

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GQEBERHA**

CASE NO 2026 –

In the matter between:

DEMOCRATIC ALLIANCE

First Applicant

RETIEF ODENDAAL

Second Applicant

and

NELSON MANDELA BAY MUNICIPALITY

First Respondent

BABALWA LOBISHE

Second Respondent

DAYALAN MURUVAN PILLAY

Third Respondent

**THE AUDITOR-GENERAL, SOUTH
AFRICA**

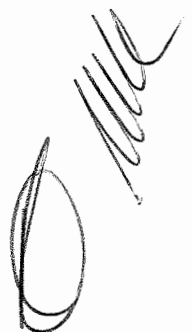
Fourth Respondent

FOUNDING AFFIDAVIT

I, the undersigned, RETIEF ODENDAAL, do hereby make oath and
state:

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1. I am a major attorney of this Court, practising under the style of Retief Odendaal Attorneys in Gqeberha. I am also a Member of the Eastern Cape Provincial Legislature in which capacity I represent the First Applicant ("the DA"). I am resident in Gqeberha and am accordingly a member of the community forming part of the First Respondent ("the Municipality") as provided for in s2 of the Local Government: Municipal Systems Act, 32 of 2000 ("the Systems Act").
2. Although I am not at present a member of the Council of the Municipality, I have previously served in that capacity and indeed as the Executive Mayor and I am well versed in municipal matters.
3. I have also been selected by the DA to represent it as a candidate in the forthcoming municipal elections scheduled for 4 November 2026 and as its candidate for election as the Executive Mayor of the Municipality.
4. The DA has instructed its attorneys of record to bring this application and has authorised me to represent it for that purpose as may be necessary.

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5. The facts to which I attest herein are to the best of my knowledge and belief, both true and correct and save to the extent that it is stated or appears from the context to the contrary are within my direct knowledge. Where any matter falls outside my knowledge, I refer to the confirmatory affidavits delivered evenly herewith.

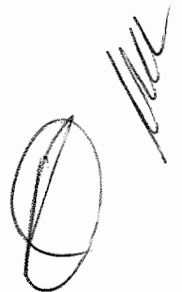
THE PARTIES

6. The First Applicant is the DEMOCRATIC ALLIANCE, a registered political party which has its national office at 16 Mill Street, Gardens, Cape Town, Western Cape and which has its local office at Block 3, Greenacres Office Park, 2nd Avenue, Newton Park, Gqeberha ("the DA").
7. The DA is currently represented in the Council of the Municipality by 48 elected councillors.
8. I am the Second Applicant. I am resident at 26 Seestrans Way, Beachview in Gqeberha.
9. The First Respondent is the NELSON MANDELA BAY MUNICIPALITY, a Category C municipality established in terms of the provisions of s12 of the Local Government: Municipal

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Structures Act, 117 of 1998 ("the Structures Act") and by Provincial Notice No. 104 dated 2 December 2000 and which has its address for the purposes of s115(3) of the Systems Act at the Offices of the City Manager, First Floor, City Hall, Vuyisile Mini Square, Govan Mbeki Avenue, Gqeberha ("the Municipality").

10. The Second Respondent is BABALWA LOBISHE, a major member of the Municipality's Council, who currently serves as its elected Executive Mayor, whose address is First Floor, City Hall, Vuyisile Mini Square, Govan Mbeki Avenue, Gqeberha ("Lobishe").
11. The Third Respondent is DAYALAN MURUVAN PILLAY, a major local government administrator, who at least during the months of August and September 2025 was in the employ of the Municipality and acting in the capacity of its municipal manager (referred to within the Municipality as the "City Manager") and who is resident at 16 Neville Street, Mangold Park, Gqeberha, 6070 ("Pillay").
12. The Fourth Respondent is the AUDITOR-GENERAL, SOUTH AFRICA, the statutory body responsible for exercising audit

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oversight over organs of state in South Africa, which has its head office at 4 Daventry Street, Lynwood Bridge Office Park, Lynwood Manor, Pretoria and which has its Eastern Cape provincial office at 14 St Helena Road, Beacon Bay, ku-Gompo City ("the AGSA").

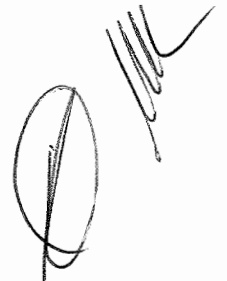
13. The Applicants seek no substantive relief against the AGSA which is cited by virtue of such interest as it may have in this matter. The Applicants nevertheless invite the AGSA, should it be inclined to do so, to be of assistance to the Court by submitting an explanatory or clarifying affidavit in relation to the submissions in this application.

INTRODUCTION

14. This application relates to a resolution taken by Lobishe, on the recommendation of Pillay, to lease to Coega Steels (Pty) Ltd (a private entity which operates a foundry within the area of the Municipality) ("Coega Steels") a 132/Kv 63MVA transformer ("the transformer") belonging to the Municipality for a 12 month period from 11 September 2025 and to the lease consequentially concluded between the Municipality (represented by Pillay) and Coega Steels

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15. On 22 January 2026, the Municipality launched an application in this Court under case number 2026 – 012338, citing Coega Steels as the respondent, in which it seeks that the decisions of Pillay and Lobishe to conclude the lease and the lease itself be declared unlawful and invalid and that they be reviewed and set aside (“the review application”).
16. A copy of the notice of motion in the review application is annexed hereto marked **FA1**.
17. The Applicants contend that:
 - 17.1. the decisions and actions of Lobishe and Pillay, which the Municipality impugns in the review application, have given, and continue to give rise to expenditure by the Municipality, for which Lobishe and/or Pillay are liable in terms of s32(1) of the Local Government: Municipal Finance Management Act, 56 of 2003 (“the MFMA”);
 - 17.2. by virtue of s32 of the MFMA, the Municipality is peremptorily obliged to recover such expenditure from Lobishe and/or Pillay.

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18. The Applicants accordingly intend to seek the declaratory and directory relief as set out in the notice of motion, in summary being:

18.1. that it be declared that the expenditure in question is irregular and/or fruitless and wasteful and/or unauthorised ("the unlawful expenditure");

18.2. that the Municipality be directed to recover the unlawful expenditure from Lobishe and/or Pillay.

MATERIAL STATUTORY AND REGULATORY FRAMEWORK

19. It is submitted that in determining this matter the Court will have regard *inter alia* to the following components of the statutory and regulatory framework applicable to local government.

The Constitution

20. The Constitution addresses local government in Chapter 7 thereof. S151 affords to a municipality the right to govern the local government affairs of its community but "*subject to national and provincial legislation as provided for in the Constitution*".

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21. In s152, the objects of local government include "*to encourage the involvement of communities and community organisations in the matters of local government*" and a municipality must strive within its financial and administrative capacity to achieve those objects.
22. The "*matters of local government*" are those referred to in s156(1). The executive and legislative authority of a municipality is vested in its council (s151(2)).
23. The national legislation referred to in s151 includes the Structures Act, the Systems Act and the MFMA which give statutory expression to the constitutional obligations of municipalities.

The Systems Act

24. In the preamble thereto, it is *inter alia* recognised that "*a fundamental aspect of the new local government system is the active engagement of communities in the affairs of municipalities of which they are an integral part and in particular in planning, service delivery and performance management*" and further that there is "*a need to ensure financially and economically viable municipalities*".

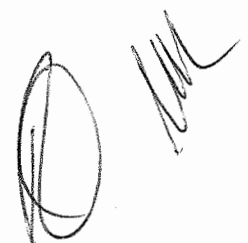
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25. The legal nature of a municipality is described in s2 of the Systems Act as being "*an organ of state within the local sphere of government exercising legislative and executive authority*" within its area and which consists of the political structures and administration thereof and "*the community of the municipality*".
26. Chapter 4 prescribes the rights and duties of municipal councils and s4(2) stipulates that the council of a municipality has the duty *inter alia* "*without favour or prejudice*" to "*provide democratic and accountable government*".
27. The concomitant rights and duties of members of the local community are provided for in s5 and include the right to contribute to the decision-making processes of the municipality; to be informed of decisions of the municipal council, or another political structure or any political office bearer of the municipality, affecting their rights, property and reasonable expectations; and to regular disclosure of the state of affairs of the municipality, including its finances.
28. Chapter 7 provides for the establishment and organisation of the Municipality's local public administration (s51) and in s53(1) and obliges the municipality to define the specific role and area

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of responsibility of each political structure and political office bearer of the municipality and of the municipal manager.

29. S54A requires the municipal council to appoint a municipal manager or an acting municipal manager for a limited period as prescribed, as head of its administration.
30. In terms of s55(1), as head of administration of the municipality, the municipal manager, subject to the policy directions of the Council, is responsible and accountable *inter alia* for the formation and development of an economical, effective, efficient and accountable administration; the management of the municipality's administration in accordance with the Systems Act and other legislation applicable to the municipality; advising the political structures and political office bearers of the municipality; carrying out the decisions of the political structures and political office bearers of the municipality; and the implementation of national legislation applicable to the Municipality.
31. S55(2) prescribes that as accounting officer of the municipality the municipal manager is responsible and accountable for all income and expenditure of the municipality; all assets and the

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discharge of all liabilities of the municipality; and proper and diligent compliance with the MFMA.

The MFMA

32. S60 provides that the municipal manager of a municipality is the accounting officer thereof for the purposes of the MFMA and must exercise the functions and powers assigned to an accounting officer in terms thereof and provide guidance and advice on compliance with the MFMA to the political structures, political office bearers and officials of the municipality.
33. S61 requires the accounting officer of a municipality to act with fidelity, honesty, integrity and in the best interests of the municipality in managing its financial affairs and to disclose to the municipal council and the mayor, all material facts which are available to him or her or reasonably discoverable and which in any way might influence the decisions or actions of the council or the mayor and further to seek to prevent any prejudice to the financial interests of the municipality.
34. S62 provides that the accounting officer of a municipality is responsible for managing the financial administration of the municipality and must take all reasonable steps *inter alia* to

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ensure that the resources of the municipality are used effectively, efficiently and economically and that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented.

35. S63 prescribes that the accounting officer of the municipality is responsible for the management *inter alia* of the assets of the municipality including the safeguarding and the maintenance of those assets. The accounting officer must further ensure that the municipality has and maintains a management, accounting and information system that accounts for the assets and liabilities of the municipality; that its assets and liabilities are valued in accordance with standards of generally recognised accounting practice; and that the municipality has and maintains a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed.
36. S32(1)(a) to (d) imposes liability variously on political office bearers, the accounting officer and officials for unauthorised, irregular and fruitless and wasteful expenditure deliberately or negligently incurred, committed, made or authorised by them in the circumstances set out in those subsections.

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37. S32(1) peremptorily requires a municipality to recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure.

38. In terms of s1:

38.1. "*irregular expenditure*" includes expenditure incurred by a municipality in contravention of or which is not in accordance with a requirement of the MFMA; the Systems Act; or the municipality's supply chain management policy;

38.2. "*fruitless and wasteful expenditure*" means expenditure which was made in vain and would have been avoided had reasonable care been exercised;

38.3. "*unauthorised expenditure*" means expenditure incurred by a municipality otherwise than in accordance with s15 or 11(3) (in summary, expenditure otherwise than in terms of an approved budget and within the limits of the amounts appropriated for the different votes therein).

39. S14 regulates the "*Disposal of capital assets*" and:

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39.1. in s14(1) precludes the transfer of ownership by sale or other transaction, or other permanent disposal of a capital asset needed to provide the minimum level of basic municipal services;

39.2. In s14(2) provides that a municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in (1) but only after the municipal council has decided on reasonable grounds that the asset is not so needed and has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset. Any such transfer must be *“fair, equitable, transparent, competitive and consistent with the municipality’s supply chain management policy”*.

40. The Minister has made regulations (the Asset Transfer Regulations, GN R 878 dated 22 August 2008 (“the Asset Regulations”)) in order to regulate the transfer and disposal of capital assets by municipalities and the granting by municipalities of rights to use, control or manage capital assets.

The Asset Regulations

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41. Regulation 1 defines the term:

41.1. *“right to use, control or manage”* in relation to a capital asset as *“a right to use control or manage for a period exceeding one calendar month without ceding legal ownership in the asset”*;

41.2. *“capital asset”* as *“any movable asset that can be used continuously or repeatedly for more than one year in the production or supply of goods and services, for rental to others or for administrative purposes, and from which future economic or social benefit can be derived, such as plant, machinery and equipment”*.

42. Regulation 34(1)(b) provides that a municipality may grant a right to use, control or manage a capital asset only after the municipal council has approved in principle that the right may be granted.

43. Regulation 36 requires a municipal council, when considering whether to grant approval for any proposed granting of a right to use, control or manage a capital asset, to take into account the matters in (a) to (g), in summary being, whether the capital asset may be required for the Municipality's own use during the

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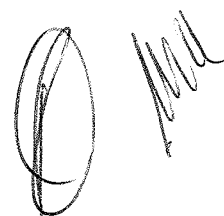
period of the right; whether any compensation to be received will result in a significant economic or financial benefit to the municipality; the risks and rewards associated with the use, control or management; any comments received from the local community and other interested persons regarding the grant of the right; any written views and recommendations thereon by the National Treasury and provincial treasury; the municipality's strategic, legal and economic interests and the interests of the local community and compliance with the legislative regime applicable to the grant thereof.

44. In terms of regulation 41(1), any such right may be granted only in accordance with the municipality's disposal management system and in terms of regulation 41(4) before granting such a right the municipality must be satisfied that the private sector party to which the right is to be granted can demonstrate the ability adequately to maintain and safeguard the asset.
45. The Municipality's disposal management system is provided for in paragraph 40 of its supply chain management policy, which *inter alia* provides that it must be read with and applied in conjunction with the Asset Regulations. A copy of that paragraph is annexed hereto marked **FA1A**.

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MATERIAL EVENTS

46. In order to place the relief sought herein in context, I am advised that it is necessary to cover in brief terms some of the same ground as is related in the review application.
47. Not all of what I say below is within my direct knowledge but with regard to the salient facts I rely primarily on reports, resolutions and other documents which served before municipal portfolio committees and/or the Council and thus form part of the public record and which I have obtained directly from municipal officials and/or councillors representing the DA.
48. On 21 August 2025, the CEO of Coega Steels addressed Pillay and advised him that it was experiencing a production shutdown due to a transformer failure and requesting the Municipality to assist it. A copy of the letter containing the request is annexed hereto marked **FA2**.
49. On 22 August 2025, Pillay responded by means of email and advised that the Municipality would lease a 63 MVA transformer to Coega Steels. A copy thereof is annexed hereto marked **FA3**.

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50. On 26 August 2025, Pillay sent a memorandum to the then Acting Executive Director: Electricity and Energy ("the AED:EE") confirming that he had advised Coega Steels that the Municipality was willing to assist by leasing the transformer to it and instructing him to prepare a formal Memorandum of Agreement "*setting out the terms of assistance, the rental of the transformer, the duration, security, insurance etc*" and further, to submit a detailed report to the Electricity and Energy Standing Committee, as well as the Mayoral Committee. A copy of the memorandum is annexed hereto marked **FA4**.
51. On 4 September 2025, the AED:EE submitted to Pillay, a memorandum addressed to the Executive Mayor, a copy of which is annexed hereto marked **FA5**. It is respectfully requested that the memorandum be read as if it had been fully set out herein. I nevertheless draw specific attention to the following:
- 51.1. it is proposed (without any motivation or other basis for doing so) that 1% of the value of the transformer be utilised to determine the monthly rental (i.e. R250 000,00);

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- 51.2. it is stated (again without any basis for doing so) that the asset value of the transformer is *"approximately R25 million"*;
- 51.3. that Coega Steels would be requested to insure the transformer at its replacement value and confirm that insurance is in place;
- 51.4. that *"Legal Services have advised that a Council resolution is required to formally grant the Municipality the authority to conclude the proposed agreement with Coega Steels"* and that this would ensure that the leasing arrangement would be *"fully compliant with municipal governance, legal and procurement requirements"*;
- 51.5. that the Budget and Treasury Directorate had raised several concerns regarding *"governance and legal protection"* pointing out that there is no policy or statutory basis for *"cases such as this"* nor is there any approved fee structure that covers leasing arrangements for *"critical assets"* and recommended that the matter serve before the Council;

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- 51.6. that the risks to the Municipality's network arising from the leasing of the transformer included that it *"is a strategic spare for the Greenbushes and Swartkops Substations"* and that in the event of a transformer failure at either of those substations the transformer may need to be recalled immediately *"to maintain the reliability and stability of the NMBM electricity network"* and that *"a formal risk assessment will be conducted to evaluate potential impacts on the network before the transformer is deployed to Coega Steels"*.
52. As appears from annexure FA5, the memorandum was recorded as having been prepared by the AED:EE and Pillay recommended to Lobishe that the recommendations in clause 1.18 be approved.
53. On 4 September 2025, Lobishe recorded her approval of the aforesaid recommendations and that: *"I approved this leasing due to the Labour Impact and financial Loss we Incure when this company (Coega Steel) is not operational"*. (sic)
54. On 8 September 2025, Lobishe signed a formal mayoral resolution document recording her aforesaid resolution under

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the heading "*Notification of matter for decision taken in terms of the authority delegated to the Executive Mayor*". A copy thereof is annexed hereto marked **FA6**.

55. On 11 September 2025, a written lease agreement was concluded between Coega Steels (represented by an unnamed person with an illegible signature) and the Municipality represented by Pillay. A copy thereof is annexed hereto marked **FA7**. The anticipated risk assessment was not undertaken prior to the upliftment by Coega Steels of the transformer, or at all.
56. Some two months after the conclusion of the lease, on 14 November 2025, the Municipality's attorneys addressed Coega Steels in a letter, a copy of which is annexed hereto marked **FA8**. It was recorded therein that the Municipality had obtained a legal opinion and had been advised that the lease had been "*irregularly and or unlawfully*" entered into and demanding an undertaking that the transformer be returned to the Municipality within a week.
57. On 24 November 2025, attorneys for Coega Steels responded in a letter, a copy of which is annexed hereto marked **FA9**, in which they advised that Coega Steels was in possession of the

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transformer in terms of a valid lease agreement and declined to provide the requested undertaking or to return the transformer.

58. Coega Steels has opposed the review application. I am advised that there is no need to comment on the merits of the review application or such opposition and I do not do so.
59. As at the date of this affidavit, the transformer remains in the possession of Coega Steels and apparently continues to be used by it.

CONSEQUENCES

60. The decisions by Pillay and Lobishe to lease the transformer to Coega Steels and the conclusion of the lease itself have given rise to expenditure on the part of the Municipality.
61. In this regard, the Municipality on its own version, has incurred the cost of an attorney and counsel, for the purposes of obtaining the opinion referred to in the letter, annexure FA8.
62. Yet further, it has incurred the costs of an attorney and both senior and junior counsel for the purposes of bringing the review application (in this regard, I annex hereto marked **FA10**,

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a copy of the last page of heads of argument filed on behalf of the Municipality in the application, reflecting the involvement of counsel).

63. I am advised that even if the Municipality succeeds in obtaining a costs order against Coega Steels in the review application, it will not recover more than its taxed party and party costs and not the costs as between attorney and own client which it will have incurred.
64. However, should Coega Steels be granted a costs order against the Municipality, the latter will be liable for those costs as taxed on a party and party basis as well as its own attorney and own client costs.
65. In the circumstances, it has already incurred expenditure in the form of legal costs and will continue to incur liability for such expenditure arising not only from the review application but also in respect of this application.
66. Yet further, as is apparent from what I have said above, the conclusion of the lease was not an arms-length commercial transaction negotiated in a competitive environment but arose from a political decision to subsidise the operation of Coega

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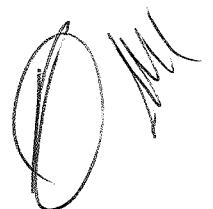
Steels by providing it with the use of an asset which constituted an essential component of a backup system to two major substations (should there be a breakdown in either of them).

67. The rental value decided upon by Lobishe was suggested by the AED:EE as a randomly selected percentage of a baldly contended for valuation of the transformer and constituted no more than a "*thumb-suck*" on his part.
68. In any event, as has been reported publicly, the Auditor General has qualified its last two audit reports on the Municipality's financial statements *inter alia* on the basis that it does not have an available asset register incorporating the value of assets such as the transformer (at all, let alone of its electricity supply assets) and is accordingly unable to state the depreciation thereof. Clearly, the proper asset value and its depreciation over the lease term would be essential components of a calculation of the lease value.
69. In terms of Generally Recognised Accounting Practice ("GRAP") as maintained by the Accounting Standards Board and as is applicable to the Municipality and being the standard applied by the Auditor-General, the "*expenses*" of the



Municipality include “*decreases in economic benefit or service potential during the reporting period in the form of outflows or consumption of assets or incurrences of liabilities that result in decreases in net assets...*”

70. Plainly, the substantial reduction in the service potential of the Municipality's electricity reticulation network (which is described in the memorandum prepared by the AED:EE (annexure FA5 and which was relied upon by Lobishe in deciding as she did) constitutes an expense which must be reflected as such in the Municipality's financial statements.
71. Indeed, in clause 1.10 of the aforesaid memorandum, it is recorded that the transformer is a “*strategic spare for the Greenbushes and Swartkops Substations*” and that: “*In the event of a transformer failure at either of these substations the leased transformer may need to be recalled immediately to maintain the reliability and stability of the NMBM network*”.
72. Provision for that possibility was not incorporated in the lease and nor was the risk assessment which it was recommended should be undertaken prior to the deployment of the transformer to Coega Steels, ever carried out.

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73. In addition, the obligation which the Municipality undertook in terms of the lease (that being to provide to Coega Steels the unencumbered use for its own purposes of the transformer) not only gave rise to the reduction in the service potential thereof to which I have referred above, but also resulted in a reduction in the net assets of the Municipality (clearly any value of the asset in the Municipality's books (which it has been unable to demonstrate in the last two financial years) would require to be impaired by the value of its loss of use).
74. The strategic service potential of the transformer was highlighted in the clearest of terms by the author of the memorandum in the imprimatur referred to above.
75. Yet further, as is conceded by the Municipality in the review application, and as I address more fully below, the decisions by Pillay and Lobishe to lease the transformer to Coega Steels and the conclusion of the lease by them constitute conduct which is inconsistent with the Constitution and invalid accordingly.
76. There is accordingly no legal basis to sustain the expense constituted by the reduction in the service potential of the Municipality's electricity reticulation network resulting from the

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loss of the backup system caused by the removal of the transformer therefrom, or the loss of the asset value of the transformer as impaired in the Municipality's books.

77. The amount of that expense could not be less than the value of the transformer, contended to be R25 million.

EXPENDITURE IS ILLEGAL

78. The transformer is a municipal capital asset as referred to in the Asset Regulations and the conclusion of the lease thereof by the Municipality with Coega Steels constitutes the granting of a "*right to use, control and manage*" the transformer.
79. The granting of the foregoing right in the form of the lease was not approved in principle by the Municipality's Council before Lobishe resolved to grant it and it was concluded by Pillay. It follows that the Council was unable to and did not consider the matters in regulation 36 of the Asset Regulations.
80. Yet further, the lease was concluded (and the right to use, control and manage the transformer was accordingly granted) without the Municipality's disposal management system having been complied with.



81. In the circumstances, the expenditure incurred by the Municipality as a consequence thereof was (and will continue to be) incurred contrary to the peremptory requirements of the Asset Regulations and the Municipality's supply chain management policy. It follows that such expenditure:

81.1. is "*irregular expenditure*" as having been incurred in contravention of, or not in accordance:

81.1.1. with a requirement of the MFMA;

81.1.2. with a requirement of the Municipality's supply chain management policy;

81.2. is "*fruitless and wasteful expenditure*" in that it was made in vain and would have been avoided had reasonable care been exercised.

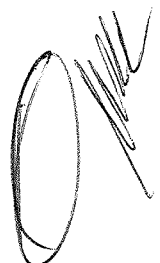
82. Further argument will be submitted in the above regard at the hearing.

LIABILITY FOR THE EXPENDITURE

83. Given what I have said above:

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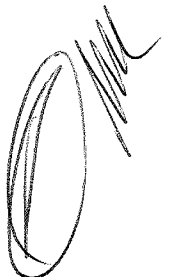
- 83.1. Lobishe is liable for the irregular and fruitless and wasteful expenditure incurred by the Municipality by virtue of the provisions of s32(1)(c) and (d) of the MFMA in that she acted deliberately or at least negligently, in resolving to lease the transformer to Coega Steels and in so doing, ignoring, or failing to have due regard to the advice from the Municipality's legal department and the Budget and Treasury Directorate contained in the memorandum, annexure FA5, and thereby authorised the expenditure in circumstances where she knew or ought to have known that her resolution was illegal and caused it to be incurred;
- 83.2. Pillay is liable for the irregular and fruitless and wasteful expenditure incurred by the Municipality by virtue of the provisions of s32(1)(c) and (d) of the MFMA in that he acted deliberately or at least negligently, in recommending to Lobishe that she lease the transformer to Coega Steels and in so doing, ignoring, or failing to have due regard to the advice from the Municipality's legal department and the Budget and Treasury Directorate contained in the memorandum, annexure FA5, and thereby caused the expenditure to

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be incurred in circumstances where he knew or ought to have known that the conclusion of the lease would be illegal.

NEED FOR THE RELIEF SOUGHT

84. The Municipality for some time has demonstrated considerable resistance to the need to comply with the peremptory requirements of s32(2) and (4) to (7) of the MFMA and for that matter, also to follow the requisite disciplinary steps against accounting officers and other officials or political office-bearers arising from contravention of s32.
85. This was demonstrated in relation to the current matter by the response to a motion submitted to the Speaker during April 2026 by a member of the Council, Councillor Kepe.
86. On 17 April 2026, Councillor Kepe delivered the notice of motion, a copy of which is annexed hereto marked **FA11**, to the office of the Speaker in the prescribed manner, requiring it to be placed on the agenda of the next Council meeting.
87. In the notice, reference is made to the lease of the transformer which had been "*conceded as irregular by the Executive Mayor*



before the COGTA Parliamentary Committee” and that the report on it as had been submitted to the Council had failed to address “*consequence management*” particularly in respect of Lobishe.

88. The notice further moves that the Council institute disciplinary proceedings against Lobishe and that the Acting City Manager provide the Council with a supplementary report addressing accountability and consequence management with specific regard to the political office bearers involved.
89. Following delivery of the notice of motion, the only communication received from the Office of the Acting City Manager was an acknowledgement of receipt. Despite a subsequent follow-up, the motion has not been placed before Council for consideration.
90. Yet further, It is a matter of public record that the AGSA, in successive annual audits, has concluded that the Municipality has accumulated billions of Rands in unauthorised, irregular, fruitless and wasteful expenditure (“UIFWE”) which the Municipality has failed to address in accordance with the requirements of s32 of the MFMA.

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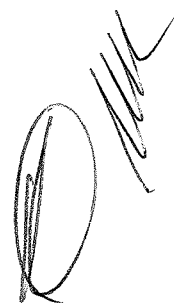
91. With regard to the amount identified as being applicable up to 30 June 2021 (in the amount of R23 billion, to the nearest billion) during August 2026, the Council resolved to write off the whole of that amount without having undertaken any of the investigations of the individual events giving rise to such expenditure or consideration of any potential recoverability in terms of s32(2) of the MFMA, simply on the basis that all of any possible claims has prescribed.
92. National Treasury has expressed the view that the approach adopted by the Council is itself irregular and significantly, the Municipality, in a letter from its Acting City Manager in turn takes issue with the view of National Treasury. For completeness, I annex hereto marked **FA12** and **FA13**, copies of reports from The Herald newspaper reporting on the heated correspondence between them (in verbatim terms).
93. I am advised that the merits of the arguments raised are not material hereto (in particular the question of whether the obligation to "*recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure...*" constitutes a debt and is capable of prescription (which I am advised it is not) and I will not address these further.

A handwritten signature in black ink, consisting of a large, stylized 'O' followed by several vertical strokes.

94. What is important is that for the period in question, the Municipality failed to comply with its statutory obligations and simply waited for the claims available to it to prescribe. Substantial amounts have similarly been identified by the AGSA as UIFWE for subsequent financial years (i.e. the 2022, 2023, 2024 and 2025 financial years – the financial statements for the 2026 financial year have yet to be audited) and the Municipality has taken no steps whatsoever to identify the persons responsible and to recover such expenditure.
95. In the circumstances, there is every reason to believe that without the intervention and supervision of this Court, the Municipality will simply carry on as before.
96. For this reason too, the Applicants were advised that the nature of the steps which the Municipality is required to take is such as to require supervision by the Court and the directory relief sought is formulated in structural form to provide therefor.

CONCLUSION

97. It is respectfully submitted and it will be argued that the Applicants have put up facts disclosing a clear right on their part to the declaratory and interdictory relief sought by them.

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98. The binding jurisprudence relating to s32 of the MFMA has established in the clearest of terms that:

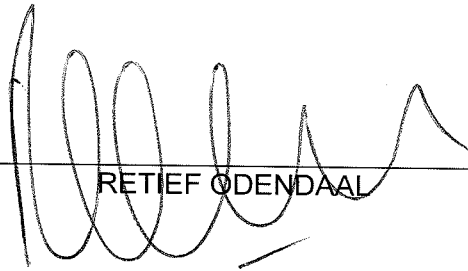
98.1. S32 of the MFMA is an independent provision which imposes statutory liability for the deliberate or negligent incurrence of the listed categories of expenditure is reinforced by the object of the MFMA *"to secure sound and sustainable management of the fiscal and financial affairs of municipalities..."*;

98.2. the recovery of unauthorised, irregular and fruitless and wasteful expenditure by a municipality is not optional; rather a municipality is enjoined to recover such expenditure from the person liable for it;

98.3. the seriousness with which Parliament views unauthorised, irregular and fruitless and wasteful expenditure is emphasised by s36(6) of the MFMA (imposing criminal liability);

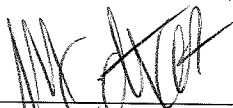
98.4. a municipality is not obliged to demonstrate loss or damage as a component of its right to recover and nor is a claim under s32 abrogated where value is received as a consequence of such expenditure;

- 98.5. the review and setting aside of the unlawful decisions or actions giving rise to the expenditure in question is not a prerequisite to proceedings for the recovery of the expenditure in question.
99. Yet further, it is submitted, and it will be argued, that the DA, its members serving on the Council and I, as a member of the community of the municipality which forms part of it, and as a ratepayer who contributes to its funding, have rights to ensure that the Municipality complies with its statutory obligations and accordingly that its fiscal and financial management is sound and sustainable.
100. The failure by the Municipality to so comply constitutes an invasion of those rights.
101. In addition, the Applicants have no other suitable remedy.
102. In the circumstances, the Applicants respectfully pray that the Court will see fit to grant the relief sought in the notice of motion.


RETIEF ODENDAAL

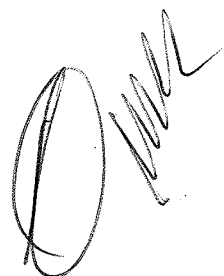


I CERTIFY that the Deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me on this 02 day of October 2026 at Gqeberha. In administering the oath, the requirements of Regulation R2477 dated 16 November 1984, as amended, have been complied with.



COMMISSIONER OF OATHS

Commissioner of Oaths
Michelle Christine Du Toit
Practising Attorney
317 Cape Road, Newton Park
Port Elizabeth, South Africa



"FAI"

COURT ONLINE COVER PAGE

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GQEBERHA**

CASE NO: 2026-012338

In the matter between:

NMBM

Plaintiff / Applicant / Appellant

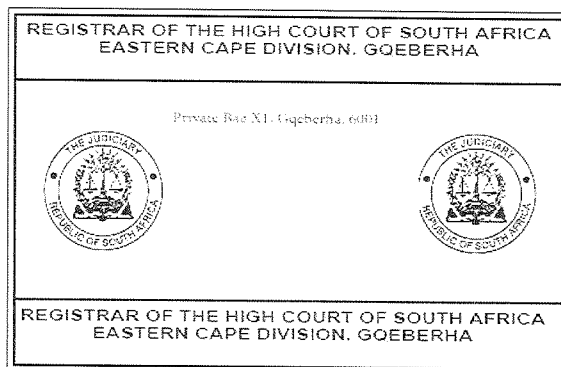
and

COEGA STEELS (PTY) LTD

Defendant / Respondent

Notice of Motion (Long Form)

NOTE: This document was filed electronically by the Registrar on 22/1/2026 at 11:52:41 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



**ELECTRONICALLY SIGNED
BY:**

**Registrar of The High Court
Eastern Cape Division,
Gqeberha**

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GQEBERHA**

Case No:

In the matter between:

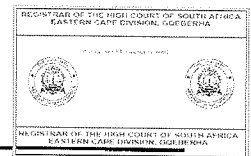
NELSON MANDELA BAY MUNICIPALITY

Applicant

and

COEGA STEELS (PTY) LTD

Respondent



NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT at the hearing of this matter the Applicant will pray for the following relief:

1. That the decisions taken by the former acting city manager and or the executive mayor of the applicant to lease a municipal owned 132/22KVA, 63 MVA transformer to the respondent be declared unlawful and invalid, and reviewed and set aside;
2. That the lease agreement concluded between the applicant and the respondent on the 11th of September 2025 for the lease of the municipal owned 132/22KVA, 63 MVA transformer be declared unlawful and invalid, and reviewed and set aside;

3. That the respondent, only to the extent that it opposes this application, be liable for the costs of this application.
4. That this Honourable Court grant the applicant such further or alternative relief as it deems meet.

BE PLEASED TO TAKE FURTHER NOTICE THAT the affidavit of **LONWABO NGOQO** will be used in support hereof.

TAKE NOTICE FURTHER THAT the Applicant has appointed Kuban Chetty Incorporated, 163 Cape road, Mill Park, Gqeberha, as the address at which it will accept notice and service of all process in these proceedings. The Applicant elects to receive electronic service at chettlaw@gmail.com and kuban@kubanchettyinc.com



TAKE NOTICE FURTHER that if you intend opposing this application, you are required:

- (a) to notify the Applicant's attorneys in writing within ten (10) days from the date of service of this application upon you;
- (b) and to appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept service of all documents in these proceedings;
- (c) and within 15 days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any;

If no such notice of intention to oppose be given, the application will be heard on a date to be determined by the Registrar.

DATED at GQEBERHA on this the 14th day of JANUARY 2026.



KUBAN CHETTY INC.

Attorneys for Applicant

163 Cape Road

Mill Park



PORT ELIZABETH

Tel: (041) 373 1706

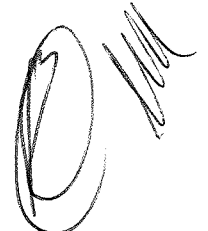
Fax: (041) 450 1407

(Ref. Mr K. Chetty)

Email: kuban@kubanchettyinc.com

TO: **THE REGISTRAR**
HIGH COURT
GQEBERHA

AND TO: **COEGA STEELS (PTY) LTD**
Cnr. Ring Road & Furnace Close
Zone 6, Coega IDZ,
Gqeberha (Port Elizabeth)
6001
Email: hassan@coegasteels.com



40. Disposal management

- (1) In terms of Section 14 of the Act, the NMBM may not transfer ownership as a result of sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.
- (2) The NMBM may transfer ownership or otherwise dispose of a capital asset other than one as contemplated in subsection (1), but only after the *Council*, in a meeting open to the public -
 - (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
 - (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.
- (3) Assets may be disposed of by -
 - (a) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
 - (b) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
 - (c) selling the asset; or
 - (d) destroying the asset.
- (4) The *Accounting Officer* must ensure that -
 - (a) when immovable property is sold by means of a *competitive bidding process*, the highest price offered, is accepted, provided such price is equal to or higher than the market related price for the relevant immovable property;
 - (b) in other cases, only at a market related price, except when the public interest or the plight of the poor demands otherwise, in which event the sale price must be determined in accordance with the applicable land disposal or indigent policy adopted by the *Council*;
 - (c) movable assets are sold either by way of written price quotations, a *competitive bidding process*, or by public auction at the highest offered price, provided such price is market related;
 - (d) firearms are not sold or donated to any *person* or institution within or outside the Republic, unless approved by the National Conventional Arms Control Committee;
 - (e) immovable property is let at market related rentals, except when the public interest or the plight of the poor demands otherwise in which event the rental must be

determined in accordance with the applicable land disposal or indigent support policy adopted by the *Council*;

- (f) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
 - (g) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
 - (h) in the case of the free disposal of computer equipment, the provincial Department of Education is first approached to indicate, within 30 days, whether any of the local schools are interested in the equipment.
- (5) This paragraph must be read with and applied in conjunction with the Municipal Asset Transfer Regulations contained in Government Notice R. 878 of 22 August 2008 and the associated policies adopted by the *Council*. In the event of conflict, the provisions of the aforesaid Regulations must be applied.

41. Risk management

- (1) The *Accounting Officer* must establish and implement an effective system of risk management for the identification, consideration and avoidance of potential risks in the Supply Chain Management system.
- (2) Risk management must include -
- (a) the identification of risks on a case-by-case basis;
 - (b) the allocation of risks to the party best suited to manage such risks;
 - (c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
 - (d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
 - (e) the assignment of relative risks to the contracting parties through clear and unambiguous *contract* documentation.

42. Performance management

“FA2”



Coega Steels (Pty) Ltd

Date: 21st August 2025

The City Manager

Nelson Mandela Bay Municipality
Port Elizabeth
Eastern Cape

Dear Sir/Madam,

RE: Notification of Production Standstill Due to Transformer Failure and Request for Assistance

We are writing to inform you that Coega Steels is currently experiencing a production standstill due to a transformer failure, resulting in zero production output. This unfortunate incident has significant implications for our operations, employees, and valued customers.

Impact on Employees.

Due to the current operational circumstances, we have implemented short time working arrangements, directly and indirectly affecting approximately 300 employees. To mitigate the impact on our valued employees, we have introduced a rotational schedule, ensuring a fair distribution of work hours and minimizing the effects on individual livelihoods. If we are unable to finalize the replacement or repairs on the transformer, we will have to introduce short time for our entire workforce of 600 employees.

Impacted Clients and Suppliers

Our specific clients and suppliers who are being impacted as a result of our production downtime are as follows:

- Scrap metal suppliers within Eastern Cape and across the country
- Logistics suppliers/transporters
- Billet buyers
- Consumable suppliers
- Engineering suppliers
- Nelson Mandela Bay Municipality (NMBM) Electricity Department

Company Reg. No. 2005/024128/07
Email - info@coegasteels.com
Metallurgical Sector, Zone 5, Corner Ring & Furnace Close, Coega 602, Port Elizabeth, South Africa

Coega Steels Pty Ltd.

VAT No. 4660241297

Website - www.coegasteels.com
Tel: +27 41 450 1331



Coega Steels (Pty) Ltd

Due to the prolonged disruption, we risk losing our valued customers if we are unable to rectify our operations promptly.

Financial Implications

As the largest customer of the Metro, we would like to highlight the significance of this disruption. Below is a breakdown of our monthly and annual electricity payments to NMBM:

- 2024 Annual Payment: For the period January to December 2024, our total electricity payment to NMBM was R200 million (excluding VAT).
- 2025 Monthly Payments: Our monthly electricity payments for 2025 are as follows:
 - January: R17.3 million (excluding VAT)
 - February: R13.4 million (excluding VAT)
 - March: R22.4 million (excluding VAT)
 - April: R21.5 million (excluding VAT)
 - May: R21.8 million (excluding VAT)
 - June: R22 million (excluding VAT)
 - July: R22.6 million (excluding VAT)
- Year-to-Date Payment: As of July 2025, our total electricity payment to NMBM amounts to R141 million (excluding VAT).

With the annual increases in power cost and our expansion due to become operational by the end of 2025, we estimate our annual electricity spending from July 2025 to June 2026 to increase to R350-R360 million per annum, averaging approximately R30 million per month.

Operational Financial Losses

We are currently facing significant operational financial losses, amounting to approximately R700,000.00 per day. This equates to a monthly loss of around R21 million.

Company Reg No. 25087/024100/07

Coega Steels Pty Ltd.

VAT No. 4560241249

Email: info@coegasteels.com

Website: www.coegasteels.com

Metallurgical Sector, Zone 6, Corner River & Furnace Cloak, Coega 100, Port Elizabeth, S.A.

Phone: (027) 4145018/1



Coega Steels (Pty) Ltd

Insurance Coverage and Transformer Assessment

As per our insurance assessor's recommendation, the transformer is scheduled to be transported to the manufacturer's premises for inspection and assessment. This assessment will determine the feasibility of repair versus replacement, with an expected timeline of 7-8 months.

We confirm that we have existing insurance coverage for the failed transformer and propose the following two options to NMBM:

1. The municipality can insure the leased transformer, with the insurance premium added to the monthly payment.
2. Alternatively, Coega Steels will insure the leased transformer at its replacement value.

We will provide the municipality with a copy of the insurance cover for the leased transformer, ensuring transparency and compliance.

Technical Report and Preventative Measures

A detailed technical report explaining the root cause of the transformer failure is as follows:

- Protection systems responded as follows. Differential relay operated first. Overpressure and Buchholz relays followed.
- Preliminary inspection indicates an internal insulation failure at the connection between the Phase C bushing tail and the Phase C primary coil. The fault was cleared within eighty-seven ms.
- The transformer will be transported to the manufacturer for a detailed failure investigation and report. The incident occurred during the energization of Furnace Phase 1 Transformer No.2, where the feeder breaker tripped on a phase-to-phase fault caused by insulation breakdown in transformer. This insulation breakdown has since been repaired.

The following measures have already been taken to mitigate further risks:

- Complete 132 kV substation testing
- 22 kV bus and network testing
- All transformers testing
- All protection systems testing
- Earthing system testing

Company Reg. No. 2005/024128/07
Email: info@coegasteels.com
Address: Plot 56, Zone 6, Corner Ring & Furnace Close, Coega IDZ, Vryburg, South Africa

Coega Steels Pty Ltd.

VAT No. 4430241287
Website: www.coegasteels.com
Tel: +27 41 450 1331



All test results and reports will be formally submitted to the municipality. We hereby give assurance of preventative actions to avoid a recurrence by implementing the following:

During scheduled or corrective maintenance on specific plant electrical sections, all tests will be repeated and compared against historical records. Only after successful comparison and verification will the system be re-energized.

Request for Assistance

Should Coega Steels proposal be accepted, we agree should the Municipality provide its appointed service provider to facilitate the relocation, installation, and commissioning of the replacement transformer. In conclusion, we would like to thank the municipality for its commitment in trying to assist Coega Steels with the crisis at our site. We look forward to working together to resolve this matter promptly.

Please do not hesitate to contact us should you require any additional information.

Yours sincerely,



CEO
Tel No: 041 4501331
Mobile: 0828056500

Company Reg. No. 2005/034126/01
Email: info@coegasteels.co.za
Melvilleburg Road, Secor, Zone 3, Corner Ring & Forepost Roads, Coega IDZ, Port Elizabeth, South Africa

Coega Steels Pty Ltd

VAT No. 4440241397
Website: www.coegasteels.co.za
Tel: +27 41 4501331

"FA3"

 nelson mandela bay
MUNICIPALITY

Am...

Office of the City Manager

Tel: +27 (0) 41 506 3208/9
PO Box 116, Port Elizabeth, 6028
Republic of South Africa
e: info@mandelabay.gov.za

22 August 2025

Chief Executive Officer
Coega Steels
By email

Dear Mr Khan,

REQUEST FOR ASSISTANCE 83 MVA TRANSFORMER

I refer to your letter dated 21 August 2025 and am pleased to advise you that the Nelson Mandela Bay Municipality will lease a 83 MVA Transformer to Coega Steels.

It is expressly understood that Coega Steels will receive and commission the 83 MVA Transformer.

In addition, Coega Steel will ensure that the leased transformer is insured at its replacement value being R25 million.

A formal agreement for the rental will be drafted to give effect to this lease.

Kind regards,



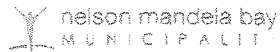
DM PILLAY
ACTING CITY MANAGER

cc: ACTING EXECUTIVE DIRECTOR : ELECTRICITY AND ENERGY





"FA4"



Office of the City Manager

Tel: +27 (0) 41 506 3208/9
PO Box 116, Port Elizabeth, 602
Republic of South Africa
e-Mail: cm@mandelametro.gov.za

MEMORANDUM

TO : ACTING EXECUTIVE DIRECTOR : ELECTRICITY & ENERGY
MMC : ELECTRICITY & ENERGY
FROM : ACTING CITY MANAGER
SUBJECT : REQUEST FROM COEGA STEELS
DATE : 26 AUGUST 2026

1. I refer to the request from Coega Steels regarding this request for assistance from the Nelson Mandela Bay Municipality.
2. This request arose out of a transformer failure at the Coega Steels Plant in the Coega SEZ.
3. I gather that Coega Steels is one of the biggest consumer of electricity and therefore is our biggest customer.
4. In view of the motivation of the company about the impact on its operations, the effect on its workforce etc, and following my discussion with you on the matter, I indicated the willingness of the NMBM to assist the company (see attached correspondence).
5. As indicated, our assistance to the company must be formalized by a Memorandum of Agreement (setting out the terms of assistance, the rental of the transformer, the duration, security, insurance, etc). Please attend to this urgently.
6. Kindly also submit a detailed report to the Electricity and Energy Standing Committee, as well as the Mayoral Committee, regarding our assistance and support to the appeal from Coega Steels. This must also be prioritised

Kind regards,


DM PILLAY
ACTING CITY MANAGER

2026/08/26 10:00:00



"FA5"



Electricity & Energy

Tel: +27 (0) 41 392 4411
PO Box 215, Port Elizabeth, 6000
Republic of South Africa
e-Mail: edee@mandelametro.gov.za

MEMORANDUM

TO EXECUTIVE MAYOR

RE PROPOSAL FOR THE LEASING OF A 132/22KV, 63MVA TRANSFORMER
(the Asset) TO COEGA STEELS (PTY) LTD

DATE 4 SEPTEMBER 2025

1.1 PURPOSE

The purpose of this report is to formally request the consideration and approval of the Mayoral Committee for the urgent leasing of a 132/22kV, 63MVA transformer. This intervention has become necessary following the unexpected failure of the customer's (Coega Steel (Pty) Ltd) existing transformer, which supplies power to their operations in CDC. Coega Steels is the Municipality's largest industrial consumer of electricity, contributing significantly to both revenue generation and the local economy through employment and industrial output.

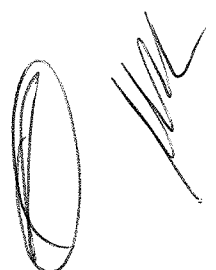
1.2 BACKGROUND AND CONTEXT

Coega Steels (Pty) Ltd formally addressed correspondence to the Acting City Manager on 21 August 2025, requesting urgent assistance from the Nelson Mandela Bay Municipality (NMBM) following the failure of their transformer on 14 August 2025, while they were in the process of restoring their network (refer to Annexure 1).

In response, on 22 August 2025, the Acting City Manager acknowledged receipt of the letter from Coega Steels and confirmed the availability of a 132/22kV, 63MVA transformer located at the Sonop Substation. The Acting City Manager further instructed the Electricity & Energy Directorate to conduct a thorough technical assessment at Coega Steels to determine both the operational requirements and the compatibility of the Sonop transformer for deployment at their site (Annexure 2).



www.nelsonmandelabay.gov.za



Subsequently, on 26 August 2025, the Acting City Manager issued a further response to Coega Steels, confirming the Municipality's willingness to assist. This communication outlined the intention to formalize a Memorandum of Agreement (MoA), which would clearly stipulate the terms and conditions of the assistance, including rental arrangements, duration of use, security measures, insurance obligations, and other relevant provisions (Annexure 3).

The Acting City Manager directed the necessity of submitting the matter as an urgent item to the Executive Mayor for consideration, approval and thereafter a Mayoral Resolution to be concluded.

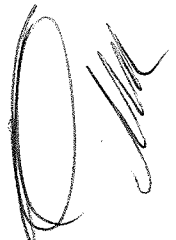
1.3 PROBLEM STATEMENT

- 1.3.1 On 21 August 2025 Coega Steels experienced a transformer failure which directly significantly impacted Coega Steels operations, employees, and valued customers.
- 1.3.2 The failure of the transformer not only threatens production continuity and economic activity at Coega Steels, but also places the Municipality at risk of substantial revenue loss from electricity sales. Leasing the available transformer will provide an immediate, practical solution to stabilize supply while longer-term alternatives, such as repair or procurement of a replacement transformer are being finalized.
- 1.3.3 Coega Steels (Pty) Ltd is the largest single electricity customer of the NMBM, directly connected at the 132kV high-voltage network. For the twelve-month period January 2024 to December 2024, Coega Steels contributed a total of R200 million (excluding VAT) in electricity payments.

For the current calendar year, 2025, the monthly electricity revenue generated from Coega Steels has been as follows:

- January: R17,3 million (excluding VAT)
- February: R13,4 million (excluding VAT)
- March: R22,4 million (excluding VAT)
- April: R21,5 million (excluding VAT)
- May: R21,8 million (excluding VAT)
- June: R22 million (excluding VAT)
- July: R22,6 million (excluding VAT)

- 1.3.4 The operational and financial losses resulting from the transformer failure at Coega Steels are estimated at approximately R700 000 per day. This translates to a projected loss of around R21 million per month should the electricity supply remain disrupted.
- 1.3.5 Given the economic, financial, and reputational risks associated with inaction, the matter is presented to the Mayoral Committee as an urgent item requiring consideration / approval and resolution.



1.4 IMPACT ON EMPLOYMENT

Due to the current operational challenges arising from the transformer failure, Coega Steels has already implemented short-time working arrangements, directly and indirectly affecting approximately 300 employees.

In an effort to mitigate the negative impact on its workforce, the company has introduced a rotational schedule, which allows for a fair distribution of reduced working hours and helps to minimize the financial strain on individual employees and their households.

However, should Coega Steels be unable to secure a replacement or successfully complete repairs to their transformer within the near future, the company has indicated that it will be compelled to extend short-time measures to its entire workforce of approximately 600 employees.

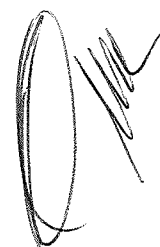
Such a development would not only have a severe impact on the livelihoods of employees and their dependents, but would also carry broader socio-economic implications for the NMBM region, including reduced household income, decreased local economic activity, and potential reputational risks for the Municipality in its ability to support and safeguard critical industrial operations.

1.5 IMPACTED CLIENTS AND SUPPLIERS

The production downtime at Coega Steels, resulting from the transformer failure, has had a significant ripple effect on a wide range of stakeholders within and beyond the NMBM region. The following clients and suppliers are directly and indirectly affected:

- Scrap metal suppliers within the Eastern Cape and across the country, whose supply chains are disrupted due to reduced demand.
- Logistics service providers and transporters.
- Billet buyers.
- Consumable suppliers.
- Engineering suppliers.
- Nelson Mandela Bay Municipality – Electricity & Energy Directorate, which is directly impacted through reduced electricity consumption and associated revenue loss.

The cascading effect of these disruptions highlights the broader economic implications of the transformer failure, affecting not only Coega Steels, but also its upstream suppliers, downstream customers, and the Municipality's financial sustainability.



1.6 RENTAL COSTS

It is proposed that 1% of the value of the Asset be utilised to determine the monthly rental (R250 000).

1.7 BENEFITS OF LEASING THE TRANSFORMER TO COEGA STEELS

The proposed leasing of the 132/22kV, 63MVA transformer to Coega Steels presents several strategic, technical, financial, and reputational benefits for the NMBM:

The transformer currently located at the Sonop Substation is not carrying any load. Leaving it idle exposes the Municipality to potential increased technical losses and asset underutilization. Leasing ensures the asset is put to productive use.

Through the rental arrangement, the Municipality will recover direct financial returns from the leasing fees. In addition, by restoring full operations at Coega Steels, the Municipality safeguards its electricity sales revenue, which is significant given the company's status as the Municipality's largest electricity customer.

By enabling Coega Steels to resume stable operations, the Municipality plays a pivotal role in protecting jobs (approximately 600 employees) and sustaining local and regional economic activity linked to suppliers, contractors, and logistics providers.

Proactively assisting Coega Steels strengthens the Municipality's reputation as a responsive and reliable service provider to strategic industrial partners. This support fosters confidence among existing and potential investors in the NMBM.

1.8 RISKS OF NOT LEASING THE TRANSFORMER

Should the municipality fail to approve the leasing of the transformer, the following risks may materialize:

Continued production downtime at Coega Steels would result in daily operational losses of approximately R700 000, totaling around R21 million per month, negatively impacting electricity revenue for the Municipality.

Short-time working arrangements currently affecting 300 employees may need to be extended to the entire workforce of 600, severely affecting livelihoods and socio-economic stability.

Disruptions would negatively affect Coega Steels' clients and suppliers, including scrap metal suppliers, logistics providers, billet buyers, consumable suppliers, and engineering contractors, with cascading economic consequences for the region.



The Municipality risks being perceived as unresponsive to critical industrial partners, which could undermine investor confidence and weaken its standing as a reliable service provider

1.9 ASSESSMENT AND FEASIBILITY TIMELINE

The expected completion period for the technical assessment and feasibility study, comparing repair versus replacement of the failed transformer is approximately eight months. This timeline accounts for coordination with manufacturers, utilities and suppliers to determine the most appropriate and sustainable solution for Coega Steels' operations.

Coega Steels has actively engaged with the transformer manufacturers, utilities, and suppliers regarding the availability of a suitable replacement. Unfortunately, due to the scarcity of transformers meeting the specific technical requirements, immediate procurement is not feasible.

Currently, the available transformer with the required specifications is the 132/22kV, 63MVA transformer owned by the NMBM. Leasing this transformer to Coega Steels therefore represents the most immediate and practical solution to restore supply and mitigate on-going operational and financial losses while longer-term repair or replacement plans are being finalized.

1.10 RISKS TO THE NMBM NETWORK FROM LEASING THE TRANSFORMER

The 132/22kV, 63MVA transformer proposed for leasing is a strategic spare for the Greenbushes and Swartkops Substations. In the event of a transformer failure at either of these substations, the leased transformer may need to be recalled immediately to maintain the reliability and stability of the NMBM electricity network. A formal risk assessment will be conducted to evaluate potential impacts on the network before the transformer is deployed to Coega Steels.

Currently, the transformer is connected at the Sonop Substation as part of an on-going project. Based on the assessment to date, there are no major risks associated with temporarily relocating the transformer to Coega Steels for this urgent requirement, provided that contingency measures are in place to ensure rapid redeployment if an emergency arises at Greenbushes or Swartkops substations.

The asset value of the 132/22kV, 63MVA transformer proposed for leasing is valued at approximately R25 million.



1.11 TECHNICAL REPORTS AND PREVENTATIVE MEASURES

Coega Steels has submitted a summarized technical report indicating that the transformer failure occurred due to an internal insulation fault at the connection between the Phase C bushing tail and the Phase C primary coil.

All necessary tests have been concluded and formal reports will be submitted to the Municipality for record-keeping and verification. Coega Steels has further provided assurance that appropriate preventative actions have been implemented to mitigate the risk of a recurrence of this fault in the future.

1.12 INSURANCE COVERAGE

Coega Steels will be requested to insure the leased transformer at its replacement value and confirm that insurance is in place.

1.13 COSTS ASSOCIATED WITH ASSET RELOCATION and COMMISSIONING

Coega Steels will bear the costs of the transporting the asset from NMBM to Coega Steels site and the costs associated with the return of the asset from Coega Steels to the NMBM.

Coega Steels shall bear the costs commissioning the asset on their site.

1.14 LEGAL FRAMEWORK

- Asset Management Policy.
- Insurance Policy.
- MFMA.
- The Electricity & Energy Directorate is governed by the applicable by-laws.

1.15 COMMENTS FROM LEGAL SERVICES

Legal Services have advised that a Council resolution is required to formally grant the Municipality the authority to conclude the proposed agreement with Coega Steels. In addition, this submission will serve as the detailed formal instruction from the Acting City Manager to Electricity & Energy Directorate and Legal Services to attend to this matter.

This ensures that the leasing arrangement is fully compliant with municipal governance, legal, and procurement requirements and provides a clear mandate for the Municipality to proceed with the agreement while safeguarding its legal and financial interests.



1.16 LEASE AGREEMENT

A lease agreement will be entered into between the NMBM and Coega Steel prior to the asset being moved to Coega Steel's premises.

1.17 COMMENTS FROM BUDGET AND TREASURY

The Budget & Treasury Directorate acknowledges the urgent financial pressure faced by Coega Steels, as outlined in their correspondence, which further impacts the Municipality's already dwindling revenue base.

However, the Budget & Treasury Directorate has raised several concerns regarding governance and legal protection:

- There is currently no existing policy framework or By-Law that specifically governs or protects the Municipality in cases such as this.
- There is no approved fee structure within the Municipality's Council Tariffs that covers leasing arrangements for critical assets under exceptional circumstances.

Given these gaps, the Budget & Treasury Directorate recommends that the matter be brought to Council as an urgent item. This will allow Council to:

- Recognize and support the urgency and economic importance of assisting Coega Steels.
- Provide formal authorization for the Municipality to proceed with the Memorandum of Agreement (MoA).
- Ensure that the Municipality is adequately protected legally and financially in the absence of a pre-existing policy or tariff provision.
- The municipal account for Coega Steel is up to date

1.18 RECOMMENDATIONS

Taking the urgency of this matter into consideration and acknowledging the potential socio-economic impact, including protection of approximately 600 jobs, continuity of local industrial activity and safeguarding municipal revenue it is recommended that the Executive Mayor considers approves the following recommendations:

- a) Approves the urgent leasing of the 132/22kV, 63MVA transformer from the NMBM to Coega Steels (Pty) Ltd to mitigate operational and financial losses resulting from the transformer failure



- b) Authorises the Electricity & Energy Directorate and Legal Services to finalize and conclude a Memorandum of Agreement (MoA) with Coega Steels, utilizing the Executive Mayor's resolution as this is one of the legal authorities accepted by the NMBM's Legal Services Division for the conclusion of an MOA, setting out the terms of the lease, including rental fees, duration, insurance, security, and any other relevant conditions.
- c) Upon conclusion of the Memorandum of Agreement (MoA) permission is granted for the immediate removal and relocation of the 132/22kV, 63MVA transformer from the Sonop Substation to Coega Steels (Pty) Ltd to mitigate on-going operational and financial losses.
- d) Direct the Electricity and Energy Directorate to monitor the installation and operation of the leased transformer, ensuring that all technical, safety, and compliance standards are met.
- e) The Executive Mayor's resolution be submitted to Council for noting and ratification of the above actions in light of the urgency demonstrated herein.


PREPARED BY : MR THOLI BIYELA
ACTING EXECUTIVE DIRECTOR
ELECTRICITY AND ENERGY

04/09/2025
DATE

RECOMMENDATION OF THE CHIEF FINANCIAL OFFICER:

REFER TO 1.7 ARZUC

CHIEF FINANCIAL OFFICER

DATE

RECOMMENDATION OF ACTING CITY MANAGER:

- RECOMMENDATIONS TO THE EXECUTIVE MAYOR : APPROVED / NOT APPROVED
- FORMAL INSTRUCTIONS FROM ACTING CITY MANAGER TO ELECTRICITY AND ENERGY AND LEGAL SERVICES : THIS ALSO SERVES AS THE ACTING CITY MANAGER'S FORMAL INSTRUCTIONS TO ELECTRICITY AND ENERGY AND LEGAL SERVICES TO ATTEND TO THIS MATTER.


D M PILLAY
ACTING CITY MANAGER

04/09/2025
DATE

DECISION BY THE EXECUTIVE MAYOR iro RECOMMENDATIONS: APPROVED / NOT APPROVED


CLLR B LOISHE
EXECUTIVE MAYOR

04/09/25
DATE

I have approved this leasing due to the Labour impact and financial Loss we incur when this company (Coega Steel) is not operational



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Annexure G

NELSON MANDELA BAY MUNICIPALITY
OFFICE OF THE EXECUTIVE MAYOR

13729

**NOTIFICATION OF MATTER FOR DECISION TAKEN IN TERMS OF THE
AUTHORITY DELEGATED TO THE EXECUTIVE MAYOR**

TO: CITY MANAGER

Please record my decision in the following matter and submit a formal resolution to me for signature.

A: Title:

**APPROVAL BY EXECUTIVE MAYOR – PROPOSAL FOR THE LEASING OF A 132/22KV,
63MVA TRANSFORMER (The Asset) TO COEGA STEELS (PTY) LTD**

B: Brief details of matter decided upon/document responded to:

See Attached Documentation from Electricity and Energy Directorate

C: Decision:

Approval by the Executive Mayor for the leasing Proposal of a 132/22KV, 63MVA, Transformer (The Asset) to Coega Steels (Pty) Ltd. due to the unexpected failure of Coega Steel's existing Transformer, which supplies power to their operations in the CDC, as Coega Steel (Pty) Ltd is the Municipality's largest industrial consumer of electricity contributing significantly to both revenue generation and the local economy through employment and industrial output.

Approval is sought by the Executive Mayor as per the recommendations which are more fully set out on the reverse side of this Mayoral Resolution.

EXECUTIVE MAYOR

Date

08/09/25

To: Executive Director: Corporate Services

Please prepare an item summary and resolution for the Executive Mayor's signature and return to me with a copy of this document.

Additional comments:

**CITY MANAGER/
ACCOUNTING OFFICER**

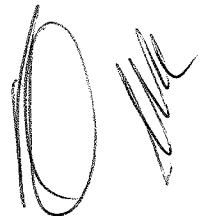
Date

09/09/2025

PEL/ASAC/2025/0010



- a) Approves the urgent leasing of the 132/22kV, 63MVA transformer from the NMBM to Coega Steels (Pty) Ltd to mitigate operational and financial losses resulting from the transformer failure.
- b) Authorises the Electricity & Energy Directorate and Legal Services to finalize and conclude a Memorandum of Agreement (MoA) with Coega Steels, utilizing the Executive Mayor's resolution as this is one of the legal authorities accepted by the NMBM's Legal Services Division for the conclusion of an MOA, setting out the terms of the lease, including rental fees, duration, insurance, security, and any other relevant conditions
- c) Upon conclusion of the Memorandum of Agreement (MoA) permission is granted for the immediate removal and relocation of the 132/22kV, 63MVA transformer from the Sonop Substation to Coega Steels (Pty) Ltd to mitigate on-going operational and financial losses.
- d) Direct the Electricity and Energy Directorate to monitor the installation and operation of the leased transformer, ensuring that all technical, safety, and compliance standards are met.
- e) The Executive Mayor's resolution be submitted to Council for noting and ratification of the above actions in light of the urgency demonstrated herein



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Annexure H

AGREEMENT OF LEASE

NELSON MANDELA BAY MUNICIPALITY

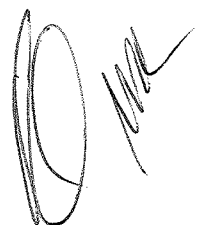
(LESSOR)

And

COEGA STEEL (PTY) LIMITED

(LESSEE)

R 17
P HK

A handwritten signature, possibly reading 'R 17', is located at the bottom right of the page.

1 Preamble

The purpose of this lease agreement is to formalise the leasing of a 132/22kV, 63MVA transformer by the Lessor to the Lessee

2. Definitions and Interpretations

2.1 These terms have the following meanings assigned to it

2.1.1 Lessor	Nelson Mandela Bay Municipality
2.1.2 Lessee	Coega Steel (Pty) Limited
2.1.3 Property	132/22kV 63MVA Transformer
2.1.4 Cost of Lease	R250 000 000 (Two Hundred and Fifty Thousand Rand) per month
2.1.5 Days	business days which are calculated by excluding the first day, public holiday, Saturday and Sunday
2.1.6 Lease Period	the duration of the lease period shall be for a period of twelve (12) months from date of signature of this agreement

1.2 References to notices, statements and other forms of communication from the Lessor

8 7

[Handwritten signature]

- 1.3 When words and figures conflict, the words must prevail.
- 1.4 The words "shall", "must" and "will" in this agreement are mandatory obligations.
- 1.5 One gender includes the other gender.
- 1.6 The singular includes the plural and vice versa.
- 1.7 The headings of the clauses in this agreement are for convenience and reference only, and shall not be used in the interpretation, modification or amplification of the terms of this agreement.

3 Lease Agreement

- 3.1 The Lessor leases its Property to the Lessee on the terms and conditions of this agreement.
- 3.2 The Lessor, for the Lease Period, has the right to use the Property as agreed.

4 Duration

This agreement will commence from the date of signature of this agreement for a duration of twelve (12) months.

5 Insurance

- 5.1 The Lessee must insure the Property against risks for the duration of the Lease Period.
- 5.2 The Lessee must not do anything to the Property that will increase the risks and damages to the Property.

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6 Cession, Delegation and Assignment:

The Lessee may not:

- 6.1 transfer its rights and/or duties under this agreement to a third person
- 6.2 give up possession of the Property to a third party

7 Duties of the Lessee

The Lessee must

- 7.1 insure the Property;
- 7.2 protect the Property from damage, destruction, and theft

8 Maintenance and Repairs

The Lessee must at its expense, and without recourse to the Lessor:

- 8.1 maintain the Property.
- 8.2 repair damage to the Property regardless of the cause of such damage

8.3 subject to and with the express written approval of the Lessor:

9 Relocation and Commissioning of the Property

The Lessee will bear the costs

- 9.1 of the transporting the asset from the Lessor's Property to the Lessee's site
- 9.2 of commissioning the Property on its site
- 9.3 associated with the return of the Property to the Lessor

10. Termination and Breach

If a Party breaches a material provision of this agreement and fails to remedy such breach within 10 Days of the date of receipt of a written notice from the aggrieved Party requiring

H.K. M.

him/her/it to do so, the aggrieved Party will be entitled to any remedy available in law without further notice and may cancel this agreement and the Lessor will take possession of its Property.

11 General

11.1 This agreement constitutes the whole agreement between the Parties.

11.2 This agreement may only be amended if the Parties agree to the amendment in writing and sign the written document, in ink by hand – which must be attached to this agreement as an Annexure.

11.3 No Party shall be bound by any express or implied term, representation, warranty, promise, or the like, not recorded in this agreement.

11.4 All legal documents, notices or other communication must be delivered to the following address of the Lessor, which will act as his *domicilium citandi et executandi*: Acting City Manager, 1st Floor, City Hall, Vuyisile Mini Square, Govan Mbeki Avenue, Gqeberha 6000.

11.5 All legal documents, notices or other communication must be delivered to the following address of the Lessee, which will act as his *domicilium citandi et executandi*:

HK BE COEGA STEELS (PTY) LTD : CNR OF RING ROAD + FARMALD CLOSE, ZONE 6, COEGA IDZ
PORT ELIZABETH, 6211 (hassan@coegasteels.com)

11.6 Non-legal documents, notices or other communication between the Parties may be by electronic communication; where a "read receipt" must be attached to each and every

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electronic communication sent so it can be determined that the electronic communication was received and read by the other Party

Signed at Gqeberha on 11 SEPTEMBER 2025

[Signature]
LESSOR

As witness for the Lessor

[Signature]

Signed at PORT ELIZABETH on 10 SEPTEMBER 2025

[Signature]
LESSEE

As witness for the Lessee

[Signature]

[Handwritten initials]

[Handwritten signature]

"FA8"

22/1/2026-11:52:41 AM



Kuban Chetty Inc.

REGISTRATION NO. 2012/011184/21

"LN"

ATTORNEYS / AMAGQWETHA / PROKUREURS

CIVIL LITIGATION
CRIMINAL LITIGATION
MOTOR VEHICLE ACCIDENTS
BAIL APPLICATIONS
CONTRACTS & AGREEMENTS
DIVORCES
ESTATES
COMMERCIAL
CORPORATE
MUNICIPAL LAW
LABOUR LAW
DEBT COLLECTION
ROAD ACCIDENT FUND CLAIMS
CONVEYANCING
FORENSIC INVESTIGATIONS

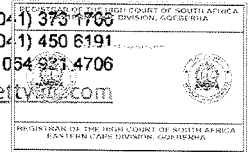
163 CAPE ROAD
MILL PARK
GQEBERHA

OFFICES ALSO AT:
45 CALEDON STREET
CANNON HILL
KARIEGA

P O BOX 63923
GREENACRES
PORT ELIZABETH

TEL: (041) 373 1706
TEL: (041) 450 6191
CELL: 054 921 4706

E-MAIL: kuban@kubanchetty.co.za



Coega Steel (Pty) Ltd

14 November 2025

Cnr Ring Road & Furnace Close

Zone 6, Coega IDZ

GQEBERHA

Per Email: hassan@coegasteels.com

Att: Mr. Hassan Khan

**NELSON MANDELA BAY MUNICIPALITY // COEGA STEEL // LEASE OF MUNICIPAL
OWNED POWERTECH TRANSFORMER 63MVA**

Dear Mr. Khan,

Director: Kuban Chetty, B.COM. B.PROC. LL.B
Associate Attorney: José Van Rooyen, BCOM, LL.B
Associate Attorney: Karin De Villiers, LL.B
Associate Attorney: Cecilia Wilkinson, LL.B
Candidate Attorneys: Itumeleng Ntho, LL.B, Luthando Ndzambo, LL.B, Matsepo Funani, LL.B
Office Manager: Simoné Swanepoel
Office Hours: Monday – Thursday 08h00 – 16h30
Friday 08h00 – 15h30

- 22/11/2026 11:52:41 AM
1. We act on behalf of our client, the Nelson Mandela Bay Municipality ("NMBM") in this matter.
 2. We are instructed that on or around 11 September 2025, Coega Steel (Pty) Ltd ("Coega Steel") entered into a lease agreement with our client, the NMBM, for the lease of a municipal owned transformer 63 MV ("the transformer") for a twelve-month period in lieu of a certain lease amount due payable to the NMBM monthly.
 3. We are also instructed that, upon the NMBM having sought a legal opinion in this matter, it appears that the said lease agreement was irregularly and or unlawfully entered into, as the required legal process was not followed as contained in the Municipal Asset Transfer Regulations ("Asset Regulations").
 4. For the reasons stated herein above, which reasons are not limited thereto, we are hereby instructed that, in a recent Council meeting of the NMBM, it was resolved by the said NMBM council that the NMBM must seek the return of its transformer from Coega Steel, and should this not happen, to seek a Court Order reviewing and setting aside the lease agreement entered into between Coega Steel and the NMBM.
 5. As such, we hereby demand a written undertaking from Coega Steel that it will, by agreement, return the municipal owned transformer within one week from today, which written undertaking must be given before close of business on Tuesday 18 November 2025, failing which we hold instructions to approach the High Court on an expedited basis.
 6. Trusting you will find this to be in order.

Yours faithfully.

KUBAN CHETTY INC.

Director: Kuban Chetty, B.COM. B.PROC. LL.B
Associate Attorney: José Van Rooyen, BCOM, LL.B
Associate Attorney: Karin De Villiers, LL.B
Associate Attorney: Cecilia Wilkinson, LL.B
Candidate Attorneys: Itumeleng Ntho, LL.B, Luthando Ndzambo, LL.B, Matsepo Funani, LL.B
Office Manager: Simoné Swanepoel
Office Hours: Monday – Thursday 08h00 – 16h30

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22/1/2026-11:52:41 AM

MCBOTHA Inc.
Lawyers for Business



"LN12"

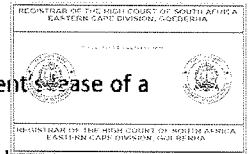
Kuban Chetty Inc
Attention: Mr J Van Rooyen
Email: jose@kubanchettyinc.com
Email: kuban@kubanchettyinc.com

OUR REF: MCB/lg/COE2/0006
YOUR REF: Mr J Van Rooyen

24 November 2025

Dear Sir

**COEGA STEELS / NELSON MANDELA BAY MUNICIPALITY
LEASE OF MUNICIPAL OWNED POWERTECH TRANSFORMER 63MVA**



1. We refer to your letter of 14 November 2025, addressed to Mr Khan regarding our client's lease of a 63MVA transformer from the NMBM.
2. In terms of your letter the NMBM demands an undertaking from Coega Steels that it will, by agreement, return the municipal owned transformer within a week (i.e. by 18 November 2025).
3. Our instructions are the following:
 - 3.1 Following a catastrophic failure of Coega Steels' 40MVA transformer responsible to supply its entire operation with electricity, their entire operation came to a standstill. Resultantly they urgently required access to a replacement transformer to avoid the failure of the business and large scale staff layoffs.
 - 3.2 Transformers cannot be purchased "off the shelf" and are manufactured to order. There are no local transformer manufacturers, necessitating Coega Steels to request an overseas supplier to manufacture a replacement transformer.
 - 3.3 There were only two possible sources for emergency backup transformers, being either Eskom or the NMBM. The Eskom transformer was not ideally suited for use by Coega Steels as it's of different vector group and required substantial re-work over an extended period to render it suitable. The NMBM transformer, to the contrary, was ideally configured and immediately available for installation and commissioning. Because of this, Coega Steels engaged the Electricity Director and Acting city manager of the NMBM for purposes of leasing a backup transformer owned by the NMBM for the short term bridging period, pending the manufacture of the replacement transformer.
 - 3.4 In addition, our client understood that such an arrangement would be in the interest of both the NMBM and Coega Steels. Firstly, because it it permitted of Coega Steels substantially limiting its production downtime, and in so doing avoiding significant production losses. Secondly, as Coega Steels is the highest power consumer in NMBM municipality, the leasing arrangement avoided a substantial revenue loss by the NMBM.
 - 3.5 In consequence of the above, the NMBM agreed to lease the transformer to our client for a period of 12 months from 11 September 2025 at a monthly rental of R250 000 per month. The lease was reduced to writing and signed by both parties. The Acting City Manager signed on behalf of the NMBM.

Director: MC Botha
Associate: Heide Poong

255 Main Road | Walmer | Gqeberha | 6070 | South Africa | Also at St. Francis Bay
+27 041 100 0080 | info@mcbotha.law | www.mcbotha.law

Registration No: 2022/3/761/21 | B-BBEE Level 4

Handwritten signatures and initials, including "WH" and "LW".

- 3.6 Thereafter, the transformer was leased to Coega Steels, installed and commissioned by NMBM authorised service provider at Coega Steels' cost and expense, orders were placed by Coega Steels with a manufacturer abroad for the manufacture and supply of the replacement transformer, and further discussions with Eskom were abandoned. It is expected that the replacement transformer will be received, installed and commissioned by end May 2026.
- 3.7 Coega Steels then proceeded to pay the monthly rental of the transformer and arranged for the transformer to be insured in accordance with the terms of the lease. Coega Steels have throughout acted in accordance with the terms of the lease.
- 3.8 At all relevant times our client engaged with the NMBM, Electricity Director and the Acting City Manager who represented to our clients that they (the administrative head of the entire NMBM and its electricity department respectively) were authorised to conclude the lease agreement without acting contrary to the NMBM's internal legal processes. Coega Steels, believing the representation to be true, acted thereon, concluded the lease with the NMBM and abandoned the less attractive option of the Eskom transformer.
- 3.9 We are further instructed that, if the transformer were to be removed as demanded by the NMBM, our client's entire business operation will come to catastrophic standstill and will remain inoperative until the earlier of the successful installation and commissioning of the replacement transformer or the (to be)reconfigured Eskom transformer – if it is indeed still available. At worst, the consequence of doing so may cause the permanent closure of our client's business. At best, the removal of the NMBM transformer will force a temporary shutdown of our client's operations, necessitating 585 employees being placed on reduced working hours (short time) until normal operations resume, while also causing substantial electricity revenue losses for the NMBM. Either of these options will result in significant financial losses to our client.
4. Under the circumstances Coega Steels assert that they are in bona fide possession of the transformer in terms of a valid lease agreement and intend to uphold the terms of the lease. Resultantly, Coega Steels will not provide the requested undertaking, nor will they return the transformer as demanded. They will however undertake to return the transformer as soon as the replacement transformer is installed and commissioned, even if this were to happen before the expiry of the lease.
5. In addition, Coega Steels instructed us to advise you that that the demand by the NMBM amounts to an unlawful repudiation of the lease by the NMBM, and they reserve their rights in that regard.
6. Insofar as the NMBM seems to be threatening an approach to the high court "on an expedited basis" please note that, firstly any such application will be opposed; and secondly, our client does not believe any such expedited approach can or will be justified, given the prevailing circumstances.

Yours faithfully
MC BOTHA INC.

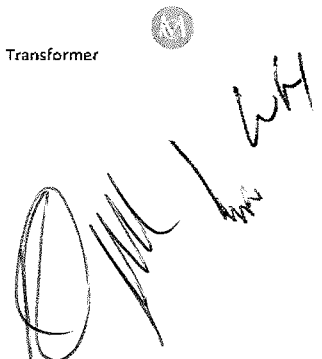


MC BOTHA
Cell: 078 456 7830

For terms and conditions of service see www.mcbotha.law/terms

Encl.

https://mcbotha.sharepoint.com/sites/SP_MCB/Shared Documents/Court/High Court/COE2.0006 Coega Steels vs NMBM Transformer Lease/Correspondence/251121 COE2.0006 Letter to Kuban Chetty Inc.docx



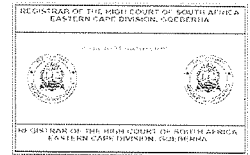


https://mcbotha.sharepoint.com/sites/SP_MCB/Shared Documents/Court/High Court/COE2.0006 Coega Steels vs NMBM Transformer Lease/Correspondence/251121 COE2.0006 Letter to Kuban Chetty Inc.docx

Handwritten signatures and initials, including a large circular mark and the letters 'WCH'.

Conclusion

31. The municipality has thus made out a case for the relief it seeks in terms of the notice of motion.
32. The municipality is also entitled to an order for costs in its favour, including the costs occasioned by the employment of two counsel, on Scale C as contemplated in the Uniform Rules of Court.



OH. RONAASEN SC

S. PATEL

Applicant's Counsel

Chambers: Gqeberha

30 June 2026

“FAIL”



PR Councillor

Your ref: Motion to Council

Our ref: Irregular Leasing of Municipal Asset

Date: 17 April 2026

Who deals with this: Cllr Ondela H Kepe

Tel: +27 (0) 41 450 9500

Cell: +27 (0) 76 274 2333

Greenacres Office Park, 84 2nd Avenue.
Newton Park, Gqeberha, 6045

e-Mail: okepe@mandelametro.gov.za

NOTICE OF MOTION TO COUNCIL: LEASING OF 132/22KV, 63MVA TRANSFORMER TO COEGA STEELS (PTY) LTD

Moved by: Councillor Ondela Kepe

Seconded by: Councillor Tyrone Adams

Subject: Institution of Consequence Management and Accountability Measures Relating to the Irregular Leasing of a 132/22kV, 63MVA Municipal Transformer to Coega Steels

This motion is submitted in terms of Rule 21 of Council's Rules of Order. Please ensure that this motion appears in the agenda of the next scheduled Council meeting, after its prescribed date of maturity.

I write to you regarding the now-confirmed irregular leasing of a 132/22kV, 63MVA municipal transformer to Coega Steels (Pty) Ltd, a matter which has served before both Committee and Council, and which has now further been conceded as irregular by the Executive Mayor before the COGTA Parliamentary Committee.

While the reports tabled by the Municipality, so far, provide a chronological account of events, they fail materially in addressing consequence management, particularly in respect of the Executive Mayor, Babalwa Lobishe, whose role in the approval of this transaction cannot be overlooked.

1. Material Facts

It is common cause that:

- A strategic municipal asset, valued at approximately R25 million, was leased to a private entity.
- This occurred without lawful Council approval, as required by legislation.
- The transaction proceeded despite clear legal advice cautioning against such action.
- The Executive Mayor signed off on the transaction despite being advised to refer the matter to Council.



www.nelsonmandelabay.gov.za



2. Applicable Legislative Framework and Breaches

The above conduct constitutes violations of several legislative prescripts, including but not limited to:

2.1 Local Government: Municipal Finance Management Act, 2003

- **Section 14(2):** Prohibits the transfer or disposal of a capital asset needed to provide the minimum level of basic municipal services. The transformer in question is a strategic backup asset within the electricity network.
- **Section 60(1):** Assigns responsibility to the Accounting Officer to ensure that the Municipality complies with all applicable legislation.
- **Section 62(1)(a) & (d):** Requires the Accounting Officer to ensure effective, efficient, and transparent systems of financial and risk management, and to safeguard municipal assets.
- **Section 171 & 173:** Provides for financial misconduct where there is deliberate or negligent non-compliance with the Act.

2.2 Local Government: Municipal Systems Act, 2000

- **Section 4(2):** Requires the Municipality to exercise its executive and legislative authority without favour or prejudice and in the best interests of the local community.
- **Section 6(2):** Obligates political structures and office bearers to act in good faith, transparently, and in the best interests of the Municipality.

2.3 Municipal Asset Transfer Regulations

- Requires that any transfer, disposal, or granting of rights to use municipal capital assets must follow a transparent, competitive, and Council-approved process, which clearly did not occur in this instance.

2.4 Code of Conduct for Councillors

- **Item 2:** Requires councillors to act in good faith, honestly, and in a transparent manner.
- **Item 5:** Prohibits abuse of position or acting in a way that compromises the credibility and integrity of the Municipality.

3. Failure of Consequence Management in Municipal Reports

Despite the seriousness of these breaches, the reports tabled:

- Deflect accountability onto former officials no longer in the employ of the Municipality.
- Fail to interrogate or assign accountability to the Executive Mayor.
- Do not propose any meaningful consequence management measures against political leadership.

This omission is both material and unacceptable, as it undermines the principles of accountability and good governance.

4. Required Action

Considering the above, we hereby move that Council resolves to:

1. Institute consequence management proceedings against the Executive Mayor in terms of the applicable legislative framework and refers the matter to the Rules and Ethics Committee.
2. Formally request the office of the ACM to refer the matter to the MEC for Cooperative Governance and Traditional Affairs for investigation and appropriate action, as provided for in law.
3. Task the office of the ACM to provide Council with a supplementary report specifically addressing accountability and consequence management in respect of the political office bearer involved in this matter.
4. Task the office of the ACM to take all necessary steps to ensure that the integrity of municipal governance processes is restored, in line with the Council resolution of 4 December 2025.

The admission that the transaction was irregular confirms what the DA has consistently maintained: that due process was disregarded, risks were ignored, and residents were placed second to improper decision-making. Accountability cannot be selective.

If officials are to be held responsible, then so too must political leadership be held to the same standard.

Your urgent attention to this matter is required.

Yours sincerely,

Councillor Ondela H. Kepe
DA Spokesperson: Electricity & Energy
Nelson Mandela Bay Municipality



“FA12”

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Treasury Slams Brakes On Bay's R23bn Write-Off Plan



Michael Kimberley

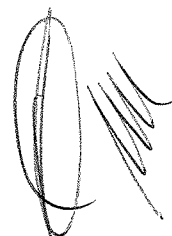
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The City Hall in Gqeberha. In a strongly worded letter to the municipality, the National Treasury said it could not support the metro's conclusion that all the flagged expenditure incurred up to June 30 2021 had prescribed, insisting that each item must first be assessed on its own facts *Picture: SUPPLIED*

The National Treasury has rejected the Nelson Mandela Bay municipality's proposed blanket write-off of R23bn in unauthorised, irregular, fruitless and wasteful expenditure, warning that the process is legally defective.

In a strongly worded letter to the municipality, the Treasury said it could not support the metro's conclusion that all the flagged expenditure incurred up to June 30 2021 had prescribed, insisting that each item must first be assessed on its own facts.

The Treasury's intergovernmental relations deputy director-general, Ogalaletseng Gaarekwe, addressed the letter to acting city manager Lonwabo Ngoqo on August 19.

ACDP councillor Lance Grootboom was included as a recipient of the email.

Municipal spokesperson Sithembiso Soyaya said the city was dealing with the flagged historical expenditure.

“The approximately R23.08bn refers to historical UIFWE reflected on the municipality’s register, covering expenditure accumulated over many years from 2009,” he said.

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“It is not an amount that has simply been removed from the municipality’s books.

“A UIFWE register balance, a determination that expenditure is legally irrecoverable, certification of irrecoverability and a final write-off are separate stages in the statutory process.”

He said that since 2024, the municipality had done extensive cleansing and reconciliation of its expenditure register to establish the accuracy of the historical record, determine what remained legally recoverable, address prescription where applicable and identify outstanding accountability matters.

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“The municipality has taken note of the National Treasury’s concerns and has responded to them.

“The correspondence will form part of the information considered through the appropriate municipal governance processes.

“The municipality does not accept that the process amounts to an abandonment of good governance or accountability.”

He said recovery remained the starting point under Section 32 of the Municipal Finance Management Act (MFMA).

“At the same time, the law of prescription must be applied where recovery rights have become legally unenforceable.

“The municipality’s position is not that UIFWE prescribes simply because it is old.

“The legal status of historical expenditure must be established from the relevant records, dates, recovery action and applicable legal principles.

“There is equally no basis for suggesting that a lawful determination of irrecoverability would amount to protecting anyone from accountability.

“Accounting treatment and consequence management are separate matters.

“Where the evidence supports disciplinary, civil, criminal or other action against officials, political office bearers, suppliers or any other responsible parties, the appropriate processes must follow.

“The acting city manager has prepared documentation arising from the UIFWE cleansing exercise for purposes of an appropriate criminal referral where the evidence warrants such action.

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“The municipality will not compromise a potential law enforcement process by releasing incomplete or premature operational information.”

Meanwhile, Gaarekwe said the municipality must examine each invoice, payment, transaction or purchase order to establish who might be liable, when the relevant facts became known, what recovery steps were taken and whether the expenditure had actually prescribed.

She warned that any decision by the municipal public accounts committee (Mpac) or council based on the current process would be unlawful and could expose the responsible officials and councillors to misconduct proceedings.

Her letter came amid moves to approve the write-off in council, which would be in breach of the MFMA.

Mpac first approved the write-off earlier in August.

However, the meeting descended into a bitter showdown.

Opposition councillors accused Mpac chair Luxolo Namette of being railroaded into approving the huge write-off without first scrutinising supporting documents to see what the amount was spent on and assess whether the metro had received value for money.

According to a report, Ngoqo sought legal advice to help the municipality investigate and address the flagged expenditure.

The Bay metro has the highest unauthorised, irregular, fruitless and wasteful expenditure of any SA municipality, totalling nearly R30bn.

Ngoqo told councillors he had prepared an affidavit, which he still needed to sign, and intended using it to report matters to the police



against people implicated in the flagged expenditure.

The legal opinion makes it clear that the municipality cannot simply assume that the historical expenditure has prescribed.

Instead, it must assess each item individually to determine if it remains legally recoverable.

Under the Prescription Act, legal claims and debts are subject to time limits.

If a creditor fails to take legal action within the prescribed period, the debt may become prescribed, meaning it is extinguished and can no longer be recovered through the courts.

After the meeting, the ACDP and DA wrote to the National Treasury.

Meanwhile, Gaarekwe ordered Ngoqo to withdraw the unsigned affidavit underpinning the proposed write-off.

She said the statutory starting point for unauthorised, irregular, fruitless and wasteful expenditure was recovery.

"A write-off occurs only after a proper investigation establishes that recovery is no longer legally possible.

"For avoidance of doubt, an item-by-item assessment means that UIFWE recoverability must be considered at the level at which the UIFWE was actually incurred.

"It does not mean a single assessment for an entire financial year, directorate, contract or aggregated register balance.

"For each such amount, the municipality must determine the person potentially liable, the basis of liability, the date on which the



municipality knew or reasonably ought to have known the relevant facts and identity of that person, and the recovery steps taken.”

However, she said Ngoqo had appeared to divert from that in his affidavit.

“For the 2022 and 2023 financial years, the affidavit states that irrecoverability should only be determined after an item-by-item assessment.

“No clear legal basis is provided for applying an individual assessment from 2022 onwards while applying a broad financial-year approach to earlier expenditure.

“The same legal test should apply to each claim.

“The National Treasury cannot support a blanket conclusion or recommendation that all UIFWE up to 30 June 2021 has prescribed.

“The age of the UIFWE incurred may justify an urgent investigation, but it does not, on its own, establish prescription.

“Each item should be assessed against the identity of the liable person, the facts giving rise to liability, the date those facts became known or could reasonably have become known, the recovery action taken and any event affecting prescription.

“The unsigned affidavit is legally defective [as it] seeks a broad write-off of UIFWE up to June 30 2021, amounting to R23,085,242,601.33, without first completing the item-by-item assessment required.

“Any decision by Mpac or council based on this defective process will be unlawful and expose responsible officials and councillors to misconduct proceedings.

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"The affidavit, whether unsigned or signed, should therefore not be served before Mpac or council in its present form.

"The National Treasury requires written confirmation ... that the unsigned affidavit has been withdrawn and that the legal concerns have been reported to Mpac and council."

Grootboom said the ACDP had serious concerns regarding the legality, accountability and oversight implications of attempting to deal with such a substantial amount of expenditure through a blanket write-off.

"Following the ACDP's urgent intervention, the National Treasury has engaged with the municipality regarding the proposed write-off and the applicable legal and financial management requirements.

"The ACDP welcomes this intervention and the further scrutiny of a matter involving billions of rand in public money," he said.

"The ACDP is particularly concerned that any process involving the potential write-off of R23bn must be transparent, properly motivated and subject to rigorous oversight by Mpac and council.

"The ACDP refused to sit back while an attempt was being made to process a blanket write-off involving more than R23bn in historic municipal expenditure.

"We raised our concerns through the appropriate oversight channels and urgently brought the matter to the attention of the National Treasury and the auditor-general."

DA councillor Gert Engelbrecht said the money belonged to residents and could not simply disappear from the books.

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“We specifically asked the National Treasury to intervene and provide clarity on the process being followed, the legal basis for the proposed write-off and whether the municipality had properly considered the individual transactions making up this enormous amount.

“The National Treasury has now responded to those concerns and has made it clear that the municipality cannot simply take a blanket approach to writing off R23bn on the basis that the expenditure has prescribed.

“The National Treasury has also raised serious concerns about the affidavit supporting the proposed R23bn write-off, including deficiencies in the process followed.

“This raises further serious questions about any decision taken by Mpac or the council if the necessary legal advice and information has not been properly considered.”

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Michael Kimberley

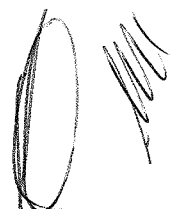
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Speaker Eugene Johnson during the council meeting at the Feather Market Hall on Thursday *Picture: Eugene Coetzee*

The Nelson Mandela Bay municipality has pushed back against the National Treasury's rejection of its proposed write-off of R23bn in historic unauthorised, irregular, fruitless and wasteful expenditure (UIFWE).

The municipality insists the money is now legally irrecoverable because the metro failed to pursue it timeously.

In a strongly-worded response to the Treasury, acting city manager Lonwabo Ngoqo said the municipality stood by its position that UIFWE recorded up to June 30 2021, dating back to 2009, had prescribed and could therefore be written off.

His response follows the Treasury's rejection of the municipality's approach, including its view that the affidavit written by Ngoqo and

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The Treasury's intergovernmental relations deputy director-general, Ogalaletseng Gaarekwe, addressed the letter to Ngoqo on August 19.

Ngoqo replied on August 20.

His response formed part of the agenda for Thursday's council meeting.

However, the issue was deferred for seven days, when the council will next sit to deal with it.

This came after a heated debate over whether the report should be tabled.

"The municipality does not agree that the affidavit presented to Mpac is legally defective, that it must be withdrawn, or that Mpac and council are precluded from considering the matter," Ngoqo said.

At the centre of the municipality's argument is Section 12(3) of the Prescription Act.



“Your letter correctly identifies that recovery is the statutory starting point under Section 32 of the local government Municipal Finance Management Act [MFMA], but it does not sufficiently account for the legal effect of prescription where a municipality has failed, despite the exercise of reasonable care required of it, to identify and pursue Section 32 recovery claims timeously,” he said.

“The proposed write-off is not advanced on the simplistic basis that UIFWE is old, nor merely because it appears on a historic register.

“The point of departure is that, in respect of UIFWE recorded up to June 30 2021, the municipality did not within two years thereafter exercise reasonable care to identify the relevant facts, the persons potentially liable, the causes of action, and any right of recovery under Section 32.”

He said that failure had direct consequences under Section 12(3), which deems a creditor to have knowledge of the debtor and the facts giving rise to the debt if that knowledge could and should have been acquired by exercising reasonable care.

“The two years is therefore used as a cautious and favourable assumption in the municipality’s analysis: even allowing for that extended period, the UIFWE recorded up to June 30 2021 has prescribed,” Ngoqo said.

The Treasury has rejected that interpretation and the municipality’s reliance on prescription as a basis for a write-off.



The Treasury has also questioned whether the correct legal process was followed and challenged the legal status of Ngoqo's affidavit.

The municipality maintains its conclusion is based on its UIFWE register and supporting schedules, not simply age.

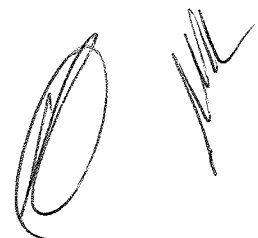
"The municipality's conclusion is not based on an abstract or unexplained assertion of prescription," Ngoqo said.

"It is based on the UIFWE register, the period during which the relevant expenditure was detected and recorded, the absence of timeous recovery proceedings, and the fact that the municipality ought, by exercising reasonable care, to have identified the relevant officials, political office-bearers, service providers, causes of action and supporting records."

This meant, he said, Mpac and council did not need to reconstruct every historic transaction before deciding whether recovery was legally possible.

"The affidavit and supporting schedules should therefore be understood as placing before Mpac and council the evidential basis for the conclusion that the relevant Section 32 claims are no longer legally recoverable," he said.

"Further reconstruction of each historic transaction may assist in explaining how a particular item arose, but it cannot revive a claim that has already prescribed."

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“Section 32 requires investigation by a council committee and a council certification of irrecoverability.

“It does not prescribe a single evidentiary method, nor does it require the impossible reconstruction of historic transactions where the municipality’s own failure to act timeously has, itself, rendered recovery legally impossible,” he said.

Ngoqo said the municipality’s reliance on the Treasury’s Circular 68, which sets out steps once UIFWE is suspected or recorded, was that its five-day and 10-day periods were not rules that automatically triggered prescription, but benchmarks for reasonable conduct.

“The circular describes the steps a municipality should take once UIFWE is suspected or recorded, including recording the item, preparing an incident report, identifying persons who may be liable, preserving evidence and placing the matter before the appropriate structures,” he said.

“Those steps are directly relevant to the Section 12[3] inquiry because they indicate what the municipality could and should have known had reasonable care been exercised.”

The municipality has drawn a distinction between UIFWE recorded before and after June 30 2021.

Ngoqo said this did not amount to applying different legal tests, but reflected different evidential positions.

“For later UIFWE, the records are more recent and the municipality is better placed to undertake a more granular assessment.”

He acknowledged some date references or arithmetic examples in his affidavit could be corrected, but said this would not change the substantive position.

Ngoqo rejected the suggestion that a write-off would end accountability.

“Any certification and write-off will not be treated as an avoidance of accountability,” he said.

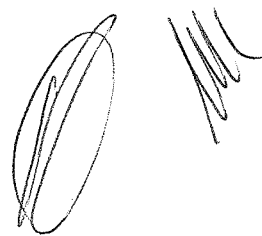
“Section 32[5] expressly preserves criminal and disciplinary consequences, and the municipality will continue to consider referrals to the SAPS, disciplinary proceedings and, where justified, possible claims under Section 176[2] of the MFMA.”

He said those claims could themselves be affected by prescription.

“It must also be recognised that Section 176 claims are themselves subject to prescription.

“A failure to act timeously in relation to UIFWE does not only affect the municipality’s ability to recover the original Section 32 debt; it may also compromise, and ultimately extinguish, any separate claim against officials or political office-bearers whose conduct caused loss.”

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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GQEBERHA**

CASE NO: 2026 -

In the matter between:

**DEMOCRATIC ALLIANCE
RETIEF ODENDAAL**

First Applicant
Second Applicant

and

**NELSON MANDELA BAY
METROPOLITAN MUNICIPALITY**

First Respondent

DAYALAN MURUVAN PILLAY

Second Respondent

BABALWA LOBISHE

Third Respondent

AUDITOR-GENERAL OF SOUTH AFRICA

Fourth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned

ONDELA HLANGOLUHLA KEPE

do hereby make oath and state:

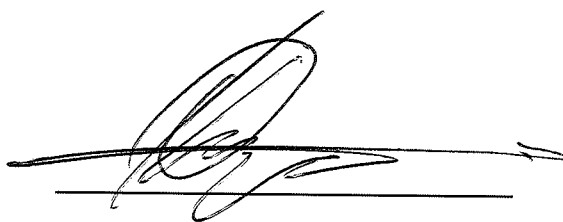


1. I am an adult male, with identity number 910712 5220 081, and an elected DA Councillor in the Nelson Mandela Bay Metropolitan Municipality, and resident at 69 Western Road, Central, Gqeberha.
2. I confirm that, to the best of my knowledge and belief, the content of this affidavit is both true and correct and, unless the context indicates otherwise, falls within my own personal and particular knowledge.
3. I confirm that I have read the Founding Affidavit of Retief Odendaal deposited to in this matter ("the Founding Affidavit"), to which this confirmatory affidavit is annexed and of which it forms part. I am familiar with its contents, including annexure FA11, insofar as they relate to me.
4. Without detracting from the generality of the above confirmation, I confirm the following:
 - 4.1. I confirm the correctness of paragraph 86 of the Founding Affidavit, insofar as it records that on 17 April 2026 I delivered the notice of motion annexed thereto marked "FA11" to the office of the Speaker in the prescribed manner, requiring it to be placed on the agenda of the next Council meeting. I confirm that annexure FA11 is a true copy of that notice of motion.

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, located in the bottom right corner of the page.

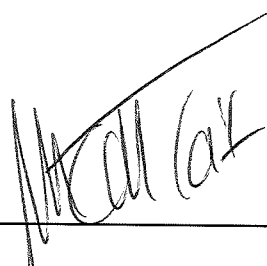
- 4.2. I confirm the correctness of paragraphs 87 and 88 of the Founding Affidavit insofar as they record the contents of my notice of motion. In that notice, I referred to the lease of the transformer having been conceded as irregular by the Executive Mayor before the COGTA Parliamentary Committee and to the report submitted to Council having failed to address consequence management, particularly in respect of Babalwa Lobishe. I moved that Council institute disciplinary proceedings against her and that the Acting City Manager provide Council with a supplementary report addressing accountability and consequence management, with specific regard to the political office bearers involved.
- 4.3. I confirm the correctness of paragraph 89 of the Founding Affidavit, insofar as it records that, following delivery of the notice of motion, the only communication received from the Office of the Acting City Manager was an acknowledgement of receipt. Despite a subsequent follow-up, the motion has not been placed before Council for consideration as at the date of this affidavit.
- 4.4. Save as aforesaid, I do not purport to confirm the balance of the contents of the Founding Affidavit, which fall outside my personal knowledge.

Handwritten signature and initials, possibly 'ML' and 'OK', in the bottom right corner.



ONDELA HLANGOLUHLE KEPE

SWORN to and **SIGNED** before me at **GQEBERHA** on this 06 day
of **OCTOBER 2026**, the Deponent having acknowledged that he
knows and understands the contents of the affidavit, has no objection
to taking the prescribed oath and regards the oath as binding on his
conscience.



COMMISSIONER OF OATHS

Commissioner of Oaths
Michelle Christine Du Toit
Practising Attorney
317 Cape Road, Newton Park
Port Elizabeth, South Africa

