about the location, formulation, recognition and/or declaration of potential OECM mechanisms is equally diverse. The law applicable to some of them prescribe a clear process, others a limited process and others no process. The range of potential authorities involved is equally diverse as too are the procedures to promote openness and transparency in these decision-making processes. The above range of issues reduce legal clarity, certainty, consistency, comparability and potential credibility when it comes to the initial assessment of the area. They could form the focus of future domestic legal reform aimed at supporting and strengthening OECMs.

5.1.3 Securing Consent

The process to secure the consent of the relevant landowner/rightsholder for both undertaking the initial assessment of the area and the process to subsequently recognise the potential OECM mechanism is again very diverse. The law applicable to some of them contain detailed procedures, some superficial procedures and some no procedures. Some provide for procedures ensuring openness and transparency, and others do not. In both the terrestrial and marine context, securing the consent of key rightsholders (such as those holding prospecting rights, mining rights, exploration rights, production rights, water rights, fishing rights, etc over the area) is often omitted, which potentially undermines the long-term sustained effectiveness of the potential OECM mechanism. In the terrestrial context, the ongoing absence of a coherent communal land rights regime and the historic challenges associated with communal institutions used to hold such rights in its absence (communal property associations, land trusts and traditional authorities), poses potential challenges in the context of recognising OECMs where the land is communally owned. This specific issue would permeate all issues relating to the management and regulation of activities in terrestrial areas of this nature. Regarding state-owned land in the terrestrial context and coastal/marine areas held under the trusteeship of the Government in the marine context, some laws provide for comprehensive intergovernmental consultation requirements and others not. The above array of issues reduces legal clarity, certainty, consistency, comparability and potential credibility when it comes to securing consent for both the assessment of and subsequent recognition of the area. They could form the focus of future domestic legal reform aimed at supporting and strengthening OECMs.

5.1.4 The Site is a Geographically Defined Area (Criterion 3)

The majority of the potential OECM mechanisms rated good or very good on this criterion. Those which did not, provided very vague delineation of the area. While the form, nature and specificity of demarcating the area's boundaries differ across the potential OECM mechanisms, most in the terrestrial context appear to largely rely on the property/properties' cadastral boundaries. Two potential common legal issues in the terrestrial context specifically when demarcating the area, are: how to demarcate the boundary of an area where it does not match the property/properties cadastral boundary (and the potential costs incurred in surveying/demarcating these areas); and how to record/deal with rights other than those of ownership (like subterranean mining

and prospecting rights) when demarcating the area. One potential common legal issue in the marine context when demarcating the area is how to record/deal with existing rights over the area such as those associated with marine resources in the water column and those below the seabed. The above array of issues reduces legal clarity, certainty, consistency, comparability and potential credibility when it comes to the clear demarcation of the boundaries of the area. They could form the focus of future domestic legal reform aimed at supporting and strengthening OECMs.

5.1.5 The Site is Confirmed to Support Important Biodiversity Values (Criterion 4)

The range of legal issues here largely duplicate those relating to criterion 2 and the rating of potential OECM mechanisms on this criterion similarly varied widely. Again, the range of information, criteria and/or thresholds which currently inform decisions about the final location, formulation, recognition and/or declaration of potential OECM mechanisms is very diverse. The law applicable to some of them prescribe clear criteria, thresholds and the mandatory consideration of the broad range of domestic statutory and non-statutory plans relevant to identifying key areas for conserving biodiversity. The law applicable to some of them make limited provision for this. The law applicable to some of them make no provision for this (particularly the case in the context of those based on the common law). The range of processes preceding decisions about the location, formulation, recognition and/or declaration of potential OECM mechanisms is equally diverse. The law applicable to some of them prescribe a clear process, others a limited process and others no process. The range of potential authorities involved is equally diverse as too are the procedures to promote openness and transparency in these decision-making processes. The above array of issues reduces legal clarity, certainty, consistency, comparability and potentially credibility when it comes to the final assessment and recognition of the area. They could form the focus of future domestic legal reform aimed at supporting and strengthening OECMs.

In addition, the “legal outcome” of the final assessment process differs. Those governed by the common law, generally result in the conclusion of an agreement, and possibly the registration of land-use conditions/restrictions against the title deed of a property. These areas are, however, generally accorded no formal statutory status (ie not designated as a specific type of area under legislation). Those areas governed by legislation, generally result in them being accorded formal statutory status (a formal designation provided for under legislation). This statutory status can be important in two main respects. Firstly, it can enable other relevant legislation to expressly cross-refer to these areas and impose additional layers of regulation consistently upon them. Secondly, it enables other legislation to expressly cross-refer to these areas and provide fiscal incentives consistently to them. Both these possibilities are largely removed where the area is not accorded any form of statutory status, thereby removing the potential applicability of important complementary regulatory tools and incentive measures. This could form the focus of future domestic legal reform aimed at supporting and strengthening OECMs.

5.1.6 Institutions or Mechanisms Exist to Govern and Manage the Site (Criterion 5)

Few of the potential OECM mechanisms rated good or very good on this criterion. The reasons for this are varied. While the legislation applicable to some forms of potential

OECM mechanisms enables all governance types in both the marine and terrestrial context, others only enable certain governance types. Those based on common law (specifically contracts) potentially enable all governance types as any array of persons/institutions could be a party to the relevant contractual arrangement underpinning the OECM mechanism. Management regimes across the potential OECM mechanisms differ significantly. The law applicable to some of them prescribe clear management objectives, provision for the identification of a management authority, and the preparation and implementation of a management plan. The law applicable to others provide for certain components of this and others very few of them. Potential OECM mechanisms founded on the common law (specifically contracts) often contain clear guidance on the above range of management issues. However, the absence of an overarching statutory framework outlining core/basic expectations on a range of management issues (management objectives; the roles and functions of management authorities; the form, nature and content of management plans; etc), potentially reduces consistency of management expectations and practice across these areas. Furthermore, openness and transparency of the process to formulate the governance and management regime varies widely across the different potential OECM mechanisms, with those founded in legislation generally exceeding those based on common law on this issue. The above array of issues reduces legal clarity, certainty, consistency, comparability and potentially credibility when it comes to governance and management arrangements. They could form the focus of future domestic legal reform aimed at supporting and strengthening OECMs.

5.1.7 Governance and Management of the Site Achieve or are Expected to Achieve the In Situ Conservation of Important Biodiversity Values (Criterion 6)

The majority of potential OECM mechanisms (whether founded on legislation or the common law) enable the regulation of activities in the area. However, the array of activities and forms of regulation differ significantly across the different potential OECM mechanisms, with the latter ranging from agreements, title deed restrictions, permitting, prohibitions, rights conditions, exemption conditions etc. The array of governance and management authorities tasked with implementing them varies widely, as do the principles/objectives/criteria/thresholds informing the processes preceding their use. The ability to regulate, control and mitigate the impact of large-scale infrastructure and industrial activities in the area similarly varied, with those founded on legislation appearing to be better placed to do so than those founded in the common law (contracts and servitudes). The above array of issues reduces legal clarity, certainty, consistency, comparability and potentially credibility when it comes to regulating activities across the potential OECM mechanisms. They could form the focus of future domestic legal reform aimed at supporting and strengthening OECMs.

As in the context of formulating a management regime for the area, few of the potential OECM mechanisms rated good or very good on this criterion, with monitoring, reporting and temporal review processes varying widely. The law applicable to some of them prescribe clear and regular monitoring, reporting and review requirements. The law applicable to others provide for certain components of this and others very few of them. Furthermore, legal mechanisms aimed at promoting openness and transparency of these processes varies widely across the different potential OECM mechanisms. The above array of issues reduces legal clarity, certainty, consistency, comparability and potentially credibility when it comes to monitoring, reporting and the

temporal review of the management regime across the potential OECM mechanisms. They could form the focus of future domestic legal reform aimed at supporting and strengthening OECMs.

5.1.8 In Situ Conservation of Important Biodiversity Values is Expected to be in the Long Term (Criterion 7)

Notwithstanding the absence of any domestic legal clarity on what constitutes long-term, several of the potential OECM mechanisms appear to operate long-term and provide differing degrees of long-term legal security to the area. In relation to those founded on the common law, long-term legal security is largely facilitated through the registration of servitudes and land-use conditions/restrictions against the title deed of the relevant property/ies. In the absence of these, contracts purporting to operate in the long-term creating personal obligations that provide little real long-term legal security, unless being a party to them accrues significant benefits/incentives, or they contain significant penalty provisions should a party withdrawn from them. In relation to those founded on legislation, some long-term security is provided through according statutory status to an area (with associated restrictions) for an open-ended (as opposed to fixed) period, prescribing permitted activities (those requiring a permit of some form to undertake them in the area) and prohibited activities (those entirely prohibited in the area), and on occasion registering the legal status of the area and relevant restrictions against the title deed of the relevant property/ies. Long-term legal security for an area would appear to be significantly strengthed by the number of "layers of legal measures" linked to it. The diversity of potentially relevant legal mechanisms is noteworthy. However, the absence of domestic legal clarity on what constitutes long-term and what constitute recognised/acceptable legal mechanisms for ensuring long-term legal security reduces legal clarity, certainty, consistency, comparability and potentially credibility. They could form the focus of future domestic legal reform aimed at supporting and strengthening OECMs.

5.1.9 Governance and Management Arrangements Address Equity Issues (Criterion 8)

Few of the potential OECM mechanisms rated good or very good on this criterion. The statutory frameworks relevant to many of the potential OECM mechanisms made no reference to/partial reference to equity issues in broad principles/objectives underlying the legislation. While some of the relevant statutory frameworks contained mechanisms through which to theoretically enable appropriate forms of equitable participation, access to, use and enjoyment of the area and the resources situated within, in the absence of any additional express legal clarity on their use in this context, they may be rendered a nullity. Some of the relevant statutory frameworks were entirely silent on these issues. In the context of those potential OECMs founded in the common law (namely contracts), the agreements could provide for all legal issues relating to appropriate forms of equitable participation, access to, use and enjoyment of the area and the resources located within it. The agreements could also provide for dispute resolution mechanisms. However, the absence of any overarching/generally applicable set of objectives/principles on these issues may lead to inconsistency and confusion regarding how to deal with these issues in these agreements. Overall, the absence of domestic legal clarity on what constitute appropriate forms of equitable participation, access to, use and enjoyment of the area and the resources situated

within it reduces legal clarity, certainty, consistency, comparability and potentially credibility. They could form the focus of future domestic legal reform aimed at supporting and strengthening OECMs.

5.2 Identification of the Form and Nature of Legal Reform Options

Considering the above analysis, there would appear to be a significant opportunity to support and strengthen the array of potential OECM mechanisms through some form of domestic legal reform. This section of the Legal Review broadly outlines the possible form and nature this domestic legal reform could take. Prior to doing so, it is essential to recognise and distinguish three potential different types of relevant domestic legal reform:

- Development of a new generally applicable legal framework spanning all forms of potential OECM mechanisms (a new OECM law):
    - This type of legal reform forms the focus of this Legal Review and is further detailed below, guided by the distillation of common legal gaps and issues identified in Part 5.1 above.

- Amendments to existing laws only relevant to particular potential OECM mechanisms:
    - This type of legal reform falls outside the scope of this Legal Review. However, it is hoped that the outcome of the Legal Assessment undertaken in Part 4 may be valuable to those seeking to undertake this form of legal reform to complement the development of a new OECM law. It is advocated that this form of legal reform should take place simultaneously with the proposed development of any new OECM law.

- Amendments to existing laws of general and not specific relevance to OECMs or a particular potential OECM mechanism:
    - Given the breadth of legal issues arising in the context of OECMs, in addition to any new OECM law, legal reform may simultaneously need to be considered and made to other relevant sectoral legislation to complement/support the development of any new OECM law. A failure to coherently consider the role and influence of these other sectoral laws when scoping the form, nature and content of a new OECM law, may undermine the success of the latter and lead to additional legal fragmentation as opposed to coherent legal harmonisation/integration.
    - Examples of other key relevant sectoral legislation requiring simultaneous consideration are:
        - Land reform and communal land rights legislation – to finalise the still outstanding legal framework providing for communal land rights and institutions, crucial in the context of OECMs recognised on communally owned/held land. This would include not only finalising new communal land rights legislation, but amending/repealing the broad array of legislation introduced between 1990-2000 to implement South Africa's land reform programme (see table under Part 3.2 for a list of this legislation).
        - Fiscal legislation – to potentially introduce new income tax and property tax incentives for OECMs through the Income Tax Act and/or

the Local Government Municipal Property Rates Act, to provide some parity in the array of potential incentives available for protected areas and OECMs.
    - Property legislation – to potentially provide for new forms of legal mechanisms to be registered against the title deeds of a property under the Deeds Registries Act (like conservation servitudes) to overcome the limitations of the common law formulation of them.
    - Land use/marine planning legislation – to potentially ensure that OECMs once recognised are clearly reflected in terrestrial and marine spatial planning frameworks and zoning schemes governed by legislation such as the Spatial Planning and Land Use Management Act (and associated provincial and municipal planning legislation) and the Marine Spatial Planning Act.
    - Environmental Management & Development Control Legislation – to potentially ensure that recognised OECMs are reflected in environmental management frameworks introduced under the NEMA; to potentially extend existing legal requirements (such as additional special provision for environmental authorisations under NEMA for activities undertaken in recognised OECMs); and to potentially prohibit certain forms of activities taking place in recognised OECMs (through provisions in NEMA such as section 24(2A)).
    - Conservation and Resource Management Legislation – to compel authorities tasked with developing relevant planning frameworks under these laws to reflect the situation/location of OECMs in them; and to compel authorities deciding whether to grant permits under these laws to consider the situation of relevant OECMs (see table under Part 3.2 for a list of this legislation).
  - It is advocated that this form of legal reform aimed at strengthening and supporting OECMs should take place simultaneously with the proposed development of a new OECM law.

As highlighted above, this Part of the Legal Review focuses on the first of the above forms of domestic legal reform, namely the development of a new generally applicable legal framework spanning all forms of potential OECM mechanisms (a new OECM law). There appear to be three main forms this new OECM law could take. These forms and their respective merits are outlined below.

5.2.1 Legislation (Act/Statute)

A new Act focusing on OECMs could be introduced, or an existing Act could be amended to include a new chapter or relevant provisions focusing on OECMs within it. In the interests of ensuring national uniformity, it is suggested that irrespective of which of the above choices is made, it would be national Act.

Should a new national OECM Act be introduced?

Some benefits and disadvantages associated with introducing a new national Act on OECMs would be:

- Benefits
  - Clarity and Certainty – all aspects relating to OECMs could be contained in one Act, and as it is legislation, these could include: all rights and obligations linked to them; all processes linked to recognition, regulation of activities, management, monitoring and reporting; and key information linked to the implementation of these issues (like principles, norms, standards).
  - Simplicity and Accessibility – members of the regulated community would be able to access all components of the overarching legal framework relevant to OECMs in one place.
  - Security – with amendments to Acts having to go through a comprehensive legislative process, the content of the Act would generally be fixed/secure in the long term, and any amendments would need to go through an extensive public participation process.

- Disadvantages:
  - Delay – the process to develop the Act would take significant time given the comprehensive legislative process.
  - Legal Fragmentation – introducing a new Act could lead to additional legal fragmentation unless properly integrated/harmonised with existing legislation.
  - Inflexibility – given the comprehensive legislative process (including for amendments), it could be difficult to easily adapt the Act should circumstances so require.
  - Overburdened – where the issue is exceptionally complicated, seeking to include everything in one Act may overburden it and make it very difficult to understand and implement.
  - Unnecessary – there could be no real need to introduce a new Act as the same objectives would be achieved through simply amending/adding to an existing Act.

Given the existence of national legislation of potential relevance to OECMs (like NEMBA and NEMPAA), the nature of the issue to be regulated, and to preclude delay and legal fragmentation, it would not appear advisable to introduce a new national law focusing specifically on OECMs. This suggestion is bolstered by the fact that both NEMBA and NEMPAA are currently subject to review by the Government. It may be most coherent to integrate any new chapter or relevant provisions dealing with OECMs within these currently open legal reform processes.

Should OECMs be provided for under amendments to NEMBA or NEMPAA?

The respective merits of integrating any new chapter or relevant provisions dealing with OECMs within the legal reform processes currently underway for both NEMBA or NEMPAA are as follows:

- NEMBA
  - It is the country's framework law dealing with biodiversity.
  - Given the biodiversity outcomes underpinning OECMs, their regulation would appear to fall neatly within the remit of NEMBA.

  - NEMBA provides for several biodiversity planning instruments of relevance to informing the identification/selection of potential sites for recognition as OECMs.
  - NEMBA already provides for certain of the types of identified potential OECM mechanisms (most notably botanical gardens and biodiversity management agreements).
  - NEMBA provides for SANBI, which may play an important role in the recognition of OECMs and overseeing monitoring and reporting on them.
  - Including the regulation of OECMs under NEMBA would clearly distinguish them from protected areas regulated under NEMPAA.
  - However, given that there is an existing national law (NEMPAA) already regulating some types of area-based measures (namely protected areas), regulating other forms of area-based measures (namely OECMs) in a different law may cause fragmentation and confusion.
  - Furthermore, the main focus of NEMBA is not the regulation of area-based instruments, and extending its application to deal with some forms of area-based instruments may undermine both its coherence and the coherence of the overall legal framework.

- NEMPAA
  - It is the country's framework law dealing with area-based instruments promoting biodiversity conservation.
  - OECMs are by their very nature an area-based instrument.
  - Regulating OECMs under NEMPAA would consolidate the regulation of most of the country's area-based instruments under one law.
  - Regulating both protected areas and OECMs under one law may promote clarity as the law could clearly distinguish between the regulatory framework applicable to the two different forms of area-based instruments in one place.
  - Regulating both protected areas and OECMs under one law would match the approach in the Kunming-Montreal Global Biodiversity Framework (which includes both protected areas and OECMs under one Target) and the international reporting framework (which includes both within a single global reporting database, the WDPA&OECMs).
  - If OECMs were to be regulated under NEMPAA, the link between many of the relevant provisions in NEMBA would not be lost as NEMPAA itself indicates that it needs to be read and applied in conjunction with NEMBA.
  - However, if the choice was to include the regulation of both protected areas and OECMs under NEMPAA, the name of the latter would need to be changed to refer to both forms of area-based instruments (feasibly to the Protected and Conserved Areas Act).

Balancing the reasons outlined above, if the Government were prepared to consider revising the name of the Protected Areas Act to the Protected and Conserved Areas Act, perhaps it would be most logical to include any new chapter or relevant provisions dealing with OECMs within it as opposed to NEMBA. If the Government were not prepared to consider this name change, then NEMBA would appear to be the most logical next place to include any future new chapter or relevant provisions dealing with OECMs.

5.2.2 Regulation

An Act should contain the main essence of the law and accordingly deal with the main issues. Regulations are introduced to support the Act, providing more details on the main issues outlined in the Act (ie they cannot deal with issues not broadly dealt with in the Act under which they are introduced). Only authorities outlined in the Act (generally the relevant Minister) can introduce Regulations on those issues the Act indicates they have authority to do so.

When are Regulations useful?

Regulations published under an Act are useful in several respects, such as:

- "Debulking" – They can be used to debulk/simplify the main text of an Act by enabling the relevant Minister to introduce rules (creating rights and obligations) linked to issues dealt with generally in the main Act under which they are published.
- Phased implementation – They can be used to introduce new rules linked to issues dealt with generally in the main Act following its initial implementation, thereby enabling the phased introduction of new rules on certain issues overtime.
- Prescribing Processes and Forms – They can be used to outline processes, time frames and the forms linked to these processes.
- Flexibility – Given that they are introduced by the Minister and not through a Parliamentary process, they are theoretically quicker to introduce, and subsequently amend, thereby building in a degree of flexibility. Accordingly, legal issues in respect of which one desires long-term consistency, certainty or security would probably be best placed in the Act itself and not Regulations.

How to decide which issues to include in an Act as opposed to Regulations?

Bearing the above in mind, and given the current absence of any overarching legal regime for OECMs in South Africa, the necessary prior steps to considering the introduction of any regulations dealing with OECMs (or specific issues relating to them), would be deciding in this particular order: (1) under which Act to include a new chapter or relevant provisions on OECMs; (2) which issues are central and should be included in the amendments to the Act (whether in the form of a new chapter or set of provisions); (3) are there any remaining issues which are best left to regulation for the one or more of the reasons outlined above. Undertaking these steps in the reverse order holds potential for the formulation of an incoherent regulatory framework.

Which issues relating to OECMs would be best located in an Act as opposed to Regulations?

Issues to potentially include in the Act as opposed to regulations would be those of central or broad importance and requiring long-term certainty, such as:

- Key definitions relevant to OECMs.
- General principles and objectives relevant to OECMs.
- Key requirements/criteria for recognising an area as an OECM.

- General process to be followed in recognising an area as an OECM.
- General management, monitoring and reporting obligations.
- General regulation of activities in OECMs (including by way of permitted and prohibited activities).
- General criteria and process to derecognise an OECM.
- General compliance and enforcement measures.

Issues to potentially include in any regulations as opposed to the Act would be those providing specific additional detail on any of the above issues, such as:

- Details on the procedure to recognise an OECM, such as timeframes, forms, authorities, roles and responsibilities of those involved, etc.
- Details on management, monitoring and reporting obligations, such as details on management roles and responsibilities, management planning, the form, nature and timing of reporting, etc
- Details on the regulation of activities in OECMs, such as the form and nature of permitted and prohibited activities, permitting processes, timeframes, forms, etc.
- Details on any derecognition process, such as roles and responsibilities, thresholds, consequences, etc.

5.2.3 Notice

As highlighted above, an Act should contain the main essence of the law and accordingly deal with the main issues. It can be supported by Regulations which contain further details on issues dealt with in the main law. Notices can also be introduced to support the implementation of the Act or Regulations published under it. Only authorities outlined in the Act (generally the relevant Minister) can introduce Notices on those issues the Act indicates they have authority to do so.

How to decide which issues to include in an Act/Regulation as opposed to a Notice?

Any rules (creating rights and obligations for anyone) should be included in the Act or Regulations published under it. Where additional information needs to be provided linked to issues regulated in the Act/Regulations, this can be provided for in a Notice. Notices should not generally contain rules (ie create any rights and obligations) as these rules should be contained in the Act or Regulations published under it. Notices can provide an important legal function in complementing the rules contained in the Act/Regulation, such as:

- “Debulking” – They can be used to debulk/simplify the main text of an Act/Regulation by removing information from them, and simply cross-referring in the Act/Regulations to a Notice containing this information.
- Providing Forms – They can be used to publish forms relating to processes outlined in the Act/Regulation.
- Flexibility – Given that they are introduced by the Minister and not through a Parliamentary process, they are theoretically quicker to introduce, and subsequently amend, thereby building in a degree of flexibility. As in the context of Regulations, legal issues in respect of which one desires long-term

consistency, certainty or security would probably be best placed in the Act itself and not Notices.

Which issues relating to OECMs would be best located in a Notice as opposed to an Act/Regulations?

Bearing the above in mind, issues to potentially include in a Notice could include:

- A list of factors which any identified person/authority must consider when exercising a power or function under the Act/Regulation.
- A list of information which must be considered by authorities in determining whether to recognise an OECM.
- A list of types of existing measures deemed to be OECMs.
- A list of management objectives all OECMs must seek to achieve.
- A list of issues to be reflected in a management plan.
- A list of issues those managing/governing an OECM must monitor and report on.
- A list of activities prohibited in an OECM.
- A list of activities requiring a permit if undertaken in an OECM.
- Expected norms and standards on any other issue relating to OECMs.
- Application forms (for recognition, permit etc).

Should these issues be provided for in a Notice, the following types of associated legal rules relating to them would need to be provided for in the Act/Regulations:

- The legal obligation on any identified person/authority to consider the list of factors in the Notice when exercising a power or function under the Act/Regulation.
- The legal obligation on an identified authority to consider the list of information set out in the Notice in determining whether to recognise an OECM.
- The legal prescription that particular types of existing measures identified in the Notice are deemed to be OECMs.
- The legal obligation on those governing/managing an OECM to ensure that it achieves/continues to achieve the list of management objectives set out in the Notice.
- The legal obligation on those managing an OECM to have in place/prepare a management plan dealing with the issues set out in the Notice.
- The legal obligation on those managing an OECM to periodically monitor and report on the issues set out in the Notice.
- The legal prohibition relating to undertaking the activities listed in the Notice within an OECM.
- The legal obligation to obtain a permit prior to undertaking the activities listed in the Notice within an OECM.
- The obligation to comply with any expected OECM norms and standards set out in the Notice.
- The obligation to use the application forms set out in the Notice.

5.3 Possible Key Content

Informed by the broad understanding of the potential role and influence of law on OECMs (Part 2), the outcomes of the Legal Assessment (Part 4), the associated identification of key common legal gaps and issues requiring reform (Part 5.1), and the discussion of the potential types, form and nature of the legal reform (Part 5.2), this part of the Legal Review seeks to broadly outline possible key content to include in the legal reform. It also proposes which components of it are perhaps best included in what type/form of legal reform.

This section does not purport to provide draft text on these issues, but only to suggest key types of issues that could be addressed in the anticipated future domestic legal reform focusing on OECMs. The core rationale underlying these suggestions is to promote certainty, clarity, consistency, comparability and the credibility of the broad area-based system. Any legal reform providing for these suggestions would need to be designed in such a manner to promote the general potential benefits and minimise the potential constraints associated with law, identified in Part 2.1.5 of this Legal Review. How it seeks to do so can only be anticipated, scoped and catered for when drafting the precise legal text of the future legal reform focusing on OECMs.

5.3.1 Definitions

Including a range of definitions on key issues/concepts relating to OECMs would provide much needed domestic legal certainty, clarity and consistency. Key broad issues/concepts potentially requiring definition in the domestic context include: what is an “OECM”; “long-term”; “perpetuity”; “biodiversity value”; thresholds such as “reasonable likelihood”, “positive”, “sustained”, and “effective”; and terms such as “conserved area”, “candidate OECM”, and “potential OECM” if these are to be used in the future legal reform. If the future legal reform seeks to formally include the range of identified potential OECM mechanisms within its scope (notably those scoped within this Legal Review underpinned by legislation and the common law), it may be necessary to include specific definitions of those not currently accorded formal statutory definition/status, such as: biodiversity agreement; conservation servitude; landowner association; conservation champion agreement; OECM zoning and/or overlay zone. These could then either be cross-referred to in the context of the definition of what is an OECM, or in the context of any deeming provision through which various types of existing legal mechanisms are deemed to constitute OECMs or satisfy certain additional potential prescribed requirements relating to them (see further below). If the Government wished to provide for nuanced regulation of OECMs, it could create a categorisation of different “types” of OECMs (for example: primary, secondary, ancillary). If it chose to do so, clearly defining and differentiating these OECM types would also be necessary in the future legal reform.

The location of these definitions will be determined by which components of the legal reform the Government chooses to include where (Act, Regulation, Notice), but it is suggested that key definitions such as what is an “OECM” and “long-term” are so central and requiring long-term certainty that they would be best located in an Act as opposed to a Regulation/Notice. So too would be any “types” of OECMs, if the Government chose to introduce some form of categorisation.

5.3.2 Principles & Objectives

One way to introduce legal certainty, clarity and consistency is through the prescription of a range of principles/objectives that are generally applicable to all issues, or a specific range of issues regulated by the law. Given the diverse array of potential OECM mechanisms identified in South Africa, the prescription of a common set of core principles/objectives generally applicable to all of them could be one way to ensure some consistency in their legal treatment. Once prescribed, these principles/objectives could then be cross referred to in subsequent components of the legal reform such as: compelling all authorities exercising any power/function under the law to consider/apply them; compelling certain authorities to consider/apply them when undertaking certain specific functions under the law (ie recognising an OECM); and compelling those governing/managing OECMs to consider/apply them when doing so.

It is acknowledged that legislation applicable to several of the potential OECM mechanisms already contains principles/objectives broadly/specifically applicable to them. Furthermore, the national environmental management principles outlined in NEMA (section 2) provide a broad principled-framework applicable to all authorities exercising any power/function under any environmental law. However, the Legal Assessment highlighted significant inconsistencies in the legal treatment of OECMs in various respects. One way to overcome this could be to distill an overriding set of dedicated principles/objectives specifically relating to OECMs and providing clarity as to their application (to whom and in what context) and their legal status (are they informative and simply needing to be considered; or are they prescriptive and binding on those exercising identified powers and functions). These principles/objectives could span issues ranging from: site selection; recognition; governance diversity; management; access, use and equity; complementarity; credibility etc.

Given their potential central role and the need for long-term certainty in relation to them, it is recommended that any provisions distilling core principles/objectives of this nature would best be contained in the Act itself.

5.3.3 Recognition & Derecognition

One of the common legal gaps identified in the Legal Assessment is the absence of a clear, coherent and consistent domestic legal process for screening and recognising OECMs. While the IUCN Site-level Tool for Identifying OECMs and the previous domestic studies (most notably the *Western Cape OECM Pilot Project Technical Review (2023))* provide broad guidance, giving formal and precise domestic legal affect to these through legal reform could promote legal clarity, certainty, consistency and comparability. To do so, any such legal reform could address the following key issues linked to the recognition of OECMs:

- The process to trigger recognition, including: who can trigger the process; and how (inclusive of the submission of any prescribed forms etc).
- The form and nature of the screening process, including: the information (such as applicable statutory and non-statutory biodiversity planning instruments), criteria and thresholds that need to be considered/met during the screening process in order to decide whether or not to proceed with the full assessment

of the area; who is responsible for undertaking it (with careful consideration needed of which institution is best resourced/capacitated to ensure the reliability and efficiency of the process); procedures for promoting public/intergovernmental consultation, openness and transparency; the outcome of the screening process (form and nature); and potentially a "rerouting" process and set of criteria for deciding whether or not the area is rather suitable for declaration as a protected area as opposed to recognition as an OECM following the screening process.

- Any additional necessary prerequisites for undertaking the subsequent full assessment, such as obtaining consent from relevant landowners and rightsholders, including: the form and nature of the consent; from whom; by whom; and following what form of process. Prescribing the need to obtain the consent of both landowners and rightsholders (including those holding rights over resources situated above/below the surface of the area – below the land, water surface or seabed), would appear essential and feasibly contribute towards ensuring long-term security and effectiveness.
- The form and nature of the full assessment process, including: the information (such as applicable statutory and non-statutory biodiversity planning instruments), criteria, thresholds and requirements that need to be considered/met during the full assessment process in order to decide whether or not the area should be recognised; who is responsible for undertaking it (with careful consideration needed of which sphere of government or perhaps statutory authority is best resourced/capacitated to ensure the reliability and efficiency of the process); and procedures for promoting public/intergovernmental consultation, openness and transparency.
- The outcome of the full assessment process including the following potential issues:
    - The formal demarcation of the area's precise boundaries (including clarity on acceptable forms this can take).
    - The formal recognition of the area (form and nature) and its recordal in relevant registers/databases.
    - Any subsequent legal formalities associated with securing the long-term recognition of the area such as potentially: registration of the legal status against the property's title deed (terrestrial areas); imposition of specific conditions/restrictions against property's title deed (terrestrial areas); the conclusion of agreements; mandatory subsequent reflection of its existence in relevant statutory planning instruments governed under other laws (such as SDFs, Marine Plans, EMFs); etc.
    - Internal appeal procedures through which a range of persons affected by the decision could challenge it (including who can, on what grounds, to whom, and following what process).
- If the Government elected to recognise types of OECMs, the legal regime relating to recognition could be nuanced across the different types.
- For those instances where the area to be recognised is already adequately regulated by a process of this nature (such as some of the potential OECM mechanisms founded in other legislation), the Government could consider the use of deeming provisions, in terms of which some potential OECM mechanisms are deemed to constitute OECMs, without having to go through the above recognition process.

There may be exceptional circumstances where an area's recognition as an OECM needs to be withdrawn (derecognition), such as where it no longer satisfies the prescribed OECM criteria or thresholds owing to mismanagement. To ensure the credibility of the area-based system, provision could be made to withdraw the OECM recognition accorded to an area. The legal reform would need to prescribe: the exceptional grounds leading to derecognition; the derecognition process; the authority tasked with overseeing/regulating the process (with careful consideration needed of which sphere of government or perhaps statutory authority is best resourced/capacitated to ensure the reliability and efficiency of the process); and the legal outcomes associated with derecognising the area, such as:

- Withdrawing any formal legal status accorded to the area.
- Removing its recordal in relevant registers/databases.
- Removing any additional legal formalities associated with initially securing the long-term recognition of the area (see those listed above).
- Internal appeal procedures through which a range of persons affected by the decision could challenge it (including who can, on what grounds, to whom, and following what process).

The following central components of any recognition and derecognition process requiring long-term legal certainty would best be placed in the Act: the broad obligation to comply with these processes; any legal outcomes associated with the recognition/derecognition of the area as an OECM; the "PA rerouting" process; any deeming provisions; the broad right of internal appeal; and the ability of an authority to introduce regulations to deal with certain components of the recognition and derecognition process. Detailed rules relating to most of these issues could be placed in regulations. Any detailed information, criteria and/or forms relating to these processes could be prescribed in notices, if they were deemed too comprehensive/burdensome to include in the regulations themselves.

5.3.4 Management

The Legal Assessment highlighted significant gaps and inconsistencies in the management arrangements across the potential OECM mechanisms. Legal reform could promote clarity, certainty, consistency and comparability across them in this regard by:

- Outlining core management objectives which all OECMs must achieve.
- Providing for the formal recognition/designation of a manager for the area and clearly setting out the recognition/designation process, including: who can be a manager; the duration of the recognition/designation; who has the authority to recognise/designate them (with careful consideration needed of which sphere of government or perhaps statutory authority is best resourced/capacitated to ensure the reliability and efficiency of the process).
- Outlining core minimum roles and functions of a manager.
- Outlining a set of core management obligations such as the need to have a management plan in place (and outlining minimum criteria for a management plan, the minimum duration of the plan etc) and potentially providing for its formal approval/ratification by some authority (including the process and from whom such approval/ratification could be obtained, with careful consideration

needed of which sphere of government or perhaps statutory authority is best resourced/capacitated to ensure the reliability and efficiency of the process).
- Providing potential mechanisms for co-management.
- Prescribing some procedure to ensure openness and transparency in the formulation and implementation of the management regime.
- If the Government chose to recognise types of OECMs, the management regime could be nuanced across the different types.
- For those instances where the area to be recognised has an existing management regime in place matching the requirements set out in the Act, the Government could again consider the use of deeming provisions, in terms of which the existing management regime is deemed to satisfy the minimum management requirements set out in the Act.

The following central components of the management regime requiring long-term legal certainty would best be placed in the Act: the prescription of broad management objectives for OECMs; the obligation to designate/recognise a manager for an OECM; the obligation on the manager to fulfil certain prescribed roles and responsibilities; any deeming provisions; the general requirements to ensure openness and transparency; and the ability of an authority to introduce regulations to deal with certain components of the management regime. Detailed rules relating to the process to recognise/designate a manager; the precise roles and responsibilities of a manager; mechanisms to enable co-management; and general management requirements could be placed in regulations. Any detailed information relating to management roles, responsibilities and obligations (such as a list of issues to include in a management plan) could be prescribed in a notice, if they were deemed too comprehensive/burdensome to include in the regulations themselves.

5.3.5 Monitoring & Reporting

The Legal Assessment also highlighted significant gaps and inconsistencies in the monitoring and reporting requirements across the potential OECM mechanisms. Legal reform could also promote clarity, certainty, consistency and comparability across them in this regard by:

- Outlining key criteria, norms and/or atandards to be monitored, and the timeframe/frequency of this monitoring.
- Outlining reporting requirements inclusive of what must be reported on, how, when, to whom, by whom, and general requirements to ensure the openness and transparency of the process.
- If the Government elected to recognise types of OECMs, the monitoring and reporting regime could be nuanced across the different types.
- For those instances where the area to be recognised has an existing monitoring/reporting system in place matching the requirements set out in the Act, the Government could consider the use of deeming provisions, in terms of which the existing monitoring/reporting regime is deemed to satisfy the minimum monitoring/reporting requirements set out in the Act.

The following central components of the monitoring and reporting regime requiring long-term legal certainty would best be placed in the Act: the obligation to monitor and report; general requirements to ensure the openness and transparency of the process;

any deeming provisions; and the ability of an authority to introduce regulations to deal with certain components of the monitoring and reporting regime. Detailed rules relating to what must be monitored and reported on, to whom, by whom, when and in what form could be placed in regulations. Any detailed information relating to monitoring and reporting requirements (such as a list of issues to be monitored and reported on) could be prescribed in a notice, if they were deemed too comprehensive/burdensome to include in the regulations themselves.

5.3.6 Permitted & Prohibited Activities

The Legal Assessment highlighted that the majority of potential OECM mechanisms (whether founded on legislation or the common law) enabled the regulation of activities in the area. Given the array of different areas and the diversity of law providing for the regulation of activities within them, differences in the array of activities subject to regulation and the array of mechanisms providing for their regulation is not surprising. This diversity is also not necessarily a problem, on condition that the different approaches provide for the effective regulation of activities in the respective areas. However, there may be instances where the Government wishes to prescribe a common set of permitted or prohibited activities across all forms of OECMs, targeting specific activities that potentially undermine their potential to achieve positive and sustained long-term outcomes for the conservation of biodiversity. Activities of this nature could include large-scale infrastructure or industrial activities. There are two potential ways through which the Government could do so through future legal reform.

Firstly, it could do so through the proposed legal reform, by prescribing an array of activities that are either permitted or prohibited in all forms of OECMs. The above suggestion to formally define what is an OECM and prescribe a formal recognition process would facilitate this, as there would be both clarity as to what is an OECM, and which activities are generally permitted or prohibited within them. The proposed legal reform could provide an overlay of additional common regulation, distinct but additional to that which is already provided for in the law applicable to each of the specific different potential OECM mechanisms. Any legal reform of this nature would need to: identify and define the array of permitted and prohibited activities. In the context of the former, it would also need to prescribe the permitting process, inclusive of: the application process; decision-making criteria; permitting authority; form and nature of the permit, procedures to ensure openness, transparency and equity; and any internal appeal procedures (who can lodge an internal appeal, on what grounds, to whom, and following what process). If this approach was adopted, the following central components of the system requiring long-term legal certainty would probably best be placed in the Act: the ability of an authority to compile and amend the list of prohibited or permitted activities; the obligation on persons to comply with the prohibition and obtain a permit; the obligation to monitor and report; general requirements to ensure the openness and transparency of the process; and the ability of an authority to prescribe a permitting process by way of regulation. The specific details of the permitting system could be contained in regulations and lists of prohibited and permitted activities feasibly in notices, if they were deemed too comprehensive/burdensome to include in the regulations themselves

Secondly, and again facilitated by the suggestion to formally define what is an OECM and prescribe a formal recognition process for them, other legislation permitting and

prohibiting certain types of activities could be amended to extend their application to situations where these activities are undertaken in OECMs. Two potential examples of this under NEMA would be: (1) the Minister extending NEMA's EIA and environmental authorisation requirements prescribed broadly under section 24(2) to specific types of listed activities undertaken in OECMs; and/or (2) the Minister using NEMA's section 24(2A) to prohibit certain activities being authorised in OECMs. In these instances, no express provision would need to be made in the specific legal reform providing for OECMs, but rather through reform to notices published under other generally applicable law, such as in the case of the above example, NEMA and its EIA Regulations and Listing Notices.

5.3.7 Support (Incentives & Investment)

The Legal Assessment highlighted that the law applicable to the majority of potential OECM mechanisms founded on legislation, are silent on the issue of incentives and investment, but for the limited income tax benefits applicable to biodiversity management agreements. In contrast, issues relating to support offered by various stakeholders to potential OECM mechanisms founded in the common law, can be included in the terms of the contractual arrangements underpinning these mechanisms.

As highlighted in Part 2 of the Legal Review, law has a key potential enabling role when it comes to identifying and linking mechanisms to support and strengthen the potential OECM mechanisms, in the form of incentives (financial and non-financial) and investment. Areas that have long-term legal security are potentially more likely to qualify for incentives and secure investment. Several of the suggestions proposed above could promote the long-term legal security of all forms of OECM mechanisms through a range of potential legal measures, thereby feasibly providing important long-term legal safeguards vital to those considering investing in these areas or providing incentives to them.

Should these suggestions be implemented, they provide potential for both securing private investment in these areas, and for creating the necessary legal safeguards for fiscal authorities to consider providing relevant tax incentives to these areas. The latter could take the form of income tax benefits, similar in nature to those currently provided for under the Income Tax Act (to areas subject to biodiversity management agreements and certain types of protected areas). They could also take the form of property tax prohibitions, differential rating, rebates and exemptions, currently provided for under the Local Government Municipal Property Rates Act to some protected areas and other forms of area-based conservation initiatives. Provision for these forms of incentives would need to be made through amendments to the fiscal legislation, but history has shown that tax authorities are ill-inclined to consider introducing incentives of this nature in the absence of there being necessary legal safeguards in the legislation regulating the areas to which they would apply. Therefore, ensuring the inclusion of these legal safeguards within the legal reform targeting OECMs aimed at ensuring their long-term duration and security, would appear to be a prerequisite to any potential reform to the fiscal legislation aimed at providing for incentives of this nature.

5.3.8 Compliance & Enforcement

Several of the suggestions relating to the future legal reform propose introducing a range of potential obligations on a range of government authorities, such as: overseeing screening procedures; securing consent; overseeing full assessment procedures; formally recognising/derecognising/deeming an area to be an OECM; designating/recognising a manager; considering and approving a management plan; overseeing monitoring and reporting; regulating permitted and prohibited activities; etc. They similarly propose introducing a range of potential obligations on those governing, managing or using the area, such as: preparing and implementing a management plan; complying with management principles and objectives; fulfilling management obligations; undertaking monitoring and reviewing; adhering to permitting requirements and prohibitions, etc.

Should the OECM law reform elect to include any of these suggestions aimed at supporting and strengthening the potential OECM mechanisms through providing improved legal certainty, clarity, consistency and comparability, then any associated legal reform would naturally need to include appropriate compliance and enforcement mechanisms as in the absence of the these, the regulatory framework would be incomplete. These compliance mechanisms could take several forms including the use of administrative measures (such as compliance notices and directives) and criminal measures (fines/imprisonment). The location of any compliance and enforcement mechanism would need to match the location of the legal obligation to which it relates, in other words be placed in the relevant law which creates the legal obligation. If the Government elected to recognise types of OECMs, and introduce nuanced legal obligations across the different types, then any compliance and enforcement regime could be similarly nuanced.

Annexure A

Supporting Narrative Text for Legal Assessment Table

With a view to complementing the Legal Assessment Table contained in Part 4 of the Legal Review, below is supporting narrative text that highlights the following in respect of each of the potential terrestrial and marine OECM mechanisms falling within the scope of this Legal Review:

- Conservation management objective (primary, secondary, ancillary).
- Identification of relevant legal framework.
- Brief explanation of relevant legal framework.
- Justification for the ratings contained in the Legal Assessment Table.

The following supporting narrative text does not contain a detailed explanation of, provide a practical example of or pass judgment on the extent to which the identified potential OECM mechanisms meet the requirements of an OECM as these aspects have been canvassed in other prior domestic studies. It solely seeks to providing supporting narrative text to support the assessment of whether the law relevant to each potential OECM mechanism adequately addresses the range of legal issues highlighted in the Legal Assessment Matrix.

Terrestrial OECM Mechanisms

1. *Biodiversity Management Agreement*
    - Conservation Management Objective (Primary)
    - Relevant Legal Framework – NEMBA (section 44)
    - Brief Explanation of Relevant Legal Framework
        - Statutory mechanism founded upon a contract concluded between the Minister and person, organisation or organ of state.
        - Must relate to implementation of a biodiversity management plan or an aspect of it.
        - While NEMBA prescribes details regarding the preparation, content, duration, alignment and approval of biodiversity management plans, no detail of this nature is provided for biodiversity management agreements.
    - Justification for Rating
        - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of protected area before considering it for recognition as an OECM.
        - Criterion 2 – Average: NEMBA outlines no specific information/criteria that must be considered when initially assessing if an area is suitable for inclusion under a biodiversity management agreement. However, NEMBA prescribes that a biodiversity management agreement must relate to biodiversity management plan. Statutory information/criteria outlined for the latter would naturally inform the former in the context of

identifying priority areas and assisting in the initial assessment of whether the area supports important biological values. NEMBA does not however prescribe the form, nature and process for initial assessment, what thresholds must be met, or a process for ensuring openness and transparency within the initial assessment process.

- Securing Consent – Average: NEMBA details the types of entities that can conclude the biodiversity management agreement and implicit in the notion of negotiating and concluding the terms of this agreement is consent. NEMBA provides little legal clarity on how to deal with situations where a landowner or relevant rightsholder (like an entity holding mining or prospecting rights) is not a party to the biodiversity management agreement or where consent needs to be obtained from multiple rightsholders. NEMBA does not expressly provide for measures to ensure openness and transparency in the process. The continued absence of communal land rights legislation may undermine legal clarity and certainty where a biodiversity management agreement relates to communal land tenure/resource rights held by communal institutions (inclusive of traditional authorities, communal property associations and land trusts).
- Criterion 3 – Good: Area's boundaries (whether applicable to part or whole of single property) should be clearly demarcated in the biodiversity management agreement. Where the area spans multiple properties, this could similarly be the case through including multiple landowners to the agreement. NEMBA lacks any clarity on how to deal with the three-dimensional nature of rights (particularly regarding potential mining/prospecting rights held by those who are not the landowner/s). The biodiversity management agreement could deal with this by including these rightsholders as parties, but without express obligation to do so, their exclusion may undermine the success of any biodiversity management agreement.
- Criterion 4 – Average: NEMBA outlines no specific information/criteria that must be considered when assessing if an area is suitable for inclusion under a biodiversity management agreement. However, NEMBA prescribes that a biodiversity management agreement must relate to biodiversity management plan. Statutory information/criteria outlined for the latter would naturally inform the former in the context of identifying priority areas and assisting in the final assessment of whether the area supports important biological values. NEMBA does not however prescribe the form, nature and process for final assessment, what thresholds must be met, or a process for ensuring openness and transparency within the final assessment process. The area subject to the biodiversity management agreement is accorded some form of statutory recognition as it is based on an agreement concluded in terms of NEMBA to which a government authority is a party. However, no other statutory frameworks regulating development/activities accord any form of specific protection to areas subject to a biodiversity management agreement.
- Criterion 5 – Average: Given the diversity of entities that can be a party to a biodiversity management agreement, it could enable all governance types. The biodiversity management agreement could provide for all

legal issues relating to management. However, the absence of statutory clarity on mandatory/discretionary management objectives/institutions/ mechanisms may lead to inconsistency and confusion. NEMBA does not provide for mechanisms to ensure openness and transparency in the formulation of the above management and governance arrangements.

- Criterion 6 – Average: The biodiversity management agreement could provide for all legal issues relating to regulating/restricting land-uses, monitoring and reporting. However, the absence of statutory clarity on these issues in NEMBA may lead to inconsistency and confusion. Furthermore, if key competing rightsholders are not included as parties to the biodiversity management agreement, regulating competing land uses may be impossible. NEMBA does not provide for mechanisms to ensure openness and transparency in the formulation of the above arrangements.
- Criterion 7 – Very Weak: NEMBA does not provide any clarity on what constitutes long-term or a prescribed minimum duration for biodiversity management agreements. While a biodiversity management agreement could be concluded for however long those party to the agreement desire, by its nature it is an agreement creating personal and not praedial obligations. Any party could withdraw from it at any stage. In the absence of NEMBA prescribing a minimum long-term duration for the agreement and expressly linking this to the registration of some conditions against the title deed of the property to ensure these are binding on successive owners in title, the biodiversity management agreement alone provides weak legal long-term protection for an area.
- Criterion 8 – Average: The biodiversity management agreement could provide for all legal issues relating to appropriate forms of equitable participation, access to, use and enjoyment of the area and the resources located within it. It could also provide for dispute resolution mechanisms. However, the absence of statutory clarity on these issues in NEMBA may lead to inconsistency and confusion. NEMBA does not provide for mechanisms to ensure openness and transparency in the formulation of the above arrangements.

2. *Biodiversity Agreement (no title deed conditions)*
   - Conservation Management Objective (Primary)
   - Relevant Legal Framework – Common Law (Contract)
   - Brief Explanation of Relevant Legal Framework
     - Contract between landowner (individual/communal) and generally provincial conservation agency/environmental authority.
     - Contract generally outlines the biodiversity value of the area, management objectives, respective parties' rights and obligations, dispute resolution procedures, duration and cancellation.
     - No statutory framework directly regulating the process to conclude the contract or informing/prescribing its terms and conditions.
   - Justification for Rating
     - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is

made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.

- Criterion 2 – Very Weak: While there exists a broad array of generally relevant statutory (National Biodiversity Framework, bioregional plans, biodiversity management plans, lists of threatened species and ecosystems, EMFs, IDPs, SDFs, coastal management programmes, National Water Resource Strategy, catchment management strategies etc) and non-statutory (NPAES, NBS&AP, NSBA, KBAs, CBAs, ESAs etc) planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values, there is no specific legal obligation on the parties to the biodiversity agreement to consider these. There is no legal certainty or clarity regarding the form, nature and process for the initial assessment, what thresholds must be met, or for ensuring openness and transparency of the process.
- Securing Consent – Average: Implicit in the notion of negotiating and concluding the terms of a biodiversity agreement is securing consent. However, there is no overarching legal certainty or clarity regarding: who can or should be a part of the negotiation process and a party to the biodiversity agreement itself; how to deal with current and potential future competing land uses and/or resource rights over the area; and measures to ensure the openness and transparency of the process. The continued absence of communal land rights legislation may undermine legal certainty where a biodiversity agreement relates to communal land tenure/resource rights held by communal institutions (inclusive of traditional authorities, communal property associations and land trusts).
- Criterion 3 – Good: The area's boundaries (whether applicable to part or whole of single property) should be able to be clearly demarcated in the biodiversity agreement. Where the area spans multiple properties, this could similarly be the case through including multiple landowners to the agreement. There is no overarching legal framework creating certainty or clarity on how to deal with the three-dimensional nature of rights (particularly regarding potential mining/prospecting rights held by those who are not the landowner). The biodiversity agreement could deal with this by including these rightsholders as parties, but without an express overarching legal obligation to do so, their exclusion may undermine the success of any biodiversity agreement.
- Criterion 4 – Very Weak: While there exists a broad array of generally relevant statutory and non-statutory (as above in the context of Criterion 2) planning instruments to identify priority areas and assist in finally assessing whether the area supports important biological values, there is no express overarching legal obligation on the parties to the biodiversity agreement to consider these. There is no legal certainty or clarity regarding the form, nature and process for the final assessment, what thresholds must be met, or for ensuring openness and transparency of the process. While a government agency/authority may be a party to the biodiversity agreement, the area subject to it has no statutory status. No other statutory frameworks regulating development/activities accord any form of specific protection to areas subject to a biodiversity agreement.

- Criterion 5 – Average: Given the diversity of entities that can be a party to a biodiversity agreement, it could enable all governance types. The biodiversity agreement could provide for all legal issues relating to management. However, the absence of any overarching legal framework providing certainty or clarity on mandatory/discretionary management objectives/institutions/mechanisms may lead to inconsistency and confusion. There is no overarching legal clarity or certainty on mechanisms to ensure openness and transparency in the formulation of the above management and governance arrangements.
- Criterion 6 – Average: The biodiversity agreement could provide for all legal issues relating to regulating/restricting land-uses, monitoring and reporting. However, the absence of any form of overarching legal framework providing certainty or clarity on these issues may lead to inconsistency and confusion. Furthermore, if key competing rightsholders are not included as parties to the biodiversity agreement, regulating competing land uses may be impossible. There is no overarching legal framework creating certainty or clarity relating to mechanisms to ensure openness and transparency in the above arrangements.
- Criterion 7 – Very Weak: There is no legal certainty or clarity on what constitutes long-term or a prescribed minimum duration for a biodiversity agreement. While the duration of a biodiversity agreement could be concluded for however long those party to the agreement desire, by its nature it is an agreement creating personal and not praedial obligations. Any party could withdraw from it at any stage. In the absence of an overarching legal framework creating certainty or clarity on a minimum long-term duration for the agreement and expressly linking this to the endorsement of some conditions against the title deed of the property to ensure these are binding on successive owners in title, the biodiversity agreement alone provides weak legal long-term protection for an area.
- Criterion 8 – Average: The biodiversity agreement could provide for all legal issues relating to appropriate forms of equitable participation, access to, use and enjoyment of the area and the resources located within it. It could also provide for dispute resolution mechanisms. However, the absence of statutory clarity on these issues may lead to inconsistency and confusion. There is no legal framework providing for mechanisms to ensure openness and transparency in the formulation of the above arrangements.

3. *Biodiversity Agreement (with title deed conditions)*
   - Conservation Management Objective (Primary)
   - Relevant Legal Framework – Common Law (Contract and Property) & Deeds Registries Act
   - Brief Explanation of Relevant Legal Framework
     - Contract between landowner (individual/communal) and generally provincial conservation agency/environmental authority.
     - Contract generally outlines the biodiversity value of the area, management objectives, respective parties' rights and obligations, dispute resolution procedures, duration and cancellation.

  - Certain terms of the agreement relating to praedial as opposed to personal obligations are recorded in a notarial deed and endorsed against the title deeds of the property, as a result of which they become binding on successive owners of the land.
  - This is no statutory framework directly regulating the process to conclude the contract or informing/prescribing its terms and conditions.
  - The Deeds Registries Act governs what conditions can be registered against the title deed of the property and the process to register these.
- Justification for Rating
  - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
  - Criterion 2 – Very Weak: While there exists a broad array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), there is no specific legal obligation on the parties to the biodiversity agreement to consider these. There is no legal certainty or clarity regarding the form, nature and process for the initial assessment, what thresholds must be met, or for ensuring openness and transparency of the process.
  - Securing Consent – Average: Implicit in the notion of negotiating and concluding the terms of a biodiversity agreement is securing consent. However, there is no overarching legal certainty or clarity regarding: who can or should be a part of the negotiation process and a party to the biodiversity agreement itself; how to deal with current and potential future competing land uses and/or resource rights over the area; and measures to ensure the openness and transparency of the process. The Deed Registries Act does provide some clarity on these issues, but only in the context of registering the title deed conditions. The continued absence of communal land rights legislation may undermine legal certainty where a biodiversity agreement relates to communal land tenure/ resource rights held by communal institutions (inclusive of traditional authorities, communal property associations and land trusts).
  - Criterion 3 – Good: The area's boundaries (whether applicable to part or whole of single property) should be able to be clearly demarcated in the biodiversity agreement. Where the area spans multiple properties, this could similarly be the case through including multiple landowners to the agreement. There is no overarching legal framework creating legal certainty or clarity on how to deal with the three-dimensional nature of rights (particularly regarding potential mining/prospecting rights held by those who are not the landowner). The biodiversity agreement could deal with this by including these rightsholders as parties, but without an express overarching legal obligation to do so, their exclusion may undermine the success of any biodiversity agreement. The Deed Registries Act does provide some clarity on these issues, but only in the context of registering the title deed conditions.
  - Criterion 4 – Very Weak: While there exists a broad array of generally relevant statutory and non-statutory planning instruments relevant to

identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), there is no specific legal obligation on the parties to the biodiversity agreement to consider these. There is no legal certainty or clarity regarding the form, nature and process for the final assessment, what thresholds must be met, or for ensuring openness and transparency of the process. While a government agency/authority may be a party to the biodiversity agreement, the area subject to the arrangement has no formal statutory conservation status. No other statutory frameworks regulating development/activities accord any form of specific protection to areas subject to a biodiversity agreement.

- Criterion 5 – Average: Given the diversity of entities that can be a party to a biodiversity agreement, it could enable all governance types. The biodiversity agreement could provide for all legal issues relating to management. However, the absence of an overarching legal framework creating certainty or clarity on mandatory/discretionary management objectives/institutions/mechanisms may lead to inconsistency and confusion. There is no overarching legal clarity or certainty on mechanisms to ensure openness and transparency in the formulation of the above management and governance arrangements.
- Criterion 6 – Average: The biodiversity agreement could provide for all legal issues relating to regulating/restricting land-uses, monitoring and reporting. However, the absence of any form of overarching legal framework providing certainty or clarity on these issues may lead to inconsistency and confusion. Furthermore, if key competing rightsholders are not included as parties to the biodiversity agreement, regulating competing land uses may be impossible. There is no overarching legal framework creating certainty or clarity relating to mechanisms to ensure openness and transparency in the above arrangements, except for those provided for in the Deeds Registries Act in the context of registering the title deed conditions.
- Criterion 7 – Good: There is no legal certainty or clarity on what constitutes long-term or a prescribed minimum duration for biodiversity agreements. While the duration of a biodiversity agreement could be concluded for however long those party to the agreement desire, by its nature it is an agreement creating personal and not praedial obligations. Any party could withdraw from it at any stage. However, by expressly linking the biodiversity agreement to the registration of some conditions against the title deed of the property to ensure these are binding on successive owners in title, the long-term protection of the area is significantly strengthened. While the title deed conditions can be removed by way of agreement or through statutory processes, they do create an additional layer of long-term legal security for the area.
- Criterion 8 – Average: The biodiversity agreement and associated title deed conditions could provide for all legal issues relating to appropriate forms of equitable participation, access to, use and enjoyment of the area and the resources located within it. It could also provide for dispute resolution mechanisms. However, the absence of statutory clarity on these issues may lead to inconsistency and confusion. There is no legal

framework provide for mechanisms to ensure openness and transparency in the formulation of the above arrangements.

4. *Conservation Servitude*
   - Conservation Management Objective (Primary)
   - Relevant Legal Framework – Common Law (Contract & Property) & Deeds Registries Act.
   - Brief Explanation of Relevant Legal Framework
     - Contract between landowner and a third party (typically a conservation NGO) coupled with a servitude.
     - In terms of the contract, the landowner agrees to set aside a portion of the land for conservation purposes in favour of a third party, with the contract generally outlining the biodiversity value of the area, management objectives, respective parties' rights and obligations, dispute resolution procedures, duration and cancellation.
     - The accompanying servitude creates praedial as opposed to personal obligations, and its terms are recorded in a notarial deed and endorsed against the title deed of the property, as a result of which they become binding on successive owners of the land.
     - This is no statutory framework directly regulating the process to conclude the contract or informing/prescribing its terms and conditions.
     - The Deeds Registries Act governs what conditions can be registered against the title deed of the property and the process to register the servitude.
   - Justification for Rating
     - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
     - Criterion 2 – Very Weak: While there exists a broad array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), there is no specific legal obligation on the parties to the contract to consider these. There is no legal certainty or clarity regarding the form, nature and process for the initial assessment, what thresholds must be met, or for ensuring openness and transparency of the process.
     - Securing Consent – Average: Implicit in the notion of negotiating and concluding the terms of the contract and accompanying conservation servitude is securing consent. However, there is no overarching legal certainty or clarity regarding: who can or should be a part of the negotiation process and a party to the contract itself; how to deal with current and potential future competing land uses and/or resource rights over the area; and measures to ensure the openness and transparency of the process. The Deed Registries Act does provide some clarity on these issues, but only in the context of the servitude. The continued absence of communal land rights legislation may undermine legal certainty where a contract and accompanying servitude relates to communal land tenure/resource rights held by communal institutions

(inclusive of traditional authorities, communal property associations and land trusts).

- Criterion 3 – Good: The area's boundaries (whether applicable to part or whole of single property) should be able to be clearly demarcated in the contract; and must be clearly demarcated in the accompanying servitude (as prescribed in the Deeds Registries Act). Where the area spans multiple properties, this could similarly be the case through including multiple landowners to the contract and registering servitudes across each of their respective properties. In the context of the contract, there is no overarching legal framework creating legal certainty or clarity on how to deal with the three-dimensional nature of rights (particularly regarding potential mining/prospecting rights held by those who are not the landowner). The contract could deal with this by including these rightsholders as parties, but without an express obligation to do so, their exclusion may undermine the success of any contract. The Deed Registries Act does provide some clarity on these issues, but only in the context of the servitude.
- Criterion 4 – Very Weak: While there exists a broad array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in finally assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), there is no specific legal obligation on the parties to the contract to consider these. There is no legal certainty or clarity regarding the form, nature and process for the final assessment, what thresholds must be met, or for ensuring openness and transparency of the process. While a government agency/authority may be a party to the contract and feasibly associated servitude, the area subject to the arrangement has no formal statutory conservation status. No other statutory frameworks regulating development/activities accord any form of specific protection to areas subject to a contract and associated servitude.
- Criterion 5 – Average: Given the diversity of entities that can be a party to the contract and associated servitude, it could enable all governance types. Predominantly the contract could provide for all legal issues relating to management. However, the absence of an overarching legal framework creating certainty or clarity on mandatory/discretionary management objectives/institutions/mechanisms may lead to inconsistency and confusion. There is no overarching legal clarity or certainty on mechanisms to ensure openness and transparency in the formulation of the above management and governance arrangements.
- Criterion 6 – Average: The contract and associated servitude could provide for all legal issues relating to regulating/restricting land-uses, monitoring and reporting. However, the absence of any form of overarching legal framework providing certainty or clarity on these issues may lead to inconsistency and confusion. Furthermore, if key competing rightsholders are not included as parties to the contract and associated servitude, effectively regulating competing land uses may be impossible. There is no overarching legal framework creating certainty or clarity relating to mechanisms to ensure openness and transparency

in the above arrangements, except for those provided for in the Deeds Registries Act in the context of the registration of the servitude.

- Criterion 7 – Good: There is no legal certainty or clarity on what constitutes long-term or a prescribed minimum duration for the contract. While the duration of a contract could be concluded for however long those party to the agreement desire, by its nature it is an agreement creating personal and not praedial obligations. Any party could withdraw from it at any stage. However, by expressly linking the contract to a servitude, with the terms of the latter registered against the title deed of the property and accordingly binding on successive owners in title, the legal long-term protection of the area is significantly strengthened. While the terms of the servitude can be removed by way of agreement or through statutory processes, they do create an additional layer of long-term legal security for the area.
- Criterion 8 – Average: The contract and associated servitude could provide for all legal issues relating to appropriate forms of equitable participation, access to, use and enjoyment of the area and the resources located within it. It could also provide for dispute resolution mechanisms. However, the absence of statutory clarity on these issues may lead to inconsistency and confusion. There is no legal framework provide for mechanisms to ensure openness and transparency in the formulation of the above arrangements.

5. *Landowner Association (with title deed conditions)*
   - Conservation Management Objective (Primary)
   - Relevant Legal Framework – Common Law (Contract & Property) & Deeds Registries Act
   - Brief Explanation of Relevant Legal Framework
     - Landowners in an area enter into an agreement to establish a landowners' association.
     - The purpose behind establishing the landowners' association is to adopt a common set of goals, principles, activities and obligations aimed at promoting conservation across the properties of those who are members of it.
     - The constitution of the landowners' association sets out its membership, structure, powers and functions, rules on dissolution, and the common set of conservation-related goals, principles, activities and obligations which members agree to adopt and apply on their land.
     - Relevant obligations/restrictions are recorded in a notarial deed and registered against the title deeds of the members properties in terms of the Deeds Registries Act which ensure that they are binding on successive owners of the land.
     - The coordination of management activities across the properties of all members can be allocated to a third party, such as a section s21 company.
     - Holistically, the legal mechanism is similar in nature to a biodiversity agreement (with title deed condition) but for the fact that the agreement provides for the establishment of a landowners' association, whose Constitution outlines how the members of the association agree to jointly manage their properties in the interest of conservation.

- Justification for Rating
    - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
    - Criterion 2 – Very Weak: While there exists a broad array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), there is no specific legal obligation on the members of the landowners' association to consider these when establishing the legal mechanism. There is no legal certainty or clarity regarding the form, nature and process for the initial assessment, what thresholds must be met, or for ensuring openness and transparency of the process.
    - Securing Consent – Average: Implicit in the notion of negotiating and concluding the terms of the landowners' association agreement/constitution is securing consent. However, there is no overarching legal certainty or clarity regarding: who can or should be a part of the negotiation process and a party to the landowners' association itself; how to deal with current and potential future competing land uses and/or resource rights over the area; and measures to ensure the openness and transparency of the process. The Deed Registries Act does provide some clarity on these issues, but only in the context of registering title deed conditions. The continued absence of communal land rights legislation may undermine legal certainty where a biodiversity agreement relates to communal land tenure/ resource rights held by communal institutions (inclusive of traditional authorities, communal property associations and land trusts).
    - Criterion 3 – Good: The area's boundaries should be able to be clearly demarcated in the legal mechanisms providing for the establishment of the landowners' association. There is no overarching legal framework creating legal certainty or clarity on how to deal with the three-dimensional nature of rights (particularly regarding potential mining/prospecting rights held by those who are not a member of the landowners' association). The legal mechanism could deal with this by including these rightsholders as parties to the agreement, but without an express overarching legal obligation to do so, their exclusion may undermine the success of the legal mechanism. The Deed Registries Act does provide some clarity on these issues, but only in the context of imposing the title deed conditions.
    - Criterion 4 – Very Weak: While there exists a broad array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of 2.*Biodiversity Agreement* (criterion 2)), there is no specific legal obligation on the members of the landowners' association to consider these when establishing it. There is no legal certainty or clarity regarding the form, nature and process for the final assessment, what thresholds must be met, or for ensuring openness and transparency of the process.

While a government agency/authority may be a party to the mechanism if they own land in the area, the area subject to the arrangement has no formal statutory conservation status. No other statutory frameworks regulating development/activities accord any form of specific protection to areas falling under a landowners' association of this nature

- Criterion 5 – Average: Given the diversity of entities that can be a member of a landowners' association, it could enable all governance types. The legal mechanism could provide for all legal issues relating to management. However, the absence of an overarching legal framework creating certainty or clarity on mandatory/discretionary management objectives/institutions/mechanisms may lead to inconsistency and confusion. There is no overarching legal clarity or certainty on mechanisms to ensure openness and transparency in the formulation of the above management and governance arrangements.
- Criterion 6 – Average: The legal mechanisms underpinning the landowner association could provide for all legal issues relating to regulating/restricting land-uses, monitoring and reporting. However, the absence of any form of overarching legal framework providing certainty or clarity on these issues may lead to inconsistency and confusion. Furthermore, if key competing rightsholders are not included as parties to the legal mechanism, regulating competing land uses may be impossible. There is no overarching legal framework creating certainty or clarity relating to the legal mechanism to ensure openness and transparency in the above arrangements, except for those provided for in the Deeds Registries Act in the context of registering the title deed conditions.
- Criterion 7 – Good: There is no legal certainty or clarity on what constitutes long-term or a prescribed minimum duration for this legal mechanism. While its duration could be concluded for however long the members of the landowners' association agree to, by its nature the legal mechanism providing for the establishment of the landowners' association creates personal and not praedial obligations. Any party could withdraw from it at any stage. However, by expressly linking the legal mechanism providing for the establishment of the landowners' association to the registration of some conditions against the title deed of the properties of its members, ensures that these are binding on successive owners in title, and significantly strengthens the long-term protection of the area. While the title deed conditions can be removed by way of agreement or through statutory processes, they do create an additional layer of long-term legal security for the area.
- Criterion 8 – Average: The agreement establishing the landowners' association, its constitution and any associated title deed conditions could provide for all legal issues relating to appropriate forms of equitable participation, access to, use and enjoyment of the area and the resources located within it. It could also provide for dispute resolution mechanisms. However, the absence of statutory clarity on these issues may lead to inconsistency and confusion. There is no legal framework provide for mechanisms to ensure openness and transparency in the formulation of the above arrangements.

6. *National Botanical Garden*
   - Conservation Management Objective (Primary)
   - Relevant Legal Framework – NEMBA (sections 33-34, read with sections 11-12)
   - Brief Explanation of Relevant Legal Framework
     - Formally declared by the Minister, with the approval of other relevant Cabinet Ministers, through publication of a notice in the Government Gazette.
     - NEMBA enables both state-owned and non-state-owned land to be included within a national botanical garden.
     - No express provision is made in NEMBA for formally registering the inclusion of a property in a national botanical garden against the property's title deeds.
     - Management, maintenance, control and the regulation of activities in botanical gardens constitute functions of the South African National Biodiversity Institute.
   - Justification for Rating
     - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
     - Criterion 2 – Average: While there exists a broad array of generally relevant statutory and non-statutory planning instruments to identify priority areas and assist in assessing whether the area supports important biological values (see above in the context of 2.*Biodiversity Agreement* (criterion 2)), NEMBA does not expressly impose an obligation on the Minister to specifically take these into account in the initial assessment of which areas to declare as national botanical gardens. NEMBAs provisions relating to the declaration of national botanical gardens are vague when it comes to the form, nature and process for initially assessing the area, and what thresholds need to be met. Openness and transparency are partly provided for in NEMBA as the Minister is compelled to consult and secure the approval of other relevant Cabinet Ministers in respect of state-owned land, consult and enter into an agreement in the context of non-state-owned land, and in respect of both, publish draft (for public comment) and final notices in the Government Gazette.
     - Securing Consent – Good: Clear provision is made in NEMBA for consultation, securing the approval of relevant Cabinet Ministers in respect of state-owned land, and entering into agreements in the context of non-state-owned land with relevant landowners prior to declaring any national botanical garden. The continued absence of communal land rights legislation may undermine legal clarity and certainty where the national botanical garden seeks to relates to communal land tenure/ resource rights held by communal institutions (inclusive of traditional authorities, communal property associations and land trusts).
     - Criterion 3 – Very Good: The boundaries for the area (whether spanning single of multiple properties) are clearly outlined in the notice declaring the national botanical garden. However, one potential weakness is that

these notices do not recognise the three-dimensional nature of potentially applicable rights but perhaps this is not of great concern as in the context of national botanical gardens, it is presumed that the Minister would not propose the declaration of an area subject to competing rights (such as mining and prospecting rights) – hence reflected as very good rating.

- Criterion 4 – Average: While there exists a broad array of generally relevant statutory and non-statutory planning instruments to identify priority areas and assist in assessing whether the area supports important biological values (see above in the context of 2.*Biodiversity Agreement* (criterion 2)), NEMBA does not expressly impose an obligation on the Minister to specifically take these into account in the final assessment of which areas to declare as national botanical gardens. NEMBAs provisions relating to the declaration of national botanical gardens are vague when it comes to the form, nature and process for finally assessing the area, and what thresholds need to be met. Openness and transparency are partly provided for in NEMBA as the Minister is compelled to consult and secure the approval of other relevant Cabinet Ministers in respect of state-owned land, consult and enter into an agreement in the context of non-state-owned land, and in respect of both, publish draft (for public comment) and final notices in the Government Gazette. The area is accorded formal statutory recognition but no other statutory frameworks regulating development/activities accord any form of specific protection to national botanical gardens.
- Criterion 5 – Average: NEMBA expressly provides for most governance types in that both state-owned land and non-state-owned land (feasibly including that held under private or communal ownership) can be included within a national botanical garden. NEMBA is however silent relating to co-management, although the agreement relating to the inclusion of non-state-owned land could feasibly provide for some form of co-management. NEMBA's provisions dealing with management of botanical gardens are exceptionally broadly framed, only prescribing that the functions of SANBI include managing, controlling and maintaining national botanical gardens. It does not provide any further details relating to management objectives, management planning, the process to develop these, or openness and transparency in developing and implementing the management regime. Inconsistency in the management of national botanical gardens is probably not an issue as they are all managed by the same authority, SANBI. Additional legal specificity on all these issues may improve clarity and certainty.
- Criterion 6 – Good: NEMBA accords broad functions and powers to SANBI to control, maintain and regulate access to national botanical gardens. It also prescribed broad monitoring and reporting functions on SANBI. While very generally phrased, these could adequately deal with regulating/restricting activities and land-uses that may threaten the area. Equally so, the vague way these functions and powers are prescribed in NEMBA may undermine their utility and create uncertainty and confusion (hence not a very good rating).

- Criterion 7 – Very Good: While there is not legal clarity regarding what constitutes long-term, NEMBA prescribes a clear procedure promoting the long-term duration of national botanical gardens. Their duration appears to be perpetual. All botanical gardens are specifically listed in a Government Gazette and in an Annexure to NEMBA. NEMBA prescribes high thresholds to disestablish or amend their boundaries. Once established, a resolution of Parliament is required to disestablish or amend the boundaries of a state-owned botanical garden. In the context of non-state-owned land included in a national botanical garden, the Minister's consent would appear necessary to disestablish the area as a notice to this effect must be published in the Government Gazette. There are accordingly several legal mechanisms securing the long-term nature of a national botanical garden.
- Criterion 8 – Good: NEMBA accords broad functions and powers to SANBI to control, maintain and regulate access to national botanical gardens. While very generally phrased, these could enable SANBI to provide for equitable participation, access to, use and enjoyment of a national botanical garden and the resources located within it, and the resolution of disputes relating to these issues. Equally so, the vague way these functions and powers are prescribed in NEMBA may undermine their utility and create uncertainty and confusion relating to these issues (hence not a very good rating).

7. *Controlled Natural Forest*
   - Conservation Management Objective (Primary)
   - Relevant Legal Framework – NFA (sections 7, 16 & 17)
   - Brief Explanation of Relevant Legal Framework
     - The NFA empowers the Minister to declare a group of indigenous trees as a natural forest.
     - The Minister has historically published two different forms of notices declaring natural forests under section 7:
       - Declare specific areas as natural forests if he believes the trees in the area need to be protected – with the notice specifically detailing the location of these natural forests.
       - Declare broad forest types as natural forests – with the notice only identifying broad forest types and providing no details as to the location of these types of natural forests.
     - Only the former are considered here as the latter would not satisfy the OECM criteria for several reasons (eg they are not geographically defined areas).
     - The NFA prohibits various activities in declared natural forests unless the person wishing to undertake these activities has been granted a licence or exemption.
     - Once the area is declared as a natural forest, and in the only occasion the Minister has declared a natural forest of this nature, the Minister can also declare the natural forest as a controlled forest area under section 17.
     - The NFA prescribes that the Minister can declare a forest as a controlled forest where urgent steps are required to prevent deforestation or rehabilitate a natural forest.

  - The notice through which the natural forest is subsequently declared a controlled forest area, outlines the background, effective period, description of the area, location, prohibitions and steps to be taken by the owner of the land, as well as the properties that form part of the controlled forest area.
  - The Act enables the Minister to request the Registrar of Deeds to note the existence of the natural forest on the relevant property deeds.
- Justification for Rating
  - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
  - Criterion 2 – Good: The NFA expressly compels the Minister to consider scientific advice prior to declaring a controlled natural forest, which should ensure that he considers the broad array of relevant statutory and non-statutory planning instruments to identify priority areas and assist in initially assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)). Various thresholds for declaring the area are detailed in the NFA and openness and transparency of the initial assessment process should be ensured through the prescribed notice and comment process (together with potential public hearings) that must precede the declaration of a controlled natural forest.
  - Securing Consent – Average: While the NFA does not prescribe that the landowner's consent is required prior to declaring a controlled natural forest, it does enable as an alternate or addition, the conclusion of an agreement with the landowner or any other interested person to assist managing the area. Implicit in the conclusion of this agreement is consent. In the absence of this agreement, consent may however be absent. The continued absence of communal land rights legislation may undermine legal clarity and certainty where a controlled natural forest relates to communal land tenure/resource rights held by communal institutions (inclusive of traditional authorities, communal property associations and land trusts).
  - Criterion 3 – Very Good: The boundaries of the area (whether comprising of a single or multiple properties) are specifically outlined in the relevant notice published under the NFA establishing the controlled natural forest. While not expressly recognising the three-dimensional nature of potential applicable rights when demarcating the area, these could be raised and explored through the extensive notice and comment (and potential hearings) process, which could result in them being addressed in the final form of the controlled forest area (declaration, agreement, or declaration and agreement).
  - Criterion 4 – Good: The NFA expressly compels the Minister to consider scientific advice prior to declaring a controlled natural forest, which should ensure that he considers the broad array of relevant statutory and non-statutory planning instruments to identify priority areas and assist in finally assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)). Various thresholds for declaring the area are detailed in

the NFA and openness and transparency of the final assessment process should be ensured through the prescribed notice and comment process (together with potential public hearings) that must precede the declaration of a controlled natural forest. The declaration of the area appears in the Government Gazette, and it is therefore accorded formal statutory recognition. However, no other statutory frameworks regulating development/activities accord any form of specific protection to controlled natural forests.

- Criterion 5 – Good: The NFA provides for these areas to be declared in respect of both state-owned land and non-state-owned land. It also anticipates a potential role for the state, landowners (private and communal) and other interested persons in the governance/ management of the area by way of agreement. All potential governance types are accordingly provided for. The NFA details a range of management issues that need to be dealt with in the notice declaring the area and/or in any associated agreement with the owner/interest person, and these are generally set out in the notice establishing the area and/or in the written agreement. These issues include allocating responsibility to manage the area and preparing a sustainable management plan for it. The prescription of some additional legal specificity in the Act on the form and nature of management objectives, institutions and planning may improve clarity and certainty. The comprehensive notice and comment (and potential hearing) process. should ensure openness and transparency in the formulation of the management regime.
- Criterion 6 – Good: The NFA, together with the notice declaring the area, sets out which activities are permitted and prohibited. The NFA also accords broad powers to the Minister to regulate, control and manage activities in the area. The NFA does not expressly provide for monitoring and reporting on the implementation of any sustainable management plan and its potential temporal review, but this could be provided for in the plan itself. The prescription of some additional legal specificity in the Act on the form and nature of monitoring and reporting requirements may improve clarity and certainty (hence not a very good rating).
- Criterion 7 – Average: The NFA provides no clarity on the duration of the declaration and/or potentially accompanying agreement and what constitutes long-term. The area could feasibly be established long-term but those established to date have been short-term in their duration. The potential for registering the declaration against the title deeds of the relevant property does provide an additional layer long-term legal security for the area, but only if the associated declaration and/or potentially accompanying agreement is/are long-term. If the latter is/are short-term, any conditions/restrictions relating to it/them registered against the title deed of the property could be removed by way of agreement or through statutory processes, at the expiry of the declaration and/or agreement.
- Criterion 8 – Average: The NFA contains clear potential mechanisms to regulate equitable participation, access to, use and enjoyment of a controlled natural forest and the resources located within it. These include prohibitions, licensing, specific restrictions and rights provided

for in the notice declaring the area, or any agreements concluded with the landowner or other interested person in respect of the area. These could also deal with dispute resolution procedures. The comprehensive notice and comment (and potential hearing) process could ensure openness and transparency in the formulation of these arrangements. However, these are mere potentials and there is no obligation imposed to formulate and implement arrangements of this nature. The prescription of some additional legal specificity in the Act on these issues may improve clarity and certainty (hence an average rating).

8. *Protected Woodland*
   - Conservation Management Objective (Primary)
   - Relevant Legal Framework – NFA (sections 12-16)
   - Brief Explanation of Relevant Legal Framework
     - The NFA enables the Minister to declare protected woodlands where he is of the belief that the woodland is not adequately protected through other legislation.
     - The Act sets out the procedure to declare a protected woodland.
     - The NFA prohibits various activities in protected woodlands unless the person wishing to undertake these activities has been granted a licence or exemption.
     - The notice through which the protected woodland is declared, outlines the background, location and the properties that form part of the protected woodland.
     - The NFA enables the Minister to request the Registrar of Deeds to note the existence of the natural forest on the relevant property deeds.
     - No express legal provision in made in the NFA relating to the management of the area, but only for regulating and prohibiting activities within it.
   - Justification for Rating
     - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
     - Criterion 2 – Average: While there exists a broad array of generally relevant statutory and non-statutory planning instruments to identify priority areas and assist in initially assessing whether the area supports important biological values (see above in the context of 2.*Biodiversity Agreement* (criterion 2)), the NFA does not expressly impose an obligation on the Minister to specifically take these into account in the initial assessment of which areas to declare as protected woodlands. The NFA only prescribes that the Minister must consider the Act's broad principles promoting sustainable forest management and ensure that the woodland is not adequately protected under other legislation. There is no legal certainty or clarity regarding the form and nature of the initial assessment and the thresholds informing their declaration are rather vague. The NFA prescribes detailed notice and comment procedures in advance of declaring the area to be a protected woodland which could ensure openness and transparency of the initial assessment process.

- Securing Consent – Very weak: The NFA makes no provision for securing the consent of anyone (including relevant landowners or rightsholders) prior to declaring the area.
- Criterion 3 – Good: The boundaries of the area (whether comprising of a single or multiple properties) are specifically outlined in the relevant notice published under the NFA establishing the protected woodland. While not expressly recognising the three-dimensional nature of potential applicable rights when demarcating the area, these should be raised and explored through the notice and comment process, which could result in them addressed in the final form of the area's declaration. Provision is not however made for an agreement to be concluded with other relevant potential rightsholders to deal with instances of competing rights (hence only a good rating).
- Criterion 4 – Average: While there exists a broad array of generally relevant statutory and non-statutory planning instruments to identify priority areas and assist in finally assessing whether the area supports important biological values (see above in the context of 2.*Biodiversity Agreement* (criterion 2)), the NFA does not expressly impose an obligation on the Minister to specifically take these into account in the final assessment of which areas to declare as protected woodlands. The NFA only prescribes that the Minister must consider the Act's broad principles promoting sustainable forest management and ensure that the woodland is not adequately protected under other legislation. There is no legal certainty or clarity regarding the form and nature of the final assessment and the thresholds informing their declaration are rather vague. The NFA prescribes detailed notice and comment procedures in advance of declaring the area which could ensure openness and transparency of the initial assessment process. The declaration of the protected woodland appears in the Government Gazette, and it is therefore accorded formal statutory recognition. However, no other statutory frameworks regulating development/activities accord any form of specific protection to controlled natural forests.
- Criterion 5 – Very Weak: The NFA makes no provision for a management regime for the area. It only seeks to prohibit and regulate activities undertaken in the area.
- Criterion 6 – Weak: The NFA only prescribes which activities are permitted and prohibited. The NFA makes no provision for monitoring and reporting.
- Criterion 7 – Good: The NFA provides no clarity on the duration of the declaration or what constitutes long-term. However, the declaration of an area as a protected woodland would appear to be long-term as it exists until such time as the Minister elects to revoke the declaration, which must again be preceded by the notice and comment procedure outlined in the Act. The potential for registering the declaration against the title deeds of the relevant property/ies does provide an additional layer of long-term legal security for the area.
- Criterion 8 – Weak: The NFA contains clear potential mechanisms to prohibit and regulate activities in the area but makes not express provision for issues relating to equitable participation, access to, use

and enjoyment of the area or the resources situated within it. No provision is made for dispute resolution.

9. *Ramsar Site*
   - Conservation Management Objective (Primary)
   - Relevant Legal Framework – Ramsar Convention
   - Brief Explanation of Relevant Legal Framework
     - Countries are entitled to submit proposed sites (wetlands of international importance especially as waterfowl habitats) to the Convention's Secretariat for inclusion in the global list of Ramsar Sites.
     - Broad guidance and criteria prescribed under the Ramsar Convention.
     - Once included in the global list of Ramsar Sites, vaguely worded obligations are imposed on the Government to promote the conservation and wise use of these sites.
     - There is no dedicated domestic legal framework governing their management, conservation or regulation prescribed in domestic legislation.
     - The only relevant applicable domestic legislation would be where these Ramsar Sites are included in other area-based measures or subject to general environmental laws regulating different types of activities.
   - Justification for Rating
     - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
     - Criterion 2 – Average: Qualification criteria, thresholds and the process for recognising a Ramsar Site have been developed under the auspices of the Ramsar Convention, but these are very broadly framed. There is no express legal obligation on the Government to consider the broad array of relevant statutory and non-statutory planning instruments (see above in the context of 2. *Biodiversity Agreement* (criterion 2)) when proposing these sites for international legal recognition. There is no domestic legal certainty or clarity regarding the form, nature and process for initial assessment, or for ensuring the openness and transparency of the process.
     - Securing Consent – Very Weak: There is no express legal provision for securing consent from relevant landowners and rightsholders prior to the designation of the site.
     - Criterion 3 – Weak: Broad coordinates are provided, but these lack specificity regarding exact property details, potentially competing rights etc.
     - Criterion 4 – Average: Qualification criteria, thresholds and the process for recognising a Ramsar Site have been developed under the auspices of the Ramsar Convention, but these are very broadly framed. There is no express legal obligation on the Government to consider the broad array of relevant statutory and non-statutory planning instruments (see above in the context of 2. *Biodiversity Agreement* (criterion 2)) when proposing these sites for international legal recognition. There is no domestic legal certainty or clarity regarding the form, nature and process for final assessment, or for ensuring the openness and

transparency of the process. While the site is accorded international legal recognition, it is accorded no formal domestic legal recognition, unless the whole or part of the Ramsar site is subsequently included within another legally recognised form of area-based measure. Ramsar sites are accorded very limited recognition in other statutory frameworks regulating development/activities (eg NEMA – Listing Notice 3).

- Criterion 5 – Very Weak: There are only broad international obligations imposed on the Government to promote conservation and the wise use of the site. There is no specific governance of management regime prescribed.
- Criterion 6 – Very Weak: There are only broad international obligations imposed on the Government to report periodically to the Ramsar Secretariat. The absence of a specific domestic legal framework governing Ramsar sites leads to a lack of clarity and certainty regarding how to regulate/restrict activities within the site, and specific monitoring and reporting requirements for each site.
- Criterion 7 – Weak: There is no legal clarity regarding what constitutes long-term. The international designation of the site appears long-term in nature. However, given that it has almost no domestic legal status, it is generally legally insecure unless it is included within other legally recognised forms of area-based initiatives.
- Criterion 8 – Very Weak: There are only broad international obligations imposed on the Government to promote wise use of the site. There is no specific domestic legal framework regulating issues relating to equitable participation, access to, use and enjoyment of the area or the resources situated within it, or for dispute resolution.

10. *Conservation Champion Agreement*
    - Conservation Management Objective (Secondary)
    - Relevant Legal Framework – Common Law (Contract)
    - Brief Explanation of Relevant Legal Framework
        - These are effectively a contractual arrangement between an NGO and a landowner, through which the latter agrees to undertake various activities, commit to various standards and activities promoting sustainable land-use practices and conservation, in return for various incentives and other forms of support.
        - There is no statutory framework relevant to these contractual arrangements.
        - As a legal mechanism, they are similar in form to a biodiversity agreement (with no associated title deed conditions) described in 2. *Biodiversity Agreement* above.
    - Justification for Rating
        - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
        - Criterion 2 – Very Weak: While there exists a broad array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of

2. *Biodiversity Agreement* (criterion 2)), there is no specific legal obligation on the parties to the conservation champion agreement to consider these. There is no legal certainty or clarity regarding the form, nature and process for initial assessment, what thresholds must be met, or for ensuring openness and transparency of the process.

- Securing Consent – Average: Implicit in the notion of negotiating and concluding the terms of a conservation champions agreement is securing consent. However, there is no overarching legal certainty or clarity regarding: who can or should be a part of the negotiation process and a party to the agreement itself; how to deal with current and potential future competing land uses and/or resource rights over the area; and measures to ensure the openness and transparency of the process. The continued absence of communal land rights legislation may undermine legal certainty where a conservation champions agreement relates to communal land tenure/ resource rights held by communal institutions (inclusive of traditional authorities, communal property associations and land trusts).
- Criterion 3 – Good: The area's boundaries (whether applicable to part or whole of single property) should be able to be clearly demarcated in the conservation champions agreement. Where the area spans multiple properties, this could similarly be the case through including multiple landowners to the agreement. There is no overarching legal framework creating certainty or clarity on how to deal with the three-dimensional nature of rights (particularly regarding potential mining/prospecting rights held by those who are not the landowner). The conservation champions agreement could deal with this by including these rightsholders as parties, but without an express overarching legal obligation to do so, their exclusion may undermine the success of any biodiversity agreement.
- Criterion 4 – Very Weak: While there exists a broad array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), there is no specific legal obligation on the parties to the conservation champion agreement to consider these. There is no legal certainty or clarity regarding the form, nature and process for the final assessment, what thresholds must be met, or for ensuring openness and transparency of the process. The area subject to the conservation champions agreement has no statutory status. No other statutory frameworks regulating development/activities accord any form of specific protection to areas subject to agreements of this nature.
- Criterion 5 – Average: Given the diversity of entities that can be a party to a conservation champions agreement, it could enable all governance types. The agreement could provide for all legal issues relating to management. However, the absence of any overarching legal framework providing certainty or clarity on mandatory/discretionary management objectives/institutions/ mechanisms may lead to inconsistency and confusion. There is no overarching legal clarity or

certainty on mechanisms to ensure openness and transparency in the formulation of the above management and governance arrangements.

- Criterion 6 – Average: The conservation champions agreement could provide for all legal issues relating to regulating/restricting land-uses, monitoring and reporting. However, the absence of any form of overarching legal framework providing certainty or clarity on these issues may lead to inconsistency and confusion. Furthermore, if key competing rightsholders are not included as parties to the agreement, regulating competing land uses may be impossible. There is no overarching legal framework creating certainty or clarity relating to mechanisms to ensure openness and transparency in the above arrangements.
- Criterion 7 – Very Weak: There is no legal certainty or clarity on what constitutes long-term or a prescribed minimum duration for conservation champions agreements. While the duration of an agreement could be concluded for however long those party to the agreement desire, by its nature it is an agreement creating personal and not praedial obligations. Any party could withdraw from it at any stage. In the absence of an overarching legal framework creating certainty or clarity on a minimum long-term duration for the agreement and expressly linking this to the endorsement of some conditions against the title deed of the property to ensure these are binding on successive owners in title, the conservation champions agreement alone provides weak long-term legal security for an area.
- Criterion 8 – Average: The conservation champions agreements could provide for all legal issues relating to appropriate forms of equitable participation, access to, use and enjoyment of the area and the resources located within it. It could also provide for dispute resolution mechanisms. However, the absence of statutory clarity on these issues may lead to inconsistency and confusion. There is no legal framework provide for mechanisms to ensure openness and transparency in the formulation of the above arrangements.

11. *Municipal Zoning Scheme & Overlays*
    - Conservation Management Objective (Secondary)
    - Relevant Legal Framework – SPLUMA, Provincial Planning Laws & Municipal Planning By-laws
    - Brief Explanation of Relevant Legal Framework
        - Following its commencement in 2025, SPLUMA compelled every municipality to prepare a new land use scheme by 2020.
        - These land use schemes (often published within municipal planning bylaws) outline different zones and prescribe different land use rights and restrictions for properties located in these different zones.
        - Landowners are required to comply with the land use rights and restrictions relating to the specific zoning attached to their property.
        - If they wish to alter these land use rights and restrictions, they must in general apply to: rezone the property (significant or long-term changes); a departure (small or temporary change); or consent use (specific uses they are empowered to apply for under the specific zoning accorded to their property).

  - One key zoning category in the context of conservation and found in many municipalities land use scheme is open space (for conservation purposes). Anyone seeking to develop/undertake activities on a property zoned open space, generally must prepare and submit a detailed site development plan to the municipality for approval.
  - Municipalities are also empowered through their municipal planning by-laws to develop and impose overlays over various areas – which enable them to impose additional layers of rights and/or restrictions over certain areas. These could take the form of conservation overlays, imposing additional restrictions on the form of development and activities allowed in certain sensitive areas.
  - Together these form a potential OECM mechanism.
- Justification for Rating
  - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
  - Criterion 2 – Very Good: When developing any zoning scheme or overlay zone, the municipality is expressly required by the relevant planning legislation to consider key relevant environmental and spatial plans. These would include the array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area to be zoned open space or subject to a conservation overlay supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)). Planning legislation cumulatively sets out a comprehensive, open and transparent process for developing and implementing zoning schemes and overlay zones, and for making any changes to them.
  - Securing Consent – Weak: No consent is required from landowners when developing the zoning scheme or overlay zone although they are required to be consulted on and participate in the development of it. This rating is accordingly reflected as weak. Once implemented, any person seeking to undertake activities on the property in conflict with the relevant land use rights and restrictions, would be required to obtain consent from the landowner to apply to alter these rights and restrictions.
  - Criterion 3 – Very Good. Properties within a zoning scheme and subject to an overlay are clearly reflected in the zoning scheme map or accompanying overlay notice. These would generally only apply to the whole and not a part of a property. Multiple properties can be accorded open space zoning or be subject to an overlay. In developing the zoning scheme or overlay zone, the municipality would be required to consider all competing land use rights, and therefore the vertical dimension of rights should be factored into decisions relating to the determination of both the open space zoning and any relevant conservation overlay.
  - Criterion 4 – Very Good: When developing any zoning scheme or overlay zone, the municipality is expressly required by the relevant planning legislation to consider key relevant environmental and spatial plans. These would include the array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas

and assisting in initially assessing whether the area to be zoned open space or subject to a conservation overlay supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)). Planning legislation cumulatively sets out a comprehensive, open and transparent process for developing and implementing zoning schemes and overlay zones, and for making any changes to them. Both land zoned open space (conservation) and areas subject to an overlay (feasibly conservation) would have a statutory status as landowners are required to comply with the rights and restrictions relating to each.

- Criterion 5 – Very Weak: All landowners (whether state, private or communal) would be subject to the same land use system, thereby feasibly extending the application of this mechanism to most governance types. The rights and restrictions linked to open space zoning or any conservation overlay clearly, regulate activity on the land and could impose clear management obligations on these landowners, although this is not currently the case. The designation of property as open space or subject to an overlay, generally only impose extra development restrictions aimed at conserving the areas subject to these mechanisms. However, in the case of a landowner seeking to develop the property, they would be required to submit and have approved by the municipality a site development plan, which could feasibly include various management obligations. However, overall, the mechanism is not designed to promote active management (whether in the form of sole or co-management) by a management authority according to an approved management plan, and the relevant legal framework accordingly provides little certainty or clarity in this regard.
- Criterion 6 – Weak: The open space zoning or any conservation overlay would expressly provide for the regulation of activities in the area. Given that the mechanism is not designed to promote active management (whether in the form of sole or co-management) by a management authority according to an approved management plan, monitoring and reporting requirements relating to management are absent.
- Criterion 7 – Good: While there is not legal clarity regarding what constitutes long-term, the operation of a zoning scheme is by its nature generally long-term. Given that the rights and restrictions linked to the property are embedded in a legal framework, they are generally legally secure. While changes can be made to the zoning scheme as a whole, the rights and restrictions attached to a particular zone or overlay zone, or the rights and restrictions attached to a particular property, the overarching legal framework creates a detailed, open and transparent process to strictly regulate changes of this nature, thereby promoting long term-legal security and certainty.
- Criterion 8 – Very Weak: While the development and implementation of land use schemes (inclusive of open space zoning and overlays) need to promote principles such as spatial sustainability, justice and resilience, they are not specifically designed to deal with equitable participation, access to, use and the enjoyment of biological resources. Accordingly, the overarching legal framework relating to them does not contain mechanisms for promoting the latter, undermining their potential utility and creating a lack of clarity and uncertainty.

12. *Coastal Planning Scheme*
    - Conservation Management Objective (Secondary)
    - Relevant Legal Framework – NEMICMA (sections 56-57), SPLUMA, Provincial Planning Ordinance & Municipal Planning By-laws
    - Brief Explanation of Relevant Legal Framework
        - NEMICMA defines a coastal planning scheme as a scheme that: (a) reserves defined areas within the coastal zone to be used exclusively or mainly for a specified purpose; and (b) prohibits or restricts any use of these areas in conflict with the terms of the scheme.
        - The purpose behind them is to define areas within the coastal zone which: may only be used or not be used for certain purposes and activities; or prohibit or restrict activities or uses of areas that do not comply with the rules of the scheme.
        - NEMICMA sets out the process to introduce a scheme of this nature, key coastal plans which must inform it, who can introduce them, and for which type of area.
        - A coastal planning scheme can only impose obligations and restrictions and cannot create rights over the area, or the resources situated within it.
        - Once introduced, they may include within or be enforced as part of the municipal land use scheme (see above), and municipal land use schemes cannot conflict with them.
        - An area subject to a coastal planning scheme could feasibly be a potential OECM mechanism, but no schemes of this nature have been introduced to date under NEMICMA.
        - None of these exist to date but they do hold potential as an OECM mechanism in the coastal and marine context.
    - Justification for Rating
        - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
        - Criterion 2 – Good: NEMICMA compels authorities to consider an array of coastal plans when developing a coastal planning scheme as it must be consistent with them. Those tasked with developing these coastal plans must consider key relevant environmental and spatial plans. These would include the array of generally relevant statutory and non-statutory planning instruments (see above in the context of 2. *Biodiversity Agreement* (criterion 2)). These would be relevant to identifying priority areas and assisting in initially assessing whether the area to be included in a coastal planning scheme supports important biological values. NEMICMA prescribes some thresholds which must be met for an area to be included in a coastal planning scheme but provides for no formal assessment process. Various forms of consultation culminating in the publication of the coastal planning scheme in a Government Gazette should ensure some openness and transparency of the process.
        - Securing Consent – Good: Authorities must consult with relevant persons exercising authority over the area to be included in the coastal

planning scheme prior to establishing it. No consent is however required from those with existing rights over the area. This is largely not an issue as most of the terrestrial area falling within the coastal zone (area between the high and low water mark) falls outside of private ownership and under the trusteeship of the state. There are a few exceptions where terrestrial territory within the coastal zone falls under non-state-ownership/control and no express provision is made for securing the consent in these circumstances (these are exceptions and accordingly the rating is still reflected as good).

- Criterion 3 – Good: While NEMICMA lacks specific clarity on this issue, the notice establishing the coastal planning scheme should clearly outline the boundaries of the area it applies to. While no provision is made for registering its location on the relevant properties' title deeds, by its very nature, the coastal planning scheme would be binding on relevant properties included within it. No express provision is made for the consideration of the vertical dimension of rights, but these should be factored into decisions relating to the establishment of the area subject to the scheme, and the coastal planning scheme would impose an additional layer of restrictions on any person seeking to exercise any rights in the area.
- Criterion 4 – Good: NEMICMA compels authorities to consider an array of coastal plans when developing a coastal planning scheme as it must be consistent with them. Those tasked with developing these coastal plans must consider key relevant environmental and spatial plans. These would include the array of generally relevant statutory and non-statutory planning instruments (see above in the context of 2. *Biodiversity Agreement* (criterion 2)). These would be relevant to identifying priority areas and assisting in assessing whether the area to be included in a coastal planning scheme supports important biological values. NEMICMA prescribes some thresholds that must be met for an area to be included in a coastal planning scheme but provides for no formal assessment process. Various forms of consultation culminating in the publication of the coastal planning scheme in a Government Gazette should ensure some openness and transparency of the process. An area within a coastal planning scheme would have a statutory status as landowners are required to comply with the restrictions reflected in it.
- Criterion 5 – Very Weak: All landowners (whether state, private or communal) would be subject to the same land use system, thereby feasibly extending the application of this mechanism to most governance types – although the areas subject to it would mainly be state governance for the reasons conveyed above. The obligations and restrictions linked to the coastal planning scheme could prescribe a clear management regime for the area to be implemented by those entities exercising authority over it, but the relevant provisions in NEMICMA lack clarity on this, which creates uncertainty and confusion and largely undermines this potential.
- Criterion 6 – Weak: The land use scheme expressly provides for the regulation of activities in the area. As NEMICMA does not expressly

provide clarity on a management regime for the area falling within a coastal planning scheme, monitoring and reporting may be absent.
    - Criterion 7 – Good: While there is no legal clarity regarding what constitutes long-term, the operation of a coastal planning scheme would be long-term. Given that the obligations and restrictions linked to areas falling within the coastal planning scheme would be embedded in a legal framework, they are generally legally secure. While changes could be made to the coastal planning scheme, the overarching legal framework creates a detailed, open and transparent process to regulate changes of this nature, thereby promoting long-term legal security and certainty.
    - Criterion 8 – Very Weak: While the development and implementation of a coastal planning scheme needs to promote NEMICMA's objectives (that include securing equitable participation, access to, the use of and enjoyment of the coast for all people), the relevant statutory framework relating to coastal planning schemes contains no additional clarity on these issues undermining their potential utility and creating a lack of clarity and uncertainty.

13. *Special Management Area*
    - Conservation Management Objective (Secondary)
    - Relevant Legal Framework – NEMICMA (sections 23-24)
    - Brief Explanation of Relevant Legal Framework
        - NEMICMA empowers the Minister after consultation with any relevant MEC, to declare a special management area wholly or partially in the coastal zone.
        - It provides for compulsory consultation with all interested and affected parties prior to doing so.
        - NEMICMA sets out clear thresholds and criteria that must be considered and met to declare the area which include: management of coastal resources by a local community; promoting sustainable livelihoods for a local community; and conserving, protecting or enhancing coastal ecosystems and biodiversity.
        - The Minister may prohibit activities being undertaken in the area.
        - The Minister may also appoint a manager for the area, but before doing so must publish regulations defining the powers and functions of the manager, and rules to facilitate the achievement of the objectives for which the area was declared.
        - No areas of this nature have been declared under NEMICMA to date.
    - Justification for Rating
        - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
        - Criterion 2 – Good: NEMICMA, while not prescribing a formal assessment process, compels authorities to consider an array of coastal plans, thresholds and objectives prior to establishing the area. Those tasked with developing these coastal plans must consider key relevant environmental and spatial plans. These would include the array of generally relevant statutory and non-statutory planning instruments (see above in the context of 2. *Biodiversity Agreement* (criterion 2)).

These would be relevant to identifying priority areas and assisting in initially assessing whether the area should be declared a special management area. Mandatory prior consultation with relevant interested and affected parties (including those with rights over the area), the need to publish both the declaration of the area and regulations relating to its management in Government Gazettes, should ensure the openness and transparency of the process.

- Securing Consent – Good: Authorities must consult with all relevant interested and affected parties prior to declaring the area. Securing consent is less of an issue as most of the terrestrial area falling within the coastal zone (area between the high and low water mark) falls outside of private ownership and under the trusteeship of the state. There are a few exceptions where terrestrial territory within the coastal zone falls under private ownership/control and no express provision is made for securing the consent in these circumstances. Furthermore, no express provision is made for securing the consent of those holding rights within the area (eg prospecting and mining rights) – therefore not a very good rating.
- Criterion 3 – Good: While NEMICMA lacks specific clarity on this issue, the notice establishing the special management area could clearly outline its boundaries. While no provision is made for registering its location on the relevant properties' title deeds, by its very nature, the special management area would be binding on relevant properties included within it. No express provision is made for the consideration of the vertical dimension of rights, but these should be factored into decisions relating to the declaration of the area, and the formulation of rules relating to it could create an additional layer of rights and obligations for any persons using the area.
- Criterion 4 – Good: NEMICMA, while not prescribing a formal assessment process, compels authorities to consider an array of coastal plans, thresholds and objectives prior to establishing the area. Those tasked with developing these coastal plans must consider key relevant environmental and spatial plans. These would include the array of generally relevant statutory and non-statutory planning instruments (see above in the context of 2. *Biodiversity Agreement* (criterion 2)). These would be relevant to identifying priority areas and assisting in assessing whether the area should be declared a special management area. Mandatory prior consultation with relevant interested and affected parties (including those with rights over the area), the need to publish both the declaration of the area and regulations relating to its management in Government Gazettes, should ensure the openness and transparency of the process. A special management area would have a statutory status and anyone managing or using it would need to comply with its rules.
- Criterion 5 – Good: NEMICMA anticipates the appointment of a manager for the area and the prescription of specific rules by way of regulations setting out the powers and functions of the manager and the rules relating to the management of the area. It also anticipates that state, private and communal persons and institutions can be appointed as the manager, thereby enabling most governance types. The rules

published by way of regulation could prescribe a clear management regime for the area to be implemented by the manager. These regulations would be published for comment prior to implementation, ensuring openness and transparency in the process. However, the relevant provisions in NEMICMA relating to management lack clarity, which creates potential uncertainty and confusion (hence not a very good rating).

- Criterion 6 – Good: The rules published by way of regulation for the special management area could regulate activities in the area. Furthermore, the rules again published by way of regulation relating to the powers and functions of the manager, could prescribe detailed monitoring and reporting requirements. These regulations would be published for comment prior to implementation, ensuring openness and transparency in the process. However, the relevant provisions in NEMICMA relating regulating activities, monitoring and reporting lack clarity, which creates potential uncertainty and confusion (hence not a very good rating).
- Criterion 7 – Good: There is no legal clarity regarding what constitutes long-term. However, the provisions in NEMICMA relating to special management areas does not outline them as a temporary measure. They would according appear to be a long-term measure, although no specific minimum duration is prescribed in the Act. Given that the declaration of the area and the rules relating to access, use and management of the special management area are embedded in regulations, the area would appear legally secure. While provision is made for the withdraw of the declaration and the regulations could be amended, these changes would need to comply with the processes outlined in NEMICMA, ensuring openness and transparency.
- Criterion 8 – Average: Special management areas can be established for a diversity of reasons including conservation community management and promoting the sustainable livelihoods of local communities. The rules published by way of regulation for the special management area could regulate a broad array of activities including those facilitating equitable participation, access to, use and enjoyment of the area and the resources situated within it. They could also deal with dispute resolution. However, the relevant provisions in NEMICMA relating to these issues lack clarity, which creates uncertainty and confusion (hence an average rating).

14. *SANDF Land (General)*
    - Conservation Management Objective (Ancillary)
    - Relevant Legal Framework – Defence Act
    - Brief Explanation of Relevant Legal Framework
        - The Defence Act regulates the administration, leasing and disposal of state-owned land falling under the control of the SANDF.
        - This state-owned land can include tracts of land of high conservation value.
        - Non-legislative standard operating procedures introduced by the SANDF can provide for environmental management of these tracts of land by the SANDF.

  - These standard operating procedures can include management planning, monitoring and reporting.
- Justification for Rating
  - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
  - Criterion 2 – Very Weak: While there exists a broad array of generally statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), there is no express overarching legal obligation imposed on SANDF in terms of the overarching relevant legal framework to consider these when determining which areas under its administration to conserve or how to conserve them. The relevant legal framework provides no legal guidance on the form and nature of the initial assessment process, key criteria and thresholds and procedures for ensuring the openness and transparency of the process.
  - Securing Consent – Very Good: As the land is state-owned and under the administration of the SANDF, only its own consent would be required.
  - Criterion 3 – Weak: If the entire property falling under the administration of the SANDF were to be recognised as an OECM, this would not be an issue as the property's cadastral boundary could be used. However, neither the Defence Act nor any other legislation governing the administration of state-owned land (such as the State Land Disposal Act and the Government Immovable Asset Management Act) prescribe a procedure/mechanism for formally designating only a portion of a property or multiple properties (where the area spans the boundary of more than one) administered by the SANDF for conservation purposes. While the demarcation of the area could be reflected in a non-statutory plan/diagram developed by the SANDF, this lacks legal formality, leading to potential uncertainty and confusion.
  - Criterion 4 – Very Weak: While there exists a broad array of generally statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), there is no express overarching legal obligation imposed on SANDF in terms of the overarching relevant legal framework to consider these when determining which areas under its administration to conserve or how to conserve them. The overarching legal framework provides no legal guidance on the form and nature of the final assessment process, key criteria and thresholds and procedures for ensuring the openness and transparency of the process. The relevant legal framework provides is no legal mechanism to accord the area any form of additional formal legal status, but for it being state-owned land and falling under the administration of the SANDF.
  - Criterion 5 – Very Weak: The Defence Act only provides for the administration of the land by a state entity, thereby only allowing for state governance. Neither the Defence Act nor any other legislation

governing the administration of state-owned land provide any clarity on the development of a management regime for the area. While a non-statutory management plan could be developed by the SANDF for the area, the lack of any legal clarity on the form, nature and content to be included in such a management plan leads to uncertainty and confusion. Furthermore, the overarching relevant legal framework provides no clear procedures for promoting openness and transparency in the formulation of any management regime.

- Criterion 6 – Weak: Given that the SANDF exercises control over the area, it can manage/regulate activities undertaken within it. However, the coherence/effectiveness of this management/regulation presumes the presence of a management plan (inclusive of monitoring and reporting requirements) and capacity/resources to implement it. As highlighted above, neither the Defence Act nor any other legislation governing the administration of state-owned land provide any clarity on the development of a management regime (inclusive of monitoring and reporting requirements) for the area. As above, while this could be catered for through a non-statutory management plan developed by the SANDF for the area, this lacks legal formality (potentially leading to uncertainty and confusion) and independent oversight (potentially leading to issues of credibility). Furthermore, the overarching relevant legal framework provides no clear procedures for promoting openness and transparency in the formulation and implementation of the above issues.
- Criterion 7 – Average: There is no legal clarity regarding what constitutes long-term. As the area constitutes state-owned land and presuming that the Government (inclusive of the SANDF) has a long-term interest in and capacity/resources to conserve the area, it is relatively secure in the long-term. However, this is not guaranteed as the Government can sell land. While the Defence Act, together other legislation governing the administration of state-owned land, do provide clear procedures governing the sale of state-owned land, the absence of any form of formal legal recognition being accorded to the area or a condition registered against the title deed of the property, the existence of the area would effectively terminate on sale. Its long-term duration is accordingly not that legally secure.
- Criterion 8 – Very Weak: The relevant statutory framework contains no additional clarity on these issues. While they could be catered for through a non-statutory plan developed by the SANDF for the area, this lacks legal formality potentially leading to uncertainty and confusion. Furthermore, the overarching relevant legal framework provides no clear procedures for promoting openness and transparency in the formulation and implementation of the above issues.

15. *SANDF Training Areas*
    - Conservation Management Objective (Ancillary)
    - Relevant Legal Framework – Defence Act
    - Brief Explanation of Relevant Legal Framework
        - The Defence Act regulates the administration, leasing and disposal of state-owned land falling under the control of the SANDF.

  - The Defence Act also enables the SANDF to designate state-owned or privately-owned property as a training area in which it may conduct military exercises and take measures to regulate access to and control the training area for the duration of any such exercises. Before doing so, the relevant Minister must follow a notice and comment procedure. All lawful occupiers of privately-owned land should provide their consent, but if it is unreasonably withheld, the Minister can still designate the privately-owned land as a training area.
  - This land designated as a training area can include tracts of land of high conservation value.
  - Non-legislative standard operating procedures introduced by the SANDF can provide for environmental management of these tracts of land by the SANDF.
  - These standard operating procedures can include management planning, monitoring and reporting.
- Justification for Rating
  - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
  - Criterion 2 – Very Weak: While there exists a broad array of general statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), there is no legal obligation imposed on SANDF in terms of the overarching relevant legal framework to consider these when determining which training areas or parts thereof to conserve or how to conserve them. The relevant legal framework provides no legal guidance on the form and nature of the initial assessment process, key criteria and thresholds and procedures for ensuring the openness and transparency of the process.
  - Securing Consent – Average: If the land is state-owned, it would be under the administration of the SANDF, and therefore only its own consent would be required. However, in the context of privately-owned land, while consent of all lawful occupiers of the land is generally required, it can be dispensed with (hence average rating). Furthermore, in the case of non-state-owned land to be included in a training area, the continued absence of communal land rights legislation may undermine legal clarity and certainty where it relates to communal land tenure/resource rights held by communal institutions (inclusive of traditional authorities, communal property associations and land trusts).
  - Criterion 3 – Good: While the Defence Act does not expressly provide for it, it is anticipated that any notice designating the training area would clearly demarcate its boundaries, whether these span the whole or part of state-owned or privately-owned land.
  - Criterion 4 – Very Weak: While there exists a broad array of statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the training area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), there is no legal obligation

imposed on SANDF in terms of the overarching relevant legal framework to consider these when determining which training areas under its administration to conserve or how to conserve them. The relevant legal framework provides no legal guidance on the form and nature of the final assessment process, key criteria and thresholds and procedures for ensuring the openness and transparency of the process. The training area would have statutory status following its designation by the Minister.

- Criterion 5 – Very Weak: While the Defence Act provides no clarity, given the nature of the area, all training areas would appear to be governed by the Government only. The Defence Act provides no clarity on the development of a management regime for the training area. While a non-statutory management plan could be developed by the SANDF for the training area, the lack of any legal clarity on the form, nature and content to be included in such a management plan leads to uncertainty and confusion. Furthermore, the overarching relevant legal framework provides no clear procedures for promoting openness and transparency in the formulation of any management regime.
- Criterion 6 – Weak: Given that the SANDF exercises control over the training area, it can manage/regulate activities undertaken within it. However, the coherence/effectiveness of this management/regulation presumes the presence of a management plan (inclusive of monitoring and reporting requirements) and capacity/resources to implement it. As highlighted above, the Defence Act provides no clarity on the development of a management regime (inclusive of monitoring and reporting requirements). As above, while this could be catered for through a non-statutory management plan developed by the SANDF for the training area, this lacks legal formality (potentially leading to uncertainty and confusion) and independent oversight (potentially leading to issues of credibility). Furthermore, the overarching relevant legal framework provides no clear procedures for promoting openness and transparency in the formulation and implementation of the above issues.
- Criterion 7 – Weak: There is no legal clarity regarding what constitutes long-term. The Defence Act seemingly allows for the designation of training areas on a temporary basis for the duration of the military exercise as the Minister must issue a certificate at the completion of the military exercise confirming the area is safe (seemingly inferring that the designation is thereafter potentially withdrawn). The long-term duration of the designated training area and any additional management regime and set of restrictions attached to it therefore seem to lack legal security.
- Criterion 8 – Very Weak: The relevant statutory framework contains no additional clarity on these issues. While they could be catered for through a non-statutory plan developed by the SANDF for the area, this lacks legal formality potentially leading to uncertainty and confusion. Furthermore, the overarching relevant legal framework provides no clear procedures for promoting openness and transparency in the formulation and implementation of the above issues.

16. *Heritage Site*
    - Conservation Management Objective (Ancillary)
    - Relevant Legal Framework – NHRA (sections 9, 27 and 42)
    - Brief Explanation of Relevant Legal Framework
        - The NHRA provides for the declaration of national and provincial heritage sites by national and provincial heritage authorities.
        - The NHRA sets out a detailed process for notifying a range of people of the intention to declare an area as a heritage site, which includes an opportunity to submit comments. No consent of the landowner is required to declare the heritage site.
        - Once declared by the relevant national or provincial heritage authority by way of a notice in the relevant Government or Provincial Gazette, no person may destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning status of any heritage site without a permit issued by the relevant heritage authority.
        - The relevant heritage authority must notify the Registrar of Deeds of any declaration, with the latter then required to endorse the relevant title deed/s of the property.
        - The responsible heritage authority is also empowered to:
            - Make regulations to conserve, protect and regulate access to any heritage site.
            - Take measures itself to manage and conserve the heritage site (with the landowner's consent).
            - Conclude a long-term or short-term heritage agreement (with the consent of the landowner) with a range of entitles that can be appointed as the guardian to conserve and manage the heritage site.
        - These are predominantly sites of cultural/heritage value but can include landscapes and natural features of cultural significance. In this latter context they are relevant as potential OECMs.
    - Justification for Rating
        - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
        - Criterion 2 – Average: The NHRA does contain clear criteria and thresholds informing decisions relating to whether to declare the area as a heritage site. These however relate predominantly to heritage and cultural significance, and not biological values. This is not surprising given the focus of the law. While there exists a broad array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), the NHRA does not expressly oblige heritage authorities to consider these when determining which areas to declare as heritage sites. The prescribed notice and comment procedures that must precede the declaration of the area provide a fairly clear process for the initial assessment of the area and should ensure openness and transparency.

- Securing Consent – Weak: The landowner's consent is not required to declare the area; they only need to be consulted. Once the area is declared, the landowner's consent is required should the relevant heritage authority conclude a heritage agreement with someone other than the owner. The procedures set out in the NHRA relating to these issues are generally clear, open and transparent. The continued absence of communal land rights legislation may undermine legal clarity and certainty where a heritage site spans communal land tenure/resource rights held by communal institutions (inclusive of traditional authorities, communal property associations and land trusts).
- Criterion 3 – Very Good: The relevant notices published in the relevant Government Gazettes clearly describe and outline the boundaries of the heritage site (whether it spans a single property, multiple properties or part of a property). No express provision is made for the consideration of the vertical dimension of rights, but these should be factored into decisions relating to the establishment of the area through the notice and comment process.
- Criterion 4 – Good: The NHRA does contain clear criteria and thresholds informing decisions relating to whether to declare the area or not. These, however, relate predominantly to heritage and cultural significance, and not biological values. This is not surprising given the focus of the law. While there exists a broad array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), the NHRA does not expressly oblige heritage authorities to consider these when determining which areas to declare as heritage sites. The prescribed notice and comment procedures that must precede the declaration of the area provide a fairly clear process for the final assessment of the area and should ensure openness and transparency. Formal legal recognition is accorded to the area once declared.
- Criterion 5 – Average: Given that the heritage site could be situated on state, private or communally-owned land, and the breadth of people and institutions that could be a party to any heritage agreement, the NHRA would appear to enable most governance types in the context of heritage sites. Management authority generally falls to the relevant heritage authority or heritage guardian (appointed to manage the area by way of agreement). There is no legal obligation to prepare a management plan. While the NHRA does provide a range of legal mechanism of potential relevance to managing the site (regulations, measures and agreements) the Act lacks detailed clarity on management issues (objectives, form, nature, planning etc), which may result in uncertainty and confusion. Express provision is made in NHRA to promote openness and transparency in implementing these legal mechanisms of potential relevance to formulating a management regime for the area.
- Criterion 6 – Average: The declaration of the area triggers immediate restrictions on activities/land-use in the area. Additional restrictions on activities/land-use could be imposed by way of the range of additional

legal mechanisms provided for by the NHRA relating to the conservation and management of the heritage site (regulations, measures and agreements). No express provision is made for monitoring and reporting, although these could be dealt with through the above legal mechanisms. Express provision is made in the NHRA to promote openness and transparency in implementing these legal mechanisms. Accorded an average rating because of uncertainty relating to monitoring and reporting requirements.

- Criterion 7 – Very Good: The provisions in the NHRA relating to heritage sites do not outline them as a temporary measure. They would according appear to be a long-term measure, although no specific minimum durations are prescribed in the Act. Given that the declaration of the area and the rules relating to access, use and management of the heritage site are embedded in notices and regulations, the site would appear legally secure. While provision is made for the withdraw of the declaration and the regulations could be amended, these changes would need to comply with the processes outlined in the NHRA, ensuring openness and transparency. The provisions relating to heritage agreements expressly indicate that they may have "effect in perpetuity" but does indicate that they can be concluded for shorter terms. Furthermore, following declaration, the heritage site's title deeds must be endorsed, creating an extra layer of long-term legal security for the site.
- Criterion 8 – Average: The NHRA does not expressly deal with these issues, but the additional legal mechanisms provided for by the NHRA relating to the conservation and management of the heritage site (regulations, measures and agreements) could provide for them. Express provision is made in NHRA to promote openness and transparency in implementing these legal mechanisms.

Marine OECM Mechanisms

1. *Fisheries Closed Area*
   - Conservation Management Objective (Primary)
   - Relevant Legal Framework – MLRA & MLRA General Regulations (1998)
   - Brief Explanation of Relevant Legal Framework
     - There are a range of provisions contained in the MLRA read together with its General Regulations (1998) that enable the Minister to declared closed areas generally, for certain fishing methods and for certain fish species:
       - Closed Area (General) (Reg 10 of MLRA Regs) – It demarcates a range of areas in which fishing is not allowed without a permit. No further clarity is provided regarding the control or management of these areas. Permits can be issued for a maximum period of a year and can contain conditions.
       - Closed Area (Trawl-net Fishing) (Reg 13 of MLRA Regs) – It demarcates a range of areas in which trawl-net fishing is not allowed without a permit. No further clarity is provided regarding the control or management of these areas. Permits can be issued for a maximum period of a year and can contain conditions.

        - Closed Areas (Purse-seine Fishing) (Reg 16 of MLRA Regs) – It demarcates a range of areas in which purse-seine net fishing is not allowed without a permit. No further clarity is provided regarding the control or management of these areas. Permits can be issued for a maximum period of a year and can contain conditions.
        - Closed Area (Other types of nets) (Reg 20 of MLRA Regs) – It demarcates a range of areas in which various types of fishing practices are prohibited and others permitted. No further clarity is provided regarding the control or management of these areas. Permits can be issued for a maximum period of a year and can contain conditions.
        - Closed Areas (West Coast Rock Lobster – General)) (Reg 47 of MLRA Regs) – It demarcates a range of areas in which people are prohibited from harvesting West Coast Rock Lobster. No further clarity is provided regarding the control or management of these areas.
        - Closed Areas (West-Coast Rock Lobster – Commercial permit) (Reg 49 of MRLA Regs) – It demarcates a range of areas in which holders of commercial permits to harvest West Coast Rock Lobster are prohibited from doing so. No further clarity is provided regarding the control or management of these areas.
- Justification for Rating
    - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
    - Criterion 2 – Weak: But for compelling the Minister to consider the broadly framed objectives and principles set out in section 2, the MLRA contains no specific information or plans for the Minister to consider prior to designating a closed area. While there exists a broad array of generally relevant statutory and non-statutory planning instruments to identify priority areas and assist in assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), the MLRA does not expressly impose an obligation on the Minister to specifically take these into account in the initial assessment of which areas to include in a closed area. The MLRA provides no legal guidance on the form and nature of the initial assessment process, key criteria and thresholds. But for the general process for publishing regulations under legislation, the MLRA contains no additional guidance on procedures for ensuring the openness and transparency of the process.
    - Securing Consent – Very Weak: The MLRA makes no provision for securing any form of consent from potential relevant rightsholders in the area.
    - Criterion 3 – Good: The MLRA clearly demarcate the area through descriptions as opposed to diagrams. Implicit in their demarcation is both a horizontal and vertical dimension as the closed area would include all marine waters and the surface of the seabed falling within its

coordinates. It would not however appear to extend to activities undertaken under the surface of the seabed.

- Criterion 4 – Weak: But for compelling the Minister to consider the broadly framed objectives and principles set out in section 2, the MLRA contains no specific information or plans for the Minister to consider prior to designating a closed area. While there exists a broad array of generally relevant statutory and non-statutory planning instruments to identify priority areas and assist in assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), the MLRA does not expressly impose an obligation on the Minister to specifically take these into account in the final assessment of which areas to include in a closed area. The MLRA provides no legal guidance on the form and nature of the final assessment process, key criteria and thresholds. But for the general process for publishing regulations under legislation, the MLRA contains no additional guidance on procedures for ensuring the openness and transparency of the process. Once designated by Regulation, the area is accorded statutory status as a closed area.
- Criterion 5 – Very Weak: The MLRA contains no provisions detailing specific governance and management arrangements for the area.
- Criterion 6 – Weak: Once declared, fishing activities in the area are strictly regulated by way of prohibitions and permitting arrangements. No mechanisms are however provided to regulate any form of non-fishing activity that may impact upon the area (such as those undertaken within the seabed). No express provision is made for monitoring and reporting requirements given the absence of a prescribed governance and management regime.
- Criterion 7 – Average: The declaration of an area seems to be a long-term measure. They are prescribed by way of regulation and accordingly are legally secure, although regulations can be amended by the Minister, but only after following the general regulatory process (which would generally include notice and comment procedures). The use of permitting and prohibitions strictly regulate fishing in the area. However, no mechanisms are provided to regulate any form of non-fishing activity which may impact upon the areas long-term security.
- Criterion 8 – Weak: The MLRA contains no express provisions dealing with these issues, but for potentially using permitting (and associated permitting conditions). However, there is no legal guidance or clarity (hence a weak rating).

2. *Fisheries Exclusion Zone*
   - Conservation Management Objective (Primary)
   - Relevant Legal Framework – MLRA & MLRA General Regulations (1998)
   - Brief Explanation of Relevant Legal Framework
     - There are a range of provisions contained in the MLRA read together with its General Regulations (1998) that enable the Minister to declare what are collectively referred to here as “fisheries exclusion zones”:
       - General Line-Fishing Area Restrictions (Reg 21 of MLRA Regs & Annexure 4) – It prohibits the holder of a traditional line-fishing permit from fishing for certain listed species generally or within

certain areas, with the latter being very vaguely defined for a handful of species (elf, cob and squid).

- Right Condition (Sustainable Conservation and Management Measures Area Restriction (S18(7) of MLRA) – It prohibits any person from undertaking commercial fishing or small-scale fishing, unless they have been granted a right from the Minister to do so. It enables the Minister to impose sustainable conservation and management measures (inclusive of area restrictions) by way of conditions attached to the grant of any such right.
- Exemption Condition (Exclusion Areas) (Section 81 of MLRA) – It enables the Minister, where there are sound reasons for doing so, to exempt any person, group of persons or organ of state from a provision of this Act. Area-related exclusions can be imposed by way of conditions attached to such an exemption. An exemption (and any associated area-related exclusion) may at any time be cancelled or amended by the Minister.

- Justification for Rating
  - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
  - Criterion 2 – Weak: But for compelling the Minister to consider the broadly framed objectives and principles set out in section 2, the MLRA contains no specific information or plans for the Minister to consider prior to designating a fisheries exclusion zone. While there exists a broad array of generally relevant statutory and non-statutory planning instruments to identify priority areas and assist in assessing whether the area supports important biological values (see above in the context of 2.*Biodiversity Agreement* (criterion 2)), the MLRA does not expressly impose an obligation on the Minister to specifically take these into account in the initial assessment of which areas to include in a fisheries exclusion zone. The MLRA provides weak legal guidance on the form and nature of the initial assessment process, key criteria and thresholds. The general legal process relating to creating these areas by way of regulation or the imposition of conditions attached to rights/exemption, would ensure openness and transparency.
  - Securing Consent – Very Weak: The MLRA makes no provision for securing any form of consent from potential relevant rightsholders in the fisheries exclusion zone.
  - Criterion 3 – Average: The general line-fishing area restrictions are very vaguely defined in Annexure 4 to the MLRA. The boundaries of a fisheries exclusion zone would require demarcation in the relevant right or exemption condition. Implicit in their demarcation of the fisheries exclusion zone would presumably be both a horizontal and vertical dimension as it would include all marine waters and the surface of the seabed falling within its coordinates.
  - Criterion 4 – Weak: But for compelling the Minister to consider the broadly framed objectives and principles set out in section 2, the MLRA contains no specific information or plans for the Minister to consider

prior to designating a fisheries exclusion zone. While there exists a broad array of generally relevant statutory and non-statutory planning instruments to identify priority areas and assist in assessing whether the area supports important biological values (see above in the context of 2.*Biodiversity Agreement* (criterion 2)), the MLRA does not expressly impose an obligation on the Minister to specifically take these into account in the final assessment of which areas to include in a fisheries exclusion zone. The MLRA provides weak legal guidance on the form and nature of the final assessment process, key criteria and thresholds. The general legal process relating to creating these areas by way of regulation or the imposition of conditions attached to rights/exemption, would ensure openness and transparency. All three types of areas constituting "fisheries exclusion zones" are accorded a statutory status once demarcated in Annexure 4 of the MLRA Regs, or in relevant rights or exemption conditions.

- Criterion 5 – Very Weak: The MLRA contains no provisions detailing specific governance and management arrangements for any form of fisheries exclusion zone.
- Criterion 6 – Weak: Once declared, fishing activities in the area are strictly regulated. No mechanisms are however provided to regulate any form of non-fishing activity which may impact upon the area. No express provision is made for monitoring and reporting requirements given the absence of a prescribed governance and management regime.
- Criterion 7 – Weak: The duration of the three types of fisheries exclusion zones differs. The General Line-Fishing Area Restrictions would appear to be long-term in nature as they are prescribed in the Act itself (Annexure 4 of the MLRA Regs). Area restrictions imposed through conditions attached to fishing rights and exemptions would be determined by the duration of the relevant right or exemption. Rights can be granted up to 15 years (although they are usually only granted for a five-year duration) and accordingly any area conditions attached to a right could be imposed for a maximum 15-year period (but currently only a 5-year duration). There is no clarity regarding the duration of an exemption, and the MLRA indicates that the Minister can impose and withdraw them at any time, which renders their duration uncertain. Accordingly, these fisheries exclusion zones established by way of rights and exemption conditions may well lack long-term legal security. Furthermore, no mechanisms are provided to regulate any form of non-fishing activity which may impact upon the areas long-term security.
- Criterion 8 – Weak: The MLRA contains no express provisions dealing with these issues, but for potentially using conditions linked to fishing rights and/or exemptions. However, there is no legal guidance or clarity (hence a weak rating).

3. *Biodiversity Conservation Area (Strict Biodiversity Conservation Zone)*
   - Conservation Management Objective (Primary)
   - Relevant Legal Framework – MSPA, Marine Spatial Planning Framework (2023) & Draft Marine Biodiversity Sector Plan (2023)
   - Brief Explanation of Relevant Legal Framework

- The MSPA outlines South Africa's future marine spatial planning system inclusive of a marine spatial planning framework and marine areas plans.
- The MSPA prescribes a broad set of principles and criteria for marine spatial planning which include several relating to biodiversity values (including equity issues), such as: the advancement of an ecosystem and earth system approach to ocean management which focuses on maintaining ecosystem structure and functioning within a marine area; adaptive management, which takes into account the dynamics of the ecosystems and the evolution of knowledge and of activities in South African waters; the principle of spatial resilience and flexibility; the promotion of equity between and transformation of sectors; etc.
- The Minister published the Marine Spatial Planning Framework in 2017 that outlines the legislative and institutional context to marine spatial planning in South Africa, and details the process to develop, implement, monitor, evaluate and revise marine area plans.
- The Minister also published draft marine sector plans (including a draft Marine Biodiversity Sector Plan) in 2023. The purpose of these marine sector plans (with a 20-year focus) is to support the development of marine area plans, with the former outlining the context to the sector, sector development objectives, sector development guidelines, proposed marine zones and spatial regulations and maps.
- The Draft Marine Biodiversity Sector Plan (2023) proposes various marine zones, including Strict Biodiversity Conservation Zones which in turn include marine protected areas, biodiversity conservation areas and biodiversity restoration areas. Biodiversity conservation areas are explained as areas identified as critical biodiversity areas that will be managed by a marine area plan and its regulations, informed by the rationale for their selection as critical biodiversity areas. Activities that are not permitted in the regulations and/or marine area plan will not be allowed to take place in these areas. They seem to hold most potential for recognition as OECMs.
- Informed by this context, the MSPA enables the Minister to develop and implement a marine area plan for a bio-geographic area and prescribes that they must be reviewed every 5 years.
- The MSPA prescribes that once developed, any right, permit, permission, licence or any other authorisation issued in terms of any other law must be consistent with the approved marine area plans.
- The MSPA, complemented by the Marine Spatial Planning Framework:
    - Outlines a detailed process to develop marine area plans, including extensive intergovernmental consultation requirements, and consultation with relevant industry bodies and the public at large.
    - Sets out the desired content for these plans which include: a description of the marine area (including its outer boundaries, inner administrative boundaries and biophysical features); principles, goals, objectives and a vision for the marine area (with a twenty-year timeframe); a description of the current and projected uses of the marine area; key issues arising out of the assessment of the marine area; management actions for

addressing each of the key issues (inclusive of management actions, zoning (inclusive of proposed strict biodiversity conservation zones), designation of priority areas etc); a statement about the authorities responsible for their implementation; and a provisional timeline for delivering the marine area plan's proposed outcomes.

  - None of these exist to date but as mentioned above, the Biodiversity Conservation Areas linked to Strict Biodiversity Conservation Zones referred to in the Draft Marine Biodiversity Sector Plan (2023) which will inform the development of the relevant Marine Area Plan, and their associated regulations, hold potential as an OECM mechanism in the context the proposed strict biodiversity conservation zones.

- Justification for Rating
  - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a marine protected area before considering it for recognition as an OECM.
  - Criterion 2 – Very Good: The MSPA together with Marine Spatial Planning Framework and draft Marine Biodiversity Sector Plan outline a very clear set of criteria/information/thresholds to inform the identification of a marine area (inclusive of a biodiversity conservation area) and the development of a marine area plan for it, which appears to include consideration of current and potential future competing land and/or resource rights over the area. They clearly outline the form, nature and process for the initial assessment of the area and development of the associated marine area plan for it, key principles and objectives which need to be met, and mechanisms for ensuring openness and transparency of the process.
  - Securing Consent – Average: Extensive provision is made for consultation between key relevant government, industry and other stakeholders in the identification of a marine area (inclusive of a biodiversity conservation area) and the formulation of the associated marine area plan for it. Most relevant sectors seem to be represented on the array of institutions tasked with the development and implementation of a marine area plan. This could ensure the building of consensus in the development of the plan. However, no express provision is made for obtaining the consent of those holding existing rights in the marine area (inclusive of a biodiversity conservation area) subject to the marine area plan.
  - Criterion 3 – Good: The MSPA, together with the Marine Spatial Planning Framework and draft Marine Biodiversity Sector Plan (2023), anticipate the boundaries of the area to which a marine area plan applies to be clearly demarcated. They also anticipate a marine area plan potentially demarcating internal administrative boundaries within the broader marine area (inclusive of a biodiversity conservation area). The legal framework does not expressly provide for the recognition of both the horizontal and vertical dimensions of the marine area (inclusive of a biodiversity conservation area), but these could potentially be included within the above demarcation process.

- Criterion 4 – Very Good: The MSPA together with Marine Spatial Planning Framework and draft Marine Biodiversity Sector Plan (2023) outline a very clear set of additional criteria/information/thresholds to inform the identification of a marine area (inclusive of a biodiversity conservation area) and the development of a marine area plan for it, which appears to include consideration of current and potential future competing land and/or resource rights over the area. They clearly outline the form, nature and process for the assessment of the area and development of the associated marine area plan for it, key principles and objectives which need to be met, and mechanisms for ensuring openness and transparency of the process. The marine area (inclusive of a biodiversity conservation area) would have statutory status
- Criterion 5 – Very Good: The MSPA, together with the Marine Spatial Planning Framework and Draft Marine Biodiversity Sector Plan (2023), anticipate the development of a detailed governance and management regime for the area within the marine area plan, inclusive of: management objectives; management actions; use of zoning; potential designation of priority areas for various issues including environmental management (such as biodiversity conservation areas); statements about the authorities responsible for implementation; and a provisional timeline for delivering the marine area plan's proposed outcomes. No express provision is made for co-management, but it could be included in the marine area plan given the breadth of stakeholders involved in formulating and implementing it.
- Criterion 6 – Very Good. The MSPA prescribes that once developed, any right, permit, permission, licence or any other authorisation issued in terms of any other law must be consistent with the approved marine area plans. It accordingly holds potential to regulate activities in the area. The MSPA, together with the Marine Spatial Planning Framework, anticipate monitoring, reporting on and the review of the marine area plan applicable to the marine area (inclusive of a biodiversity conservation area).
- Criterion 7 – Weak: The specific duration of the recognition of the marine area (inclusive of a biodiversity conservation area) is not prescribed but reference is made to the need for the marine area plan to prescribe objectives for the marine area with a twenty-year timeframe. Provision is also made for the review of the marine area plan on a 5-year basis. Therefore, while formally published in a Government Gazette, the marine area (inclusive of a biodiversity conservation area) and associated marine area plan would appear to have a fixed maximum long-term duration of at most 20 years, notwithstanding its temporal review every 5 years. The area may therefore lack long-term legal security.
- Criterion 8 – Very Good: Many of the broad objectives, principles and criteria outlined in the MSPA and accompanying Marine Spatial Planning Framework broadly refer to equitable participation, access and use issues which should ensure that these permeate the formulation of the marine area plan relating to the marine area (inclusive of a biodiversity conservation area). The overarching prescribed process for

designating areas and developing relevant plans associated with them should ensure openness and transparency.

4. *Protected Islands & Rocks*
   - Conservation Management Objective (Primary)
   - Relevant Legal Framework – SB&SPA
   - Brief Explanation of Relevant Legal Framework
     - The SB&SPA grants the Minister control over 37 islands and rocks listed in the schedules to the Act, to protect the seals and seabirds situated on them.
     - People are generally prohibited from setting foot upon these islands and rocks unless they have been granted a permit or exemption to do so by the Minister.
     - Some of these islands and rocks have been designated as special nature reserves, nature reserves and marine protected areas and these would naturally constitute protected areas.
     - Those that have not been could feasibly constitute OECMs.
     - Some informal/non-legal management arrangements exist to manage the marine environment around some of these islands and rocks (eg management plan for the island extending into the marine context) but as these are non-legal in nature they are not included here.
     - The focus below is solely on islands and rocks recognised under the SB&SPA (excluding those currently falling within protected areas).
   - Justification for Rating
     - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
     - Criterion 2 – Weak: The SB&SPA contains no specific criteria, information or plans for the Minister to consider prior to including islands or rocks under the auspices of the Act. While there exists a broad array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), the SB&SPA does not prescribe that the Minister must take these into account when recognising islands or rocks. There is no legal certainty or clarity regarding the form, nature and process for the initial assessment of an island or rock for inclusion under the auspices of the Act. The general legal process regulating the addition to or removal from the list of protected islands and rocks would ensure some element of openness and transparency.
     - Securing Consent – Very Weak: No provision is made for securing the consent of any person with potential interests/rights prior to including any island or rock under the auspices of the Act.
     - Criterion 3 – Good: The name of the island or rock and its general location are set out in a Schedule to the Act, although their specific coordinates are not included.
     - Criterion 4 – Weak: The SB&SPA contains no specific criteria, information or plans for the Minister to consider prior to including islands

or rocks under the auspices of the Act. While there exists a broad array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in finally assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), the SB&SPA does not prescribe that the Minister must take these into account when recognising islands or rocks. There is no legal certainty or clarity regarding the form, nature and process for the final assessment of an island or rock for inclusion under the auspices of the Act. The general legal process regulating the addition to or removal from the list of protected islands and rocks would ensure some element of openness and transparency. As the islands and rocks are listed in the Schedule to the Act, they have statutory status.

- Criterion 5 – Very Weak: The SB&SPA makes no provision for a dedicated governance or management regime for each island or rock, simply locating broad regulatory power in the Minister to control access to the island or rock.
- Criterion 6 – Weak. While the SB&SPA accords the Minister the power to control access to the island or rock, monitoring and reporting requirements are absent as there is no legally prescribed management regime for the island or rock.
- Criterion 7 – Good: Once listed, the duration of the protection accorded to the island or rock generally seems perpetual, but the Minister is however empowered to remove an island or rock from the ambit of the Act by simply amending the Schedule to the Act. No criteria are prescribed to inform this process and while a notice to this effect would need to be published in the Government Gazette, the long-term protection is not guaranteed (hence not very good rating).
- Criterion 8 – Weak: The SB&SPA makes little express provision for equitable participation, access to, use and enjoyment of the area and the resources situated within it but for providing for access to the islands by way of a permit or exemption. These could therefore theoretically deal with these issues, although this does not appear to the rationale underpinning these mechanisms. They are more about strictly regulating and controlling access to the island, only allowing access in exceptional circumstances (hence the weak rating).

5. *Estuarine Management Plan*
   - Conservation Management Objective (Secondary)
   - Relevant Legal Framework – NEMICMA (section 34) read together with the National Estuarine Management Protocol (2021)
   - Brief Explanation of Relevant Legal Framework
     - NEMICMA, read together with the National Estuarine Management Protocol (2021), enables a broad array of government authorities to develop estuarine management plans for estuaries falling under their jurisdiction.
     - NEMICMA, read together with the National Estuarine Management Protocol (2021), outlines key objectives underlying the Act, a vision, set of objectives and management standards for estuarine management generally.

  - They also contain detail on the expected content and process for developing estuarine management plans, including provision for:
    - Mandatory consideration of other relevant coastal management planning instruments (specifically national, provincial and municipal coastal management programmes) and biodiversity-related plans.
    - Minimum requirements for an estuarine management plan (which include a description and map of its boundaries, a vision and set of objectives for the estuary, a list of management objectives and activities (factoring in conservation, use and social equity issues), spatial zonation, institutional arrangements and monitoring and reporting requirements.
    - A notice and comment procedure.
    - A formal approval process.
    - The integration of the estuarine management plan within other relevant coastal and spatial planning instruments.
    - The review of the estuarine management plan at least every 5 years.
- Justification for Rating
  - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
  - Criterion 2 – Very Good: NEMICMA, read together with the National Estuarine Management Protocol (2021), contains a diverse array of coastal plans and objectives and estuarine criteria, objectives, and standards that must be considered when formulating an estuarine management plan. Those tasked with developing these coastal plans must consider key relevant environmental and spatial plans. These would include the array of generally relevant statutory and non-statutory planning instruments (see above in the context of 2. *Biodiversity Agreement* (criterion 2)). These would therefore be relevant to identifying the boundaries of an estuary, the status of an estuary, priority areas within it, and how the estuary could be managed through an estuarine management plan. NEMICMA, read together with the National Estuarine Management Protocol (2021), provide a detailed phased process for assessing the area and developing/approving an estuarine management plan for it. Mandatory engagement with all relevant stakeholders (government and other), and the need to publish both the draft and final form of the estuarine management plan in Government Gazettes, should ensure the openness and transparency of the process.
  - Securing Consent – Weak: No express provision is made for securing the consent of those with rights or interests in the estuary prior to the development of the estuarine management plan, although they would be consulted through the mandatory public participation process.
  - Criterion 3 – Very Good: NEMICMA, read together with the National Estuarine Management Protocol (2021) expressly indicate that the estuarine management plan must contain a description and map of its boundaries. The area should accordingly be clearly defined. While

NEMICMA, read together with the National Estuarine Management Protocol (2021), do not expressly mention the three-dimensional nature of potentially applicable rights relevant to the estuary, some existing estuarine management plans do.

- Criterion 4 – Very Good: NEMICMA, read together with the National Estuarine Management Protocol (2021), contains a diverse array of coastal plans and objectives and estuarine criteria, objectives and standards that must be considered when formulating an estuarine management plan. Those tasked with developing these coastal plans must consider key relevant environmental and spatial plans. These could include the array of generally relevant statutory and non-statutory planning instruments (see above in the context of 2. *Biodiversity Agreement* (criterion 2)). These would therefore be relevant to identifying the boundaries of an estuary, the status of an estuary, priority areas within it, and how the estuary could be managed through an estuarine management plan. NEMICMA, read together with the National Estuarine Management Protocol (2021), provide a detailed phased process for assessing the area and developing/approving an estuarine management plan for it. While no express provision is made for the consideration of current and future rights over the area, these would probably form part of the assessment phase given the breadth of prescribed issues that must be considered during it. Mandatory engagement with all relevant stakeholders (government and other), and the need to publish both the draft and final form of the estuarine management plan in Government Gazettes, should ensure the openness and transparency of the process. Once approved, the estuarine management plan, and accordingly the area it deals with, would have some statutory status/recognition.
- Criterion 5 – Very Good: NEMICMA, read together with the National Estuarine Management Protocol (2021), clearly outline minimum requirements for an estuarine management plan, which include a vision and set of objectives for the estuary, a list of management objectives and activities (factoring in conservation, use and social equity issues), spatial zonation, and institutional arrangements (which could feasibly include co-management). The mandatory public participation process informing the development of the estuarine management plan should ensure openness and transparency in the formulation and review of the management regime.
- Criterion 6 – Very Good: NEMICMA, read together with the National Estuarine Management Protocol (2021), clearly outline minimum requirements for an estuarine management plan, which include prescribing prohibited and permitted activities in different zones of the estuary (and outlining which authorities will need to enact relevant laws to implement these), and monitoring and reporting requirements. The mandatory public participation process informing the development of the estuarine management plan should ensure openness and transparency in the formulation and review of the management regime.
- Criterion 7 – Very Good: The Government is compelled to adopt an estuarine management plan for all estuaries in South Africa. These must be reviewed every five years. The mechanism accordingly appears to

be long-term as the area falling within an estuary will always be subject to an estuarine management plan even if it is reviewed every five years. With NEMICMA, read together with the National Estuarine Management Protocol (2021), prescribing a clear and consistent set of mandatory criteria, objectives and standards for the initial and subsequent version of an estuarine management plan, management of the area should be consistent and long-term.
    - Criterion 8 – Very Good: NEMICMA, read together with the National Estuarine Management Protocol (2021), clearly outline minimum requirements for an estuarine management plan, which include access, use, social and equity issues. The mandatory public participation process informing the development of the estuarine management plan should ensure openness and transparency in the initial formulation and review of the estuarine management plan in so far as it deals with these issues.

6. *Special Management Area*
    - Conservation Management Objective (Secondary)
    - Relevant Legal Framework – NEMICMA (sections 23-24)
    - Brief Explanation of Relevant Legal Framework
        - NEMICMA empowers the Minister after consultation with any relevant MEC, to declare a special management area wholly or partially in the coastal zone.
        - With the coastal zone including the area from the high-water mark to the outer reaches of the EEZ (200nm offshore), special management areas are a potential OECM measure in the marine context.
        - NEMICMA provides for compulsory consultation with all interested and affected parties prior to doing declaring a special management area.
        - NEMICMA sets out clear thresholds and criteria that must be considered and met to declare the area which include management of coastal resources by a local community; promoting sustainable livelihoods for a local community; and conserving, protecting or enhancing coastal ecosystems and biodiversity.
        - The Minister may prohibit activities being undertaken in the area.
        - The Minister may also appoint a manager for the area, but before doing so must publish regulations defining the powers and functions of the manager, and rules to facilitate the achievement of the objectives for which the area was declared.
        - No areas of this nature have been declared under NEMICMA to date.
    - Justification for Rating
        - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the area meets the requirements of a protected area before considering it for recognition as an OECM.
        - Criterion 2 – NEMICMA, while not prescribing a formal assessment process, compels authorities to consider an array of coastal plans, thresholds and objectives prior to establishing the area. Those tasked with developing these coastal plans must consider key relevant environmental and spatial plans. These would include the array of generally relevant statutory and non-statutory planning instruments

(see above in the context of 2. *Biodiversity Agreement* (criterion 2)). These would be relevant to identifying priority areas and assisting in initially assessing whether the area should be declared a special management area. Mandatory prior consultation with relevant interested and affected parties (including those with rights over the area) and the need to publish both the declaration of the area and regulations relating to its management in Government Gazettes, should ensure the openness and transparency of the process.

- Securing Consent – Good: Authorities must consult with all relevant interested and affected parties prior to declaring the area. Consent will generally not be an issue as the marine area falling within the coastal zone (area between the high and low water mark) falls under the trusteeship of the state. However, no express provision is made for securing the consent of those holding rights within the marine area (eg fishing, oil, petroleum and gas rights) – therefore not a "very good" rating.
- Criterion 3 – Good: While NEMICMA lacks specific clarity on this issue, the notice establishing the special management area could clearly outline its boundaries. No express provision is made in NEMICMA for the consideration of the vertical dimension of rights, but these should be factored into decisions relating to the declaration of the area and the formulation of rules relating to it could create an additional layer of rights and restrictions on any persons using the area.
- Criterion 4 – Good: NEMICMA, while not prescribing a formal assessment process, compels authorities to consider an array of coastal plans, thresholds and objectives prior to establishing the area. Those tasked with developing these coastal plans must consider key relevant environmental and spatial plans. These would include the array of generally relevant statutory and non-statutory planning instruments (see above in the context of 2. *Biodiversity Agreement* (criterion 2)). These would be relevant to identifying priority areas and assisting in assessing whether the area should be declared a special management area. Mandatory prior consultation with relevant interested and affected parties (including those with rights over the area) and the need to publish both the declaration of the area and regulations relating to its management in Government Gazettes, should ensure the openness and transparency of the process. A special management area would have a statutory status and anyone managing or using it would need to comply with its rules.
- Criterion 5 – Good: NEMICMA anticipates the appointment of a manager for the area and the prescription of specific rules by way of regulations setting out the powers and functions of the manager and the rules regulating the management of the area. It also anticipates that state, private and communal persons and institutions can be appointed as the manager, thereby enabling most governance types. The rules published by way of regulation could prescribe a clear management regime for the area to be implemented by the manager. These regulations would be published for comment prior to implementation, ensuring openness and transparency in the process. However, the relevant provisions in NEMICMA relating to management lack clarity,

which creates potential uncertainty and confusion (hence not a very good rating).

- Criterion 6 – Good: The rules published by way of regulation for the special management area could regulate activities in the area. Furthermore, the rules again published by way of regulation relating to the powers and functions of the manager, could prescribe detailed monitoring and reporting requirements. These regulations would be published for comment prior to implementation, ensuring openness and transparency in the process. However, the relevant provisions in NEMICMA relating to regulating activities, monitoring and reporting lack clarity, which creates uncertainty and confusion (hence not a very good rating).
- Criterion 7 – Good: The provisions in NEMICMA relating to special management areas do not outline them as a temporary measure. They would according appear to be a long-term measure, although no specific minimum durations are prescribed in the Act. Given that the declaration of the area and the rules relating to access, use and management of the special management area are embedded in regulations, the area would appear legally secure. While provision is made for the withdraw of the declaration and the regulations could be amended, these changes would need to comply with the processes outlined in NEMICMA, ensuring openness and transparency.
- Criterion 8 – Average: Special management areas can be established for a diversity of reasons including conservation, community management and promoting the sustainable livelihoods of local communities. The rules published by way of regulation for the special management area could regulate a broad array of activities including those facilitating equitable participation, access to, use and enjoyment of the area and the resources situated within it. They could also deal with dispute resolution. However, the relevant provisions in NEMICMA relating to these issues lack clarity, which creates uncertainty and confusion (hence an average rating).

7. *Small-Scale Fishing Area/Zone*
   - Conservation Management Objective (Secondary)
   - Relevant Legal Framework – MLRA (section 19) read together with the Regulations Relating to Small-Scale Fishing (2016) & Small-Scale Fishing Policy (2012)
   - Brief Explanation of Relevant Legal Framework
     - The MLRA recognises the small-scale fishing sector and enables the Minister to recognise a community to be a small-scale fishing community. Provision is made for a small-scale fishing community to have a management plan specifying what marine resources it would use and how, reporting and equity issues. This would appear to relate mainly to the functioning of the small-scale fishing community.
     - The MLRA compels the Minister, through a notice published in the Government Gazette, to establish areas or zones where small-scale fisher communities may fish; and empowers the Minister to prohibit any fishing or related activity or the exercise of rights of access to these areas or zones (a small-scale fishing community area/zone).

  - The MLRA also compels the Minister to introduce regulations to prescribe the process to allocate rights of access to small-scale fishing communities, criteria to recognise small-scale fishers and communities, and issues relating to the management of their rights of access to marine living resources.
  - Fulfilling this obligation, the Minister introduced Regulations Relating to Small-Scale Fishing (2016), which vaguely outline the process to demarcate these small-scale fishing areas/zones (including consultation requirements); and empowers the Minister to regulate or prohibit certain activities that have a proven severe impact on the fishing activities of small-scale fishers in them.
  - The Minister also introduced the Policy for the Small-Scale Fishers Sector in South Africa (2012), which contains information on a range of issues including:
    - Background to the small-scale fishing sector.
    - Key policies principles and objectives underpinning it.
    - Policy focal areas (including a focus on co-management, compliance monitoring and enforcement).
    - Details on potential management instruments and tools (including comprehensive resource assessments, the demarcation of small-scale fishing community areas (including closed areas within them), management plans, technical control measures and agreements (including co-management agreements)
    - Institutional arrangements (including co-management committees)
    - Grant of small-scale fishing rights.
  - By way of a notice published in 2016, the Minister advocated for a precautionary approach and indicated that small-scale fishing rights could be allocated for a maximum 3-year period (followed by a potential additional 2-year renewal period).
  - Depending on how they are recognised, managed and regulated, these small-scale fishing community areas/zones (inclusive of closed areas within them) could constitute OECMs.
  - None of these exist to date but they do hold potential as an OECM mechanism in the marine context.
- Justification for Rating
  - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
  - Criterion 2 – Good: The Minister would be compelled to consider the broadly framed objectives and principles set out in section 2 of the MLRA, and its broadly framed fisheries planning provisions when designating any small-scale fishing community area/zone (or a closed area within it). The relevant Regulations contain very little additional criteria/information. The relevant Policy contains additional guidance on criteria/information that the Minister must consider prior to designating a small-scale fishing community area/zone (or a closed area within it). While there exists a broad array of generally applicable statutory and

non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of 2.*Biodiversity Agreement* (criterion 2)), neither the MLRA not its relevant Regulations/Policy prescribe that the Minister must take these into account when recognising a small-scale fishing community area/zone (or a closed area within it). The MLRA does provide for mandatory consultation prior to demarcating any small-scale fishing community area/zone (or a closed area within it). However, the MLRA and its relevant Regulations provide little additional legal certainty or clarity regarding the form, nature and process for the initial assessment of the area as a small-scale fishing community area/zone (or a closed area within it) and any specific thresholds/criteria that need to be met to recognise it. This void is partially filled by the relevant Policy which contains some guidance on the assessment process (including key principles, objectives, consultation and dispute resolution procedures). This guidance is however contained in Policy and perhaps greater legal certainty could be provided if this was prescribed in the Act itself or by way of Regulation. The mandatory consultation requirements and provision for the area to be established/recognised by way of a notice published in the Government Gazette, should ensure openness and transparency of the process.

- Securing Consent – Good: The MLRA and its relevant Regulations provide for consultation with the small-scale fishing community when demarcating a small-scale fishing community area/zone (or a closed area within it), but do not expressly provide for their consent. The relevant Policy proposes the conclusion of a co-management agreement to govern the relationship between the Government and the small-scale fishing community in managing the exercise of their fishing rights, including feasibly within a small-scale fishing area/zone (and a closed area within it). The relevant Policy provides broad guidance on a range of issues relevant to concluding an agreement of this nature, including: who the relevant parties to the agreement could be; the process to conclude it; and key content to be included in the agreement, including setting out the parties' roles and responsibilities and ensuring that the small-scale communities' benefits will not compromise the ecological integrity of the resource in the area. If concluded, this agreement would naturally constitute consent. In the absence of such an agreement being concluded, the relevant legal framework only provides for consultation. The detail on these agreements is however contained in Policy and perhaps greater legal certainty could be provided if this was prescribed in the Act itself or by way of Regulation.
- Criterion 3 – Good: As the area would be established/recognised by way of a notice published in the Government Gazette, it is anticipated that its boundaries would be clearly demarcated in the notice, although the MLRA and its relevant Regulations/Policy provide limited certainty or clarity on this process and how the three-dimensional nature of any applicable rights (such as petroleum/oil/gas exploration or production rights) would be dealt with.

- Criterion 4 – Good: The Minister would be compelled to consider the broadly framed objectives and principles set out in section 2 of the Act, and its broadly framed fisheries planning provisions when designating any small-scale fishing community area/zone (or a closed area within it). The relevant Regulations contain very little additional criteria/information. The relevant Policy contains additional guidance on criteria/information that the Minister must consider prior to designating a small-scale fishing community area/zone (or a closed area within it). While there exists a broad array of generally applicable statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in assessing whether the area supports important biological values (see above in the context of 2.*Biodiversity Agreement* (criterion 2)), neither the MLRA not its relevant Regulations/Policy prescribe that the Minister must take these into account when recognising a small-scale fishing community area/zone (or a closed area within it). The MLRA does provide for mandatory consultation prior to demarcating any small-scale fishing community area/zone (or a closed area within it). However, the MLRA and its relevant Regulations provide little additional legal certainty or clarity regarding the form, nature and process for the final assessment of the area as a small-scale fishing community area/zone (or a closed area within it) and any specific thresholds/criteria that need to be met to recognise it. This void is partially filled by the relevant Policy that contains some guidance on the assessment process (including key principles, objectives, consultation and dispute resolution procedures). This guidance is, however, contained in Policy and perhaps greater legal certainty could be provided if this was prescribed in the Act itself or by way of Regulation. The mandatory consultation requirements and provision for the area to be established/recognised by way of a notice published in the Government Gazette, should ensure the openness and transparency of the process. The area would be accorded a statutory status as it would be recognised through publication of a notice in the Government Gazette. The relevant Policy also advocates for the reflection of these small-scale fishing community areas/zones (or closed areas within them) in relevant other statutory planning instruments including IDPs and coastal management programmes. This is, however, contained in Policy and perhaps greater legal certainty could be provided if this was prescribed in the Act itself or by way of Regulation.
- Criterion 5 – Good: Neither the MLRA nor the relevant Regulations make provision for developing a governance or management regime (inclusive of management objectives and a management plan) for the small-scale fishing area/zone (or a closed area within it). Provision is only made for a small-scale fishing community to have a management plan specifying what marine resources it would use and how, reporting and equity issues. This management plan could feasibly be extended to provide for the management of the small-scale fishing area/zone (or a closed area within it), but this does not seem to be its intended purpose as this form of management plan appears to be more about managing the functioning of a small-scale fishing community, as opposed to a plan to manage a specific area. However, the relevant Policy details several

potential management instruments and tools that could provide an effective management regime for the small-scale fishing community area/zone (or closed area within it), including comprehensive resource assessments, management plans, technical control measures and agreements. It furthermore details potential institutional arrangements (including co-management arrangements). This guidance is however contained in Policy and perhaps greater legal certainty could be provided if this was prescribed in the Act itself or by way of Regulation (hence not a very good rating).

- Criterion 6 – Good: The MLRA enables the Minister, through a notice published in the Government Gazette, to prohibit any fishing or related activity or the exercise of rights of access to a small-scale fishing community area. Neither the MLRA nor the relevant Regulations make express provision for monitoring compliance with a management plan for the small-scale fishing are/zone (or a closed area within it), reporting on it to specified authorities, or amending the regime should circumstances so require. However, the relevant Policy details potential compliance, monitoring, reporting and enforcement options that could be relevant to small-scale fishing community area/zones (or closed areas within them). This guidance is, however, again contained in Policy and perhaps greater legal certainty could be provided if this was prescribed in the Act itself or by way of Regulation (hence not a very good rating).
- Criterion 7 – Very Weak: The designation of a small-scale fishing area/zone (and a closed area within it), seems to be integrally connected to the grant of fishing rights to small-scale fishing communities. The Minister has in the past published a notice indicating that these rights can be granted for a maximum three-year period (followed by a potential two-year renewal period). An area-based initiative associated with these rights would therefore appear to have a similar duration, having little long-term legal security, unless the small-scale fishing rights were granted for a long-term period.
- Criterion 8 – Average: One of the rationales for introducing small-scale fishing rights was to facilitate equitable participation, access to, use and management by individuals and communities previously excluded from the fishing industry. While again the Act and the relevant Regulations lack specific detail in this regard, the Policy contains several references to promoting community access, use, management and equity issues which would be relevant in the context of recognising and managing small-scale fishing community areas/zones (or closed areas within them). This guidance is, however, again contained in Policy and perhaps greater legal certainty could be provided if this was prescribed in the Act itself or by way of Regulation (hence an average rating).

8. *Military Practice Zone*
   - Conservation Management Objective (Ancillary)
   - Relevant Legal Framework – MSPA, Marine Spatial Planning Framework & Draft Marine Defence (Navy) Sector Plan (2023)
   - Brief Explanation of Relevant Legal Framework

- The MSPA outlines South Africa's future marine spatial planning system inclusive of a marine spatial planning framework and marine areas plans.
- The MSPA prescribes a broad set of principles and criteria for marine spatial planning which include several relating to biodiversity values (including equity issues), such as: the advancement of an ecosystem and earth system approach to ocean management which focuses on maintaining ecosystem structure and functioning within a marine area; adaptive management, which takes into account the dynamics of the ecosystems and the evolution of knowledge and of activities in South African waters; the principle of spatial resilience and flexibility; the promotion of equity between and transformation of sectors; etc.
- The Minister published the Marine Spatial Planning Framework in 2017 that outlines the legislative and institutional context to marine spatial planning in South Africa, and details the process to develop, implement, monitor, evaluate and revise marine area plans.
- The Minister also published draft marine sector plans (including a draft Marine Defence (Navy) Sector Plan) in 2023. The purpose of these marine sector plans (with a 20-year focus) is to support the development of marine area plans, with the former outlining the context to the sector, sector development objectives, sector development guidelines, proposed marine zones and spatial regulations and maps.
- The draft Marine Defence (Navy) Sector Plan (2023) proposes various marine zones, including military practice zones, and maps the proposed location of several such zones which largely match marine military training areas previously designated by the SANDF in terms of the Defence Act. It also proposes that most activities should be prohibited in these zones for the duration of the military training/practice sessions. The above will be further detailed in the regulations and/or marine area plan.
- Informed by this context, the MSPA enables the Minister to develop and implement a marine area plan for a bio-geographic area and prescribes that they must be reviewed every 5 years.
- The MSPA prescribes that once developed, any right, permit, permission, licence or any other authorisation issued in terms of any other law must be consistent with the approved marine area plans.
- The MSPA, complemented by the Marine Spatial Planning Framework:
    - Outlines a detailed process to develop marine area plans, including extensive intergovernmental consultation requirements, and consultation with relevant industry bodies and the public at large.
    - Sets out the desired content for these plans which include: a description of the marine area (including its outer boundaries, inner administrative boundaries and biophysical features); principles, goals, objectives and a vision for the marine area (with a twenty-year timeframe); a description of the current and projected uses of the marine area; key issues arising out of the assessment of the marine area; management actions for addressing each of the key issues (inclusive of management actions, zoning (inclusive of proposed strict biodiversity

conservation zones), designation of priority areas etc); a statement about the authorities responsible for their implementation; and a provisional timeline for delivering the marine area plan's proposed outcomes.

  - None of these exist to date but some prior studies have identified these military practice zones referred to in the Draft Marine Defence (Navy) Sector Plan (2023) which will inform the development of the relevant Marine Area Plan and their associated regulations, as constituting a potential OECM mechanism in the marine context. Hence, they are included in the scope of the Legal Review.

- Justification for Rating
  - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is made for first assessing if the site meets the requirements of a protected area before considering it for recognition as an OECM.
  - Criterion 2 – Weak: The MSPA together with Marine Spatial Planning Framework outline a very clear set of criteria/information/thresholds to inform the identification of a marine area (inclusive of a military practice zone). They clearly outline the form, nature and process for the initial assessment of the area and development of the associated marine area plan for it, key principles and objectives which need to be met, and mechanisms for ensuring openness and transparency of the process. However, unlike in the context of the draft Marine Biodiversity Sector Plan (2023), the specific Draft Marine Defence (Navy) Sector Plan (2023) which is supposed to inform the identification and regulation of future military practice zones and associated plans to manage them, provides no information/criteria/thresholds to guide how to conserve the biodiversity in these zones during and between military practices. While there exists a broad array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in initially assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), there is no specific legal obligation on those identifying marine areas and developing marine area plans to consider these when doing so.
  - Securing Consent – Average: Extensive provision is made for consultation between key relevant government, industry and other stakeholders in the identification of a marine area (inclusive of a military practice zone) and the formulation of the associated marine area plan for it. Most relevant sectors seem to be represented on the array of institutions tasked with the development and implementation of a marine area plan. This could ensure the building of consensus in the development of the plan. However, no express provision is made for obtaining the consent of those holding existing rights in the marine area (inclusive of a military practice zone) subject to the marine area plan.
  - Criterion 3 – Good: The MSPA, together with the Marine Spatial Planning Framework and draft Marine Defence (Navy) Sector Plan, anticipate the boundaries of the area to which a marine area plan applies to be clearly demarcated. They also anticipate a marine area plan potentially demarcating internal administrative boundaries within

the broader marine area (inclusive of a military practice zone). The legal framework does not expressly provide for the recognition of both the horizontal and vertical dimensions of the marine area (inclusive of a military practice zone), but these could potentially be included within the above demarcation process.

- Criterion 4 – Weak: The MSPA together with Marine Spatial Planning Framework outline a very clear set of criteria/information/thresholds to inform the identification of a marine area (inclusive of a military practice zone). They clearly outline the form, nature and process for the initial assessment of the area and development of the associated marine area plan for it, key principles and objectives which need to be met, and mechanisms for ensuring openness and transparency of the process. However, unlike in the context of the draft Marine Biodiversity Sector Plan (2023), the specific Draft Marine Defence (Navy) Sector Plan (2023) which is supposed to inform the identification and regulation of future military practice zones and associated plans to manage them, it provides no information/criteria/thresholds to guide how to conserve the biodiversity in these zones during and between military practices. While there exists a broad array of generally relevant statutory and non-statutory planning instruments relevant to identifying priority areas and assisting in assessing whether the area supports important biological values (see above in the context of 2. *Biodiversity Agreement* (criterion 2)), there is no specific legal obligation on those identifying marine areas and developing marine area plans to consider these when doing so. The marine area (inclusive of a military practice zone) would have statutory status.
- Criterion 5 – Good: The MSPA, together with the Marine Spatial Planning Framework, anticipate the development of a detailed governance and management regime for the area within the marine area plan, inclusive of management objectives, management actions, use of zoning, and potential designation of priority areas for various issues including environmental management, statements about the authorities responsible for implementation; and a provisional timeline for delivering the marine area plan's proposed outcomes. No express provision is made for co-management, but it could be included in the marine area plan given the breadth of stakeholders involved in formulating and implementing it. However, unlike in the context of draft Marine Biodiversity Sector Plan (2023), the Draft Marine Defence (Navy) Sector Plan (2023) contains no guidance on the development of a management regime for military practice zones relevant to conserving the biodiversity within them during or between military practices (hence not a very good rating).
- Criterion 6 – Good. The MSPA prescribes that once developed, any right, permit, permission, licence or any other authorisation issued in terms of any other law must be consistent with the approved marine area plan. It accordingly holds potential to regulate activities in the area. The MSPA, together with the Marine Spatial Planning Framework, anticipate monitoring, reporting on and the review of the marine area plan applicable to the marine area (inclusive of a military practice zone). However, unlike in the context of the draft Marine Biodiversity Sector

Plan (2023), the Draft Marine Defence (Navy) Sector Plan (2023) contains no additional guidance on the development of a monitoring and reporting regime for military practice zones (hence not a very good rating).

- Criterion 7 – Weak: The specific duration of the recognition of the marine area (inclusive of a military practice zone) is not prescribed but reference is made to the need for the marine area plan to prescribe objectives for the marine area with a twenty-year timeframe. Provision is also made for the review of the marine area plan on a 5-year basis. Therefore, while formally published in a Government Gazette, the marine area (inclusive of a military practice area) would appear to have a fixed maximum long-term duration of at most 20 years, notwithstanding its temporal review every 5 years. The area may therefore lack long-term legal security. In addition, the Draft Marine Defence (Navy) Sector Plan (2023) only anticipates regulating activities in a military practice zone for the duration of the practice (which appear limited in duration), thereby potentially limiting their long-term application.
- Criterion 8 – Good: Many of the broad objectives, principles and criteria outlined in the MSPA and accompanying Marine Spatial Planning Framework informing their development, broadly refer to equitable participation, access and use issues which should ensure that these permeate the formulation of the marine area plan relating to the marine area (inclusive of a military practice zone). The overarching prescribed process for designating areas and developing relevant plans associated with them should ensure openness and transparency. However, the Draft Marine Defence (Navy) Sector Plan (2023) relevant to future military practice zones contains no additional guidance (hence not a very good rating).

9. *Exclusion Zone (Wreck)*
   - Conservation Management Objective (Ancillary)
   - Relevant Legal Framework – NHRA (section 35) and its Regulations (2000)
   - Brief Explanation of Relevant Legal Framework
     - The South African Heritage Resource Agency is responsible for all wrecks in the territorial waters.
     - Wrecks are accorded automatic protection under the NHRA, and any person wishing to access or excavate a wreck requires a permit from SAHRA prior to doing so.
     - The process to apply for a permit is detailed in Regulations published in 2000, which also provide that the area within a radius of 200m from the wreck will be deemed to be the wreck for the purposes of the permit.
     - This effectively creates an exclusion zone of 200 metres around all wrecks.
     - Some prior studies have identified these exclusion zones around wrecks as constituting a potential OECM mechanism in the marine context. Hence, they are included in the scope of the Legal Review.
   - Justification for Rating
     - Criterion 1 – Weak: What is a PA is clearly defined in NEMPAA but what is an OECM not in any statutory framework. No statutory provision is

made for first assessing if the exclusion zone meets the requirements of a protected area before considering it for recognition as an OECM.

- Criterion 2 – Very Weak: The exclusion area around the wreck is simply accorded automatic protection irrespective of its biological importance, as the exclusion zone is there to protect the wreck and not about conserving the biodiversity around it.
- Securing Consent – Very Weak: The NHRA makes no provision for securing consent, even from those potentially holding rights to extract resources in the exclusion zone.
- Criterion 3 – Good: Presuming that the location of the wreck is known, it simply amounts to a 200m exclusion zone around it. The NHRA does not, however, provide a listing of the location of all wrecks, hence not a very good rating.
- Criterion 4 – Weak: The exclusion zone around the wreck is simply accorded automatic protection irrespective of its biological importance, as it functions to protect the wreck and is not about conserving the biodiversity around it. The exclusion area around the wreck is created in terms of the NHRA and therefore does have statutory status.
- Criterion 5 – Very Weak: SAHRA is designated to protect all wrecks. However, but for a permitting system, there is no provision in the NHRA for prescribing a management regime to guide the management of the exclusion zone around the wreck.
- Criterion 6 – Weak: Access to the exclusion zone around a wreck is strictly regulated through a permitting regime. Given the absence of a management regime, there is no provision in the NHRA for monitoring and reporting on this management plan.
- Criterion 7 – Very Good. The automatic protection accorded to wrecks and the exclusion zone around them appears to have perpetual duration and is legally secure as it is prescribed in legislation.
- Criterion 8 – Very Weak. While permits can be obtained to access the wreck and the exclusion zone, the provisions regulating the process to apply for these permits do not deal expressly with equity issues.

Annexure B

List of Key Resources Consulted

International Instruments

Convention for the Protection of the World Cultural and Natural Heritage (1972) 11 *ILM* 1358

Convention on the Protection of Wetlands of International Importance Especially as Waterfowl Habitats (1972) 11 *ILM* 963

United Nations Convention on the Law of the Sea (1982) 21 *ILM* 1261

ILO Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries (1989) 28 *ILM* 1382

Convention on Biological Diversity (1992) 31 *ILM* 818

United Nations Declaration on the Rights of Indigenous Peoples (2007) 46 *ILM* 1013

UN General Assembly *Transforming Our World: Agenda 2030 for Sustainable Development* (2015) United Nations New York.

International Decisions & Resolutions

CBD COP 10 *Decision X/2: The Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets* (2010) UNEP/CBD/COP/DEC/X/2

CBD COP 10 *Decision X/31: Protected Areas* (2010) UNEP/CBD/COP/DEC/X/31

CBD COP 14 *Decision 14/8: Protected Areas and Other Effective Area-Based Conservation Measures* (2018) CBD/COP/DEC/14/8

CBD COP 15 *Decision 15/4: Kunming-Montreal Global Biodiversity Framework* (2022) CBD/COP/DEC/15/4

CBD COP 15 *Decision 15/5: Monitoring Framework for the Kunming-Montreal Global Biodiversity Framework* (2022) CBD/COP/DEC/15/5

CBD COP 15 *Decision 15/6: Mechanism for Planning, Monitoring, Reporting and Review* (2022) CBD/COP/DEC/15/6

International Reports & Guidance

Beltrán J *Indigenous and Traditional Peoples and Protected Areas: Principles, Guidelines and Case Studies* (2000) IUCN and WWF International Gland, Switzerland

Bingham H, Dudley N, Jonas H, Marnewick D, Mitchell B, Stevens C & Stolton S *Privately Protected Areas: International Reporting and their Relationship with OECMs* IUCN WCPA Technical Note No. 1 (2020) IUCN Gland, Switzerland

Borrini-Feyerabend G, Dudley N, Jaeger T, Lassen B, Broome NP, Phillips A & Sandwith T *Governance of Protected Areas: From Understanding to Action* (2013) IUCN Gland, Switzerland

Convention on Biologcal Diversity SBSTTA *Protected and Conserved Areas Governance in the Convention on Biological Diversity: A Review of Key Concepts, Experiences, and Sources of Guidance* (2018)

Dalton D, Berger V, Kirchmeir H, Adams V, Botha J, Halloy S, Hart R, Švara V, Ribeiro KT, Chaudhary S & Jungmeier M *A Framework for Monitoring Biodiversity in Protected Areas and Other Effective Area-based Conservation Measures: Concepts, Methods and Technologies* IUCN WCPA Technical Report Series No. 7 (2024) IUCN Gland, Switzerland

Department of Climate Change, Energy, the Environment and Water *National Other Effective Area-based Conservation Measures Framework: Conserved Areas Site Assessment Tool* (2024) Commonwealth of Australia

Department of Climate Change, Energy, the Environment and Water *National Other Effective Area-based Conservation Measures Framework: Supporting Australia to Achieve 30 by 30 on Land* (2024) Commonwealth of Australia

Dudley N *Guidelines for Applying Protected Area Management Categories* (2013) IUCN Gland, Switzerland

FAO *A Handbook for Identifying, Evaluating and Reporting Other Effective Area-Based Conservation Measures in Marine Fisheries* (2022) Rome

Fernandez BH & Aria J *Other Effective Area-based Conservation Measures: Concept Guide and Guidelines for their Identification and Monitoring in Central America* (2024) IUCN

Hilty J, Worboys GL, Keeley A, Woodley S, Lausche B, Locke H, Carr M, Pulsford I, Pittock J, White JW, Theobald DM, Levine J, Reuling M, Watson JEM, Ament R & Tabor GM *Guidelines for Conserving Connectivity Through Ecological Networks and Corridors* Best Practice Protected Area Guidelines Series No. 30 (2020) IUCN Gland, Switzerland

Sharma M & Pasha MKS *Asian Protected Areas Partnership Roadmap for OECMs: APAP Regional OECMs Consultation Workshop* (2024) IUCN Asia Regional Office, Thailand

IUCN & WCPA *IUCN Green List of Protected and Conserved Areas: Standard, Version 1.0* (2016) IUCN Gland, Switzerland

IUCN-WCPA Task Force on OECMs *Recognising and Reporting Other Effective Area-Based Conservation Measures* (2019) IUCN Gland, Switzerland

IUCN-WCPA Freshwater Specialist Group *The Role of OECMs for Inland Water Biodiversity Outcomes.* Technical Note No. 17 (2024) IUCN Gland, Switzerland

Jonas HD, MacKinnon K, Marnewick D & Wood P *Site-level Tool for Identifying Other Effective Area-based Conservation Measures (OECMs) (First edition)* IUCN WCPA Technical Report Series No. 6 (2023) IUCN Gland, Switzerland

Lausche B *Guidelines for Protected Area Legislation* (2011) IUCN Gland, Switzerland

Lausche B, David Farrier, Jonathan Verschuuren, Antonio G. M. La Viña, Arie Trouwborst, Charles-Hubert Born & Aug L *The Legal Aspects of Connectivity Conservation, A Concept Paper* (2013) IUCN Gland, Switzerland

Mitchell BA, Stolton S, Bezaury-Creel J, Bingham HC, Cumming TL, Dudley N, Fitzsimons JA, Malleret-King D, Redford KH & Solano P *Guidelines for Privately*

Protected Areas Best Practice Protected Area Guidelines Series No. 29 (2018) IUCN Gland, Switzerland

Republic of Namibia *Framework and Guidelines for Identifying OECMs in Namibia* (2024)

Stolpe G, Howland E & Upton J *OECMs in Europe - The Way Forward for OECMs* IUCN WCPA Issues Paper Series No. 1 (2024) IUCN Gland, Switzerland

WWF & IUCN-WCPA *A Guide to Inclusive, Equitable and Effective Implementation of Target 3 of the Kunming-Montreal Global Biodiversity Framework (Version 1)* (2023)

Zhang Y, Zhang L, Sun Y, Li D, Wang W, Jin T & Xu J *A Stocktaking Report on Other Effective Area-based Conservation Measures in China* (2024) IUCN Gland, Switzerland

National Legislation

Communal Property Associations Act 28 of 1996

Conservation of Agricultural Resources Act 43 of 1983

Deed Registries Act 47 of 1937

Defence Act 42 of 2002

Environment Conservation Act 73 of 1989

Extension of Security of Tenure Act 62 of 1997

Government Immovable Asset Management Act 19 of 2007

Income Tax Act 58 of 1962

Infrastructure Development Act 23 of 2014

Interim Protection of Informal Land Rights Act 31 of 1996

Kwazulu-Natal Ingonyama Trust Act 3KZ of 1994

Local Government Municipal Property Rates Act 6 of 2004

Marine Living Resources Act 18 of 1998

Marine Spatial Planning Act 16 of 2018

Mountain Catchment Areas Act 63 of 1970

Mining Titles Registration Act 16 of 1967

National Environmental Management Act 107 of 1998

NEM: Biodiversity Act 10 of 2004

NEM: Integrated Coastal Management Act 24 of 2008

NEM: Protected Areas Act 57 of 2003

National Forests Act 84 of 1998

National Heritage Resources Act 25 of 1999

National Water Act 36 of 1998

Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998

Restitution of Land Rights Act 22 of 1994
Sea Birds and Seals Protection Act 46 of 1973
Spatial Planning and Land Use Management Act 16 of 2013
State Land Disposal Act 48 of 1961
Trust Property Control Act 57 of 1998
Upgrading of Land Tenure Rights Act 112 of 1991
World Heritage Convention Act 49 of 1999

Provincial Legislation

Bophuthatswana Nature Conservation Act 3 of 1973
Eastern Cape Parks and Tourism Agency Act 2 of 2010
Eastern Cape Parks and Tourism Agency Act 3 of 2024
Gauteng Planning and Development Act 3 of 2003
Gauteng Removal of Restrictions Act 3 of 2003
KwaZulu-Natal Nature Conservation Act 29 of 1992
KwaZulu-Natal Nature Conservation Management Act 9 of 1997
KwaZulu-Natal Nature Conservation Management Amendment Act 5 of 1999
Kwazulu-Natal Planning and Development Act 6 of 2008
Land Use Planning Ordinance (Cape) 15 of 1985
Limpopo Environmental Management Act 7 of 2003
Limpopo Tourism Act 2 of 2009
Mpumalanga Nature Conservation Act 10 of 1998
Mpumalanga Tourism and Parks Agency Act 5 of 2005
Nature Conservation Act (Ciskei) 10 of 1987
Nature Conservation Ordinance (Cape) 19 of 1974
Nature Conservation Ordinance (OFS) 8 of 1969
Nature Conservation Ordinance (Transvaal) 12 of 1983
Northern Cape Heritage Resources Authority Act 9 of 2013
Northern Cape Nature Conservation Act 9 of 2009
Northern Cape Planning and Development Act 7 of 1998
North West Biodiversity Management Act 4 of 2016
North West Parks and Tourism Board Act 2 of 2022
Townships Ordinance (OFS) 9 of 1969
Town-Planning and Townships Ordinance (Transvaal) 15 of 1986
Transkei Environmental Conservation Decree 9 of 1992

Western Cape Biodiversity Act 6 of 2021

Western Cape Land Use Planning Act 3 of 2014

National Regulations & Notices

GN R1111 in GG No. 19205 of 2 September 1998 (Marine Living Resources Regulations)

GN R547 in GG No. 33306 of 18 June 2010 (Environmental Management Framework Regulations)

GN 1032 in GG No. 33734 of 12 November 2010 (Declaration of Phase 2A of the Olifants River Water Resources Development Project Offsite Mitigation Area as a Controlled Forest Area under Section 17(2) of the National Forests Act)

GN 474 in GG No. 35455 of 20 June 2012 (Policy for the Small-Scale Fisheries Sector in South Africa)

GN R982 in GG No. 38282 of 4 December 2014 (Environmental Impact Assessment Regulations)

GN R983 in GG No. 38282 of 4 December 2014 (Environmental Impact Assessment Regulations Listing Notice 1)

GN R984 in GG No. 38282 of 4 December 2014 (Environmental Impact Assessment Regulations Listing Notice 2)

GN R985 in GG No. 38282 of 4 December 2014 (Environmental Impact Assessment Regulations Listing Notice 3)

GN 229 in GG 39790 of 8 March 2016 (Regulations Relating to Small-Scale Fishing)

GN 1067 in GG No. 40286 of 16 September 2016 (Duration of Small-Scale Fishing Rights)

GN 385 in GG No. 40815 of 28 April 2017 (Declaration of Phase 2A of the Olifants River Water Resources Development Project (ORWRDP) Offsite Mitigation Area as a Temporary Protected Woodland under the National Forests Act)

GN R548 in GG No. 21239 of 2 June 2000 (Regulations under the National Heritage Resources Act)

GN 1339 in GG No. 43992 of 11 December 2020 (Declaration of the Grey Dell and Fort Grey Forest Areas as a Natural Forest under Section 7(2) of the National Forests Act)

GN 1340 in GG No. 43992 of 11 December 2020 (Declaration of the Grey Dell and Fort Grey Forest Areas as a Controlled Forest Area under Section 17(2) and 7(2) of the National Forests Act)

GN 533 in GG No. 44724 of 18 June 2021 (National Estuarine Management Protocol)

GN 3132 in GG No. 48187 of 10 March 2023 (Publication of Draft Marine Sector Plans for Public Comment)

National Biodiversity-Related Policies, Plans & Strategies

DEA *National Co-Management Framework* (2010)

DEA *National Buffer Zone Strategy for National Parks* (2012)

DEA *National Biodiversity Economy Strategy* (2016)

DEA *South African Strategy for the Biosphere Reserve Programme* (2016-2020)

DEA *National Biodiversity Strategy & Action Plan* (2015-2025)

DEA *National Protected Areas Expansion Strategy* (2018)

DEA & SANBI *Biodiversity Stewardship Guideline* (2018)

DEFF *National Botanical Garden Expansion Strategy* (2019-2030)

DFFE *Revised National Biodiversity Framework* (2019-2024)

DFFE *Game Meat Strategy for South Africa* (2023)

DFFE *National Biodiversity Offset Guideline* (2023)

DFFE *White Paper on Conservation and Sustainable Use of South Africa's Biodiversity* (2023)

DFFE *Policy Position on the Conservation and Sustainable Use of Elephant, Lion, Leopard and Rhinoceros* (2024)

DFFE *Draft Revised National Biodiversity Economy Strategy* (2024)

Government of South Africa *National Framework for Marine Spatial Planning in South Africa* (2023)

SANBI *National Biodiversity Assessment* (2018)

Domestic Reports & Studies

DFFE *Synthesis Workshop Outputs: 30x30 Implementation Workshop 6-8 June 2023* (2023)

DFFE *Other Effective Area-Based Conservation Measures (OECMs) in Marine and Coastal Ecosystems in South Africa: Criteria and Exploration of Potential Mechanisms* (March 2024)

Marnewick D, Stevens C, Antrobus-Wuth R, Theron N, Wilson N, Naude K & Jonas H *Assessing the Extent of OECMs in South Africa: Final Project Report* (2020) BirdLife South Africa

Murison G, Hulley S, Maree B, McCann K, Boothway G, Wheeler A, Escott B & Whitecross M *Western Cape OECM Pilot Project Technical Review* (2023) WWF Nedbank Green Trust

Wright DR *A Review of the Alternate Area-Based Conservation Mechanisms in South Africa* (2019) Table Mountain Fund

Journal Articles

Alves-Pinto H, Geldmann J, Jonas H, Maioli V, Balmford A, Ewa Latawiec A, Crouzeilles R & Strassburg B "Opportunities and Challenges of Other Effective Area-based Conservation Measures (OECMs) for Biodiversity Conservation" (2021) *Perspectives in Ecology and Conservation* 115-120

Armitage D, Mbatha P, Muhl EK, Rice W & Sowman M "Governance Principles for Community-centered Conservation in the Post-2020 Global Biodiversity Framework" (2020) *Conservation Science and Practice* 1-18

Bhola N, Klimmek H, Kingston N, Burgess ND, van Soesbergen A, Corrigan C, Harrison J & Kok MTJ "Perspectives on Area-Based Conservation and its Meaning for Future Biodiversity Policy" (2021) *Conservation Biology* 168-178

Chen X, Tengteng T, Han P, Yuyi J, Xiaodian Z, Biao Y & Li Z "Extablishing a Protected Area Network in Xinlong with Other Effective Area-Based Conservation Measures" (2024) *Conservation Biology* 1-13

Claudet J, Ban NC, Blythe J, Briggs J, Darling E, Gurney GG, Palardy JE, Pike EP, Agostini VN & Ahmadia GN "Avoiding the Misuse of Other Effective Area-based Conservation Measures in the Wake of the Blue Economy" (2022) *One Earth* 969-974

Cook CN, Lemieux CJ & Kroner RG "Increasing Transparency and Accountability in Global Protected Area and Conserved Area Reporting" (2024) 7 *One Earth* 421-430

Cook CN "Progress Developing the Concept of Other Effective Area-based Conservation Measures" (2024) *Conservation Biology* 1-15

Cook CN, Rao M, Clyne PJ, Rathbone V, Barrientos C, Boveda A, Diment A, Parra J, Falabella V, Linkie M, Kujirakwinja D, Ostrowski S, Olson K, Patankar V, Rasolofomanan L & Grantham H "Evaluating the Likelihood for Area Important for Conservation to be Recognised as OECMs" (2024) BioRXiv (https://doi.org/10.1101/2024.02.05.579011)

Cook CN "Diverse Approaches to Protecting Biodiversity: The Different Conservation Measures Discussed as Possible Other Effective Area-Based Conservation Measures" (2024) *Conservation Letters* 1-15

Diz D, Johnson D, Riddell M, Rees S, Battle J, Gjerde K, Hennige S & Roberts JM "Mainstreaming Marine Diodiversity into the SDGs: The Role of Other Effective Area-based Conservation Measures (SDG 14.5)" (2018) *Marine Policy* 251-261

Donald PF, Buchanan GM, Balmford A, Bingham H, Couturier AR, La Rosa GE, Gacheru P, Herzog SK, Jathar G, Kingston N, Marnewick D, Maurer G, Reaney L, Shmygaleva T, Sklyarenko S, Stevens CMD & Butchart SHM "The Prevalence, Characteristics and Effectiveness of Aichi Target 11′s 'Other Effective Area-based Conservation Measures' (OECMs) in Key Biodiversity Areas" (2019) *Conservation Letters* 1-8

Dudley N, Jonas H, Nelson F, Parrish J, Pyhälä A, Stolton S & Watson JEM "The Essential Role of Other Effective Area-Based Conservation Measures in Achieving Big Bold Conservation Targets" (2018) *Global Ecology and Conservation* 1-7

Echeverri J, Cely-gómez A, Zafra-calvo N, González J, Matallana-tobón C, Santamaría M & Galán S "Applicaton of Site-level Assessment of Governance and Equity (SAGE) Methodology to a Sandidate OECM: Andakí Municipal Natural Park, Caquetá, Colombia" (2021) *PARKS* 85-90

Eghenter C "Indigenous Effective Area-Based Conservation Measures: Conservation Practices Among the Dayak Kenyah of North Kalimantan" (2018) *PARKS* 69-78

Estradivari, Agung MF, Adhuri DS, Ferse SCA, Sualia I, Andradi-Brown DA, Campbell SJ, Iqbal M, Jonas HD, Lazuardi ME, Nanlohy H, Pakiding F, Pusparini NKS,

Ramadhana HC, Ruchimat T, Santiadji IWV, Timisela NR, Veverka L & Ahmadia GN "Marine Conservation eyond MPAs: Towards the Recognition of Other Effective Area-Based Conservation Measures (OECMs) in Indonesia" (2022) *Marine Policy* 1-12

Fitzsimons J, Stolton S, Dudley N & Mitchell B "Clarifying 'Long-term' for Protected Areas and Other Effective Area-based Conservation Measures (OECMs): Why Only 25 years of 'Intent' Does Not Qualify" (2024) *PARKS* 89-93

Fitzsimons JA, Partridge T & Keen R "Other Effective Area-Based Conservation Measures (OECMs) in Australia: Key Considerations for Assessment and Implementation" (2024) *Conservation* 176-200

Geldmann J, Deguignet M, Balmford A, Burgess ND, Dudley N, Hockings M, Kingston N, Klimmek H, Lewis AH & Rahbek C "Essential Indicators for Measuring Site-based Conservation Effectiveness in the Post-2020 Global Biodiversity Framework" (2021) *Conservation Letters* (https://doi.org/10.1111/conl.12792)

Gray PA, Cheriton D, Gaetz N, Lehman P, Sherwood J, Beechey TJ & Lemieux CJ "Comparing Screening Tools for Assessment of Potential 'Other Effective Area-Based Conservation Measures' in Ontario, Canada" (2018) *PARKS* 31-48

Gurney GG, Adams VM, Álvarez-Romero JG & Claudet J "Area-based Conservation: Taking Stock and Looking Ahead" (2023) *One Earth* 98-104

Gurney GG, Darling ES, Ahmadia GN, Agostini VN, Ban NC, Blythe J, Claudet J, Epstein G, Estradivari, Himes-Cornell A, Jonas HD, Armitage D, Campbell SJ, Cox C, Friedman WR, Gill D, Lestari P, Mangubhai S, McLeod E, Muthiga NA, Naggea J, Ranaivoson R, Wenger A, Yulianto I & Jupiter SD "Biodiversity Needs Every Tool in the Box: Use OECMs" (2021) *Nature* 646-649

Hardy MJ, Fitzsimons JA, Bekessy SA & Gordon A "Exploring the Permanence of Conservation Covenants" (2017) 10(2) *Conservation Letters* 221-230

Hockings M, Hardcastle J, Woodley S, Sandwith T, Wilson J, Bammert M, Valenzuela S, Chataigner B, Lefebvre T, Leverington F, Lopoukhine N, MacKinnon K & Londoño JM "The IUCN Green List of Protected and Conserved Areas: Setting the Standard for Effective Area-based Conservation" (Nov 2019) *PARKS* 57-66

Jonas HD, Ahmadia GN, Bingham HC, Briggs J, Butchart SHM, Cariño J, Chassot O, Chaudhary S, Darling E, DeGemmis A, Dudley N, Fa JE, Fitzsimons J, Garnett S, Geldmann J, Kroner RG, Gurney GG, Harrington AR, Himes-Cornell A, Hockings M, Jonas HC, Jupiter S, Kingston N, E TcaL, Lieberman S, Mangubhai S, Marnewick D, Matallana-Tobón CL, Maxwell SL, Nelson F, Parrish J, Ranaivoson R, Rao M, Santamaria M, Venter O, Visconti P, Waithaka J, Painemilla KW, Watson JEM & Weizäcker Cv "Equitable and Effective Area-based Conservation: Towards the Conserved Areas Paradigm" (2021) *PARKS* 71-83

Jonas HD, Barbuto V, Jonas HC, Kothari A & Nelson F "New Steps of Change: Looking Beyond Protected Areas to Consider Other Effective Area-Based Conservation Measures" (2014) *PARKS* 111-128

Jonas HD, Bingham HC, Bennett NJ, Woodley S, Zlatanova R, Howland E, Belle E, Upton J, Gottlieb B, Kamath V, Lessmann J, Delli G, Dubois G, Ahmadia G, Claudet J, Cook C, Deza J, Grorud-Colvert K, Gurney G, Lemieux CJ & Ruiz L "Global Status and Emerging Contribution of Other Effective Area-based Conservation Measures

(OECMs) Towards the '30x30' Biodiversity Target 3" (2024) *Frontiers in Conservation Science* (https://doi.org/10.3389/fcosc.2024.1447434)

Jonas HD, Lee E, Jonas HC, Matallana-Tobon C, Wright KS, Nelson F & Enns E "Will 'Other Effective Area-based Conservation Measures' Increase Recognition and Support for ICCAs?" (2017) *PARKS* 63-77

Jonas HD, MacKinnon K, Dudley N, Hockings M, Jessen S, Laffoley D, MacKinnon D, Matallana-Tobón CL, Sandwith T, Waithaka J & Woodley S "Editorial Essay: Other Effective Area-based Conservation Measures: From Aichi Target 11 to the Post-2020 Biodiversity Framework" (2018) *PARKS* 9-16

Laffoley D, Dudley N, Jonas H, MacKinnon D, MacKinnon K, Hockings M & Woodley S "An Introduction to 'Other Effective Area-Based Conservation Measures' Under Aichi Target 11 of the Convention on Biological Diversity: Origin, Interpretation and Emerging Ocean Issues" (2017) *Aquatic Conservation* 130-137

Lemieux CJ, Kraus DT & Beazley KF "Running to Stand Still: The Application of Substandard OECMs in National and Provincial Policy in Canada" (2022) *Biological Conservation* 1-6

Maini B, Blythe JL, Darling ES & Gurney GG "Charting the Value and Limits of Other Effective Conservation Measures (OECMs) for Marine Conservation: A Delphi Study" (2023) *Marine Policy* 1-6

Marnewick D, Stevens CM, Jonas H, Antrobus-Wuth R, Wilson N & Theron N "Assessing the Extent and Contribution of OECMs in South Africa" (2021) *PARKS* 57-70

Matallana-Tobón CL, Santamaría M, Tapias AA, Solano C & Galán S "Rethinking Nature Conservation in Colombia: A Case Study of Other Effective Area-Based Conservation Measures" (2018) *PARKS* 89-98

Mitchell BA, Fitzsimons JA, Stevens CMD & Wright DR "PPA or OECM? Differentiating Between Privately Protected Areas and Other Effective Area-Based Conservation Measures on Private Land" (2018) *PARKS* 49-60

Paterson A "Other Effective Area-based Conservation Measures, Biodiversity Stewardship and Statutory intervention – A South African Perspective" (2023) *Potchefstroom Electronic Law Journal* 1-31

Paterson A "Scoping the Potential Influence of Law on Terrestrially Located Other Effective Area-Based Conservation Measures" (2023) *Law, Environment and Development Journal* 32-50

Paterson A "Learning from the Protected Areas - Distilling Lessons for a Potential Future OECM Statutory Framework in South Africa" (2024) 35(2) *Stellenbosch Law Review* 1-31 (in press)

Robinson JA, Stroud DA, Jennings K, Grady S, Mahon C, Hwakins K, Abbott P, McCarthy B & Pienkowski MW "Developing Statements of Compliance for UK Protected Areas and OECMs" (2024) *PARKS* 37-45

Rodríguez-Rodríguez D, Sánchez-Espinosa A & Abdul Malak D "Potential Contribution of OECMs to International Area-based Conservation Targets in a Biodiversity Rich Country, Spain" (2021) *Journal for Nature Conservation* (https://doi.org/10.1016/j.jnc.2021.126019)

Salafsy N, Cortez PM, de Meyer K, Dudley N, Klimmek H, Lewis A, Macrae D, Mitchell B, Redford KH & Sharma M "A Standard Lexicon of Terms for Area-Based Conservation Version 1.0" (2024) *Conservation Biology* 1-12

Schreckenberg K, Franks P, Martin A & Lang B "Unpacking Equity for Protected Area Conservation" (2016) *PARKS* 11-26

Waithaka J & Njoroge GW "The Role of Potential OECMs in Safeguarding Space for Nature in Kenya: A Case Study of Wildlife Conservancies" (2018) *PARKS* 99-106