

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
02 March 2022
(Also the agenda for the Mayoral Committee Meeting : 28 March 2022)**

3.

A PORTION OF ERF 4831 HERMANUS: DEVIATION FROM PARAGRAPH 18 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A DIRECT LEASE AGREEMENT WITH DE VETTE MOSSEL HERMANUS (PTY) LTD

7/2/3/1

A Le Roux

Manager: Property Administration

01 February 2022

(028) 316-5623

1. Executive Summary

To obtain approval from Council for the deviation from paragraph 18 of the Administration of Immovable Property Policy (as approved by Council on 25 November 2015) allowing the Municipality to enter into, and take over, a lease agreement directly with De Vette Mossel Hermanus (Pty) Ltd (Registration No: 2018/636621/07) (hereinafter referred to as "De Vette Mossel") in respect of a portion of Erf 4831 Hermanus, $\pm 2000\text{m}^2$ (APPROXIMATELY TWO THOUSAND SQUARE METRES) in extent (hereinafter referred to as the "Property") situated in the De Mond Public Resort for a period of 3 (THREE) years commencing from 1 October 2020 until 30 September 2023 for the purpose of operating the De Vette Mossel restaurant, without following a competitive bidding process.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
02 March 2022
(Also the agenda for the Mayoral Committee Meeting : 28 March 2022)**

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

A tender for the development of the De Mond Caravan Park was awarded to the Pohl Business Trust (trading as the Pohl Property Development Group) trading as The Crown Grant (Pty) Ltd (hereinafter called the "Pohl Group"). A lease agreement between the Municipality and the Pohl Group was entered into in March 2018. The Pohl Group applied for consent to sub-lease a portion of Erf 4831 Hermanus (See the Locality Map attached as Annexure A) to De Vette Mossel, which approval was then granted.

De Vette Mossel entered into a lease agreement with the Pohl Group in terms whereof they paid rental and services charges to the Pohl Group directly. The rental amount paid by De Vette Mossel varied from month to month as they paid a basic rental of R12,900 (TWELVE THOUSAND NINE HUNDRED RAND) (Vat excluded) plus turnover rental ranging from R194.04 (ONE HUNDRED AND NINETY FOUR RAND AND FOUR CENTS) up to R15,758.43 (FIFTEEN THOUSAND SEVEN HUNDRED AND FIFTY EIGHT RAND AND FORTY THREE CENTS) depending on the month. The last rental amount paid by De Vette Mossel was R6,450.00 (SIX THOUSAND FOUR HUNDRED AND FIFTY RAND) (VAT excluded). The Pohl Group also gave rental exemptions due to Covid-19. The average between the three basic rentals paid amounts to R8,808.00 (EIGHT THOUSAND EIGHT HUNDRED AND EIGHT RAND) (Vat excluded). However the basic rental was agreed to between De Vette Mossel and the Pohl Group on, *inter alia*, the assumptions that the Pohl Group would be making numerous upgrades to the De Mond area, especially accomodation units which would have resulted in substantially more foot traffic and customers that would be absorbing the large rental amount and that the lease term would be longer. As the lease agreement with the Pohl Group lapsed on 1 July 2019 (due to the non-fulfillment of suspensive conditions by the Pohl Group as confirmed by an arbitration award received on 29 September 2020), the De Mond area is under Municipal management again since the arbitration award and a lease agreement needs to be entered into between the Municipality and De Vette Mossel. Furthermore due to the the risk of having such a facility vacant in a remote area, the impact of Covid-19 and the roadworks on the R43 the last rental amount of R6,450.00 (SIX THOUSAND FOUR HUNDRED AND FIFTY RAND) (Vat excluded) per month, escalating annually on 1 July by a percentage equal to the Consumer Price Index (all items) can be seen as the market related rental to begin the lease with the Municipality with. This was the last rental amount agreed to between the Pohl Group and De Vette Mossel and, for the reasons set out above, should be used as the starting point for a lease with the Municipality.

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
02 March 2022
(Also the agenda for the Mayoral Committee Meeting : 28 March 2022)**

In the light of the above, and taking into consideration that De Vette Mossel has invested money into the the Property and the risk of having such a facility vacant in such a remote area, it is recommended that the lease agreemeent they had with the Pohl Group be taken over as a temporary lease agreement of 3 years commencing on 1 October 2020, pending the awarding of a new tender for the whole area.

A new tender for the development of the De Mond Caravan Park will be advertised within the next two months. Despite this, the Municipality must still, in terms of the Municipal Asset Transfer Regulations and the Administration of Immovable Property Policy, have a written lease agreement with De Vette Mossel for the period they have been on the Property since the latest date it was declared that the lease agreement with the Pohl Group has lapsed and until such time the tender is awarded and the De Mond development can commence.

The Accounting Officer (Municipal Manager) approved the short term lease of the Property to De Vette Mossel, subject thereto that the approval of Council is obtained as to the deviation from paragraph 18 of the Administration of Immovable Property Policy, as requested in this report. In the interim, for administrative and audit purposes, a written lease agreement was signed that is subject to Council's approval for a deviation from the competitive bidding requirements to allow the Municipality to enter into the agreement directly.

This lease agreement is in writing and further include specific conditions as stipulated by the Administration of Immovable Property Policy Policy and will thus not be on exactly the same terms and conditions as the agreement De Vette Mossel had with the Pohl Group. One of the conditions will be that the Municipality can cancel the lease agreement with De Vette Mossel on the provision of 6 months written notice. This condition has been accepted by De Vette Mossel.

It must be noted that De Vette Mossel is not prohibited from negotiating with any new developer of the De Mond Caravan Park.

Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following paragraphs of the Administration of Immovable Property Policy are applicable:

Paragraph 4: “No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
02 March 2022
(Also the agenda for the Mayoral Committee Meeting : 28 March 2022)**

processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including - but not limited to - legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.

In this case the Municipality will be taking over a lease agreement between the Pohl Group and De Vette Mossel, thus no application fee is payable.

Paragraph 17: “Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:

- 17.1 a competitive process, which may include a closed or public tender or proposal call, specifically in circumstances listed in paragraph 18 below; or***
- 17.2 a direct lease.”***

Paragraph 18: “A competitive process must at all times be followed in circumstances where:

- 18.1 the lease is for a long term with an income value in excess of R10 million;***
- 18.2 the lease is for a formal business premises with a market related rental;***
- 18.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or***
- 18.4 by discretion of the municipality, a competitive process will best serve the interests of the community”.***

In this case the Municipality will be taking over the lease agreement De Vette Mossel had with the Pohl Group, but with the condition that it will only be for a period of 3 years with a 6 months cancellation clause. As this is a temporary short term lease for a period of 3 years on a property already temporarily developed for restaurant purposes by De Vette Mossel and as the whole area will be made available for the lease and development for a long term, it will not serve a usefull purpose to follow a competitive process for this specific portion of Erf 4831 for such a short period. The Property will thus be included in the tender for the bigger portion of Erf 4831 Hermanus (see diagram attached marked Annexure C). De Vette Mossel will then have the opportunity again to negotiate

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
02 March 2022
(Also the agenda for the Mayoral Committee Meeting : 28 March 2022)**

with any new developer as and when the tender is awarded. Therefore it is recommended that Council approves a deviation from paragraph 18.

Paragraph 21: “Short term lease of municipal immovable property:

21.1. The Municipality may grant a short term lease of municipal immovable property up to three years without the option of renewal only after the Accounting Officer has approved the lease in principle.

21.2 Immovable property let according to paragraph 21.1 above need not be advertised in terms of paragraph 10.1 and 10.2 and need not be subsequently approved by the Executive Mayor, but shall be subject to the following:

(a) the lessee shall be responsible for all costs regarding the connection of services, service fees and any other costs associated with the lease;

(b) the Municipality shall, if it is not prescribed that market related rental must be charged, determine the rental;

(c) the lessee shall undertake in writing to compensate the Municipality for damages caused to the immovable property for whatever reason;

(d) the lessee shall indemnify the Municipality against any claims; and

(e) the Municipality may request proof of financial viability to honour the lease.”

The Accounting Officer (Municipal Manager) approved the lease of the Property to De Vette Mossel subject thereto that the approval of Council is obtained as to the deviation from paragraph 18 of the Administration of Immovable Property Policy as requested in this report.

Paragraph 24: “The fair market value for the alienation of, the rental amount for the leasing or compensation payable for a servitude over municipal immovable property shall be determined by an independent professional valuer or professional associated valuer registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000), or any ensuing act at the cost of the purchaser (in the case of a direct sale) or lessee (in the case of a direct lease)/servitude holder (in the case of a servitude).”

The average between the three basic rentals paid by De Vette Mossel to the Pohl Group amounts to R8,808.00 (EIGHT THOUSAND EIGHT HUNDRED AND EIGHT RAND) (Vat excluded). However the former basic rental was agreed to between De Vette Mossel and the Pohl Group on, *inter alia*, the assumptions that the Pohl Group would be making numerous upgrades to the De Mond area, especially accommodation units which would have resulted in substantially more foot traffic and

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
02 March 2022
(Also the agenda for the Mayoral Committee Meeting : 28 March 2022)**

customers that would be absorbing the large rental amount and that the lease term would be longer. The last rental amount paid by De Vette Mossel was R6,450.00 (SIX THOUSAND FOUR HUNDRED AND FIFTY RAND) (VAT excluded) and this amount can be seen as market related as it was negotiated between two willing parties in a business transaction with due regard to their circumstances. This rental amount will escalate annually on the 1st of July by a percentage equal to the prevailing consumer price index (all items).

Conclusion

Taking the above into consideration, it is recommended that Council approves the deviation from paragraph 18 of the Administration of Immovable Property Policy in order for the Municipality to take over the lease agreement with De Vette Mossel from the Pohl Group for a period of 3 (THREE) years from 1 October 2020 until 30 September 2023 without following a competitive process.

7. Financial Implications

The Municipality stands to gain a rental amount of R6,450.00 (SIX THOUSAND FOUR HUNDRED AND FIFTY RAND) (VAT excluded) per month, escalating annually on the 1st of July by a percentage equal to the prevailing consumer price index (all items) and service charges.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets, Mr J Vorster - (028) 313 8046

“As this is an income generating proposal, with no intention of selling the asset, there is no objection against the application.”

10. Annexures

- Annexure A: Locality Map (1&2)
- Annexure B: Payments Made
- Annexure C: Lease Area for the whole De Mond

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
02 March 2022
(Also the agenda for the Mayoral Committee Meeting : 28 March 2022)**

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to enter into a direct lease agreement with De Vette Mossel in respect of a portion of Erf 4831 Hermanus for a period of 3 (THREE) years commencing from 1 October 2020 until 30 September 2023 at a rental amount of R6,450.00 (SIX THOUSAND FOUR HUNDRED AND FIFTY RAND) (VAT excluded) per month, escalating annually on the 1st of July by a percentage equal to the prevailing consumer price index (all items) without following a competitive process, **be approved.**

| | |
|--|----------------------|
| RESPONSIBLE OFFICIAL : | R MARINUS |
| TARGET DATE FOR IMPLEMENTATION : | 06 APRIL 2022 |
| TARGET DATE TO INFORM APPLICANT : | 06 APRIL 2022 |
| TARGET DATE TO INFORM OBJECTOR : | N/A |

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 March 2022
(Also the agenda for the Mayoral Committee Meeting : 28 March 2022)**

3.

A PORTION OF ERF 4831 HERMANUS: DEVIATION FROM PARAGRAPH 18 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A DIRECT LEASE AGREEMENT WITH DE VETTE MOSSEL HERMANUS (PTY) LTD

7/2/3/1

A Le Roux

Manager: Property Administration

01 February 2022

(028) 316-5623

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 2 MARCH 2022, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy in order to enter into a direct lease agreement with De Vette Mossel in respect of a portion of Erf 4831 Hermanus for a period of 3 (THREE) years commencing from 1 October 2020 until 30 September 2023 at a rental amount of R6,450.00 (SIX THOUSAND FOUR HUNDRED AND FIFTY RAND) (VAT excluded) per month, escalating annually on the 1st of July by a percentage equal to the prevailing consumer price index (all items) without following a competitive process, **be approved.**

RESPONSIBLE OFFICIAL :

R MARINUS

TARGET DATE FOR IMPLEMENTATION :

06 APRIL 2022

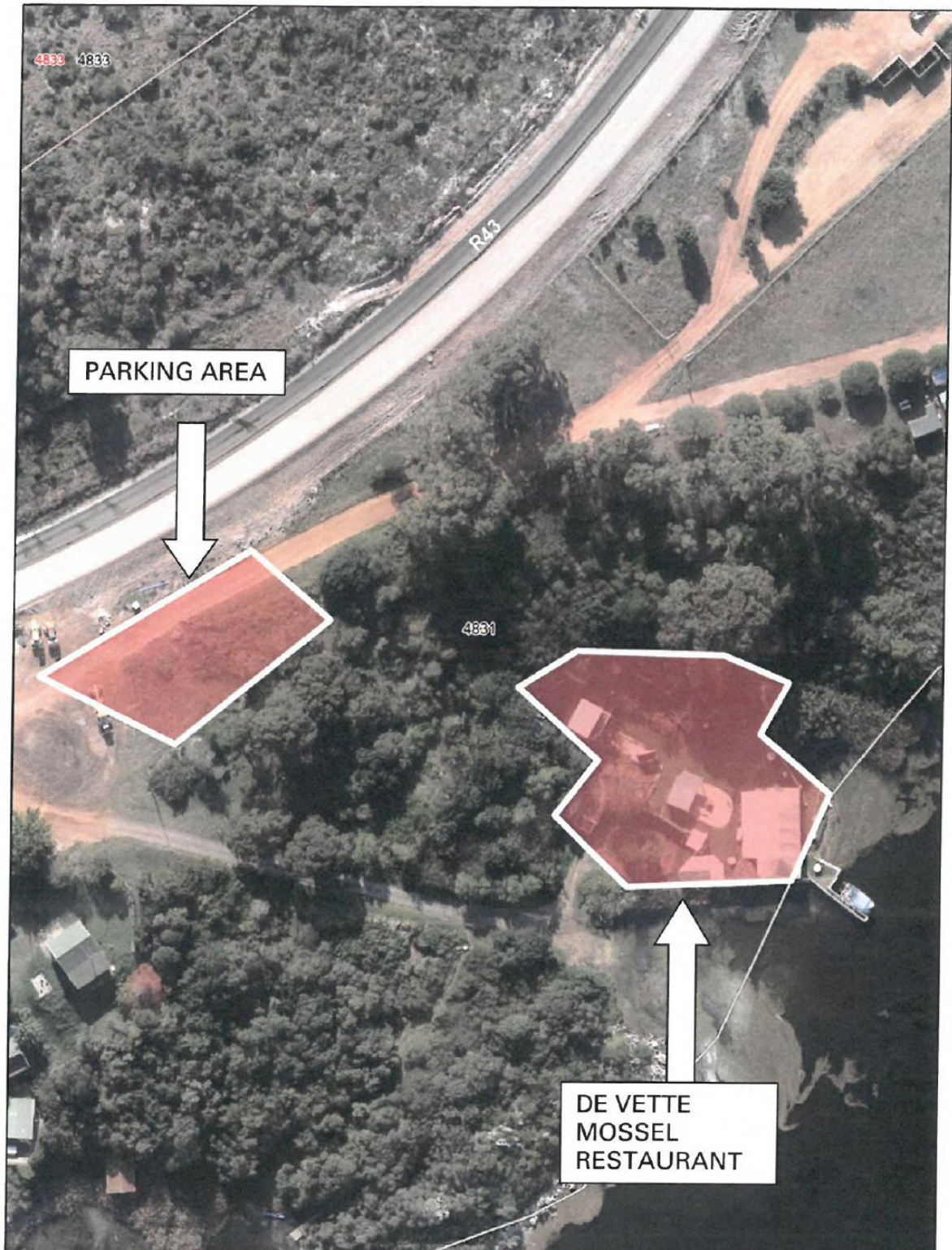
TARGET DATE TO INFORM APPLICANT :

06 APRIL 2022

TARGET DATE TO INFORM OBJECTOR :

N/A





ANNEXURE B

| De Vette Mossel Hermanus- Betalings aan Pohl Groep: 15 Des 2018 tot 20 Oktober 2020 | | | | | | | | | | |
|--|-----------------|-----------------|-----------------|-----------------|----------------|----------------|----------------------|----------------|------------------|--|
| | Huur | Omset Huur | Elektrisiteit | Water | Sewerage | Admin Foon | Meter Reading Charge | BTW | Verbruik Totaal: | |
| Deposito 2018 | 12000 | | | | | | | | | |
| Water Aktiveer Deposito | | | | 2186 | | | | | | |
| 2018 | | | | | | | | | | |
| Des | 7074,2 | 11039,71 | 405,73 | 1723,62 | 152,93 | 228,23 | 205,41 | 407,39 | 3123,31 | |
| 2019 | | | | | | | | | | |
| Jan | 12900 | 7587,25 | 1098,36 | 1002,06 | 152,93 | 225,34 | 202,8 | 338 | 3019,49 | |
| Feb | 12900 | 2772,1 | 961,55 | 434,87 | 38,88 | 143,53 | 129,18 | 143,53 | 1851,54 | |
| Maart | 12900 | 3537,5 | 819,6 | 987,3 | 59,62 | 186,65 | 167,99 | 279,98 | 2501,14 | |
| April | 12900 | 2083,67 | 1077,84 | 1376,18 | 549,5 | 300,35 | 270,32 | 450,53 | 4024,72 | |
| Mei | 12900 | 1184,97 | 751,19 | 168,06 | 64,02 | 98,33 | 88,49 | 147,49 | 1317,58 | |
| Junie | 12900 | 1098,97 | 968,39 | 226,03 | 55,21 | 124,96 | 112,47 | 187,44 | 1674,5 | |
| Julie | 12900 | 194,04 | 1032,94 | 187 | 89,04 | 137,63 | 123,87 | 206,45 | 1776,93 | |
| Aug | 12900 | 816,89 | 1262,83 | 392,77 | 130,1 | 178,57 | 160,71 | 267,85 | 2392,83 | |
| Sept | 12900 | 1901,03 | 1178,1 | 355,05 | 168,73 | 170,19 | 153,17 | 255,28 | 2280,52 | |
| Okt | 12900 | 1157,24 | 1725,12 | | | | | 258,88 | 1984 | |
| Nov | 12900 | 1175,55 | 2600,87 | | | | | | 2600,87 | |
| Des | 12900 | 15758,43 | 1759,65 | 366,37 | 136,67 | 226,27 | 203,64 | 339,4 | 3032 | |
| 2020 | | | | | | | | | | |
| Jan | 12900 | 5269,44 | 2891,73 | 1279,05 | 483,56 | | | | 4654,34 | |
| Feb | 12900 | 2619,99 | 2114,43 | 339,73 | 142,87 | | | | 2597,03 | |
| Maart | 12900 | | 1786,66 | 397,5 | 176,51 | | | | 2360,67 | |
| April | | | 1777,81 | 397,5 | 176,51 | | | | 2351,82 | |
| Mei | | | 409,22 | 184,42 | | | | | 593,64 | |
| Junie | | | 916,34 | 184,42 | | | | | 184,42 | |
| Julie | | | 1103,74 | 224,44 | 57,61 | | | | 1385,79 | |
| Aug | | | 1005,09 | 223,42 | 46,09 | | | | 1274,6 | |
| Sept | 6450 | | 1202,68 | 218,39 | 46,11 | | | | 1467,18 | |
| Okt | | | | | | | | | | |
| Totaal | 207024,2 | 58196,78 | 28849,87 | 10668,18 | 2726,89 | 2020,05 | 1818,05 | 3282,22 | 48448,92 | |

