



**ORDINARY MEETING OF THE MAYORAL  
COMMITTEE**

**GEWONE VERGADERING VAN DIE  
BURGEMEESTERSKOMITEE**

**INTLANGANISO YESIQHELO YEKOMITI  
KASODOLOPHU**

**A G E N D A**

**I-AJENDA**

**DATE / DATUM / UMHLA : 26 MAY / MEI / MEYI 2021**  
**VIRTUAL**

**TIME / TYD / IXESHA : 10:00**

## **MUNICIPALITY / MUNISIPALITEIT / UMASIPALA WE-OVERSTRAND**

Office of the Municipal  
Manager  
Municipal Offices  
HERMANUS

**21 May 2021**

### **NOTICE TO ALL ALDERMEN AND COUNCILLORS**

**NOTICE IS HEREBY GIVEN** that, due to the Covid-19 lockdown, an **ORDINARY MEETING** of the **MAYORAL COMMITTEE** will be held by means of a virtual platform on **WEDNESDAY, 26 MAY 2021** at **10:00** of which the agenda will be available on the Overstrand Website ([www.overstrand.gov.za](http://www.overstrand.gov.za)).

**D O'NEILL**  
**MUNICIPAL MANAGER**

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**21 Mei 2021**

### **KENNISGEWING AAN ALLE RAADSHERE EN RAADSLEDE**

**KENNIS WORD HIERMEE GEGEE** dat, weens die Covid-19 inperking, 'n **GEWONE VERGADERING** van die **BURGEMEESTERSKOMITEE** gehou sal word by wyse van 'n virtuele platform op **WOENSDAG, 26 MEI 2021** om **10:00** welke agenda op die Overstrand Webtuiste beskikbaar sal wees ([www.overstrand.gov.za](http://www.overstrand.gov.za)).

**D O'NEILL**  
**MUNISIPALE BESTUURDER**

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**21 Mei 2021**

### **ISAZISO ESIYA KUBO BONKE OOCEBAKHULU NOOCEBA**

### **INTLANGANISO YESIQHELO YEKOMITI KASODOLOPHU WE-OVERSTRAND**

**OKU KUKWAZISA** ukuba, ngenxa yokuvalwa okubangelwe yintsolongwane i-Covid-19, intlanganiso **YESIQHELO yeKOMITI KASODOLOPHU**, izakubanjwa ngeqonga elibonakalisayo **NGOLWESITHATHU UMHLA, 26 MEYI 2021** ngeye-**10:00** Apho i-ajenda iya kufumaneka kwiwebhusayithi ye-Overstrand.

**D O'NEILL**  
**UMPHATHI KAMASIPALA**

**AGENDA/...**

**1. OPENING**

**2. APPLICATIONS FOR LEAVE OF ABSENCE**

**3. CONFIRMATION OF MINUTES**

3.1 Minutes of an **Ordinary Meeting** of the **Mayoral Committee** held on **Wednesday, 28 April 2021 at 10:00**

**4. STATEMENTS AND COMMUNICATIONS BROUGHT FORWARD BY THE EXECUTIVE MAYOR / DEPUTY EXECUTIVE MAYOR**

5.

**A PORTION OF ERF 4831 AND ERF 5327 HERMANUS (DE MOND): WRITE BACK AND WRITE OFF OF AMOUNTS RAISED AND WAIVER OF RENTAL – “POHL BUSINESS TRUST (T/A POHL PROPERTY DEVELOPMENT GROUP) TRADING AS THE CROWN GRANT (PTY) LTD”**

7/2/3/2

<b>A Le Roux</b>	<b>Manager: Property Administration</b>	<b>(028) 316-5623</b>
<b>E Hooneberg</b>	<b>Senior Manager: Revenue</b>	<b>(028) 313-8149</b>
<b>L Wallace</b>	<b>Senior Manager: Legal Services</b>	<b>(028) 313-5031</b>

**17 March 2021**

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### **1. Executive Summary**

The purpose of the report is to request Council to approve the:

- (a) waiver of the Municipality’s claim against the Pohl Group for payment of the amount of R1,056,032.98 (ONE MILLION AND FIFTY-SIX THOUSAND AND THIRTY-TWO RAND AND NINETY-EIGHT CENTS) representing determinable rental received by them from sub-tenants on the property;
- (b) writing back of the amount of R85,854.03 (EIGHTY-FIVE THOUSAND EIGHT HUNDRED AND FIFTY-FOUR RAND AND THREE CENTS) representing basic and infrastructure charges (electricity, water, sewerage and refuse) on municipal account number 900000522815 for the period 1 July 2018 to 30 September 2019;
- (c) writing off of the amount of R49,074.45 (FORTY-NINE THOUSAND AND SEVENTY-FOUR RAND AND FORTY-FIVE CENTS) representing consumption charges (electricity, water and sewerage) levied on municipal account number 900000522815 for the period 1 July 2018 to 30 September 2019;
- (d) writing off of the amount of R1,779.54 (ONE THOUSAND SEVEN HUNDRED AND SEVENTY NINE RAND AND FIFTY FOUR CENTS) representing the balance of the services charges due on municipal account number 900000522815 for the period 1 October 2019 to 31 May 2021, representing the time period the Klein River Lagoon Park Association and De Vette Mossel made payments of services charges directly to the Municipality;
- (e) writing off of a total amount of R15,245.99 (FIFTEEN THOUSAND TWO HUNDRED AND FORTY-FIVE RAND AND NINETY-NINE CENTS) representing sundry charges (collection costs, etc.) and interest levied on the municipal account number 900000522815 for the period 1 July 2018 to 30 April 2021;

- (f) re-allocation of an amount of R146,872.68 (ONE HUNDRED AND FORTY SIX THOUSAND EIGHT HUNDRED AND SEVENTY TWO RAND AND SIXTY EIGHT CENTS) representing payments (including services deposits) made by the Pohl Group on account number 90000522815 for the period 1 July 2018 to 31 October 2019 to partially settle the legal services costs in the amount of R302,105.25 (THREE HUNDRED AND TWO THOUSAND ONE HUNDRED AND FIVE RAND AND TWENTY FIVE CENTS) incurred in the arbitration for which payment the Pohl Group is liable for (levied on the account);
- (g) writing back of the amount of R107,731.45 (ONE HUNDRED AND SEVEN THOUSAND SEVEN HUNDRED AND THIRTY-ONE RAND AND FORTY-FIVE CENTS) representing the balance basic and infrastructure charges for electricity on municipal account number 770004831004 for the period 1 July 2018 to 30 April 2021;
- (h) writing off of the amount of R110,822.94 (ONE HUNDRED AND TEN THOUSAND EIGHT HUNDRED AND TWENTY-TWO RAND AND NINETY-FOUR CENTS) representing the balance consumption charges for electricity on municipal account number 770004831004 for the period 1 July 2018 to 30 April 2021;
- (i) writing off of a total amount of R8,487.02 (EIGHT THOUSAND FOUR HUNDRED AND EIGHTY-SEVEN RAND AND TWO CENTS) representing sundry charges (collection costs, etc.) and interest levied on the municipal account number 770004831004 for the period 1 July 2018 to 30 April 2021; and
- (j) re-allocation of an amount of R155,232.57 (ONE HUNDRED AND FIFTY-FIVE THOUSAND TWO HUNDRED AND THIRTY TWO RAND AND FIFTY SEVEN CENTS) representing the balance payments (including services deposits) made by the Pohl Group on account number 770004831004 for the period 1 July 2018 to 31 July 2020 to partially settle the legal services costs in the amount of R302,105.25 (THREE HUNDRED AND TWO THOUSAND ONE HUNDRED AND FIVE RAND AND TWENTY FIVE CENTS) incurred in the arbitration for which payment the Pohl Group is liable for (levied on the account);

in relation to a portion of Erf 4831 Hermanus and Erf 5327 Hermanus (herein referred to as “the property”), which property belongs to the Overstrand Municipality, but was leased to the Pohl Business Trust (t/a Pohl Property Development Group) t/a The Crown Grant (Pty) Ltd (herein referred to as “the Pohl Group).

See locality map attached hereto marked Annexure A.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Directorate Infrastructure and Planning  
 Department: Property Administration

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
 Provision and maintenance of municipal services

**4. Delegated Authority**

None

**5. Legal Requirements**

- Local Government: Municipal Systems Act, Act 32 of 2000
- Customer Care, Credit Control & Debt Collection Policy of the Overstrand Municipality as amended from time to time
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

**6. Background/Discussion/Evaluation/Conclusion****Background/Discussion/Evaluation**

The basis of this report is a lease agreement which was entered into on 7 March 2018 between the Overstrand Municipality and the Pohl Group for a period of 45 years after the tender was successfully awarded to them. The agreement entered into was for the development and lease of municipal property, being a portion of Erf 4831 Hermanus (approximately 9,74 ha in extent) and a portion of Erf 5327 Hermanus (approximately 0,76 ha in extent) and in total approximately 10,5ha in extent (hereinafter jointly referred to as "the property"), also known as "De Mond" for the purpose of developing and operating a Holiday Resort

**LEASE AGREEMENT**

The lease agreement entered into had several suspensive conditions that had to be fulfilled before 1 July 2019 and contained the following relevant dates:

- (a) Effective date: Means the date on which the signature of the last party to sign the lease agreement, is affixed hereto, namely 7 March 2018.
- (b) Date of Occupation: Means the date on which the Lessee takes occupation of the Land in terms of the lease agreement, namely 1 July 2018.
- (c) Commencement date: Means 1 July 2019.

These dates are relevant as it determines the following:

- (a) The effective date: The date the Pohl Group took full responsibility of the property as well as the date they took over the tenants of the Municipality.
- (b) The date of occupation: The date from which the Pohl Group was liable for the payment of municipal services.
- (c) Commencement date: The date the Pohl Group had to start paying rental in the amount of R220,950.00 (TWO HUNDRED AND TWENTY THOUSAND NINE HUNDRED AND FIFTY RAND) per month (VAT included).

The Pohl Group failed to fulfil the suspensive conditions contained in the lease agreement by 1 July 2019. This had the effect that the lease agreement lapsed on 1 July 2019, which the Pohl Group placed in dispute. The matter was subsequently referred for mediation and subsequently arbitration (as the mediation was unsuccessful). The arbitration was instituted by the Pohl Group in terms of the lease agreement.

#### **LEGAL POSITION / ARBITRATION**

The matter was heard in arbitration on 17 September 2020. The Arbitrators who were appointed were S F Burger S.C., L A Rose-Innes S.C. and J A Newdigate S.C. who are all well respected in the law field.

In the Arbitration, the Pohl Group (the "Claimant") claimed for a series of declaratory orders, which read as follows:

- "1. It is declared that the contract of lease did not come to an end on 1 July 2019;*
- 2. It is declared that upon a proper interpretation of the contract of lease the Claimant's payment obligation would only arise upon the contract becoming unconditional, i.e. after fulfilment of all the conditions precedent listed in clause 5;*
- 3. It is declared that on a proper interpretation of the contract of lease an application timeously submitted by the Claimant (lessee) would automatically result in an extension of the deadline of 1 July 2019 until such time as such application under Clause 12 had been finally dealt with, either by agreement or by a property decision taken by the municipality (lessor), and in the event of any dispute about such decision, after the dispute had been finally determined by arbitration under and in terms of Clause 18 of the lease.*
- 4. It is declared that the 1 July 2019 dated in Clause 5 was by agreement extended to 29 February 2020.*
- 5. It is declared that the Claimant's 12 February 2020 application for a further extension of the deadline under Clause 5 of the lease had not yet been considered or dealt with by the Respondent (municipality) and that the contract is still of full force and effect."*

The Pohl Group's counsel argued that on a proper interpretation of the lease agreement an application to extend (their letter dated 12 April 2019) based on a relief event, submitted prior to 1 July 2019 would necessarily result in an automatic extension of the date of 1 July 2019 until such time as the application had been finally dealt with, either by agreement between the parties or by a decision by the Lessor (Municipality), and in the event of a dispute arising about the decision, until finalisation of the dispute by arbitration in terms of Clause 18 of the lease agreement. This extension will then also have the effect that the commencement date of 1 July 2019 will be extended, hence they are not liable for the payment of rental from 1 July 2019. It was further argued that the Pohl Group's payment obligation (to pay the rental) was dependent upon the lease agreement becoming unconditional and would accordingly only arise once all the conditions referred to in Clause 5 had been properly fulfilled.

For clarity, the term "Relief Event" was defined in the lease agreement as:

- "(a) any fire, explosion, tempest, flood, drought (to the extent it does not constitute an event of Force Majeure), earthquakes, wind and/or hail storms, ocean wave action, riots, official or unofficial strikes, go slow or other such labour disputes generally affecting the relevant industry or a significant sector of it, lock-out and civil commotion;*
- (b) without limiting the obligations of Lessee in terms of this Agreement, any failure by the Lessor or any responsible authority, utility or other like body to carry out works or provide services related to the Development;*
- (c) any accidental loss or damage to the Land and subsequent Development;*
- (d) any off site failure or shortage of power, fuel or transport;*
- (e) any blockade or embargo which does not constitute an event of Force Majeure;*
- (f) the discovery of any heritage objects or resources that could not reasonably have been discovered by proper due diligence;*
- (g) any delay in obtaining any consent or authorisation beyond the control of the Lessee; or*
- unless any of the events listed in clauses (a) to (g) inclusive arises, directly or indirectly, as a result of any negligence, wilful conduct or default of the Lessee or any subcontractor appointed by it;"*

The Municipality's counsel argued that (summary):

1. That there was no relief event as relied upon by the Pohl Group (clause 12 of the lease agreement).
2. The Pohl Group did not fulfil their contractual conditions by 1 July 2019 and as the Municipality only gave them one extension to fulfil clause 5.3 by 15 August 2019, the lease agreement had lapsed as the other conditions contained in Clause 5 were not fulfilled.
3. At best for them if the Municipality did give an extension for all of the conditions to be fulfilled to 15 August 2019, then no further extension was given before that date and the contract lapsed then.



4. The Municipality did respond to their motivation for an extension dated 12 April 2019 in the Municipal Manager's letter of 20 June 2019 where it was stated that the Municipality was only prepared to extend the one condition and if they wanted to extend the others they must provide further motivation.
5. The extension was granted on condition that they still start paying rental as from 1 July 2019.
6. It was not open to the parties to extend the date for fulfilment of the conditions after the lease agreement had lapsed and even if one accepts, which the Municipality denied, that the date for fulfilment was extended and the lease agreement extended to 29 February 2020, that date has also come and gone.

After the respective counsels presented their statements, the Arbitrators requested the Municipality's counsel to submit her note on argument and the Pohl Group's counsel to reply. The Arbitrators reserved judgement but undertook to give judgement as soon as possible after receipt of the statements referred to above.

Judgement in the arbitration hearing was subsequently delivered on 29 September 2020. The Arbitrators indicated that the central question to be determined in the arbitration hearing is whether the lease agreement was to be interpreted as argued by the Pohl Group's counsel. If this question was to be answered in favour of them, it would have the result that the lease agreement did not lapse by reason of a non-fulfilment of the conditions precedent in Clause 5. If the question was however to be answered in the negative, i.e. if on the proper interpretation of the lease agreement it would then have lapsed on 1 July 2019. The Arbitrators then proceeded to discuss case law in this regard taking the arguments into consideration.

The Arbitrators subsequently dismissed the claim of the Pohl Group and declared that the lease agreement between the parties lapsed and became unenforceable on 1 July 2019 with the result that their obligation to pay rental to the Municipality in terms of the lease fell away. The Pohl Group was ordered to pay the cost of the arbitration including the cost of the Arbitrators.

#### **EFFECT OF THE OUTCOME OF THE ARBITRATION**

##### **A: RENTAL RECEIVED BY THE POHL GROUP FROM SUB-TENANTS**

During the time the Pohl Group had occupation of the property, they received rental from sub-tenants. The following lease agreements of the Municipality were ceded to the Pohl Group:

- (i) Klein River Lagoon Park Association – still in occupation.
- (ii) M Erasmus (Selkirk Cottage) – vacated 30 June 2018.

The Pohl Group went further and requested consent to sub-lease a portion to the De Vette Mossel Restaurant, which consent was given. They are still in occupation.

However, during the time they had occupation, other tenants were placed on the property without the knowledge and consent of the Municipality. The Municipality discovered that the following lease agreements were entered into by the Pohl Group and the tenant is still occupying a portion of the property.

- (i) Unknown person (builder with the name Abrie) who rented the old caretakers house (no services to this house) for R4,000.00 per month. The Pohl Group denied that they charged rental when confronted with this. No further information is available as to how long the sub-lease was for or when the person / his workers vacated the house. It can however be confirmed that the house is vacated.
- (ii) Unknown person (caretaker) who occupied the Selkirk Cottage after Ms Erasmus vacated the property. No further information is available.
- (iii) Henk Esterhuyzen/"See en Sand" for Ms Tilla Esterhuyzen to stay in. Lease agreement is for a period of one year from 1 August 2020. The sub-tenant is still in occupation.

With a strict interpretation of the outcome of the arbitration hearing, all rental received by the Pohl Group must be paid to the Municipality as they are not entitled thereto. The Municipality has knowledge of the following total amounts of rental which were received by the Pohl Group and which are determinable:

- (i) Klein River Lagoon Park Association: R769,350.00 (SEVEN HUNDRED AND SIXTY-NINE THOUSAND THREE HUNDRED AND FIFTY RAND) (see Annexure B attached). Klein River Lagoon Park Association paid rental to the Pohl Group until end August 2020 and will pay over subsequent rentals to the Municipality directly as they are still in occupation of the property. Any rental deposits paid by the tenant to the Pohl Group must be dealt with between the parties and cannot be taken into consideration. An approval in principle was obtained from the delegated authority to enter into a lease agreement with the Klein River Lagoon Park Association for a short-term period, subject to Council's approval. A separate report will serve before Council in this regard in due course. The tenant will have to open a municipal account for the levying of municipal services.
- (ii) De Vette Mossel Restaurant: R265,220.98 (TWO HUNDRED AND SIXTY-FIVE THOUSAND TWO HUNDRED AND TWENTY RAND

AND NINETY-EIGHT CENTS) consisting of rental and turnover rental (see Annexure C attached). De Vette Mossel paid rental to the Pohl Group until end September 2020 and will pay over subsequent rentals to the Municipality directly as they are still in occupation of the property. Any rental deposits paid by the tenant to the Pohl Group must be dealt with between the parties and cannot be taken into consideration. An approval in principle was obtained from the delegated authority to enter into a lease agreement with De Vette Mossel Restaurant for a short-term period, subject to Council's approval. A separate report will serve before Council in this regard in due course. The tenant will have to open a municipal account for the levying of municipal services.

- (iii) Ms M Erasmus R3,462.00 (THREE THOUSAND FOUR HUNDRED AND SIXTY-TWO RAND) (see Annexure D attached).
- (iv) Henk Esterhuyzen/"See en Sand" R18,000.00 (EIGHTEEN THOUSAND RAND) (see Annexure D attached). Ms Esterhuyzen paid rental to the Pohl Group until end October 2020 and will pay over subsequent rentals to the Municipality directly as she is still in occupation of the property. Any rental deposits paid by the tenant to the Pohl Group must be dealt with between the parties and cannot be taken into consideration. A request will be submitted to the delegated authority for an approval in principle to enter into a short-term lease agreement, subject to Council's approval, will be prepared in due course. If the lease is approved as indicated above, the tenant will have to open a municipal account for the levying of services and rental.

The Municipality is thus entitled to a minimum total amount of R1,056,032.98 (ONE MILLION AND FIFTY-SIX THOUSAND AND THIRTY-TWO RAND AND NINETY-EIGHT CENTS) which the Pohl Group received from the sub-tenants for the period 1 March 2018 to 31 October 2020.

**B: MUNICIPAL SERVICES AND RENTAL LEVIED ON ACCOUNTS**

In terms of the lease agreement, the Pohl Group had to open municipal accounts for the levying of services charges, deposits, rental, etc. The following accounts were opened by them:

- (i) Account number: 900000522815
- (ii) Account number: 770004831004

The levying of rental was stopped and this rental levied plus penalties on the arrear rental were reversed in January 2020 on advice of the Municipality's attorneys of record as the stance of the Municipality at that time was already that the lease agreement has lapsed.

The arrangement between the Pohl Group and their sub-tenants were that the latter would provide them with invoice reflecting their respective contributions to the municipal account. The Pohl Group remained liable for payment of the monthly accounts irrespective of whether their sub-tenants paid them or not. Unfortunately, once the rental was levied on the one municipal account with the subsequent refusal of the Pohl Group to pay the rental, the accounts became in arrears. This had the effect that services to the property were stopped, subsequently causing the sub-tenants, the Klein River Lagoon Park Association and De Vette Mossel, being negatively affected. It was thus agreed that these two sub-tenants' contribution to the municipal accounts of the Pohl Group will be paid directly to the Municipality as from November 2018 (accounts of October 2018).

As to the sub-lease of the Selkirk Cottage, the agreement was that the tenant pay a contribution for municipal services to the Pohl Group directly. Ms Esterhuyzen did not receive any invoice from the Pohl Group indicating what she must pay since she took occupation. She has thus up to date not paid for any municipal services delivered to Selkirk Cottage and has accepted that it was included in the rental amount.

To give effect to the outcome of the arbitration, the following must be done:

- (i) Basic and infrastructure charges on the two municipal accounts (excluding those in relation to the Klein River Lagoon Park Association and De Vette Mossel which were paid by them directly to the Municipality) will have to be written back.
- (ii) Consumption charges on the two municipal accounts (excluding those in relation to the Klein River Lagoon Park Association and De Vette Mossel which were paid by them directly to the Municipality) will have to be written off.
- (iii) Any balance on account number 900000522815 after the reconciliation of the account in relation to Kleinrivier Lagoon Park Association and De Vette Mossel, will have to be written off.
- (iv) All sundries (e.g. collection costs) and interest on the two accounts must be written off.
- (v) All balance payments on the two accounts must be re-allocated to settle the legal costs in the Arbitration (which amounts were debited accordingly on the respective accounts).

The above must be done to ensure that the end balance of the two accounts are zero in order for it to be closed. Any subsequent levies from 1 May 2021 and payments of subsequent accounts will be transferred to the respective accounts to be opened by the Klein River Lagoon Park Association, De Vette Mossel and Henk Esterhuyzen/"See en Sand".

**C: LEGAL COSTS FOR THE ARBITRATION**

As mentioned above, the Pohl Group was ordered to pay the costs of the arbitration, which includes the costs of the Arbitrators.

The bill of costs for the Municipality's counsel was taxed in the High Court on 1 February 2021 with the costs amounting to R299,605.25 (TWO HUNDRED AND NINETY-NINE THOUSAND SIX HUNDRED AND FIVE RAND AND TWENTY-FIVE CENTS). The total cost of the Arbitrators in the amount of R143,500.00 (ONE HUNDRED AND FORTY-THREE THOUSAND FIVE HUNDRED RAND) is included in the bill of costs.

The fee of the tax consultant amount to R2,500.00 (TWO THOUSAND FIVE HUNDRED RAND).

The full amount payable by the Pohl Group to the Municipality with regards to the arbitration is R302,105.25 (THREE HUNDRED AND TWO THOUSAND ONE HUNDRED AND FIVE RAND AND TWENTY-FIVE CENTS). This amount was settled by the re-allocating the balance payments on the two municipal accounts. This will have the effect that the legal services cost is recovered in full and will not have to be written off.

**RECOVERY OF ALL MONIES DUE BY THE POHL GROUP**

On 10 February 2021 the Municipality's attorneys on record received an email from the Pohl Group's attorneys that they were advised that the Pohl Group has no money or assets and is not in a position to make payment in the amount as claimed and for the same reason they are withdrawing as attorneys of record for the Pohl Group.

Based on the email dated 10 February 2021 a search was done by the Municipality's attorneys and it was found that:

- (i) The entity remains in business based on the CIPC search; and
- (ii) The property searches indicate no immovable assets to the entity's name.

Normally the next steps to be taken to recover any money due is to obtain a writ in execution against the Pohl Group's assets. To obtain this, the Municipality's attorneys will have to apply to the High Court to have a writ in execution issued based on the arbitration award, agreement and the allocated bill of costs. For any claim to recover the rentals the Pohl Group received from the sub-tenants, a new legal process will have to followed for which there will be additional legal costs. Due to the amount due, this process will also have to be done via the High Court.

If the Municipality proceeds with the above, there is a real risk that it will incur further irrecoverable costs. Given the risk of no recovery of both the taxed legal cost and outstanding rental is not advisable to proceed with any further legal costs in this regard. In addition, further legal cost would be incurred whilst based on the information at our disposal it seems as if the Pohl Group is a company that was initially set up to tender.

### **Conclusion**

Taking the above in consideration, it is recommended that Council approves the:

- (a) waiver of the Municipality's claim against the Pohl Group for payment of the amount of R1,056,032.98 (ONE MILLION AND FIFTY-SIX THOUSAND AND THIRTY-TWO RAND AND NINETY-EIGHT CENTS) representing determinable rental received by them from sub-tenants on the property;
- (b) writing back of the amount of R85,854.03 (EIGHTY-FIVE THOUSAND EIGHT HUNDRED AND FIFTY-FOUR RAND AND THREE CENTS) representing basic and infrastructure charges (electricity, water, sewerage and refuse) on municipal account number 900000522815 for the period 1 July 2018 to 30 September 2019;
- (c) writing off of the amount of R49,074.45 (FORTY-NINE THOUSAND AND SEVENTY-FOUR RAND AND FORTY-FIVE CENTS) representing consumption charges (electricity, water and sewerage) levied on municipal account number 900000522815 for the period 1 July 2018 to 30 September 2019;
- (d) writing off of the amount of R1,779.54 (ONE THOUSAND SEVEN HUNDRED AND SEVENTY NINE RAND AND FIFTY FOUR CENTS) representing the balance of the services charges due on municipal account number 900000522815 for the period 1 October 2019 to 31 May 2021, representing the time period the Klein River Lagoon Park Association and De Vette Mossel made payments of services charges directly to the Municipality;
- (e) writing off of a total amount of R15,245.99 (FIFTEEN THOUSAND TWO HUNDRED AND FORTY-FIVE RAND AND NINETY-NINE CENTS) representing sundry charges (collection costs, etc.) and interest levied on the municipal account number 900000522815 for the period 1 July 2018 to 30 April 2021;
- (f) re-allocation of an amount of R146,872.68 (ONE HUNDRED AND FORTY SIX THOUSAND EIGHT HUNDRED AND SEVENTY TWO RAND AND SIXTY EIGHT CENTS) representing payments (including services deposits) made by the Pohl Group on account number 900000522815 for the period 1 July 2018 to 31 October 2019 to

- partially settle the legal services costs in the amount of R302,105.25 (THREE HUNDRED AND TWO THOUSAND ONE HUNDRED AND FIVE RAND AND TWENTY FIVE CENTS) incurred in the arbitration for which payment the Pohl Group is liable for (levied on the account);
- (g) writing back of the amount of R107,731.45 (ONE HUNDRED AND SEVEN THOUSAND SEVEN HUNDRED AND THIRTY-ONE RAND AND FORTY-FIVE CENTS) representing the balance basic and infrastructure charges for electricity on municipal account number 770004831004 for the period 1 July 2018 to 30 April 2021;
- (h) writing off of the amount of R110,822.94 (ONE HUNDRED AND TEN THOUSAND EIGHT HUNDRED AND TWENTY-TWO RAND AND NINETY-FOUR CENTS) representing the balance consumption charges for electricity on municipal account number 770004831004 for the period 1 July 2018 to 30 April 2021;
- (i) writing off of a total amount of R8,487.02 (EIGHT THOUSAND FOUR HUNDRED AND EIGHTY-SEVEN RAND AND TWO CENTS) representing sundry charges (collection costs, etc.) and interest levied on the municipal account number 770004831004 for the period 1 July 2018 to 30 April 2021; and
- (j) re-allocation of an amount of R155,232.57 (ONE HUNDRED AND FIFTY-FIVE THOUSAND TWO HUNDRED AND THIRTY TWO RAND AND FIFTY SEVEN CENTS) representing the balance payments (including services deposits) made by the Pohl Group on account number 770004831004 for the period 1 July 2018 to 31 July 2020 to partially settle the legal services costs in the amount of R302,105.25 (THREE HUNDRED AND TWO THOUSAND ONE HUNDRED AND FIVE RAND AND TWENTY FIVE CENTS) incurred in the arbitration for which payment the Pohl Group is liable for (levied on the account).

## **7. Financial Implications**

The following amounts will be waived, written back and written off.

- |                                                                                                                                                    |               |
|----------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| (a) waiver of claim against the Pohl Group – rental of sub-tenants.                                                                                | R1,056,032.98 |
| (b) writing back of basic and infrastructure charges levied on municipal account number 900000522815.                                              | R 85,854.03   |
| (d) writing off of the balance of the consumption charges levied on municipal account number 900000522815.                                         | R 49,074.45   |
| (e) writing off the balance on municipal account number 900000522815 (in relation to the Klein River Lagoon Park Association and De Vette Mossel). | R 1,779.54    |
| (f) writing off of the sundry charges and interest levied on municipal account number 900000522815.                                                | R 15,249.99   |

**AGENDA OF THE MAYORAL COMMITTEE MEETING:****26 MAY 2021**

(g)	writing back of the basic and infrastructure charges levied on municipal account number 770004831004.	R 107,731.45
(i)	writing off of the balance of the consumption charges levied on municipal account number 770004831004.	R 110,822.94
(j)	writing off of the sundry charges and interest levied on municipal account number 770004831004	R 8,487.02
	<b>Total</b>	<u>R1,435,032.40</u>

See calculations attached marked Annexures E and F.

**8. Staff Implications**

N/A

**9. Comments from other Departments, Divisions and Administrations**

None

**10. Annexures**

Annexure A: Locality map

Annexure B: Rental payments made by the Klein River Lagoon Park Association

Annexure C: Rental payments made by De Vette Mossel Restaurant

Annexure D: Rental payments made by Ms M Erasmus and Mr H Esterhuyzen/"See en Sand" respectively

Annexure E: Account number 900000522815 calculations

Annexure F: Account number 770004831004 calculations

**RECOMMENDATION TO THE COUNCIL:**

that Council **approves** the:

1. waiver of the Municipality's claim against the Pohl Group for payment of the amount of R1,056,032.98 (ONE MILLION AND FIFTY-SIX THOUSAND AND THIRTY-TWO RAND AND NINETY-EIGHT CENTS) representing determinable rental received by them from sub-tenants on the property;
2. writing back of the amount of R85,854.03 (EIGHTY-FIVE THOUSAND EIGHT HUNDRED AND FIFTY-FOUR RAND AND THREE CENTS) representing basic and infrastructure charges (electricity, water, sewerage and refuse) on municipal account number 900000522815 for the period 1 July 2018 to 30 September 2019;



3. writing off of the amount of R49,074.45 (FORTY-NINE THOUSAND AND SEVENTY-FOUR RAND AND FORTY-FIVE CENTS) representing consumption charges (electricity, water and sewerage) levied on municipal account number 900000522815 for the period 1 July 2018 to 30 September 2019;
4. writing off of the amount of R1,779.54 (ONE THOUSAND SEVEN HUNDRED AND SEVENTY NINE RAND AND FIFTY FOUR CENTS) representing the balance of the services charges due on municipal account number 900000522815 for the period 1 October 2019 to 31 May 2021, representing the time period the Klein River Lagoon Park Association and De Vette Mossel made payments of services charges directly to the Municipality;
5. writing off of a total amount of R15,245.99 (FIFTEEN THOUSAND TWO HUNDRED AND FORTY FIVE RAND AND NINETY-NINE CENTS) representing sundry charges (collection costs, etc.) and interest levied on the municipal account number 900000522815 for the period 1 July 2018 to 30 April 2021;
6. re-allocation of an amount of R146,872.68 (ONE HUNDRED AND FORTY SIX THOUSAND EIGHT HUNDRED AND SEVENTY TWO RAND AND SIXTY EIGHT CENTS) representing payments (including services deposits) made by the Pohl Group on account number 900000522815 for the period 1 July 2018 to 31 October 2019 to partially settle the legal services costs in the amount of R302,105.25 (THREE HUNDRED AND TWO THOUSAND ONE HUNDRED AND FIVE RAND AND TWENTY FIVE CENTS) incurred in the arbitration for which payment the Pohl Group is liable for (levied on the account);
7. writing back of the amount of R107,731.45 (ONE HUNDRED AND SEVEN THOUSAND SEVEN HUNDRED AND THIRTY-ONE RAND AND FORTY-FIVE CENTS) representing the balance basic and infrastructure charges for electricity on municipal account number 770004831004 for the period 1 July 2018 to 30 April 2021;
8. writing off of the amount of R110,822.94 (ONE HUNDRED AND TEN THOUSAND EIGHT HUNDRED AND TWENTY-TWO RAND AND NINETY-FOUR CENTS) representing the balance consumption charges for electricity on municipal account number 770004831004 for the period 1 July 2018 to 30 April 2021;
9. writing off of a total amount of R8,487.02 (EIGHT THOUSAND FOUR HUNDRED AND EIGHTY-SEVEN RAND AND TWO CENTS) representing sundry charges (collection costs, etc.) and interest levied on the municipal account number 770004831004 for the period 1 July 2018 to 30 April 2021; and

10. re-allocation of an amount of R155,232.57 (ONE HUNDRED AND FIFTY-FIVE THOUSAND TWO HUNDRED AND THIRTY TWO RAND AND FIFTY SEVEN CENTS) representing the balance payments (including services deposits) made by the Pohl Group on account number 770004831004 for the period 1 July 2018 to 31 July 2020 to partially settle the legal services costs in the amount of R302,105.25 (THREE HUNDRED AND TWO THOUSAND ONE HUNDRED AND FIVE RAND AND TWENTY FIVE CENTS) incurred in the arbitration for which payment the Pohl Group is liable for (levied on the account).

**RESPONSIBLE OFFICIALS :**

**A LE ROUX  
E HOONENBERG  
L WALLACE**

**TARGET DATE FOR IMPLEMENTATION :**

**18 JUNE 2021**

**TARGET DATE TO INFORM APPLICANT :**

**N/A**

**TARGET DATE TO INFORM OBJECTOR :**

**N/A**

ANNEXURE A



## ANNEXURE B

<b><u>Klein River Lagoon Park Association- Payments to the Pohl Group: 5 April 2018 to 1 Sept 2020</u></b>				
<b>Date paid</b>	<b>Rental</b>	<b>VAT</b>	<b>Total Rental</b>	<b>For Month</b>
5 April 2018	R 32 000,00	R 4 800,00	<b>R 36 800,00</b>	March 2018
8 May 2018	R 32 000,00	R 4 800,00	<b>R 36 800,00</b>	April 2018
4 June 2018	R 17 391,30	R 2 608,70	<b>R 20 000,00</b>	May 2018
26 June 2018	R 22 608,70	R 3 391,30	<b>R 26 000,00</b>	June 2018
23 July 2018	R 20 000,00	R 3 000,00	<b>R 23 000,00</b>	July 2018
20 August 2018	R 20 000,00	R 3 000,00	<b>R 23 000,00</b>	August 2018
21 September 2018	R 20 000,00	R 3 000,00	<b>R 23 000,00</b>	September 2018
19 October 2018	R 20 000,00	R 3 000,00	<b>R 23 000,00</b>	October 2018
19 November 2018	R 20 000,00	R 3 000,00	<b>R 23 000,00</b>	November 2018
28 December 2018	R 20 000,00	R 3 000,00	<b>R 23 000,00</b>	December 2018
16 January 2019	R 20 000,00	R 3 000,00	<b>R 23 000,00</b>	January 2019
22 February 2019	R 20 000,00	R 3 000,00	<b>R 23 000,00</b>	February 2019
26 March 2019	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	March 2019
9 April 2019	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	April 2019
2 May 2019	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	May 2019
4 June 2019	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	June 2019
3 July 2019	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	July 2019
7 August 2019	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	August 2019
3 September 2019	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	September 2019
2 October 2019	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	October 2019
5 November 2019	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	November 2019
17 December 2019	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	December 2019
4 February 2020	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	January 2020
2 March 2020	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	February 2020
6 April 2020	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	March 2020
5 May 2020	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	April 2020
2 June 2020	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	May 2020
1 July 2020	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	June 2020
30 July 2020	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	July 2020
1 September 2020	R 22 500,00	R 3 375,00	<b>R 25 875,00</b>	August 2020
<b>TOTALS</b>	<b>R 669 000,00</b>	<b>R 100 350,00</b>	<b>R 769 350,00</b>	

## ANNEXURE C

<b>De Vette Mossel Hermanus- Payments to the Pohl Group: 15 Dec 2018 to 30 September 2020</b>				
	<b>Rental</b>	<b>Turnover Rental</b>	<b>Total Rental/month</b>	<b>Comments</b>
Deposit 2018	R 12 000,00			
Decemer 2018	R 7 074,20	R 11 039,71		
January 2019	R 12 900,00	R 7 587,25	R 20 487,25	
February 2019	R 12 900,00	R 2 772,10	R 15 672,10	
March 2019	R 12 900,00	R 3 537,50	R 16 437,50	
April 2019	R 12 900,00	R 2 083,67	R 14 983,67	
May 2019	R 12 900,00	R 1 184,97	R 14 084,97	
June 2019	R 12 900,00	R 1 098,97	R 13 998,97	
July 2019	R 12 900,00	R 194,04	R 13 094,04	
August 2019	R 12 900,00	R 816,89	R 13 716,89	
September 2019	R 12 900,00	R 1 901,03	R 14 801,03	
October 2019	R 12 900,00	R 1 157,24	R 14 057,24	
November 2019	R 12 900,00	R 1 175,55	R 14 075,55	
December 2019	R 12 900,00	R 15 758,43	R 28 658,43	
January 2020	R 12 900,00	R 5 269,44	R 18 169,44	
February 2020	R 12 900,00	R 2 619,99	R 15 519,99	
March 2020	R 12 900,00	R -	R 12 900,00	
April 2020	R -	R -	R -	Rental exemption
May 2020	R -	R -	R -	Rental exemption
June 2020	R -	R -	R -	Rental exemption
July 2020	R -	R -	R -	Rental exemption
August 2020	R -	R -	R -	Rental exemption
September 2020	R 6 450,00	R -	R 6 450,00	Rental reduction
<b>TOTALS</b>	<b>R 207 024,20</b>	<b>R 58 196,78</b>	<b>R 265 220,98</b>	

## ANNEXURE D

<b><u>Ms M Erasmus- Payments to the Pohl Group: 1 April 2018 to 30 June 2018</u></b>	
<b>Month</b>	<b>Rental</b>
April 2018	R 1 154,00
May 2018	R 1 154,00
June 2018	R 1 154,00
<b>TOTAL</b>	<b>R 3 462,00</b>
<b><u>"See en Sand" - Payments to the Pohl Group: 1 August 2020 to XXXXX 2021</u></b>	
<b>Month</b>	<b>Rental</b>
August 2020	R 6 000,00
September 2020	R 6 000,00
October 2020	R 6 000,00
<b>TOTAL</b>	<b>R 18 000,00</b>

## ANNEXURE E

<b>900000522815</b>			
<b>Pohl groep</b>			
<b>July 2018 - September 2019 levies</b>		<b>Payments July 2018 - October 2019</b>	
<b>Write back</b>		Services dep	-7 972,00
Basic electric	17 348,46		-138 900,68
Basic water	63 701,37		
Basic sewer	2 085,27		
Refuse	2 718,93		
	85 854,03		
<b>Write off</b>			
Consumption electric	17 619,95		
Consumption water	17 743,66		
Consumption sewer	13 710,84		
	49 074,45		
	134 928,48		
<b>July 2018 - April 2021</b>			
<b>Write off</b>			
Write off Sundries	9 675,00		
Write off Interest	5 570,99		
	15 245,99		

<b>900000522815</b>			
<b>KRLP &amp; DVM</b>			
<b>October 2019-April 2021 levies</b>		<b>Payments November 2019 - May 2021</b>	
			-142 382,06
Basic electric	7 930,91		-6 860,95
Basic water	83 702,40		-1 870,81
Basic sewer	3 005,62		
Refuse	4 148,99		
	98 787,92		
Consumption electric	25 026,54		
Consumption water	15 597,12		
Consumption sewer	13 481,78		
	54 105,44		
	152 893,36		
Balance due		1 779,54	write off

<b>90000522815</b>			
<b>EFFECT</b>			
	<b>Debit</b>	<b>Credit</b>	<b>Comment</b>
Basic electric	17 348,46	17 348,46	Write back
Basic water	63 701,37	63 701,37	Write back
Basic sewer	2 085,27	2 085,27	Write back
Refuse	2 718,93	2 718,93	Write back
Consumption electric	17 619,95	17 619,95	Write off
Consumption water	17 743,66	17 743,66	Write off
Consumption sewer	13 710,84	13 710,84	Write off
Write off Sundries	9 675,00	9 675,00	Write off
Write off Interest	5 570,99	5 570,99	Write off
Basic electric	7 930,91		
Basic water	83 702,40		
Basic sewer	3 005,62		
Refuse	4 148,99		
Consumption electric	25 026,54		
Consumption water	15 597,12		
Consumption sewer	13 481,78	1 779,54	Write off
Services deposits		7 972,00	
Payments		138 900,68	
Payments		142 382,06	
Payments		6 860,95	
Payments		1 870,81	
	<b>146 872,68</b>		To legal fees
	<b>449 940,51</b>	<b>449 940,51</b>	



## ANNEXURE F

<b>770004831004</b>			
<b>Pohl groep</b>			
<b>July 2018 -April 2021 levies</b>		<b>Payments July 2018 - April 2021</b>	
<b>Write back</b>		Services dep	-17 213,00
Balance Basic electric	107 731,45		-181 610,83
<b>Write off</b>			
Partial Consumption electric	110 822,94		
Write off Sundries	4 136,00		
Write off Interest	4 351,02		
	119 309,96		
<b>KRLP levies paid</b>			-49 253,85
<b>October 2019 - May 2020 levies</b>			
Balance Basic electric	1 954,82		
Partial Consumption electric	47 299,03		
	49 253,85		
<b>EFFECT</b>			
	<b>Debit</b>	<b>Credit</b>	<b>Comment</b>
Partial Basic electric	107 731,45	107 731,45	Write back
Partial Consumption electric	154 414,20	110 822,94	Write off
Write off Sundries	4 136,00	4 136,00	Write off
Write off Interest	4 351,02	4 351,02	Write off
Partial Basic electric	1 954,82		
Partial Consumption electric	47 299,03		
Services deposits		17 213,00	
Payments		181 610,83	
Payments		49 253,85	
	155 232,57		To balance legal fees
	475 119,09	475 119,09	