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Kanyika Niobium Project

Resettlement Policy Framework



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Table of Contents

1	Background to the Resettlement Policy Framework	3
1.1	Introduction	3
1.2	Aims and Objectives of the Resettlement Policy Framework.....	3
1.3	Potential Users of the Resettlement Policy Framework.....	4
2	Resettlement Background	4
2.1	Relocation Area.....	4
2.2	Land Tenure	4
2.3	Description of Assets Requiring Relocation	8
3	Project Timeframes and Linkages to Resettlement	11
4	Legal Framework for Land Acquisition, Compensation and Resettlement	12
5	Guiding Principles for Resettlement Preparation and Implementation	13
5.1	Consultation with the general public and local authorities.....	13
5.2	Land acquisition procedures	13
5.3	Eligibility criteria and entitlements	15
5.4	Valuation Process.....	15
5.5	MONITORING AND EVALUATION.....	18
6	Conclusion.....	18

Attachment: GMMA Drawing: 00-G-001

1 Background to the Resettlement Policy Framework

As part of the overall Environmental Impact Assessment (EIA), a Resettlement Policy Framework (RPF) has been prepared to assist in planning resettlement activities and in preparation of the Kanyika Niobium Project (KNP) Relocation Action Plan (RAP). This document outlines the RPF based on extensive consultation with all stakeholders in the project and will be used as the basis of initial negotiations with the local residents.

1.1 INTRODUCTION

Globe Metals and Mining (Africa) Limited (GMMA) is proposing to develop the Kanyika Niobium Project (KNP) located in the Mzimba District in the Northern Region of Malawi. The KNP will involve the mining and processing of ore to produce Niobium and Tantalum products. GMMA is a Malawian company owned by Globe Metals and Mining Limited, an Australian based company. GMMA obtained an Exclusive Prospecting Licence (EPL 0188) in December 2005 with an area of 607 km². Exploration activities commenced in 2006 leading to the discovery of Niobium at Kanyika. GMMA commenced feasibility studies in 2009 and commissioned an Environmental Impact Assessment (EIA) in 2010.

The EIA has been undertaken in accordance to section 24 (2) of the Malawian Environment Management Act (No. 23 of 1996). The EIA commenced with the submission of the Project Brief to the Environmental Affairs Department (EAD) in December 2009 and was followed by submission of the Scoping Report in March 2011. As part of the overall EIA, the EAD requested that a RPF should be prepared for aspects of the project requiring resettlement.

1.2 AIMS AND OBJECTIVES OF THE RESETTLEMENT POLICY FRAMEWORK

The objective of RPF is to provide a framework for resettlement planning to ensure that project affected persons (PAPs) that reside or have assets in the project area are relocated and compensated for any losses incurred. The RPF is prepared as part of the requirements of the EIA and will be followed by a RAP. The RPF provides a framework for negotiation with relevant project stakeholders and includes the following:

- Baseline socio-economic data;
- Identification of stakeholders and PAPs;
- Applicable Malawian legislation for resettlement planning;
- A framework for the determination of compensation;
- A framework for consultation with all stakeholders; and
- A framework for resolution of disputes.

1.3 POTENTIAL USERS OF THE RESETTLEMENT POLICY FRAMEWORK

This RPF has been developed for use by the following stakeholders:

- Government of Malawi.
- PAPs.
- GMMA.
- Mzimba District Commissioner (DC).
- The Ministry of Agriculture.
- The Ministry of Lands.
- Traditional Authorities, Village Group Headmen and Village Headmen of affected areas.
- Development groups and agencies operating at the Kanyika.
- EAD.
- The Department of Antiquities.

2 Resettlement Background

2.1 RELOCATION AREA

The KNP area is outlined in GMMA Drawing 00-GA-001 appended to this document and summarised in Figure 2-1 General Arrangement of the Kanyika Niobium Project. The relocation area is defined by the project fence line shown on the drawing. Households shown within the fenced area in Figure 2-1 will be subject to relocation and compensation. A census was undertaken by GMMA of a portion of the relocation area in 2009. These data together with satellite imagery (2009) of the site has been used to prepare Figure 2-2 Croplands and Homesteads within the Proposed Relocation Area showing homesteads and croplands in the project area. The relocation area totals approximately 1007 ha and encompasses approximately 125 homesteads with an estimated total of 730 people.

2.2 LAND TENURE

Malawian Land Tenure and associated issues are governed by three Acts; these are the 1965 Land Act (Cap 57), the Registered Land Act (Cap 58), and the Customary Land Development Act (Cap 59). Land in Malawi has traditionally been divided into three tenure categories:

- **Customary Land:** customary land is the most dominant tenure in the country covering 68% of the land.

- **Private Land:** private land incorporates both freehold and leasehold land. Non-citizens are not permitted to own land in Malawi but are entitled to lease land for a period of 50 years
- **Public Land:** public land is occupied, used or acquired by the government and any other land which reverts to government on termination, surrender or fall-in of freehold or leasehold.

The KNP area is classified as Customary Land and falls under Traditional Authority. Acquisition will require consultation between the Traditional Authorities (Chief Mabulabo) and government represented by the District Commissioner for Mzimba. The Land Act Cap. 57:01 allows for government to acquire land, including the transfer of customary land to public land should it be of public interest and for the benefit of society. Any person that suffers disturbance or loss as a result of the acquisition shall be compensated and it is GMMA's intention that no person shall be worse off as a consequence of the relocation.

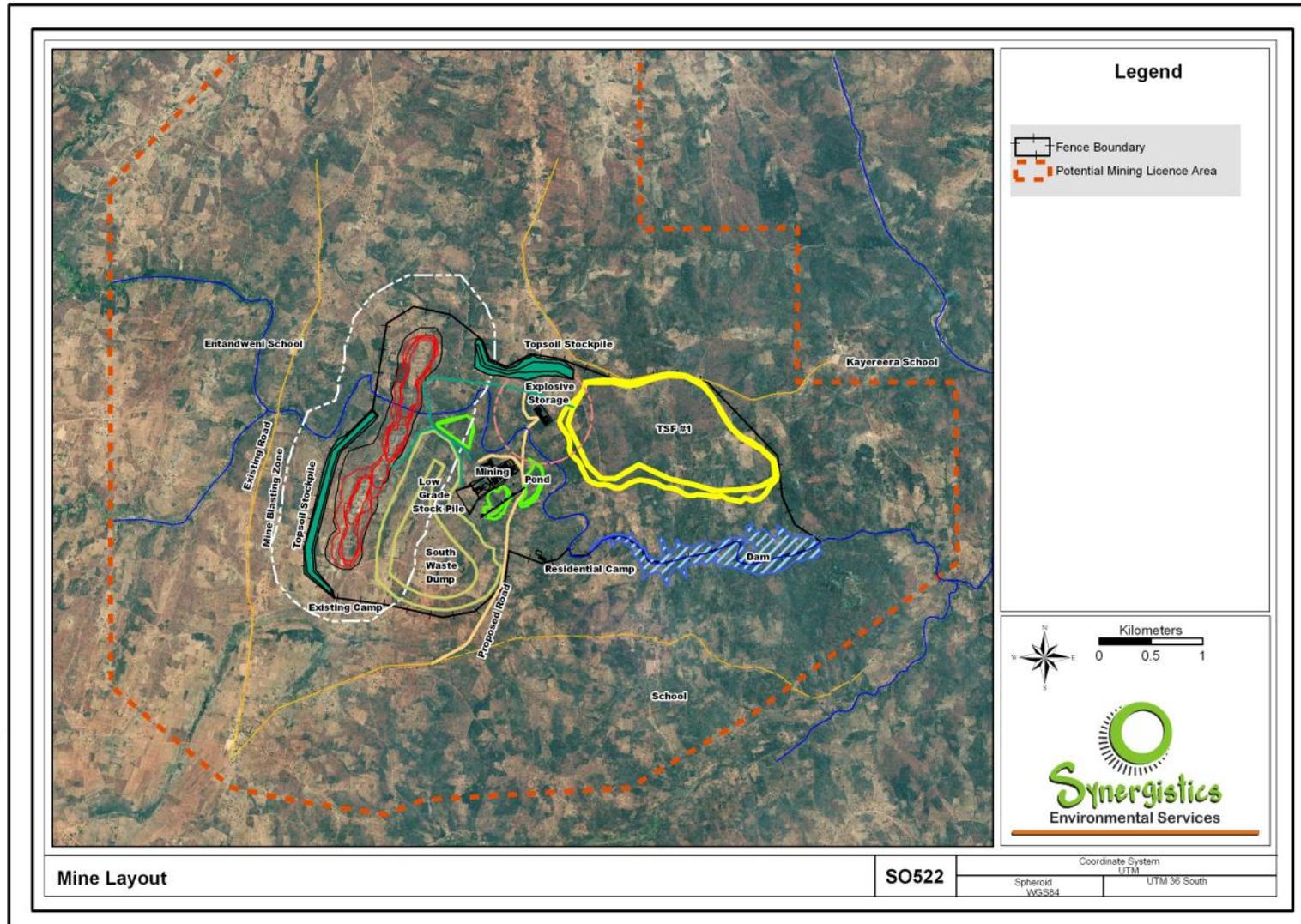


Figure 2-1 General Arrangement of the Kanyika Niobium Project

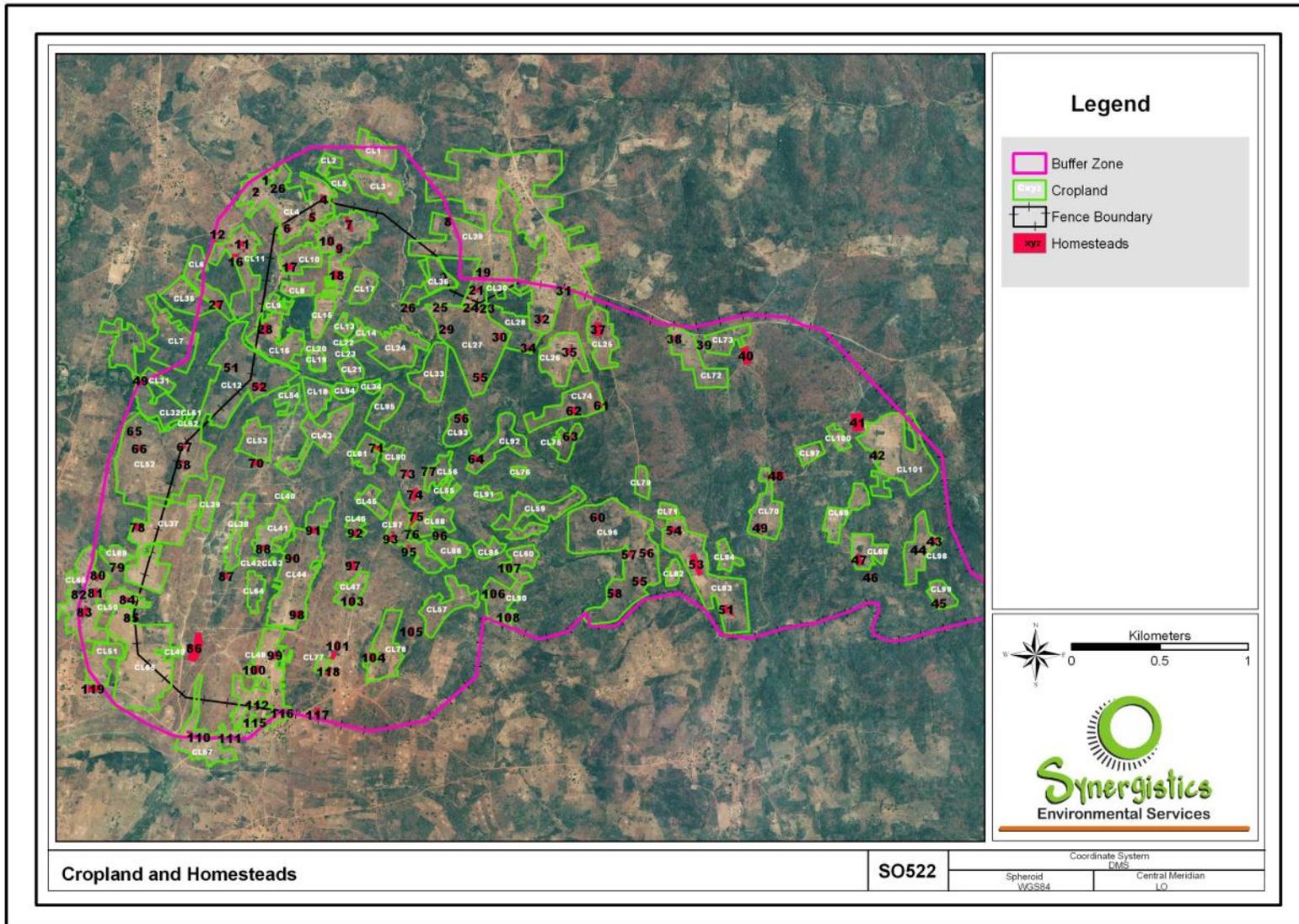


Figure 2-2 Croplands and Homesteads within the Proposed Relocation Area

2.3 DESCRIPTION OF ASSETS REQUIRING RELOCATION

The number of persons residing in the relocation area based on data collated in the 2009 GMMA census and is shown in Table 2-2.

Table 2—1 Description of Population within the Relocation Area

Estimated number of persons residing within the area	723
Average number of persons per household	5.8
Average number of children per household (up to 15 years)	2.9
Average number of adults per household (older than 15 years)	2.9
Number of household in the area:	125
Estimated number of structures within area	971
Average number of structures per village	7.8
Average footprint area covered per village	0.11 Ha
Total footprint area of villages	14 Ha

Homesteads within the KNP relocation area comprise a combination of residences, kitchens, bathrooms, toilets, kholas and granaries.

2.3.1 Croplands

Agriculture is the main source of livelihood in the area. Principal crops are: maize, tobacco, groundnuts, cassava and millet beans. Domestic animals include bullocks, cows, goats, chickens and pigs. Maize is the staple crop. Each of the homesteads can be expected to be associated with agricultural lands used by the residences of the homestead for the production of crops. The following information is of relevance with respect to croplands within the relocation area:

Table 2—2 Description of Croplands within the Relocation Area

Total number of croplands identified	100
Average size of croplands per homestead	3.3 ha
Total size croplands within the resettlement area	418.37ha

2.3.2 Cemeteries and Burial Sites

There are 7 recognised graveyards within the relocation area and numerous individual gravesites. GMMA commissioned a preliminary survey of gravesites by Mlambe Consulting. The Department of Antiquities (Antiquities) have been engaged to prepare a detailed inventory of graves and a relocation strategy. Antiquities will manage the actual relocation of those graves that are exhumed. The location of the cemeteries and burial sites identified is given in Figure 2-3.

Table 2—3 Description of Burial Sites Within the Relocation Area

DESCRIPTION OF SITE	LOCATION	mE	mS
Graveyard with 2 graves Nhlane Aron Village	Northern section of proposed open pit	577678.6722	8597241.449
Cemetery – ~100 Graves Nhlane Aron Village	North western section of the proposed open pit	572813.4622	8596974.579
Cemetery – ~20 Graves (Mberewere)	North west of proposed topsoil stockpile	573565.3362	8597162.853
Cemetery ~ 100 graves Nhlane Aron (Zebedia Village)	South east of Entandweni	572282.9257	8596291.379
Graveyard ~ 2 Adult graves and	East of GMMA	574572.4975	8595742.434

DESCRIPTION OF SITE	LOCATION	mE	mS
children (Akim Nguluwe Village)	prospecting camp		
Graveyard ~20 Graves (Nthondo Banda Village)	West of Kayeleka within proposed TSF	575901.0418	8596386.969
Cemetery ~100 graves (Sokani Village)	South of the proposed southern waste dump	573299.5142	8594727.213

2.3.3 Heritage Sites

In accordance with the Malawi Monuments Act, 9th August 1965, a Heritage Impact Assessment (HIA) was completed on the area. Features of high and medium heritage value on a local and regional scale are listed in Table 3-5. The location of the heritage sites is given in Figure 2-3.

Table 2—4 Description of Valuable Heritage Sites within the Relocation Area

DESCRIPTION OF SITE	LOCATION	mE	mS
Early Iron Age Site	South west of the proposed tailing storage facility	574637.5554	8596120.486
Iron Age Smelting Site	North of the western proposed topsoil stockpile area	572351.7088	8596439.396
Iron Age smelting Site	North of the proposed western topsoil stockpile area	572447.4137	8596499.976
Iron Age Smelting Site	North east of the orebody	573323.932	8597446.593

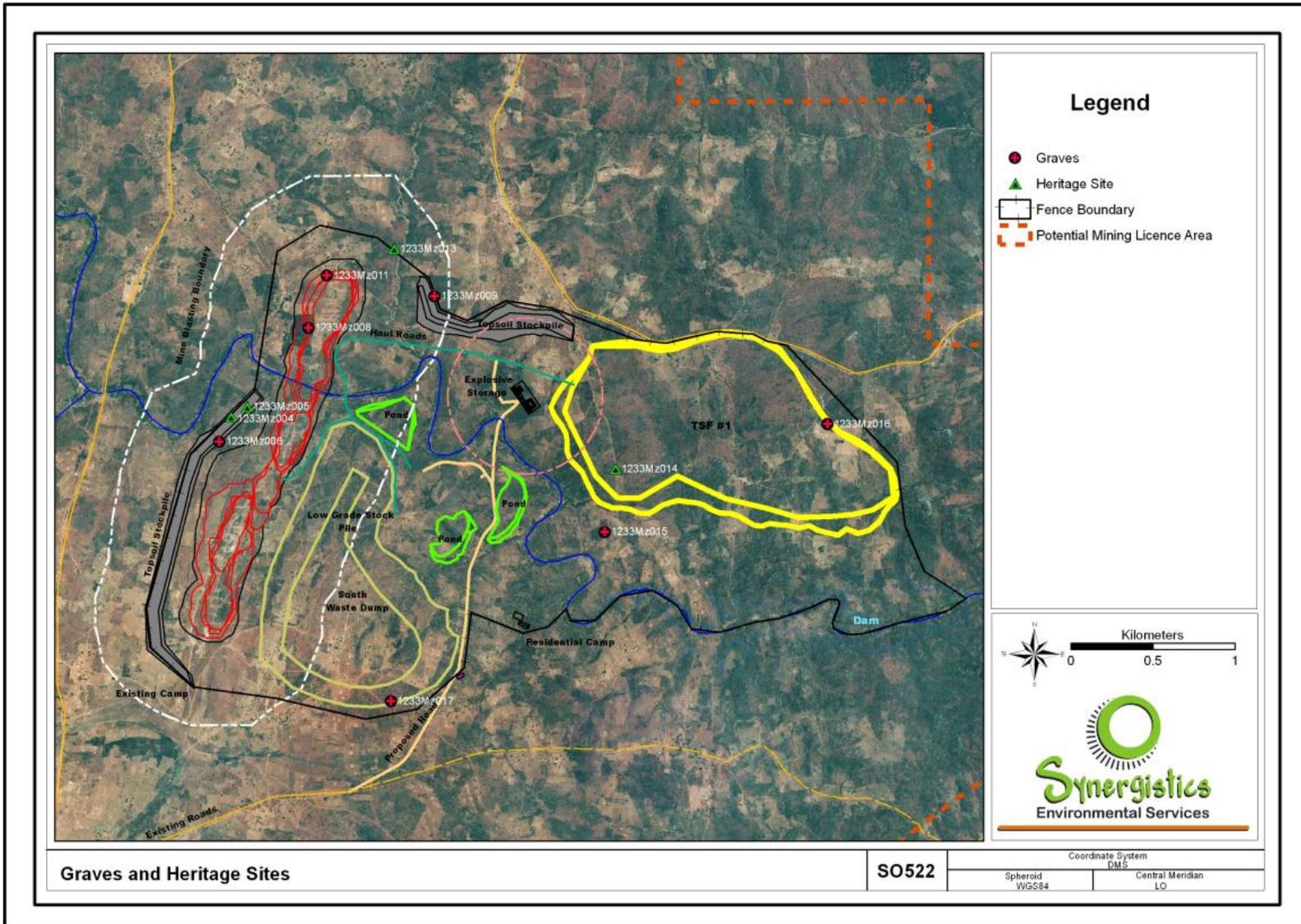


Figure 2-3 Graves and Heritage Sites within the Proposed Relocation Area

3 Project Timeframes and Linkages to Resettlement

The key milestones for the project and their relationship to the relocation are described in Table 3-1. A detailed schedule will be prepared as the GMMA DFS proceeds.

Table 3—1 Project Timeframes and Linkages to Resettlement

KNP TIMEFRAMES	RESETTLEMENT PLANNING
<p><u>The Planning Phase</u></p> <p>This phase involves the identification of stakeholders and preparation of the RPF.</p> <p>GMMA will complete the Definitive Feasibility Study during this period.</p>	<p>Preliminary Identification and consultation with PAPs. GMMA has completed a census of the KNP affected area which is reported in this document.</p> <p>Completion of the RPF outlining the plan going forward (May 2012).</p> <p>Detailed census prepared by the District Commissioners Office identifying all assets involved in the relocation. (June 2012).</p> <p>Appointment of independent third party by GMMA (June 2012).</p> <p>Valuation of assets and negotiation with GMMA and 3rd party to schedule of compensation (December 2012).</p> <p>Completion of the RAP by GMMA.</p>
<p><u>Implementation Phase</u></p> <p>This phase involves the identification of stakeholders and negotiation to establish eligibility and compensation.</p> <p>GMMA will complete detailed design and commence the Construction Phase.</p>	<p>Implement the RAP.</p> <p>Negotiate with PAPs for compensation payments with independent overview.</p> <p>Establish grievance procedure and RAP monitoring organisation.</p>
<p><u>Execution Phase</u></p> <p>This phase involves physical relocation and monitoring of the RAP.</p> <p>GMMA will complete construction and move to operations.</p>	<p>Staged relocation of PAPs .</p> <p>Monitoring of the RAP and addressing grievances.</p>

4 Legal Framework for Land Acquisition, Compensation and Resettlement

Malawi has developed a number of policies and legislation to guide environmentally sustainable development in various sectors of the economy. The aim of adopting these policies and legislative framework is to promote and consolidate sustainable socio-economic development in the country through the mainstreaming of environmental considerations in project planning and implementation. Some of the policies and legislation include the Constitution of the Republic of Malawi of 1995, the National Environmental Policy (NEP) of 2004, the Environment Management Act (EMA) of 1996, the National Forestry Policy of 1996, the National Forestry Act of 1997, the National Land Policy of 2002, the National Land Act of 1965, the National Land Resources Management Policy and Strategy of 1998, the Water Resources Management Policy and Strategy of 1994 and the Water Resources Act of 1969. Legislation specifically directed at the RPF is summarised in Table 4-1.

Table 4—1 Overview of Malawi Legislation Applicable to the RPF

LEGISLATION	RESETTLEMENT ASPECT	ADMINISTERING AUTHORITY	APPLICABILITY TO RESETTLEMENT PLANNING
Lands Acquisition Act, Cap 58:04	Land	Ministry of Lands and Natural Resource	Provides methodology for valuation of land
Malawi National Land Policy 2002	Land	Ministry of Lands and Natural Resource	Provides information on land tenure in Malawi
Land Act Cap. 57:01	Land	Ministry of Lands and Natural Resources	This act requires that any person that suffers disturbance, loss or damage as a result of the development must be paid compensation for such disturbance, loss and damage.
Forestry Act, 1997	Forests (forests in customary lands used for communal benefit)	Director of Forestry	Ensures the management of forests, any destruction of natural forests will have to be communicated to the Director of Forestry. Communities No forests are found in the affected area.
Monuments and Relics Act	Graves and heritage resources	Ministry of Antiquities	This Act will be considered for relocating graves
Section 28 (2) of the Constitution of Republic of Malawi, 1995	Property	Government of Malawi	States that no person shall be arbitrarily deprived of property
Town and Country Planning Act Cap 23:01	Compensation rates for people	Department of Valuation	Compensation for crops and trees is based on a standard rate set by the government. Compensation for buildings is based on market prevailing rates for material used to construct the building

5 Guiding Principles for Resettlement Preparation and Implementation

The resettlement planning follows the guiding principles listed below:

- Minimisation of persons affected by the development.
- Ensuring that no person relocated will be disadvantaged by the process and all claims will be treated in a fair and transparent manner.
- Involvement of government, the traditional authority and independent non-government organisations (NGOs) in planning and implementation.
- Adherence to the laws of Malawi and the guiding principles as set out by the International Finance Corporation (IFC).

5.1 CONSULTATION WITH THE GENERAL PUBLIC AND LOCAL AUTHORITIES

Extensive consultation has been undertaken with local stakeholders by means of community meetings held on site and in regional centres. A key participant has been the Mzimba District Commissioner and council. The council highlighted the need for proper consideration of project alternatives to minimise project impacts and maximise benefits. Community members from the project impact areas have also indicated the need for full and fair compensation of their property and land and that those displaced by the project should be given proper attention and support in a timely manner. Most of the people interviewed welcomed the project and are willing to give up their land and property for this development as long as they will be fully compensated.

Follow-up consultations will be carried out during the resettlement planning process and later during the relocation process to assess the effectiveness and efficiency of the process and highlight any unresolved issues and potential conflicts for the attention of the project administrators once the project is funded. GMMA maintains a stakeholder consultation programme and will maintain a close and transparent relationship with the Kanyika community.

5.2 LAND ACQUISITION PROCEDURES

GMMA will negotiate acquisition of land within the relocation area using agreed compensation and resettlement plans. The following procedures will be used to carry out the relocation:

GMMA in co-operation with the Mzimba District Commissioner shall initiate negotiations with the affected persons including the traditional leaders of the area and the owner or occupier of the land.

GMMA shall involve institutions and NGOs to facilitate successful and transparent negotiations. The Government (the Ministry responsible for Lands) shall serve notice through the District Commissioners and Chief Executives to the PAPs, clearly explaining the purpose of the land acquisition, the size of the area required and the owners or occupiers right to compensation in accordance with the existing legislation and policies.

The District Commissioner shall ascertain from the traditional leaders, the persons who have rights over the affected land for positive identification and compensation to correct persons.

The cut-off date for all claims to compensation shall be the time of completion of the DC's Census. Thereafter a final dossier shall be prepared and certified accurately showing the profile and other details of the registered owners including the size of land to be acquired. The profile will include:-

- a) The land to be acquired.
- b) Names of owners or occupiers of the land, as ascertained by the traditional leaders and other bona fide local residents.
- c) Names of the traditional and community leaders or representatives to assist in the process of land acquisition and resettlement;
- d) The estimated magnitude of impacts relative to the need for resettlement or compensation and valuation of assets for the compensation;
- e) Financial records to be maintained by the Ministry, District Assemblies and Ministry of Economic Planning and Development to permit calculation of the final cost of resettlement and compensation per household. Each household receiving compensation will have a dossier containing:
 - i. Detailed identification information, including name, date and place, of birth, next of kin, marital status etc.;
 - ii. Number of persons she or he claims as household or homestead dependants; the
 - iii. Amount of land available to the person or household when the dossier is opened
 - iv. Assets — including structures, resources, crops, etc.
 - v. Socio-economic status
- f) The dossiers will provide the foundation for monitoring and evaluation, as well as documentation of compensation agreed to, received and signed for. Additional information will be required for individual's eligibility for resettlement or compensation. This information will include:
 - a. level of income and of production.
 - b. inventory of material assets and any improvements made on the land.
- g) Proposed compensation offers and draft agreements to be signed by the affected persons and the developer;
- h) Details of alternative land (if applicable) inclusive of ancillary support services such as transport for physical resettlement, provision of housing, provision of crop starter packs and food support or any other relevant assistance that may be required;

- i) Details of resettlement after-care and assistance, where appropriate;
- j) Available employment opportunities for the PAPs to participate in the KNP activities.
- k) Mechanisms for monitoring and evaluation.
- l) A copy of the plan will be cleared by an independent third party NGO and deposited with the office of the District Commissioner or the Chief Executive, as the case may be, of the District Assembly and with the GVH and Traditional leaders of the area affected.

The land acquisition and compensation procedures shall ensure that persons affected either physically or economically by the project maintain or improve their livelihood.

5.3 ELIGIBILITY CRITERIA AND ENTITLEMENTS

The procedures for determining eligibility to compensation, resettlement assistance and rehabilitation assistance measures and the actual displaced persons shall consider the following factors:

- Those that have formal legal rights to land, including customary and traditional rights recognised under the laws of Malawi. This class of people includes those holding leasehold land, freehold land and land held within the family or passed through generations.
- Those who have no formal legal rights to land at the time the census begins but have a claim to such land or assets provided that such claims are recognized under the laws of Malawi. This class of people includes those that come from outside and given land by the local chief to settle.
- Those who have no legal right or claim to the land they are occupying. This class of people includes those that settle at a place on semi-permanent basis, or those settling at a place without any formal grant or authority.
- Vulnerable groups.

Displaced Persons who encroach on the KNP relocation area after the cut-off date shall not be entitled to Compensation, or any Resettlement Assistance or any other form of Rehabilitation Assistance. Entitlements for compensation shall be based on ownership and the various categories of losses identified during the DC field census. Due to the continued fluctuation of the Malawi Kwacha, the calculated values of assets will be adjusted with movements in the inflation index.

5.4 VALUATION PROCESS

The existing methods of valuation for compensation are based on the Malawi Legislation. The Ministry of Lands Natural Resources compensation schedules will be used to set compensation for assets such as physical buildings, crops, vegetables, fruit/plantation, trees and forest trees. The current valuation methods have several problems, and will be adjusted to Kanyika situation. Compensation will be calculated in Malawian Kwacha adjusted for inflation. For compensation in kind; items such as land, houses, other structures, building materials, seedlings, agricultural inputs and financial credits for equipment should be included. Assistance will include allowances for transfer, transportation and labour.

Currently there are a number of compensation schedules based on type of assets affected. These schedules are used to determine compensation for:

- Physical assets (buildings, bare land and other structures;
- Crops, fruit/plantation crops;
- Indigenous and exotic forest trees;
- Income earning activities.

Each compensation schedule has its own method for valuation as follows:

5.4.1 Valuation of physical assets

The Ministry responsible for lands is responsible for carrying out the valuation of physical assets. The owner is identified with the help of the Traditional Authority or village headman; or title documents are used as evidence or proof of ownership for leased physical assets. Values for affected buildings and bare lands are determined by taking into account the construction materials used, floor/surface area covered, age and location of building or property. The market value of a similar building, in the same location is used to calculate the compensation value based on 'Open Market Value'.

5.4.2 Valuation of field crops and fruit/plantation trees

The procedure for valuing affected crops and fruit/plantation trees will be based on predetermined produce unit prices. The valuation takes into account the type of crop the yield level (High, Medium or Low yield variety), the expected yield for and the produce unit price. The total value is arrived at by multiplying the yield (e.g. kg/ha) with the pre-determined produce unit price (Kwacha/kg.) and the area of land (ha). The unit price compensation schedule currently in use by the Ministry of Lands, Housing and Surveys was compiled in 1994. Valuation will be done based on a combination of staple foods and cash crops. The unit price (Kwacha per kilogram) of staple crop shall be taken as the highest market unit price over the past 3 years. This unit price of the commodity, multiplied by the yield (kg/ha), and multiplied by the total area (ha) will give the compensation value for the crop. The yield (kg/ha) shall be the high yield for that particular crop variety as determined by the Ministry of Agriculture and Food Security.

The value of labour invested in preparing agricultural land will be compensated for using Government wage for the same period of time. The labour cost for preparing replacement land will be calculated on what it would cost a farmer to create a replacement farmland.

5.4.3 Valuation for forest trees (indigenous and exotic species)

The Forestry Department shall take the lead in the valuation of affected forest trees by taking into account such factors as: type of tree (indigenous or exotic), tree species name (botanical and vernacular names), measured diameter at breast height (1.3 m) and current market price (MK/ per cubic metre) as determined by the Forestry Department.

5.4.4 Complaints and grievances redress mechanisms

The Constitution and associated legislation provide for grievance redress mechanism through the formal court system. This is a constitutional right but practice proves that this can be a costly undertaking and GMMA will implement a complaints and grievances mechanism as outlined below

to deal with complaints promptly or else in the event of failure the matter can be referred to the formal court system.

5.4.5 Objections

At the time that the individual resettlement plans are approved and individual compensation contracts are signed, affected individuals and households would have been informed of the process for expressing dissatisfaction and seeking redress. The grievance procedure will be simple and will be administered by a third party NGO at local levels to facilitate access by PAPs.

All grievances concerning non-fulfilment of contracts, levels of compensation, or seizure of assets without compensation should be addressed to a local committee comprising traditional leaders of the affected area, NGO and representatives of the District Assembly.

The local committee will inform and consult with the GMMA and the District Commissioner to determine validity of claims. If valid, the local committee will notify the complainant who will be assisted as appropriate. If the complainant's claim is rejected, the matter shall be brought before the District Commissioner for settlement. The grievance redress mechanisms is designed with the objective of solving disputes at the earliest possible time, which will be in the interest of all parties concerned and therefore, it implicitly discourages referring such matters to the court for resolution. Compensation and resettlement plans will be legally binding, and will recognize that customary law is the law that governs land administration and tenure in the rural/village areas. This is the law that most Malawians living in these areas, are used to and understand.

All objections to land acquisition shall be made in writing, to the implementing agency with copies to the Ministry of Lands and Natural Resources within 20 days after the public notice; or through a formal complaint lodged via the Traditional Authority and District Assembly. The traditional leaders and the local committee shall maintain records where grievances and complaints, including minutes of discussions, recommendations and resolutions made, will be recorded.

5.4.6 Timeframes

The following timeframes shall apply provided that time changes shall not adversely affect the rights or interests of stakeholders:

- The inventory shall be completed at least four months prior to the commencement of the relocation.
- The RAP shall be submitted to the government for approval.
- Compensation, resettlement and rehabilitation activities shall only commence after the responsible Ministry and PAPs have accepted the RAP.
- Compensation payments for acquired land and affected assets, resettlement of households and documentation/validation of voluntary land donations, as described above, must be completed as a condition for taking away of land and before commencement of any works under the project.

The compensation, resettlement and rehabilitation plans, if any, shall be completed at least one month prior to the commencement of work. Timely attention should be paid to both the displaced and host communities even if it means mere consultations with host communities before bringing new comers.

5.4.7 Costs and Schedule

The relocation budget and will be determined at the conclusion of the District Commissioner's Census. The ultimate relocation schedule will be determined as an outcome from the KNP definitive feasibility study.

5.5 MONITORING AND EVALUATION

A monitoring mechanism will be implemented by GMMA to assess whether the goals of the resettlement and compensation plan are met, covering issues such as physical resettlement, disbursement of compensation, effectiveness of public consultation, and grievance redress processes. This monitoring plan will have indicators and milestones and will also indicate the required resources including responsible persons or institutions, necessary to carry out the monitoring activities. In this case, a number of objectively verifiable indicators shall be used to monitor the performance, impacts and outcomes of the compensation and resettlement activities. These indicators will be targeted at measuring the physical and socio-economic status of the PAPs, to determine and guide improvement in their social wellbeing. Therefore, monitoring indicators to be used for the RAP will have to be developed to respond to specific zone of influence.

6 Conclusion

Resettlement planning for KNP will be undertaken following the process illustrated above, this document will be circulated to PAPs as part of the consultation process and to ensure transparency during the resettlement planning process.