12.
IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF REMAINDER ERF 323 ROOI ELS, (±357m^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**

1. **Executive Summary**

   To obtain in principle approval for the direct alienation of a portion of Remainder Erf 323 Rooi Els (±357m^2 in extent) adjacent to Erf 101 Rooi Els, situated in Hotel Crescent, Rooi Els, to the owner of the adjoining property, Erf 101 Rooi Els, being Ms Jennifer Anne Baigrie, to retain the existing partial enclosure. See the locality maps attached hereto marked Annexure “A1” and “A2”.

2. **Service Delivery and Budget Implementation Plan - IGNITE**

   Infrastructure and Planning
   Property Administration

3. **Compliance with Strategic Priorities**

   Provision of democratic, accountable, and ethical governance
   Creation and maintenance of a safe and healthy environment

4. **Delegated Authority**

   None

5. **Legal Requirements**

   - Local Government: Municipal Financial Management Act (Act 56 of 2003) (“MFMA”)
   - Municipal Asset Transfer Regulations (R. 878 of 2008)
   - Administration of Immovable Property Policy of the Overstrand Municipality, as amended.

6. **Background/Discussion/Evaluation/Conclusion**

   Background/Discussion

   An application was received from Ms Jennifer Anne Baigrie, hereafter referred to as “the Applicant”, to purchase a portion of Remainder Erf 323 Rooi Els

(±357m^2 in extent), adjacent to Erf 101 Rooi Els, situated in Hotel Crescent, Rooi Els, hereafter referred to as “the Property”.

The Applicant is the owner of Erf 101 and Erf 336 Rooi Els. The Applicant wants to purchase the Property she has been using for the past 30 years to provide a more convenient vehicle access driveway to Erf 101 Rooi Els.

The Applicant has no intentions of changing anything by way of building, they would however clear much of the bush on either side of the “driveway” to widen it for the big “honeysucker” trucks and to give easier pedestrian access between the houses. The dunes will not be touched, nor will the road be paved.

The Applicant currently has a lease agreement in place for the Property. Their previous lease agreement commenced on 1 May 2013 and expired on 31 March 2023. A renewal of the lease agreement was approved in-principle by the delegated authority for the same area as the proposed sale area. The Applicant has been instructed to rehabilitate a portion of Erf 368 Rooi Els.

One of the conditions to the alienation will be that no structures of any kind (excluding a boundary wall or fence) may be erected on the Property.

Subsequent costs

The Applicant will be liable for the costs of the transaction which include, but not limited to, the application costs, valuation costs, closure of public place (road), rezoning, subdivision and consolidation of the Property, transfer costs as well as the required Section 14 advertisement in terms of the MFMA and Administration of Immovable Property Policy.

Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following conditions of the said Policy will apply:

Paragraph 4: “*No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including –*

***but not limited to – legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid*."**

The Applicant already paid the application fee. The transaction will only proceed once the Applicant accepted the conditions imposed by Council, which will include the acceptance of the cost implications.

Paragraph 7*: "The transfer of ownership of immovable property must be fair, equitable, transparent, competitive (unless it is not applicable or unpractical e.g., non-viable immovable property) and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA."*

Non-viable immovable property is defined in the relevant Policy 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."*

The Property 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. 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 again that no other adjoining property owner needs to consent to this alienation as both adjoining properties are owned by the Applicant.

Paragraph 9.2: "*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:*

(a) ***decided on reasonable grounds that the non-viable immovable property is not needed to provide the minimum level of basic municipal services;***
(b) ***considered the fair market value of the immovable property and the economic and community value to be received in exchange for the immovable property in accordance with Section 14(2) of the MFMA, and***
(c) ***has as a consequence to 9.2(a) and (b) above approved in principle that the immovable property may be transferred or disposed, provided that, when giving the in-principle approval,***

it is recorded in the minutes the full reasons for the Municipality preferring such direct transfer.”

(a) The comments received from the relevant departments indicate that the Property is not needed for the provision of municipal services.

(b) HCB Property Valuations determined the market related value on 1 October 2023 at an amount of R800.00/m^2 (EIGHT HUNDRED RAND PER SQUARE METRE) (VAT excluded). The valuation was done taking into consideration the size, shape, locality, zoning, and proposed use (restriction) of the Property. No community value is applicable to this transaction.

(d) The reasons for preferred direct sale are discussed above and will subsequently be recorded in the minutes.

Paragraph 28: ***“All costs pertaining to a transaction shall be borne by the successful bidder/purchaser, e.g., survey, advertisements, valuation, rezoning, relocation, or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs.”***

The Applicant will be liable for the costs of the transaction which will include, but not be limited to, the application fee, valuation cost, removal of restrictive conditions (if any), closure of public place (road), rezoning subdivision and consolidation, Section 14 advertisement and transfer costs.

Paragraph 29: ***“Should existing services need to be relocated or secured by means of the registration of a servitude in favour of the Municipality as a result of the alienation of the immovable property, all related costs shall be for the account of the successful bidder/purchaser.”***

The Applicant will be liable for all cost in this regard should it be necessary. From the comments received, no services will be affected.

Paragraph 30: ***“Small areas of land such as closed roads or portions of public place sold to an adjacent owner must be consolidated with the existing property of the adjacent owner, unless circumstances exist which, in the opinion of the Municipality, make such consolidation undesirable.”***

A condition to this effect will be included in the Deed of Sale.

Paragraph 32*: "Save with prior approval, the immovable property alienated may only be used for the purpose for which it was originally sold, and purposes permitted by town planning scheme regulations pertaining to such purposes."*

A condition to this effect will be included in the Deed of Sale. The condition that no structures may be erected on the Property will be registered against the title deed of the Property.

Paragraph 33: ***"The agreement might contain a suspensive condition in respect of immovable property which is sold subject to approval in terms of land use planning legislation."***

A condition to this effect will be included in the Deed of Sale.

Paragraph 34: ***"A 10% deposit of the agreed/tendered purchase price will be due and payable by the purchaser/successful bidder within 10 days of date of request in writing thereof by the Municipality."***

A condition to this effect will be included in the Deed of Sale.

Paragraph 35: ***"Interest on the purchase price, as from date of signature of the deed of sale, must be charged by the Municipality should payment or transfer be delayed due to an action or failure on the part of the successful bidder/ purchaser."***

A condition to this effect will be included in the Deed of Sale.

B: Advertisement/Notification

The necessary advertisement in terms of Section 14 of the MFMA will be published after obtaining this in principle decision. The applicant will be liable for the costs of the Section 14 advertisement.

Conclusion

Considering the comments of the internal departments, as well as the above discussion, it is recommended that the direct alienation of the Property to the Applicant be approved in principle.

Furthermore, the Applicant will be liable for all cost involved to affect transfer of the Property in the Deeds Office. Subsequently the costs will entail, amongst others, the application costs, valuation costs, closure of public place (road), rezoning, subdivision and consolidation, Section 14 advertisement, and the transfer costs.

7. Financial Implications

The Municipality stands to gain a market related purchase price of R800.00/m^2 (EIGHT HUNDRED RAND PER SQUARE METRE) (VAT excluded).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets - Mr J Vorster

"The full extent of Erf 323 Rooi Els is currently reflected as Road in the fixed asset register for PPE: Land at a carrying value of R405'000-00 as at 30 June 2023. Once the proposed transfer of the portion has been concluded, it will have to be written out of the fixed asset register at the applicable selling price in order to account for the actual gain / (loss) on the disposal of a portion of an asset.

There is no objection against the alienation."

Senior Manager: Operational Services - Mr D van Rhodie

"Operational Services Kleinmond have no objection to the application."

Senior Town Planner: Town Planning Department - Ms H van der Stoep

"Not supported. A portion of road was closed in 1999 and is zoned Public Open Space. There is sufficient space to access the property from Hotel Road. The Erf 368 is an ideal buffer between the sea and the existing residential erven, and no other access is obtained from the mentioned erf and should be in any case be rehabilitated.

The portion to be leased or sold is a public access / road and there is no reason for the applicant to purchase and restrict access for pedestrians to the sea. A more convenient access is not sufficient reason since the road reserve is sufficient to serve that purpose.

Thus, the extension of the lease and sale are not supported, since it is a nice to have, which is not to the benefit of the general public."

<u>Comment from Property Administration:</u>

Although the application is not supported by Town Planning there is no Town

Planning legislation/policy which prohibits the sale of the Property. there is access to the coastal area close enough (approximately 80metres further on – see Annexure “A2”) and thus the public is no being denied access to the coastal area. Further access to the ocean is available at the parking area in Bathers Street and by various footpaths from Priestleya Street.

Manager: Building Control - Mr L Coetzee

“No objection.”

Manager: Engineering Services - Mr R Andrew

“No comment.”

Assistant Chief: Fire and Rescue - Mr E Solomons

“No comment.”

Senior Superintendent: Operations (Traffic) - Mr P de Gruchy

“As the applicant is the owner of Erf 101 and 336, the roadway will not be an issue towards other property owners. There are no objections towards this application from this office.”

Environmental Officer - Ms T Zweig

“The EMS has no objection to this application. Please inform the owner of the Overstrand Environmental Management Overlay Zones (EMOZ) Erf 323 is within the Coastal Protection EMOZ. Please direct the owner to the EMOZ Regulations on the Overstrand website: https://www.overstrand.gov.za/en/documents/town-planning/by-laws/overstrand-municipality-amendment-by-law-on-municipal-land-use-planning-2020

The area that requires rehabilitation is zoned as Open Space Zone 1: Nature Reserve and Tarron Dry (Biodiversity Manager) must be notified of this rehabilitation plan.”

10. Annexures

Annexure A1 & A2: Locality Maps

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 (±357m^2 in extent), to the owner of the adjoining Erf 101 Rooi Els, Ms Jennifer Anne Baigrie, at an amount of R800.00/m^2 (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).

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**

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, (±357m^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 (±357m^2 in extent), to the owner of the adjoining Erf 101 Rooi Els, Ms Jennifer Anne Baigrie, at an amount of R800.00/m^2 (EIGHT HUNDRED RAND PER SQUARE METRE) (VAT excluded), to retain the existing partial enclosure, **be approved in principle**;

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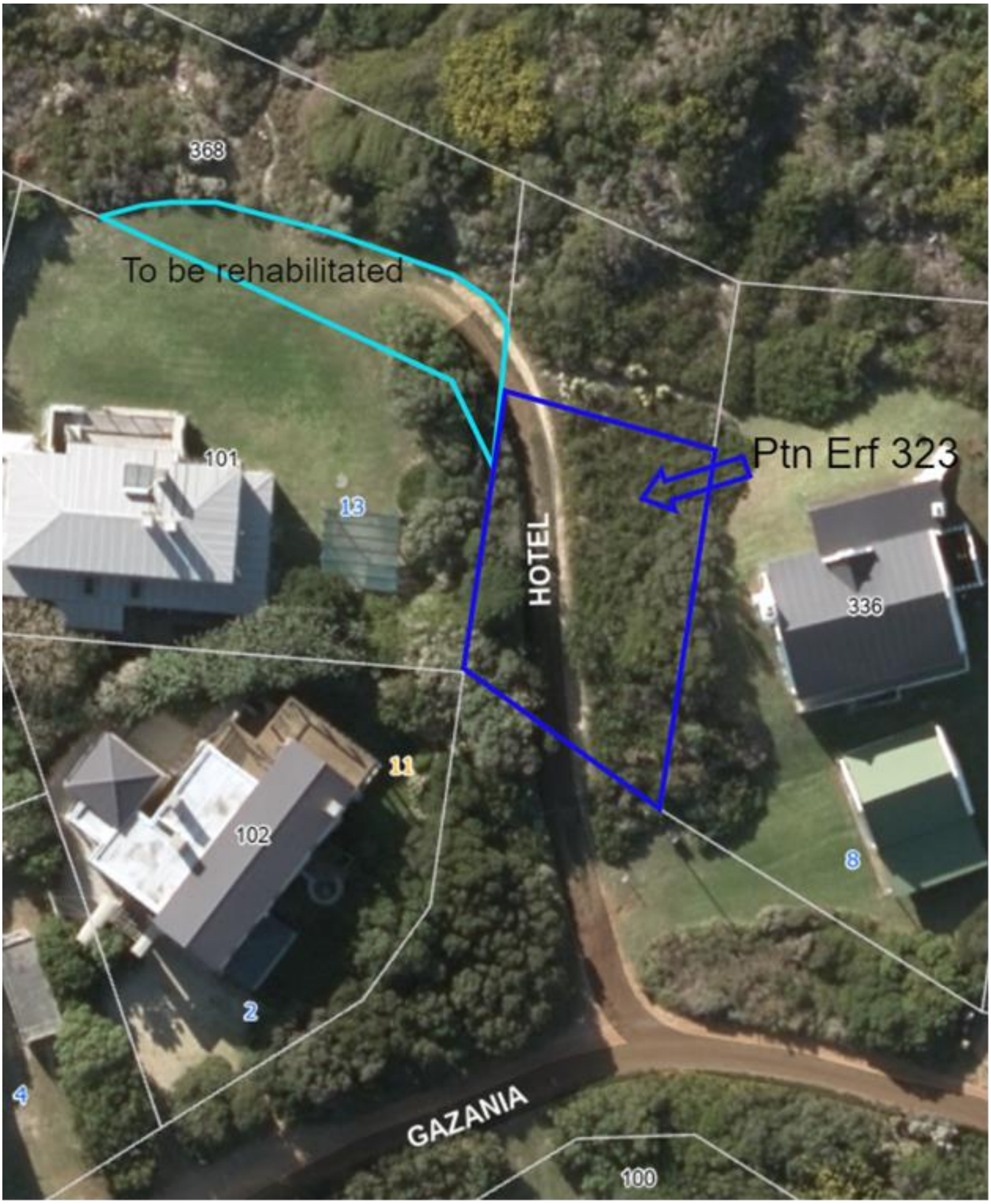
5. that the alienation of said portion of Remainder Erf 323 Rooi Els be subject to a suspensive condition that the applicant/purchaser obtains approval for all the required land use rights, which include, the closure of public place (road), rezoning, subdivision and consolidation;

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

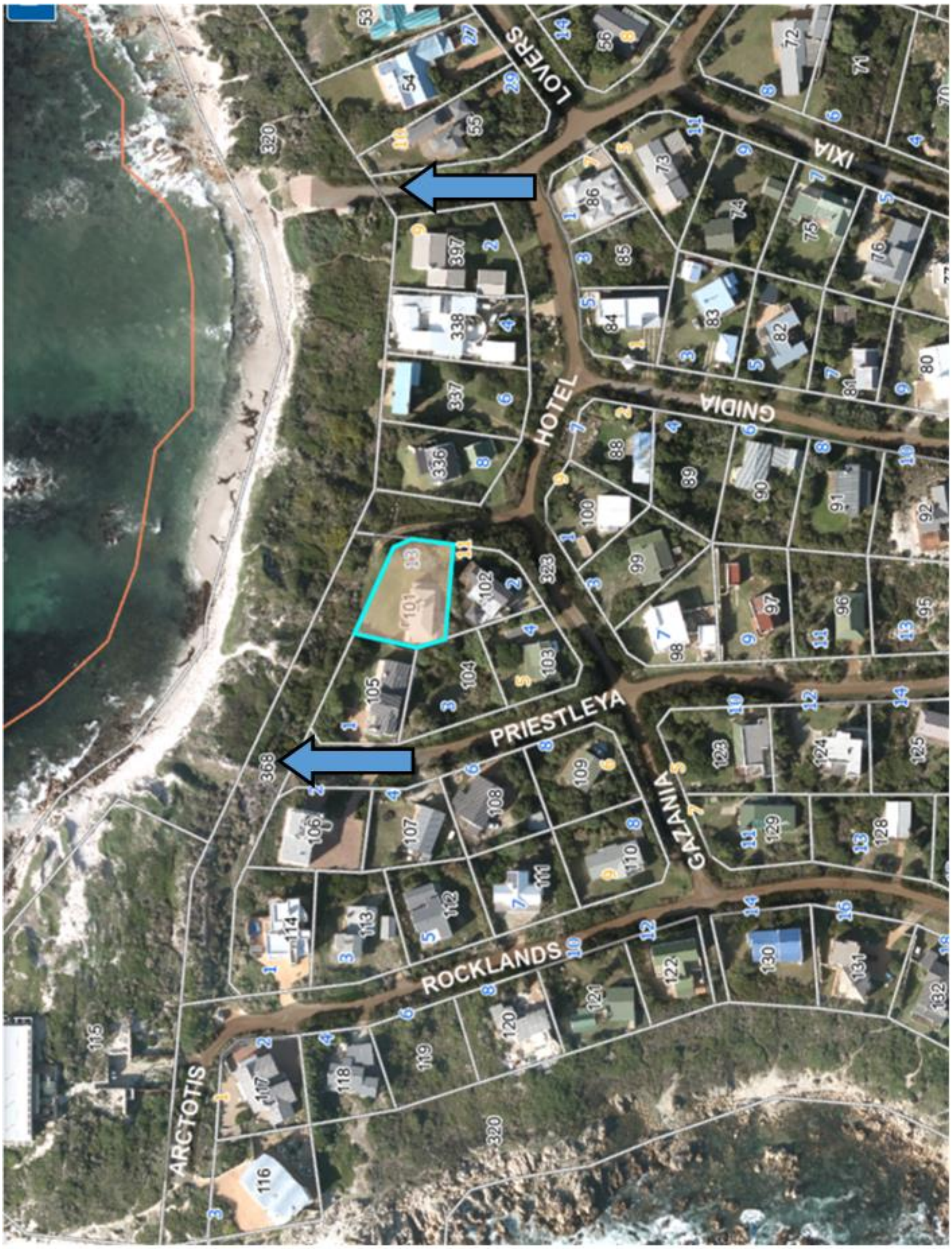
7. that it be noted that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance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

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


368
To be rehabilitated
101
13
Ptn Erf 323
HOTEL
336
11
102
8
2
4
GAZANIA
100

ANNEXURE A2



ACCESS TO COASTAL AREA