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29/8/23

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

**Before the Honourable Justice Gamble**

**Cape Town: Tuesday 29 August 2023**

**CASE NO: 21414/2022**

In the matter between:

**PROTECT THE WEST COAST NPC**

First Applicant

**THE DORINGBAAI SMALL SCALE FISHING  
COMMUNITY**

Second Applicant

**THE OLIFANTS RIVER SMALL SCALE FISHING  
COMMUNITY**

Third Applicant

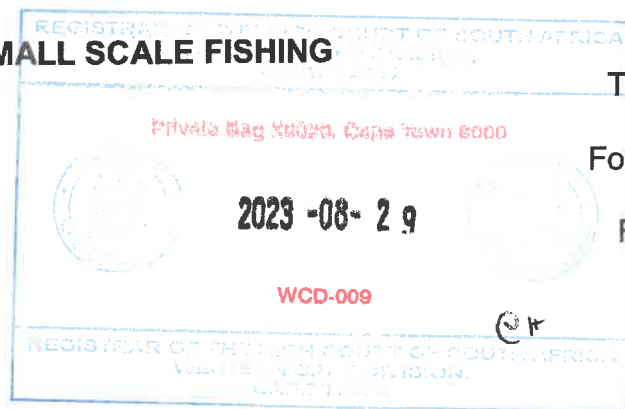
**PRESTON GOLIATH**

Fourth Applicant

**FABIAN MOHAMMED**

Fifth Applicant

and



**MINISTER OF MINERAL RESOURCES AND ENERGY**

First Respondent

**REGIONAL MANAGER: MINERAL REGULATION  
WESTERN CAPE REGION**

Second Respondent

**MINISTER OF FORESTRY, FISHERIES AND THE  
ENVIRONMENT**

Third Respondent

**MOONSTONE DIAMOND MARKETING (PTY) LTD**

Fourth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR  
TRANSPORT PUBLIC WORKS  
(WESTERN CAPE PROVINCE)**

Fifth Respondent

**MEMBER OF THE EXECUTIVE COUNCIL FOR LOCAL  
GOVERNMENT, ENVIRONMENTAL AFFAIRS &  
DEVELOPMENT PLANNING (WESTERN CAPE PROVINCE)**

Sixth Respondent

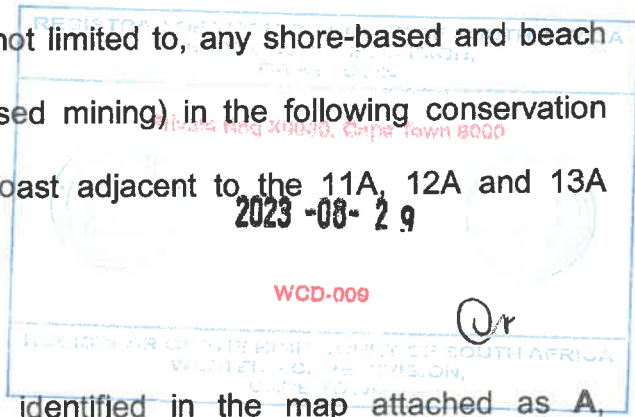
**THE MATZIKAMA LOCAL MUNICIPALITY**

Seventh Respondent

  
DRAFT ORDER

By agreement between the Applicants and the Fourth and Eighth Respondents, the following orders are hereby made:

1. The Fourth Respondent ("**Trans Hex**") and its contractors are prohibited from undertaking any mining and related activities (beach, shore or vessel) in the area delineated in red from points 1 to 4 on the map attached hereto marked "**A**", with the seawards boundary being 500m from the high-water mark.
2. Trans Hex and its contractors are prohibited from undertaking any land-based mining operations, including but not limited to, any shore-based and beach mining (i.e., excluding vessel-based mining) in the following conservation worthy areas along the West Coast adjacent to the 11A, 12A and 13A concession areas:

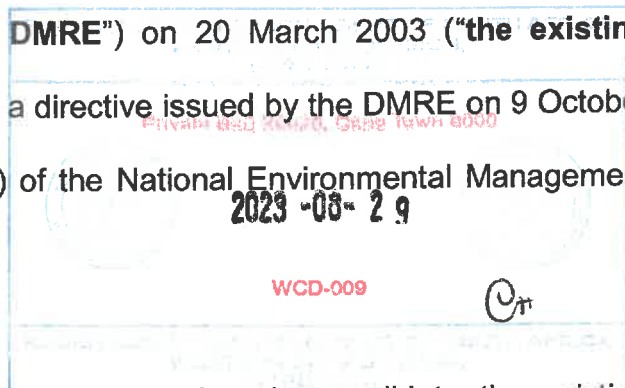


  - 2.1. in addition to the area identified in the map attached as **A**, Strandfontein, from the Olifants River mouth to south of Strandfontein, which is approximately 11 kilometres of shoreline;
  - 2.2. De Toring – Skuit Bay, which is approximately 1,8 kilometres of shoreline; and

2.3. Duiwegat, which is approximately 200m of shoreline,

as depicted on the map attached hereto marked "B".

3. It is recorded that Trans Hex is currently in the process of upgrading, amending and consolidating the Project-Specific EMPr for Marine Diamond Mining in the 11(a), 12(a) concession areas and corresponding surf-zone concessions and admiralty strips, and the Project-Specific EMPr for Marine Diamond Mining in the 13(a) concession area and corresponding surf-zone concessions and admiralty strips approved by the Department of Mineral Resources and Energy ("the **DMRE**") on 20 March 2003 ("the **existing approved EMPr**"), pursuant to a directive issued by the DMRE on 9 October 2020 in terms of section 12(5) of the National Environmental Management Amendment Act, 2008.



4. Trans Hex undertakes to upgrade, amend and consolidate the existing approved EMPr by making an application to the DMRE ("**Application**") in accordance with the process/es contemplated in Regulation 54(2), read with Part 2 of Chapter 5 of the Environmental Impact Assessment Regulations, 2014 ("**the EIA Regulations**").
5. Trans Hex undertakes, as far as reasonably practicable, to submit the Application to the DMRE within 6 months of the granting of this order, or such extended date as the Applicants and Trans Hex may agree in writing.

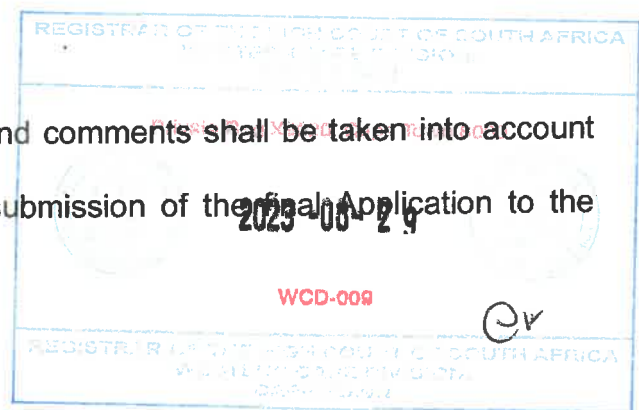
6. **Prior** to the submission of the Application to the DMRE:

6.1. the Environmental Assessment Practitioner appointed by Trans Hex ("the EAP") shall provide the Applicants and affected communities (care of the applicants' attorneys of record), Birdlife South Africa, the West Coast District Municipality and the Matzikama Municipality ("identified I&APs") with copies of the Application and the identified I&APs shall be entitled to:

6.1.1. recommend to the EAP any additional specialist studies that should be undertaken for purposes of the Application; and

6.1.2. review and comment on the Application, inclusive of specialist studies,

which recommendations and comments shall be taken into account by the EAP prior to the submission of the final Application to the DMRE.



7. The Application to be submitted to the DMRE shall, among other things:

7.1. take into account the Department of Forestry, Fisheries and the Environment's National Web-Based Screening Tool in the determination of the specialist studies to be undertaken;

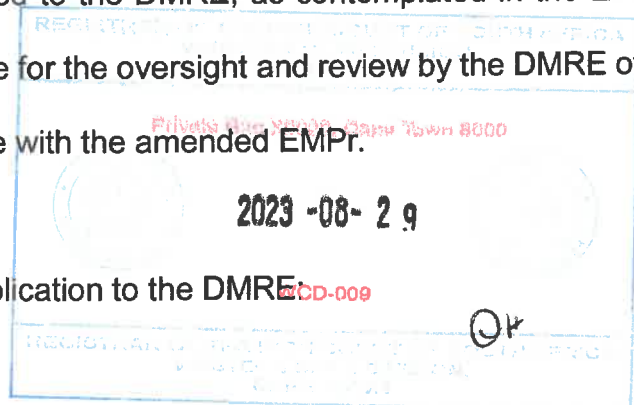
- 7.2. include a specialist fisheries study which addresses the interests of small-scale fisheries;
- 7.3. assess the cumulative impacts of Trans Hex's operations as well as any potential impacts of such operations on climate change;
- 7.4. identify, on the basis of the specialist studies, any areas where no mining may be undertaken ("no-go areas"), which no-go mining areas may result in the extension of the area surrounding the Olifants River Estuary no-go areas referred to in paragraph 1;
- 7.4.1. in determining such no-go areas, the EAP shall take biodiversity considerations into account, as well as other relevant considerations, such as archaeological features, beach fauna and flora, water, fisheries, public access and other relevant attributes;
- 7.5. separately identify the impacts and mitigation measures required in respect of beach, shore-based and vessel-based operations;
- 7.6. provide a map of the coastline of the 11A, 12A and 13A concession areas at an appropriate scale, which superimposes the proposed mining activities on the environmental sensitivities of the concession areas, indicating any areas that should be avoided, including buffers

as contemplated in regulation (1)(c) of Appendix 4 of the EIA Regulations;

7.7. incorporate the requirements of Appendix 5 of the EIA Regulations for closure plans and the NEMA requirements for financial provisioning, where necessary;

7.8. specify the intervals when environmental audit reports shall be conducted and submitted to the DMRE, as contemplated in the EIA Regulations and provide for the oversight and review by the DMRE of Trans Hex's compliance with the amended EMPr.

8. **After** the submission of the Application to the DMRE:



8.1. Trans Hex shall comply with the process contemplated in regulation 32 of the EIA Regulations and shall ensure that any public participation process contemplated in such regulation includes meaningful and adequate public participation by disadvantaged coastal communities, including the Second and Third Applicants.

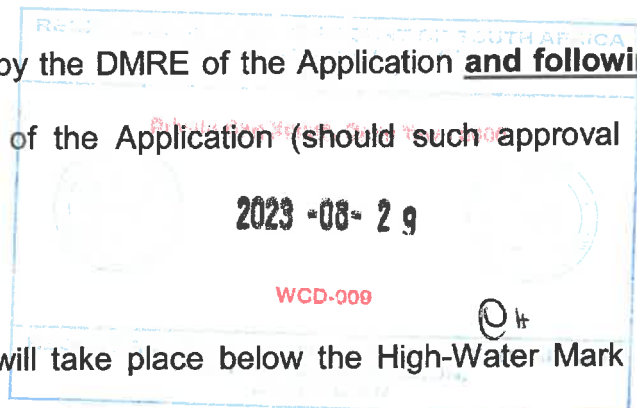
9. **Pending** the approval by the DMRE of the Application:

9.1. all Trans Hex's mining and related activities will be undertaken in terms of the existing approved EMPs;

9.2. Trans Hex and its contractors shall not undertake any mining or mining related activities, and no disturbances shall take place within 5 metres of the toe or cliff of a dune, and shall demarcate this 5-metre buffer zone before the commencement of beach mining activities, save as otherwise provided in the final draft amended EMPr, submitted to, but not yet approved, by the DMRE;

9.3. Trans Hex and/or its contractors shall confine their beach mining activities to the Bethels, Weskus, de Punt and Strykloof mining rights.

10. Both **pending** the approval by the DMRE of the Application **and following** the approval by the DMRE of the Application (should such approval be granted):



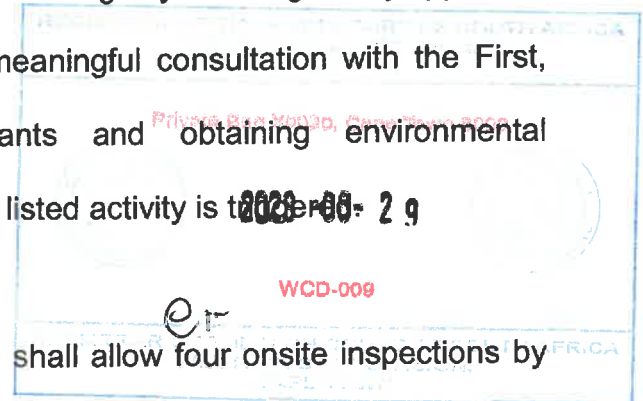
10.1. All mining activities will take place below the High-Water Mark as defined in section 1 of the National Environmental Management: Integrated Coastal Management Act, 24 of 2008.

10.2. Trans Hex and its contractors shall demarcate the approximate High-Water Mark before the commencement of beach mining activities.

10.3. Trans Hex and/or its contractors will only utilise existing road networks and shall not create new roads or pathways for vehicles unless and until these roads and pathways are authorised by the relevant competent authority, including but not limited to, the approval of the

application by the DMRE, and obtaining any such further environmental authorisation as may be required if a listed activity is triggered under the EIA Regulations and listing notices.

- 10.4. Trans Hex and/or its contractors will not undertake beach mining activities at Doringbaai and Bamboesbaai in terms of its Hollebaksfontein Mining Right, unless and until Trans Hex's regulatory approvals have been amended to accommodate new technology / mining method, provided that obtaining any such regulatory approvals shall include adequate and meaningful consultation with the First, Second and Third Applicants and obtaining environmental authorisation under NEMA if a listed activity is triggered.



- 10.5. Trans Hex and its contractors shall allow four onsite inspections by the Applicants' specialist/s per calendar year, to take place on reasonable written notice to Trans Hex, which shall mean not less than 5 working days' notice.

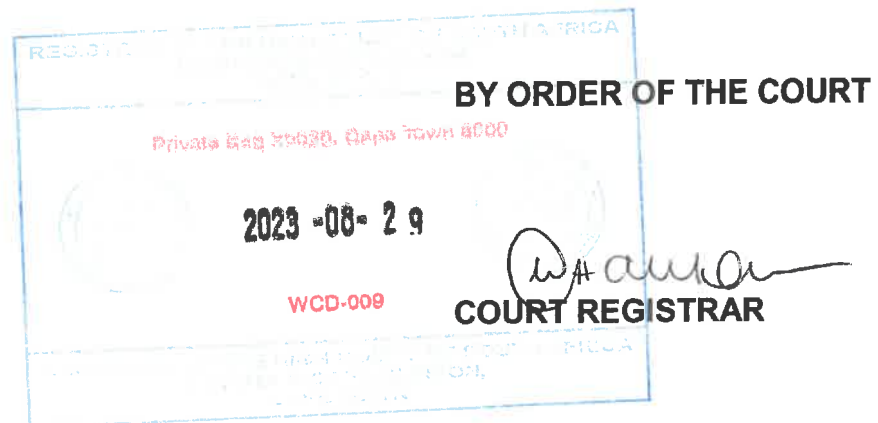
- 10.6. Trans Hex shall make its environmental audit reports in terms of Chapter 5: Part 3 of the EIA Regulations available on its website in accordance with the EIA Regulations.

- 10.7. Parts 3, 4 and 5 of Chapter 5 of the EIA Regulations shall, with the changes required by the context apply, and for purposes thereof,



Trans Hex shall be deemed to be a holder of an environmental authorisation.

11. This order is granted in full and final settlement of the relief sought in Part A and B of the Notice of Motion.
12. The Applicants, and the Fourth and Eighth Respondents, shall each bear their own costs.



**9 Bisset Boehmke McBlain**  
**Cape Town**

