

# MINUTES

Ref no.2/1/4/4/2

Date distributed

## **SPECIAL COUNCIL MEETING OF THE BREEDE VALLEY MUNICIPALITY**

**2021-09-28 AT 10:00**



**BREEDE VALLEY**  
MUNICIPALITY • MUNISIPALITEIT • UMASIPALA

**A caring valley of excellence.**

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**1. OPENING AND WELCOME**

In terms of the Rules of Order for Internal Arrangement By-Law 2012 the chairperson must take the chair at the time stated in the notice of the meeting or as soon thereafter as is reasonably possible: provided that the meeting does not commence later than 30 (thirty) minutes after the time stated in the notice of the meeting and must proceed immediately with the business of the meeting.

**The Speaker opened the meeting at 10:10 and welcomed everyone present to the meeting. The Speaker granted a minute for silent prayer and meditation.**

**The Speaker welcomed Cllr J. Schneider to the Council Meeting. The Speaker further congratulated Cllr K. Benjamin on the birth of her daughter. The Speaker conveyed his condolences to Cllrs E. Van der Westhuizen with the loss of her father in law and the family of former Cllr B. Willemse.**

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**2. OFFICIAL NOTICES****2.1 DISCLOSURE OF INTERESTS**

Item 5 of the Code of Conduct for councillors' states:

A councillor must –

- (a) disclose to the council, or any committee of which that councillor is a member, any direct or indirect personal or private business interest that that councillor or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee; and
- (b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillors' direct or indirect interest in the matter is trivial or irrelevant.

**2.2 APPLICATIONS FOR LEAVE OF ABSENCE**

In terms of the Rules of Order for Internal Arrangement By-Law 2012.

- 2.2.1 Every Councillor attending a meeting of the Council must sign his or her name in the attendance register kept for such purpose.
- 2.2.2 A Councillor must attend each meeting except when –
  - (a) Leave of absence is granted in terms of Clause 10; or
  - (b) The Councillor is required to withdraw in terms of law.
- 2.2.3 The Attendance Registers will be available at the meeting.
- 2.2.4 A blank Application for Leave of Absence form is enclosed.

**The Speaker received Applications for Leave from Cllrs V. Mngcele and K. Benjamin. Cllr P Tyira apologised for his absence and will submit an Application for Leave to the office of the Speaker.**

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### **3. CONSIDERATION OF AGENDA ITEMS**

**CONFIDENTIAL:  
IN TERMS OF: -**

**SECTION 20: ADMISSION OF PUBLIC TO MEETINGS. – (1) (a) & (b) OF THE  
LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT NO. 32 OF 2000.**

**THE MUNICIPAL MANAGER IS OF THE OPINION THAT THE DISCLOSURE OF THE  
ITEMS MARKED “CONFIDENTIAL” AND OR PRINTED ON BLUE PAPER IN THE  
AGENDA, WILL NOT BE IN THE INTEREST OF THE MUNICIPALITY.**

**THE PUBLIC AND THE PRESS SHALL THEREFORE BE EXCLUDED FROM THE  
PROCEEDINGS WHILE THESE ITEMS ARE CONSIDERED. SUCH RULING MAY  
ONLY BE OVERTURNED BY COUNCIL IN-COMMITTEE. THE RESOLUTIONS  
REGARDING THESE ITEMS WILL BE MINUTED SEPARATELY.**

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#### **3.1 RECRUITMENT AND SELECTION PROCESS FOR THE APPOINTMENT OF THE MUNICIPAL MANAGER**

**File no.: 4/1/3/1**

**Responsible Official: R Esau**

**Directorate: SSS**

**Portfolio: Human Resources**

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**CONFIDENTIAL:  
IN TERMS OF: -**

**SECTION 20: ADMISSION OF PUBLIC TO MEETINGS. – (1) (a) & (b) OF THE  
LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT NO. 32 OF 2000.**

**THE MUNICIPAL MANAGER IS OF THE OPINION THAT THE DISCLOSURE OF THE  
ITEMS MARKED “CONFIDENTIAL” AND OR PRINTED ON BLUE PAPER IN THE  
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**THE PUBLIC AND THE PRESS SHALL THEREFORE BE EXCLUDED FROM THE  
PROCEEDINGS WHILE THESE ITEMS ARE CONSIDERED. SUCH RULING MAY  
ONLY BE OVERTURNED BY COUNCIL IN-COMMITTEE. THE RESOLUTIONS  
REGARDING THESE ITEMS WILL BE MINUTED SEPARATELY.**

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**3.2 RECRUITMENT AND SELECTION PROCESS FOR THE APPOINTMENT OF  
THE DIRECTOR: PUBLIC SERVICES**

**File no.:** 4/1/3/1

**Responsible Official:** D McThomas

**Directorate:** SSS

**Portfolio:** Human Resources

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**3.3 REPORT TO COUNCIL ON DEVIATIONS FOR THE MONTH OF: AUGUST  
2021****File No./s:** 2/1/1/1**Responsible Official:** R. Ontong**Directorate:** Financial Services**Portfolio:** Supply Chain Management

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**1. Purpose**

To report to Council on all deviations and their reasons, approved by the delegated authority in terms of paragraph 36(2) of the Supply Chain Management Policy, for the month of August 2021.

**2. Background**

The purpose of this report is to ensure that Council maintains oversight over the implementation of the Supply Chain Management Policy. In terms of paragraph 36(2) of the said policy, the Accounting Officer must record the reasons for any deviations in terms of paragraph 36(1)(a) of the policy and report them to Council. However, it must be noted that these deviations also serve on the **monthly Section 71** (MFMA) report/s to Mayco and **quarterly Section 52** (MFMA) report/s to Council.

Deviations approved in terms of paragraph 36(1)(a) for the month of August 2021, are attached as **Annexure A**.

**3. Financial Implications**

Reference can be made to the total approved amount as reflected in annexure "A"

**4. Applicable Legislation / Council Policy**

Municipal Finance Management Act. 2003, (Act 56 of 2003)  
Breede Valley Supply Chain Management Policy, as amended.  
Supply Chain Management Regulations

**Comment of Directorates / Departments**

**Municipal Manager:** Noted

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**Director: Strategic Support Services:** Noted

**Director: Financial Services:** Noted

**Director: Engineering Services:** Noted

**Director: Community Services:** Noted

**Acting Director: Public Services:** Noted

**Senior Manager: Legal Services:** Noted

### **RECOMMENDATION**

In respect of

#### **REPORT TO COUNCIL ON DEVIATIONS FOR THE MONTH OF: AUGUST 2021**

Discussed by Council at the Special Council Meeting held on 28 September 2021:

1. That the deviations from the procurement processes, approved in terms of the delegated authority for the month of August 2021, **be noted**.

**PROPOSED: CLLR W.R. MEIRING**

**SECONDED: ALDERMAN A. STEYN**

### **RESOLVED**

**C84/2021**

In respect of

#### **REPORT TO COUNCIL ON DEVIATIONS FOR THE MONTH OF: AUGUST 2021**

Discussed by Council at the Special Council Meeting held on 28 September 2021:

1. That the deviations from the procurement processes, approved in terms of the delegated authority for the month of August 2021, **be noted**.

### **To Action**

M. Potgieter

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The Speaker asked Cllr C.F. Wilskut thrice in terms of the Rules of Order, article 22 to (1) conduct himself; (2) to discontinue his speech; and (3) to be seated. In terms of the Rules of Order, article 22 (3) the Speaker asked that Cllr C.F. Wilskut to leave the meeting. Cllr C.F. Wilskut refused to leave the meeting.

The Speaker ruled that the meeting that the meeting be adjourned for 10 minutes.

Meeting adjourned at 13:20.

Meeting reconvened at 16:20.

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**3.4 IN-PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION AND TRANSFER OF A PORTION OF ERF 4014 AND A PORTION OF ERF 4015, SITUATED ON THE R43 VILLIERSDORP ROAD, WORCESTER, TO CAPE WINELANDS DISTRICT MUNICIPALITY**

**File no.:** 10/3/3/365

**Responsible Official:** L Cupido

**Directorate:** SSS

**Portfolio:** Legal Services

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## **1. PURPOSE**

The purpose of this item is to obtain in-principle approval for the direct alienation as well as the transfer of a portion of Erf 4014, and a portion of Erf 4015 (after this called "*the property*"), situated on the R43 ("*Villiersdorp Road*"), Worcester ( $\pm 47.23$  ha in extent), to Cape Winelands District Municipality ("*CWDM*").

Attached is the locality plan of the property indicated in yellow on **Annexure A**, being respectively portion B ( $\pm 27.98$  ha in extent) and portion C ( $\pm 19.25$  ha in size), measuring approximately  $\pm 47.23$  ha in total.

## **2. BACKGROUND / DISCUSSION**

CWDM submitted a letter, attached as **Annexure B**, to Breede Valley Municipality requesting the transfer of the property to it for purposes of establishing a regional landfill site.

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In terms of section 84(1)(e)(iii) of the Local Government: Municipal Structures Act, No. 117 of 1998, a District Municipality is responsible for the establishment, operation and control of waste disposal sites within the area of various local municipalities falling under its jurisdiction.

Based on this legislative mandate and the dire straits of a lack of landfill airspace in the eastern part of its jurisdiction, CWDM investigated a regional landfill site to serve Witzenberg, Breede Valley and Langeberg municipalities. This investigation was successful, and a Waste Management License (“WML”) for the proposed construction and operation of a regional landfill site on the property (the preferred location) was granted by the Western Cape Government Department of Environmental Affairs and Development Planning (“DEA&DP”).

Breede Valley Municipality owns the property, currently zoned as Agriculture Zone I. It is depicted on the site development plan, **Annexure C**. Figure “BCDE” indicated on **Annexure C** represent the Material Recovery Facility (“MRF”), which site was approved by the Breede Valley Municipal Planning Tribunal. The Senior Manager: Town Planning confirmed compliance with the relevant subdivision conditions. The MRF will remain the property of the Municipality and is thus excluded from the proposed transfer. In addition, Breede Valley Municipality will be permitted to utilise the weighbridge situated at the entrance road to the MRF at no additional cost, should Council in principle support the transfer to CWDM.

To enhance intergovernmental relationships and address the request from CWDM (Annexure B) adequately, it is proposed that Council accordingly consider the direct alienation and transfer of the property. The property is regarded as surplus to the requirements of the Breede Valley Municipality, which is elaborated upon under the Analysis of Applicable Law heading below.

It is suggested that the proposed alienation and subsequent transfer of the property not be restricted to the establishment of a regional landfill site but that the opportunity instead be afforded to CWDM to identify alternative utilization of the property to fulfil and execute their mandated functions and responsibilities if so required. If CWDM resolves not to proceed with the

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establishment of a regional landfill site and determine an alternative, more suitable future usage of the property, such utilization would be subject to all legislative application procedures to be approved by Breede Valley Municipality, which may entail *inter alia* Town planning processes, e.g. rezoning and consolidation.

### 3. RELEVANT LEGISLATION

Local Government: Municipal Finance Management Act (No. 56 of 2003) (“*MFMA*” / “*the Act*”)

Municipal Asset Transfer Regulations (R. 878 of 2008) (“*MATR*”)

Land Management and Disposal Policy of Breede Valley Municipality (“*the Policy*”)

### 4. EVALUATION

A: **MFMA, MATR AND THE POLICY**

- Section 14 of **the MFMA** determines as follows:

“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 (own underlining)*** *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”.*

The following paragraphs of **the Policy** find application:

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- *“TRANSFER OR DISPOSAL OF IMMOVABLE ASSETS*

*Paragraph 4.4.1*

*The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of immovable property needed to provide the minimum level of basic municipal services in accordance with Section 14(1) of the MFMA”.*

The transfer of ownership as a result of this sale or transaction to CWDM will not result in Breede Valley Municipality being unable to provide the minimum level of basic services.

- *“Paragraph 4.4.8*

*The above-mentioned provisions do not apply to the transfer of immovable property to another municipality or to a national or provincial organ of state”.*

For sake of completeness, the respective provisions in the policy state in 4.4.1-4.4.7:

- *“TRANSFER OR DISPOSAL OF IMMOVABLE ASSETS*

*4.4.1. The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of immovable property needed to provide the minimum level of basic municipal services in accordance with Section 14(1) of the MFMA.*

*4.4.2. The Municipality may transfer ownership or otherwise dispose of immovable property only after:*

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- 4.4.2.1. *a public participation process has been conducted to facilitate the determinations the municipal Council must make in terms of sections 14(2)(a) and (b) of the MFMA in the case of disposal of any capital asset with a total value exceeding five percent of the total value of the immovable assets of the Municipality in the financial year; and*
- 4.4.2.2. *the municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA;*
- 4.4.2.2.1. *decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services;*
- 4.4.2.2.2. *has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset in accordance with Section 14(2) of the MFMA; and*
- 4.4.2.2.3. *has after consideration of the content of the above-mentioned provisions approved in principle that the capital asset may be transferred or disposed of.*
- 4.4.2.3. *The public participation process in terms of the above-mentioned provisions may only be authorised by the municipal Council. A request to the municipal Council for authorisation of a public participation process must be accompanied by:*
- 4.4.2.3.1. *a valuation and the method used to determine the value of the capital asset to be transferred or disposed of;*
- 4.4.2.3.2. *the reasons for the proposed transfer or disposal of the capital asset;*
- 4.4.2.3.3. *any expected benefits to the Municipality as a result of the proposed transfer or disposal;*
- 4.4.2.3.4. *any expected proceeds to be received by the Municipality from the proposed transfer or disposal; and*
-

- 4.4.2.3.5. *any expected gain or loss to be realised or incurred by the Municipality arising from the proposed transfer or disposal.*
- 4.4.3. *approval in terms clause 4.4.2.2.3. may be given subject to any conditions, including:*
- 4.4.3.1. *the way in which the capital asset is to be sold or disposed of with reference to the Supply Chain Management Regulations and Policy;*
  - 4.4.3.2. *a price or minimum compensation for the capital asset;*
  - 4.4.3.3. *whether the asset may be transferred or disposed of for less than its fair market value, in which case the criteria set out in clause 4.4.9 must be considered, and*
  - 4.4.3.4. *a framework within which direct negotiations for the transfer or disposal of the capital asset must be conducted with another person, if transfer or disposal is subject to direct negotiations.*
- 4.4.4. *A decision by the municipal Council that a specific immovable property 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 in accordance with Section 14(3) of the MFMA.*
- 4.4.5. *Any transfer of ownership of immovable property must be fair, equitable, transparent, competitive and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA.*
- 4.4.6. *The Municipality is not obliged to consider a private request, commonly called an unsolicited bid, received outside its normal bidding process. But if Council does decide to consider said application, it shall request the administration to, depending on the type of disposal to ensure that said transfer or disposal is done in line with relevant legislative prescripts.*
- 4.4.7. *The Municipality shall not transfer or dispose of a capital asset, unless it has advertised its intention so to act by causing a notice to that effect to be:*
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- 4.4.7.1. *affixed to the public notice boards of the Municipality, satellite offices and libraries;*
- 4.4.7.2. *published in a newspaper that is circulated within the area of the town where the relevant property is situated;*
- 4.4.7.3. *published on the official website of the Municipality, in accordance with Section 21A of the Systems Act, in which any person who wishes to object to the exercise of any such intention, is called upon to lodge his/her comments, objection or representations in respect of*
- such intention in writing with the Municipal Manager within a period of not less than thirty days from the date of the publication of the notice in the newspaper;*
- 4.4.7.4. *considered the objections (if any) lodged in accordance with the advertisement above, and*
- 4.4.7.5. *if the municipal Council has authorised the conduct of a public participation process for the proposed transfer or disposal of any immovable asset with a total value exceeding five percent of the total value of the immovable assets of the Municipality in the financial year, the accounting officers must at least 60 days before the meeting of the Council at which the determinations referred to in 6(1)(b) are to be considered:*
- 4.4.7.6. *in accordance with section 21A of the Municipal Systems Act, make public:*
- 4.4.7.6.1. *the proposal to transfer or dispose of the immovable asset together with the information statement referred to above, and*
- 4.4.7.6.2. *invite the local community and other interested persons to submit to the Municipality comments or*
-



*representations in respect of the proposed transfer or disposal of the capital asset, and*

4.4.7.6.3. *solicit the views and recommendations of the National Treasury and the relevant provincial treasury in the matter.*

4.4.8. **The above-mentioned provisions do not apply (own underlining) to the transfer of immovable property to another municipality or to a national or provincial organ of state**".

The **MATR**, Chapter 3, Regulation 20 determines, amongst others that:

- **"20. CIRCUMSTANCES IN WHICH TRANSFER OF MUNICIPAL CAPITAL ASSETS TO ORGANS OF STATE IS EXEMPTED FROM SECTION 14 AND 90-**

*Section 14(1) to (5) of the Act does not apply if a municipality or municipal entity transfers a capital asset to an organ of state in any of the following circumstances:*

*(f) any other circumstance not provided in paragraph (a) to (e), provided that*

*(i) the capital asset to be transferred is determined by Council to be not needed for the provision of the minimum level of basic municipal services and to be surplus to the requirements of the Municipality; and*

*(ii) if the capital asset is to be transferred for less than fair market value, the Municipality takes into account-*

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In respect of (i) above, it is reiterated that the property is not required for the provision of the minimum level of basic municipal services and is regarded as surplus to the requirements of the municipality.

With reference to (ii) above, it is recommended that Council consider the fair market value for transfer purposes and not transfer the property for less than the fair market value.

- Land Management and Disposal Policy: ***Paragraph 4.4.22***

*The buyer shall bear all costs of a transaction, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. However, the Municipality may waive its right to claim the costs should it be to its advantage to bear the costs. Where necessary, a deposit to cover the charges may be required”.*

All costs will be borne by CWDM.

- Land Management and Disposal Policy: ***Paragraphs 4.4.25 - 4.4.28***

**“4.4.25** *Where immovable property is sold for development, a condition must be included in the Deed of Sale stipulating that such development must be completed within two years from date of registration. Likewise a condition must be included in the agreement to provide for forfeiture in the event that the development has not been completed within the required time period, unless an extension has been granted by the Municipality.*

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- 4.4.26 *Save with prior approval, the property alienated may only be used for the purpose for which it was originally sold and purposes permitted by town planning scheme applicable for such purposes.*
- 4.4.27 *The agreement of sale shall be finalised and concluded within 60 days from the date of the Municipality's official written request and registration must be effected within 60 days of signature of the agreement by both parties. Failure to comply shall cause the sale to lapse.*
- 4.4.28. *The agreement must contain a suspensive condition in respect of property which is sold subject to approval in terms of land use planning legislation”.*

Clauses to this effect will be included in the Deed of Sale. However, with specific reference to paragraph 4.4.27 and due to the backlog at the Deeds Office, it is proposed that the Municipal Manager be delegated to extend the period for registration within 60 days.

- Land Management and Disposal Policy: “**Paragraph 4.4.48**  
*Immovable property may be sold/leased out of hand to other spheres of government and other municipalities. All such immovable property transactions shall be considered at a fair market value basis, except in the following cases:*

- 4.4.48.1. *where immovable property was acquired for the development of a less formal township and such township is to be transferred to the Municipality at a later stage;*
- 4.4.48.2. *where the property will be used for projects with a view to social and economic upliftment of a previously disadvantaged group”.*
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HCB Valuers provided the current market value of the property as R1 890 000.00 (One Million Eight Hundred And Ninety Thousand Rand), alternatively R40 000.00 (Forty Thousand Rand) per hectare. Council is requested to consider / take cognisance of the fair market value as provided for purposes of this direct alienation and transfer.

**B:           ADVERTISEMENT/NOTIFICATION**

As the property is exempted in terms of Regulation 20 of the Municipal Asset Transfer Regulations and alienated to an organ of state, the alienation of the property does not have to follow a public participation process. Thus, a notice will not be placed in the local newspaper for the purpose of requesting comments or objections from the public.

**C:           FINANCIAL IMPLICATIONS**

Should Council resolve to alienate and transfer the property to CWDM, the purchase price as well as future rates, taxes and municipal service charges will be due to Breede Valley Municipality.

**5.       CONCLUSION**

It is recommended that the property, being a portion of Erf 4014 and a portion of Erf 4015, Worcester, ±47.23 ha in extent, be directly alienated and transferred to the Cape Winelands District Municipality at a market-related purchase price of R1 890 000.00 (One Million Eight Hundred And Ninety Thousand Rand), alternatively R40 000.00 (Forty Thousand Rand) per hectare for the primary purpose of constructing and establishing a regional landfill site, or for alternative identified utilisation to be approved by Breede Valley Municipality.

Furthermore, it is recommended that the Cape Winelands District Municipality be liable for all costs involved to transfer the property. These costs may *inter alia* include the subdivision, rezoning, transfer, and registration costs.

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**ANNEXURES**

Annexure A: Locality Plan

Annexure B: Request from Cape Winelands District Municipality

Annexure C: Site Development Plan

**COMMENTS OF DIRECTORATES / DEPARTMENTS**

**MUNICIPAL MANAGER:** Item supported

**DIRECTOR ENGINEERING SERVICES:** Support the item and recommendation.

**CHIEF FINANCIAL OFFICER:** Recommendation supported

**DIRECTOR COMMUNITY SERVICES:** Supported

**ACTING DIRECTOR PUBLIC SERVICES:** Supported

**DIRECTOR STRATEGIC SUPPORT SERVICES:** Co-Author of the item

**Legal Advisor Legal Services:** Author of the item

**RECOMMENDATION**

That in respect of –

**IN-PRINCIPLE, APPROVAL FOR THE DIRECT ALIENATION AND TRANSFER OF A PORTION OF ERF 4014 AND A PORTION OF ERF 4015, SITUATED ON THE R43 VILLIERSDORP ROAD, WORCESTER, TO CAPE WINELANDS DISTRICT MUNICIPALITY**

as discussed by Council at the Special Council meeting held on 28 September 2021, Council decide:

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1. That the capital asset to be transferred is not needed for the provision of the minimum level of basic municipal services and is considered to be surplus to the requirements of the municipality;
2. That the direct alienation and transfer of the property being a portion of Erf 4014 and a portion of Erf 4015, situated on the R43 Viliersdorp Road, Worcester ±47.23 ha in extent, at the market-related value of R1 890 000.00 (One Million Eight Hundred And Ninety Thousand Rand), alternatively R40 000.00 (Forty Thousand Rand) per hectare, for the **primary purpose of establishing a Regional Landfill Site or for alternative utilisation identified and approved by Breede Valley Municipality** to the Cape Winelands District Municipality, be **approved in principle**;
3. that the transfer of the property be subject to obtaining the necessary rezoning and subdivision approvals as well as compliance with the relevant internal departments (Directorates) comments with the right to supplement same;
4. that all costs pertaining to the transaction be borne by the Cape Winelands District Municipality; and
5. that the Municipal Manager be authorized to sign all documents relating to the alienation and transfer of the property and all necessary documents relating to it.

**PROPOSED: CLLR J.F. VAN ZYL**

**SECONDED: CLLR E. VAN DER WESTHUIZEN**

**21 VOTES IN FAVOUR OF CLLR J.F. VAN ZYL'S PROPOSAL**

**RESOLVED**

**C85/2021**

That in respect of –

**IN-PRINCIPLE, APPROVAL FOR THE DIRECT ALIENATION AND TRANSFER OF A PORTION OF ERF 4014 AND A PORTION OF ERF 4015, SITUATED ON THE R43**

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**VILLIERSDORP ROAD, WORCESTER, TO CAPE WINELANDS DISTRICT MUNICIPALITY**

as discussed by Council at the Special Council meeting held on 28 September 2021, Council decide:

1. That the capital asset to be transferred is not needed for the provision of the minimum level of basic municipal services and is considered to be surplus to the requirements of the municipality;
2. That the direct alienation and transfer of the property being a portion of Erf 4014 and a portion of Erf 4015, situated on the R43 Villiersdorp Road, Worcester ±47.23 ha in extent, at the market-related value of R1 890 000.00 (One Million Eight Hundred And Ninety Thousand Rand), alternatively R40 000.00 (Forty Thousand Rand) per hectare, for the **primary purpose of establishing a Regional Landfill Site or for alternative utilisation identified and approved by Breede Valley Municipality** to the Cape Winelands District Municipality, be **approved in principle**;
3. that the transfer of the property be subject to obtaining the necessary rezoning and subdivision approvals as well as compliance with the relevant internal departments (Directorates) comments with the right to supplement same;
4. that all costs pertaining to the transaction be borne by the Cape Winelands District Municipality; and
5. that the Municipal Manager be authorized to sign all documents relating to the alienation and transfer of the property and all necessary documents relating to it.

**To Action**

L. Cupido

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**3.5 CONFERRAL OF ALDERMANSHIP ON COUNCILLORS R. FARAO, W.R. MEIRING AND J.F. VAN ZYL****File No. /s:** 2/1/1/1**Responsible Official:** V. Amsterdam**Directorate:** Strategic Support Services **Portfolio:** Strategic Support Services

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**1. Purpose**

To consider applications for conferral of Aldermanship received from Councillors listed below in alphabetic order in terms of their surnames:

1. R. Farao
2. W.R. Meiring
3. J.F. Van Zyl

**2. Background**

Alderman means the historical title which is derived from the Anglo-Saxon position of ealdorman, literally meaning "elder man". In South Africa the term "Alderman" refers to senior members of municipal assemblies. They are distinguished from ordinary councillors for their long and distinguished service as a councillor. This can be achieved either via long term of service, or through alternative means such as point' systems. The title of Alderman is conferred for life and is only removed in terms of paragraph 3.3.5. of the Council's Conferment of Civic Honours Policy, 2017, when:

- i. such person is convicted of a criminal offence and sentenced to more than 12 months imprisonment without the option of a fine;
- ii. the actions of such Councillor brings the Council into disrepute; and
- iii. a Councillor has acted in a manner unbecoming the holder of the title of Alderman.

**Councillors obtaining a minimum of 20 (twenty) points:**

In compliance with paragraph 3.3.1.3. of Council's Conferment of Civic Honours Policy, 2017

A Councillor who obtains a minimum of 20 (twenty) points on the following scale:

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- 3.3.1.3.1. one point for each completed year (12 calendar months) served as a Councillor on any local governmental body;
- 3.3.1.3.2 one additional points for each completed year served as a Chairperson of a Portfolio/Standing Committee or as a member of the Executive Mayoral Committee of any local governmental body prior to 5 December 2000;
- 3.3.1.3.3 two additional points for each completed year served as the Mayor of any local governmental body prior to 5 December 2000;
- 3.3.1.3.4 one additional points for each completed year of service as the Deputy Mayor, Speaker, member of the Executive Committee/Mayoral Committee or Chief Whip of the Council of the Breede Valley Municipality subsequent to 5 December 2000;
- 3.3.1.3.5 one point for each completed year (12 months) of service to communities via a non-statutory organisation or body, prior to 1 February 1995. Such Councillors to provide proof to the satisfaction of the Municipal Manager of membership of the executive of such organisation or body by means of an affidavit or a letter from such organisation or body as proof of the actual number of year served, provided that this provision shall not apply to those Councillors who had access to municipal elections prior to 1 February 1995; and
- 3.3.1.3.6 one additional point for each completed year service as Chairperson of a Portfolio Committee for being a member of the Executive Mayoral Committee may be bestowed the title of Alderman.

Councillors R. Farao, W.R. Meiring and J.F. Van Zyl claim that they have obtained a minimum of 20 (twenty) points and thus conforms to the determination as contained in paragraph 3.3.1.3 of the Conferment of Civic Honours Policy.

**Councillor Reginald Farao** claim in his letter attached, that he was first elected as a councillor of the Breede Valley Municipality on 18 May 2011 until 10 August 2016 and again on 15 August 2016 until 31 August 2021, therefore obtaining 10 points and a further 10 points for being elected as Chief Whip from 1 June 2011 until 10 August 2016 and serving as Mayco Member from 15 August 2016 until 31 August 2021. The Administration verified the claims by Cllr R. Farao and confirm that Cllr R. Farao obtained a total of 20 points (see Cllr R. Farao's Application with proof of verified claims submitted as Annexure A).

**Councillor Wouter Ryk Meiring** claim in his letter attached, that he was first elected as a councillor of the Breede Valley Municipality on 18 May 2011 until 10 August 2016 and again on 15 August 2016 until 31 August 2021, therefore obtaining 10 points and a further 10 points for serving as a Mayco Member from 1 June 2011 to 10 August 2016 and 15 August 2016 until 31 August 2021. The Administration verified the claims by Cllr W.R. Meiring and confirm that Cllr

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W.R. Meiring obtained a total of 20 points (see Cllr W.R. Meiring's Application with proof of verified claims as Annexure B).

**Councillor Johannes Ferdinand Van Zyl** claim in his letter attached, that he was first elected as a councillor of the Breede Valley Municipality on 18 May 2011 until 10 August 2016 and again on 15 August 2016 until 31 August 2021, therefore obtaining 10 points and a further 10 points for serving as a Mayco Member from 1 June 2011 to 10 August 2016 and 15 August 2016 until 31 August 2021. The Administration verified the claims by Cllr J.F. Van Zyl and confirm that Cllr J.F. Van Zyl obtained a total of 20 points (see Cllr J.F. Van Zyl's Application with proof of verified claims as Annexure C).

Paragraph 3.3.4 of the Conferment of Civic Honours Policy states that the recipient of the title of Alderman shall be issued with a suitable lapel badge or medal with neck ribbon which shall be presented to the recipient at a Council or Special Council Meeting.

### **3. Financial Implications**

Cost related to the certificates and lapel badges.

### **4. Applicable Legislation / Council Policy**

Conferment of Civic Honours Policy, 2017

### **Comment of Directorates / Departments concerned**

**Municipal Manager:** Recommendation Supported

**Director: Strategic & Support Services:** Recommendation Supported

**Director: Financial Services:** Recommendation Supported

**Director: Engineering Services:** Recommendation Supported

**Acting Director: Public Services:** Recommendation supported

**Director: Community Services:** Recommendation Supported

**Senior Manager: Legal Services:** Recommendation Supported

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**RECOMMENDATION**

That in respect of

**CONFERRAL OF ALDERMANSHIP ON COUNCILLORS R. FARAO, W.R. MEIRING  
AND****J.F. VAN ZYL**

discussed by Council at the Special Council meeting held on 28 September 2021 that:

1. In compliance with paragraph 3.3.1.3. of Council's Conferment of Civic Honours Policy, 2017, the title of Alderman is bestowed on Councillor Reginald Farao;
2. In compliance with paragraph 3.3.1.3. of Council's Conferment of Civic Honours Policy, 2017, the title of Alderman is bestowed on Councillor Wouter Ryk Meiring;
3. In compliance with paragraph 3.3.1.3 of Council's Conferment of Civic Honours Policy, 2017, the title of Alderman is bestowed on Councillor Johannes Ferdinand Van Zyl.

**PROPOSED: ALDERMAN M. SAMPSON**

**SECONDED: ALDERMAN E.Y. SHELDON**

**21 VOTES IN FAVOUR OF ALDERMAN M. SAMPSON'S PROPOSAL.**

**RESOLVED****C86/2021**

That in respect of

**CONFERRAL OF ALDERMANSHIP ON COUNCILLORS R. FARAO, W.R. MEIRING  
AND****J.F. VAN ZYL**

discussed by Council at the Special Council meeting held on 28 September 2021 that:

1. In compliance with paragraph 3.3.1.3. of Council's Conferment of Civic Honours Policy, 2017, the title of Alderman is bestowed on Councillor Reginald Farao;
2. In compliance with paragraph 3.3.1.3. of Council's Conferment of Civic Honours Policy, 2017, the title of Alderman is bestowed on Councillor Wouter Ryk Meiring;
3. In compliance with paragraph 3.3.1.3 of Council's Conferment of Civic Honours Policy, 2017, the title of Alderman is bestowed on Councillor Johannes Ferdinand Van Zyl.

**To Action:**

R Esau

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### 3.6 PROPOSED AMENDMENTS TO BID BV 823/2021: UPGRADING OF GRAVEL ROADS AT AVIAN PARK: WORCESTER IN COMPLIANCE WITH SECTION 116(3) OF THE MFMA

**File No./s:** 5/3/1/146

**Responsible Official:** J. Steyn

**Directorate:** Engineering Services

**Portfolio:** Civil Engineering Services

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#### 1. Purpose

The purpose of this report is to provide the necessary information and motivation on the proposed amendment of the following contract:

**JVZ CONSTRUCTION (Pty) Ltd** – (BV 823/2021: Upgrading of gravel roads in Avian Park, Worcester).

In terms of section 116(3) of the Local Government: Municipal Finance Management Act, Act No. 56 of 2003 (MFMA), Council to make an informed decision whether to consent to the amendment of the contracts.

#### 2. Legal Requirements

Section 116(3) of the MFMA provides as follows:

“(3) A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended by the parties, but only after -

- (a) the reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the Council of its parent municipality; and
- (b) The local community-
  - (i) has been given reasonable notice of the intention to amend the contract or agreement and
  - (ii) has been invited to submit representations to the municipality or municipal entity.”

The following three things as set out below must therefore be done before the accounting officer can amend a procurement contract:

- a) The contracts must have been procured through the supply chain management policy of the Municipality.
  - b) The reasons for the proposed amendment have been tabled in the Council.  
And
-

- c) The local community has been given reasonable notice of the intention to amend the contract or agreement, and they have been invited to submit representations to the Municipality.

### **3. Contracts procured through the Supply Chain Management Policy**

It is confirmed that the contract as set out below were procured in compliance with the Municipality supply chain management policy.

BV 823/2021: UPGRADING OF GRAVEL ROADS AT AVIAN PARK: WORCESTER

It is further confirmed that the contract above is still valid and enforceable and may be amended.

The CIDB grading threshold has been confirmed, not to exceed the scaling threshold required by CIDB for the increased value. Therefore it has been confirmed that the existing contract holder has been found compliant and capacitated towards the CIDB rating required for the increased value in contract.

### **4. Background/Motivation**

In terms of the Breede Valley Municipality's Supply Chain Management Policy Contract BV 823/2021: UPGRADING OF GRAVEL ROADS AT AVIAN PARK: WORCESTER was awarded to JVZ Construction (Pty) Ltd for the amount of R 8 078 300.11 (including 10% contingencies and 15% VAT).

Subsequent councils' approval of the 2021/22 MTREF ( Councils Resolution C 52/2021, 25 May 2021) and the Bid Notice and Invitation to Tender (*March 2021*) the Municipal Infrastructure Grant (MIG) approves R 6 250 156,64 towards the upgrading of Taxi Route at Avian Park (Ward 21) on 28 June 2021. The Public Sector must, as counter funding to the MIG provide R 2 872 763.52. The project cost of the upgrading of Taxi Route at Avian Park (Ward 21, Mockingbird and Pelikaan Streets) is estimated at R 8 822 920.16. As per the revised MIG Detail Project Implementation Plan (DPIP) for the 2021/22 FY the project must be implemented and completed before end of financial year (30 June 2021). Hence, it is considered impractical and impossible to follow a new supply chain process, due to the time constrained, which could result in the municipality forfeiting the MIG project funding. In addition, the service provider indicated in their bid submission that the completion period for this specific project is 20 weeks, which is within the available lead time, as per the MIC project funding requirements.

Due to JVZ Construction (Pty) Ltd's favourable offer amount, since they were most cost effective bidder at the time of the initial bid submission and that no further price adjustments/ escalations will be imposed in terms of this contract, it is considered to extend the Scope of Works under Contract BV 823/2021 to the limits of the approved budget for the UPGRADING OF GRAVEL ROADS AT AVIAN PARK: WORCESTER.

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In order to proceed with the upgrading of gravel roads at Avian Park: Worcester without any interruption of construction and taking into account the available budget and the fact that BV823/2021: UPGRADE OF GRAVEL ROADS AT AVIAN PARK: WORCESTER is in place, it is proposed that Breede Valley Municipality amend the contract to include the additional Works to a contract value not exceeding R 15 250 156.64 (exclusive of VAT).

## 5. Financial Implications

Council resolved with Council resolutions C52/2021 (25 May 2021) the budget to the amounts of R 6,000,000.00 and R 3,000,000.00 (VAT exclusive), respectively for the Upgrading of Gravel Road at Avian Park, Wards 12 and 21 as part of the Medium Term Revenue and Expenditure Framework (MTREF). The total budget available for the Upgrading of Gravel Road at Avian Park amounts to R9,000,000.00 (VAT exclusive). See table 3 below.

Table 3: Budget 2021/2022/2023/2024 FY

<u>Description</u>	<u>Finance Source Desc.</u>	<u>Budget 2021/22</u>	<u>Budget 2022/23</u>	<u>Budget 2023/24</u>	<u>TOTAL</u>
Ward 12 Upgrading of Gravel Road	CRR	R 6 000 000	R 0	R 0	R 6 000 000
Ward 21 Upgrading of Gravel Roads	CRR	R 1 000 000	R 1 000 000	R 1 000 000	R 3 000 000
<b>TOTAL BUDGET (Exclusive VAT)</b>		<b>R 7 000 000</b>	<b>R 1 000 000</b>	<b>R 1 000 000</b>	<b>R 9 000 000</b>

Besides the approved budget (R 9 000 000.00), an additional MIG of R6 250 156.64 (exclusive VAT) will be made available for the period ending until 30 June 2022. Total project budget amounts to R 15 250 156.64 (exclusive VAT).

## 6. Applicable Legislation / Council Policy

Local Government: Municipal Finance Management Act, 2003(Act 56 of 2003)  
 Circular 57, National Treasury Practise note  
 Circular 62, National Treasury Practise note  
 Circular 73 National Treasury Practise note  
 Circular 102, National Treasury Practice note  
 Breede Valley Municipality Supply Chain Management Policy, as amended  
 Breede Valley Municipality Contract Management Framework as part of the SCM Policy, as amended

Section 116 (3) of the Municipal Finance Management Act 56 of 2003 determines as follows—

“A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended by the parties, **but only after**— (*own highlight and underlining*)

- (a) the reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality; and
- (b) the local community—
  - (i) has been given reasonable notice of the intention to amend the contract or agreement; and
  - (ii) has been invited to submit representations to the municipality or municipal entity.”

In order to comply with section 116 (3) of the Municipal Finance Management Act, a public participation process was followed, whereby the intention to amend this contract was advertised as follow:

#### **Section 116(3) Notification for Public Participation**

Date of Advertising: 22 September 2021  
Method of Advertising: Notice Boards; Breede Valley Municipality Website  
Closing Date for Comments: 22 October 2021

Should comments or representations be received, as result of the invitation placed on the notice boards and the BVM website, this item will be referred to council for further consideration. If no representation or comments was received on the 22<sup>nd</sup> of October 2021, implementation from 25 October 2021 will be applicable and one can observe this process as completed.

### **7. Comment of Directorates / Departments**

**Municipal Manager:** Supported.

**Director: Strategic Support Services:** Supported.

**Director: Financial Services:** Supported.

**Senior Manager Supply Chain Management Unit:** Supported.

**Director: Engineering Services:** Author of the item.

**Acting Director: Public Works:** Supported

**Director: Community Services:** Supported.

**Legal Services:** Supported.

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**RECOMMENDATION**

That in respect of

**Proposed amendments to bid BV823/2021: UPGRADING OF GRAVEL ROADS AT AVIAN PARK: WORCESTER in compliance with section 116(3) of the MFMA**

as discussed by Council at the Special Council meeting held on 28<sup>h</sup> of September 2021 council decide:

1. That in order to proceed with the upgrading of gravel roads at Avian Park without any interruption of construction and taking into account the available budget and the fact that Contract BV823/2021: UPGRADING OF GRAVEL ROADS AT AVIAN PARK: WORCESTER is in place, that Breede Valley Municipality amend the contract to include the additional Works to a contract value not exceeding R 15 250 156.64 (exclusive VAT).

**8. Annexures**

Annexure A: Intent to amend document

Annexure B: Contract Specification and Bill of Quantities

Annexure C: Proof of Advertisement

**Cllr I. Tshabile asked for a caucus of 10 minutes.**

**Caucus started at 17:05**

**Meeting reconvened at 17:25.**

**Cllr Z.M. Mangali asked for a caucus.**

**Caucus started at 17:45**

**Meeting reconvened at 17:55**

**PROPOSED: ALDERMAN M. SAMPSON**

**SECONDED: CLLR T. MARIDI**

**29 VOTES IN FAVOUR OF ALDERMAN M. SAMPSON'S PROPOSAL.**

**RESOLVED**

**C87/2021**

That in respect of

**Proposed amendments to bid BV823/2021: UPGRADING OF GRAVEL ROADS AT AVIAN PARK: WORCESTER in compliance with section 116(3) of the MFMA**

as discussed by Council at the Special Council meeting held on 28<sup>h</sup> of September 2021 council decide:

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1. That in order to proceed with the upgrading of gravel roads at Avian Park without any interruption of construction and taking into account the available budget and the fact that Contract BV823/2021: UPGRADING OF GRAVEL ROADS AT AVIAN PARK: WORCESTER is in place, that Breede Valley Municipality amend the contract to include the additional Works to a contract value not exceeding R 15 250 156.64 (exclusive VAT).

**To Action**

M. Potgieter

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**4. CLOSURE**

**The Speaker closed the meeting at 18:02.**

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