

10.

**HERMANUS: IN PRINCIPLE APPROVAL FOR THE ALIENATION OF A PORTION OF REMAINDER ERF 4771 HERMANUS (SITUATED IN SEVENTH STREET BETWEEN FOURTH AND SIXTH AVENUE, VOËLKLIIP), 30 000m<sup>2</sup> IN EXTENT, BY MEANS OF A COMPETITIVE PROCESS FOR THE DEVELOPMENT OF TOWN HOUSING**

7/2/3/2

A Le Roux  
6 July 2022

Manager: Property Administration

(028) 316-5623

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### **1. Executive Summary**

To obtain in principle approval for the alienation of a portion of Remainder Erf 4771 Hermanus, 30 000m<sup>2</sup> (thirty thousand square metres) in extent (the "Property"), for by means of a competitive process for the development of town housing.

The locality of the portion of Remainder Erf 4771 Hermanus is indicated with the blue line on the locality map attached per "Annexure A".

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

Investment and Infrastructure  
Property Administration

### **3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
The encouragement of structured community participation in the matters of the municipality

### **4. Delegated Authority**

None

### **5. Legal Requirements**

- Local Government: Municipal Finance 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
- Municipal Supply Chain Management Regulations (Notice 868 of 30 May 2005)
- Overstrand Municipality Supply Chain Management Policy, as amended

## 6. Background/Discussion/Evaluation/Conclusion

### Background/Discussion

The subject Property was identified for development as part of the Investment Conference that took place on 23 and 24 June 2022. Several attendees of the conference indicated interest in developing the Property.

The Property is 30 000m<sup>2</sup> (thirty thousand square metres) in extent, vacant and situated in Seventh Street between Fourth and Sixth Avenue, Voëlklip.

The Property is zoned as Open Space Zone 2: Public Open Space and a portion of the Property is also partially situated outside of the Urban Edge as depicted in the Overstrand Municipality Spatial Development Framework, 2020.

As there is a need for residential erven it is recommended that the Property be made available in the open market by means of a competitive process for the development of Town Housing.

### Evaluation

#### A. Evaluation in terms of the Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply to this report:

**Paragraph 9.1(a): “The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA decided on reasonable grounds that the immovable property is not needed to provide the minimum level of basic municipal services.”**

The comments received from the relevant officials confirmed that the subject Property is not needed for the provision of the minimum level of basic municipal services.

**Paragraph 9.1(b): “The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA 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.”**

Boland Valuers determined the market related value of the Property on 24 June 2022 at an amount of R1,095.00/m<sup>2</sup> (one thousand and ninety five rand) (VAT excluded).

**Paragraph 9.1(c):** *“The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA has as a consequence to 9.1(a) and (b) above approved in principle that the immovable property may be transferred or disposed of, and the method of disposal or transfer.”*

The purpose of this report is to request in principle approval from Council for the alienation of the Property by means a competitive process.

**Paragraph 15.1:** *“The transfer of immovable property must, except in the case of non-viable immovable property, be affected by means of competitive process, which may include a public or closed tender, auction or proposal call.”*

It is recommended that the Property be alienated by means of a competitive process.

**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 successful bidder will be liable for all costs pertaining to the transaction, excluding the cost for the valuation of the property. Costs for the successful bidder will include, but is not limited to:

- Section 14 advertisement,
- transfer costs,
- installation, upgrading and connection of services,
- Town Planning processes (including the preparation of subdivision diagrams and Environmental Impact Assessment, etc), and
- any other costs pertaining to the transaction and proposed development.

The above will be suspensive conditions in the deed of sale which will have the effect of a delayed transfer. If the conditions are not met, the transaction will not continue. The above will be done at the successful bidder’s own risk and cost.

**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.”*

A servitude must be registered for a water pipeline at the cost of the successful bidder.

**Paragraph 31:** *“Where immovable property is alienated for development, a condition, taking into consideration the nature of the development, might be included in the Deed of Sale stipulating that such development must be completed within two years from date of registration. Likewise a condition may be included in the agreement to provide for forfeiture in the event that the development has not been completed within the required time period, unless a written extension has been granted by the Municipality.”*

A clause to this effect will be included in any deed of sale to be entered into between the Municipality and the successful bidder to ensure that the development is at least commenced with, and that the Property is not used for speculation purposes.

**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 clause to this effect will be included in any deed of sale to be entered into between the Municipality and the successful bidder.

**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.”*

The following land use planning processes, as a minimum, must be followed in order to develop the Property:

- Subdivision of the Property together with a general plan.
- Closure of a portion of public place.
- Rezoning the Property from Open Space Zone 2: Public Open Space to General Residential Zone 1: Town Housing.
- Deviation of the Spatial Development Framework of 2020 to allow higher densities up to 35 units per hectare and to amend the urban edge.
- Traffic Impact Assessment.
- Heritage Impact Assessment.
- Environmental Impact Assessment.
- The application must also address the relevant overlay zones applicable to the Property.

**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.”*

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A clause to this effect will be included in any deed of sale to be entered into between the Municipality and the successful bidder. The bidder will be required to pay the deposit even before the suspensive conditions are met.

**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 clause to this effect will be included in the deed of sale to be entered into between the Municipality and the successful bidder. The interest rate used in another transfer was a rate equal to the prime lending interest rate of Nedbank Bank applicable on date of signature, to be calculated date of signature of the deed of sale by the last signature to date of registration of the transfer (both days included).

**B. Advertisement/Notification**

The necessary advertisement in terms of Section 14 of the MFMA will be published after the tender is duly awarded. The successful bidder will be liable for the costs of the Section 14 advertisement.

**Conclusion**

It is recommended that a portion of Remainder Erf 4771 Hermanus (±30 000m<sup>2</sup> in extent) be alienated for the development of Town Housing by means of a competitive process, at not less than the market related value.

Furthermore, it is recommended that the successful bidder/ be liable for all costs related to the transaction, excluding the costs for the valuation of the Property.

**7. Financial Implications**

The Municipality stands to gain a market related purchase price of R1,095.00/m<sup>2</sup> (one thousand and ninety-five rand) (VAT excluded) for the Property which equates to ±R32,850,000.00 (thirty two million eight hundred and fifty thousand rand) (VAT excluded) for the ±30 000m<sup>2</sup>.

**8. Staff Implications**

None.

**9. Comments from other Departments, Divisions and Administrations****Senior Manager: Expenditure and Assets: Mr J Vorster - (028) 313 8046**

*Erf 4771 Hermanus is currently reflected in the fixed asset register for PPE: Land at a carrying value of R3'999'450-42 as at 30 June 2022. Once the proposed alienation has been concluded the subdivided portion of the erf will have to be written out of the fixed asset register at the applicable selling price in order to account for actual gain / (loss) on the disposal of an asset.*

*There is no objection as the application complies with the Administration of Immoveable Property Policy.*

**Town Planner: Mr P Roux – (028) 313 8983**

*The subject portion of Erf 4771, Hermanus is zoned as Open Space Zone 2: Public Open Space and a portion of the portion of Erf 4771, Hermanus is also partially situated outside of the Urban Edge as depicted in the Overstrand Municipality Spatial Development Framework, 2020.*

*The successful bidder will have to apply for the land use rights to develop a Town Housing development. This application may include the following:*

- *Subdivision of the portion from Erf 4771, Hermanus,*
- *Closure of the portion of Erf 4771, Hermanus,*
- *Rezoning of portion of Erf 4771, Hermanus from Open Space Zone 2: Public Open Space to General Residential Zone 1: Town Housing,*
- *Deviation of the SDF, 2020 to allow higher densities up to 35 units per hectare and to amend the urban edge,*
- *Traffic Impact Assessment,*
- *Heritage Impact Assessment,*
- *Environmental Impact Assessment, and*
- *The application must also address the relevant overlay zones applicable to the site.*

**Senior Manager: Hermanus Administration: Mr A Wyngaard – (028) 313 8112**

*I support the sale of the said property for the development of Town Housing.*

**Senior Manager: Operational Services: Mr T Marx – (028) 313 8092**

*Services are available in the vicinity of the property. A servitude must be registered to accommodate the water pipeline crossing the property as indicated on the attached locality map (Annexure B). Upgrading of the services for the purpose of the proposed development will be required and to be done at the developer's cost.*

**Senior Environmental Manager: Ms L de Villiers - (028) 316 5615**

*This office supports the sale and development of a portion of Remainder Erf 4771 Hermanus.*

- *A portion of the property falls under “New Proposal to Council” (refer to area outside urban edge) under the Fernkloof Protected Areas Management Plan – This document has served in front of Council, but the new proposal must still be considered by council. The request is that the remainder of the erf be rezoned as Open Space Zone 1, Nature Reserve and Proclaimed under the Protected Areas Act, Fernkloof Nature Reserve.*
- *The property is currently Open Space Zone 2, new proposal to be zoned Opens Space Zone 1.*
- *It is noted that according to the GIS there are existing services on the property (Water and Storm Water).*
- *The vegetation type is Agulhas Limestone Fynbos – Which his “Vulnerable” according to the SANBI Ecosystem Vegetation Layer.*
- *The property falls under the Environmental Overlay Zone, Protected Areas Buffer zone.*
- *Please note. The proposed portion of 4771 borders on Fernkloof Nature Reserve.*

Comments from the Property Administration Department: At this stage the inclusion of a portion of the Property into the Fernkloof Protected Areas Management Plan has not been approved by Council. The development of this area will go through a public participation process and the successful developer will have to obtain an Environmental Assessment Impact report which can address this.

**Manager: Engineering Services: Mr R Andrew - (028) 313 5073**

*If the sale is approved:*

1. *The developer should identify and locate all municipal services located on the property under consideration.*
2. *The existing municipal services have to stay intact and can't be compromised. If any of the existing services need to be relocated, it will be done by the applicants at his cost, and to the satisfaction of the Director: Infrastructure and Planning. Servitudes should be registered for all municipal services on private property.*
3. *The developer will only utilized the existing roads/accesses and no new additional roads/accesses will be created without the written approval of the Senior Manager: Engineering Services.*
4. *Bulk Infrastructure Contribution Levies are payable by the developer where there is an intensification of land use and a resultant increase in*

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*loading on the municipal engineering services. Bulk Contribution Levies will be charged according to the Overstrand Bulk Contribution Levy Policy and the prescribed tariffs as contained in Council's budget. These tariffs are subject to annual adjustment. Levies will be payable prior to the submission of building plans (for sectional title units / commercial buildings) or rates clearance being issued (for free-standing properties).*

5. *The developer will be responsible for the construction and provision of all municipal services to the proposed development, including all connection fees and investigation levies for municipal services.*
6. *The developer must enter into a service level agreement with the Municipality.*

Comments from the Property Administration Department: The relevant conditions imposed will be included in a deed of sale.

**Senior Manager Electrical Services: Mr JH du Plessis - (028) 316 5627**

*The Electrical department does not have any objections towards the development, however, keep in mind this is an open space and there is no electrical capacity available on this property. A formal application must be made for the needed capacity for the development. Please take note that an 11k V cable cross this property as per attached plan (Annexure C). This cable will have to be rerouted alongside 7<sup>th</sup> Street which can be addressed in the service agreement.*

Comments from the Property Administration Department: The deed of sale will stipulate that such costs are for the bidder's account.

**Senior Manager: (Building Control Department): Mr L Coetzee – (028) 313 8091**

*The Building Control Department has no objection. Any building plan application must comply with all the applicable law.*

**Senior Superintendent: Operations: Mr P De Gruchy – (028) 313 0999**

*This office has no objection to the sale and development of a portion of Remainder Erf 4771 Hermanus for the development of Town Housing.*

*The approval of the application is subject to the Engineering Comments which addresses traffic flow and accesses."*

**Assistant Chief: Fire Safety & Health and Safety: E Solomons - (028) 313 8979**

*The fire department has no objection subject to compliance with the provision of SANS-A:2016, 10400-T:2020 and the By-Law relating to community fire safety.*

### **10. Annexures**

- Annexure A: Locality Map
- Annexure B: Locality Map – Water pipeline
- Annexure C: Fernkloof Protected Areas Management Plan proposal
- Annexure D: Locality Map - Electrical services for relocation

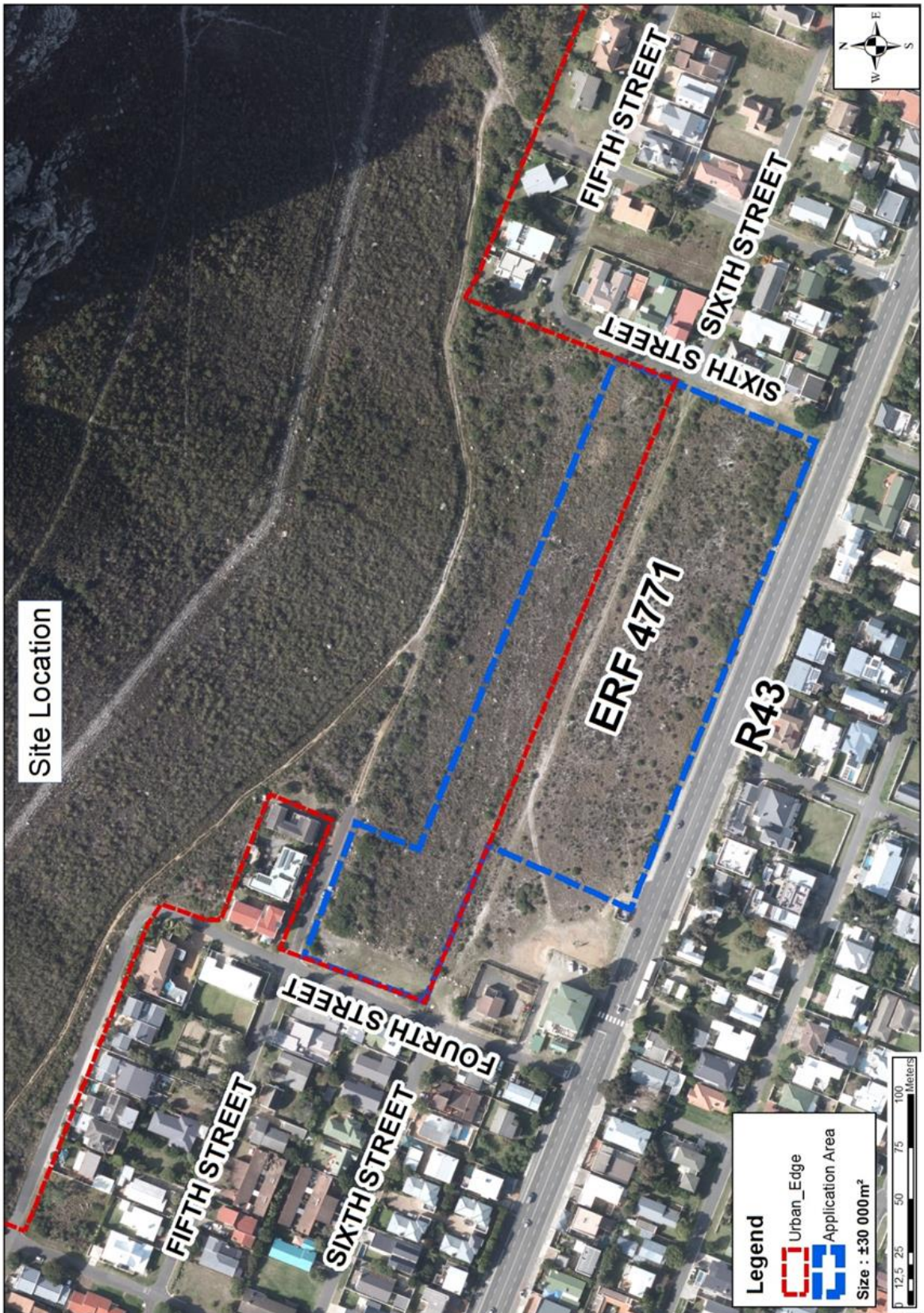
### **RECOMMENDATION TO THE COUNCIL:**

1. that the alienation of a portion of Remainder Erf 4771 Hermanus ( $\pm 30\,000\text{m}^2$  in extent) for a Town Housing development by means of a competitive process at a market related price **be approved in principle**;
2. that the alienation of the portion of Remainder Erf 4771 Hermanus be subject to a suspensive condition that the successful bidder obtains at own cost all the approvals, e.g., Town Planning/Land Use Planning, etc.) necessary for the transfer and subsequent development of the said portion of Remainder Erf 4771 Hermanus;
3. that a condition be included in the deed of sale for forfeiture stating that such development must be completed within 2 (two) years from date of registration unless prior written approval is obtained from Overstrand Municipality, under the hand of the delegated authority, for an extension of time;
4. that a condition be included in the deed of sale that interest on the purchase price will be charged by the Municipality should payment or transfer be delayed due to an action or failure on the part of the successful bidder;
5. that a condition be registered against the title deed of the Property that it may only be used for the development of a Town Housing development and in line with the development parameters as depicted in the Overstrand Municipality Land Use Scheme, 2020 under General Residential Zone 1: Town Housing;
6. that all the costs pertaining to the transaction and subsequent development, for example, but not limited to, the transfer costs, water, sewer and electricity connections and the section 14 advertisement, but excluding the valuation costs, be paid by the successful bidder;
7. that the successful bidder, at its own cost, constructs the internal municipal and electrical services for the development as well as any link or bulk municipal services that needs to be approved;

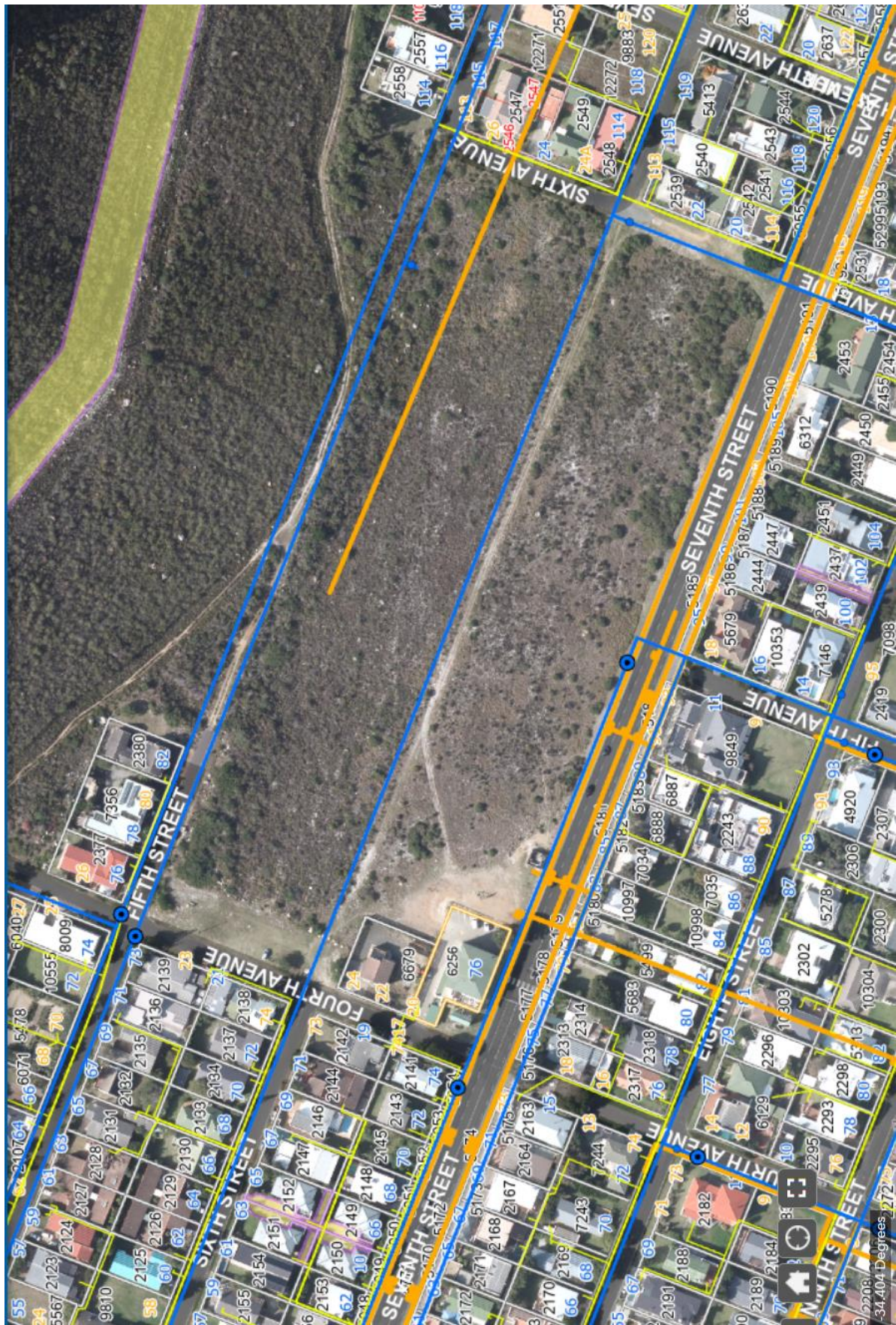
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8. that the successful bidder enters into a Services Agreement with the Municipality for the provision of internal-, link- and bulk services in terms of the tender, applicable legislation and Council policies;
9. that a services servitude for the water pipeline be registered against the title deed of the Property in favour of the Municipality, at the successful bidder's cost, simultaneous with the registration of the transfer; and
10. that it is hereby confirmed by Council that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of paragraph 5 of the Administration of Immovable Property Policy approved by Council on 25 November 2015 and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

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| <b>RESPONSIBLE OFFICIAL :</b>            | <b>A LE ROUX</b>         |
| <b>TARGET DATE FOR IMPLEMENTATION :</b>  | <b>12 SEPTEMBER 2022</b> |
| <b>TARGET DATE TO INFORM APPLICANT :</b> | <b>N/A</b>               |
| <b>TARGET DATE TO INFORM OBJECTOR :</b>  | <b>N/A</b>               |



ANNEXURE B



ANNEXURE C



