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ERF 101, 13 HOTEL CRESCENT, ROOI ELS AND A PORTION OF ERF 323, HOTEL CRESCENT, ROOI-ELS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR SUBDIVISION, REZONING, CONSOLIDATION AND CLOSURE OF A PUBLIC PLACE: PLAN ACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF JA BAIGRIE AND OVERSTRAND MUNICIPALITY

101 & 323 KRE (4705/2024)

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18 February 2025

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Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 26 June 2024 from Plan Active Town & Regional Planners on behalf of JA Baigrie and Overstrand Municipality in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- ❖ **subdivision** of Erf 323 Rooi-Els in terms of Section 16(2)(d) in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 into 2 portions, namely a Portion A ($\pm 358\text{m}^2$) and a Remainder (*extent unknown*);
- ❖ **rezoning** in terms of Section 16(2)(a) in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 of subdivided Portion A ($\pm 358\text{m}^2$) from Transport Zone 2: Road and Parking to Residential Zone I: Single Residential (SR1);
- ❖ **consolidation** in terms of Section 16(2)(e) in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 of subdivided and rezoned Portion A ($\pm 358\text{m}^2$) with Erf 101, Rooi-Els to create a single residential property of $\pm 1296\text{m}^2$ in extent, and
- ❖ **closure of public place** in terms of Section 16(2)(n) in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to accommodate the closure of a portion of public road (subdivided Portion A ($\pm 358\text{m}^2$)).

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, while the proposed Site Development Plan is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The owner of Erf 101 Rooi Els, Mrs J.A. Baigrie, applied to purchase a portion of Remainder Erf 323 Rooi Els (Public Street) that is $\pm 358\text{m}^2$ in extent from the Overstrand Municipality.

Subsequently the Mayoral Committee resolved at their meeting held on 28 February 2024 that a portion of the public street (Hotel Crescent), namely Remainder Erf 323 Rooi Els, be sold to the above-mentioned owner of Erf 101 Rooi Els and that a portion of Remainder Erf 323 Rooi Els be subdivided, rezoned and consolidated with Erf 101 Rooi Els. Refer to the copy of the decision letter dated 5 March 2024. A copy of the minutes of the Mayoral Committee meeting is also attached. See Annexure F.

Mrs Baigrie is the owner of Erven 101 and 336 Rooi Els. Our client wants to purchase the portion of road she has been using for the past thirty years to provide a more convenient vehicle access driveway to Erf 101 Rooi Els. The portion made available to acquire is positioned between Erven 101 and 336 Rooi Els.

The portion to be subdivided, rezoned and consolidated with Erf 101 Rooi Els is a portion of road reserve and due to the locality, shape, intended use and size of the property, it cannot be developed independently, and thus it can be classified as a non-viable property.

4. SUMMARY OF APPLICANT'S MOTIVATION

CONTEXTUAL INFORMATION

First, to give effect to the approval from Property Administration, it is proposed to subdivide Erf 323 Rooi Els (Hotel Crescent) as follows:

TOTAL AREA	Unknown (municipal road)
AREAS FOR SUBDIVISION	Portion A: ±358m ² Remainder: Unknown
OWNER	Overstrand Municipality
TITLE DEED	T13367/1948

Secondly, an application is submitted for the rezoning of Portion A, a portion of Erf 323 Rooi Els, from Transport Zone 2: Roads and Parking to Residential Zone I: Single Residential - the same zoning as Erf 101 Rooi Els.

TOTAL EXTENT OF CONSOLIDATION	±1296m ²
PROPOSED CONSOLIDATION	Portion A: ±358m ² Erf 101: 938m ²

DEVELOPMENT PROPOSAL

Special conditions were specified with reference to the approval of the sale of a portion of Erf 323 Rooi Els to the owner of Erf 101 Rooi Els. Some of the conditions worth noting:

- “2. that the direct alienation is possible as the said portion of Remainder Erf 323 Rooi Els can be classified as a non-viable property;
3. that a condition for the alienation will be that the said portion of Remainder Erf 323 Rooi Els must be consolidated with the adjoining property of Ms Jennifer Anne Baigrie, being Erf 101 Rooi Els;
4. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Remainder Erf 323 Rooi Els, which condition must be registered against the title deed of the consolidated property;

7. *that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003)."*

From the above it is evident that the municipality considers the portion for alienation as a non-viable property. No buildings or structures may be constructed on Portion A; a portion of Erf 323 Rooi Els after subdivision, rezoning and consolidation has taken place except for a boundary wall or fence. In addition, the portion to be alienated is not required for the provision of basic municipal services.

The proposed land use application will allow our client to retain the existing access. Subsequently, the actual use of this specific portion of the road will remain unchanged (for access to Erf 101 Rooi Els). The purpose of the land acquisition and subsequent land use application is to avoid vehicles driving onto the property as the road does not provide vehicular access to the ocean nor parking space, which results in drivers ending up in her driveway and forcing such drivers to reverse back up the steep incline with poor visibility as there is also no space to turn around. Drivers are not able to observe this when entering the undeveloped gravel road because of its overgrown nature.

In addition, the proposed land use application for Erven 323 and 101 Rooi Els will also take the burden from the municipality for the maintenance of this portion of the public street.

The proposal will not change the primary land use of the subject property as this application constitutes the inclusion of a portion of Public Street that is $\pm 358\text{m}^2$ in extent that will be used as an extension of Erf 101 Rooi Els. The impact on the character of the area will therefore be minimal. The proposed street closure, subdivision, rezoning and consolidation of Erven 323 and 101 Rooi Els will not have a negative impact on the neighbouring properties or residential character of the area.

The proposal to close a portion of Public Street, subdivide, rezone and consolidate the road portion with Erf 101 Rooi Els will not result in any erven in the immediate vicinity to be land locked. All erven in the immediate vicinity will retain their existing accesses.

In addition, no new structures (except boundary wall and fences) will be allowed on the road portion to be closed once it has been consolidated as previously discussed. The look and feel of the proposed land use is in line with the general look and feel of the existing residential character of the area. Thus, there will be no impact on the character of the area.

The current access to Erf 101 Rooi Els is via Erven 323 and 368 Rooi Els. Our client has been leasing the portion of road from the municipality for nearly ten years with no complaints received. As per the property administration approval and as indicated on the subdivision and consolidation plan, our client will change the access to the property to exclude Erf 368 Rooi Els. This portion of erf 368 Rooi Els must be rehabilitated. The area that requires rehabilitation is zoned as Open Space Zone 1: Nature Reserve (area indicated on the land acquisition plan) and the Overstrand Biodiversity Manager will be notified of the rehabilitation plan.

ACCESS

Remainder Erf 323 Rooi Els is a public road situated adjacent to Erf 101 Rooi Els. The owner of Erf 101 Rooi Els (our client) has been using a portion of Erf 323 Rooi Els (Hotel Crescent) as part of her driveway and as an entrance to her property for the past thirty years. Our client applied for the renewal of the lease of the portion of road for a further period of nine years and eleven months. The renewal of the lease was granted in October 2023.

Access to erf 101 Rooi Els is currently over both a portion of Erf 368 and 323 Rooi Els (Hotel Crescent). As per the property administration approval and as indicated on the subdivision and consolidation plan, our client will change the access to the property to exclude Erf 368 Rooi Els. This portion of erf 368 Rooi Els will be rehabilitated. The existing driveway on Portion A, a portion of erf 323 Rooi Els, will remain unchanged and will continue to provide access to Erf 101 Rooi Els.

The subject property will still be used for single residential purposes only, no additional erven are proposed and therefore the impact on the traffic flow in the area will remain unchanged.

SERVICES

All services on Erf 101 Rooi Els already exist and the inclusion of a portion of Erf 323 Rooi Els will not require any additional services. The proposal will have no impact on the scale and usage of the existing available services since no additional loading of the existing civil infrastructure is anticipated.

CONSISTENCY WITH SPLUMA AND LUPA PRINCIPLES:

o **Spatial Justice**

This principle addresses the need to address the past imbalances regarding opportunity. This application is for erven as per the establishment of the existing Rooi Els Township and this principle does therefore not apply to this application.

o **Spatial Sustainability**

The newly consolidated property is developed in line with the Residential Zone I: Single Residential land use parameters as stipulated in the Land Use Scheme. Any future proposal that deviates from the SR1 parameters will have to follow a separate land use application. In addition, the proposed closure of a portion of Public Street, subdivision, rezoning and consolidation will be in line with the layout pattern and erf sizes applicable to the area.

The proposed land use application is to an improved erf within an established residential area and therefore will not impact on urban sprawl, or upon a sensitive environment.

The impact on the biophysical environment will also be kept to a minimum (i.e. no impact on natural, heritage or agricultural resources). Furthermore, the proposed application will have no adverse impact on the spatial sustainability of the area and is in keeping with the existing residential area as discussed in this report.

- **Spatial Efficiency**

The Property Administration department confirmed that this portion of Hotel Crescent (public road) is a small non-viable portion of a street that is ±358m² in extent. This portion of the public street has no function as a street and is not required for the upgrading and / or installation of municipal services in future. The property can be utilised much better by the neighbouring landowner by incorporating it with her property. Subsequently, the Overstrand Municipality will not have the burden to upkeep the road reserve.

- **Spatial Resilience**

Not Applicable.

- **Good Administration**

The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation.

POLICY DOCUMENTS:

Overstrand Wide Development Framework, 2020

The Overstrand Spatial Development Framework (2020) earmarks the area where Erven 101 and 323 Rooi Els are situated, for urban development purposes. Refer to the Spatial Development Framework Plan (2020) below. The zoning and use of the newly consolidated property will remain unchanged (Residential Zone I: Single Residential for single residential use). As a result, the impact of the proposed road closure, subdivision, rezoning and consolidation on the spatial integrity of the area will be minimal and is therefore consistent with the Overstrand SDF (2020).

Overstrand Growth Management Strategy, 2010

The Overstrand Municipality's densification policy stipulates that it is important to enhance and protect the character of the existing low-density residential area such as Rooi Els, while still sensitively densifying where appropriate. This ensures that a wide range of erf sizes and types of development are available within the greater Overstrand area.

The Overstrand Municipal Growth Management Strategy (OMGMS, 2010) specifies that Erven 101 and 323 Rooi Els are part of Planning Unit no. 1 that consists of the established residential area. The subject properties are also earmarked as a heritage special area. Access to public amenities is also indicated in red on the map.

Heritage Value

The application does not involve changing the character of a site larger than 5 000m². In addition, no development is proposed for the newly consolidated property. Consequently, the proposed land use application does not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Both Erven 101 and the relevant road portion (a portion of erf 323 Hermanus) are situated within the Heritage Overlay Zone: Special Areas as determined by the Overstrand Municipal Growth Management Strategy (2010). In addition, the subject properties fall within the Heritage Protection Overlay Zone: Local Area (2020) demarcated for the Rooi Els & Hangklip Smallholdings area.

No new development is proposed with this application. Erf 101 Rooi Els is already developed and the road portion to acquire is an existing gravel road. The status quo of the newly consolidated residential property will remain. The subject properties are not associated with any important persons or groups or important events and activities. As a result, there will be no impact on the heritage value of the area.

Biophysical Environment

The proposed closure of a portion of public street, subdivision, rezoning and consolidation (land use application) to create a newly consolidated single residential erf do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

The land acquisition application was circulated to Overstrand's Environmental Management Services Department (EMS) for comment / consent. The EMS confirmed the department has no objection to the proposed application. The subject properties do however fall within the Overstrand Environmental Management Overlay Zones (EMOZ). Erf 368 Rooi Els (that formed part of our client's driveway) is positioned within the Coastal Protection EMOZ. EMS suggested that the entrance to the property must only be from erf 323 Rooi Els that already has a Transport Zone 2: Roads and parking zoning. The proposal is therefore to subdivide, rezone and consolidate a portion of erf 323 Rooi Els only. The portion of erf 368 Rooi Els that requires rehabilitation is zoned as Open Space Zone 1: Nature Reserve. EMS indicated that their department must be notified of a rehabilitation plan for this area to be excluded from the application at hand.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local newspaper	Yes	12 September 2024	18 October 2024
Email notices & site notice	Yes	12 September 2024	18 October 2024
Internal departments	Yes	12 September 2024	18 October 2024
Ward Councillor	Yes	12 September 2024	18 October 2024
Total comments	TWO (2)		
Total letters of support	ONE (1)		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			Yes
Was the application processed correctly (if no, elaborate below):			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			Yes

6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments
Property Administration	17/09/2024	<ul style="list-style-type: none"> • No objection as it is in line with the Council's approval as well as the Deed of Sale. • Please note that the sale was approved in-principle by the Council and not the Mayor as indicated in the application. • The applicant must note that no structures will be allowed on the portion of Erf 323 Rooiels to be sold.
Environmental Management	18/10/2024	<ul style="list-style-type: none"> • No objection. • The requirement of a rehabilitation plan for the encroachment of Erf 101 into a portion of Open Space 1 Nature Reserve (Erf 368). • The rehabilitation plan must be submitted to the EMS within 60 days of the final decision by Council.
Engineering Services	30/10/2024	See Annexure G.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION, THE APPLICANT'S RESPONSE AND THE MUNICIPAL TOWN PLANNER'S RESPONSE THEREON

The application was duly advertised in the local newspaper and E-mail notifications were sent out to surrounding neighbours and the Rooiels Ratepayers Association. A notice board was also placed on-site by the applicant's consultant.

Two (2) letters of objection were received forthcoming the public participation process from the following parties:

- ✚ **Friends of Rooiels**
- ✚ **Eldie Brink**

One (1) **support** letter was also received from the Rooiels Ratepayers Association. In addition, Environmental Management Services and Property Administration **support** the application and we take note of the content of their letters.

The applicant was provided with an opportunity to respond to the objections. See Annexures D and E respectively.

SUPPORT

ROOI ELS RATEPAYERS ASSOCIATION (RERA)

The Rooi Els Ratepayers Association supports the application for the subdivision, rezoning, consolidation and partial closure of a public street. We would like to express our agreement with the RERA regarding their support for the proposed land use application. This endorsement highlights the desirability of the application based on several key reasons as stipulated by RERA:

- The proposal will not negatively impact the residents of Rooiels.
- The proposal will not negatively affect the general public.
- It will positively contribute to the rehabilitation and maintenance of the Public Open Space located in the back-dune zone between the houses and the beach.
- The application reinforces the de facto situation that has existed for many years, which has not raised any concerns or objections to date.
- The portion of the road to be closed and consolidated with erf 101 Rooi Els will remain undeveloped and will not alter the general built environment in the area.
- The responsibility for the management and maintenance of this portion of the road, which exclusively serves Erf 101, will fall to Erf 101 Rooi Els.
- The support from the Rooi Els Ratepayers Association confirms that the proposed application aligns with the interests of the community and enhances the overall quality of the environment.

TOWN PLANNER'S RESPONSE

Noted.

FRIENDS OF ROOIELS

OBJECTION

Friends of Rooi Els request that the Municipal Planning Tribunal (MPT) refrain from making a decision on the rezoning of a portion of Hotel Crescent until a public participation process has been conducted for its alienation. The objectors argue that the municipality incorrectly views the alienation as an approval in-principle that does not require public input. They emphasize the need for adherence to legal standards of natural justice and assert that the MPT, as an independent quasi-legal body, should ensure proper procedures are followed before any decisions are made.

APPLICANT'S RESPONSE

We appreciate the concerns regarding transparency and public involvement in the alienation and land use application process. While we cannot speak for the municipality, we believe they are committed to these principles. The current process allows for public comment following the initial property administration decision, ensuring community input is considered.

We recognize your suggestion for a more inclusive approach prior to decisions on alienation. This feedback can be considered for future applications. Refer to the Property Administration department's comments on the objections attached in this regard. See Annexure E.

It is important to note that due process was followed, including a public participation process for the land use application. The necessity for further engagement is noted and it is for the municipality to review this considering your feedback.

TOWN PLANNER'S RESPONSE

The process of alienation of Erf 323 has been dealt with in terms of the Administration of Immovable Property Policy (Policy) and has no bearing on the application to comply with the conditions that was part of the approval of Council. The aspects with regard to the Policy will be dealt with by Property Administration in their item to Council to finalize the transfer.

OBJECTION

The objectors argue that Hotel Crescent serves as a public amenity providing access to Rooiels beach for vehicles and pedestrians. They assert that its disposal is prohibited under Section 14 of the Local Government: Municipal Finance Management Act.

APPLICANT'S RESPONSE

The approved section of Remainder Erf 323 Rooi Els, designated for acquisition by our client, consists of a portion of vacant land that includes a gravel road used for accessing Erf 101 Rooi Els. Despite its status as a public road, the Property Administration department has confirmed that direct alienation is feasible, classifying this portion of land as a non-viable property.

TOWN PLANNER'S RESPONSE

The road has not been used for vehicle access to the beach which is evident on Google Maps since 2005. Bathers Road has a dedicated parking area and fulfilled the function of access for vehicles.

OBJECTION

The Friends of Rooi Els state that Hotel Crescent, classified as a public road in the town planning layout, is not considered "non-viable" land that can be alienated. They claim it can exist independently without consolidation with adjacent property, and that the Mayoral Committee's in-principle approval contradicts municipal policy.

APPLICANT'S RESPONSE

The reference to "non-viable" land was to indicate that the piece of land is not suitable for development or does not have enough value or potential to warrant investment or utilization. Essentially, it was also merely suggested the land will not be used for its intended purpose and can therefore be alienated.

TOWN PLANNER'S RESPONSE

The road has since its inception with the proclamation of the township existed as independent, but for many a year did function as an access to Erf 101.

The aspects with regard to the Policy will be dealt with by Property Administration in their item to Council to finalize the transfer.

OBJECTION

The objectors request that the Mayoral Committee should have called for public participation prior to the alienation decision, given the road's significance. There is concern that the current advertisement regarding the transfer does not adequately inform ratepayers about how the participation process relates to the previously finalized alienation approval.

APPLICANT'S RESPONSE

The municipality prioritizes public access and services and is dedicated to adhering to all relevant legislation. However, we cannot comment on behalf of the municipality regarding the property administration process that was undertaken – refer to the Property Administration department's feedback attached in this regard. Our role is solely to address the land use application, which followed the required public participation procedures, including notifications to adjacent property owners and the placement of a notice board on-site.

TOWN PLANNER'S RESPONSE

The application was advertised, site notice and to surrounding properties as well as the Rooi Els Ratepayers and Ward Councillor.

OBJECTION

The objection notes that a recently renewed lease already grants access to the applicant, rendering the proposed disposal unnecessary. They mention that the Senior Town Planner opposed this lease renewal as unlawful.

APPLICANT'S RESPONSE

While Town Planning did not support the application, the Property Administration department confirmed that there is no legislation or policy that prohibits the sale of the property. Access to the coastal area remains available approximately 80 meters away, ensuring that the public is not being denied access. Additionally, the ocean can be accessed from the parking area on Bathers Street and via several footpaths from Priestleya Street.

TOWN PLANNER'S RESPONSE

Any lease agreements are the mandate and responsibility of the Department of Property Administration. The opposition to the acquisition remains in place from a town planning perspective.

OBJECTION

The Friends of Rooi Els include several requests in the event that the Municipal Planning Tribunal (MPT) does not reject the current application:

- 1. Public Lane Subdivision:***

The objectors request the subdivision of a public lane from the subject portion of Hotel Crescent, adjacent to Erf 336, to provide pedestrian access to the beach. They argue that such lanes exist in other areas and are essential for public access. They also request the creation of two parking spaces adjacent to the alienated portion of Hotel Crescent to further facilitate public access.

APPLICANT'S RESPONSE

As previously mentioned, access to the coastal area is available approximately 80 meters away, ensuring that the public is not being denied access. Additionally, the ocean can be reached from the parking area on Bathers Street and public access to the seafront and beach from Priestley Road is provided by a municipal path and is well used as such. Therefore, the proposal does not include a public lane or pedestrian access or two parking spaces, as the need for such access and parking bays is considered unnecessary.

Additionally, approximately 50 meters to the northwest, at the end of Rocklands Road, there is a turning circle and space for some parking, along with pedestrian access to a seafront path leading around the front of Erf 115 to the beaches located on State property, below the high-water mark on Erf 320 and Erf 326 (the main beach). Earlier comments have noted the presence of three roads providing access to the beach; the two described above are among them. The third access is via Slipway Road, situated four houses to the east of the applicant's driveway, with parking available on Bathers Road (as previously mentioned) and Hotel Crescent.

The suggestion to create a "public path" through the natural shrubs and trees along the boundary with Erf 336, designed to accommodate two parking spaces, raises significant concerns. Not only would this require the removal of valuable natural vegetation, but it would also necessitate a turning circle or force drivers to reverse along the path back to Gazania Road, creating safety hazards. Furthermore, where would this path lead? Our client is committed to preserving the dune-protected frontage, as outlined in the Rooiels Vision that all property owners support. The proposal to clear natural vegetation for double parking spaces in these pristine dune areas is contrary to the conservation goals and would face strong opposition if ever proposed.

TOWN PLANNER'S RESPONSE

It should be noted that there are pedestrian pathways along the road transgressing the Open Space to the coast. The creation of two parking bays however is not supported due to the fact that there is indigenous vegetation that will have to be removed which can have an impact on the stabilized dune system.

OBJECTION

2. Title Deed Condition:

They propose that the consolidation of Hotel Crescent with Erf 101 include a title deed condition stating that it is "Zoned Undetermined" in accordance with the town planning scheme. This condition aims to prevent future development on the consolidated portion.

APPLICANT'S RESPONSE

Portion A of Erf 323 Rooi Els will be rezoned from Transport Zone 2: Roads and Parking to Residential Zone I: Single Residential, aligning it with the zoning of Erf 101 Rooi Els. Special conditions accompany the sale of this portion to the owner of Erf 101.

One key condition state:

3. *"No structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Remainder Erf 323 Rooi Els, and this condition must be registered against the title deed of the consolidated property."*

As such, after subdivision, rezoning, and consolidation, no buildings or structures may be constructed on Portion A, other than a boundary wall or fence. This restriction was confirmed in a departmental comment on the land use application from Mrs. Anja le Roux, Manager – Property Administration, dated 17 September 2024, which states: *"The applicant must note that no structures will be allowed on the portion of Erf 323 Rooi Els to be sold."* Therefore, this will be a condition of approval.

The preference for the two parcels of land to maintain their current status and avoid future development has been addressed in the Deed of Sale. Any attempt by a future owner of the consolidated Erf 101 to deviate from these stipulations would constitute a clear violation of the law, providing grounds for the municipality to deny any building application that conflicts with these established conditions. This ensures that the intent of the original agreement is upheld; safeguarding the area's character and preventing unauthorized developments.

TOWN PLANNER'S RESPONSE

The zoning of "Undertermined" is unclear since this zoning allocation does not appear in the Title Deed and not in the Township Establishment Conditions and General Plan dated 1947.

There is no provision in the title deeds that restricts the consolidation of properties.

ELDIE BRINK**OBJECTION**

Mr Brink not only acted on behalf of the Friends of Rooi Els but also submitted an objection as a property owner. He has previously applied for the lease and closure of a portion of Rocklands Road in front of his house, citing security concerns related to perlemoen poachers. His application was rejected, and he hopes it would draw attention to the fact that the circumstances surrounding the current application also do not warrant disposal through lease or alienation.

APPLICANT'S RESPONSE

While his concerns are valid, the current application has been assessed based on its specific context and justifications provided by the applicant.

The objector's comparison of his application and the servitudes at the south end of Oceanview Drive to our client's situation is unfounded. His application for Erf 237 would likely face rejection, and it seems to serve merely as a tactical distraction.

Furthermore, the other servitudes Mr Brink references lack any resemblance to this application. On Oceanview Drive, the narrow 100m one-way road serves only six properties and terminates at Erf 324, a substantial section of mountainside that has faced legal challenges for decades and remains undeveloped due to infrastructure concerns. The servitude between Erven 279 and 280 was established to facilitate access for future housing on the still undeveloped Erf 324, which has been effectively protected from development by RERA, Rooi Els Conservancy, and numerous private objectors. This servitude, like others, is rarely utilized and bears no relevance to our client's longstanding, established driveway. The comparison is therefore completely inappropriate.

The objector's concerns regarding security and poachers are applicable to every property along the Rooi Els waterfront, including Erf 101 Rooi Els. This application will not alter this situation, nor would his; poachers tend to create their own paths regardless of any changes to the land. Additionally, the dune frontal area already benefits from three public road access points with parking, as mentioned in previous documents. Therefore, the concerns raised do not substantiate objections to this application.

The need for vehicle access to the applicant's property has been considered, and it is important to note that this application follows the appropriate processes and regulations set forth by the municipality. Different circumstances may warrant varying responses.

TOWN PLANNER'S RESPONSE

Each application is dealt with on own merit.

OBJECTION

Mr Brink's other concerns are addressed as follows:

PART A:

- 1. The objector claims that both the lease approval and the alienation application are based on unfounded circumstances and requests the rejection of the alienation application and cancellation of the renewed lease. The objector was unaware of the lease application due to being overseas.***

APPLICANT'S RESPONSE

The objector has not provided substantial evidence to support the claims of unfounded circumstances. As outlined in our report, the alienation of the road followed the proper procedures and received in-principle approval from the Council. Furthermore, our report addresses the merits of the application comprehensively.

TOWN PLANNER'S RESPONSE

Noted.

OBJECTION

- 2. The objector asserts that if the municipal manager had answered the PAJA questions as required, it would have revealed further issues with the current application.**

APPLICANT'S RESPONSE

The alienation of the road followed the proper procedures and received in-principal approval from the Council (refer to Property Administration's comments on the objections). The land use application also followed due process.

TOWN PLANNER'S RESPONSE

The application in terms of the Overstrand By -Law on Municipal Planning and the process has been duly followed by the applicant as prescribed.

The process of the Policy and Council decision is dealt with by the Department of Property Administration.

OBJECTION

- 3. The purpose stated for the alienation - improving vehicle access to Erf 101 – is described as unnecessary. The objector argues it is the municipality's duty to ensure access to public roads and that the applicant should independently manage access to their property. The objector highlights inconsistencies between the purpose of the lease and the current application, stating that previous measures by the applicant have obstructed public access.**

APPLICANT'S RESPONSE

As described in our application, the proposed land use application will enable our client to maintain the existing access to Erf 101 Rooi Els. Consequently, the actual use of this specific portion of the road will remain unchanged, serving solely as access to the property. The purpose of the land acquisition and subsequent application is to prevent vehicles from driving onto the property, as the road does not provide access to the ocean or any parking space. This situation often leads drivers to end up in the driveway, forcing them to reverse up a steep incline with poor visibility, where there is no space to turn around. Additionally, the overgrown nature of the undeveloped gravel road makes it difficult for drivers to assess the area upon entry.

TOWN PLANNER'S RESPONSE

The objection from a town planner's point of view remains in place as indicated in the comment for the acquisitions and alienation of the portion of road. Access from Hotel Crescent is available to the applicant.

OBJECTION

- 4. *The Senior Town Planner's comments are cited to emphasize that the lease is not supported, and that the applicant has adequate access to Erf 101 without restricting public use of Hotel Crescent.***

APPLICANT'S RESPONSE

While Town Planning does not support the application, the Property Administration department confirmed that there is no legislation or policy that prohibits the sale of the property. Access to the coastal area remains available approximately 80 meters away, ensuring that the public is not being denied access. Additionally, the ocean can be accessed from the parking area on Bathers Street and via several footpaths from Priestleya Street.

TOWN PLANNER'S RESPONSE

The comment remains in place.

OBJECTION

- 5. *The objector criticizes the Property Administration's narrow interpretation of the lease and alienation's legal implications, suggesting that existing leases make further disposal unnecessary.***

APPLICANT'S RESPONSE

There are several good reasons why our client applied for the alienation of the portion of road instead of continuing the lease:

- The alienation provides a permanent solution for our client's access, ensuring clarity in ownership and use, as opposed to the temporary nature of a lease.
- Alienating the portion of the road can help manage traffic flow and minimize congestion as previously described.
- Continuing the lease can lead to potential complications regarding renewals, conditions, and compliance. Alienation simplifies property management and reduces administrative burdens.
- Owning the land outright is a more valuable long-term investment compared to a lease, which may need to be renewed or renegotiated periodically.
- The alienation provides clearer legal rights compared to leasing, which can be subject to interpretation and varying terms.

TOWN PLANNER'S RESPONSE

Noted, this aspect falls within the domain of the Department of Property Administration, which will be dealt with in the process of transfer to Council.

OBJECTION**PART B:**

- 6. The objector requests the Municipal Planning Tribunal (MPT) to reverse the Council's in-principle approval for the alienation of a portion of Hotel Crescent, citing unlawful circumstances surrounding the approval process.**
- 7. The objector highlights that they raised concerns regarding the legality of the proposed sale prior to the approval, indicating that both the Mayco and Council were informed of these concerns.**
- 8. The objector submitted several questions under the Promotion of Administrative Justice Act (PAJA) regarding the rationale for deeming the public street portion as “non-viable,” questioning its usefulness for public access and parking.**
- 9. The municipal manager dismissed further correspondence from the objector, indicating that the municipality’s stance was clear and suggesting that legal recourse would be the appropriate next step.**
- 10. The objector insists that the answers to their PAJA questions must be provided to ensure transparency and legality in the decision-making process, suggesting that failure to do so indicates a lack of proper consideration by the municipality.**

APPLICANT’S RESPONSE

It is important to emphasize that the alienation was conducted in accordance with established procedures, with in-principal approval granted by the Council after thorough consideration. While the objector raises concerns about the legality of the approval, we maintain, and the municipality confirmed (comments attached) that all necessary legal frameworks were adhered to during the process. The Council considered the application in light of relevant policies and regulations.

As per the item that served before Council and the decision letter that was issued, it is the municipality’s position that the public street portion was deemed non-viable based on specific criteria related to its current use and overall context. The assertions about public access and parking capabilities were assessed in line with planning regulations. The decision of the municipal manager to limit further correspondence was most likely aimed at maintaining efficiency in the administrative process.

To conclude, the Municipal Planning Tribunal (MPT) will review all objections, including the request to reconsider the Council's decision. The MPT will thoroughly evaluate the merits of the application, and the concerns raised to ensure a fair outcome.

TOWN PLANNER’S RESPONSE

The MPT does not have the authority to reverse a decision by Council. It may however consider the land use application in front of them.

OBJECTION**PART C:**

- 11. The objector urges the Municipal Planning Tribunal (MPT) to require a public participation process before making a decision on the application for alienation of the portion of Hotel Crescent, citing its significance for the community.**
- 12. The objector references various legal frameworks and policies, including the Municipal Finance Management Act and municipal asset transfer regulations, arguing that even if public participation is not mandated for non-high-value disposals, it should be considered essential due to the community importance of the asset in question.**
- 13. The objector emphasizes that the road provides vital access to Rooi Els beach, making its disposal particularly relevant to public interests and community use.**
- 14. They reference practices from other municipalities, such as the City of Cape Town, which conduct public participation for all disposals regardless of value, suggesting that Overstrand Municipality should adopt a similar approach.**

APPLICANT'S RESPONSE

We cannot answer on behalf of the municipality whether the current legislation does not mandate public participation for non-high-value disposals. As consultants that were not involved in the property administration application; therefore, we cannot speak on behalf of the municipality. We can only assume that the decision-making process followed in this instance adhered to the legal requirements set forth in all relevant legislation and associated regulations. There is considerable reference to Hotel Crescent as a public road. The road along the seafront from our client's driveway to Rocklands Road, known as Arctotis Road, was de-proclaimed. When this occurred, the remaining section of the driveway was renamed as an extension of Hotel Crescent, which runs over the top of the driveway into Gazania. According to our client this de-proclamation was legally recognized and advertised for public comment in the Provincial Gazette about 30 years ago, making it part of the protected dune front area. For over 50 years, there has been no usable road along the dune front from our client's driveway to Rocklands Road. Currently, Hotel Crescent begins at the boundary of Erf 101 and, 20 meters up our client's driveway, intersects with Gazania Road at a T-junction. If the sale goes through, it will extend east for 100 meters to Slipway Road. This change does not impact any neighbours or the community. The reference to practices in other municipalities, such as the City of Cape Town, highlights an important aspect of local governance and we agree that a more inclusive approach to public participation for all disposals could enhance transparency and community relations. The MPT will carefully consider the objection and evaluate the merits of the application, especially regarding its potential impact on community access to the beach. However, we believe that the issue of beach access has been adequately addressed in both the property administration and land use applications.

TOWN PLANNER'S RESPONSE

It should be noted that the MPT can only evaluate the land use application as determined by the Overstrand By-Law on Municipal Planning.

OBJECTION**PART D:**

15. ***Mr Brink argues that the Municipal Planning Tribunal (MPT) has the authority to make independent decisions regarding land use applications, without being bound by the prior in-principle approval from the Council. The objector emphasizes that a public participation process should precede any decisions about alienating the road, given its significance to the Rooi Els community as a means of accessing the beach. They assert that the road access provided by Hotel Crescent constitutes a basic municipal service, and thus its alienation is prohibited under the Local Government: Municipal Finance Management Act. The objector calls for the application to be referred to the Council based on these grounds.***

APPLICANT'S RESPONSE

We appreciate the concerns raised regarding the authority of the MPT and the importance of public participation. The MPT is indeed empowered to assess land use applications based on relevant legislation, and it will consider all factors, including community access to public amenities. However, the prior in-principle approval by the Council followed due process, ensuring that the application was thoroughly reviewed before reaching Council. We believe that the Council's decision reflects a balanced consideration of public interests, including access to the beach. While the objection highlights the significance of road access for the community, our report indicates that the existing access provisions have been adequately addressed in both the property administration and land use applications.

We submit that the existing processes are sufficient and that a further public participation phase will be superfluous at this stage.

TOWN PLANNER'S RESPONSE

The applicant's response is supported.

OBJECTION**PART E:**

The objector asserts that the portion of Hotel Crescent is not a "non-viable" piece of land and therefore should not be subject to alienation or leasing under the Overstrand Municipality's policies. The objector emphasizes that Hotel Crescent serves as a public road intended for access to the Rooi Els beach and is vital for public vehicles and pedestrians. They argue that the Mayoral Committee's in-principle approval for alienation contradicts the municipality's own policies regarding immovable property.

APPLICANT'S RESPONSE

While the objection argues that the road is crucial for public access, our assessment determined that the proposed alienation does not impair existing access arrangements for the community.

The Mayoral Committee's approval followed a thorough evaluation of the property in line with municipal policies, considering the broader implications for land use and community access. We stand by the conclusion that the proposed changes align with the policies governing the administration of immovable property.

To conclude: Overstrand Municipality's Property Administration Department has provided us with their comments on the objections raised – see attached annexure. The department has only addressed the aspects related to the sale and have made it clear that they will not be dealing with the lease matters (which have already been concluded, and the process is unrelated to the lease).

Similarly, they are not addressing the PAIA (Promotion of Access to Information Act) aspect.

The core of the Property Administration Department's comments is that access to the sea is not considered a basic municipal service and that no "pre-public participation" process is required. The advertisement that they have placed now constitutes public participation in terms of Section 14 of the MFMA (Municipal Finance Management Act).

TOWN PLANNER'S RESPONSE

All aspects with regard to the Policy will be dealt with by the Department of Property Administration in their item to Council with regard to transfer.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

Refer to point 7 of this report.

9. MUNICIPAL ASSESSMENT OF COMMENTS

Refer to point 7 of this report.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

10.1 Background

N/A

10.2 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

The application is in line with the planning objectives applicable to this application.

The objectives relating to:

Spatial Justice

Not applicable.

Spatial Sustainability

The proposed application will not impede on any high potential agriculture and environmental aspects.

Efficiency

The application does not require any additional municipal services.

Spatial Resilience

Not Applicable.

Good Administration

The applicant did comply with procedures and public participation process as requested.

10.3 (In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)

Same as Point 10.2 above.

10.4 (In)consistency with the IDP/Various levels of SDF's/Applicable policies

The application is in line with the SDF 2020.

10.5 (In)consistency with guidelines prepared by the Provincial Minister

N/A

10.6 Impact on Municipal Engineering Services

Existing services are provided by the Municipality.

10.7 Outcomes of investigations/applications i.t.o other legislation

N/A

10.8 Existing and proposed zoning comparisons and considerations

The existing zoning is Road and the proposed is Residential Zone 1.

Consideration must be given whether the road closure is in the best interest of the town or an individual which will be dealt with under point 12.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

Not Applicable.

12. THE DESIRABILITY OF THE PROPOSAL

The objections have been dealt with extensively and the discussion will relate to the desirability of the application.

The Council has given a principle approval for the alienation of a portion of road to Erf 101 on the bases that it is non-viable. The Merriam-Webster definition is as follows: *not capable of living, growing, developing, or functioning successfully*. It is clear from an operational and engineering point of view, the portion of road is not viable, since it will not be built and if constructed, the expense of maintenance in a rural town with little to no traffic utilising the road.

Be that as it may, the road has been established in 1947 and does provide access to Erf 101. It also makes it possible for the general public to access the coastal area from this road. At present it is not vehicles but pedestrians. The reasoning for the past lease was that the access to Erf 101 was obtained from the closed road section in 1999, which has been rezoned to Open Space Zone 1 (Nature Reserve). The reasons provided by the applicant indicate that the access to Erf 101 is used by the general public to access the coast. The topography is as such that visitors cannot park and then make use of the applicant's erf to turn. It is an inconvenience for Erf 101. The applicant did indicate that there is sufficient access to the coast 80m away from the site for the general public.

The reasons are not sufficient to close of an existing road for access to Erf 101. The erf always had access from Hotel Crescent and there is no need to close the road. The main reason it seems is the inconvenience of the general public that transgress onto Erf 101 with vehicles in order to turn and or movement in close proximity of the erf. One of the objectors did indicate a possible solution is to ensure a pedestrian lane for people to access the coastal strip, which may be a solution. However, the applicant did indicate that the public can access the coastal strip from Priestley Road, the question arises why not Hotel Crescent as it is a proclaimed road. Thus, the erf owners along Priestley Road now have to deal with the overflow of pedestrians due to the proposed closure of Hote Crescent. The question is why; the closure of the road is only to the benefit of Erf 101 who has known that the application erf is located adjacent to a public road that can at any time be constructed.

The reasoning behind the application is noted, but it is only desirable, for Erf 101, whose erf is 909m² in extent. The house is set back form the road and the public open space zone 1 and there is not sufficient reason for the application. The non viability of the road is a perspective from an engineering side. The environmental sections comments refer to the area within the Open Space zone 1 (Nature reserve) that has been used as access and does not relate to the road per se. From a town planning point of view the road is viable for public access to the coast, including the owner's access to Erf 101.

The area of Rooi Els is developing with the construction of new buildings, more permanent residents and tourists. Therefore, if existing access points are available to the coast. It should be utilised and not removed creating a situation in future overloading the remaining access points, to the detriment of owners alongside remaining access points.

CONCLUSION:

The application is not supported in its current format.

13. RECOMMENDATION

1. that the objections be noted.
2. that the application in terms of Section 16(2)(d) in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the subdivision of Erf 323 Rooi Els into 2 portions, namely a Portion A ($\pm 358\text{m}^2$) and a Remainder (*extent unknown*), **not be approved**, in terms of the provisions of Section 61 of the By-Law;
3. that the application in terms of Section 16(2)(a) in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 of for the rezoning of subdivided Portion A ($\pm 358\text{m}^2$) from Transport Zone 2: Road and Parking to Residential Zone I: Single Residential (SR1), **not be approved**, in terms of the provisions of Section 61 of the By-Law;
4. that the application in terms of Section 16(2)(e) in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the consolidation of subdivided and rezoned Portion A ($\pm 358\text{m}^2$) with Erf 101, Rooi Els to create a single residential property of $\pm 1296\text{m}^2$ in extent, **not be approved**, in terms of the provisions of Section 61 of the By-Law;
5. that the application in terms of Section 16(2)(n) in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to accommodate the closure of a portion of public road (subdivided Portion A $\pm 358\text{m}^2$), **not be approved**, in terms of the provisions of Section 61 of the By-Law.
6. that the applicant and persons who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above decision.

14. REASONS FOR RECOMMENDATION

- ❖ There is no reason to close the road Hotel Crescent.
- ❖ It will prohibit the public to use an existing access point to the coast.
- ❖ Access to Erf 101 is available from Hotel Crescent.
- ❖ The owner of Erf 101 had full knowledge that the erf is bordering a public road, which can at any time be constructed.
- ❖ An existing access, Hotel Crescent, is available for public access to the coast and it will be irresponsible to overload other existing access points to the benefit of one owner.

15. ANNEXURES

- Annexure A: Locality Plan
- Annexure B: Motivation Report
- Annexure C: Site Development Plan & Survey plan indicating transgressions
- Annexure D: Objections & one (1) support letter received

- Annexure E: Applicant's response to the objections received
Annexure F: Property Administration decision letter dated 5 March 2024 &
Minutes of the Mayoral Committee meeting
Annexure G: Services Report

SIGNATURE**REGISTERED PLANNER**

Name: **H OLIVIER**

SACPLAN registration number: **B/8128/2004**

Signature: _____

Date: _____

**PROPOSED PARTIAL PUBLIC STREET CLOSURE,
SUBDIVISION, REZONING AND CONSOLIDATION****ERF 101 ROOI ELS AND A PORTION OF
REMAINDER ERF 323 ROOI ELS (ROAD)****OVERSTRAND MUNICIPALITY****MOTIVATION REPORT****1. BACKGROUND**

Mrs J.A. Baigrie, the owner of erf 101 Rooi Els, and Mrs Anja le Roux on behalf of the Overstrand Municipality, the owner of Remainder erf 323 Rooi Els, have instructed the company Plan Active Town and Regional Planners to apply for a partial public road closure, subdivision and rezoning of Remainder erf 323 Rooi Els and consolidation with erf 101 Rooi Els.

The owner of erf 101 Rooi Els, Mrs J.A. Baigrie, applied to purchase a portion of Remainder erf 323 Rooi Els (public street) that is ±358m² in extent from the Overstrand Municipality. Subsequently the Mayoral Committee resolved at their meeting held on 28 February 2024 that a portion of the public street (Hotel Crescent), namely Remainder erf 323 Rooi Els, be sold to the above mentioned owner of erf 101 Rooi Els and that a portion of Remainder erf 323 Rooi Els be subdivided, rezoned and consolidated with erf 101 Rooi Els. Refer to the copy of the decision letter dated 5 March 2024. A copy of the minutes of the Mayoral Committee meeting is also attached.

Mrs Baigrie is the owner of erven 101 and 336 Rooi Els. Our client wants to purchase the portion of road she has been using for the past thirty years to provide a more convenient vehicle access driveway to Erf 101 Rooi Els. The portion made available to acquire is positioned between erven 101 and 336 Rooi Els.

The portion to be subdivided, rezoned and consolidated with erf 101 Rooi Els is a portion of road reserve and due to the locality, shape, intended use and size of the property, it cannot be developed independently, and thus it can be classified as a non-viable property. The portion of the public road (Remainder erf 323 Rooi Els) is not considered part of the future road planning upgrades for the area and will be rezoned to Residential Zone 1 and consolidated with erf 101 Rooi Els.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(n) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the closure of a portion of the public road, Remainder erf 323 Rooi Els;
- Chapter 4, Section 16(2)(d) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the subdivision of Remainder erf 323 Rooi Els;
- Chapter 4, Section 16(2)(a) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the rezoning of Portion A, a portion of Remainder erf 323 Rooi Els, from Transport Zone 2 to Residential Zone 1;
- Chapter 4, Section 16(2)(e) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the consolidation of Portion A, a portion of Remainder erf 323 Rooi Els with erf 101 Rooi Els.

3. GENERAL APPLICATION INFORMATION

3.1 PROPERTY DESCRIPTION

Erf 101 Rooi Els is situated at 13 Hotel Crescent. Remainder erf 323 Rooi Els is a public road (Hotel Crescent). Refer to the enclosed locality map.

Erf 101 Rooi Els is held by title deed no. T30415/1980 and is 938m² in extent. The extent of Remainder erf 323 Rooi Els is unknown since it is a remainder public road portion. Remainder erf 323 Rooi Els is held by title deed no. T13367/1948.

Erf 101 Rooi Els is developed and characterized by a residential dwelling, ancillary outbuildings and a garden area. The approved section of Remainder erf 323 Rooi Els to be acquired by our client is a portion of vacant land with a gravel road (road reserve) that is used to gain access to erf 101 Rooi Els.

3.2 ZONING

Erf 101 Rooi Els is zoned Residential Zone 1: Single Residential. Remainder erf 323 Rooi Els is zoned Transport Zone 2: Road and Parking.

Surrounding properties are also zoned Residential Zone I: Single Residential and Transport Zone 2: Road and Parking purposes and being utilised as such.

3.3 LAND USE

Erf 101 Rooi Els is used for single residential living purposes. A dwelling with outbuildings and a garden is established on the property. The approved section of Remainder erf 323 Rooi Els to be acquired by our client is a portion of vacant land with a gravel road (road reserve) that is used to gain access to erf 101 Rooi Els. Refer to the aerial photograph below.



Image 1: Aerial photograph of erven 101 and Remainder erf 323 Rooi Els

Land uses that surround the subject properties are single residential dwellings, public open spaces and public roads.

3.4 PROPOSED APPLICATION

- The closure of a portion of public road, Remainder erf 323 Rooi Els, of $\pm 358\text{m}^2$ in extent in terms of Chapter 4, Section 16(2)(n) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020;
- The subdivision of Remainder erf 323 Rooi Els in terms of Chapter 4, Section 16(2)(d) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, into two portions as follows:
 - Portion A: $\pm 358\text{m}^2$
 - Remainder: Extent unknown;

- The rezoning of Portion A, a portion of Remainder erf 323 Rooi Els, from Transport Zone 2: Road and Parking to Residential Zone 1: Single Residential, in terms of Chapter 4, Section 16(2)(a) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020;
- The consolidation of Portion A, a portion of Remainder erf 323 Rooi Els, of $\pm 358\text{m}^2$ with erf 101 Rooi Els of 938m^2 in terms of Chapter 4, Section 16(2)(e) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to create a newly consolidated SR1 portion of $\pm 1296\text{m}^2$.

Remainder erf 323 Rooi Els is a public road situated adjacent to erf 101 Rooi Els. The owner of erf 101 Rooi Els (our client) has been using a portion of erf 323 Rooi Els (Hotel Crescent) as part of her driveway and as an entrance to her property for the past thirty years. Our client applied for the renewal of the lease of the portion of road for a further period of nine years and eleven months. The renewal of the lease was granted in October 2023.

The owner of erf 101 Rooi Els, Mrs J.A. Baigrie, applied to purchase a portion of Remainder erf 323 Rooi Els (public street) that is $\pm 358\text{m}^2$ in extent from the Overstrand Municipality. Subsequently the Mayoral Committee resolved at their meeting held on 28 February 2024 that a portion of the public street (Hotel Crescent), namely Remainder erf 323 Rooi Els, be sold to the above mentioned owner of erf 101 Rooi Els and that the portion of Remainder erf 323 Rooi Els be subdivided, rezoned and consolidated with erf 101 Rooi Els. Refer to the copy of the decision letter dated 5 March 2024. A copy of the minutes of the Mayoral Committee meeting is also attached. The land acquisition plan that accompanied the application is included below:



Image 2: Approved land acquisition plan

It is now required that an application be lodged for:

- the closing of a portion of public road, Remainder erf 323 Rooi Els;
- the subdivision of Remainder erf 323 Rooi Els into two portions;
- the rezoning of a portion of Remainder erf 323 Rooi Els from Transport Zone 2: Roads and Parking to Residential Zone 1: Single Residential;
- the consolidation of Portion A, a portion of Remainder erf 323 Rooi Els, with erf 101 Rooi Els.

In order to subdivide and consolidate a portion of erf 323 Rooi Els (public road) with erf 101 Rooi Els, it is required that this portion of the public road be closed, and the road portion be rezoned.

First, to give effect to the approval from Property Administration, it is proposed to subdivide erf 323 Rooi Els (Hotel Crescent) as follows:

TOTAL AREA	Unknown (municipal road)
AREAS FOR SUBDIVISION	Portion A: $\pm 358\text{m}^2$ Remainder: Unknown
OWNER	Overstrand Municipality
TITLE DEED	T13367/1948

Secondly, an application is submitted for the rezoning of Portion A, a portion of erf 323 Rooi Els, from Transport Zone 2: Roads and Parking to Residential Zone I: Single Residential - the same zoning as erf 101 Rooi Els.

It is then proposed to consolidate Portion A, a portion of erf 323 Rooi Els, with erf 101 Rooi Els as follows:

TOTAL EXTENT OF CONSOLIDATION	$\pm 1296\text{m}^2$
PROPOSED CONSOLIDATION	Portion A: $\pm 358\text{m}^2$ Erf 101: 938m^2

Refer to the Subdivision and Consolidation Plan attached.

The portion to be acquired is a portion of road reserve and due to the locality, shape, intended use and size of this portion of road, it cannot be developed independently, and thus it can be classified as a non-viable property. Overstrand Municipality's Property Administration Department confirmed that non-viable property can in terms of the current Administration of Immovable Property Policy be alienated directly to an adjoining property owner, subject to certain conditions. It must be mentioned that no other adjoining property owner needs to consent to this alienation as both adjoining properties (erven 101 and 336 Rooi Els) are owned by our client.

Special conditions were specified with reference to the approval of the sale of a portion of erf 323 Rooi Els to the owner of erf 101 Rooi Els. Some of the conditions worth noting:

2. *that the direct alienation is possible as the said portion of Remainder Erf 323 Rooi Els can be classified as a non-viable property;*
3. *that a condition for the alienation will be that the said portion of Remainder Erf 323 Rooi Els must be consolidated with the adjoining property of Ms Jennifer Anne Baigrie, being Erf 101 Rooi Els;*
4. *that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Remainder Erf 323 Rooi Els, which condition must be registered against the title deed of the consolidated property;*

7. *that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).*

From the above it is evident that the municipality considers the portion for alienation as a non-viable property. No buildings or structures may be constructed on Portion A, a portion of erf 323 Rooi Els after subdivision, rezoning and consolidation has taken place except for a boundary wall or fence. In addition, the portion to be alienated is not required for the provision of basic municipal services.

The proposed land use application will allow our client to retain the existing access. Subsequently, the actual use of this specific portion of the road will remain unchanged (for access to erf 101 Rooi Els). The purpose of the land acquisition and subsequent land use application is to avoid vehicles driving onto the property as the road does not provide vehicular access to the ocean nor parking space, which results in drivers ending up in her driveway and forcing such drivers to reverse back up the steep incline with poor visibility as there is also no space to turn around. Drivers are not able to observe this when entering the undeveloped gravel road because of its overgrown nature.

In addition, the proposed land use application for erven 323 and 101 Rooi Els will also take the burden from the municipality for the maintenance of this portion of the public street.

3.5 CHARACTER OF THE ENVIRONMENT

The proposal will not change the primary land use of the subject property as this application constitutes the inclusion of a portion of public street that is $\pm 358\text{m}^2$ in extent that will be used as an extension of erf 101 Rooi Els. The impact on the character of the area will therefore be minimal. The proposed street closure, subdivision, rezoning and consolidation of erven 323 and 101 Rooi Els will not have a negative impact on the neighbouring properties or residential character of the area.

3.6 POTENTIAL OF THE PROPERTY (DESIRABILITY OF THE PROPOSED UTILIZATION)

Portion A, a portion of erf 323 Rooi Els, is a non-viable portion of a public street that is already utilised as an entrance to erf 101 Rooi Els. Subsequently the land use being a vacant portion of a public street will remain the same and will be used as an extension of erf 101 Rooi Els to retain and improve the access to the subject property from Hotel Crescent.

No additional buildings or erven are proposed that will put strain on municipal services. The municipality will instead be alleviated from the burden of the upkeep of this portion of public street that has no function as a public road. This application is merely to incorporate a non-viable portion of a public street that is $\pm 358\text{m}^2$ in extent with an adjoining residential erf that will continue to be used for access to the subject property.

3.7 ECONOMIC IMPACT

The proposed public street closure, subdivision, rezoning and consolidation will not have a negative impact on the future land use of erven 323 and 101 Rooi Els. Property values of surrounding erven will not be negatively affected by the proposed application since the portion of road (erf 323 Rooi Els) is already used to give access to the existing garages on erf 101 Rooi Els and the subject property is already considered an extension of erf 101 Rooi Els.

The proposed road closure, subdivision, rezoning and consolidation will have a low impact on the local economy. The proposed land use application will ensure that the property owner of erf 101 Rooi Els meets all the conditions of approval for the acquisition of a portion of public street (erf 323 Rooi Els).

The municipality will receive funds for selling the road portion, versus an unconstructed public road that has no income potential to the municipality or need in terms of road planning for the area.

3.8 SOCIAL IMPACT

The proposed closure of a portion of public street, subdivision, rezoning and consolidation will have a low but positive impact on the social status quo of the area.

By allowing the acquisition of land (and in turn approving the land use application) it will eliminate the possible maintenance related concerns an unconstructed road portion can have on the neighbouring residential properties. In addition, this portion or unbuilt road has been used for access to erf 101 Rooi Els for the past 30 years with no negative impact on the social wellbeing of the surrounding community. The proposal will be beneficial, and no negative impacts are anticipated.

3.9 COMPATIBILITY WITH SURROUNDING LAND USES

The subject properties are situated in a residential area. Only the road portion will be rezoned to allow the consolidation with the neighbouring erf 101 Rooi Els. The zoning of the newly consolidated erf will be SR1 therefore the proposed land use application is compatible with the surrounding land uses. In addition, the proposed erf size of $\pm 1296\text{m}^2$ after road closure, subdivision, rezoning and consolidation is still compatible with surrounding erf sizes.

The proposal to close a portion of public street, subdivide, rezone and consolidate the road portion with erf 101 Rooi Els will not result in any erven in the immediate vicinity to be land locked. All erven in the immediate vicinity will retain their existing accesses.

In addition, no new structures (except boundary wall and fences) will be allowed on the road portion to be closed once it has been consolidated as previously discussed. The look and feel of the proposed land use are in line with the general look and feel of the existing residential character of the area. Thus, there will be no impact on the character of the area.

The proposal will not hinder general coastal access. It must be noted that there is access to the coastal area close enough - approximately 80 metres further on to the east and west. Thus, the public is not being denied access to the coastal area. Refer to the image below:



Image 3: Access to the coastal area

The current access to erf 101 Rooi Els is via erven 323 and 368 Rooi Els. Our client has been leasing the portion of road from the municipality for nearly ten years with no complaints received. As per the property administration approval and as indicated on the subdivision and consolidation plan, our client will change the access to the property to exclude Erf 368 Rooi Els. This portion of erf 368 Rooi Els must be rehabilitated. The area that requires rehabilitation is zoned as Open Space Zone 1: Nature Reserve (area indicated on the land acquisition plan) and the Overstrand Biodiversity Manager will be notified of the rehabilitation plan.

3.10 IMPACT ON EXTERNAL ENGINEERING SERVICES

3.10.1 PROVISION OF SERVICES

All services on erf 101 Rooi Els already exist and the inclusion of a portion of erf 323 Rooi Els will not require any additional services. The proposal will have no impact on the scale and usage of the existing available services since no additional loading of the existing civil infrastructure is anticipated. Additional services (if required) will be provided to the satisfaction of the Overstrand Municipality.

As stipulated in the approval conditions the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

3.10.2 TRAFFIC IMPACT AND ACCESS

Access to erf 101 Rooi Els is currently over both a portion of erf 368 and 323 Rooi Els (Hotel Crescent). As per the property administration approval and as indicated on the subdivision and consolidation plan, our client will change the access to the property to exclude Erf 368 Rooi Els. This portion of erf 368 Rooi Els will be rehabilitated. The existing driveway on Portion A, a portion of erf 323 Rooi Els, will remain unchanged and will continue to provide access to erf 101 Rooi Els.

The subject property will still be used for single residential purposes only, no additional erven are proposed and therefore the impact on the traffic flow in the area will remain unchanged.

3.11 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.11.1 HERITAGE VALUE

The application does not involve changing the character of a site larger than 5 000m². In addition, no development is proposed for the newly consolidated property. Consequently, the proposed land use application does not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Both erven 101 and the relevant road portion (a portion of erf 323 Hermanus) are situated within the Heritage Overlay Zone: Special Areas as determined by the Overstrand Municipal Growth Management Strategy (2010). In addition, the subject properties fall within the Heritage Protection Overlay Zone: Local Area (2020) demarcated for the Rooi Els & Hangklip Smallholdings area.

No new development is proposed with this application. Erf 101 Rooi Els is already developed and the road portion to acquire is an existing gravel road. The status quo of the newly consolidated residential property will remain. The subject properties are not associated with any important persons or groups or important events and activities. As a result, there will be no impact on the heritage value of the area.

Considering the above it is evident that the proposed public street closure, subdivision, rezoning and consolidation will not hinder any future land use applications on the subject erven. From the above it is evident that the proposed application does not encompass any heritage significance and therefore the impact on the heritage value of the area will be kept to a minimum.

3.11.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed closure of a portion of public street, subdivision, rezoning and consolidation (land use application) to create a newly consolidated single residential erf do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

The land acquisition application was circulated to Overstrand's Environmental Management Services Department (EMS) for comment / consent. The EMS confirmed the department has no objection to the proposed application. The subject properties do however fall within the Overstrand Environmental Management Overlay Zones (EMOZ). Erf 368 Rooi Els (that formed part of our client's driveway) is positioned within the Coastal Protection EMOZ. EMS suggested that the entrance to the property must only be from erf 323 Rooi Els that already has a Transport Zone 2: Roads and parking zoning. The proposal is therefore to subdivide, rezone and consolidate a portion of erf 323 Rooi Els only. The portion of erf 368 Rooi Els that requires rehabilitation is zoned as Open Space Zone 1: Nature Reserve. EMS indicated that their department must be notified of a rehabilitation plan for this area to be excluded from the application at hand.

In light of the above comments received from EMS the Municipal Manager approved the land acquisition application subject to the condition that the property owner of erf 101 Rooi Els be required to make vehicular access to her property from Hotel Crescent on Erf 323 Rooi Els only and rehabilitate the portion of erf 368 Betty's Bay that she has used as part of her driveway.

Should the future development (if any) of the newly consolidated residential property trigger a NEMA application, due process will be followed prior to the commencement of construction on site.

3.12 TITLE DEED

Title deeds no. T30415/1980 and T13367/1948 have no restrictions that need to be removed for this application to be approved. A conveyancer's certificate is not included with this application since the title deeds are straight forward.

There are no bonds registered against erven 101 and 323 Rooi Els.

3.13 FORWARD PLANNING AND LAND USE DOCUMENTS

3.13.1 OVERSTRAND SPATIAL DEVELOPMENT FRAMEWORK (2020)

The Overstrand Spatial Development Framework (2020) earmarks the area where erven 101 and 323 Rooi Els are situated, for urban development purposes. Refer to the Spatial Development Framework Plan (2020) below. The zoning and use of the newly consolidated property will remain unchanged (Residential Zone I: Single Residential for single residential use). As a result, the impact of the proposed road closure, subdivision, rezoning and consolidation on the spatial integrity of the area will be minimal and is therefore consistent with the Overstrand SDF (2020).



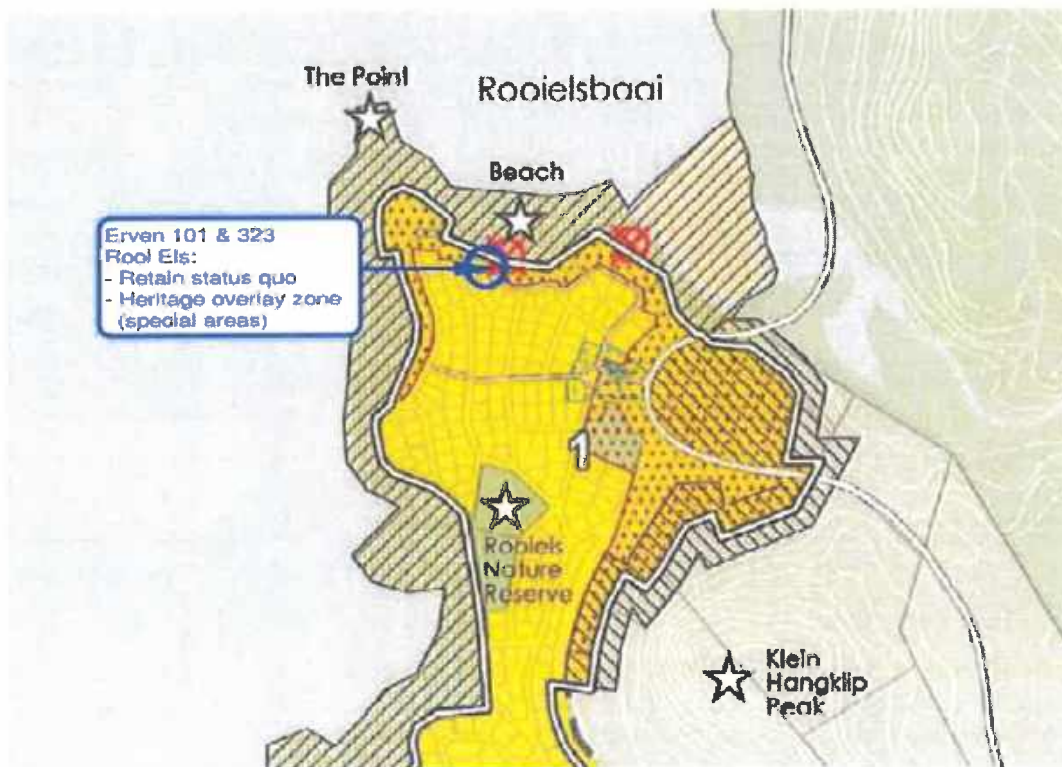
Map 1: Overstrand SDF 2050 Spatial Proposal: Rooi Els

3.13.2 OVERSTRAND MUNICIPAL GROWTH MANAGEMENT STRATEGY (2010)

The Overstrand Municipality's densification policy stipulates that it is important to enhance and protect the character of the existing low-density residential area such as

Rooi Els, while still sensitively densifying where appropriate. This ensures that a wide range of erf sizes and types of development are available within the greater Overstrand area.

The Overstrand Municipal Growth Management Strategy (OMGMS, 2010) specifies that erven 101 and 323 Rooi Els are part of Planning Unit no. 1 that consists of the established residential area. The subject properties are also earmarked as a heritage special area. Access to public amenities are also indicated in red on the map. Refer to the extract from the OMGMS (2010) Proposals Plan below for Rooi Els below:



Map 2: Overstrand Municipal Growth Management Strategy (2010): Rooi Els

This application does however not propose to create any additional portions, nor does it propose the construction of an additional dwelling unit on the subject property. The density / status quo will therefore remain unchanged.

It is not proposed to deny the public access to the beach / coastal area. There is access to the coastal area in close proximity to the application site - approximately 80 metres further to the east and west as indicated on the coastal access map included

in this report. As a result, the public is not being denied access to the coastal area. In addition, access to the ocean is available at the parking area in Bathers Street and by various footpaths from Priestleya Street.

No impact on the heritage value of the area is anticipated since no new development is proposed.

From the above it is evident that the proposed partial street closure, subdivision, rezoning and consolidation adhere to the spatial planning policies for the Rooi Els area and subsequently fall within the existing planning for the Rooi Els area.

3.14 PLANNING PRINCIPLES

The planning principle of spatial resilience is not applicable to this application.

Spatial justice: This principle addresses the need to address the past imbalances regarding opportunity. This application is for erven as per the establishment of the existing Rooi Els Township and this principle does therefore not apply to this application.

Spatial sustainability: The newly consolidated property is developed in line with the Residential Zone I: Single Residential land use parameters as stipulated in the Land Use Scheme. Any future proposal that deviates from the SR1 parameters, will have to follow a separate land use application. In addition, the proposed closure of a portion of public street, subdivision, rezoning and consolidation will be in line with the layout pattern and erf sizes applicable to the area. The proposed land use application is to an improved erf within an established residential area and therefore will not impact on urban sprawl, or upon a sensitive environment.

It is submitted that the newly consolidated residential erf is compatible with the character of the area and will not impact negatively on the existing rights of anyone else as motivated in this report. The impact on the biophysical environment will also be kept to

a minimum (i.e. no impact on natural, heritage or agricultural resources). Furthermore, the proposed application will have no adverse impact on the spatial sustainability of the area and is in keeping with the existing residential area as discussed in this report.

Efficiency: The Property Administration department confirmed that this portion of Hotel Crescent (public road) is a small non-viable portion of a street that is $\pm 358\text{m}^2$ in extent. This portion of the public street has no function as a street and is not required for the upgrading and / or installation of municipal services in future. The property can be utilised much better by the neighbouring landowner by incorporating it with her property. Subsequently, the Overstrand Municipality will not have the burden to upkeep the road reserve. The Overstrand Municipality also gains from a financial point of view since a portion of erf 323 Rooi Els is purchased from the Overstrand Municipality at market value.

Good administration: Our Company is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020.

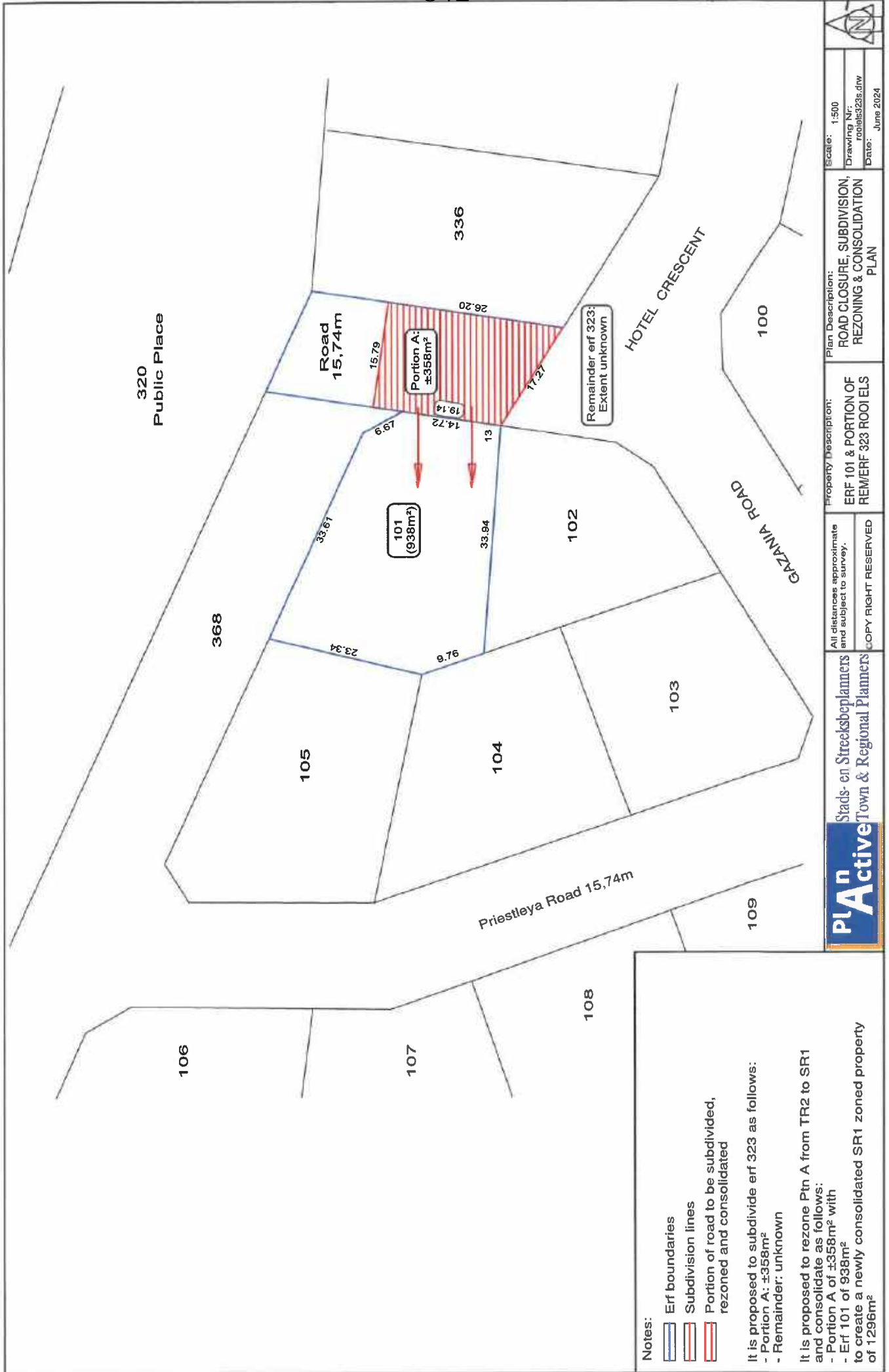
4. RECOMMENDATION

When this application is evaluated it is important to take note of the following:

- This application is to incorporate a small non-viable portion of a public street that is $\pm 358\text{m}^2$ in extent with an adjoining residential erf that will be used to gain access from Hotel Crescent;
- All services already exist. Additional services will not be required;
- Access to the subject property will remain unchanged and the impact on the traffic will also remain unchanged;

- The proposed public street closure, subdivision, rezoning and consolidation are compatible with the existing built character of the area;
- The proposed portion of public street closure, subdivision, rezoning and consolidation will not have a negative impact on the land values of the surrounding erven;
- The Overstrand Municipality gains capital since a portion of erf 323 Rooi Els is purchased from the municipality at market value;
- The municipality will be alleviated from the burden of upkeeping a portion of street (road reserve) that has no function as a public street;
- The proposed portion of public street closure, subdivision, rezoning and consolidation will not have a negative impact on the surrounding land uses in the area;
- The proposal is compatible with the existing built character of the area;
- Impact on the traffic will be kept to a minimum;
- There are no heritage aspects that will negatively impact the application;
- There are no environmental aspects that will negatively impact the application and the application will not have a negative impact on any environmental factors;
- The proposal is compatible with the spatial planning strategies for the area;
- The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013).

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would approve the partial public street closure, subdivision, rezoning and consolidation applicable to erven 101 and 323 Rooi Els.



Scale:	1:500
Drawing Nr:	ro01e1323s.dwg
Date:	June 2024

Plan Description:
ROAD CLOSURE, SUBDIVISION,
REZONING & CONSOLIDATION
PLAN

Property Description:
ERF 101 & PORTION OF
REWERF 323 ROOIELS

All distances approximate
and subject to survey.
COPY RIGHT RESERVED

Stads- en Streeksbeplanners
Town & Regional Planners

Notes:

- Erf boundaries
- Subdivision lines
- Portion of road to be subdivided, rezoned and consolidated

It is proposed to subdivide erf 323 as follows:

- Portion A: ±358m²
- Remainder: unknown

It is proposed to rezone Ptn A from TR2 to SR1 and consolidate as follows:

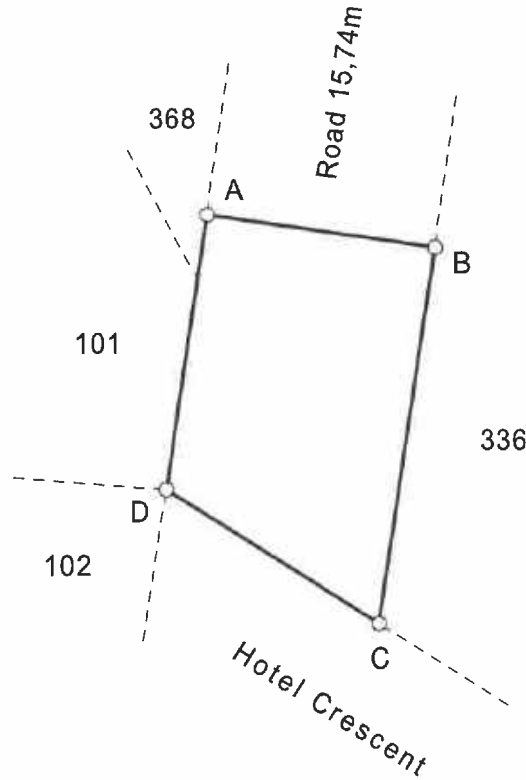
- Portion A of ±358m² with
- Erf 101 of 938m²

to create a newly consolidated SR1 zoned property of 1296m²

SIDES metres	ANGLES OF DIRECTION	CO-ORDINATES Y System: WG 19° X		SG No.		
		Constants	0,00		+3 700 000,00	
A B	15,79	278.24.30	A	+16 923,22	+96 883,88	Approved for SURVEYOR- GENERAL
B C	26,20	8.32.30	B	+16 907,60	+96 886,19	
C D	17,27	122.32.40	C	+16 911,49	+96 912,10	
D A	19,14	188.30.00	D	+16 926,05	+96 902,81	
STEEN 6		60		+15 233,59	+95 016,63	
STEEN 9		63		+16 445,42	+97 814,75	

BEACON DESCRIPTIONS

A,B,C,D ... 12mm Iron peg



Scale : 1 / 500

The figure ABCD represents 358 square metres of land, being

Erf 398 Rooi Els

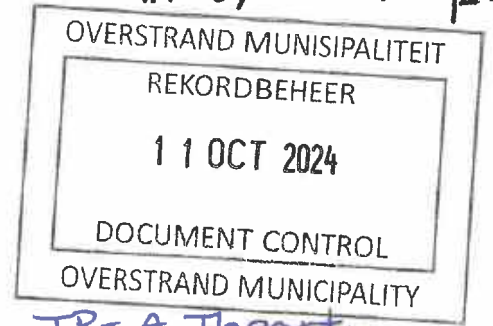
situate in Rooi Els Township,
in Overstrand Municipality
Administrative District of Caledon

LA van Dyk
LA van Dyk

Western Cape Province
Surveyed in June 2024 by me

Professional Land Surveyor
Registration Number: PLS 1069

This Diagram is annexed to No. Registrar of Deeds	The original diagram is S.G. No.	File:
	Transfer No.	S.R. No. G.P. TP 690 LD Comp AH-4BA/Y34 (352) LPI No. C0130019



TP - A Theart (Hvd Stoop)



ROOIELS RATEPAYERS ASSOCIATION

11 October 2024

e-mail – loretta@overstrand.gov.za

ERF 101, 13 HOTEL CRESCENT, ROOI ELS AND A PORTION OF ERF 323, HOTEL CRESCENT, ROOI-ELS: APPLICATION FOR SUBDIVISION, REZONING, CONSOLIDATION AND CLOSURE OF A PUBLIC PLACE

The above application with a closing date of 18 October 2024, refers.

This application was considered at the EXCO meeting of the Rooiels Ratepayers Association (RERA) on 10 October 2024. The following aspects of this application are noted:

1. The subject property has been leased by the adjoining landowner for many years, with a further 10 year lease having recently been entered into.
2. The portion of erf 323 which it is proposed to subdivide and sell to the adjoining owner is a portion of Hotel Crescent. The portion proposed to be subdivided and sold is zoned Transport Zone 2 and is currently the driveway access to the applicant's property.
3. This portion of Hotel Crescent does not provide public access to the beach and has not done so for many years.



FILE NO. Erf 101 - KRE ✓
+ Erf 323 KRE
SCAN NO. KRE 101
COLLABORATOR NO.
2138344

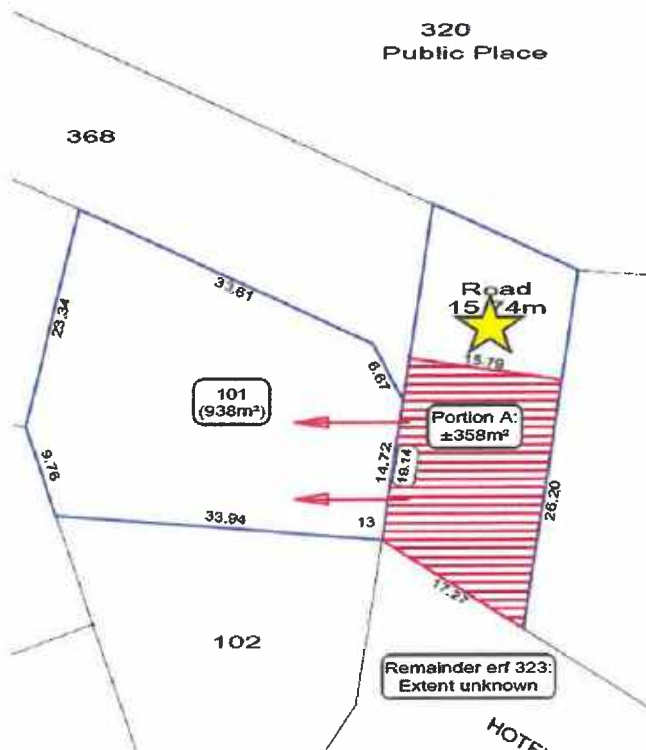
4. Within the immediate vicinity, public access to the beach is provided via Rocklands Road, Priestley Road and Bathers Road.

TP 11 OCT 2024



5. The applicant proposes to rehabilitate that portion of erf which is zoned Open Space 1 adjacent to erf 101 and which has been improperly utilised as a driveway.

Based on the above and having reviewed both the site and the application in detail, RERA is in support of the application for the subdivision, rezoning, consolidation and closure as proposed subject to the isolated road portion (identified below) adjacent to erf 368 being rezoned to Open Space 1

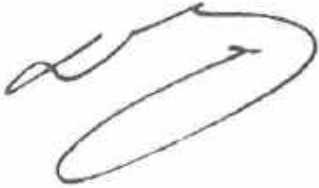


The reasons for the support as expressed are as follows:

- The proposal will not negatively impact the residents of Rooiels.
- The proposal will not negatively impact the general public.
- The proposal will positively support the rehabilitation and maintenance of the Public Open Space that is the back of dune zone between the houses and the beach.
- The proposal entrenches the de facto situation which has been in place for many years and which has not been the cause of any concern or objection to date.
- The portion of road to be closed and consolidated with erf 101 will not be built on and will not lead to any change to the general built environment in the area.
- The management and maintenance of this portion of the road which only serves erf 101, will fall to erf 101.

We trust that you will find this in order. Please do not hesitate to contact the writer should you require anything further.

Yours sincerely

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the bottom.

N Buris - 0826582629
OBO RERA

Loretta Gillion

From: Nigel Burls <nigel@nigelburls.co.za>
Sent: Friday, 11 October 2024 06:31
To: Loretta Gillion
Cc: Tom Baigrie
Subject: Hotel Crescent
Attachments: 11 October 2024 Support letter on letterhead.pdf

Nigel Burls

NIGEL BURLS
& ASSOCIATES

Pr. Pln.: A/563/1988

c.: +27 82 658 2629

e.: nigel@nigelburls.co.za

PostNet Suite #8, Private Bag X1005, Claremont, 7735

www.nigelburls.co.za

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FRIENDS OF ROOIELS

The Municipal Manager
OVERSTRAND MUNICIPALITY
PO BOX 20
HERMANUS
7200

friendsofrooiels@gmail.com
eldie.brink@gmail.com
Cell 082 575 9801
8 October 2024

TP - A Theart
(H vld Stoep)



PER EMAIL: loretta@overstrand.gov.za

ERF 101, 13 HOTEL CRESCENT, ROOI ELS AND A PORTION OF ERF 323, HOTEL CRESCENT, ROOI-ELS:
APPLICATION FOR SUBDIVISION, REZONING, CONSOLIDATION AND CLOSURE OF A PUBLIC PLACE:
PLAN ACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF JA BAIGRIE AND OVERSTRAND
MUNICIPALITY

1. REQUEST FOR PUBLIC PARTICIPTATION PROCESS FOR ALIENATION OF PORTION HOTEL CRESCENT

We request please that the Municipal Planning Tribunal (MPT) takes no decision on the rezoning of the subject portion of Hotel Crescent until a public participation process has been followed for the alienation of the portion of Hotel Crescent.

It would appear as if the OM regards the subject alienation as an approval in-principle only, for which public participation is not deemed necessary and that the present later process will give ratepayers the opportunity to object to the transfer of the subject alienated land.

We would submit that this is an incorrect interpretation of the legislation. As set out below and also in an individual objection, the OM should have exercised its discretion to call for a public participation before taking a decision to alienate.

We would submit that the MPT would do the property owners of RE a disservice if it would take a decision on a council decision which apparently does not conform to natural justice, the rule of law applicable to the MPT.

We submit that, as a quasi-legal body, the MPT exercises its opinion independently from Council.

FILE NO. Erf 101 - KRE ✓
+ ERF 323 KRE
SCAN NO. KRE 101
COLLABORATOR NO.
2136823

2. OBJECTIONS SUBMITTED

We draw the attention of the MPT that the proposed transfer of Hotel Crescent and the corollary land use application are, besides ourselves, also being objected to separately in more detail by another party on the following submissions:

2.1 That the alienation and transfer of Hotel Crescent, being a public amenity giving access to the Rooiels beach for public vehicles and pedestrians, is a "basic municipal service", disposal of which, it is submitted, is prohibited by Sec 14 of the Local Government: Municipal Finance Management Act.

2.2 That the alienation and transfer of Hotel Crescent, being a public road, designed in the RE town planning layout to give access to public vehicles and pedestrians to the RE beach, is not a "non-viable" land as allowed to be alienated in the OM "Administration of Immovable Property Policy" of 2015. It is capable of existing without being consolidated with a neighbouring property. The in-principle approval by the Mayoral Committee (Mayco) was apparently unfounded and in conflict with the OM policy document.

2.3 It is also being submitted that the Mayoral Committee should have exercised its discretion (in view of the importance of a public road to the beach) to call for a public participation process prior to taking an in-principle decision to approve the alienation.

In Paragraph 1 above we request that the decision of the Mayco be reversed and that a public participation process be followed.

The present advertisement, other than an unexplained reference to a "transfer" which it seems to link with the finalised approval in terms of Sec 14 of the Local Government: Municipal Finance Management Act, does not alert ratepayers how at this stage any process of participation now will affect the prior finalised OM alienation process by Mayco and Council approval. For some unexplained reason the Rooielsers may now comment on the transfer. (The approval already having been concluded, and to which approval of transfer or not apparently bears no relation, practically or in term of the subject act)

2.4 An existing lease, recently renewed, giving access to the applicant, already exists, making disposal unnecessary.

The recent application for approval of the renewed lease was firmly opposed by your Senior Town Planner, as being unlawful and unconstitutional.

3. OUR FURTHER REQUEST PLEASE

In the event that the above objections are not favourably considered by the MPT to reject the present application, we please request that:

3.1 A public lane be subdivided from the subject portion of Hotel Crescent, bordering on erf 336, to give pedestrian access to the public.

Such public lanes are employed at a number of sites elsewhere in RE to give access between erven towards the seashore.

Not to subdivide a public lane in the present case will be to defeat the reason for approving the present lease, and in response to the Senior Town Planner's objection that the public was being denied access to the beach by leasing the portion of Hotel Crescent to the applicant.

The lease was made conditional on the applicant rehabilitating its illegal vehicle access over the pristine RE coastal dunes zoned Nature Reserve and also to give pedestrian access for the public to the beach. To this end the applicant was also to have removed the existing boom and to replace it with a chain instead (the previous lease having had the effect of prohibiting the public from accessing the beach from a public street).

3.2 The consolidation of the subject portion of Hotel Crescent to Erf 101, should be subject to a title deed condition that it is "Zoned Undetermined in terms of a town planning scheme at any time applicable to the RE township"

In terms of clause 3.1.2(b) of the OM Zoning Scheme Regulations: "A land unit may be zoned:

- a) with a single base zone that applies to the entire land unit; or
- b) with a split-zoning where one base zone applies to a portion of the land unit and one or more other base zones apply to other defined portions of the land unit, provided that where a split-zoning is envisaged, the applicant must submit a plan prepared by a suitably qualified land surveyor, clearly identifying the area of each base zone concerned, to the satisfaction of the Municipality; and
- (c)"

We submit that this title deed condition will strengthen the title deed conditions approved by Mayco, with the in-principle approval of the alienation, to prevent development of the subject portion after consolidation.

3.3 Two parking places be created bordering on the alienated portion of Hotel Crescent, to afford access to the public in addition to the lane.

4. We would appreciate it if the MPT will favourably consider the alternatives as set out above in paragraphs 1 and 3, in the event that the objections in paragraph 2 are not favourably considered to reject the application.

Yours faithfully,

Eldie Brink

for Friends of Rooiels

Loretta Gillion

From: Eldie Brink <eldie.brink@gmail.com>
Sent: Tuesday, 08 October 2024 09:18
To: Loretta Gillion
Cc: Friends of Rooiels; Drooge Vallei Aartappels; Denise; Alison Lewis; Kay Leresche; Ian Lewis; Pierre & Eneth Kruger; frank raymond; Chair Conservancy
Subject: ERF 101, 13 HOTEL CRESCENT, ROOI ELS AND A PORTION OF ERF 323, HOTEL CRESCENT, ROOI-ELS: APPLICATION FOR SUBDIVISION, REZONING, CONSOLIDATION AND CLOSURE OF A PUBLIC PLACE: PLAN ACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF JA BAIGRIE AND OVERSTRAND MUN...
Attachments: FOR Objections Alienation of RE Hotel Crescent.pdf

Beste Me Gillion,

Aangeheg is asseblief Vriende van Rooiels se beswaar.

Ek sal dit waardeer indien u asseblief ontvangs kan erken.

Eldie Brink
Vir Vriende van Rooiels

9/20

TP-A Theart
(H vld Stoep)

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
10 OCT 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

The Municipal Manager
 OVERSTRAND MUNICIPALITY
 PO BOX 20
 HERMANUS
 7200

eldie.brink@gmail.com
 Cell 082 575 9801
 9 October 2024

PER EMAIL: loretta@overstrand.gov.za

ERF 101, 13 HOTEL CRESCENT, ROOI ELS AND A PORTION OF ERF 323, HOTEL CRESCENT, ROOI-ELS:
 APPLICATION FOR SUBDIVISION, REZONING, CONSOLIDATION AND CLOSURE OF A PUBLIC PLACE:
 PLAN ACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF JA BAIGRIE AND OVERSTRAND
 MUNICIPALITY

MY INTEREST IN THE MATTER:

I am the owner of Erf 237, Rocklands Road, Rooiels.

As a property owner in the small township of Rooiels, I have a direct interest in the present application, which affects the public amenities of RE.

To test the water, I had, subsequent to the lease to the applicant, myself privately applied for the lease and closure for vehicle access of a portion of Rocklands Road in front of my house, for the far more compelling reason of the security risk posed by perlemoen poachers, than the present applicant's motivation of cars turning into its driveway, for which a gate would have served the purpose, without having to lease a public street.

My application was rejected, as I had expected, but I did hope that it would focus the attention of the OM that the circumstances of the present application similarly do not justify a disposal, whether by lease or alienation.

PART A

1. I WOULD SUBMIT THAT BOTH THE APPROVAL OF THE APPLICATION FOR THE LEASE OF THE SUBJECT PORTION OF HOTEL CRESCENT BY THE MAYORAL COMMITTEE IN OCTOBER 2023 AS WELL AS THE PRESENT APPLICATION FOR ALIENATION ARE BASED ON CONTRIVED, UNFOUNDED CIRCUMSTANCES.

1.1 I please request that, not only do the unfounded circumstances require:

1.1.1 The rejection of the present application for alienation, but also

1.1.2 The cancellation of the currently renewed lease.

FILE NO. Erf 101-KRE
+ Erf 323 KRE
SCAN NO. KRE 101
COLLABORATOR NO.
2138007

10 OCT 2024
PP

(I was unfortunately overseas on 6 September 2023 when the application for the lease was advertised in the Overstrand Herald and had no other access to knowledge of the application, otherwise I would have brought the different circumstances under the attention of the OM.)

1.2 I submit that the answers to the PAJA questions in PART B, if they had been answered by the OM municipal manager, as the OM was legally required to do, would have given additional unfavourable insight as to the merits of the present application.

1.3 The OM advertisement for the present application describes the purpose of the alienation as follows:

“Purpose: To form part of privately owned single residential Erf 101 Rooi-Els, for the purposes of a more effective vehicle access driveway.”

1.3.1 **My comment:** This is contrived nonsense.

It is the duty of the of the OM to provide access from the public road to the boundary of erf 101. Whether the applicant buys the portion or not, has no effect on its responsibility of providing its own effective access from its boundary with professional help. Just as for everyone else in RE.

1.4 The above declared purpose for the present alienation is quite different from the purpose as described for the previously renewed lease for the subject property, which had read as follows for the agenda for the Mayoral Committee Meeting: 11 October 2023

“The Applicant explained that the purpose of the chain is to avoid vehicles driving onto the Property as the road does not provide vehicular access to the ocean nor parking space, which results in drivers ending up in her driveway and forcing such drivers to reverse back up the steep incline with poor visibility as there is also no space to turn around. Drivers are not able to observe this when entering the undeveloped gravel road because of its overgrown nature.”

1.4.1 **My comment:** This is once more contrived nonsense.

Of course, the portion of Hotel Crescent provides public vehicular and pedestrian access to the beach, and directly so.

By means of the previous lease to the applicant, which did not contain the present lease condition ensuring public pedestrian access, the applicant had previously engineered it so that the leased street did not provide access, by preventing public access with a big boom across Hotel Crescent.

1.5 To this the Senior Town Planner quite rightly responded as follows:

“The lease is not supported. At present the applicant have access onto erf

101 via Hotel Crescent over erf 368 (According to the GIS, aerial photo). The latter is zoned Nature Reserve, and the applicant has sufficient space to access erf 101 directly from Hotel Crescent.

The lease to restrict the public to make use of Hotel Crescent and the Nature Reserve cannot be allowed. The applicant must secure her properties as allowed by the Overstrand Land Use Scheme and National Building Regulations. The Municipality cannot restrict movement of public spaces to the benefit of a private owner. This is in contravention of the Constitution and the Overstrand Land Use Scheme.

The application is not supported, and that the applicant rehabilitate the access over the erf 368 (Nature Reserve) and obtain access directly from Hotel Crescent. The lease agreement as it stands now is in contravention of legislation and should not be renewed.”

1.5.1 My comment: I agree with the Senior Town Planner and would urge the OM to cancel the present lease.

1.6 The comments by Property Administration, which formed the basis of the subsequent approval of the lease, were as follows:

“In light of the above comments received from the Town Planning and the Environmental Services the Municipal Manager approved the renewal of the lease in-principle subject to the following conditions that will be included in the lease agreement, should the renewal be approved:etc”.

1.6.1 My comment: I submit that it would appear, based on my comments to the application, that Property Administration has taken too narrow a view and interpretation of the legal implications of both the lease and the alienation.

1.7 I draw the attention that there is already a lease that has been renewed in favour of the applicant, making a subsequent disposal unnecessary.

PART B

2. I PLEASE REQUEST THAT THE MUNICIPAL PLANNING TRIBUNAL SHOULD REQUEST COUNCIL TO REVERSE THEIR IN-PRINCIPLE APPROVAL OF THE DIRECT ALIENATION, ON 28 FEBRUARY 2024.

2.1 I draw the attention that, prior to the mayoral committee (Mayco) meeting of 13 February 2024, I, per email, drew the attention of Mayco that the proposed in-principle approval of the subject sale would appear to be unlawful. The councillor for Ward 10, at my request, also drew the attention to the apparent unlawfulness to the DA Caucus prior to the Council meeting of 28 February 2024. OM Council nevertheless on 28 February 2024 approved the alienation of portion of Hotel Crescent in-principle.

2.2 On 26 March 2024 I sent the following questions in terms of the Promotion of Administrative Justice Act (PAJA) to the OM, under cover of the following email:

“NEW REQUEST DATED 26 MARCH 2024

1 I herewith submit a new request, which also includes a request in respect of the decision by the mayoral committee from the executive mayor and from the mayoral committee.

2 I disagree with the reason given for the denial as per your email of 25 March 2024, namely that the request for reasons relates to an executive power or function of a municipal council.

It is commonplace for a decision-maker, in the face of a challenge, to deny that its conduct amounts to administrative action.

3 As set out in my attached letter, I submit that both decisions are of an administrative nature and therefore subject (to) PAJA.”

1.3 The municipal manager, who is also the responsible OM official to answer questions in terms of PAJA, responded as follows on the same day:

“Dear Mr Brink,

I will not entertain any further correspondence from you on this matter. The stance of the municipality is clear. Should you not agree you are welcome to approach the relevant court, but we cannot be constantly engaging in senseless legal arguments.”

1.4 The questions in terms of PAJA were as follows:

“Agenda for the Council Meeting: 28 February 2024)

Item 6.13

IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF
REMAINDER ERF 323 ROOI ELS, (±357m2
IN EXTENT), ADJACENT TO ERF 101
ROOI ELS, SITUATED IN HOTEL CRESCENT, ROOI ELS, TO MS JA BAIGRIE

(My emphases below)

1. Paragraph 9.2 of the ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF THE OVERSTRAND MUNICIPALITY, AS AMENDED reads:

“The Municipality may transfer ownership or otherwise dispose of a **non-viable immovable property**, as non-exempted immovable property which **can be of no practical use to any other person**, directly to adjoining property owner(s), only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA:...”

2. Could the Council/Municipality please give reasons why the public street portion, which is a cul-de-sac that borders on and directly gives access for the public to the beach and which can also be used for public parking in an area where there is already limited parking available **“can be of no practical use to any other person “** as per Par 9.2 above.

3. Could the Council/Municipality please give reasons why the public street portion, which is a cul-de-sac that borders on and directly gives access to the public to the beach, and which can also be used for public parking in an area where there is already limited parking available, is **“a non-viable immovable property”** as per Par 9.2

4. Could the Council/Municipality please give reasons why the new condition in the lease renewed recently with the same owner of erf 101, giving the public pedestrian access over the street portion to the beach, is not also **an acknowledgement by the municipality as public proof that the portion can be of practical use to other persons**, public pedestrians, and that it is as such also **viable as an integral part** of the bigger street network (Erf 323) giving access and parking.

5. Could the Council/Municipality please give reasons why the municipality endorses or disagrees with the view of the Senior Town Planner in the statement below, relating to the existing lease, and which apparently also motivates that the portion can be **of practical use to other persons, pedestrians**, and that it is as **such also viable for vehicles as part of the RE street system to the beach.**

“The lease is not supported. At present the applicant have access onto erf 101 via Hotel Crescent over erf 368 (According to the GIS, aerial photo). The latter is zoned Nature Reserve, and the applicant has sufficient space to access erf 101 directly from Hotel Crescent.

The lease to restrict the public to make use of Hotel Crescent and the Nature Reserve cannot be allowed. The applicant must secure her properties as allowed by the Overstrand land Use Scheme and National Building Regulations. The Municipality cannot restrict movement of public spaces to the benefit of a private owner. This is in contravention of the Constitution and the Overstrand Land Use Scheme.

The application is not supported, and that the applicant rehabilitate the access

over the erf 368 (Nature Reserve) and obtain access directly from Hotel Crescent. The lease agreement as it stands now is in contravention of legislation and should not be renewed.”

6. Could the Council/Municipality please give reasons why the municipality considers it an acceptable or non-acceptable practice, that an owner should, **by means of a periodically renewable permission for the lease** of an otherwise integral and viable public street and by means of permission for a boom, which prevents public access as per the attached photo, **be allowed to permanently engineer, for subsequent sale**, practically the whole of Hotel Crescent into a space that is now as a result of these permissions allegedly non-viable and of no use to any other person, who would otherwise have made use of Hotel Crescent for parking or on foot to access the beach.

Attached: Photo of the existing boom by the owner of Erf 101 across Hotel Crescent.

(Source: Website of Overstrand Herald)

E Brink

11 March 2024”

2.3 I would submit that any reasons supplied to the above PAJA questions by the municipal manager could not have supported the approvals by Mayco and Council, and that the answers cannot now favourably support the present application.

I would submit that, in the absence of considering these questions and answering them, that the OM would not be applying its mind properly in terms of administrative law.

I now present the self-same questions to the OM Planning Department (PD) and MPT for consideration of the present application.

2.4 My request is that, if the PD should consider that the council decision was unlawful and unfounded, that the PD should advise the Municipal Planning Tribunal to request Council to reverse their in-principle approval of 28 February 2024, **thereby putting the present application on hold or “not-approved”**.

PART C

3. I PLEASE REQUEST THE MPT TO ADOPT THE VIEW THAT IT IS UNABLE TO DECIDE THE PRESENT APPLICATION IN TERMS OF THE OM LAND USE PLANNING BY-LAW UNLESS A PUBLIC PARTICIPATION PROCESS HAS FIRST BEEN CONDUCTED BEFORE COUNCIL TAKE A DECISION IN TERMS OF SECTION 14 OF THE MUNICIPAL FINANCE MANAGEMENT ACT, 2003 AND THE MUNICIPAL ASSET TRANSFER REGULATIONS of 2008

The relevant OM policy document, which does not make a public participation process mandatory for the disposal of non-high value immovable property, would appear to be out of line with common practice, as set out below.

3.1 The relevant legislation, as set out in par 3.2, requires public participation only in the case of a high value disposal, which the present is not. However, in the public sources below, the view is that, before a council takes a decision, such a public participation should be held for the disposal of all immovable property, and particularly if the property is of great significance for a community.

I would submit that the closing and disposal of a road, leading to the Rooiels beach, and which gives pedestrian access to, as well as vehicular and parking access for vehicles to the public, is of great significance for the RE community, and that a public participation should first be conducted.

3.2 The LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003

MUNICIPAL ASSET TRANSFER REGULATIONS of 2008 **does not require public participation** in the present case.

It reads as follows:

“Part 1: Decision -making process for municipalities

Transfer or disposal of non-exempted capital assets

5. (1) A municipality may transfer or dispose of a non-exempted capital asset only after -

(a) the accounting officer has in terms of regulation 6 conducted a public participation process to facilitate the determinations a municipal council must make in terms of section 14(2)(a) and (b) of the Act; and

(b) the municipal council -

(i) has made the determinations required by section 14(2)(a) and (b);^{1°} and

(ii) has as a consequence of those determinations approved in principle that the capital asset may be transferred or disposed of.

(2) Sub-regulation (1)(a) must be complied with only if the capital asset proposed to be transferred or disposed of is a high value capital asset. If the combined value of any capital assets a municipality intends to transfer or dispose of in any financial year exceeds five per cent of the total value of its assets, as determined from its latest available audited annual financial statements, sub-regulation (1)(a) must be complied with in relation to all the capital assets proposed to be transferred or disposed of during that year.

(3) (a) Only the municipal council may authorise the public participation process referred to in sub-regulation (l)(a)."

3.3 The National Treasury GUIDE TO THE MUNICIPAL ASSET TRANSFER REGULATIONS

advises that a public participation process should first be conducted if a particular asset, although not having a "high value" is of great significance for a particular community.

On P18 it reads: "It is important to note that even if an asset is not "high value", council may still make the disposal subject to a public participation process or the administration can recommend such to council when providing the mandatory information envisaged in regulation 7 or 10, if a particular asset, although not having a "high value" is of great significance for a particular community."

3.4 The South African Local Government Association GENERIC MUNICIPAL POLICY LAND ACQUISITION AND DISPOSAL document **advises that it should be mandatory for all immovable property disposals to undergo public participation, irrespective of value.**

Par 9.2.6 reads: "It is mandatory for all immovable property disposals to undergo public participation. The extent/intensity and duration of public participation may differ from one property transaction to another.

All immovable property disposals shall be preceded by an analysis of the extent/intensity and duration of public participation required. This analysis shall be done by the Property Department and submitted for adoption by Council. Approval of the public participation analysis report is required prior to the submission of a Council report on the disposal of the immovable property.

3.5 City of Cape Town MANAGEMENT OF CERTAIN OF THE CITY OF CAPE TOWN'S IMMOVABLE PROPERTY POLICY makes it mandatory that the City shall conduct a public participation process in respect of Non-High Value Disposals, before it takes a decision.

It reads:

"11.4 The first phase in the process of decision-making is public participation. In terms of the MATR, this phase applies only to High Value Property and includes:

11.4.1 a request to Council, accompanied by an Information Statement,⁷ to authorise the City Manager to conduct a public participation process;

11.4.2 the City Manager conducting a public participation process as prescribed in the MATR.⁸

11.5 The City shall conduct a public participation process in respect of Non-High

Value Disposals and may determine the form that this process should take.

11.6 Once the public participation phase of the decision-making process has been completed, Council is required to take decisions in respect of the Disposal.”

PART D

4. I WOULD SUBMIT THAT THE MUNICIPAL PLANNING TRIBUNAL IS A QUASI-JUDICIAL BODY THAT EXERCISES ITS FUNCTIONS IN TERMS OF SPECIFIC LAND USE LEGISLATION, AND THAT IT IS ENTITLED TO EXERCISE ITS DISCRETION TO APPROVE OR NOT TO APPROVE, OR TO REFER THE MATTER BACK TO COUNCIL, UNFETTERED BY AN IN-PRINCIPLE COUNCIL DECISION UNDER DIFFERENT LEGISLATION SUCH AS THE PRESENT. COUNCIL IS NOT ENTITLED, DIRECTLY OR INDIRECTLY, TO PRESCRIBE TO THE MPT WHAT DECISION IT SHOULD TAKE.

4.1 I would submit that my view is substantiated by the communications that I have received from the OM in my attempts as per PAR B to communicate my concerns with the mayoral committee, our councillor, the DA Caucus and Council.

The viewpoint that I have received in all cases, was that I have raised my concerns prematurely, and that the present is an “in-principle decision” only, on the basis of whether the disposal will interfere with the provision of municipal services, and that I should raise my concerns at the later stage when a public participation process takes place.

4.2 I would suggest therefor that the MPT can now take into account all other considerations also, other than the narrow provision of municipal services, and decide for itself which decision it should take.

4.3 I would respectfully suggest that the matter be referred back for a voluntary public participation process before a decision is taken in terms of section 14 of the LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003 and the MUNICIPAL ASSET TRANSFER REGULATIONS of 2008.

Only after that should the present application be advertised.

PART D

5. I WOULD SUBMIT THAT THE ROAD ACCESS, THAT HOTEL CRESCENT HAS BEEN DESIGNED TO GIVE TO ROOIELS RATEPAYERS, IS A BASIC MUNICIPAL SERVICE IN TERMS OF LEGISLATION AND THAT THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003 and the MUNICIPAL ASSET TRANSFER REGULATIONS of 2008 PROHIBIT THE COUNCIL FROM ALIENATING THE STREET.

I REQUEST THE MPT PLEASE TO REFER THE APPLICATION BACK TO COUNCIL ON THIS BASIS ALSO.

5.1 SPLUMA reads as follows:

“Deciding an application

42. (1) In considering and deciding an application a Municipal Planning Tribunal

must—

(a)

(b).....

(c) take into account—

(i) the public interest;”

5.2 The disposal and transfer and land use applications relating to the disposal of a public street, such as in the present case, is clearly of public significance.

I submit that it would not be regular for the MPT to take a land use decision where there is doubt about the lawfulness of the application of another law to the present application.

5.3 I submit the following in support of the Senior Town Planner’s objection to the Mayoral and Council’s approving the current lease of the subject public street (and so much more of the present alienation) as per par 2.2 (PAJA question 5) above, that the present disposal is also unlawful and unconstitutional, as it excludes the public from a basic amenity, namely access to the beach.

5.4 I would submit that the OM takes too narrow a view of “basic municipal services” as per the LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003, where it forbids the alienation of municipal immovable property:

Section 14, as referred to in the notice for the present application, reads:

“Disposal of capital assets

14. (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.”

“Basic municipal service” is defined as follows in the act:

“basic municipal service” means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety or the environment. “

5.5 I would submit that in the context of Rooiels pedestrian and vehicular access to a public amenity such as to the RE beach is a basic municipal service, which would prevent physical infrastructure such as Hotel Crescent from being sold, as per Section 14 of Act. The act states that municipalities may not dispose of an immovable property that is required for minimum level of service delivery.

PART E

6. I SUBMIT THAT THE PORTION OF HOTEL CRESCENT IS NOT A “NON-VIABLE” PORTION OF LAND, CAPABLE OF BEING LEASED OR ALIENATED IN TERMS OF THE OM POLICY DOCUMENT, BOTH AS TO THE LEASE AND ALIENATION.

6.1 I submit that the alienation and transfer of Hotel Crescent, being a public road, designed in the RE town planning layout to give access to public vehicles and pedestrians to the RE beach, is not a

“non-viable” land as allowed to be alienated in the OM “Administration of Immovable Property Policy” of 2015.

It is capable of existing without being consolidated with a neighbouring property.

The in-principle approval by the Mayoral Committee (Mayco) was apparently unfounded and in conflict with the OM policy document.

Yours faithfully,

Eldie Brink.

Loretta Gillion

From: Eldie Brink <eldie.brink@gmail.com>
Sent: Wednesday, 09 October 2024 15:43
To: Loretta Gillion; Friends of Rooiels
Subject: ERF 101, 13 HOTEL CRESCENT, ROOI ELS AND A PORTION OF ERF 323, HOTEL CRESCENT, ROOI-ELS: APPLICATION FOR SUBDIVISION, REZONING, CONSOLIDATION AND CLOSURE OF A PUBLIC PLACE: PLAN ACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF JA BAIGRIE AND OVERSTRAND MUN...
Attachments: Rooiels Erven 101 and 323 Objection to transfer of portion of Hotel Crescent.pdf

Beste Me Gillion,

Ek heg asseblief my beswaar aan.

Ek sal dit waardeer indien u asseblief ontvangs kan erken



TOWN & REGIONAL PLANNERS
STADS-EN STREEKSBEPLANNERS

Annexure E 1/21

6 Magnolia St / Str
PO Box / Posbus 286
HERMANUS
7200
Tel: (028) 313 1673
Fax / Faks: (028) 312 1351
Email:
planactive@hermanus.co.za
www.planactive.co.za

Our reference: PA24019/ML
Your reference: KRE 101 & 323 (*unregistered*)
Application ID: 4705/2024

9 December 2024

**THE MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY
P.O. BOX 20
HERMANUS
7200**

FOR ATTENTION: MRS. H. VAN DER STOEP

Sir

ERVEN 323 AND 101 ROOI ELS: PROPOSED PARTIAL CLOSURE OF A PUBLIC STREET, SUBDIVISION, REZONING AND CONSOLIDATION

- Overstrand Municipality
- J.A. Baigrie

Reference is made to our application dated 25 June 2024 and your email dated 28 October 2024. Two (2) objections and one letter of support were received. In addition, Environmental Management Services and Property Administration **support** the application and we take note of the content of their letters.

The Rooi Els Ratepayers Association (RERA) supports the application for the subdivision, rezoning, consolidation and partial closure of a public street. We would like to express our agreement with the RERA regarding their support for the proposed land use application. This endorsement highlights the desirability of the application based on several key reasons as stipulated by RERA:

- The proposal will not negatively impact the residents of Rooiels.
- The proposal will not negatively affect the general public.
- It will positively contribute to the rehabilitation and maintenance of the Public Open Space located in the back-dune zone between the houses and the beach.
- The application reinforces the de facto situation that has existed for many years, which has not raised any concerns or objections to date.
- The portion of the road to be closed and consolidated with erf 101 Rooi Els will remain undeveloped and will not alter the general built environment in the area.
- The responsibility for the management and maintenance of this portion of the road, which exclusively serves erf 101, will fall to erf 101 Rooi Els.

The support from the Rooi Els Ratepayers Association confirms that the proposed application aligns with the interests of the community and enhances the overall quality of the environment.

Divine Inspiration Trading 329 (Pty) Ltd. trading as Plan Active
Reg. No. 2006/030921/07
Vat. No. 4770250340

John Mc Lachlan: Ndip (Town Planning) Tech Witwatersrand; MSAPI Nr.10908; SACPLAN Tch.Pln B/8250/2014
Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)
Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACPLAN Pr.Pln A/158/2009

Please note that Mr Eldie Brink is the sole objector on this application. His organization, Friends of Rooiels, is a personal initiative designed to lend legal weight to his extensive objections, many of which are also shared by other property owners. In this case, his personal interests have been incorrectly conflated with our client's. His objections should be dismissed, as no one else in Rooiels has raised concerns, including the relevant departments. Our client's financial contribution will provide significant support to the municipality, and our client will serve as responsible guardians of the undeveloped property, acting in the best interests of both themselves and the community.

SUMMARY AND RESPONSE TO OBJECTIONS

As background, it is important to note at the outset that the applicant has owned and resided on erf 101 for 44 years, since 1980. This longstanding family experience with the property provides context for the situation at hand, particularly regarding the sloped gravel driveway. In recent years, the growth of tourism in Rooiels has led to an increase in the number of public vehicles exploring the area. As a result, more drivers are using the narrow, sloping driveway, often needing to turn onto the open lawn in front of the dwelling to create a turning circle, as reversing out of the driveway is impractical.

The Objector, Mr. Brink, repeatedly raises concerns regarding inadequate public hearings. However, both the residents and property owners were specifically surveyed by RERA, and no objections were raised at that time. Furthermore, the broader public has been provided with an extended period during which objections could be submitted, in full compliance with legal requirements, with appropriate signage posted on-site by OM. Therefore, Mr. Brink's objections on this matter are unfounded and unsupported, as he is the sole individual raising them.

The crux of the issue is that neither the immediate local owners nor the wider public have raised any objections, and all processes have been conducted in accordance with the law. Additionally, our client has a signed conditional Deed of Sale with OM, further validating the legitimacy of the proceedings.

Notwithstanding, we would like to respond to the two objections received as follows:

A. FRIENDS OF ROOIELS OBJECTION

- ***Friends of Rooi Els request that the Municipal Planning Tribunal (MPT) refrain from making a decision on the rezoning of a portion of Hotel Crescent until a public participation process has been conducted for its alienation. The objectors argue that the municipality incorrectly views the alienation as an approval in-principle that does not require public input. They emphasize the need for adherence to legal standards of natural justice and assert that the MPT, as an independent quasi-legal body, should ensure proper procedures are followed before any decisions are made.***

We appreciate the concerns regarding transparency and public involvement in the alienation and land use application process. While we cannot speak for the municipality, we believe they are committed to these principles. The current process allows for public comment following the initial property administration decision, ensuring community input is considered.

We recognize your suggestion for a more inclusive approach prior to decisions on alienation. This feedback can be considered for future applications. Refer to the **Property Administration department's comments on the objections attached** in this regard.

It is important to note that due process was followed, including a public participation process for the land use application. The necessity for further engagement is noted and it is for the municipality to review this considering your feedback.

- ***The objectors argue that Hotel Crescent serves as a public amenity providing access to Rooiels beach for vehicles and pedestrians. They assert that its disposal is prohibited under Section 14 of the Local Government: Municipal Finance Management Act.***

The approved section of Remainder Erf 323 Rooi Els, designated for acquisition by our client, consists of a portion of vacant land that includes a gravel road used for accessing erf 101 Rooi Els. Despite its status as a public road, the Property Administration department has confirmed that direct alienation is feasible, classifying this portion of land as a non-viable property.

- ***The Friends of Rooi Els state that Hotel Crescent, classified as a public road in the town planning layout, is not considered "non-viable" land that can be alienated. They claim it can exist independently without consolidation with adjacent property, and that the Mayoral Committee's in-principle approval contradicts municipal policy.***

The reference to "non-viable" land was to indicate that the piece of land is not suitable for development or does not have enough value or potential to warrant investment or utilization. Essentially, it was also merely suggested the land will not be used for its intended purpose and can therefore be alienated.

- ***The objectors request that the Mayoral Committee should have called for public participation prior to the alienation decision, given the road's significance. There is concern that the current advertisement regarding the transfer does not adequately inform ratepayers about how the participation process relates to the previously finalized alienation approval.***

The municipality prioritizes public access and services and is dedicated to adhering to all relevant legislation. However, we cannot comment on behalf of the municipality regarding the property administration process that was undertaken – refer to the **Property Administration department's feedback attached** in this regard. Our role is solely to address the land use application, which followed the required public participation procedures, including notifications to adjacent property owners and the placement of a notice board on-site.

- ***The objection notes that a recently renewed lease already grants access to the applicant, rendering the proposed disposal unnecessary. They mention that the Senior Town Planner opposed this lease renewal as unlawful.***

While Town Planning did not support the application, the Property Administration department confirmed that there is no legislation or policy that prohibits the sale of the property. Access to the coastal area remains available approximately 80 meters away, ensuring that the public is not being denied access. Additionally, the ocean can be accessed from the parking area on Bathers Street and via several footpaths from Priestleya Street.

- ***The Friends of Rooi Els include several requests in the event that the Municipal Planning Tribunal (MPT) does not reject the current application:***
 1. ***Public Lane Subdivision: The objectors request the subdivision of a public lane from the subject portion of Hotel Crescent, adjacent to erf 336, to provide pedestrian access to the beach. They argue that such lanes exist in other areas and are essential for public access. They also request the creation of two parking***

As previously mentioned, access to the coastal area is available approximately 80 meters away, ensuring that the public is not being denied access. Additionally, the ocean can be reached from the parking area on Bathers Street and public access to the seafront and beach from Priestley Road is provided by a municipal path and is well used as such. Therefore, the proposal does not include a public lane or pedestrian access or two parking spaces, as the need for such access and parking bays is considered unnecessary.

Additionally, approximately 50 meters to the northwest, at the end of Rocklands Road, there is a turning circle and space for some parking, along with pedestrian access to a seafront path leading around the front of Erf 115 to the beaches located on State property, below the high-water mark on Erf 320 and Erf 326 (the main beach). Earlier comments have noted the presence of three roads providing access to the beach; the two described above are among them. The third access is via Slipway Road, situated four houses to the east of the applicant's driveway, with parking available on Bathers Road (as previously mentioned) and Hotel Crescent.

The suggestion to create a "public path" through the natural shrubs and trees along the boundary with erf 336, designed to accommodate two parking spaces, raises significant concerns. Not only would this require the removal of valuable natural vegetation, but it would also necessitate a turning circle or force drivers to reverse along the path back to Gazania Road, creating safety hazards.

Furthermore, where would this path lead? Our client is committed to preserving the dune-protected frontage, as outlined in the Rooiels Vision that all property owners support. The proposal to clear natural vegetation for double parking spaces in these pristine dune areas is contrary to the conservation goals and would face strong opposition if ever proposed.

2. Title Deed Condition: They propose that the consolidation of Hotel Crescent with erf 101 include a title deed condition stating that it is "Zoned Undetermined" in accordance with the town planning scheme. This condition aims to prevent future development on the consolidated portion.

Portion A of erf 323 Rooi Els will be rezoned from Transport Zone 2: Roads and Parking to Residential Zone I: Single Residential, aligning it with the zoning of erf 101 Rooi Els. Special conditions accompany the sale of this portion to the owner of erf 101. One key condition state:

3. *"No structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Remainder Erf 323 Rooi Els, and this condition must be registered against the title deed of the consolidated property."*

As such, after subdivision, rezoning, and consolidation, no buildings or structures may be constructed on Portion A, other than a boundary wall or fence. This restriction was confirmed in a departmental comment on the land use application from Mrs. Anja le Roux, Manager - Property Administration, dated 17 September 2024, which states: *"The applicant must note that no structures will be allowed on the portion of Erf 323 Rooi Els to be sold."* Therefore, this will be a condition of approval.

The preference for the two parcels of land to maintain their current status and avoid future development has been addressed in the Deed of Sale. Any attempt by a future owner of the consolidated Erf 101 to deviate from these stipulations would constitute a clear violation of the law, providing grounds for the municipality to deny any building application that conflicts with these established conditions. This ensures that the intent of the original agreement is upheld, safeguarding the area's character and preventing unauthorized developments.

B. MR ELDIE BRINK OBJECTION

- ***Mr Brink not only acted on behalf of the Friends of Rooi Els, but also submitted an objection as a property owner. He has previously applied for the lease and closure of a portion of Rocklands Road in front of his house, citing security concerns related to perlemoen poachers. His application was rejected, and he hopes it would draw attention to the fact that the circumstances surrounding the current application also do not warrant disposal through lease or alienation.***

While his concerns are valid, the current application has been assessed based on its specific context and justifications provided by the applicant.

The objector's comparison of his application and the servitudes at the south end of Oceanview Drive to our client's situation is unfounded. His application for Erf 237 would likely face rejection, and it seems to serve merely as a tactical distraction.

Furthermore, the other servitudes Mr Brink references lack any resemblance to this application. On Oceanview Drive, the narrow 100m one-way road serves only six properties and terminates at Erf 324, a substantial section of mountainside that has faced legal challenges for decades and remains undeveloped due to infrastructure concerns. The servitude between Erven 279 and 280 was established to facilitate access for future housing on the still undeveloped Erf 324, which has been effectively protected from development by RERA, Rooi Els Conservancy, and numerous private objectors. This servitude, like others, is rarely utilized and bears no relevance to our client's longstanding, established driveway. The comparison is therefore completely inappropriate.

The objector's concerns regarding security and poachers are applicable to every property along the Rooi Els waterfront, including erf 101 Rooi Els. This application will not alter this situation, nor would his; poachers tend to create their own paths regardless of any changes to the land.

Additionally, the dune frontal area already benefits from three public road access points with parking, as mentioned in previous documents. Therefore, the concerns raised do not substantiate objections to this application.

The need for vehicle access to the applicant's property has been considered, and it is important to note that this application follows the appropriate processes and regulations set forth by the municipality. Different circumstances may warrant varying responses.

Mr Brink's other concerns are addressed as follows:

PART A:

1. ***The objector claims that both the lease approval and the alienation application are based on unfounded circumstances and requests the rejection of the alienation application and cancellation of the renewed lease. The objector was unaware of the lease application due to being overseas.***

The objector has not provided substantial evidence to support the claims of unfounded circumstances. As outlined in our report, the alienation of the road followed the proper procedures and received in-principle approval from the Council. Furthermore, our report addresses the merits of the application comprehensively.

2. The objector asserts that if the municipal manager had answered the PAJA questions as required, it would have revealed further issues with the current application.

The alienation of the road followed the proper procedures and received in-principal approval from the Council (refer to Property Administration's comments on the objections). The land use application also followed due process.

3. The purpose stated for the alienation - improving vehicle access to erf 101 - is described as unnecessary. The objector argues it is the municipality's duty to ensure access to public roads and that the applicant should independently manage access to their property. The objector highlights inconsistencies between the purpose of the lease and the current application, stating that previous measures by the applicant have obstructed public access.

As described in our application, the proposed land use application will enable our client to maintain the existing access to erf 101 Rooi Els. Consequently, the actual use of this specific portion of the road will remain unchanged, serving solely as access to the property. The purpose of the land acquisition and subsequent application is to prevent vehicles from driving onto the property, as the road does not provide access to the ocean or any parking space. This situation often leads drivers to end up in the driveway, forcing them to reverse up a steep incline with poor visibility, where there is no space to turn around. Additionally, the overgrown nature of the undeveloped gravel road makes it difficult for drivers to assess the area upon entry.

4. The Senior Town Planner's comments are cited to emphasize that the lease is not supported, and that the applicant has adequate access to erf 101 without restricting public use of Hotel Crescent.

While Town Planning does not support the application, the Property Administration department confirmed that there is no legislation or policy that prohibits the sale of the property. Access to the coastal area remains available approximately 80 meters away, ensuring that the public is not being denied access. Additionally, the ocean can be accessed from the parking area on Bathers Street and via several footpaths from Priestleya Street.

5. The objector criticizes the Property Administration's narrow interpretation of the lease and alienation's legal implications, suggesting that existing leases make further disposal unnecessary.

There are several good reasons why our client applied for the alienation of the portion of road instead of continuing the lease:

- The alienation provides a permanent solution for our client's access, ensuring clarity in ownership and use, as opposed to the temporary nature of a lease.
- Alienating the portion of the road can help manage traffic flow and minimize congestion as previously described.
- Continuing the lease can lead to potential complications regarding renewals, conditions, and compliance. Alienation simplifies property management and reduces administrative burdens.
- Owning the land outright is a more valuable long-term investment compared to a lease, which may need to be renewed or renegotiated periodically.
- The alienation provides clearer legal rights compared to leasing, which can be subject to interpretation and varying terms.

PART B:

6. *The objector requests the Municipal Planning Tribunal (MPT) to reverse the Council's in-principle approval for the alienation of a portion of Hotel Crescent, citing unlawful circumstances surrounding the approval process.*
7. *The objector highlights that they raised concerns regarding the legality of the proposed sale prior to the approval, indicating that both the Mayco and Council were informed of these concerns.*
8. *The objector submitted several questions under the Promotion of Administrative Justice Act (PAJA) regarding the rationale for deeming the public street portion as "non-viable," questioning its usefulness for public access and parking.*
9. *The municipal manager dismissed further correspondence from the objector, indicating that the municipality's stance was clear and suggesting that legal recourse would be the appropriate next step.*
10. *The objector insists that the answers to their PAJA questions must be provided to ensure transparency and legality in the decision-making process, suggesting that failure to do so indicates a lack of proper consideration by the municipality.*

It is important to emphasize that the alienation was conducted in accordance with established procedures, with in-principal approval granted by the Council after thorough consideration. While the objector raises concerns about the legality of the approval, we maintain, and the municipality confirmed (comments attached) that all necessary legal frameworks were adhered to during the process. The Council considered the application in light of relevant policies and regulations.

As per the item that served before Council and the decision letter that was issued, it is the municipality's position that the public street portion was deemed non-viable based on specific criteria related to its current use and overall context. The assertions about public access and parking capabilities were assessed in line with planning regulations.

The decision of the municipal manager to limit further correspondence was most likely aimed at maintaining efficiency in the administrative process.

To conclude, the Municipal Planning Tribunal (MPT) will review all objections, including the request to reconsider the Council's decision. The MPT will thoroughly evaluate the merits of the application and the concerns raised to ensure a fair outcome.

PART C:

11. *The objector urges the Municipal Planning Tribunal (MPT) to require a public participation process before making a decision on the application for alienation of the portion of Hotel Crescent, citing its significance for the community.*
12. *The objector references various legal frameworks and policies, including the Municipal Finance Management Act and municipal asset transfer regulations, arguing that even if public participation is not mandated for non-high-value disposals, it should be considered essential due to the community importance of the asset in question.*
13. *The objector emphasizes that the road provides vital access to Rooi Els beach, making its disposal particularly relevant to public interests and community use.*
14. *They reference practices from other municipalities, such as the City of Cape Town, which conduct public participation for all disposals regardless of value, suggesting that Overstrand Municipality should adopt a similar approach.*

We cannot answer on behalf of the municipality whether the current legislation does not mandate public participation for non-high-value disposals. As consultants that were not involved in the property administration application; therefore, we cannot speak on behalf of the municipality. We can only assume that the decision-making process followed in this instance adhered to the legal requirements set forth in all relevant legislation and associated regulations.

There is considerable reference to Hotel Crescent as a public road. The road along the seafront from our client's driveway to Rocklands Road, known as Arctotis Road, was de-proclaimed. When this occurred, the remaining section of the driveway was renamed as an extension of Hotel Crescent, which runs over the top of the driveway into Gazania. According to our client this de-proclamation was legally recognized and advertised for public comment in the Provincial Gazette about 30 years ago, making it part of the protected dune front area. For over 50 years, there has been no usable road along the dune front from our client's driveway to Rocklands Road. Currently, Hotel Crescent begins at the boundary of erf 101 and, 20 meters up our client's driveway, intersects with Gazania Road at a T-junction. If the sale goes through, it will extend east for 100 meters to Slipway Road. This change does not impact any neighbors or the community.

The reference to practices in other municipalities, such as the City of Cape Town, highlights an important aspect of local governance and we agree that a more inclusive approach to public participation for all disposals could enhance transparency and community relations.

The MPT will carefully consider the objection and evaluate the merits of the application, especially regarding its potential impact on community access to the beach. However, we believe that the issue of beach access has been adequately addressed in both the property administration and land use applications.

PART D:

15. Mr Brink argues that the Municipal Planning Tribunal (MPT) has the authority to make independent decisions regarding land use applications, without being bound by the prior in-principle approval from the Council. The objector emphasizes that a public participation process should precede any decisions about alienating the road, given its significance to the Rooi Els community as a means of accessing the beach. They assert that the road access provided by Hotel Crescent constitutes a basic municipal service, and thus its alienation is prohibited under the Local Government: Municipal Finance Management Act. The objector calls for the application to be referred to the Council based on these grounds.

We appreciate the concerns raised regarding the authority of the MPT and the importance of public participation. The MPT is indeed empowered to assess land use applications based on relevant legislation, and it will consider all factors, including community access to public amenities.

However, the prior in-principle approval by the Council followed due process, ensuring that the application was thoroughly reviewed before reaching Council. We believe that the Council's decision reflects a balanced consideration of public interests, including access to the beach.

While the objection highlights the significance of road access for the community, our report indicates that the existing access provisions have been adequately addressed in both the property administration and land use applications.

We submit that the existing processes are sufficient and that a further public participation phase will be superfluous at this stage.

PART E:

The objector asserts that the portion of Hotel Crescent is not a "non-viable" piece of land, and therefore should not be subject to alienation or leasing under the Overstrand Municipality's policies. The objector emphasizes that Hotel Crescent serves as a public road intended for access to the Rooi Els beach and is vital for public vehicles and pedestrians. They argue that the Mayoral Committee's in-principle approval for alienation contradicts the municipality's own policies regarding immovable property.

While the objection argues that the road is crucial for public access, our assessment determined that the proposed alienation does not impair existing access arrangements for the community.

The Mayoral Committee's approval followed a thorough evaluation of the property in line with municipal policies, considering the broader implications for land use and community access. We stand by the conclusion that the proposed changes align with the policies governing the administration of immovable property.

To conclude: Overstrand Municipality's Property Administration Department has provided us with their comments on the objections raised – see attached annexure. The department has only addressed the aspects related to the sale and have made it clear that they will not be dealing with the lease matters (which have already been concluded, and the process is unrelated to the lease). Similarly, they are not addressing the PAIA (Promotion of Access to Information Act) aspect.

The core of the Property Administration Department's comments is that access to the sea is not considered a basic municipal service and that no "pre-public participation" process is required. The advertisement that they have placed now constitutes public participation in terms of Section 14 of the MFMA (Municipal Finance Management Act).

We trust that you find the above in order.

Yours faithfully



**M. LERM Pr. Pln. (A/158/2009)
PLAN ACTIVE**

ANNEXURE:
**OVERSTRAND MUNICIPALITY'S PROPERTY
ADMINISTRATION DEPARTMENT'S RESPONSE TO
THE OBJECTIONS**

1. **OBJECTOR 1: FRIENDS OF ROOI ELS (summarised – full objection attached)**

Public Participation and interpretation of Policy/legislation

The Friends of Rooi Els (hereinafter referred to as “Objector 1”) requests that the Municipal Planning Tribunal (MPT) takes no decision on the rezoning of a portion of Hotel Crescent until a public participation process has been carried out regarding the proposed alienation of this land.

It appears that the Overstrand Municipality views the alienation as an approval in principle, which does not require public participation, with subsequent processes allowing for objections from ratepayers. Objector 1 contends that this interpretation is incorrect, as public participation should have occurred prior to any decision being made regarding the alienation of the land.

Objector 1 further asserts that the Municipal Planning Tribunal would be doing a disservice to the property owners in Rooi Els if it proceeds with a decision that seemingly undermines the principles of natural justice and the rule of law.

Objector 1 emphasizes that the Municipal Planning Tribunal, as an independent quasi-judicial body, is expected to make its decisions based on its own impartial judgment, free from undue influence by the Council.

The Municipal Planning Tribunal (MPT) is informed of objections regarding the proposed transfer of Hotel Crescent and associated land use. Key concerns raised include:

- **Public Service Designation:** Hotel Crescent, a public road providing access to Rooi Els beach, is considered a “basic municipal service.” Its transfer is argued to be prohibited by Section 14 of the Municipal Finance Management Act.
- **Property Viability:** As a public road, Hotel Crescent does not qualify as “non-viable” land under the Overstrand Municipality’s policy on immovable property (2015), meaning it can function independently without requiring consolidation with neighboring property. Therefore, the Mayoral Committee’s initial approval for transfer is viewed as inconsistent with policy.
- **Lack of Public Participation:** The Mayoral Committee is criticized for not initiating a public participation process, given the importance of the road for beach access, before making its in-principle approval.

Objector 1 request the reversal of the Mayoral Committee’s decision and a public participation process. Additionally, they argue that current advertisements fail to clarify how public comments might impact the prior approval for alienation.

Lastly, they note an existing lease, recently renewed, which provides access to the Applicant, questioning the necessity of the transfer and citing prior opposition to the lease renewal by the Senior Town Planner on legal grounds.

Future Request

In the event that the above objections are not favourably considered by the Municipal Planning Tribunal and the present application is rejected, Objector 1 request that:

- A public lane should be subdivided from the Hotel Crescent property, adjacent to Erf 336, to provide pedestrian access to the beach. Public lanes like this are common in Rooi Els to allow access to the seashore. Failing to subdivide the lane would undermine the purpose of the current lease, which was approved with the condition that the Applicant provide beach access. The lease also required the Applicant to rehabilitate illegal vehicle access over the Rooi Els coastal dunes, a Nature Reserve, and to replace an existing boom with a chain to ensure public access to the beach.
- The consolidation of the Hotel Crescent portion with Erf 101 should be subject to a title deed condition stating that it is “Zoned Undetermined” under any applicable town planning scheme for Rooi Els. According to the Overstrand Municipality Zoning Scheme Regulations, a land unit can

be zoned with a single base zone or a split-zoning, where different zones apply to different portions of the land. If split-zoning is proposed, a plan must be submitted by a qualified land surveyor. The objector argues that this title deed condition will reinforce the conditions approved by Mayco, preventing further development of the consolidated portion.

PROPERTY MANAGEMENT DIVISION COMMENTS ON OBJECTION 1

The Property Management Division is not going to respond to each, and every statement made by the objector and will only respond insofar the process to be followed in terms of the Municipality's Administration of Immovable Property Policy and the Municipal Asset Transfer Regulations.

Public Participation and interpretation of Policy/legislation

As a first it must be mentioned that the Municipal Planning Tribunal has no rights or authority to deal with the sale and transfer of municipal owned immovable property. This authority lies with Council and cannot be delegated.

Secondly, the objector's interpretation of the relevant policy and regulations is flawed in all aspects.

Thirdly, the in principle approval was obtained from Council, not Mayco as the latter does not have the authority to approve the sale of municipal owned immovable property. This said, one of the conditions imposed by Council when the in principle approval was obtained, is that a public participation process be followed, which was done.

It is evident from Objector 1's submission that they would have preferred the Municipality to conduct a preliminary public participation process prior to granting in-principle approval for the sale/alienation of a portion of Remainder Erf 323, Rooi Els, adjacent to Erf 101, Rooi Els. However, the Municipality is neither obligated nor required to conduct preliminary public participation for any municipal immovable property which is not classified as "high value" and specifically not for non-viable immovable property.

The Municipality undertook the necessary internal processes and conducted thorough investigations, concluding that the sale/alienation of this property would not impact municipal services. It has been confirmed that there are sufficient alternative access points to the ocean for public use. Furthermore, the Municipality adhered to the prescribed administrative procedures for public participation as mandated by Sections 47 and 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020, as well as Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

According to these regulations, public participation is to be conducted following the Council's in-principle approval. The Council's decision for in-principle approval was made on 28 February 2024, with the subsequent public participation process initiated on 12 September 2024. Thus, the public participation process as required by Section 14 of the MFMA has been attended to, which is evident from the comments/objections received. In this regard it must be noted that section 14 clearly indicates that the public participation process must be followed after Council has approved in principle the sale of the property.

The objections and comments received through the 30-Day period of the public participation process will be compiled and included in the final transfer agenda for Council, ensuring that Council has all necessary information to make an informed decision on the transfer of the Property.

As to the Key concerns raised:

- **Public Service Designation and Property Viability:** The Remainder of Erf 323 Rooi Els does not meet the criteria for a "basic municipal service" as defined by municipal standards. Basic municipal services typically include infrastructure essential for public welfare and community functionality, such as roads for primary access, utilities, sanitation, and emergency services. However, this portion of Erf 323 Rooi Els lacks the key features usually associated with such services.

The Property consists of an undeveloped, overgrown gravel road that does not provide direct vehicular access to the ocean nor offer any designated parking facilities. As a result, it does not fulfil a significant public access function. Furthermore, its condition and limited use mean it does

not contribute to essential public needs. From the locality it is clear that there is only one small self-made footpath to the ocean, with no provision for parking, as mentioned.

Alternative access routes are available within 80 meters from the property, including those from Bathers Street and Priestleya Street, offering more practical and developed access for both pedestrians and vehicles. These alternative access points sufficiently meet public access requirements, ensuring that the community's needs are adequately addressed without relying on this section of Erf 323 Rooi Els.

In addition, a portion of the Remainder of Erf 323 Rooi Els is currently zoned as a public road, with no municipal services located on the property. Given that the land does not provide vehicular access or parking and has not been used as such for over 30 years, and considering the availability of alternative access routes, the direct sale or alienation of this property will not impact public access to the coastal area. Public access remains fully supported by nearby infrastructure, including the parking area on Bathers Street and footpaths from Priestleya Street. Therefore, the sale/alienation of this property does not detract from the community's access or well-being.

- Lack of Public Participation

The Municipality has completed all required administrative steps and investigations prior to the granted approval of the lease by the Executive Mayor (delegated authority) and this will not be discussed further. The Applicant has utilized the Property as part of her driveway and entry to Erf 101 Rooi Els for over 30 years. Throughout the previous lease term, no complaints were raised by the community nor the public in whole.

A preliminary public participation process is not required for the sale/alienation of the portion of Remainder Erf 323 Rooi Els, because the property is classified as "non-viable immovable property" and not a high value asset. As mentioned above, a public participation is required after Council has approved the sale in principle (conditionally).

- Public Lane Subdivision Request:

The subject Property is approximately 15m wide with the Applicant owning both Erf 101 and 336 Rooi-Els. A proposed public lane will at the most only secure pedestrian flow to the beach, which is fully catered for approximately 80metres down the road. Such a public lane will have an effect on the security of both properties. This said, the creation of a public lane on the side of Erf 336 Rooi-Els might require substantial vegetation to be cleared.

- Rezoning and Consolidation of the Property:

The portion of Remainder Erf 323 Rooi Els in question will be consolidated with Erf 101 and rezoned to a residential zone, aligning it with the current zoning of the Applicant's property. The municipality affirms that this consolidation and rezoning process will be subject to the title deed condition, which will restrict any development beyond a boundary wall or fence. This ensures that the Property will not be developed for any new buildings or structures that could alter the existing character of the area. The municipality is confident that this approach aligns with sound land-use planning principles and safeguards the area's integrity while facilitating the applicant's residential use.

- Title Deed Condition and Development Restrictions:

The Objector's request for the addition of a title deed condition that the property be "Zoned Undetermined in terms of a town planning scheme," the municipality does not make sense. As part of this process, the municipality will ensure that a title deed condition is in place to prevent any development, besides a boundary wall, on the Property. The condition will effectively prevent any construction beyond a boundary wall and help uphold the residential character of the consolidated property. This Division does not concur with the reason given for a split zoning.

The requests of Objector 1 are not viable and do not make logical sense and defeats the purpose of the application.

Thus, we do not concur with objector 1's interpretation of the Policy and regulations and submit that the objection be dismissed.

2. **OBJECTOR 2: E BRINK (summarised – full objection attached)**

The Property Management Division is not going to respond to each, and every statement made by the objector and will only respond insofar the process to be followed in terms of the Municipality's Administration of Immovable Property Policy and the Municipal Asset Transfer Regulations.

Part A (Pages 1-3)

In Part A, Objector 2 argues that both the approval of the lease for a portion of Hotel Crescent in October 2023 and the current application for alienation are based on false and unfounded reasons. Brink requests the rejection of the alienation application and the cancellation of the renewed lease.

Objector 2 criticizes the justification for the alienation, which states that it is for better vehicle access to Erf 101. Objector 2 asserts that the Municipality is responsible for providing access to the property, regardless of the Applicant's purchase of the portion of land. They also refute the Applicant's previous explanation for the lease renewal, claiming it misrepresented the situation and restricted public access.

The Senior Town Planner's comments align with Objector's views, arguing that the Applicant's actions contravene legal regulations and the public's right to access. Objector 2 agrees with this assessment and urges the Municipality to cancel the lease. Objector 2 also points out that Property Administration's approval of the lease renewal was based on a narrow view, and emphasizes that the lease is already in place, making the alienation unnecessary.

Objector 2's main points in Part A are:

- **Challenge to the Lease and Alienation Approval:** Objector 2 contests both the approval of the lease in October 2023 and the current application for alienation of a portion of Hotel Crescent, claiming that the circumstances surrounding these decisions are unfounded and contrived.
- **Request for Lease Cancellation:** Objector 2 requests that not only should the current alienation application be rejected, but the renewed lease should also be cancelled, as Objector 2 believes the original approval was made under false pretences.
- **Contradictory Claims:** Objector 2 highlights discrepancies between the stated purposes for the lease and alienation. The advertised purpose of the alienation—to provide better vehicle access to Erf 101—is criticized as unnecessary, as the Municipality is responsible for providing such access. The previous lease's purpose is also seen as misleading, as the applicant had previously restricted public access to the street for private benefit.
- **Support from the Senior Town Planner:** Objector 2 agrees with the Senior Town Planner's recommendation to reject the lease renewal, emphasizing that the public's access to Hotel Crescent and the nature reserve should not be restricted for the private benefit of the Applicant.
- **Unfavourable Interpretation of Property Administration's View:** Objector 2 believes Property Management Division has too narrowly interpreted the legal implications of the lease and sale/alienation, and that the lease renewal should be reconsidered.
- **Existing Lease Renewal:** The Objector 2 points out that a lease has already been renewed in favour of the Applicant, making the sale/alienation of the Property unnecessary.

The main thrust of Part A is that Objector 2 believes the lease and alienation decisions are unjustified, based on misleading purposes, and should be rejected or cancelled by the Municipality.

Part B (Pages 4-6)

In Part B, Objector 2 requests that the Municipal Planning Tribunal recommend that the Overstrand Municipality Council reverse their in-principle approval of the direct alienation of a portion of Hotel Crescent, granted on 28 February 2024. Objector 2 had previously raised concerns about the potential

unlawfulness of the alienation, which were ignored by the Council despite being highlighted to both the Mayoral Committee and the DA Caucus before the decision was made.

Objector 2 submitted questions under the Promotion of Administrative Justice Act (PAJA) on 26 March 2024, seeking clarification from the Overstrand Municipality on why the public street portion of Hotel Crescent, which provides access to the beach and could be used for public parking, was deemed "non-viable" for public use. These questions challenge the basis for alienating the land and question the legality of the Municipality's actions, including the renewal of a lease that restricts public access.

Objector 2 argues that the municipal manager's refusal to address these questions undermines the Council's decision, and that proper consideration of these issues is necessary for the application to comply with administrative law. Objector 2 requests that the Planning Department advise the Municipal Planning Tribunal to request the Council to reverse their approval, putting the application on hold or preventing it from moving forward.

Objector 2's main points in Part B are thus:

- Challenge to the In-Principle Approval: Objector 2 is challenging the in-principle approval granted by the Overstrand Municipality Council on 28 February 2024 for the alienation of a portion of Remainder Erf 323 Rooi Els. Objector 2 had previously raised concerns about the lawfulness of this approval before the decision was made.
- Request for Reversal of Approval: Objector 2 formally requests that the Municipal Planning Tribunal ask the Council to reverse its in-principle approval of the alienation, arguing that the approval was made unlawfully and without proper consideration of important questions related to public access and the property's viability.
- Promotion of Administrative Justice Act (PAJA) Request: On 26 March 2024, Objector 2 submitted a request under the Promotion of Administrative Justice Act (PAJA) to the Municipality, seeking clarification on the decision to alienate the property. Objector 2 disputes the Council's stance that the matter falls outside of administrative action and should be subject to PAJA.
- Questions Regarding the Alienation: Objector 2 presents several specific questions about the alienation, particularly questioning why a public street portion, which provides access to the beach and could be used for parking, is considered "non-viable" and of "no practical use to any other person," as claimed by the Municipality. Objector 2 also questions the validity of the renewed lease that restricts public access to the beach, and whether such a practice could render the entire street system effectively privatized for the benefit of a single property owner.
- Argument for the Reversal: Objector 2 argues that if the Planning Department and the Municipal Planning Tribunal find that the Council's decision was unlawful or improperly reasoned, they should advise the Council to reverse the decision and halt the alienation process.

Overall, Part B is a detailed legal argument requesting the Municipal Planning Tribunal to intervene and have the Council's approval for the alienation reversed, highlighting the perceived flaws in the decision-making process, the disregard for public access rights, and the potential for unlawful private benefit.

Part C (Pages 6-9)

Objector 2 requests the Municipal Planning Tribunal to rule that the current application cannot be decided unless a public participation process is conducted beforehand, in accordance with Section 14 of the Municipal Finance Management Act (2003) and the Municipal Asset Transfer Regulations (2008). While the Overstrand Municipality policy does not require pre-public participation for non-high-value property disposals, Objector 2 argues that such a process should be mandatory when the property is significant to the community, particularly in cases like the proposed disposal of a road leading to the Rooi Els beach, which provides important access to the public.

Objector 2 acknowledges that public participation is not required for non-high-value disposals under the current legislation but points to national guidelines suggesting that such a process should still be conducted if the asset is of significant community value. Additionally, other municipalities, like the City of Cape Town, mandate public participation even for non-high-value property disposals, further supporting the request for public participation in this case.

Objector 2's main points in Part C are:

- Request for Public Participation: Objector 2 asks the Municipal Planning Tribunal to conduct a public participation process before the municipal Council decides on the disposal of the property, as mandated by Section 14 of the Municipal Finance Management Act and the Municipal Asset Transfer Regulations.
- Community Significance: The objector emphasizes that the road leading to Rooi Els beach, which provides access for both pedestrians and vehicles, is of significant importance to the local community. Therefore, public participation should be conducted before any decision is made on its disposal.
- Support from Other Sources: While the legislation does not require preliminary public participation for non-high-value disposals, the Objector cites guidelines from the National Treasury and the South African Local Government Association, which suggest public participation should still be considered if the asset is of significant value to the community. The objector also references policies from other municipalities, like Cape Town, that require public participation even for non-high-value disposals.

Overall, Objector 2 argues that the proposed property sale/alienation, due to its community significance, should undergo a public participation process, regardless of whether it meets the "high value" criteria.

Part D (Pages 9-10)

Objector 2 argues that the Municipal Planning Tribunal (MPT), as a quasi-judicial body, operates under specific land use legislation and has independent discretion in its decision-making. The council cannot dictate the MPT's decisions, directly or indirectly, based on an in-principle resolution made under different legislation. The objector references communications from Overstrand Municipality indicating that their concerns were considered premature, as the current decision only addresses whether the disposal interferes with municipal services. Broader concerns should be raised during the public participation process.

Objector 2 suggests that the Municipal Planning Tribunal (MPT) should now consider all relevant factors, beyond municipal service provision, and recommends a voluntary public participation process under the Municipal Finance Management Act (2003) and Asset Transfer Regulations (2008) before final decisions or advertisements proceed.

Objector 2 further argues the following:

- Road Access as a Basic Municipal Service: The road access via Hotel Crescent, providing Rooi Els Ratepayers access to the beach, qualifies as a basic municipal service under legislation. The Local Government: Municipal Finance Management Act (2003) and Municipal Asset Transfer Regulations (2008) prohibit the council from alienating such property.
- Public Interest Consideration as per Spatial Planning and Land Use Management Act (SPLUMA): The Spatial Planning and Land Use Management Act (SPLUMA) mandates that public interest be considered when deciding land use applications. The disposal of a public street is of public significance, and any legal uncertainties must be resolved before proceeding with the application.
- Objection to Disposal: The disposal of the public street is argued to be unlawful and unconstitutional as it restricts public access to a basic amenity (the beach). The Senior Town Planner has raised objections to the current lease of the public street, supporting this view.
- Definition of Basic Municipal Services: Section 14 of the Local Government: Municipal Finance Management Act (2003) prohibits the permanent disposal of assets needed for basic municipal services. Basic municipal service is defined as necessary for a reasonable quality of life and to avoid risks to public health, safety, or the environment.
- Access to Rooi Els Beach: Pedestrian and vehicular access to Rooi Els Beach via Hotel Crescent constitutes a basic municipal service. The act prevents the disposal of immovable property required for minimum service delivery levels.

Objector 2 requests that the Municipal Planning Tribunal refer the application back to the council, considering these legal and public interest issues.

Part E (Page 10)

In Part E of the objection, Objector 2 argues that the portion of Hotel Crescent should not be considered "non-viable" land under the Overstrand Municipality policy for lease or alienation. The objector asserts that Hotel Crescent is a public road, originally planned to provide access to Rooi Els beach, and therefore cannot be classified as "non-viable" land for alienation. The objection highlights that the road can function independently without being merged with a neighbouring property. Additionally, Objector 2 claims that the Mayoral Committee's in-principle approval for the alienation of the land was unfounded and conflicts with the municipality's policy on immovable property.

PROPERTY MANAGEMENT DIVISION COMMENTS ON OBJECTION 2

Part A (Pages 1-3)

- **Challenge to the Lease and Alienation Approval and Request for Lease Cancellation:** This will not be addressed in the report as it was dealt with in another report and finalised. The objector did not submit an appeal to the approval and cannot make use of this process to challenge the lease.
- **Contradictory Claims:** This will not be addressed as the lease was approved and finalised. The Applicant indicated clearly why she applied to purchase the Property.
- **Support from the Senior Town Planner:** This is not relevant to this application. The lease has already been approved and finalised.
- **Unfavourable Interpretation of Property Administration's View:** This is not relevant to this application. The lease has already been approved and finalised. The purpose of the sale/alienation, as stated in the public participation advertisement, is to allow the Applicant to incorporate the portion into their property, Erf 101 Rooi Els, to improve the functionality of their vehicle access driveway. The Municipality recognizes that while the sale/alienation of this portion may appear unnecessary to some, it is consistent with the applicant's plans for their property and will not negatively affect public spaces.
- **Existing Lease Renewal:** The Applicant has the right to apply to purchase the Property and make the right permanent and if approved, not having to pay a market related rental every month.

Part B (Pages 4-6)

- **Challenge to the In-Principle Approval:** The in-principle approval granted for the sale/alienation of the portion of Erf 323 Rooi Els was made in accordance with the relevant policies and legal frameworks. The concerns raised prior to the approval were carefully considered, and the municipality should by its decision that the Property is not required for basic municipal services and qualifies as "non-viable" for public use. The decision to proceed with the approval was consistent with municipal procedures.
- **Request for Reversal of Approval:** There is no reason for the municipality to reverse the in-principle conditional approval. The correct procedure in terms of legislation was followed.
- **Promotion of Administrative Justice Act (PAJA) Request:** The Property Management Division was not privy to this and cannot comment thereon.
- **Questions Regarding the Alienation:** The Property can be classified as non-viable property as "a property that, owing to urban planning, physical constraints or extent, cannot be developed on its own or function as a separate entity and can therefore only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner's property". It does not relate to whether it has practical use to anyone else. As mentioned, the public was only able to make use of the Property for pedestrian access to the beach. It is thus considered that the alienation of this Property will not substantially affect overall public access to the beach, given the

availability of other routes. The municipality has determined that the public's ability to use the beach remains unaffected, and the proposed sale will not impede access to the public place.

- **Argument for the Reversal:** The Municipal Planning Tribunal does not have the authority to decide on the sale of municipal immovable property. Their authority is limited to land use planning matters. Based on the assessment of all relevant factors, including the provision of alternative access to the beach and the land's classification as non-viable for public use, the municipality does not find sufficient grounds to reverse the in-principle approval granted by the Council on 28 February 2024. The Property Management Divisions maintains that the decision was made in compliance with the applicable policies, laws, and administrative procedures.

Part C (Pages 6-9)

- **Request for Public Participation:** The Municipal Planning Tribunal is not authorised to deal with the sale of municipal immovable property. This said, Section 14 of the Municipal Finance Management Act does not require a public participation process before the in-principle decision to sell, but does require one after the in-principle decision is taken. This process is being followed, which is evident from the objections received.
- **Community Significance:** Therefore, public participation should be conducted before any decision is made on its disposal. The Municipality has conducted a thorough assessment and confirmed that the proposed alienation will not negatively affect public access to the beach. While the portion of Remainder Erf 323 Rooi Els currently lies within a road reserve, it does not provide vehicular access to the coastline or sufficient parking. Public access to the beach is maintained through alternative access points located approximately 80 metres further along the road, as well as through other well-established routes on Bathers Street and Priestleya Street. It must be mentioned that this objector does not reside close to the affected area.
- **Support from Other Sources:** The guideline of National Treasury is just guidelines, it is not legislation. Similarly, the Overstrand Municipality is not bound by the Policy of City of Cape Town. The generic policy of SALGA is just that, a generic, which municipalities who do not have a policy can use as a guideline to adopt their own policies. Thus, this argument and research of the objector do not carry any value and is in effect, just an opinion. To reiterate, in accordance with the Municipal Finance Management Act the required notice of the proposed transfer was published on 12 September 2024, following the Council's in-principle approval. The notice was published in the Overstrand Herald, and a 30-day period for the public to submit objections or comments was provided. This step fully complies with the requirements for public participation, ensuring that any concerns from the public are duly considered before final approval

Part D (Pages 9-10)

- **General:** The claim that the sale/alienation of the Property would obstruct access to Rooi Els Beach is not substantiated. There are multiple access points to the beach available via other nearby roads, ensuring that public access to the beach remains unimpeded. The subject Property is, therefore, not critical to maintaining public access or fulfilling the municipality's obligation to provide such access.
- **Road Access as a Basic Municipal Service:** The road access via Hotel Crescent, providing Rooi Els Ratepayers access to the beach, qualifies as a basic municipal service under legislation. The Local Government: Municipal Finance Management Act (2003) and Municipal Asset Transfer Regulations (2008) prohibit the council from alienating such property.
- **Public Interest Consideration as per Spatial Planning and Land Use Management Act (SPLUMA):** The Municipal Planning Tribunal (MPT) operates independently in considering and deciding on land use applications under the Spatial Planning and Land Use Management Act (SPLUMA). The municipality recognizes the importance of public interest as outlined in SPLUMA but emphasizes that the current decision pertains solely to the alienation of the property, not its zoning or land use approval. Any land use considerations will be evaluated independently by the MPT when relevant applications are submitted.
- **Objection to Disposal:** The disposal of the property is being conducted in full compliance with the Local Government: Municipal Finance Management Act (2003), the Municipal Asset Transfer

Regulations (2008) and the municipality's Administration of Immovable Property Policy (2015). The municipality confirms that all legal requirements at this stage for the alienation of immovable property were met, including confirming that the property is not required for municipal service delivery. If the objector is of opinion that the approval of Council is unconstitutional, he must approach the relevant court to consider same.

- Definition of Basic Municipal Services and Access to Rooi Els Beach: The objector's assertion that the Property in question constitutes a "basic municipal service" as defined by the Local Government: Municipal Finance Management Act (2003) is not accurate. The Property is not required to provide or maintain any minimum levels of municipal service delivery, such as those necessary for public health, safety, or environmental protection. Its alienation will not impact the municipality's ability to meet its service delivery obligations.

Part E (Page 10)

- Public Access and Viability of the Land: While Objector 2 contends that Hotel Crescent serves as a public road providing access to Rooi Els beach, it is important to note that there are alternative access points to the ocean in the vicinity via other nearby roads. These alternatives ensure that public access to the beach and surrounding areas is maintained and that the proposed sale will not impede the ability of the public to reach the ocean.
- Need for the Property for Municipal Services: The municipality has carefully reviewed its current and future needs regarding this property, and it has been determined that the portion of Hotel Crescent proposed for sale is not required for the provision of basic municipal services. As such, the alienation of this land does not compromise essential municipal services or infrastructure.
- Policy Compliance: Regarding the objection's reference to the "Overstrand Municipality Administration of Immovable Property Policy" of 2015, the municipality maintains that the proposed sale complies with the applicable regulations. While the objector mentions the road's designation for public access, the existence of alternative routes, along with the lack of necessity for the property in municipal service provision, supports the decision to proceed with the alienation. Furthermore, the municipality's policies do not require preliminary public participation for the sale or alienation of this land, as it does not interfere with fundamental services or public access.
- Mayoral Committee Approval: The approval for the sale/alienation was granted by the municipal Council and not the Mayoral Committee and this approval was based on a thorough assessment of the land's current use, public access, and municipal needs. The approval aligns with the municipality's strategic objectives and complies with relevant policies and legal frameworks.

In the light of the above discussion, it is recommended that the two above objections, be dismissed.

3. SUPPORTER: ROOI ELS RATEPAYERS ASSOCIATION – conditional support to application

The Rooi Els Ratepayers Association (RERA) considered the application for the subdivision, rezoning, consolidation, and closure of a public place related to Erven 101 and 323 Rooi Els. Key points from the application include:

- The property has been leased by the adjacent landowner for many years, with a recent 10-year lease agreement.
- A portion of Erf 323 Rooi Els, currently zoned Transport Zone 2 and used as a driveway, is proposed to be subdivided and sold to the adjacent landowner.
- This portion does not provide public access to the beach, and access is available through other roads nearby (Rocklands, Priestley, and Bathers Roads).
- The applicant intends to rehabilitate a portion of Erf 101 Rooi Els, currently misused as a driveway but zoned Open Space 1.

Rooi Els Ratepayers Association (RERA) supports the proposal, mentioning that it will not negatively impact residents or the public. They also believe it will enhance the rehabilitation and maintenance of the public open space between the houses and the beach and reinforce the existing situation that has been in place without objections. The portion of road to be closed will not alter the area's-built environment, and the maintenance responsibility will fall to the landowner of Erf 101 Rooi Els. The

support is conditional upon rezoning a portion of the road adjacent to Erf 368 Rooi Els to Open Space 1.

PROPERTY MANAGEMENT DIVISION COMMENTS

The Municipality acknowledges the conditional support by the Rooi Els Ratepayers Association. It must however be made clear that their support cannot be subject to a condition that Erf 368 Rooi-Els be rezoned to Open Space Zone 1: Nature Reserve. The latter is subject to other processes and cannot be linked to this application.

ALTERNATIVE ACCESSES TO THE BEACH



ACCESS TO COASTAL AREA

KANTOOR VAN DIE DIREKTEUR: INFRASTRUKTUUR & BEPLANNING
OFFICE OF THE DIRECTOR: INFRASTRUCTURE & PLANNING

NAVRAE | ENQUIRIES:
LEËRVERWYSING | FILE REFERENCE:
DATE | DATUM:

Ms M Bekker
7/2/3/2 – Erf 323, adjacent to Erf 101 Rooi Els
5 March 2024



JA Baigrie
13 Hotel Crescent
ROOI ELS
7196

PER EMAIL: adbaigrie@gmail.com
jenbaigrie@gmail.com

Dear Mr / Ms Baigrie,

RE: IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF REMAINDER ERF 323 ROOI ELS (ROAD RESERVE) ADJACENT TO ERF 101 ROOI ELS, SITUATED IN HOTEL CRESCENT, ROOI ELS, TO MS. JA BAIGRIE

The abovementioned refers.

Council, at a meeting held on 28 February 2024, resolved as follow:

1. *that the direct alienation of a portion of Remainder Erf 323 Rooi Els (adjacent to Erf 101 Rooi Els) situated in Hotel Crescent, Rooi Els (±357m² in extent), to the owner of the adjoining Erf 101 Rooi Els, Ms Jennifer Anne Baigrie, at an amount of R800.00/m² (EIGHT HUNDRED RAND PER SQUARE METRE) (VAT excluded), to retain the existing partial enclosure, **be approved in principle;***
2. *that it be noted that the direct alienation is possible as the said portion of Remainder Erf 323 Rooi Els can be classified as a non-viable property;*
3. *that it be noted that a condition for the alienation will be that the said portion of Remainder Erf 323 Rooi Els must be consolidated with the adjoining property of Ms Jennifer Anne Baigrie, being Erf 101 Rooi Els;*
4. *that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Remainder Erf 323 Rooi Els, which condition must be registered against the title deed of the consolidated property;*
5. *that the alienation of said portion of Remainder Erf 323 Rooi Els be subject to a suspensive condition that the applicant/purchaser obtains approval for all the required land use rights, which include, the closure of public place (road), rezoning, subdivision and consolidation;*
6. *that all the costs pertaining to the transaction, e.g., application costs, valuation costs, closure of public open space, rezoning, subdivision and consolidation, advertisement, and the related costs, etc. be paid by the Applicant/purchaser, Ms Jennifer Anne Baigrie; and*
7. *that it be noted that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).*



Should you have any queries in this regard, please do not hesitate to contact Ms. A Le Roux (Manager: Property Administration) at 028 316 5623.

We trust you find the above in order and herewith request your written acceptance of the conditions as imposed by the Overstrand Municipality in this letter in order to proceed with the application process.

Kindly provide us with a copy of your ID document and confirm whether you are married in or out of community of property in order for us to finalise the Deed of Sale for signature.

As soon as the agreement is signed you may continue to apply for the Town Planning processes.

Yours sincerely,

MAGDA BEKKER
PROPERTY ADMINISTRATION

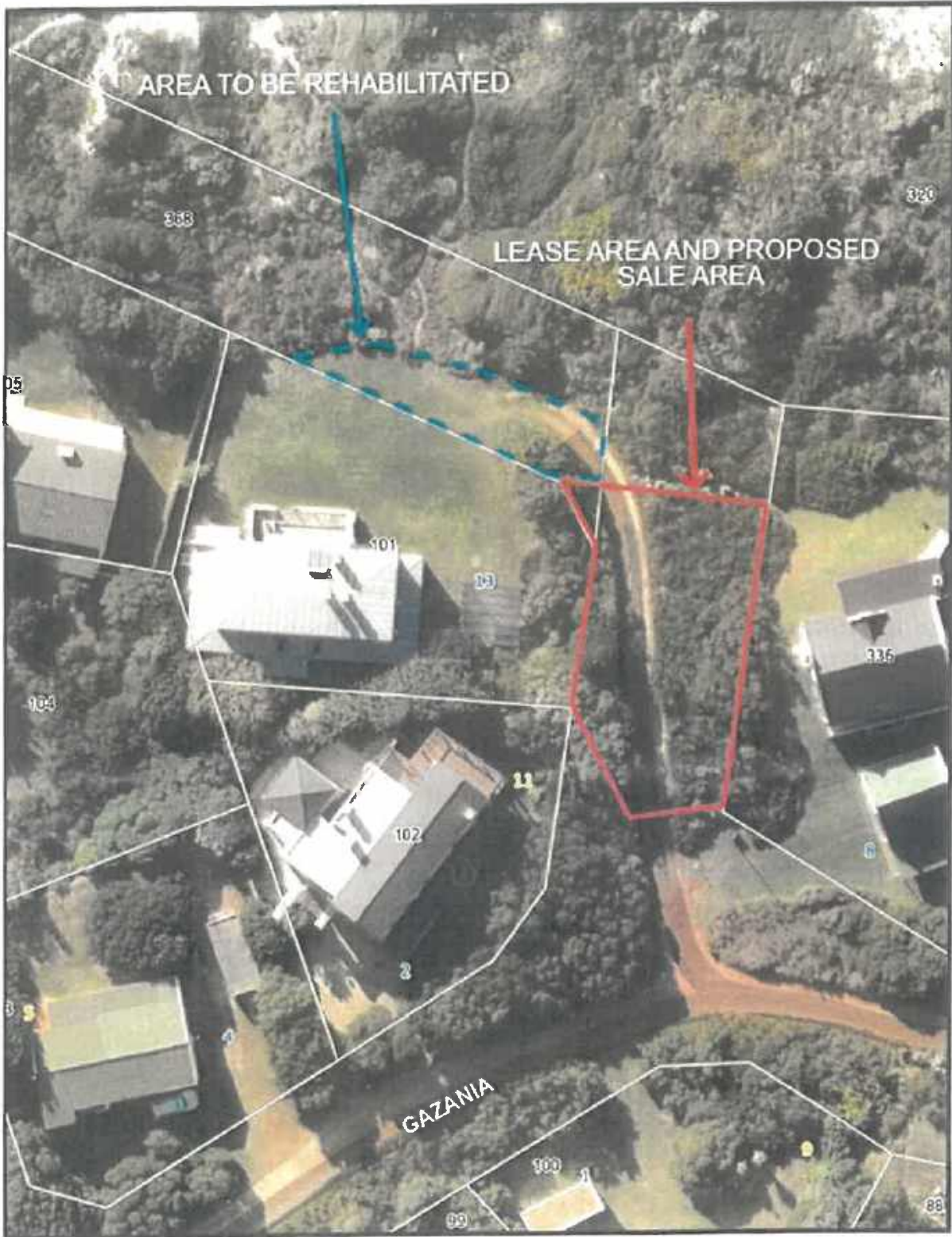
I, _____ (full names) with Identity Number _____, acknowledges that as the owner of Erf 101 Rooi Els, I understand and accept the conditions as stipulated in this council resolution.

Signature

Date



Locality Map



**AGENDA of the
Portfolio Committee : Investment, Infrastructure & Tourism
7 February 2024
(Also the Agenda for the Mayoral Committee Meeting : 13 February 2024)**

12.

**IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF
REMAINDER ERF 323 ROOI ELS, ($\pm 357\text{m}^2$ IN EXTENT), ADJACENT TO ERF 101
ROOI ELS, SITUATED IN HOTEL CRESCENT, ROOI ELS, TO MS JA BAIGRIE**

M Erasmus

Acting Manager: Property Administration

29 November 2023

(028) 316 - 5602

**THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE
PORTFOLIO COMMITTEE ON 7 FEBRUARY 2024, WHICH COMMITTEE
RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Remainder Erf 323 Rooi Els (adjacent to Erf 101 Rooi Els) situated in Hotel Crescent, Rooi Els ($\pm 357\text{m}^2$ in extent), to the owner of the adjoining Erf 101 Rooi Els, Ms Jennifer Anne Baigrie, at an amount of R800.00/m² (EIGHT HUNDRED RAND PER SQUARE METRE) (VAT excluded), to retain the existing partial enclosure, **be approved in principle**;
2. that it be noted that the direct alienation is possible as the said portion of Remainder Erf 323 Rooi Els can be classified as a non-viable property;
3. that it be noted that a condition for the alienation will be that the said portion of Remainder Erf 323 Rooi Els must be consolidated with the adjoining property of Ms Jennifer Anne Baigrie, being Erf 101 Rooi Els;
4. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Remainder Erf 323 Rooi Els, which condition must be registered against the title deed of the consolidated property;
5. that the alienation of said portion of Remainder Erf 323 Rooi Els be subject to a suspensive condition that the applicant/purchaser obtains approval for all the required land use rights, which include, the closure of public place (road), rezoning, subdivision and consolidation;
6. that all the costs pertaining to the transaction, e.g., application costs, valuation costs, closure of public open space, rezoning, subdivision and consolidation, advertisement, and the related costs, etc. be paid by the Applicant/purchaser, Ms Jennifer Anne Baigrie; and
7. that it be noted that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

**AGENDA of the
Portfolio Committee : Investment, Infrastructure & Tourism
7 February 2024
(Also the Agenda for the Mayoral Committee Meeting : 13 February 2024)**

RESPONSIBLE OFFICIAL:	M BEKKER
TARGET DATE FOR IMPLEMENTATION:	13 MARCH 2024
TARGET DATE TO INFORM APPLICANT:	13 MARCH 2024
TARGET DATE TO INFORM OBJECTOR:	N/A

ANNEXURE A1



ANNEXURE A2



← ACCESS TO COASTAL AREA

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR SUBDIVISION, REZONING, CONSOLIDATION &
CLOSURE OF A PUBLIC PLACE: ERF 101 & UNREGISTERED ERF 323,
ROOI ELS (4705/2024)**

Electricity	:	Eskom Area
Water	:	Refer to conditions
Sewer	:	Refer to conditions
Stormwater	:	Refer to conditions
Roads and traffic	:	Refer to conditions

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
3. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Principal Technologist: Kleinmond for written approval;
4. that any additional and / or extended vehicle entrances will be for the owner's account;
5. that no reservation of on-street parking be allowed.
6. that stormwater discharged from higher lying properties and generated in the catchment area of the property be allowed to drain freely through the property;
7. that stormwater reticulation and connection(s) to the municipal system be provided at the owners cost, if required.



**RICARDO ANDREW
PRINCIPAL TECHNOLOGIST:
DEVELOPMENT CONTROL**

30/10/2024
DATE