

Reference No. 36657/1
Verusha Morgan (8151)
MEETING OF THE ADMINISTRATOR: 3 September 2020



4.1.2 GROUP PROPERTY DEPARTMENT
PROPOSED LEASE OF THE PROPOSED PORTION OF THE REMAINDER OF
PORTION 10 OF THE FARM HARTEBEESTPOORT 328-JR FOR OIL REFINERY
AND STORAGE
(From the Executive Committee: 31 August 2020)

1. PURPOSE

The purpose of the report is to obtain approval to lease the proposed portion of the Remainder of portion 10 of the farm Hartebeestpoort 328-JR measuring 20.2724Ha indicated as figure XYgVW in the sketchplan attached as annexure A for the development of an oil refinery and storage facility in terms Regulation 34 and 36 of the Municipal Asset Transfer Regulations as well as The Land Management Policy as approved on the 28/03/2019 and Regulations

2. STRATEGIC OBJECTIVES

A City that facilitates economic growth and job creation.

3. BACKGROUND

3.1 INFORMATION ABOUT THE PROPERTY

The Remainder Portion 10 of the farm Hartebeestpoort 328-JR is situated in the Industrial site commonly known as Waltloo and measures 95 2282ha. A portion of the Remainder portion 10 measuring 23 7570 ha is used for municipal purposes as a Vehicle Testing and Licensing Services Centre. A portion measuring 4.2 ha is leased out to the SPCA and the remaining portion is mostly unoccupied. The area identified for the proposed oil refinery and storage measuring 20 2724ha as indicated as figure XYfgVW is situated at the corner of Eersterus road and Petroleum street.

Waltloo Industrial area already consists of two oil refinery depots owned by ENGEN and BP Oils. This department has identified this property with the aim of supporting small medium companies that aim at establishing themselves and competing in this industry that is largely dominated by the big seven companies namely (BP, ENGEN, Chevron, Petro SA,Sasol, Shell and Total). It is imperative that as the local government the city makes an effort in supporting small and medium enterprise to enter and establish themselves in this industry. One of the ways the local government can support small businesses is by providing resources such as land. Given that Waltloo is an established industrial area that is situated in close proximity to rail services and have easy access to main roads, this area will be an ideal incubator for a small company trying to establish itself in the oil industry as transportation of the products will easy.

The sketchplan attached as annexure A indicates that the Remainder of Portion 10 of the farm Hartebeestpoort 328-JR is affected by wetlands and the Moreletaspruit crosses through the lower part of the property. Based on this, Group Property

deemed it necessary to ascertain if the property is environmentally suitable for the proposed usage of oil storage and refinery, the report below from Environmental and Agriculture Management indicates that this proposed area is suitable for such usage, however a detailed environmental impact study will be necessary prior to the development of the property. See Below detailed report from Environment.

3.2 ENVIRONMENTAL SCREENING OF THE REMAINDER OF PORTION 10 OF THE FARM HARTEBEESTPOORT 328-JR

KEY FACTORS INFORMING THE COMMENTS

- Geographic Information System (GIS data);
- The National Environmental Management Act 1998 (Act 107 of 1998) (NEMA): its decision-making principles and Environmental Impact Assessment Regulations;
- The Tshwane Open Space Framework (TOSF) Policy Statements and Typologies 2005;
- The Draft Bioregional Plan for the City of Tshwane;
- The Gauteng Conservation Plan Version 3.3 (C-Plan 3.3);
- Tshwane Town Planning Scheme 2008 (Revised 2014); and
- The Gauteng Provincial Environmental Management Framework (GPEMF) 2015

The Department made the following findings:

- a) The southern part of the proposed site is traversed by the Moreleta Spruit and associated wetlands and 1:50 flood lines as informed by the Tshwane Open Space Framework (TOSF). It is therefore required that the area adjacent to the watercourse (natural, cultivated or built up) be excluded from any development activity. The layout plan should reserve the 1:50 year flood line area or an area that extends 32m from either side of the centre line of a watercourse (whichever is the greatest) as a "Public Open Space";
- b) The proposed site is situated within the other natural area and no natural area remaining as informed by the Draft Bioregional Plan for the City of Tshwane. There are no conflicts with the bioregional plan's conservation objectives in the area. Therefore, the site is considered suitable and developable as it has no significant biodiversity features which will be impacted on should any development take place;
- c) The Gauteng Provincial Environmental Management Framework (GPEMF) 2015 depicts largest parts of the proposed site as situated within Zone 4: Normal control zone. Therefore, no listed activities may be excluded from environmental impact assessment (EIA) requirements in this zone;
- d) The proposed site is situated within the area currently zoned for Industrial 1 as informed by the Tshwane Town Planning Scheme 2008 (Revised 2014). Therefore, proposed activity for oil storage facility is in line with the envisaged development of the broader Waltloo industrial area;
- e) The proposed activity is oil storage facility and it will suitable to take place within the other natural area and no natural area remaining of bioregional plan. However, it is important to note that the development and related operation of facilities or infrastructure, for the storage and handling, of a dangerous good,

where such storage occurs in containers with a combined capacity of 80 cubic metres or more will trigger or act requiring environmental authorisation (EA).

The Department requires that the following issues be taken into consideration:

- a) Tshwane Open Space Framework (TOSF) requires that any development adjacent to a watercourse (natural, cultivated or built up) should reserve the 1:50 year flood line area or an area that extends 32m from either side of the centre line of a watercourse (whichever is the greatest) as a "Public Open Space". Therefore, the development proposal should exclude this part of the site as an open space;
- b) No listed activities may be excluded from environmental impact assessment (EIA) requirements in Zone 4: Normal control zone as required by the Gauteng Provincial Environmental Management Framework (GPEMF) 2015. Therefore an Environmental impact study will be required before commencement with any activity on site;
- c) The other natural area and no natural area will be suitable and developable portion for the proposed oil storage facility as informed by the Draft Bioregional Plan for the City of Tshwane as the site has no significant biodiversity features which will be impacted on by proposed development be allowed; and
- d) It is important to note that the development and related operation of facilities or infrastructure, for the storage and handling, of a dangerous good, where such storage occurs in containers with a combined capacity of 80 cubic metres or more will trigger or require environmental authorisation (EA).

Based on the above, the proposed site is considered suitable and developable for the proposed oil storage facility as the site has no significant biodiversity features which will be impacted on by proposed development with the exclusion of area within the flood lines and a water course. However, it is important to note that the development and related operation of facilities or infrastructure, for the storage and handling, of a dangerous good, where such storage occurs in containers with a combined capacity of 80 cubic metres or more will trigger or require environmental authorisation (EA).

3.3 LOCALITY MAP: THE REMAINDER OF PORTION 10 OF THE FARM HARTEBEESTPOORT 328-JR:



4. DISCUSSION

4.1 MOTIVATION OF THE LEASE OF THE PROPOSED PORTION OF THE REMAINDER OF PORTION 10 OF THE FARM HARTEBEESTPOORT 328-JR

This department has conducted an analysis on the expected gains for the lease of the above mentioned property for Industrial purposes and it was estimated that the development of the property will attract an estimated 1.6 billion in investment and increase the current land value to R192 million rands. Such development will have a positive impact in terms of creation of both temporary and permanent employment opportunities.

Development Proposal	
Proposed development	Oil Refinery/Logistic Park
Size	23.7570ha
Current Use	Vacant
Zoning	Industrial 1
Estimated Investment Value	R1.6Billion
Estimated Land Value	R192M

4.2 SOCIO-ECONOMIC BENEFITS FOR RESERVING THE PROPERTY FOR OIL REFINERY AND STORAGE INDUSTRY

The Petroleum Industry in South Africa

The liquid fuels sector is dominated by private petroleum companies, as well as the state-owned Petroleum, Oil and Gas Corporation of South Africa (PetroSA). According to the South African Petroleum Industry Association (Sapia), the fuel sector contributes about 6% to the country's gross domestic product (GDP) while supplying some 18% of South Africa's primary energy needs through annual sales of around 31 billion litres of liquid fuels and 750 000 direct and indirect jobs (4.9% of formal employment).

CONSUMPTION OF PETROLEUM PRODUCTS IN SOUTH AFRICA

Millions of litres

Year	Petrol	Diesel	Paraffin	Jet fuel	Fuel oil	LPG
2008	11 069	9 762	532	2 376	555	613
2009*	11 321	9 437	551	2 349	724	554
2010*	11 455	10 170	545	2 308	468	612
2011*	11 963	11 225	581	2 434	477	717
2012*	11 714	11 262	470	2 367	568	656
2013*	11 153	11 890	530	2 223	523	485
2014*	11 344	13 169	558	2 197	487	398
2015*	12 072	14 178	573	2 441	591	588
2016*	10 160	10 846	558	2 121	562	557
2017**	11 174	12 147	648	2 713	523	551
2018**	11 142	12 539	702	2 346	552	504

The above mentioned paragraph as taken from SAPIA 2018 annual report indicates petroleum products play a major role in the economy of South Africa, the consumption of these products indicates a significant increase that indicates that this industry does not only drive the economic sector of the country but has become a basic need for businesses and households in the country. By providing support and allowing this industry to establish itself in the city, the city will ensure that the supply for petroleum products is easily accessible.

4.3 IMPACT ON JOB CREATION:

The table below reflects the combined workforce profile for direct employees of SAPIA member companies and its refineries as reported to the Department of Labour in October 2018. It should be noted that the petroleum industry supports direct and indirect employment for over 100 000 people.

Occupational levels	Male				Female				Foreign nationals		Total
	C	I	W	A	C	I	W	A	Male	Female	
A											
Top management	13	9	8	20	14	4	6	5	13	0	92
Senior management	123	53	60	96	77	25	27	40	20	4	525
Professionally qualified and experienced specialists and mid-management	573	308	261	335	491	196	137	155	35	12	2 503
Skilled technical and academically qualified workers, junior management, supervisors, foreman and superintendents	904	532	178	307	678	269	90	166	4	4	3 132
Semi-skilled and discretionary decision making	1 275	242	74	50	403	80	26	30	2	3	2 185
Unskilled and defined decision making	168	3	2	1	153	5	0	0	3	1	336
TOTAL PERMANENT	3 044	1 147	583	801	1 807	578	286	396	76	24	8 742
Temporary employees	140	85	22	56	154	49	18	9	3	0	536
*GRAND TOTAL	3 184	1 232	605	857	1 961	627	304				

The above graph shows a national impact of this industry in job creation. Given the above graph it is easy to assume that the development of another refinery company in the city will have significant impact in the city's efforts to create employment and also contribute towards economic growth.

4.4 CONTRIBUTION TOWARDS B-BBEE

Annual reports from the South African Petroleum Industry Association indicates a continuous need of aligning the Petroleum and Liquid Fuels Charter to the B-BBEE Act. By empowering the previously disadvantaged groups such as blacks, women and the disabled. It is imperative that the successful lessee of this property be assessed based on their qualification and compliance with the above mentioned act.

5. COMMENTS OF THE STAKEHOLDER DEPARTMENTS

5.1 COMMENTS OF THE CHIEF FINANCIAL OFFICER

The purpose of the report is to obtain approval to lease the proposed portion of the Remainder of portion 10 of the farm Hartebeestpoort 3280-JR measuring 20.2724 Ha indicated as figure XYgVW in the sketch plan attached as annexure A for the development of an oil refinery and storage facility in terms of 34 and 36 of the Municipal Assets Transfer Regulations as well as the Land Management Policy as approved on the 28/03/2019 and Regulations.

Since the proposed lease is being dealt with in accordance with the legislative framework, the Group Financial Services cannot raise any objection to this action.

For accounting and administrative purposes, it is noted that all the documentation relevant to the lease will be submitted to the Asset Management Unit for processing the necessary entries in the Asset Register.

All the property lease transactions must be disclosed in the corporate financial statements for the purpose of transparency and to comply with the requirements of GRAP.

The successful lessee/s of a portion of the Remainder of portion 10 of the farm Hartebeestpoort 3280-JR must submit proof that all municipal rates and taxes and municipal service charges payable by them are not in arrears.

It must be noted that all aspects of the new Municipal Asset Transfer Regulations pertaining to the lease of municipal assets must be adhered to.

The proposed lease, exclusive of assessment rates for the above-mentioned property measuring 20.2724 Ha is R840 000 per month and this amount must escalate annually by 9 % effective from 1 July 2022. The Group Head: Group Property must ensure the proposed increase is included in the revenue component during the 2022/23 Budgeting process. In determining the proposed rental, it has been assumed that the said property will be used exclusively for industrial purpose.

5.2 COMMENTS OF THE GROUP HEAD: GROUP LEGAL AND SECRETARIAT SERVICES

The provisions of the Municipal Asset Transfer Regulations applies to the request for approval to lease the proposed portion of Portion 10 of the Farm Hartebeestpoort No. 328 - JR, measuring 20.2724 Hectares, as indicated as figure "XYgVW" in the sketch plan attached as annexure A to the report. The proposed purpose of the lease is for the development of an oil refinery and storage facility on the property, for supporting small medium companies that aim at establishing themselves and competing in this industry. According to the report, part of Portion 10 of the farm Hartebeestpoort No. 328-JR is utilized as a Vehicle Testing and Licensing Services Centre, and another part is leased out to the SPCA, while there appears to be part of the farm portion that remain unoccupied.

From records available to Group Legal Services Department, there is no Portion 10, but Remainder of Portion 10 the Farm Hartebeestpoort No. 328 – JR, held in ownership by the Municipality under Deed of Transfer No. T23965/1945. It does not seem as if the leased and licensing parts of the Remainder of Portion 10 are formally subdivided, thus, the proposed lease appears to be intended to be on part of Remainder of Portion 10, zoned “existing streets” and “Industrial”.

In accordance with the provisions of Regulation 34(1) of the Municipal Asset Transfer Regulations, the municipality is entitled to grant, inter alia, a right to use a capital asset only after the Municipal Manager has, in terms of regulation 35 conducted a public participation process regarding the proposed granting of the right; and the municipal council has approved in principle that the right may be granted.

The aforesaid public participation must, in accordance with regulation 34(2), be complied with since a long term right is proposed to be granted in respect of the capital asset. The right to use, in relation to a capital asset, is defined in Regulation 1(1) of the Municipal Asset Transfer Regulations as a right to use the capital asset for a period exceeding one calendar month without ceding legal ownership in the asset.

According to Regulation 34(3)(a) and (b) respectively, only the Municipal Council may authorise the public participation process referred to above; and a request to the municipal council for authorization of a public participation process must be accompanied by an information statement stating the reasons for the proposal to grant a long term right to use the relevant capital asset; any expected benefits to the municipality that may result from the granting of the right; any expected proceeds to be received by the municipality from the granting of the right; and any expected gain or loss that will be realized or incurred by the municipality arising from the granting of the right. The right to use, in relation to a capital asset, is defined in Regulation 1(1) as a right to use the capital asset for a period exceeding one calendar month without ceding legal ownership in the asset; and long term is defined in the same Regulation as a period of longer than three years.

According to the context of the report, the asset intended for the lease is a capital asset, as defined in Regulation 1, the land value is alleged to be R192 million rand, and the period of the lease (50 years) is long term lease, as defined in Regulation 1. The Municipal Council must approve public participation, and a public participation must be conducted, in compliance with Regulation 35.

The Municipal Council must, in terms of Regulation 36, when considering in terms of approval for any proposed granting of a right to use, control or manage a capital asset, take into account – 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 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 risks and rewards associated with the use, control or management of the capital asset in relation to the municipality's interests; any comments or representations on the proposed granting of the right received from the local community and other interested persons; any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant provincial treasury; 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 Compliance with the legislative regime applicable to the proposed granting of the right.

Upon Council approving the granting of the rights in question and public participation process been conducted as said above, the municipality may, in terms of Regulation 41(1)(a) to (c) MAT Regulations, only grant a right to use, control or manage a capital asset, in accordance with the disposal management system of the municipality, irrespective of the value of the asset, the period for which the right is to be granted, or whether the right is to be granted to a private sector party or organ of state.

Regulation 41(2) MATR provides an exception from the provisions of sub-section (1) only in the following circumstances:

- (a) where the municipality reviews in terms of Chapter 8 of the Municipal Systems Act, 2000 its service delivery mechanisms for the performance of a municipal service;
- (b) where the municipality selects through a competitive bidding process a private sector party as the service provider for the performance of that municipal service;
- (c) where the municipality grants that service provider the right to use, control or manage that capital asset as an integral component of the performance of that municipal service;
- (d) where the municipality selects through a competitive bidding process a private sector party or organ of state as the service provider for the performance of a commercial service; and
- (e) where the municipality grants that service provider the right to use, control or manage that capital asset as an integral component of the performance of that commercial service;

In that case, the municipality may in terms of Regulation 41(3) MATR, negotiate directly with the private sector party to whom the right is to be granted; and provided the party to be granted that right can, in terms of Regulation 41(4) MATR, demonstrate the ability to adequately maintain and safeguard the asset.

Having regard to the aforesaid and with specific reference to the context of the report, Group Legal and Secretariat Services Department submits as follows:

1. The lease of the property for the intended purpose will promote economic growth, sustainable development within the municipality, and will uplift human resources within the community, in fulfillment of the duty imposed by section 4(2)(g) read with section 1 of the Municipal Systems Act, 2000 (Act No. 32 of 2000).
2. The property is not exempted by Regulation 41(2) of MAT Regulations, and may only be leased in accordance with the Disposal management system (Public Tender), therefore, the approval of the report is supported subject thereto.
3. The intended use is within the applicable land use zoning, "industrial", and will not need to be rezoned.
4. The valuation of the property as determined must be supported by a valuation certificate/report accompanying this report to Council, in order for the Council make an informed decision and/or to make a determination whether a public participation is required, in compliance with Regulation 34(1) read with 34(2),
5. It must be ascertained that no rights have been granted by the municipality to any third party, in respect of the portion intended for lease;
6. The conditions imposed by the departments in the report, must be incorporated in the recommendations, in order that they should form part of the resolution.
7. The Sketch plan must be amended to leave open the required road reserve, as requested by Roads and Transport Department.
8. the property description must be verified and amended to Remainder of Portion 10 the Farm Hartebeestpoort No. 328 – JR
9. With regard to the powers of the Administrator to approve the proposed lease, we refer the Department to a decision in *Mnquma Local Municipality and Another v Premier of the Eastern Cape and Others (2009) ZAECBHC 14 (5 August 2009)*, in terms of which the Administrator assumes executive functions only. The court took the view that an "executive functions" means a function under the authority of a municipality, specifically the functions set out in

Schedule 4, Part B and Schedule 5, Part B to the Constitution, which alienation of municipal capital assets is not part thereof.

10. However, as there appears to be clear cut legislative provision regulation these powers, we are of the opinion that the administrators may exercise such powers, provided they are specified in the **terms of reference** outlined in the administrators' letter of appointment from the Provincial Executive.

5.3 COMMENTS OF THE ECONOMIC DEVELOPMENT AND SPATIAL PLANNING DEPARTMENT

In terms of the Regionalized Municipal Spatial Development Framework, 2018 for Region 6 (RMSDF) the Silverton/ Silvertondale/ Waltloo/ Bellevue – area has been identified as one of the main characteristics of this Region. The aforementioned area is also the second most important industrialized area in Tshwane.

However, the Moreleta Spruit and its tributaries cover virtually the entire area to the south of the Bronberg, contributing to the well-defined regional open space system of the southern part of the region. Therefore, this area has also been identified in terms of the RMSDF as one of the main characteristics of this Region. Furthermore, the Moreleta Spruit and its tributaries covering the entire area forming an interlinked regional open space network has also been identified as one of the main structuring elements of the region.

The RMSDF has identified the significant watercourse systems in the southern part, most notably the Moreleta Spruit and all its tributaries (Tweefontein, Waterkloof, Garstfontein, Constantiapark, Philadelphia Spruit) as major environmental features giving elements that determine the surrounding urban structure.

The RMSDF for Region 6 includes a few prominent land uses of strategic significance to the local as well as broader urban environment of Tshwane. The Silverton/ Waltloo/ Koedoespoort industrial area has been identified as one of the Specialized Activity Areas of metropolitan importance in terms of the MSDF.

The RMSDF has identified the Waltloo/ Silverton area as a mixed use activity area as well as one of the main job opportunities areas of the region. Presently, the main job opportunities within the region are located in Waltloo and Silverton (50 000 job opportunities). Despite this, Mamelodi, Eersterust and Nellmapius are subject to large-scale poverty and unemployment. The creation of more job opportunities is therefore a high priority and a focused effort should be put into attracting investment to these areas to create more job opportunities.

According to the Tshwane Town Planning Scheme, 2008 (Revised 2014), A Portion of the Remainder of Portion 10 of the farm Hartebeestpoort 328 – JR is zoned as "Industrial 1". In terms of Clause 14, Table B, Column (3), the following land uses are permitted as a Primary Right i.e. Business building subject to Schedule 10, Cafeteria, Car Wash, Commercial Use, Industry, Light Industry, Parking Garage subject to Schedule 10, Place of Refreshment, Retail Industry, Shop subject to Schedule 10.

In terms of Clause 14, Table B, Column (4), the following inter alia land uses are permitted only with the consent from the Municipality i.e. Noxious Industry subject to Clause 14(6)(d)(ii).

An "oil refinery and storage depot" is not defined in the Tshwane Town Planning Scheme, 2008 (Revised 2014). However, the scheme defines a "Fuel Depot" as follows:

"Means land and buildings used only for the storage of various kinds of flammable liquids in containers or tanks etc. and shall be classified as a Noxious Industry in Schedule 8 and may include a Caretakers Flat and ancillary and subservient Offices for the main use."

This Department is in support of these types of proposed land uses i.e. "Fuel Depot" (oil refinery and storage depot) in the Waltloo area, However, this Department is of the opinion that other alternative properties should be investigated i.e. erven 36 – 41 Waltloo, erven 43 – 53 Waltloo and the Remainder of Erf 54, Waltloo. (Indicated as "A" on the Amended Sketch Plan, Sheet no 2) for this specific use/ lease agreement. These properties are situated to the south of existing Fuel Depot's, owned by ENGEN and BP in Alwyn Street, Waltloo.

The motivation are as follows:

The importance of the Moreleta Spruit and its tributaries as motivated in the RMSDF.

This Department is of opinion that this natural feature should be protected as far as possible against inter alia pollution including pollution of the ground water. The proposed property, Portion of the Remainder of Portion 10 of the farm Hartebeestpoort 328 – JR, is draining towards the Moreleta Spruit whilst the alternative properties drain away therefrom.

The alternative properties are easily accessible to major transport roads i.e. N 4 highway, via either Watermeyer Street or Pretoria- / Simon VermootenRoad.

The alternative properties measure approximately 16 ha in extent and is all owned by the Municipality. The alternative properties are all vacant.

The alternative properties are also in close proximity of the Silverton Fire Station.

According to the existing land use pattern in the Waltloo-area all industrial activities and noxious industries have developed on the north-eastern side of Petroleum Street.

The alternative properties will only require the following Land Development Applications in terms of the City of Tshwane Land Use Management By-Law, 2016, namely consolidation of the properties and consent for the Noxious Industries.

Lastly, this Department is of opinion that it is good planning practice to locate or group similar land uses in close proximity of one another and restrict these land uses to a central location in a bigger area.

It is therefore our comment, based on the abovementioned, that the proposed use cannot be accommodated on the subject site, and it is advised that the suggested alternative sites be investigated as they are better suited for the proposed fuel depot/ fuel refinery.

5.4 COMMENTS OF THE EMERGENCY SERVICES DEPARTMENT

The contents of this report are noted. The lease of the proposed Portion of the Remainder of Portion 10 of the farm Hartebeestpoort 328 – JR for oil refinery and storage is supported on condition that an environmental impact assessment is conducted to establish the suitability of the land. Furthermore, it is vital that the local community (Eersterust and Mamelodi) be consulted on this initiative. The disaster response plan should be in place.

There exist likelihood of a Major Hazard Installation (MHI) as with the other refineries mentioned above. Therefore all MHI regulations should be adhered to, and as such, a risk assessment should be conducted by an approved inspection authority (AIA). It is recommended that such a risk assessment not be conducted in isolation of the other existing MHI's in the area (a combined risk assessment of all the refineries in the Waltloo area is recommended). Also for adherence are Fire Brigade bylaws which stipulates the submission and approval of drawings (fire protection plan) prior to erection on site.

The assertion that a "layout plan should reserve the 1:50 year flood line area or an area that extends 32m from either side of the centre line of a watercourse (whichever is the greatest) as a "Public Open Space" is fully supported. Storm water drainage designs should take into consideration the proximity of the Moreleta spruit chances of increasing the risks of flooding the area.

The Emergency Services Department supports any initiative of the City to enhance investment and the economic wellbeing of the residents, where societal and environmental risks are holistically assessed and proper risk avoidance and reduction measures are put into place.

5.5 COMMENTS OF THE ENVIRONMENT AND AGRICULTURE MANAGEMENT DEPARTMENT

The report seeks to obtain approval to lease the proposed Portion of the Remainder of Portion 10 of the farm Hartebeestpoort 328 – JR measuring 20.2724Ha indicated as figure XYgVW in the sketchplan attached.

From the sketchplan and the GIS maps of the City, it is noted that the wetlands and a river viz, Moreletaspruit are located south of the site. As a result the site is not affected by the wetland and river.

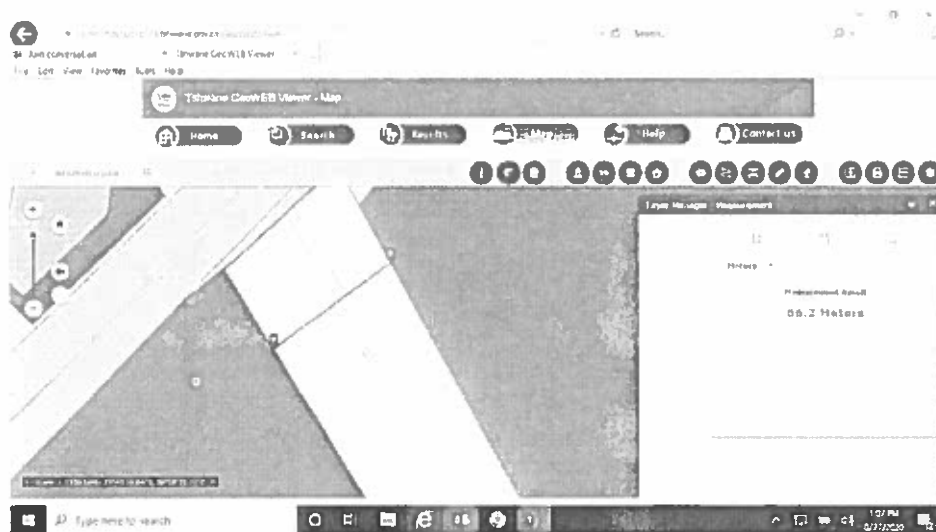
Given the above circumstances the application for lease of Portion of the Remainder of Portion 10 of the farm Hartebeestpoort 328 – JR measuring 20.2724Ha as indicated as figure XYgVW is supported.

Notwithstanding the above, all other relevant National, Provincial and CoT legislative and policy requirements pertaining to the proposed development must be met including where necessary the undertaking of Environmental Impact Assessment and acquisition of Environmental Authorisation in terms of the National Environmental Management Act (NEMA) from the Gauteng Department of Agriculture and Rural Development.

5.6 COMMENTS OF THE ROADS AND TRANSPORT SERVICES DEPARTMENT

The Roads and Transport take cognisance the proposed lease of the intended portion of the Remainder of portion 10 as per the proposal and suggest the following to be taken into account:

- The land parcel portion 10 affects the road reserve for Petroleum Road, especially where the road crosses the railway line. The Sketch plan must be amended to leave open the required road reserve, thus also recalculation of the land area to be leased. The Land surveyors must consult the Roads and Transport Department for refining the road reserve/ property boundary. A view of the zoning map (extract from Geoweb) gives an indication of the extent of the reserve;
- The Doubling of Petroleum road was an Industrial area revitalization project, the designs were reported to have been done. These should also be consulted for information;
- Suitable access position and configuration will also have to be established; and
- Regarding watercourses and stormwater, cognisance is taken of the riverine area and environmental sensitivity assessment, and the comments regarding the floodline being reserved. Stormwater drainage from higher lying areas (north-east of Petroleum road will have to be taken into account in the development of the site once size and coordinates of property are adjusted.



5.7 COMMENTS OF THE TSHWANE METRO POLICE SERVICES DEPARTMENT

The purpose of this report is to obtain approval to lease the proposed Portion of the Remainder of Portion 10 of the farm Hartebeestpoort 328 – JR measuring 20.2724Ha indicated as figure XYgVW in the sketchplan attached as annexure A for the development of an oil refinery and storage facility in terms Regulation 34 and 36 of the Municipal Asset Transfer Regulations as well as The Land Management Policy as approved on the 28/03/2019 and Regulations.

The Tshwane Metro Police Department takes cognisance of the content of the report and further supports the recommendation(s) as set out in the report, subject to positive comments being received from the Emergency Services Department and

Environment and Agriculture Management Department. It should be noted that the property must be utilised for the purposes as stipulated within the land use zoning for the specific property and access to and from the premises must be provided in accordance with the National Road Traffic Act, 1996 (Act 93 of 1996), as amended.

5.8 COMMENTS OF THE UTILITY SERVICES DEPARTMENT

WATER:

- Water is available. Water SUPPLY could BE PROBLEMATIC. The existing water services are insufficient for this development and therefore the Lessee's Consulting Engineer must investigate the required water network services improvements that might have to be installed at the cost of the Applicant to ensure sufficient water supply from the local water network for day-to-day use as well as for possible fire fighting purposes as required by the "Fire Brigade Services Division, Section Fire Safety"

SEWER:

- THE sewer connection THAT WILL be required for this application, at any other point along the boundaries of the property, WILL BE FOR THE COST OF THE LESSEE, FURTHERMORE all resulting costs to provide a sewer connection point as well as all costs incurred as a result of the protection by servitude / moving / provision of a private or municipal sewer necessitated by such application shall be for the account of the lessee. Sewer and connection must be installed by a approved plumber, or should an extension be required designed by a Consulting Engineer and installed by a suitably qualified private plumbing contractor under the Engineer's certified supervision. Information and specifications are available from any of the One-Stop-Service-Desks for Water-and Sanitation Services.

ZONING:

The rezoning of the property be done by the Lessee and the Bulk payable for such rezoning at the account of the Lessee.

The Bulk money be utilized for upgrading the existing water systems as required by the division Water and Sanitation

6. IMPLICATIONS

6.1 HUMAN RESOURCES

None.

6.2 FINANCES

Monthly rental and rates and taxes will be generated from the lease of the property.

6.3 CONSTITUTIONAL AND LEGAL FACTORS

LEGISLATIVE FRAMEWORK

1. In terms of the **Municipal Asset Transfer (MAT) Regulations** published in terms of the MFMA on 22 August 2008, lease of municipal property is authorised as follows :

34 "Granting of rights to use, control or manage municipal capital assets

- (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 granted.
- (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 authorise the public participation process referred to in subregulation (1)(a).
 - (b) A request to the municipal council for authorisation 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 benefits to the municipality that may result from the 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 realised 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."

"36 The municipal council must, when considering in terms of regulation 34(1) (b) approval for any proposed granting of a right to use, control or manage capital assets, take into account-

1. whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
2. 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;

3. the risks and rewards associated with the use, control or management of the capital asset in relation to the municipality's interests;
4. any comments or representations on the proposed granting of the right received from the local community and other interested persons;
5. any written views and recommendations on the proposed granting of the right by the national treasury and the relevant provincial treasury;
6. 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
7. Compliance with the legislative regime applicable to the proposed granting of the right."

B) Land Management Policy

This report complies with Land Management Policy, as approved on 28/03/2019. The clauses of the policy framework which describe the applicable principle and prescribe the appropriate method of disposal are:

11.3 Long Term Lease Agreements

considerations for notarial lease agreements greater than 9 (nine) years and 11 (eleven) months may be considered in instances where;

- Investment on the property asset may require a notarial lease depending on the investment maturity and Council in its discretion may therefore consider a notarial lease period.

6.4 COMMUNICATION

Notice of the lease will be given in terms of Section 79(18) of the Local Government Ordinance, 1939 (Ordinance 17 of 1939). Should any objections to or representations in respect of the proposed lease be received, the proposed lease together with such objections and/or representations, will be submitted to the Council for consideration and a final decision. Should no objections and/or representations be received, the lease will be proceeded with in term of the Municipality's approved Land Management Policy.

6.5 PREVIOUS COUNCIL OR MAYORAL COMMITTEE RESOLUTIONS

None.

7. CONCLUSION

There's a need for the city to support different sectors of business and ensure that its properties are used for socio-economic growth and to support the government initiatives to support Small and medium business enterprises and ensure business transformation. It is for this reason that this department proposes that this property be reserved not only for oil refinery and storage but in the process also support initiatives for black empowerment

ANNEXURE

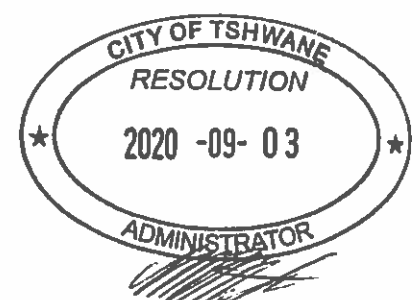
A. Sketchplan

RESOLVED:

1. That the proposed Portion of the Remainder of Portion 10 of the farm Hartebeestpoort 328 – JR measuring 20.2724ha indicated as figure XYfgVW in the sketchplan attached as annexure A in is not required to provide the minimum level of basic municipal services;
2. That the fair market rental of the proposed Portion of the Remainder of Portion 10 of the farm Hartebeestpoort 328 – JR measuring 20.2724ha indicated as figure XYfgVW in the sketchplan attached as annexure A, the economic and community value to be received in exchange for this property has been determined as set out in the report;
3. That the lease of the proposed Portion of the Remainder of Portion 10 of the farm Hartebeestpoort 328 – JR measuring 20.2724ha indicated as figure XYfgVW in the sketchplan attached as annexure A for a maximum period of 50 (fifty years) in terms of Regulations 34 (1)(b) of the Municipal Asset Transfer Regulations be approved;
4. That the notice of the lease will be given in terms of Section 79(18) of the Local Government Ordinance, 1939 (Ordinance 17 of 1939). Should any objections to or representations in respect of the proposed lease be received, the proposed lease together with such objections and/or representations, will be submitted to the Council for consideration and a final decision. Should no objections and/or representations be received, the process be proceeded with in term of the Municipality's approved Land Management Policy;
5. That the Accounting Officer be granted permission to conduct public participation on the lease of the property in terms of Regulation 35 of the Municipal Asset Transfer Regulations;
6. That proposed sub-division of Portion of the Remainder of Portion 10 of the farm Hartebeestpoort 328 – JR to create a portion measuring 20.2724ha indicates as figure XYfgVW in the sketchplan attached as annexure A be approved;
7. That the lessee, at his own cost and risk apply within three months of signing of the deed of lease, will amend the Tshwane Town-Planning Scheme, 2008 (revised 2014) by rezoning the proposed Portion of the Remainder of Portion 10 of the farm Hartebeestpoort 328 – JR measuring 20.2724ha indicated as figure XYfgVW in the sketchplan attached as annexure A in terms of the Spatial Planning and Land Management Act, 2013 SPLUMA, from the current zoning to an appropriate zoning that will allow for the envisaged use and that the Accounting officer be granted authority to issue power of attorney to enable the lessee to lodge necessary applications thereof;



8. That the lessee at its costs and risks will conduct an Environmental Impact Study (EIA) prior to any development on the property;
9. That the lessee shall not cede, sublet, transfer, pledge or in any way alienate any of his/ her rights in terms of this agreement;
10. That the lessee be responsible for registration of the Notarial Lease Agreement of the leased property at the Office of the Registrar of Deeds, at the lessee's costs;
11. That a condition be included in the Lease Agreement for undeveloped property that the property has to be developed within a period of 3 (three) years after the lease agreement is signed, and if not complied with, that the lease be cancelled, as the Land Management Policy prescribes. Provision is to be made that if it is reasonable, the City may extend this provisional development period, on the lessee's request;
12. That the Lessee will protect the existing municipal services, namely existing bulk sewer lines, water pipes and electricity services, on the property, by not doing construction over the municipal services or allowing vegetation to harm the existing municipal services;
13. That the existing municipal services' location and sizes needs to be specified on a Sketch Plan, where applicable and attached to the Lease Agreement;
14. That all costs incurred for the provision or relocation of any services as a result of this application will be borne by the applicant;
15. That the land parcel proposed Portion of the Remainder of Portion 10 of the farm Hartebeestpoort 328 – JR affects the road reserve for Petroleum Road, especially where the road crosses the railway line. The Sketch plan must be amended to leave open the required road reserve, thus also recalculation of the land area to be leased. The Land surveyors must consult the Roads and Transport Department for refining the road reserve/ property boundary. A view of the zoning map (extract from Geoweb) gives an indication of the extent of the reserve;
16. That stormwater drainage from higher lying areas (north-east of Petroleum road will have to be taken into account in the development of the site once size and coordinates of property are adjusted;
17. That the Lessee at its own cost and risk apply and lodge site development, plans, building plans, licenses or any applications necessary for the proposed development, or the managing of a building and a business on municipal land;
18. That during development, access for fire-fighting and rescue purposes, must be provided in accordance with Regulation T(1)(1)(e) of the National Building Regulations, read with the Deemed to Satisfy rules, Clause 4.54 of SANS10400;



19. That consent be given to put a condition in the lease agreement that give rights to a Financial Institution to step in if a lessee fail to carry out its obligations under the lease agreement in which case the Financial Institution shall take over the development of the property and improvements as contemplated, in the place of the lessee;
20. That the leased property with all improvements erected on it will revert back to the CoT after expiry of the 50 (fifty years) lease period;
21. That no lease be signed with any applicant or proposed lessee, which has outstanding rental in terms of an earlier lease with the Municipality or any bad payment record with the Municipality;
22. That Group Legal Counsel be authorized to issue a Power of Attorney to the lessee so that it can conduct the required Environmental Impact study and also lodge the applications necessary for the development and management of the property; and
23. That the Municipality' further conditions of lease usually applicable on a transaction of this nature and the conditions embodied in this report be applicable.

