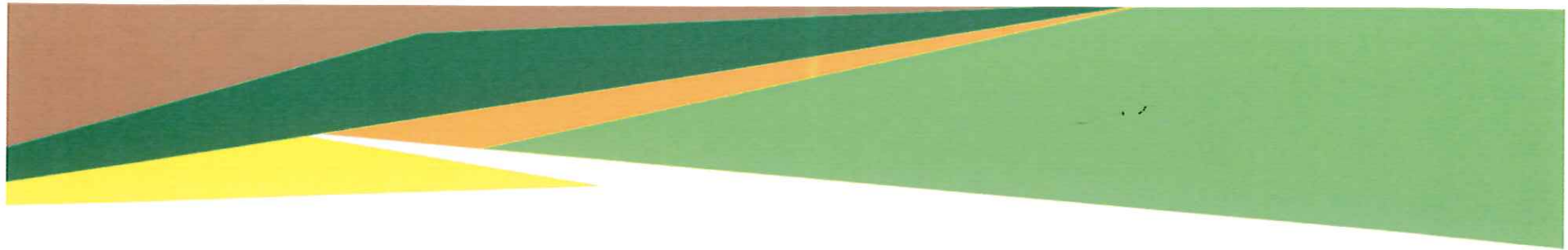


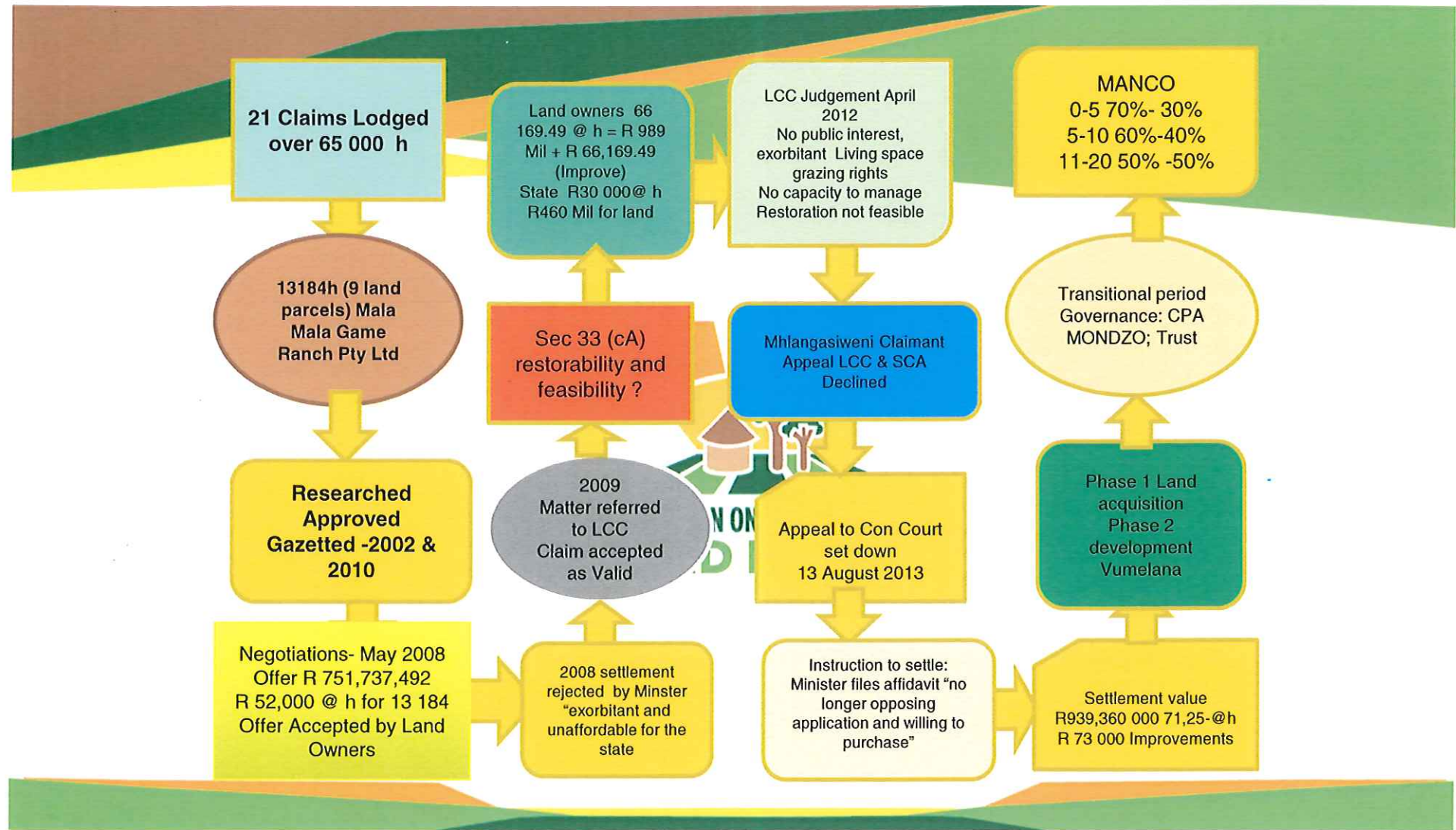
180613 DC RURAL



**SETTLEMENT OF THE MALAMALA GAME RANCH TO THE N'WANDLAMHARHI CPA
PRESENTATION TO THE PORTFOLIO COMMITTEE ON RURAL DEVELOPMENT AND LAND REFORM**

13 JUNE 2018





MALAMALA BRIEFING REPORT



BACKGROUND

3

- Claims were lodged by twenty one (21) claimants in their respective capacity as individuals and also as representatives of their own communities.
- Claimants have lodged claims against twenty one (21) properties consisting of sixty three(63) portions, measuring 65 000 hectares in total extent.
- Properties claimed included nine(9) land parcels used to be owned by MalaMala Game Ranch (Pty) Ltd, measuring 13 184.1601 hectares in total extent, which are the subject of this presentation.
- After the Regional Land Claims Commissioner was satisfied that these claims meet the requirements of the Restitution Act, he thereafter caused a notice of the claim to be published in the Government Gazette in 2002 and 2010.
- The Gazette Notice was made known to the land owners, and as a results there were no objections received disputing the merits of the claim.



NEGOTIATIONS

- In **May 2008**, an offer to the amount of **R751,737,492** was made (inclusive of the 329 Hectares initially not gazetted) this included improvements to the value of **R66 169,492** .
- The offer was based on **R52,000** per Hectare for **13 184** Hectares.
- The offer was accepted by the Landowners, however subject to Ministerial approval.
- This offer was **rejected** by the Minister on the basis that it was exorbitant and unaffordable for the state.



REFFERAL TO COURT

- After settlement negotiations collapsed, this matter was referred to the Land Claims Court for Adjudication in 2009.
- The Land Claims Court had accepted that the claimants had a valid land claim.
- The only issue to be determined was whether restoration was feasible within the meaning of Sec 33 (cA) of the Restitution Act.
- The issue of determining feasibility was based on the landowners demanding payment of R 989 million as compensation for the land, excluding improvements valued @ R66,169.49 , whereas the state was prepared to pay an amount of R460 million as compensation for the land, arguing that anything in excess would be unfeasible.



REFFERAL TO COURT CONTI....

The Judgment was handed down on 19 April 2012 by Judge Geldenhuys that :

- It would not be in the interest of the public to pay such an exorbitant amount as the claimants have only been dispossessed of a living space, grazing rights and cropping land. Restoration of the property to them would amount to over-compensation.
- The Court argued further that the claimants did not have the requisite capacity to manage the land, and as a result restoration would be unfeasible.
- The claimants had sought leave to appeal the matter, which was declined and also failed at the SCA. They then approached the Constitutional Court seeking leave to appeal against the judgement and order of the Land Claims Court.



REFFERAL TO COURT CONTI...

- The Constitutional Court set the matter down for hearing for 13 August 2013.
- The First Respondent “Minister of DRDLR” filed an affidavit to the effect that he was no longer opposing the application but, instead, was willing to purchase the land on behalf of the claimants.
- The matter was therefore removed from the roll and the Court issued a directive that “the application under CCT 111/12 set down for hearing on 13 August 2013 be removed from the roll”, and
- That the First Respondent is required to file a report with the Registrar of the Court by **Friday 8 November 2013** on the progress made in settling the land claim and related matters.



INTERVENTION

The Minister of DRDLR requested that the matter be removed from the Constitutional Court roll, and that the parties must settle the matter out of Court.

Negotiations began immediately and were led by the Chief Land Claims Commissioner:

- Minister legal representative;
- Commission legal representatives;
- Land Owners; and
- Claimant Legal representatives.

The parties had finally settled the claim on these properties for an amount of R939,360,000.00 for the acquisition of the land, calculated a R71,250.00 per hectare to acquire 13 184 hectares. (note 2008 vs 2013 values), the acquisition of the improvements at R73,169,492.00 and R7000,000.00 for movables.



SETTLEMENT FRAMEWORK

The first phase of the negotiation mandate was to focus on the acquisition of land and improvements, and subsequently as phase two to negotiate co-management between the claimants and landowners.

In the second phase of the negotiations to discuss the co-management partnership, Vumelana Advisory Fund was appointed as Transactional Advisors.

The previous landowners requested that they be allowed a transitional period which its term as approved and signed, would expire on 31 January 2015, with a monthly rental of R700, 000.00, in order to allow enough time on the second phase negotiations around the co-management agreement.



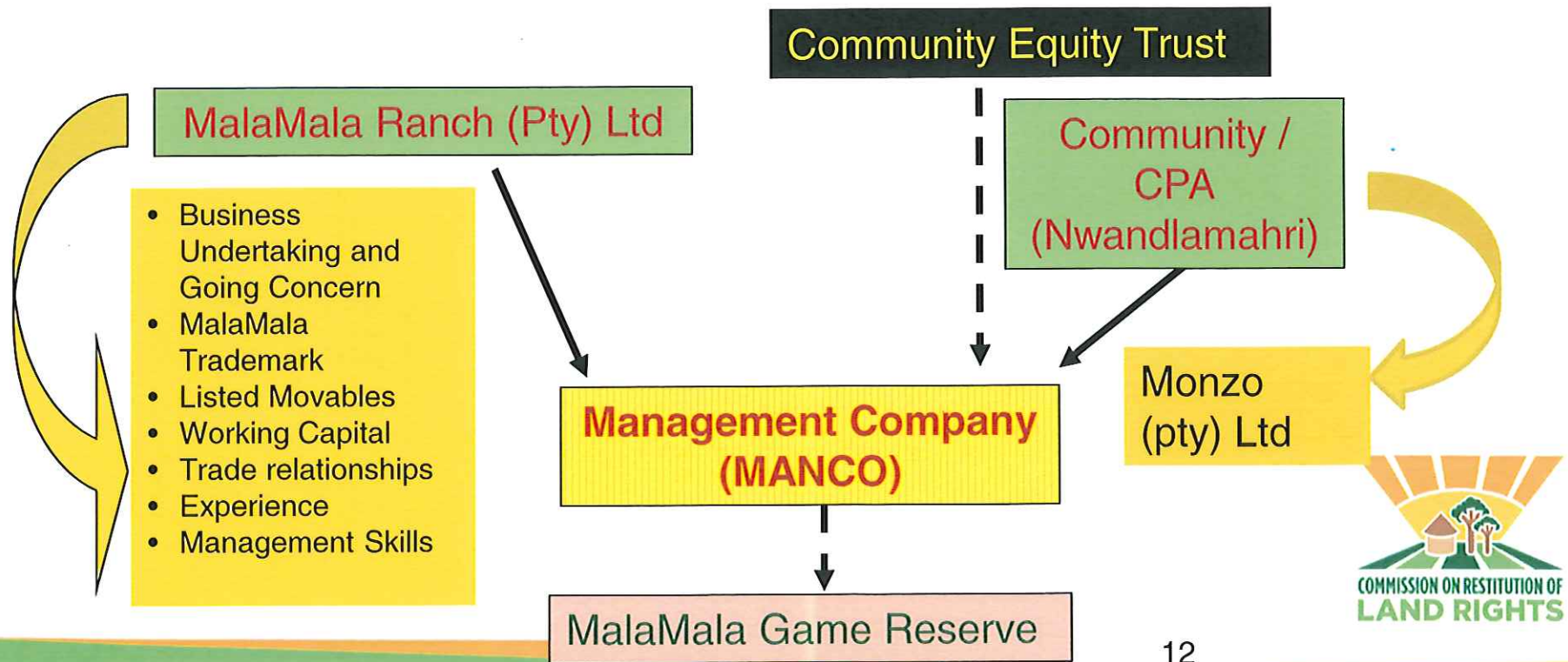
SETTLEMENT STATISTICAL INFORMATION

Name of claim	Mhlanganisweni Community
Location, Municipal area, Province	Bushbuckridge Local Municipality
No. of claims lodged	21 (on the entire Sabi Sand, including 2 duplicates)
Who lodged the claim	Z.L. Mhlongo and twenty (20) others
The value of land as per valuation	R939, 360, 000.00
Asking price by landowner	R939, 360, 000.00
Value of improvements excluding movable assets	R73, 169, 492.00
Land use	Conservation and Eco-tourism
Total number of properties claimed	21 farms comprising of 63 portions, and 9 of which affect this settlement
Total hectorage claimed	65 000
Total hectorage to be restored	13 184
No. of households	960
No. of beneficiaries	5760
Legal entity established	N'wandlamharhi CPA
Extent of compensatory land at time of dispossession	3919.6874
Nature and extent of rights lost	Unregistered and / or informal ownership rights
Options considered	Restoration of ancestral land



THE CO-MANAGEMENT

The Future Structure:



THE CO – MANAGEMENT PROPOSAL

The mechanics of the process (cont.)

- **The Shareholders** in MANCO would be MalaMala Ranch (Pty) Ltd and the Community
- The shareholding would alter progressively over time, ultimately resulting in the dilution of the MalaMala Ranch (Pty) Ltd stake in favour of the Community until such time as the Community holds a majority share.
- It was proposed that the dilution takes place over a period of 25 years on the following basis:

Years	MalaMala Ranch (Pty)	Community
0 - 10	70%	30%
11 - 25	60%	40%



INSTITUTIONAL ARRANGEMENT

14

- The claimants have formed a Communal Property Association (CPA) called N'wandlamharhi CPA which has been duly registered in terms of the Communal Property Association Act, Act .
- The CPA would function as a governance structure responsible for land administration and is comprised of 15 Committee members.
- In support of the CPA, there are four (4) sub-committees, viz, Social Cohesion Committee, Technical Committee, Economic Committee and the Governance Committee. Each committee consists of 4 people.
- The CPA is experiencing internal strife and tensions around leadership, beneficiary list and financial accountability. However, the joint venture business is operating very well.



SUMMARY

The benefits of a successful co-management agreement between MalaMala Ranch (Pty) Ltd and the Community:

Seamless continuation of an internationally recognised brand and commercially sustainable business with a 50 year track record

Immediate financial benefit to the Community through three revenue streams:

- Rental of land
- Annual dividends
- Tourism Levy

No financial commitment or liability/debt for the Community



THE CO – MANAGEMENT PROPOSAL

16

The principles on which the proposal is based (cont.)

- Progressive job creation, wage generation and community development over time
- The maximum possible financial benefit to the Community through three different income streams
- No financial commitment or financial risk and no liabilities for the Community
- Continued protection and maintenance of the environmental integrity of the property
- Establishment of a Broad Based Black Economic Empowerment (BBBEE) eco-tourism company



THE CO – MANAGEMENT PROPOSAL

- The property was transferred to the newly formed N'wandlamhari CPA on 30 October 2013.
- From the date of transfer of the land in October 2013, the property was leased back to MalaMala Ranch (Pty) Ltd under a Transitional Agreement until 28 February 2015, pending the conclusion of phase 2 of the settlement agreement by the parties.
- The CPA was to immediately received R700 000.00 per month in the interim.



THE MECHANICS OF THE PROCESS

The mechanics of the process

• **Income streams** – the Community would receive a monthly and annual income from the following three sources:

1. **Property rental** - MANCO would pay a monthly rental to the Community/CPA for the lease of the property on terms to be agreed between MalaMala Ranch (Pty) Ltd and the Community. MalaMala Ranch (Pty) Ltd was proposing a rental based on “percentage of revenue/turnover”
2. **Dividends** – MANCO would pay annual dividends comprising no less than 50% of operating profit after tax
3. **Community Tourism Levy** – MANCO would pay a Community Tourism Levy of R125 per bona fide tourist who occupied a bed night to a proposed “Community Equity Trust”



THE MECHANICS OF THE PROCESS (CONT.)

- **The Shareholders** in MANCO will be MalaMala Ranch (Pty) Ltd and the Community
- The shareholding will alter progressively over time, ultimately resulting in the dilution of the MalaMala Ranch (Pty) Ltd stake in favour of the Community until such time as the Community holds a majority share.
- It was finally agreed that the dilution would take place over a period of 20 years on the following basis:

Years	MalaMala Ranch (Pty)	Community
0 - 5	70%	30%
5-10	60%	40%
11 - 20	50%	50%



THE MECHANICS OF THE PROCESS (CONT.)

20

Summary of Contributions to MANCO:

MalaMala provided:

- All the listed movable assets required for the operation of the going concern
- Donation of the Brand MalaMala to the NEWCO
- Working capital by way of loan account
- Management skills, experience and proven expertise in the field of eco-tourism
- The Marketing and Sales functions necessary to keep patronage buoyant
- The continuation of established trade relationships

Above all, the sustainability and viability of the enterprise and the properties.



BBBE, EMPLOYMENT AND SKILLS DEVELOPEMTN

21

Broad Based Black Economic Empowerment

Establishment of a Broad Based BEE business through:

- Ownership
- Transfer of knowledge and skills
- Mentoring and coaching
- Procurement
- Community participation and beneficiation
- The multiplier effect on the local economy
- Empowering the community with a business with true operational capacity



BBBE, EMPLOYMENT AND SKILLS DEVELOPMENT

Employment and Skills Development Framework

- Together with the Community, establish a protocol to address future employment opportunities and agree on a skills development plan.
- Community is to identify a pool of prospective employees to fill vacancies that arise through natural attrition or business growth. Once identified, follow a recruitment programme in line with the company's human resources policies.
- Identify individuals to attend educational courses and training programmes in core aspects of the company's operations:
 - Tourism & hospitality management,
 - Wildlife & conservation management,
 - Sales & marketing,
 - Financial management etc.



BBBE, EMPLOYMENT AND SKILLS DEVELOPEMENT

Employment and Skills Development Framework (cont.)

- Use the Community Tourism Levy to fund such educational and training programmes.
- Provide on-the-job training, with the assistance of CATHSSETA, to individuals identified by the Community and company.
- Explore further job opportunities in the context of the Government's Expanded Public Works Programme (EPWP), specifically Working for Water, Working for Fire and Working for Wetlands. These can be accessed through the Provincial Department of Environmental Affairs to assist with job creation and poverty alleviation



BENEFICIATION INFORMATION ON THE MECHANICS OF THE PROCESS

24

- The business made a profit after tax of **R46 million** and declared a dividends of 79% wherein the community will receive an amount of R10.1 million, this is in addition to the **R12 million** which they received for the rentals for the financial year 2017/18
- 15 students have been admitted to various training institutions through bursaries which are funded by the community levy that is paid by each guest.
- A total amount of R5.7 million in community levy has already been allocated since March 2016.



EXCLUSIVE USE AREA (BUSINESS OPERATIONS AREA)

The MalaMala Exclusive use Area

: Eyerefield 343 KU; the Farm MalaMala 341 KU; MalaMala 359 KU; Flockfield 414 KU; Flockfiend 361 KU.

- Total area = 9,169 Ha
- Current bed density = 1 per 135Ha (assume total of 68 tourist beds)
- Potential max. bed density = 1 per 100Ha (assume maximum of 92 tourist beds)

Exclusive Use Area 2 - The Charleston Exclusive use Area: Charleston 378 KU (including the Remainder and Portion 1) and Toulon Portion 7.

- Total area = 4,014,26Ha
- Proposed bed density = 1 per 95,5Ha (assume total tourist bed rights of 42)



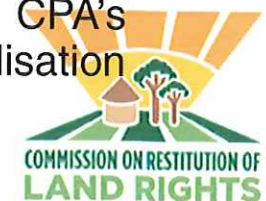
THE VUMELANA ADVISORY FUND (VUMELANA)

- To assist the N'wandlamharhi CPA to negotiate agreements for the management, marketing and operation of the MalaMala lodge and to establish the organisation structures and build the capacity needed to manage its affairs effectively.

Organisation Development support

Goal: designed to establish the necessary operating entities (including a vehicle to manage the CPA's commercial interests and a joint venture with the prospective managers of the lodge for the co-management of the lodge); policies, systems and

It will ensure that the key operational policies and procedures are in place and the necessary commercial vehicles established for the management of the CPA's commercial interests and the co-management of the lodge in time for the finalisation of agreements for the co-management of the lodge.



POST TRANSFER STATUS

- In line with the Framework Agreement for settlement of the MalaMala Claim, the following has been achieved:

Agreed Milestone	Achievements to date
Where possible, MalaMala undertook to employ community members	<ul style="list-style-type: none"> 84 Community members are permanently employed at MalaMala. During the refurbishment of the Main and Sable Camps, 27 community members were temporarily employed.
Redevelopment of MalaMala to the tune of R20 million by the end of year 8 of the Joint Venture	<ul style="list-style-type: none"> R34 million is to be spent on redevelopment of Main Camp and Sable Camp by June 2018 – 6 years ahead of agreed timeframe



POST TRANSFER STATUS CONTI...

Agreed Milestone	Achievements to date
<p>MalaMala is to pay a lease fee to the CPA , which is to start at R700,000.00 per month until the Joint Venture kicks in, whereafter, the lease fee will be reduced to R560,000.00 per month, with annual escalation</p>	<ul style="list-style-type: none"> • Since November 2014 up to December 2017, the CPA has received R36.2 million in lease rentals.
<p>MalaMala to pay Community Tourism Levy of R125 per guest. The funds are to be used for education and training of Community members in eco-tourism and conservation</p>	<ul style="list-style-type: none"> • Since November 2014 to date, the Community has received R5.5 million in Community Tourism Levy. • 15 Community members have been enrolled at various institutions so far.



POST TRANSFER STATUS CONTI...

- In line with the Framework Agreement for settlement of the MalaMala Claim, the following has been achieved:

Agreed Milestone	Achievements to date
<p>MalaMala to distribute 75% of net profit each year by payment of a cash dividend to shareholders</p>	<ul style="list-style-type: none"> In its first year of inception (2017 financial year), MalaMala joint venture paid a dividend of R40 million, equivalent to 83% of 2017 FY's profit after tax. R12 million of this amount, which constitutes 30% of the R40 million, was paid to the Community's company (Mondzo Community Investment (Pty) Ltd) Mondzo has since paid out R6 million of the R12 million to the CPA.



POST TRANSFER STATUS CONTI...

Agreed Milestone	Achievements to date
<p>MalaMala is to spend no less than R50 million in the development of a 42 bed Charleston Camp</p>	<ul style="list-style-type: none"> Phase 1 of the new development will result in the establishment of an 18-bed luxury tented camp of R60 million. Drawings have already been completed and the Environmental Impact Assessment (EIA) process is at an advanced stage.
<p>MalaMala is to pay a minimum annual lease fee of R2.4 million in respect of the new Charleston Camp as from 1 March 2019</p>	<ul style="list-style-type: none"> Commencement date for payments has not yet been reached. 1 March 2019 was agreed upon as the date in order to allow for approval and construction processes to be completed.

CHALLENGES & LESSONS FOR FUTURE SIMILAR CASES

31

- Membership (verification) disputes;
- Lack of accountability by CPA Executives;
- Lack of Models for benefits-sharing;
- Lack of skills;
- Underhand deals by some Community leaders without proper mandate from the Community;
- Separation of governance from business ensures sustainability of land restoration;
- CPA leaders are to be trained in corporate governance; and
- Mandate of the CRLR is often clouded by matters beyond the legal mandate as defined by the Restitution Act (e.g CPA disputes).



CONCLUSION

Goal: The OD support programme is designed to establish the necessary operating entities (including a vehicle to manage the CPA's commercial interests and a joint venture with the prospective managers of the lodge for the co-management of the lodge); negotiate the required agreements in a manner that best serves the interests of the CPA; and install the necessary policies, systems and procedures.

Process: The OD support process is designed to align with the transaction advisory support process. It will ensure that the key operational policies and procedures are in place and the necessary commercial vehicles established for the management of the CPA's commercial interests and the co-management of the lodge in time for the finalisation of agreements for the co-management of the lodge. The agreed steps are set out below.



THANK YOU

