

Dear Stakeholders

RE: PROTECT THE WEST COAST & OTHERS // TRANS HEX OPERATIONS (PTY) LTD & OTHERS – DE PUNT OPERATIONS

The following statement is a summary of the High Court application instituted by Protect the West Coast & Others (the Applicants) and the subsequent settlement which, in Trans Hex's view, was indicative of the ongoing tension between mining companies and environmentalists, who wish to, sometimes at all costs, protect the environment.

A decision as to which *side* should ultimately succeed is a polycentric question and it is for this reasons that there are prescribed mechanisms in the Minerals and Petroleum Resources Development Act and National Environmental Management Act, which then provide a forum to weigh and balance all views.

It is against this background that the Applicants instituted an (debatably) urgent application, in December 2022, in order to (1) interdict / prohibiting Trans Hex from continuing its lawful mining operations at De Punt, and (2) setting aside Trans Hex's mining rights.

The Applicants' main complaints were that *inter alia* Trans Hex's environmental management program was outdated and had to be revised, and that Trans Hex was mining above the high-water mark in Doringbaai. Importantly, Trans Hex's environmental approval and mining method is premised on the principle understanding that all mining operations must take place below the high-water mark along the beaches. This is to make use of the natural process of the movement of sand to rehabilitate all areas naturally, and almost immediately after mining operations cease.

To the *lay-person*, it would have appeared as if Trans Hex was 'mining' above the high-water mark in the vicinity of Doringbaai. Regrettably, no one, to our knowledge, approached Trans Hex to verify this as the simple explanation for doing so was that Trans Hex (as part of its rehabilitation obligations) was filling in a number of old excavations that had been left by the previous owner of the mining right. This much is clear from a reading of Trans Hex's EMPr which contains photos of these holes.

As part of its commitment to the Matzikama Municipality, Trans Hex also assisted in preparing the area so that the Municipality could establish an abalone factory on this site. The Municipality had obtained environmental approval to do so and a letter from the Municipal Manager, confirming as much and with an expression of gratitude after completion of the works, is attached to Trans Hex's court papers.

In terms of the Applicants application and the settlement thereof, from the settlement reached it is quite clear that the application did not achieve its principle aims as the mining operations are continuing and the mining rights remain in good standing.

In this regard, bearing in mind the discussion above about the *polycentric nature* of these decisions, Trans Hex, in its defence, raised the irrefutable fact that the Applicants had not followed due process by submitting an internal administrative appeal, in terms of section 96 of the MPRDA. By implication, the Applicants were in terms of the MPRDA, and the Promotion of Access to Justice Act (PAJA) prohibited from instituting legal proceedings until they had done so.

The Applicants further do not appear to have truly considered this defence until it was more clearly summarised in Trans Hex's heads of argument which were filed on 14 August 2023 and in which reference is made to case law which are *on point* with Trans Hex's position (especially the Tendele Coal judgments). Up until this point, even though Trans Hex had always left the proverbial *door open* to the parties settling the legal proceedings, and had invited the Applicants to do so repeatedly, the Applicants seemed disinterested in doing so.

This case law authority is also supportive of Trans Hex's position that it was entitled to continue mining whilst it undertook a process of updating its EMPr to account for the most recent amendments to NEMA, which is reflected in the settlement agreement that was made an order of court.

The Applicants further implied that Trans Hex's operations are / were extremely destructive. This however is not the case as Trans Hex has been undertaking mining operations in the De Punt area for more than 30 years, which have been confined to the area below the high-water mark. The disturbances that remain above the high-water mark were left by other mining companies and fall well outside Trans Hex's mining areas.

It should further be noted that Trans Hex already, since 2005, undertook and honoured the undertaking not to mine in certain 'conservation areas' constituting approximately 14 kilometres of coastline, which were now formalised in the court order.

Trans Hex remains of opinion that there are various reasons why the legislature deemed it necessary to include due process in the legislation in order to protect communities from unlawful mining activities and *vice versa* protect mining companies, who invest millions in their operations and local communities, from aggressive or unsubstantiated litigation.

Finally, we should not ignore the positive impact that the De Punt operation has had on the local community, not only through contributing substantially towards community upliftment and the social and labour projects, which form part of conducting a mining operation in South Africa, but the so-called *indirect impact*. The De Punt operation contributes millions towards the local community, through employment and the payment contractors, for an area where financial opportunities are hard to come by.

We accordingly implore individuals to not only consider the environmental value of an area and their *right to an environment* (which is not absolute), but to take a balanced view, as part of a larger community, where locals benefit from economic activity and experience a better life – something they may never have the chance to enjoy without mining activity in the area.

Trans Hex remains committed to mine lawfully and in an environmentally sustainable manner.



Marco Wentzel

CEO