

**TO ALL COUNCILLORS AND DIRECTORS OF THE BREEDE VALLEY
MUNICIPALITY**

NOTICE IS HEREBY GIVEN that a **COUNCIL MEETING** of the Breede Valley
Municipality will be held on

MONDAY, 29 MAY 2017 at 10:00

in **THE COUNCIL CHAMBER, CAPE WINELANDS DISTRICT MUNICIPALITY,
51 TRAPPES STREET, WORCESTER**

to consider the matters listed in the following Addendum Agenda.


CLLR. N.MERCUUR
SPEAKER

23 MAY 2017

ADDENDUM AGENDA

6. CONSIDERATION OF AGENDA ITEMS

6.8 SPECIAL RATING AREA: WORCESTER IMPROVEMENT DISTRICT

File no.: 2/3/2/65

Responsible Official: H POTGIETER

Directorate: SSS

Portfolio: Legal Services

1. PURPOSE

The purpose of this item is to inform Council of the developments in respect of the Special Rating Area: Worcester Improvement District hereinafter referred to as "the SRA".

2. BACKGROUND

During the Council meeting held on 30 March 2016, it was resolved as follows:

"RESOLVED: C24/2016 That in respect of the APPLICATION FOR THE ESTABLISHMENT OF A SPECIAL RATING AREA (SRA): WORCESTER BUSINESS IMPROVEMENT DISTRICT, Discussed by the Council at the Council meeting held on 30 March 2016: Council approves:

1. That, in terms of the Special Rating Area By-law, the application submitted by Worcester Business Improvement District company, represented by Mr Danie Nel as Director, be approved and that the Breede Valley Municipality determine the following area as a special rating area, namely:

- The defined or demarcated area in the well-established existing Worcester Central Business District, also known as the Worcester "Middedorp", which lies in the block bounded by Tulbagh, Durban, Somerset (Drostdy) and Riebeeck streets to be declared a Special Rating Area called Worcester Business Improvement District;*

2. That Council takes note than no objections to the establishment of the proposed Special Rating Area were received;

3. That the additional rates in terms of Section 22(1)(b) of the Municipal Property Rates Act be applicable as follows: • Rate of 0.00165 before VAT for the Budget for 2016/17 on property value of the participating businesses / commercial properties as from 1 July 2016 in terms of the Special Rating Area By-Law;

4. That the additional rates be included in the 2016/2017 budget;

5. That all properties changing use (ratable in terms of SRA) during the course of the year, will only be included for the special rate in the following financial year;

6. That an implementation action plan for the SRA implementation be submitted for approval by the Municipal Manager for implementation as from July 2016;and

7. That, in terms of Section 11 of the Special Rating Area By-law, a Finance Agreement be concluded and that delegated authority be awarded to the Municipal Manager to conclude and sign such an agreement.”

On the above date of approval of the SRA, 145 properties were identified within the demarcated area. In terms of the SRA by-law the required written consents of the majority of the members of the local community were obtained and the SRA was thus duly approved by Council.

3. DISCUSSION

During the implementation phase of the applicable rates, it was ascertained that additional properties will be affected. Directorate: Finance therefore billed the rate of 0.00165 before VAT for the Budget for 2016/17 on property value of the participating businesses / commercial properties as from 1 July 2016 in terms of the Special Rating Area By-Law. The additional revenue derived from billing the additional properties was however not paid over to the WBID pending the finalisation of the outstanding consents. The WBID provided the additional requests required in order to have a majority on the new number of affected properties. During the current

financial year an amount of R1 046 183 has been billed and an amount of R 944 092.31 has been collected from affected properties. An amount of R310 798 has been paid to the WBID. An amount of R633 294 has been ring-fenced and not paid over to the WBID.

For sake of completeness, Council is herewith informed that the total number of properties in the SRA is 289 and 150 written consents were received, amounting to 52%, being the majority of the demarcated area. The additional rate will be 0.001751 cents in the rand excluding VAT.

4. FINANCIAL IMPLICATIONS

The cost for the SRA will be covered by the raising of a special rate for all businesses in the SRA.

RELEVANT LEGISLATION

- Local Government: Municipal Property Rates Act, no 6 of 2004
- Special Rating Area By-law
- Special Rating Area Policy

COMMENTS FROM DEPARTMENTS / DIRECTORS

MUNICIPAL MANAGER

Recommendation supported

DIRECTOR COMMUNITY SERVICES

Recommendation noted

DIRECTOR FINANCIAL SERVICES

Recommendation supported

DIRECTOR TECHNICAL SERVICES (ACTING):

Support the item and recommendation

DIRECTOR STRATEGIC SUPPORT SERVICES (ACTING)

Author of the item. Recommendation supported.

RECOMMENDATION

1. That Council reaffirm the establishment of a Special Rating Area;
2. that the additional rates in terms of Section 22(1)(b) of the Municipal Property Rates Act be applicable as follows:

0.001751 excluding VAT. The VAT inclusive Additional Rate is 0.001996;
3. that the additional rates be included in the 2017/18 budget; and
4. that the amount already collected and not paid over to the WBID (ring-fenced) be paid over less any retention fee.

6.9 ALIENATION OF CERTAIN ERVEN IN AVIAN PARK BY MEANS OF A COMPETITIVE PROCESS

File no.: 9/2/3/1/38

Responsible Official: M Müller

Directorate: SSS

Portfolio: Legal Services

1. PURPOSE

To obtain approval in principle for the alienation of 25 erven in Avian Park, by means of a competitive process.

2. BACKGROUND / DISCUSSION

In recent past these erven became available after being improved by the Municipality. The erven are situated in Segull Street except Erf 24648 which is situated in Bromvoel Street. A locality map, attached hereto as "Annexure A1" indicate the erven's locality whereas "Annexure A2", attached hereto indicate the individual erven more closely.

The erven, as set out in the list, attached hereto as "Annexure C", are improved erven and zoned as Residential 1. Indicated on this list is the respective erf numbers as well as the individual sizes of the erven indicated in square meters.

It can be confirmed that the erven are not needed for the provision of minimum level of basic municipal services and also not required for operational services. As the need for residential erven are numerous and more so that legislation compels the Municipality, it is recommended that the property be sold by means of a competitive process.

It is further recommended that the erven may be sold for less than the fair market value, having regard to the infrastructure cost, in order to determine the residual (indicative price) value at which the erven are to be sold.

3. EVALUATION

A. LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, ACT 56 OF 2003

14. Disposal of capital assets

- (1) A municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.

- (2) A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal 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) A decision by a municipal council that a specific capital asset is not needed to provide the minimum level of basic municipal services, may not be reversed by the municipality after that asset has been sold, transferred or otherwise disposed of.

- (4) A municipal council may delegate to the accounting officer of the municipality its power to make the determinations referred to in subsection (2)(a) and (b) in respect of movable capital assets below a value determined by the council.
- (5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111.
- (6) This section does not apply to the transfer of a capital asset to another municipality or to a municipal entity or to a national or provincial organ of state in circumstances and in respect of categories of assets approved by the National Treasury, provided that such transfers are in accordance with a prescribed framework.

Adherence to this section is sought through obtaining in principle approval from Council to alienate the respective erven by means of a competitive process.

B. ASSET TRANSFER REGULATIONS

7. Consideration of proposals to transfer or dispose of non-exempted capital asset.

The municipal council must, when considering any proposed transfer or disposal of a non-exempted capital asset in terms of regulation 5(1)(b)(i) and (ii) take into account -

- (a) whether the capital asset may be required for the municipality's own use at a later date;
- (b) The expected loss or gain that is expected to result from the proposed transfer or disposal;

- (c) the extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or benefit to the municipality'
- (d) the risks and rewards associated with the operation or control of the capital asset that is to be transferred or disposed of in relation to the municipality's interest;
- (e) the effect that the proposed transfer or disposal will have on the credit rating of the municipality, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow;
- (f) any limitations or conditions attached to the capital asset or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions;
- (g) the estimated cost of the proposed transfer or disposal;
- (h) the transfer of any liabilities and reserve funds associated with the capital asset;
- (i) any comments or representations on the proposed transfer or disposal received from the local community and other interested persons;
- (j) any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant provincial treasury;
- (k) the interest of any affected organ of state, the municipality's own strategic and economic interests and the interest of the local community; and
- (l) compliance with the legislative regime applicable to the proposed transfer or disposal.

It can be confirmed that the erven are not required by the municipality for own use.

As the community of Avian Park experience a shortage of adequate housing the interests of the community will be served through the alienation of the erven.

As the erven has already been improved by the Municipality it is of paramount importance to alienate the erven in reducing the risk of the infrastructure being stolen. The Municipality will therefore reduce the risk associated in this instance and be proactive in safeguarding its assets.

13. Compensation for transfer of non-exempted municipal assets

- (1) The compensation payable to a municipality or municipal entity for the transfer of a non-exempted capital asset must, subject to regulation (2) –**
 - (a) be consistent with criteria applicable to compensation set out in the disposal management system of the municipality or municipal entity; and**
 - (b) if regulation 12(2)(b) applies to the transfer, reflect fair market value.**

- (2) If a municipality or municipal entity on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a non-exempted capital asset for less than its fair market value, the municipality or entity must, when considering the proposed transfer, take into account –**
 - (a) the interest of –**
 - (i) the State; and**
 - (ii) the local community;**
 - (b) the strategic and economic interest of the municipality or municipal entity, including the long-term effect of the decision on the municipality or entity;**
 - (c) the constitutional rights and legal interest of all affected parties;**
 - (d) whether the interest of the parties to the transfer should carry more weight than the interest of the local community, and how the individual interest is weighed against the collective interest; and**
 - (d) whether the local community would be better served if the capital asset is transferred at less than its fair market value, as opposed to a transfer of the asset at fair market value.**

As the erven is earmarked to alleviate a greater concern, namely addressing poverty and the housing needs of the community the erven may thus be sold at a value, having regard to the infrastructure cost in determining the residual value (indicative price), at a value less than the fair market related value.

C. ADVERTISEMENT

It is recommended that approval be granted to follow a public participation process. Subsequently an advertisement is to be placed stipulating the intention to alienate the indicated erven by means of a competitive process in a local newspaper for a 30(THIRTY) day objection/comment period. Approval is to be further made subject to no material objections/comments being received, in which event the matter will not have to serve before Council again.

4. CONCLUSION

It is recommended that the erven be alienated by means of a competitive process at a value less than the market related value whilst the infrastructure cost be used as an indication in determining the residual value (indicative price).

5. FINANCIAL IMPLICATIONS

The Municipality stands to gain the purchase price for the erven and also rates and taxes after transfer of the erven.

ANNEXURES

Annexure A1: Locality Map

Annexure A2: Locality Map – close-up

Annexure B: General Plan

Annexure C: List of Erven

6. COMMENTS OF DIRECTORATES / DEPARTMENTS

MUNICIPAL MANAGER:

Recommendation supported

DIRECTOR TECHNICAL SERVICES (ACTING):

Municipal water and sewer services were installed during the 2016/2017 financial year. Due to limited funding no municipal roads, stormwater and electricity were installed. Should council consider the alienation of the 25 Avian Park erven, then Council should also make provision in the budgets for the completion of the engineering services (i.e. roads, stormwater and electricity) towards the 25 Avian park erven.

Senior Manager Civil Engineering Services:

No streets and stormwater are available to the 25 erven and must be constructed. The estimated cost amounts to R 550,000.00.

Senior Manager Electrical Services:

No electrical reticulation is available to the 25 erven and must be constructed. The estimated cost amounts to R 450,000.00.

Senior Manager Town Planning and Building Control:

No objection.

DIRECTOR FINANCIAL SERVICES:

The engineering services as mentioned by the Director Technical Services are not specifically catered for in the 2017/8 budget. This implies that the specific projects can only be taken up with the Mid-Year Adjustments Budget in February 2018.

However engineering service related to other Electricity projects and Roads project are budgeted, which may be used to finance the services needed for the 25 erven in Avian Park. This may require the re-prioritisation / rescheduling of projects currently in the

budget, given that the necessary amendments to restore the respective budgets can only be effected with the Adjustment Budget in February 2018.

DIRECTOR COMMUNITY SERVICES:

Alienation process is noted

DIRECTOR STRATEGIC SUPPORT SERVICES (ACTING):

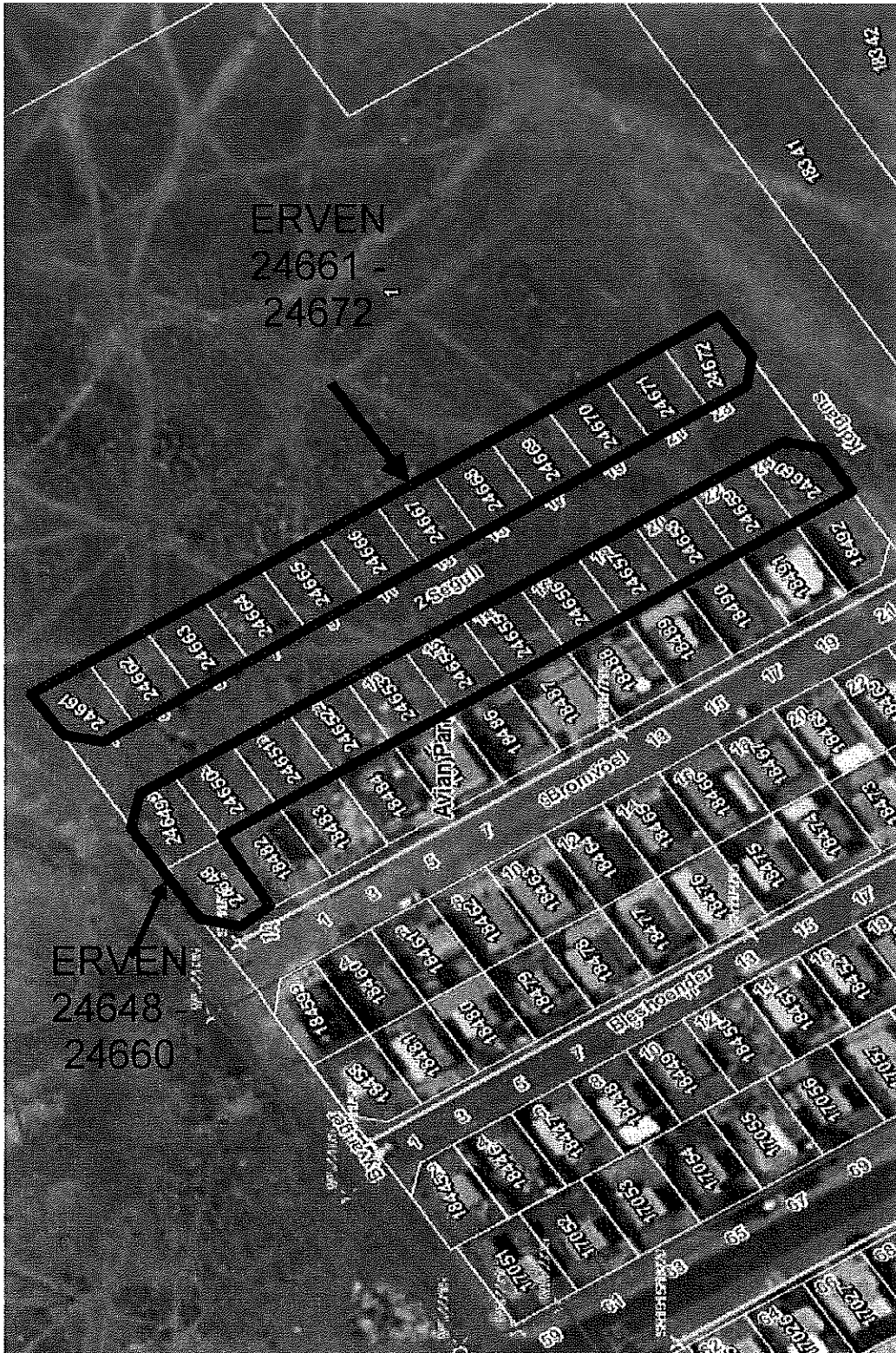
Co-author of item – recommendation supported.

RECOMMENDATION TO THE COUNCIL:

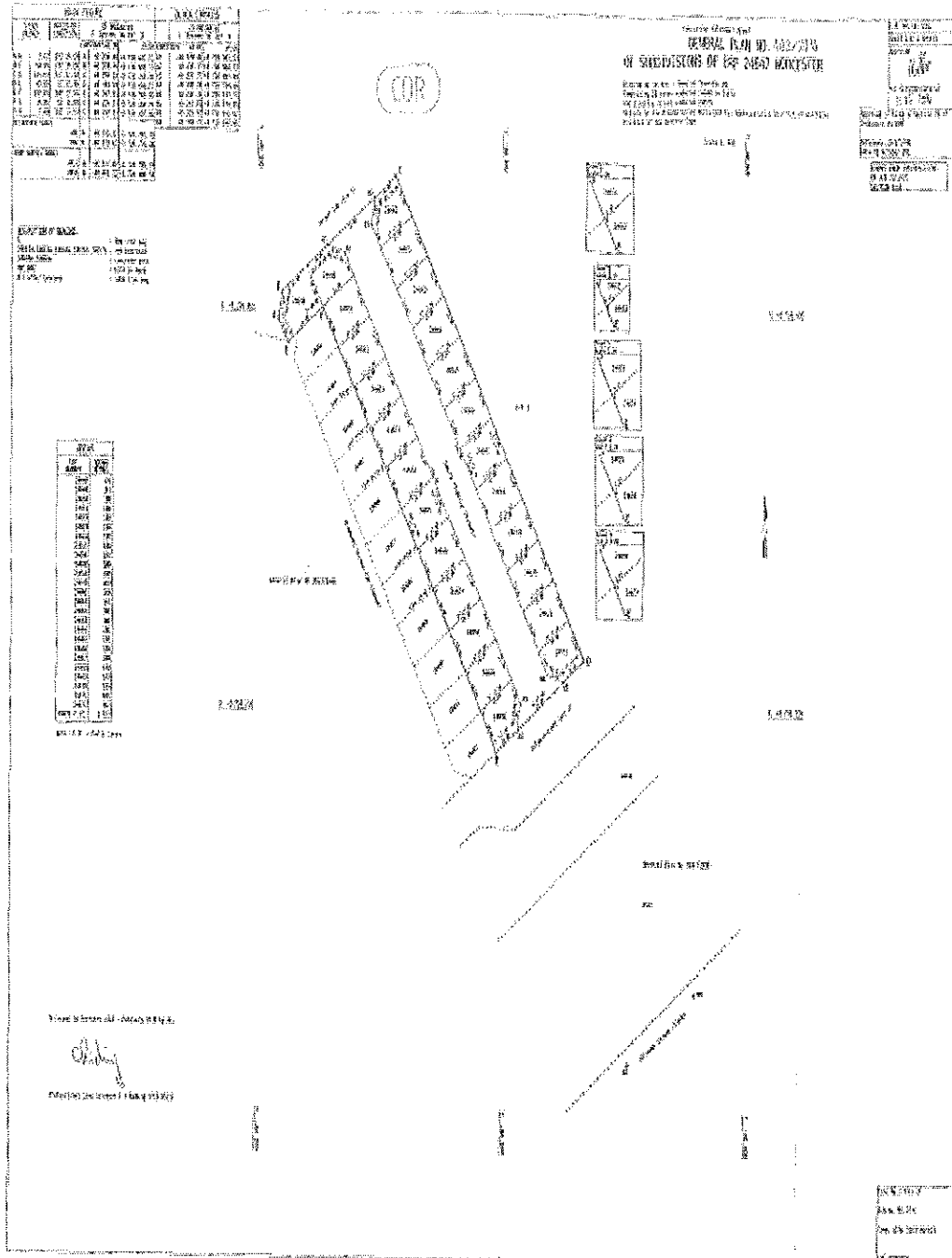
1. that the alienation of the respective erven as set out in Annexure C by means of a competitive process be **approved in principle**;
2. that the following of a public participation process, **be approved**;
3. that the costs pertaining to the transaction, e.g. transfer costs, water-, sewer, street, stormwater, electricity reticulation and electricity connections, the section 14 advertisement, etc. but excluding the valuation costs, be paid by the purchaser;
4. That the MTREF makes provision for the provision of roads, stormwater and electrical reticulation to the amount of approximately R 1,000,000.00.
5. that it is confirmed that Council has taken cognisance of the fact that the Municipal property herewith alienated is not required for the provision of basic municipal services in terms of the provisions Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003), and

6. that the Municipal Manager be authorised to sign all documentation related to the alienation of the subject properties.





ANNEXURE B



#	ERF NUMBER	SIZE (m ²)
1.	24648	191
2.	24649	167
3.	24650	180
4.	24651	180
5.	24652	180
6.	24653	180
7.	24654	180
8.	24655	180
9.	24656	180
10.	24657	180
11.	24658	180
12.	24659	180
13.	24660	168
14.	24661	167
15.	24662	180
16.	24663	180
17.	24664	180
18.	24665	180
19.	24666	180
20.	24667	180
21.	24668	180
22.	24669	180
23.	24670	180
24.	24671	180
25.	24672	167

6.10 RENEWAL OF LEASE AGREEMENT OF MUNICIPAL PROPERTY TO ABSA BANK LTD. – A PORTION OF ERF 1083 WORCESTER

File no.: 9/2/3/1/62

Responsible Official: M Müller

Directorate: SSS

Portfolio: LEGAL SERVICES

1. PURPOSE

To obtain approval from Council to enter into a further lease agreement with ABSA Bank Ltd., hereinafter referred to as "ABSA", in respect of Municipal Property, being a portion of Erf 1083 Worcester situated at 45 Baring Street for a period of 5 (FIVE) years for the purpose of operating ATM's/Strong rooms.

2. BACKGROUND

ABSA has been leasing a portion of Erf 1083 since 2003. This property is zoned as Business 1.

The current agreement is for a period of 5 (FIVE) years. ABSA applied for the renewal of the agreement in accordance with the agreement. Said contract provides for an option for renewal of the agreement on the same terms and conditions for a further period of 5(FIVE) years or such shorter period as the lessee may decide, on condition that 3(THREE) months written notice is given, to which ABSA complied with.

The locality and layout of the proposed lease area is indicated on a locality plan attached per annexure "A". The portion that is currently rented is approximately 20m².

3. DISCUSSION

ABSA has been utilising the said space for well over 10(TEN) years and provides a very important service to the community of Worcester, especially in the provision of

banking services to their clients. ABSA has applied for a long term lease agreement of 5(FIVE) years.

The lease amount has since inception of the first agreement escalated annually with a fixed percentage on the anniversary of the agreement, which was then a market related amount.

ABSA's municipal account is up to date. It has however come to the attention that homeless people are utilising the area as a place to sleep/shelter from the elements of nature. These people leave the area in a vile condition. This needs to be attended to in terms of any further lease agreement to be entered into with ABSA.

ABSA proposed the following terms in respect of the renewal agreement:

- a) Electricity to be included in the rental as per current lease agreement.
- b) 7(SEVEN) % escalation rate.

In terms of the current lease agreement, specifically Clause 8, the Municipality as Lessor is responsible for the payment of all municipal rates and taxes of the building while the Lessee/ABSA is responsible for the actual cost of electrical power consumed by it. It is to be noted that this is not allowed for in terms of the Municipality's Land Management and Disposal Policy (hereinafter referred to as "the Policy"), approved by Council and specifically paragraph 4.4.35 thereof. As the agreement afforded an option to ABSA to renew the agreement "**on the same terms and conditions**" a deviation of the specific paragraph of the Policy is proposed. However, it is still recommended that ABSA be liable for the actual cost of electrical power consumed as this will be in terms of the existing contract's conditions.

In respect of the escalation percentage, ABSA gave no reason as to why there should be a deviation from the applicable Policy, specifically Paragraph 4.4.34. The same argument holds true in that the option afforded is for the renewal of the agreement "**on the same terms and conditions**". Thus, the escalation rate should remain 8(EIGHT)% and not 7(SEVEN)%. This will only be allowed if Council allows a deviation from the Policy.

The above proposed deviations from the Policy, is to be considered by Council due to the prevailing circumstances of this matter and should not be regarded as the norm.

A lease agreement will be drafted and provided to Absa subject to the public participation process and on condition that no material objections and / or comments are received.

4. EVALUATION

D. ASSET TRANSFER REGULATIONS

Regulation 34 of the Asset Transfer Regulation R878 determines as follows:

- “(1) A municipality may grant a right to use, control or manage a capital asset only after –**
 - a) the accounting officer has in terms of regulation 35 conducted a public participation process regarding the proposed granting of the right; and**
 - b) the municipal council has approved in principle that the right may be grant.**
- (2) Subregulation (1)(a) must be complied with only if –**
 - a) the capital asset in respect of which the proposed right is to be granted has a value in excess of R10 million; and**
 - b) a long term right is proposed to be granted in respect of the capital asset.**
- (3) a) Only the municipal council may authorize the public participation process referred to in subregulation (1)(a)**
 - b) A request to the municipal council for authorization of a public participation process must be accompanied by an information statement stating –**
 - i. the reasons for the proposal to grant a long term right to use, control or manage the relevant capital asset;**
 - ii. any expected to the municipality that may result from granting of the right;**

- iii. any expected proceeds to be received by the municipality from the granting of the right; and
- iv. any expected gain or loss that will be realized or incurred by the municipality arising from the granting of the right.

(4) A municipal council may delegate to the accounting officer its approval power referred to in subregulation (1)(b) excluding the power to grant long term rights to use, control or manage capital assets of a value in excess of R10 million.

It is recommended that Council approve in respect of the long term right in respect of the capital asset, the following of a public participation process as well as approve in principle the right to use, i.e. the lease of the property and that the approval will be regarded as final unless material objects/comments are received through the public participation process.

More specifically it is recommended that a long term right of a period of 5 (FIVE) years be approved.

In terms of Regulation 36 of the Asset Transfer Regulation R878, the Municipal Council must, when considering approval for any proposed granting of a right to use, control or manage a capital asset, take into account-

- (a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;**

The asset is not required for municipal use as can be seen from the comments of the Departments received.

- (b) the extent to which any compensation to be received for the right together with the estimated value of any improvements or enhancements to the capital asset that the private sector party or organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit to the Municipality;**

The Municipality will receive a market related rental income monthly as well as applicable rates and taxes. This will then also be to the benefit of the public.

- (c) **the risks and rewards associated with the use, control or management of the capital asset in relation to the municipality's interests;**

No risks are involved.

- (d) **any comments or representations on the proposed granting of the right received from the local community and other interested persons;**

A public participation process is to be followed after the necessary approval is obtained in this regard. Should there be any material objections/comments the matter will revert to Council to consider same.

- (e) **any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant provincial treasury;**

Should the comments be found necessary to be obtained same shall be obtained and shall the matter only revert back to council should it be material of nature.

- (f) **the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and the rental of this asset is to the benefit of the local community; and**

The rental and use of these properties are to the benefit of the local community as well as the Municipality. Through the services provided by ABSA the community will benefit.

- (g) **compliance with the legislative regime applicable to the proposed granting of the right.**

The Asset Transfer Regulations has been complied with.

E. LAND MANAGEMENT AND DISPOSAL POLICY

The following conditions of said policy apply:

Paragraph 4.4.18: "Immovable property sold or let by the Municipality shall be inspected at least one a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease."

The property will be inspected by the Legal Services Department at least once a year.

Paragraph 4.4.29: "All costs pertaining to a transaction, e.g. survey, advertisements, valuation. Relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required."

ABSA will pay the cost relating to the advertisement. No survey or valuation was done and therefore no costs were incurred in this regard.

"Paragraph 4.4.34: "Rental, except where it is decided otherwise by the Municipality shall escalate annually by a percentage fixed in accordance with the prevailing consumer price index (all items).

In light of the aforementioned discussion it is recommended that Paragraph 4.4.34 be deviated from and that the annual escalation rate be a fixed percentage of 8(EIGHT) %. This escalation to take place every year on the 1st of July.

PARAGRAPH 4.4.35: "The lessee shall, as a rule, be liable for the payment of rates and service charges in respect of the properties listed in the current valuation role. In the case of leases to certain social care users at rentals lower than market value the Municipality may consider granting a rebate on rates in accordance with the rates policy of the Municipality."

In light of the aforementioned discussion it is recommended that Paragraph 4.4.35 be deviated from in that the lessee shall only be liable for the actual cost of electrical power consumed.

It is further confirmed that the other Conditions of Lease as stipulated in paragraph 4.4.29 – 4.4.42 will be included in the lease agreement with the ABSA where applicable.

F. ADVERTISEMENT

An advertisement is to be placed for the renewal of the lease to ABSA of a portion of Erf 1083 Worcester in the local newspaper for a 30(THIRTY) day objection/comment period. Approval is to be made subject to no material objections/comments being received, in which event the matter will not have to serve before Council again.

5. CONCLUSION

In light of the above discussion it is recommended:

- a) that the deviation from Paragraph 4.4.34 and 4.4.35 be approved in respect of a fixed rate percentage to apply to the escalation of the rental amount and the payment of only the actual cost of the electricity consumed;
- b) that the lease agreement with ABSA be approved for a further period of 5(FIVE) years from 1 June 2017 at a rental amount of R2,926.75 (TWO THOUSAND NINE HUNDRED AND TWENTY-SIX RAND AND SEVENTY-FIVE CENTS) (VAT excluded) per month. The lease amount will escalate every year on the 1st of July in accordance with a fixed percentage of 8(EIGHT)%, the first escalation to be on 1 July 2017, and
- c) that a clause be inserted in the lease agreement to the effect that ABSA will be responsible to address the security issues of the leased area and general appearance of the leased area.

6. FINANCIAL IMPLICATIONS

The Municipality stands to gain a rental in the amount of R2,926.75 (TWO THOUSAND NINE HUNDRED AND TWENTY-SIX RAND AND SEVENTY-FIVE CENTS) (VAT excluded) for June 2017. For the period 1 July 2017 to 30 June 2018 the Municipality stands to gain a rental of R2,926.75 (TWO THOUSAND NINE HUNDRED AND TWENTY-SIX RAND AND SEVENTY-FIVE CENTS) (VAT excluded) per month plus the increase of the fixed percentage of 8(EIGHT)&. Thereafter the lease amount will escalate every year on the 1st of July with a fixed percentage of 8(EIGHT)%. All expenses pertaining to the proposed lease will be

borne by ABSA. Furthermore, the Municipality stands to gain the actual amount in respect of electricity consumed in respect of the portion of the erf leased to ABSA.

ANNEXURES

Annexure A: Locality Plan

7. COMMENTS OF DIRECTORATES / DEPARTMENTS

MUNICIPAL MANAGER:

Recommendation supported

DIRECTOR TECHNICAL SERVICES (ACTING):

Supports the recommendation as it will aid economic development of the region.

Town Planning: Mr Pieter Hartzenberg

No objection.

Building Department: Mr Marius Cronje

Building Control has no objection to the renewal of the lease agreement.

Civil Engineering: Mr Carel Posthumus

Civil Engineering Services has no objection to the application as submitted, subject to the following conditions:

1. That the applicant indemnifies Breede Valley Municipality against all actions, proceedings, claims and demands, cost, damages and expenses arising out of the approved rental which commence on the date that the applicant commences with his proposed activities on the municipal land.
2. That the Electrical and Traffic Department and other relevant departments/institutions do not have any objections to the application.

Senior Manager Electrical Services:

No objection.

DIRECTOR FINANCIAL SERVICES:

Recommendation supported

DIRECTOR COMMUNITY SERVICES:

Recommendation supported

Traffic Services:

No objections/comments received.

Fire and Rescue: Mr Neels de Klerk

This department has no objection with the renewal of this contract under the following conditions:

- The strong room area must be provided with its own serviced fire extinguisher and services of this extinguisher must be maintained annually.
- Should any structural or internal changes be made it must conform with the provisions of the National Building Regulations, SANS 10400-A:2010, Part T:201 Fire Protection Regulation.
- At no time during maintenance work or refiling of ATM's may the exists of the building be affected or obstructed.

DIRECTOR STRATEGIC SUPPORT SERVICES (ACTING):

Co-author of the item – recommendation supported.

RECOMMENDATION TO THE COUNCIL:

1. That the lease of Municipal Property, being a portion of Erf 1083 Worcester, in extent of ±20m², to ABSA Bank Ltd. for the purpose of operating ATM's/strong rooms for a period of 5(FIVE) years be approved;
2. that the deviation from paragraph 4.4.34 of the Land Management and Disposal Policy in order for the lease amount to escalate every year on 1 July with a fixed percentage of 8% and not as per the prevailing consumer

price index (all items), **be approved;**

3. that the deviation from paragraph 4.4.35 of the Land Management and Disposal Policy insofar as allowing ABSA Bank Ltd to only be liable for the actual cost of electrical power consumed, **be approved;**
4. that a clause be inserted in the lease agreement to the effect that ABSA Bank Ltd. be responsible to address the security issues of the leased area and general appearance of the leased area,
5. that the following of a public participation process, **be approved** at the cost of the Applicant;
6. that the item reverts back to Council following the public participation process for further consideration and decision only if there are material objections/comments;
7. that should the comments be found necessary to be obtained from National Treasury and the relevant provincial treasury same shall be obtained and shall the matter only revert back to Council should the comments be material of nature; and
8. that no rights shall vest or accrue prior to the conclusion of a lease agreement between ABSA Bank Ltd. and the Municipality.

6.11 RENEWAL OF LEASE AGREEMENT OF MUNICIPAL PROPERTY TO AFRIMAT AGGREGATES (OPERATIONS) (PTY) LTD. – A PORTION OF A REMAINDER OF ERF 3604 WORCESTER ALSO KNOWN AS BREWELSKLOOF QUARRY

File no.: 9/2/3/1

Responsible Official: M MULLER

Directorate: SSS

Portfolio: Legal Services

1. PURPOSE

To obtain approval from Council to enter into a further lease agreement with Afrimat Aggregates (Operations) (Pty) Ltd., hereinafter referred to as "Afrimat", in respect of Municipal Property, being a portion of a Remainder of Erf 3604 Worcester for a period of 1 (ONE) year with an option afforded to the Municipality to renew the agreement for a period of up to 2(TWO) years for the purpose of a quarry.

2. BACKGROUND

Afrimat, previously known as Prima Klipbrekers (Pty) Ltd., has been leasing a portion of Remainder of Erf 3604 since 1985. This property is zoned as Agricultural Zone 1.

The last agreement was for a period of 10 (TEN) years and Afrimat applied for the renewal of the agreement.

The locality of the proposed lease area is indicated on a locality plan attached per "Annexure A1" as well as an unregistered diagram attached as per "Annexure A2" indicating the area. The leased portion was indicated in the previous agreement as 87,4004 hectares, which was determined by an aerial photo. However, with the new diagram the lease area has been surveyed by a land surveyor as being 92,7918 hectares.

3. DISCUSSION

Afrimat has been utilising the said space for well over 30(THIRTY) years and provides an economical service to the community of Worcester, especially having regard to the employment of locals and so forth. Afrimat has applied for a long term lease agreement of a minimum of 10(TEN) years with the option to renew thereafter for a further period of 10(TEN) years.

As the property is utilised in a business capacity the process after the proposed renewal of the agreement, will be a competitive process. The option afforded to the Municipality for the renewal after the 1(ONE) year period of renewal, is to allow adequate time for the necessary implementation of the required procedures to be followed.

It is proposed that the lease agreement not to be renewed on the same terms and conditions and as such a market related rental will have to be obtained in order to address the new rental to be paid which will include that the actual material to be excavated be paid for by Afrimat. This rental is then also to be escalated annually on the 1st of July by the prevailing consumer price index (all items).

A lease agreement will be drafted and provided to Afrimat subject to the public participation process and on condition that no material objections and / or comments are received.

4. EVALUATION

G. ASSET TRANSFER REGULATIONS

Regulation 34 of the Asset Transfer Regulation R878 determines as follows:

- “(1) A municipality may grant a right to use, control or manage a capital asset only after –**
- c) the accounting officer has in terms of regulation 35 conducted a public participation process regarding the proposed granting of the right; and**

- d) the municipal council has approved in principle that the right may be grant.
- (2) Subregulation (1)(a) must be complied with only if –
- c) the capital asset in respect of which the proposed right is to be granted has a value in excess of R10 million; and
 - d) a long term right is proposed to be granted in respect of the capital asset.
- (3)
- a) Only the municipal council may authorize the public participation process referred to in subregulation (1)(a)
 - b) A request to the municipal council for authorization of a public participation process must be accompanied by an information statement stating –
 - v. the reasons for the proposal to grant a long term right to use, control or manage the relevant capital asset;
 - vi. any expected to the municipality that may result from granting of the right;
 - vii. any expected proceeds to be received by the municipality from the granting of the right; and
 - viii. any expected gain or loss that will be realized or incurred by the municipality arising from the granting of the right.
- (4) A municipal council may delegate to the accounting to the accounting officer its approval power referred to in subregulation (1)(b) excluding the power to grant long term rights to use, control or manage capital assets of a value in excess of R10 million.

It is recommended that Council approve in respect of the long term right in respect of the capital asset, the following of a public participation process as well as approve in principle the right to use, i.e. the lease of the property and that the approval will be regarded as final unless material objects/comments are received through the public participation process.

More specifically it is recommended that a long term right for a period of 1 (ONE) year with the option afforded to the Municipality to renew the agreement for a period of up to 2(TWO) years be approved depending on the relevant procedures as well as the progress of the following thereof.

In terms of Regulation 36 of the Asset Transfer Regulation R878, the Municipal Council must, when considering approval for any proposed granting of a right to use, control or manage a capital asset, take into account-

- (a) **whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;**

The asset is not required for municipal use as can be seen from the comments of the Departments received.

- (b) **the extent to which any compensation to be received for the right together with the estimated value of any improvements or enhancements to the capital asset that the private sector party or organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit to the Municipality;**

The Municipality will receive a market related rental income monthly as well as applicable rates and taxes. This will then also be to the benefit of the public.

- (c) **the risks and rewards associated with the use, control or management of the capital asset in relation to the municipality's interests;**

No risks are involved.

- (d) **any comments or representations on the proposed granting of the right received from the local community and other interested persons;**

A public participation process is to be followed after the necessary approval is obtained in this regard. Should there be any material objections/comments the matter will revert to Council to consider same.

- (e) **any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant provincial treasury;**

Should the comments be found necessary to be obtained same shall be obtained and shall the matter only revert back to council should it be material of nature.

- (f) **the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests**

of the local community; and the rental of this asset is to the benefit of the local community; and

The rental and use of these properties are to the benefit of the local community as well as the Municipality.

- (g) **compliance with the legislative regime applicable to the proposed granting of the right.**

The Asset Transfer Regulations has been complied with.

It is further confirmed that all relevant Asset Transfer Regulations and legal requirements will be complied with.

H. LAND MANAGEMENT AND DISPOSAL POLICY

The following conditions of said policy apply:

Paragraph 4.4.12.1: “let immovable property at a lower rental than the rental determined;”

The fair market related rental will be obtained from an independent valuer and will include *inter alia* the actual excavation.

Paragraph 4.4.18: “Immovable property sold or let by the Municipality shall be inspected at least one a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease.”

The property will be inspected by the Legal Services Department at least once a year.

Paragraph 4.4.29: “All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.”

Afrimat will be responsible for all costs related to this application, *inter alia* the cost relating to the advertisement, valuation, survey cost as well as any town planning procedures to be done.

Paragraph 4.4.34: “Rental, except where it is decided otherwise by the Municipality shall escalate annually by a percentage fixed in accordance with the prevailing consumer price index (all items).

A clause to this effect will be inserted in the lease agreement.

Paragraph 4.4.35: “The lessee shall, as a rule, be liable for the payment of rates and service charges in respect of the properties listed in the current valuation role. In the case of leases to certain social care users at rentals lower than market value the Municipality may consider granting a rebate on rates in accordance with the rates policy of the Municipality.”

A clause to this effect will be inserted in the agreement.

It is further confirmed that the other Conditions of Lease as stipulated in paragraph 4.4.29 – 4.4.42 will be included in the lease agreement with Barry’s where applicable.

I. ADVERTISEMENT

It is recommended that approval be granted to follow a public participation process. Subsequently an advertisement is to be placed for the lease to Afrimat Aggregates (Operations) (Pty) Ltd. of a portion of the Remainder of Erf 3604 Worcester for a period of 1 (ONE) year with an option afforded to the Municipality to renew the agreement for a period of up to 2(TWO) years for the purpose of a quarry in a local newspaper for a 30(THIRTY) day objection/comment period. Approval is to be further made subject to no material objections/comments being received, in which event the matter will not have to serve before Council again.

5. CONCLUSION

In light of the above discussion it is recommended:

- d) that the right to use a portion of the Remainder of Erf 3604 Worcester be granted in principle and that the following of a public participation process be approved and that such approval will be made subject to no material objections/comments being received, in which event the matter will not have to serve before Council again, and be regarded as final;
- e) that the lease agreement with Afrimat be approved for a period of 1 (ONE) year with an option afforded to the Municipality to renew the agreement for a period of up to 2(TWO) years for the purpose of quarry at a market related rental per month which will include amounts for the actual excavation. The lease amount will escalate every year on the 1st of July in accordance with the prevailing consumer price index (all items); and
- f) that Afrimat be responsible for all cost relating to the application, e.g. valuation costs, surveyors cost, town planning processes, etc.

6. FINANCIAL IMPLICATIONS

The Municipality stands to gain a market related rental per month which will include *inter alia* amounts for the actual excavation, which amount will annually increase on the 1st of July by a percentage equal to the prevailing consumer price index (all items). All expenses pertaining to the proposed lease will be borne by Afrimat. Furthermore, the Municipality will receive the rates and taxes in relation to the portion of the Remainder of Erf 3604 leased to Afrimat.

ANNEXURES

Annexure A1: Locality Map

Annexure A2: Unregistered Surveyor's Diagram of Lease Area

7. COMMENTS OF DIRECTORATES / DEPARTMENTS

MUNICIPAL MANAGER:

Recommendation supported

DIRECTOR TECHNICAL SERVICES (ACTING):

Support the item and recommendation as it will aid economic development of the region.

Town Planning:

No objection.

Building Department:

Comments were received in respect of rezoning and is therefore not applicable.

Civil Engineering:

The Department: Civil Engineering has no objection to the application for lease of Erf 3604, Worcester as indicated in the application subject to the following conditions:

1. That, the existing water connection at the corner of Carinus and Eddie Prins Street will remain in place. There is currently no sewer infrastructure available in to Erf 3604, the applicant will, at his cost, be responsible for the provision sewer services for Erf 3604, if required.
2. That, notwithstanding abovementioned, the applicant must comply with all statutory requirements that may be applicable to the undertaking of the proposed lease agreement, development of Erf 3604.
3. That the applicant indemnifies Breede Valley Municipality against all actions, proceedings, claims and demands, cost, damages and expenses arising out of the approved rental which commence on the date that the applicant commences with his proposed activities on the municipal land.

Electrical Engineering:

No comments were received.

DIRECTOR FINANCIAL SERVICES:

Recommendation supported

DIRECTOR COMMUNITY SERVICES:

Recommendation supported

Traffic Services:

No comments were received.

Fire and Rescue:

This department has no objection with the renewal of this contract under the following conditions:

- Should flammable liquids be stored on the premises in excess of 200 litres it must be registered with the Fire department annually.
- A Fire Clearance certificate should be applied for to confirm that all structures comply with the fire protection regulations.
- If explosives are kept on site, the fire department must be informed regarding the quantities.
- Fire breaks must be provided on the boundaries of the property that complies with the National Veld and Forest Fire Act 101 of 1998.

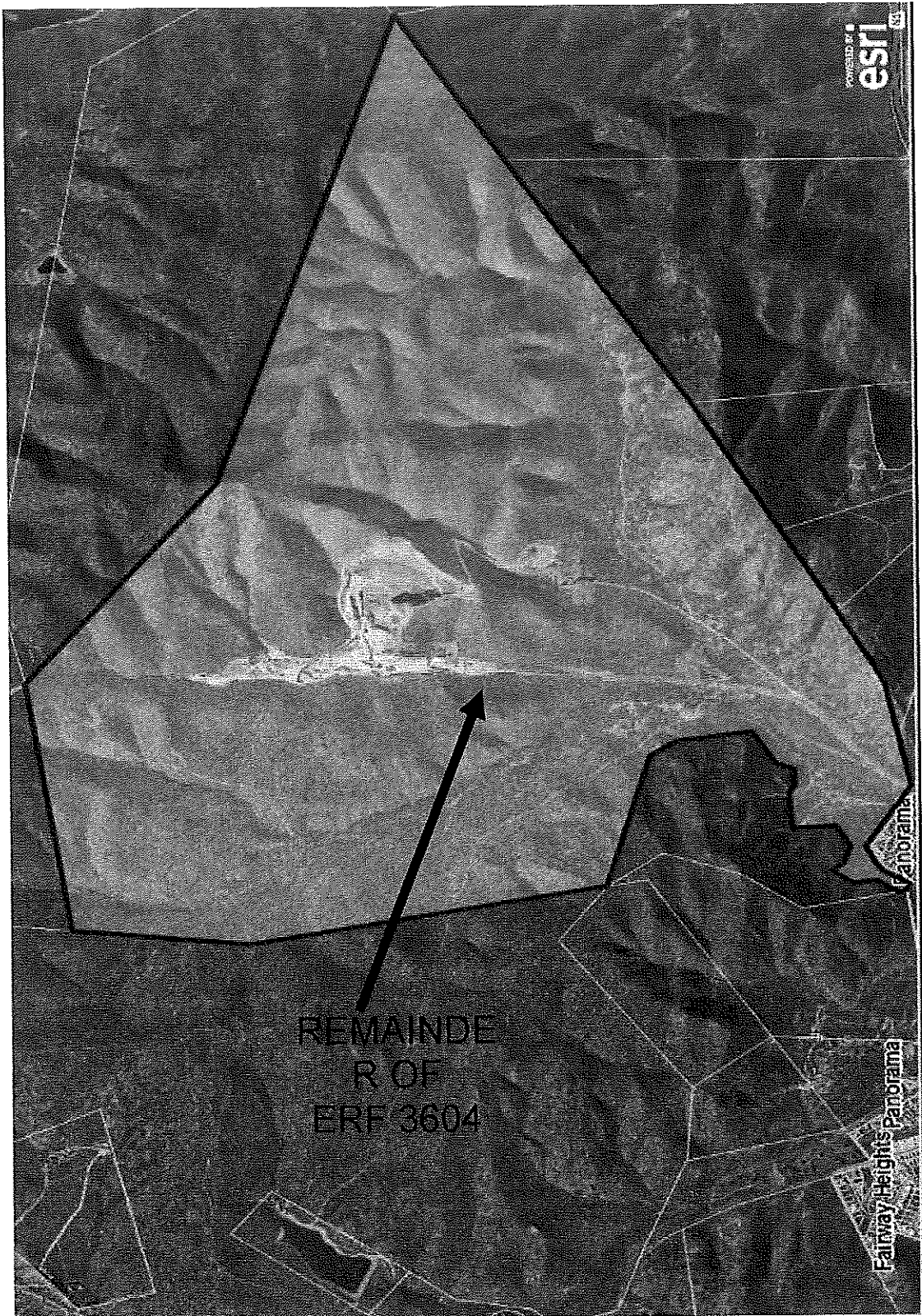
DIRECTOR STRATEGIC SUPPORT SERVICES (ACTING):

Co-author of item – recommendation supported.

RECOMMENDATION TO THE COUNCIL:

1. That the lease of Municipal Property, being a portion of the Remainder of Erfen 3064, also known as the Brewels Quarry, for a period of 1 (ONE) year with an option afforded to the Municipality to renew the agreement for a period of up to 2 (TWO) years for the purpose of a quarry to Afrimat Aggregates (Operations) (Pty) Ltd. at a monthly market related rental which will *inter alia* include amounts for the actual excavation, **be approved**;
2. that the lease amount annually increases on the 1st of July by a percentage equal to the prevailing consumer price index (all items), the first escalation to be on 1 July 2018;
3. that Afrimat Aggregates (Operations) (Pty) Ltd. be responsible for for all costs relating to the application, e.g. valuation costs, surveyors cost, town planning processes, etc.;
4. that the following of a public participation process, **be approved** at the cost of the Applicant;
5. that the item reverts back to Council following the public participation process for further consideration and decision only if there are material objections/comments;

6. that should the comments be found necessary to be obtained from National Treasury and the relevant Provincial Treasury same shall be obtained and shall the matter only revert back to council should the comments be material of nature; and
7. that no rights shall vest or accrue prior to the conclusion of a lease agreement between Afrimat Aggregates (Operations) (Pty) Ltd. and the Municipality.



garnet & houterman

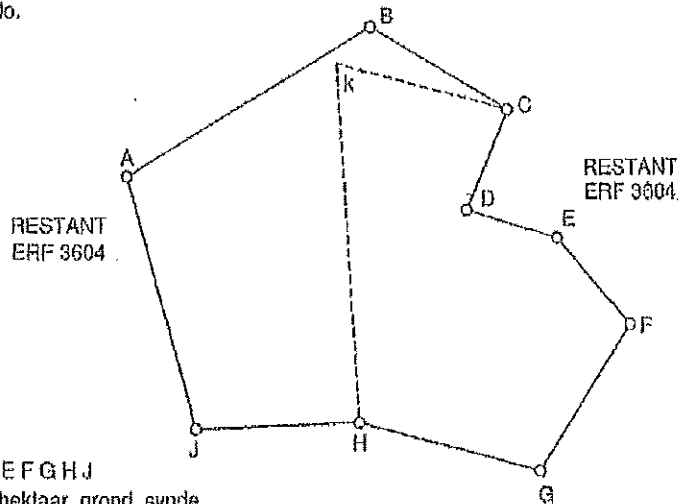
SYE METER	RIGTINGS HOEKE	KOÖRDINATE			L.G. No.	
		Y	Stelsel WG, 19°			X
	Konstante		+ 0,00	+3 700 000,00		
AB	747,43	239.25.20	A	- 42 970,11	+ 18 994,25	Goedgekeur nms. Landmeter-generaal
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CD	280,32	23.42.30	C	- 43 973,52	+ 18 825,83	
DE	251,28	286.25.40	D	- 43 860,81	+ 19 082,50	
EF	291,93	318.52.20	E	- 44 101,83	+ 19 153,57	
FG	442,72	33.34.00	F	- 44 293,84	+ 19 373,46	
GH	492,97	104.24.10	G	- 44 049,07	+ 19 742,36	
HJ	427,90	87.42.00	H	- 43 571,60	+ 19 619,75	
JA	665,79	164.51.20	J	- 43 144,04	+ 19 636,92	
PEILBAKENS:						
208	Ronde		Δ	- 40 024,46	+ 19 912,60	
212	K W V		Δ	- 39 185,97	+ 24 351,84	

BAKENBESKRYWING:

A, B, C, D, E, F, H, J - - - - 16mm Ysterpen
G - - - - - Spoorstaaf hoekdraadpaal

KOMPONENTE:

- Die figuur A B C k H J stel voor Huurgebied No. 2,
Vide diagram L.G. No. ; Transportakte
- Die figuur k C D E F G H stel voor Huurgebled No. 1;
Vide diagram L.G. No.
Transportakte



SKAAL 1/15 000

Die figuur A B C D E F G H J
stel voor 92,7918 hektaar grond, synde

**HUURGEBIED NO. 3 OOR
DIE RESTANT VAN ERF 3604 WORCESTER**

en bevat die komponente soos hierbo aangedul

Geleë in die Breede Valley Munisipaliteit
Administratiewe Distrik van Worcester
Provinsie Wes-Kaap

Opgemaet in AUGUSTUS 2007 en JUNIE en

OKTOBER 2008 deur my M. VILJOEN Professionele Landmeter (PLS 0890)

Hierdie diagram is geheg aan No. gedateer t.g.v. Registratour van Aktes	Die oorspronklike diagramme is soos hierbo aangedul	Lêer No. M.S. No. Komp. BI-5DB-V.32 (1675) LPI C0850004
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re/3604 ka

6.12 APPROVAL OF LEASE AGREEMENT OF MUNICIPAL PROPERTIES TO BARRY'S TRADING (PTY) LTD. ALSO KNOWN AS JAFFES FORD – ERVEN 10363, 10364, 10381 AND 10382 AND A PORTION OF ERF 10360 WORCESTER ALSO KNOWN AS HUGENOTE SQUARE

File no.: 9/2/3/1/38

Responsible Official: M Müller

Directorate: SSS

Portfolio: Legal Services

1. PURPOSE

To obtain approval from Council to enter into a lease agreement with Barry's Trading (Pty) Ltd. (also known as Jaffe's Ford), hereinafter referred to as "Barry's", in respect of Municipal Property, being Erven 10363, 10364, 10381, 10382 and a portion of Erf 10360 Worcester also known as Hugenote Square for a period of 9 (NINE) years and 11 (ELEVEN) months with the option afforded to the Municipality to renew the agreement for the same term of 9 (NINE) years and 11 (ELEVEN) months for the purpose of parking.

2. BACKGROUND

Barry's has applied to lease the respective erven, application attached hereto as "Annexure A", as indicated on the locality map, attached hereto as "Annexure B", initially for a period of 50 (FIFTY) years which application was amended later to a period of 9(NINE) years and 11 (ELEVEN) months with the option afforded to the Municipality to renew the agreement for the same term of 9 (NINE) years and 11 (ELEVEN) months. The precise purpose of the lease is discussed below.

The locality map of the proposed lease area is attached hereto per "Annexure B1" and a closer view of the area is indicated on the attached "Annexure B2". A site plan is also attached hereto and marked as "Annexure C", specifically C1; indicating the site layout on the proposed lease area and C2 indicating the layout for the proposed lease area as well as Barry's erven. It is to be noted that Barry's erven are the following: Erf 1159, Erf 1038 and Erf 24536 (currently still indicated as Erf 4919 and Erf 18844 although the property was consolidated approximately a year ago). The proposed portion to be leased is approximately 2686m².

The erven of the proposed lease area are all zoned as Transport 1.

3. DISCUSSION

Barry's' application purports a lease for the following purposes:

- 1) To provide parking for customers and staff/personnel of Barry's. This will then assist in alleviating the parking problem as experienced in Fairbairn and High Street and minimise traffic flow problems as experienced when entering and exiting the premises from these streets.
- 2) To provide parking in general.
- 3) To revamp the area at Barry's costs in accordance with the prescripts/instructions of the Municipality's Engineering Department. Specifically, the following:
 - a. intensive landscaping;
 - b. street furniture;
 - c. covered parking;
 - d. permanent road surface;
 - e. security, and
 - f. adequate lightning in the area.

The following is to be noted in respect of the application as well as the proposed leased area:

- 1) The area concerned experiences a high criminal element, making the area unsafe to use by the public and surrounding neighbouring owners, as well as being mostly in a vile condition. Through this lease it is purported to address these issues.
- 2) The parking area, indicated as purple on Annexure C1 and 2 will be for the exclusive use of Barry's.
- 3) The parking area, indicated in green on Annexures C1 and 2, will be available to the public during business hours.
- 4) The current owners/tenants and their successors in title will be allotted specific parking areas as to ensure that they also have adequate parking at no cost, indicated as green on Annexures C1 and 2. At no time will anyone be denied access or utilisation of the area in any way whatsoever and will the access or utilisation thereof not be encumbered unreasonable by Barry's. No fees will be charged for access or utilisation.
- 5) Barry's will change their building's layout as to fully utilise the proposed parking. Entrance/exit to the Barry's erven (as well as surrounding owners/tenants) is currently of concern to the Municipality in light of the traffic volume experienced in Fairbairn and High Street.
- 6) Exit to Stockenström Street to be enclosed with palisades/other clear view material. This entails that there will be no thoroughfare for vehicles or pedestrians from Stockenström Street. See the site plan, attached as Annexure C1 and 2 – on the erf boundary of Erf 1035.

- 7) The proposed area was earmarked for the parking management tender which is envisaged in the near future.
- 8) Barry's indicated its willingness to assume responsibility for the existing 4 (FOUR) street lamps (if allowed), alternatively that the street lights be removed and that Barry's install lighting in that area according to the standards of the Municipality.

The Municipality stands to gain improvement of the area concerned at no cost to it and the area will thereafter also be maintained by Barry's. The improvement is estimated to be well above R1,000,000.00

In respect of the rental to be charged a valuation was received from HCB Valuations indicating the fair market related rental per square meter as will be used in the agreement to be entered into. In light of the fact that Barry's will invest a substantial amount on improving the area as well as maintaining it at no cost to the Municipality and more so the community value also to be derived from this project it is recommended that a lower rental will be allowed in this instance. It is recommended that the lease be the market related rental minus 90%. It is to be noted that a clause will be inserted in the agreement to ensure that adequate proof is given for the expenses incurred.

From the comments, as obtained from the internal departments, the following is to be noted, and is recommended as such:

- 1) **Technical Services:** The necessary town planning procedures, e.g. rezoning of the erven are to be followed and will be for the account of Barry's. In respect of the final approval of the layout of the site, material to be used, etc. the approval thereof will rest upon the respective departments concerned. The layout of the site will be to the satisfaction of the Municipality as determined by the Technical Services Department. In respect of the Electrical Department's comment; there are 4(four) street lights in the proposed lease area. Barry's indicated the willingness to take over the maintenance of these lights and for all cost relating to it and can it be removed from the street light network. Otherwise, should it be found, after consultation with the Department, to be more feasible to have the lights removed and that Barry's provide the area with adequate lighting to the satisfaction of the Municipality as determined by this department, this can also be done. Clauses to this effect will be inserted in the agreement.
- 2) **Community Services:** The fact that the proposed lease area will be removed from the workings of the tender regarding the new parking management system which is envisaged for the near future is indicative that this project will save the municipality money in that the municipality will not be liable for the area concerned. Barry's will be contractually bound to liaise with the Traffic and Fire and Rescue Departments in order to meet any specific requirements for the envisaged project, e.g. the thoroughfare of fire trucks and access to the area concerned.

- 3) **General:** Should Barry's wishes to have the contract registered notarial the cost thereof will be for his account.

4. EVALUATION

J. ASSET TRANSFER REGULATIONS

Regulation 34 of the Asset Transfer Regulation R878 determines as follows:

- “(1) A municipality may grant a right to use, control or manage a capital asset only after –**
- e) the accounting officer has in terms of regulation 35 conducted a public participation process regarding the proposed granting of the right; and**
 - f) the municipal council has approved in principle that the right may be granted.**
- (2) Subregulation (1)(a) must be complied with only if –**
- e) the capital asset in respect of which the proposed right is to be granted has a value in excess of R10 million; and**
 - f) a long term right is proposed to be granted in respect of the capital asset.**
- (3) a) Only the municipal council may authorize the public participation process referred to in subregulation (1)(a)**
- b) A request to the municipal council for authorization of a public participation process must be accompanied by an information statement stating –**
- ix. the reasons for the proposal to grant a long term right to use, control or manage the relevant capital asset;**
 - x. any expected to the municipality that may result from granting of the right;**
 - xi. any expected proceeds to be received by the municipality from the granting of the right; and**
 - xii. any expected gain or loss that will be realized or incurred by the municipality arising from the granting of the right.**

(4) A municipal council may delegate to the accounting officer its approval power referred to in subregulation (1)(b) excluding the power to grant long term rights to use, control or manage capital assets of a value in excess of R10 million.

It is recommended that Council approve in respect of the long term right in respect of the capital asset, the following of a public participation process as well as approve in principle the right to use, i.e. the lease of the respective properties and that the approval will be regarded as final unless material objects/comments are received through the public participation process.

Furthermore, it is recommended that a long term right for a period of 9 (NINE) years and 11 (ELEVEN) months with the option afforded to the Municipality to renew the agreement for the same term of 9 (NINE) years and 11 (ELEVEN) months, be approved.

In terms of Regulation 36 of the Asset Transfer Regulation R878, the Municipal Council must, when considering approval for any proposed granting of a right to use, control or manage a capital asset, take into account-

(a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;

The asset is not required for municipal use as can be seen from the comments of the Departments received.

(b) the extent to which any compensation to be received for the right together with the estimated value of any improvements or enhancements to the capital asset that the private sector party or organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit to the Municipality;

Barry's will attend to the improvement/or enhancement of the area to a value of approximately R1,935,290.00. Furthermore, the surrounding owners/tenants will benefit from the upgrade as the area will be more secure to use and the criminal elements will be minimized as access to the area will be more controlled.

The general public will also benefit through the granting of the right as the parking and traffic flow issues as experienced specifically in High and Fairbairn Street will be alleviated.

The Municipality will receive a market related rental income monthly as well as applicable rates and taxes. More importantly the area

will be maintained by Barry's. This will then also be to the benefit of the public.

- (c) **the risks and rewards associated with the use, control or management of the capital asset in relation to the municipality's interests;**

No risks are involved.

- (d) **any comments or representations on the proposed granting of the right received from the local community and other interested persons;**

A public participation process is to be followed after the necessary approval is obtained in this regard. Should there be any material objections/comments the matter will revert to Council to consider same.

- (e) **any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant provincial treasury;**

Should the comments be found necessary to be obtained same shall be obtained and shall the matter only revert back to council should it be material in nature.

- (f) **the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and the rental of this asset is to the benefit of the local community; and**

The rental and use of these properties are to the benefit of the local community as well as the Municipality.

- (g) **compliance with the legislative regime applicable to the proposed granting of the right.**

The Asset Transfer Regulations has been complied with.

K. LAND MANAGEMENT AND DISPOSAL POLICY

The following conditions of said policy apply:

Paragraph 4.4.12.1: "let immovable property at a lower rental than the rental determined;"

The fair market related rental will be obtained and will be the rental applicable having regard to the discussion above.

Paragraph 4.4.18: “Immovable property sold or let by the Municipality shall be inspected at least one a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease.”

The property will be inspected by the Legal Services Department at least once a year.

Paragraph 4.4.29: “All costs pertaining to a transaction, e.g. survey, advertisements, valuation. Relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.”

Barrys will be responsible for all costs related to this application, *inter alia* the cost relating to the advertisement, valuation, survey cost as well as any Town Planning procedures to be complied with. The discussion of the Electrical Department regarding the 4(FOUR) street lights is to be noted in this regard.

Paragraph 4.4.34: “Rental, except where it is decided otherwise by the Municipality shall escalate annually by a percentage fixed in accordance with the prevailing consumer price index (all items).

A clause to this effect will be inserted in the lease agreement.

Paragraph 4.4.35: “The lessee shall, as a rule, be liable for the payment of rates and service charges in respect of the properties listed in the current valuation role. In the case of leases to certain social care users at rentals lower than market value the Municipality may consider granting a rebate on rates in accordance with the rates policy of the Municipality.”

In light of the aforementioned discussion a clause to the effect will be inserted in the lease agreement, having regard to the applicable circumstances to be determined.

It is further confirmed that the other Conditions of Lease as stipulated in paragraph 4.4.29 – 4.4.42 will be included in the lease agreement with Barry's where applicable.

L. ADVERTISEMENT

It is recommended that approval be granted to follow a public participation process. Subsequently an advertisement is to be placed for the lease to Barry's of Erven 10363, 10364, 10381, 10382 and a portion of Erf 10360 Worcester also known as Hugenate Square in a local newspaper for a 30(THIRTY) day objection/comment period. Approval is to be further made subject to no material objections/comments being received, in which event the matter will not have to serve before Council again.

5. CONCLUSION

In light of the above discussion it is recommended:

- g) that the lease agreement with Barry's be approved for a period of 9 (NINE) years and 11 (ELEVEN) months with the option afforded to the Municipality to renew the agreement for the same term of 9 (NINE) years and 11 (ELEVEN) months for the purpose of parking at a market related rental (minus 90%) per month. The lease amount will escalate every year on the 1st of July in accordance with the prevailing consumer price index (all items),
- h) that the Technical Services Department be mandated to approve the final site plan for the lease area and that the Electrical Department be mandated to liaise and approve any matter relating to ensure that the proposed lease area will have adequate lightning;
- i) that Barry's be responsible for all cost relating to the application, e.g. valuation costs, surveyors cost, town planning processes, having the contract notary registered etc.; and
- j) that the lease amount be reconsidered having regard to the premises as currently having influenced the determination thereof for the further period of the lease agreement.

6. FINANCIAL IMPLICATIONS

The Municipality stands to gain a market related rental (minus 90%) which amount will annually increase on the 1st of July by a percentage equal to the prevailing

consumer price index (all items). All expenses pertaining to the proposed lease will be borne by Barry's. Furthermore, the Municipality stands to gain also the rates and taxes in relation to the erven leased to Barry's.

ANNEXURES

Annexure A: Barry's Application

Annexure B1: Locality Map

Annexure B2: Locality Map – close-up

Annexure C1: Site Plan – proposed lease area

Annexure C2: Site Plan – proposed lease area as well as Barry's erven.

7. COMMENTS OF DIRECTORATES / DEPARTMENTS

MUNICIPAL MANAGER:

Recommendation supported

DIRECTOR TECHNICAL SERVICES (ACTING):

Support the item and recommendation.

Town Planning:

No objection.

Civil Engineering:

With regards to the application for lease Erf 10363, 10364, 10381, 10382 and portions of Erf 1035 and 10360, Worcester the Department: Civil Engineering Services has no objection to the application as submitted, subject to the following conditions:

- 1) That the applicant indemnifies Breede Valley Municipality against all actions, proceedings. Claims and demands, cost, damages and expenses arising out of the approved rental which commence on the date that the applicant commences with his proposed activities on the municipal land.
- 2) That detail plans be provided for approval before any development can commence. The plans must clearly indicate motor vehicle and heavy vehicle traffic movement on the property.
- 3) A need analysis of the current businesses utilising the parking space be submitted together with the developmental plan. A proposal on how these needs will be addressed needs to accompany the development proposal.

- 4) That the Electrical and Traffic Department and other relevant departments/institutions do not have any objections to the application.

Electrical Engineering:

The application referring to ervens 10363, 10364, 10381 & 10382 is reserve as municipal public parking. The Department Electrical Services has no objections to the application as submitted, subjected to the following conditions:

- 1) That the street lights be disconnected from the existing electrical street light network.

Comment: Legal Services

The requirements are adequately addressed in the discussion above.

DIRECTOR FINANCIAL SERVICES:

The market related rent amount is not indicated in the report to enable us to make a fair comparison between the 90% rebate on rent versus the improvement/enhancement of approximately R 1 935 290 and other benefits to the Municipality as mentioned in the report.

We must ensure that these expenses are monitored and that the contract make provision for when there is a huge departure from these expenses, as indicated by Barry's Trading (PTY) LTD., the rental rebate be reviewed.

DIRECTOR COMMUNITY SERVICES:

Recommendation noted

Traffic Services:

Disapprove application – Hugenote Square forms part of the new parking management system to come out soon-the road through the Square serves as a relief for High Street traffic.

This was then later changed to:

Hereby, Traffic Services wishes to amend our previous comment. Traffic has no objection against the application, seeing that the area is removed out of the tender and can the Municipality lease the area concerned.

Fire and Rescue:

Any future structures/buildings being erected on the above-mentioned premises must conform with the provisions of the National Building Regulations, SANS 10400-A:2010, Part T:**2011 Fire Protection Regulation** as well as the Breede Valley Fire Safety Bylaw.

Access for fire-fighting and rescue purposes, must be provided in accordance with Regulation T1(1)(e) of the National Building Regulations, read with the Deemed to Satisfy rules, Rule **T4.54** of SANS 10400-2011, Part T, and in accordance to the Fire Brigade By-Laws of the Breede Valley Municipality. A width of 3.5 metre and a height of 4.2 metre must be maintained for emergency vehicles to enter premises.

Provision must be made for fire-fighting equipment (fire extinguishers), in accordance to SANS 10400-2011 Part T4.37 Table 10.

The owner of any public building must apply in writing to the Service for the issuing of a certificate of fitness and must pay the fees as determined in the Municipal Tariff Policy.

DIRECTOR STRATEGIC SUPPORT SERVICES (ACTING):

Co-author of the item. Recommendation supported.

RECOMMENDATION TO THE COUNCIL:

1. that the lease at market related rental (minus 90%) of Municipal Property, being Erven 10363, 10364, 10381, 10382 and a portion of Erf 10360 Worcester, also known as the Hugonote Square, for a period of 9 (NINE) years and 11 (ELEVEN) months with the option afforded to the Municipality to renew the agreement for the same term of 9 (NINE) years and 11 (ELEVEN) months for parking purposes to Barry's Trading (Pty) Ltd. (also known as Jaffe's Ford), **be approved**;
2. that the lease amount annually increases on the 1st of July by a percentage equal to the prevailing consumer price index (all items);
3. that Barry's Trading (Pty) Ltd. (also known as Jaffe's Ford) be responsible for for all cost relating to the application, e.g. valuation costs, surveyors cost, Town Planning processes, having the contract notary registered etc.;
4. that the Technical Services Department be mandated to approve the final site plan for the lease area and that the Electrical Department be mandated to liaise

and approve any matter relating to ensure that the proposed lease area will have adequate lightning;

5. That the following of a public participation process, **be approved** at the cost of the Applicant;
6. that the item reverts back to Council following the public participation process for further consideration and decision only if there are material objections/comments;
7. Should the comments be found necessary to be obtained from National Treasury and the relevant provincial treasury same shall be obtained and shall the matter only revert back to council should the comments be material of nature;
8. that no rights shall vest or accrue prior to the conclusion of a lease agreement between Barry's Trading (Pty) Ltd. (also known as Jaffe's Ford) and the Municipality.

ANNEXURE A

Datum:- 18 April 2017
Verw.-: #WOR/HUGENOTEPLEIN
Vir aandag:- Direkoraat Strategiese dienste:- Me V May

Die Munisipale Bestuurder
Breedevallei Munisipaliteit
Privaatsak X 3046
WORCESTER
6849

VERSOEK AAN DIE RAAD VIR LANGTERMYN HUUR VAN GEDEELTE VAN RAADSEIENDOM:- GEDEELTE VAN ERWE 1035 EN 10360, WORCESTER EN ERWE 10363, 10364, 10381 EN 10382, HUGENOTEPLEIN, WORCESTER

Bogenoemde versoek het betrekking.

Die versoek het ten doel om 'n 9 jaar en 11 maande, (hernubbaar vir 'n addisionele 9 jaar en 11 maande), termyn huurkontrak met die Raad aan te gaan vir gebruik van gedeeltes van erwe 1035 en 10360 en volledige erwe 10363, 10364, 10381 en 10382, Hugenoteplein, Worcester.

Ondersoek eiendomme bestaan uit 'n gedeelte van Hugenoteplein wat funksioneer as 'n parkeerterrein en vir die doeleinde gesoneer is. Die eiendomme behoort aan Breedevallei Munisipaliteit.

My eiendomme, erwe 1159 en 24536, Worcester, word aangetoon op aangehegte terreinplan, beide erwe grens aan die ondersoek terrein. Die rooi gearseerde area groot, ± 2 686 m² is die gedeelte parkeerarea wat ek graag by die Raad met 'n huurperiode van 9 jaar en 11 maande jaar wil huur, met 'n opsie vir 'n addisionele periode van 9 jaar en 11 maande. Met in ag genome dat die huurder op eie koste die kapitaal verbeterings op die Munisipaliteit se eiendom sal aanbring word versoek dat die huur bereken word teen 'n minimale nominale huurbedrag per jaar.

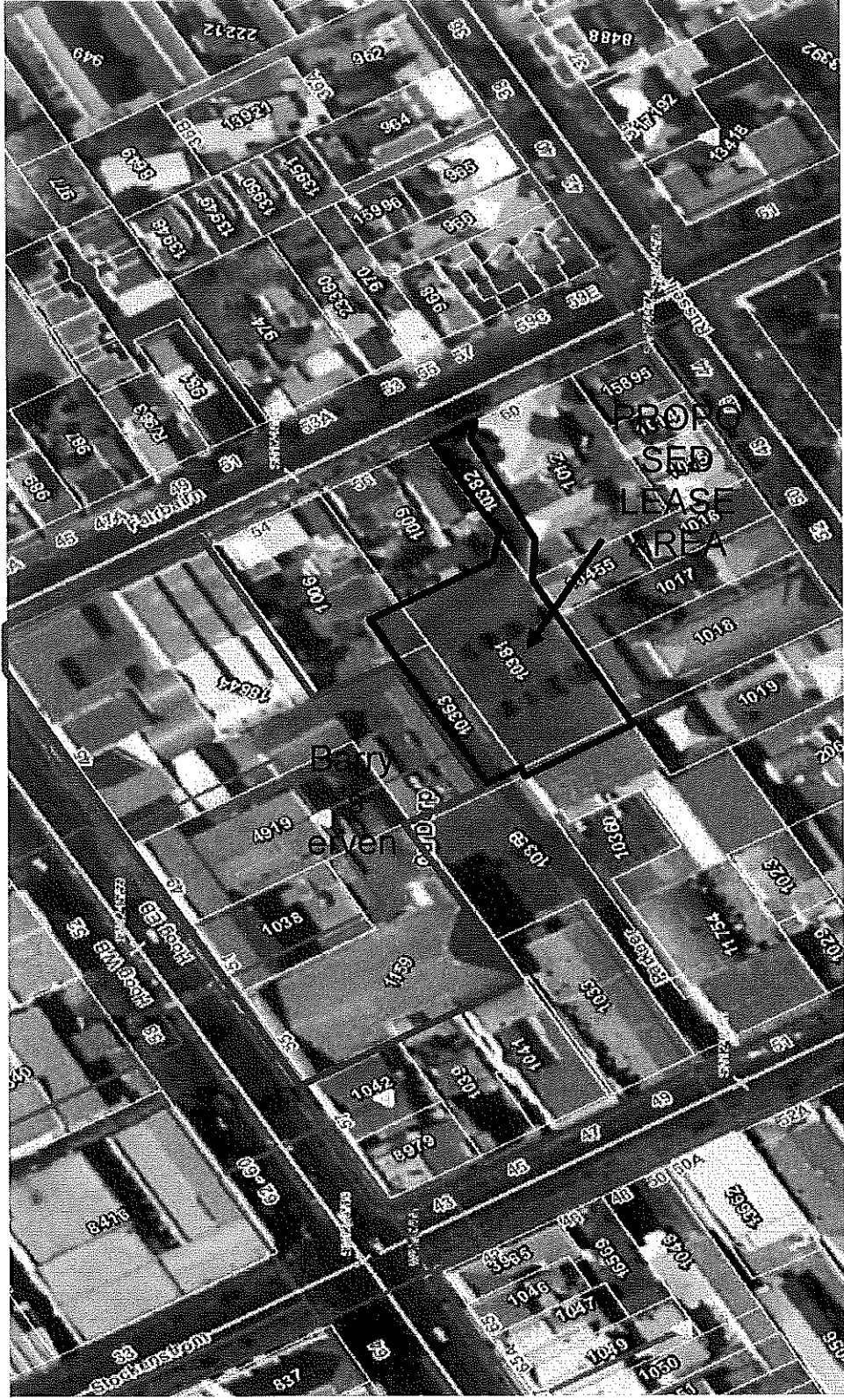
Doel van die langtermyn huurkontrak en rede vir die aangaan van huur teen 'n lae nominale huurtarief:-

- Ek wil graag die parkeerarea gebruik vir toegang na die Ford motorhandelaarskap, my kliente sal dus die parkeerarea kan gebruik en veilig hulle motors daar kan laat. Die Hugenoteplein is huidiglik vervalle en huisves 'n kriminele element wat die veiligheidsrisiko verhoog om van die parkeerterrein gebruik te maak.
- Personeel sal van veilige parkering voorsien kan word wat aanleiding sal gee tot verligting in bestaande parkeerdruk wat ondervind word in Fairbairn- en Hoogstraat.
- Die gebruik van die parkeerterrein gaan 'n wesenlike rol speel op die finale ontwerp van my geboue wat geleë is op erwe 24536 en 1159. As gevolg van die hoë ontwikkelingskoste is die belangrik om vooraf uitklaring te kry oor die moontlikheid van 'n langtermyn huurkontrak.
- Die verkeersdruk wat ondervind word in Hoog- en Fairbairnstraat maak dit baie moeilik vir 'n Motor Handelaarskap om 'n in- en uitgang te hê wat uitloop op die twee betrokke strate.
- Die parkeerarea word voorgestel opgeknop te word op my eie kostes en volgens spesifikasie en voorskrifte van Breedevallei Munisipaliteit se Ingenieursafdeling. Die volgende word beplan binne 2 jaar vanaf aangaan van die huurkontrak:-
 - Intense landskapering;
 - Straatmeubelment;
 - Skadunette;
 - Permanente padoppervlak;
 - Sekuriteit; en
 - Beligting.
- Ondersoek gedeelte van die parkeerterrein word ook gebruik deur aanliggende eiendomme met huidige direkte toegang tot Hugenoteplein, geen van die eienaars sal toegang of gebruik geweier / belet word nie. Daar sal 'n bepaalde hoeveelheid parkeervakke aan die spesifieke eienaars toegeken word vir hul uitsluitlike gebruik.
- Deurgang na Stockenströmstraat sal met palisade of ander deursien materiaal afgeskerm word. Dus geen deurgang vir voertuie of voetgangers. Sien terreinplan.
- Die parkeerterrein sal tydens normale winkelure toeganklik wees vir die publiek.

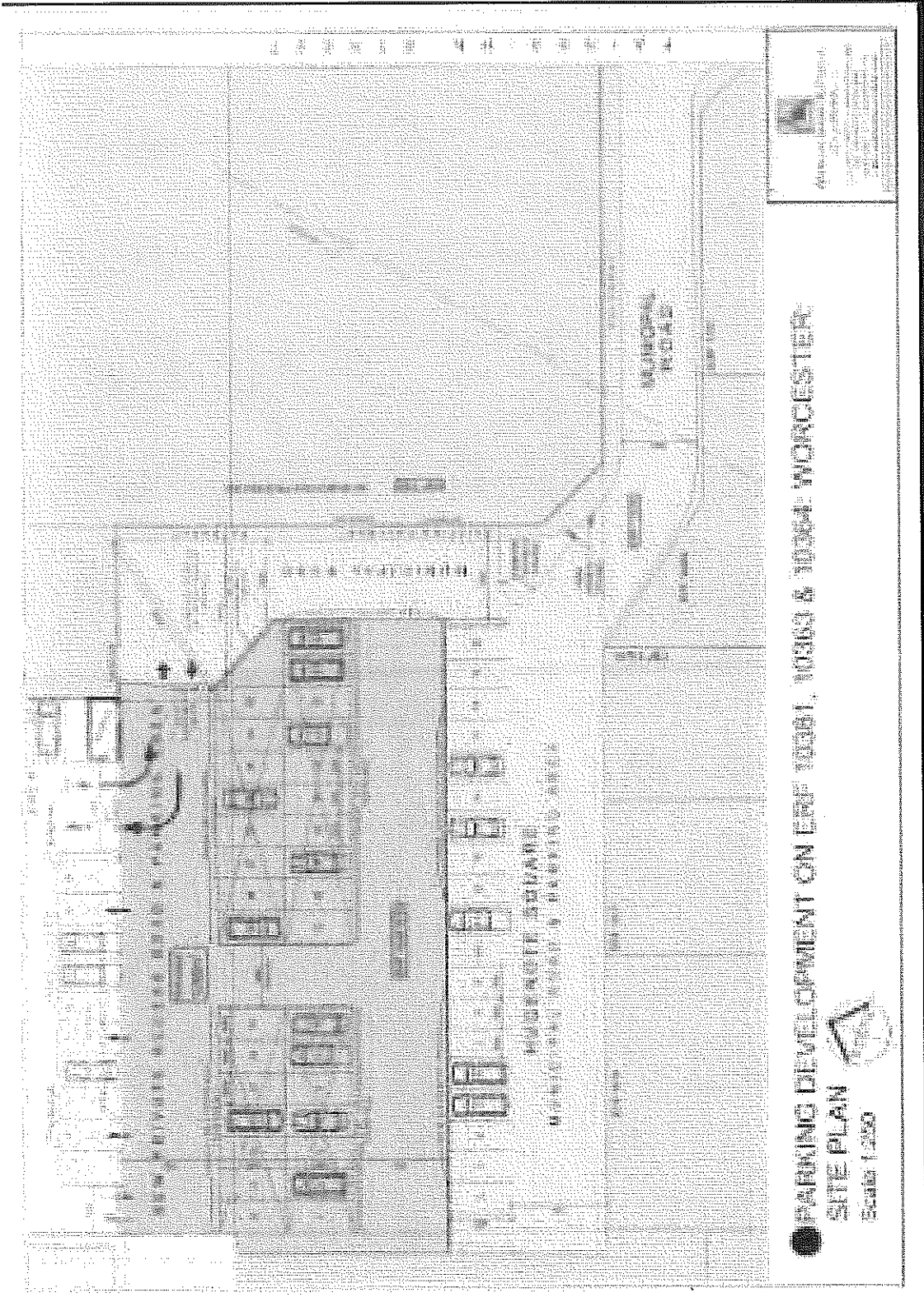
Ek is cortuig dat bogenoemde voorstel 'n groot waarde toevoeging teweeg sal bring aan die betrokke gedeelte van die midde dorp en hooplik ook aanleiding sal gee tot ander projekte wat die middedorp van Worcester oor die langtermyn sal verbeter.

Ek vertrou dat u bogenoemde in orde sal vin den verneem ek graag van u in hierdie verband.

Vriendelike groete
De Villiers Barry

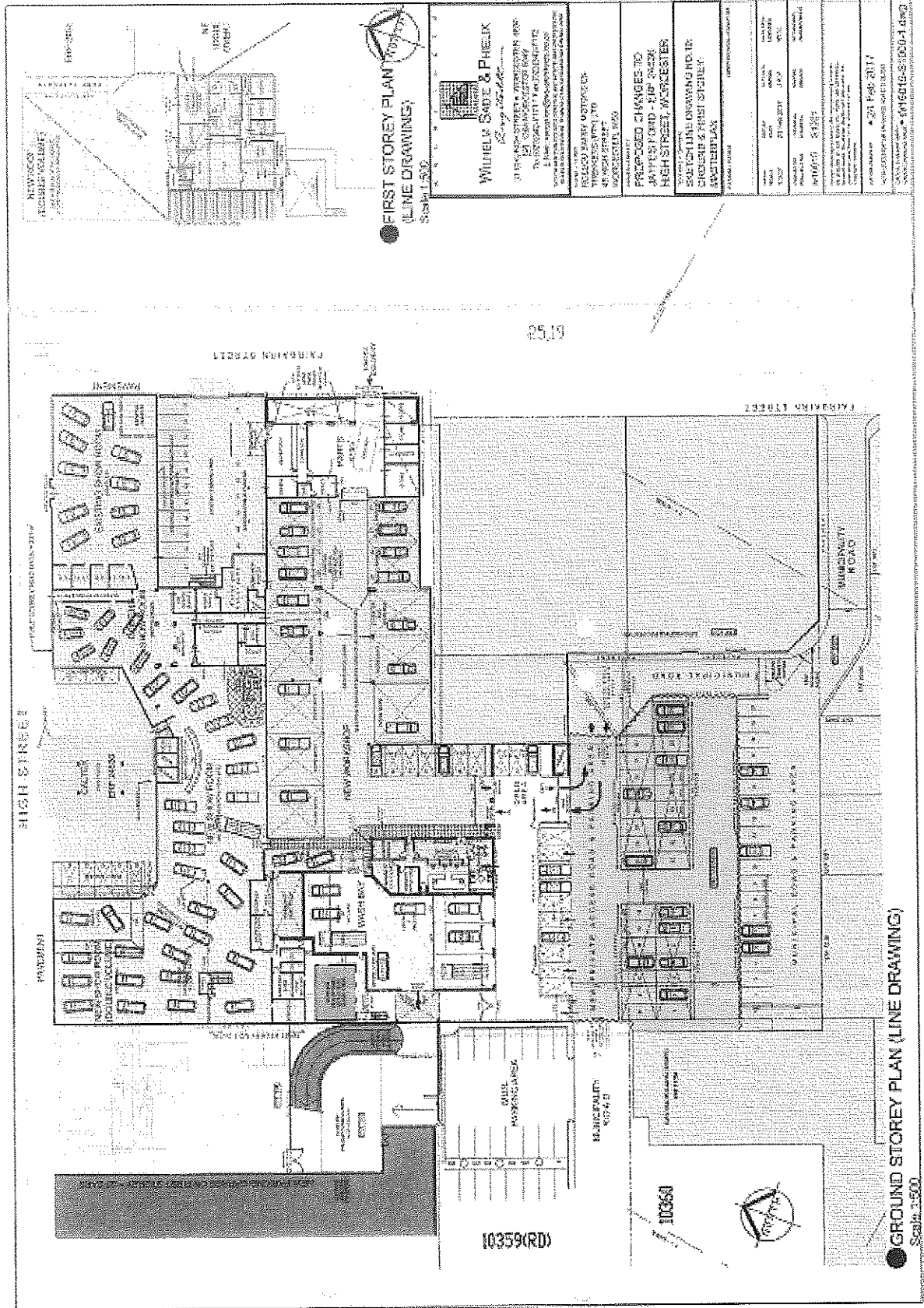






● PARKING DEVELOPMENT ON ERF 1001, 1002 & 1003, WORCESTER
SITE PLAN
Scale 1:250

Author: [Name]
Date: [Date]
Project: [Project Name]
Drawing No: [Drawing No]



FIRST STOREY PLAN (LINE DRAWING)
 Scale: 1:500

WILLIAMS & PHEAK
 ARCHITECTS
 17 BRANCKEN STREET, ABERDEEN, WA
 PH: 08 9406 2222
 WWW.WILLIAMSANDPHEAK.COM

PROPOSED CHANGES TO:
 JAYNES FORD - 103 2429
 HIGH STREET, WORCESTER

SCHEMATIC DRAWING NO. 10:
 GROUND & FIRST STOREY
 ARCHITECTURAL PLAN

DATE	NO.	DESCRIPTION
15/05/2017	1	ISSUED FOR PERMIT

DATE: 15/05/2017
 DRAWN BY: J.P.
 CHECKED BY: J.P.
 PROJECT NO.: 103 2429
 SHEET NO.: 103 2429 - 103
 TOTAL SHEETS: 103 2429 - 103

GROUND STOREY PLAN (LINE DRAWING)
 Scale: 1:500

10359(RD)

10360

05.19