

REILLYS

ATTORNEYS, NOTARIES & CONVEYANCERS

310 Vincent House, Wynberg Mews
Ebenezer Road, Wynberg, 7800☒ 18006, Wynberg, 7824
e-mail: law@reillys.co.za☎ (021) 763 6020
Fax: (021) 763 6021TP- A Theart
(C H Olivier)The Municipal Manager/Chief Executive
Officer
Overstrand Municipality
P O Box 20
HERMANUS
7200e-mail: b.nyman@reillys.co.za
Direct Line: (021) 763 6026
Our Ref: VAN125/0003/SLR/bn
Your Ref:
Date: 20 November 2015VIA E-MAIL: Alida@overstrand.gov.za

Dear Sir

**RE: NOTICE OF OBJECTION TO APPLICATION FOR REMOVAL/AMENDMENT OF
RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURES: ERF 2228,
HERMANUS SITUATED AT 71 10TH STREET, VOËLKLIP, HERMANUS**

We refer to the writer's telephone conversation yesterday with Ms Alida Calitz when we advised that we were acting on behalf of the registered owner of Erf 2226 Hermanus who had instructed us to submit a written objection to the Director: Integrated Environmental Management of the Provincial Government of the Western Cape and to send a copy thereof to you. We confirm that we enquired of Ms Calitz whether it would be in order for us to send the copy of the aforesaid letter to you by email and she confirmed that this would be in order and kindly furnished us with the email address to which we should send it.

A copy of our aforesaid letter of even date is, accordingly, attached and we have also send the letter to the Director: Integrated Environmental Management by email, having been assured that submission by email to him was also acceptable.

Thank you for your assistance in this matter.

Yours faithfully

REILLYS

Per: 

S L REILLY

FILE NO:	EL 2228-HVK
SCAN NO:	06
COLLABORATOR NO:	858391

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The Director: Integrated Environmental
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Provincial Government
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CAPE TOWN
8000

e-mail: b.nyman@reillys.co.za

Direct Line: (021) 763 6026

Our Ref: VAN125/00003/SLR/bn

Your Ref:

Date: 20 November 2015

VIA E-MAIL: Rykhana.Rabikissoon@westerncape.gov.za

Dear Sir

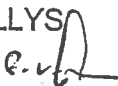
RE: NOTICE OF OBJECTION TO APPLICATION FOR REMOVAL/AMENDMENT OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURES: ERF 2228, HERMANUS SITUATED AT 71 10TH STREET, VOËLKLIP, HERMANUS

We refer to the writer's telephone conversation yesterday with your Ms Rabikissoon when she informed us that it would be in order for us to address the attached letter of objection to you by email and she kindly gave us the address to which it should be sent.

We also attach a copy of a letter (without its attachment) which we have addressed to the Municipal Manager/Chief Executive Officer of the Overstrand Municipality for your records.

Yours faithfully

REILLYS

Per: 

S L REILLY

Berry Nyman

From: Berry Nyman
Sent: 20 November 2015 02:51 PM
To: 'Alida@overstrand.gov.za'
Subject: NOTICE OF OBJECTION TO APPLICATION FOR REMOVAL/AMENDMENT OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURE: ERF 2228
Attachments: MUNICIPALMANAGLET.20NOV15.pdf

S L REILLY

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Officer
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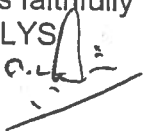
Dear Sir

RE: NOTICE OF OBJECTION TO APPLICATION FOR REMOVAL/AMENDMENT OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURES: ERF 2228, HERMANUS SITUATED AT 71 10TH STREET, VOËLKLIP, HERMANUS

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Yours faithfully
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Per: 

S L REILLY

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The Director: Integrated Environmental
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Department of Environmental Affairs and
Development Planning
Provincial Government of the Western Cape
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CAPE TOWN
8000

e-mail: b.nyman@reillys.co.za
Direct Line: (021) 763 6026
Our Ref: VAN125/0003/SLR/bn
Your Ref:
Date: 20 November 2015

VIA E-MAIL: Rykhana.Rabikissoon@westerncape.gov.za

Gentlemen

NOTICE OF OBJECTION TO APPLICATION FOR REMOVAL / AMENDMENT OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURES: ERF 2228, HERMANUS SITUATED AT 71 10TH STREET, VOËLKLIP, HERMANUS

1. We address you on the instructions of our client, Mr Johannes Jacobus Marthinus van Zyl.

Introduction

2. Our client is the registered owner of Erf 2226, Hermanus, in the Overstrand Municipality, division Caledon, Province of the Western Cape, in extent 495m², held by Deed of Transfer T18856/1986 ("Erf 2226"). A copy of the said Deed of transfer is annexed hereto, marked "JvZ1".
3. Our client has been notified that the owner of Erf 2228, Hermanus, in the Overstrand Municipality, division Caledon, Province of the Western Cape, in extent 991m², held by Deed of Transfer T10151/2000 ("Erf 2228"), being Onshelf Property 87 (Pty) Ltd ("the Applicant") has made application for:

Page 2

- 3.1 the removal/amendment of the praedial servitudes registered against Erf 2228 in favour of Erf 2226 by virtue of Notarial Deed of Servitude No. 3/1949 dated 11 December 1948 ("the Servitude");
- 3.2 a departure from the relevant Scheme Regulations by relaxing the lateral building lines applicable to Erf 2228 from 2 metres to 1 metre in order to accommodate additions.
4. Copies of the aforementioned Deeds of Servitude and Transfer are annexed to the written application submitted by the Applicant dated 7 October 2015, marked "C" ("the Application").
5. For the sake of convenience, we hereafter distinguish between the relief sought by the Applicant in respect of the removal or amendment of the Servitude and in respect of the departure from the relevant Scheme Regulations by referring to the former as "the Removal Application" and to the latter as "the Departure Application".

Notice of objection

6. Our client herewith formally notifies you that he objects to and opposes the relief sought in respect of the Removal Application, as well as the Departure Application, on the grounds set out below.

Right to object

7. It is submitted that it cannot be disputed that our client, as the registered owner of the dominant tenement in respect of the Servitude, being Erf 2226, has the necessary standing and authority to oppose the Application.

The Removal Application

8. We will firstly set out the grounds upon which our client objects to and opposes the Removal Application.

9. Please note that we were not instructed to deal with each and every allegation made by Tommy Brümmer Town Planners in the written motivation supporting the Application ("the Motivation"). Accordingly, our failure to deal with any particular allegation in the Motivation should in no way be regarded as an admission of such allegation. On the contrary, such allegation should be deemed to be denied unless the contrary clearly appears from what is stated elsewhere herein.

(a) Repeal of Removal of Restrictions Act 84 of 1967

10. The Removal Application is brought to the Provincial Government of the Western Cape in terms of the Removal of Restrictions Act 84 of 1967 ("the Restrictions Act").
11. However, Section 59 of the Spatial Planning and Land Use Management Act 16 of 2013 that commenced on 1 July 2015 ("the Planning Act")¹ determines that the laws mentioned in Schedule 3 thereto are repealed to the extent indicated in the third column of that Schedule.
12. Schedule 3 provides that the whole of the Restrictions Act was repealed with the enactment of the Planning Act.
13. Although Section 60 of the Planning Act, which deals with certain transitional provisions, determines in sub-Section 1 thereof that the repeal of laws referred to in Section 59 or by a provincial legislature in relation to provincial or municipal planning does not affect the validity of anything done in terms of that legislation, such transitional provisions clearly only relate to an act that was performed prior to the commencement of the Planning Act and the consequential repeal of the Restrictions Act.
14. The Removal Application was only launched during or about October 2015. As it was submitted subsequent to the commencement of the Planning Act, it is clear that section 60 thereof is of no application in this instance
15. Accordingly, the Applicant is seeking relief in terms of non-existent legislation.

16. Be that as it may, the Planning Act determines, in Section 41(1) thereof, that a Municipal Planning Tribunal, which must be established by a municipality in terms of Part B of Chapter of such Act, may, upon application being made to it in the prescribed manner, remove, amend or suspend a restrictive condition.
17. The above authority or competence is amplified by the provisions of Section 47 of the Planning Act which determines, inter alia, that a restrictive condition may, with the approval of a Municipal Planning Tribunal and in the prescribed manner, be removed, amended or suspended.
18. As such, it is clear that the necessary legislative authority or competence to attend to the removal of conditions henceforth vests in local authorities.ⁱⁱ
19. It is, however, equally clear that until the promulgation of the Western Cape Land Use Planning Act 3 of 2014 ("the Provincial Act") in respect of the Overstrand Municipality, such municipality will not have the necessary legislative authority or competence to attend to the removal of conditions.
20. However, although the Provincial Act has come into force in respect of certain municipalities in the Western Cape, it appears that this has not happened in respect of the Overstrand Municipality to date hereof.ⁱⁱⁱ
21. Accordingly, it is submitted that, as at present, it is not possible or competent to apply for the removal of restrictive conditions in terms of any legislative framework and that such restrictive conditions can only be removed upon an application to court and by satisfying the court that for example, the consent of all interested persons is obtained or where the rights created by the restrictive conditions no longer exist.^{iv}
22. The Application should thus be rejected purely on the grounds stated above.
23. However, and without making any admission in this regard and purely for the sake of completeness, we briefly deal below with the merits of the Removal Application.

(b) Failure to deal with relevant considerations

24. Section 42(1) of the Planning Act determines that in considering and deciding an application, including an application for the removal, amendment or suspension of a restrictive condition, a Municipal Planning Tribunal must:

24.1 be guided by the development principles set out in Chapter 2 of such Act;

24.2 make a decision which is consistent with the norms, standards and measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and the municipal spatial development framework; and

24.3 take into account:

24.3.1 the public interest;

24.3.2 the constitutional transformation imperatives and the related duties of the State;

24.3.3 the facts and circumstances relevant to the application;

24.3.4 the respective rights and obligations of all those affected;

24.3.5 the state and impact of engineering services, social infrastructure and open space requirements; and

24.3.6 any factors that may be prescribed, including timeframes for making decisions.

25. Section 47(2) of the Planning Act further determines that a removal, amendment or suspension of a restrictive condition contemplated in sub-Section (1) must, in the absence of the contemplated written consent, be effected:

25.1 in accordance with Section 25 of the Constitution, as well as the Planning Act;

25.2 with due regard to the respective rights of all those affected, and to the public interest; and

25.3 in the prescribed manner,

if such removal, amendment or suspension will deprive any person of property as contemplated in Section 25 of the Constitution.

26. Although it is conceded that it has not yet commenced in respect of the Overstrand Municipality, it is submitted that regard should also be had to the Provincial Act in order to determine what considerations could or should be regarded as relevant or important in considering any application for the removal or amendment of a restrictive condition.

27. Such Act determines, in Section 39(5) thereof, that when a municipality considers the removal, suspension or amendment of a restrictive condition, a municipality must have regard to at least the following:

27.1 the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;

27.2 the personal benefits which accrue to the holder of rights in terms of the restrictive condition;

27.3 the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;

27.4 the social benefit of the restrictive condition remaining in place in its existing form;

27.5 the social benefit of the removal, suspension or amendment of the restrictive condition; and

- 27.6 whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.
28. It is clear that that the Applicant failed, properly or at all, to address the aforementioned considerations and requirements in the Removal Application, undoubtedly because of its misplaced reliance on the Restrictions Act and it is submitted that its failure to do so is fatal to the Removal Application.
29. We further say that our client is under no obligation to expressly deal with the aforementioned considerations and requirements in light of the failure of the Applicant to do so. In addition, any attempt to do so will constitute pure speculation in light of the fact that our client does not have any knowledge as to what the Applicant may have alleged in that regard or not.
30. However, it is nonetheless appropriate to draw your attention to, in particular, the failure of the Applicant to deal with the provisions of Section 25 of the Constitution.
31. The Servitude constitutes "property" within the meaning of Section 25 of the Constitution and any removal or amendment thereof will constitute a deprivation or expropriation of our client's property.^v
32. In terms of Section 25(2) of the Constitution, property may be expropriated only in terms of law of general application:
- 32.1 for a public purpose or in the public interest; and
- 32.2 subject to compensation, the amount of which and the time and manner of the payment of which have either been agreed to by those affected or decided or approved by a court.
33. Firstly, it is not only clear that, as stated above, there is at present no law of general application in terms of which the Servitude may be amended or removed.

34. Secondly, it is clear that the true motivation of the Applicant for seeking the removal or amendment of the Servitude has very little to do with the public interest, whatever it may profess to the contrary, but to obtain a personal benefit and advantage to which it would otherwise not have been entitled.
35. Thirdly, the Applicant has made no attempt or effort to offer our client any compensation whatsoever for the deprivation of his property.
36. As such, the Removal Application clearly offends against Section 25 of the Constitution.

(c) Motivation in support of Removal Application

37. We deal briefly with certain aspects of the Motivation.
 - (i) No agreement
38. The impression is created that our client and the Applicant in 2003 actually reached agreement with regard to the removal or amendment of the Servitude but that such removal or amendment was never registered. Such an implication is simply not true.
39. Although there were discussions between the parties to that effect, they never reached agreement in that regard. In confirmation of this, we annex several items of correspondence between the parties from 2000 to 2004, hereto, marked "JvZ2".
 - (ii) Spatial development framework
40. Much is made by the Applicant of the Provincial Spatial Development Framework of 2009 and the Overstrand Municipal Spatial Growth Management Strategy of 2010. In particular, the Applicant relies heavily on such policies to claim that the Servitude should be removed and amended in order to allow for densification of the area.
41. This contention must be rejected.

42. Firstly, the aforementioned policies do not constitute rules of law but merely a guide or overview as to how future spatial developments may be approached or dealt with.
43. Secondly, it is clear that such policies are actually aimed at new developments especially with a view to repairing the injustices of the past; they are not aimed at changing the character and nature of existing neighbourhoods.
44. Thirdly, neither of the policies envisages or requires densification to occur at the expense of the rights of neighbouring properties and their owners. On the contrary, it is clear that such policies wish to utilise the existing legislative framework and zoning schemes to achieve such a purpose. In fact, appears that,, in particular, the Growth Strategy of the Overstrand Municipality envisages the removal of any restrictive conditions to allow this to take place.
45. Fourthly, as correctly pointed out by the Applicant, Voëlklip falls into Planning Unit 6 of the area described as Hermanus East.
46. The particular Growth Strategy adopted in respect of Planning Unit 6 ("GU6") does indeed refer to densification. However, such strategy stipulates^{vi} that the proposed interventions in order to achieve densification are:
 - 46.1 the promotion of medium density housing opportunities along the R43 (the road to Stanford and Gansbaai);
 - 46.2 the promotion of a medium density housing node adjacent to the existing caravan park at the eastern entrance to Hermanus; and
 - 46.3 incremental densification within the existing residential fabric where appropriate.
47. Erf 2228 is not situated next to the R43 nor is it situated adjacent to the existing caravan park at the eastern entrance to Hermanus.
48. As far as the third option is concerned, no mention is made of constructing second dwellings on properties, especially not where this entails the removal of a restrictive

title condition. On the contrary, GU6 makes it clear, on page 68 thereof, that the proposed densification should be achieved by subdividing existing properties to allow the construction of further dwelling units.

49. The Applicant has further failed to address the fact that GU6 expressly requires the following factors to be taken into account when considering any densification of the area, in particular:

49.1 the entire Hermanus East area, being a high property value, is an area with a low vacancy factor and is predominantly characterised by a monotonous low-density single residential land use character;^{vii}

49.2 although the bulk water supply to the Hermanus East area is regarded as sufficient, the potable water treatment works are operating at capacity and require a costly upgrade to provide for the existing as well as the future areas. In addition, in especially the older areas such as Voëlklip, the water network is old and requires replacement;^{viii}

49.3 several natural features such as the Fernkloof Nature Reserve, the steep slopes, Heritage Areas along the coast and the scenic beauty of the mountain and beaches in the area, contribute to a sensitive area of possible development;^{ix}

49.4 the associated high property values, demarcated Heritage Areas, identified critical vistas, scenic drives, fine-grained development and tourism value place further restrictions on densification of the area;^x

49.5 the proposed interventions should respond to areas of natural environmental sensitivity, the need to protect the natural environment adjacent to the scenic route and existing land use patterns in the form of economic opportunities at local level;^{xi} and

49.6 Densification is to be achieved through the subdivision of existing properties.^{xii}

49.7 The area in which Erf 2228 is located is regarded as a sensitive area, in particular a Heritage Overlay Zone (Special Area) with a densification grading of less than 10 DU/H.^{xiii}

50. None of the aforementioned issues were raised and discussed in the Motivation.
51. As such, it is clear that the bald, vague and generalised statements of the Applicant regarding densification should be rejected.

(iii) Zoning

52. The argument by the Applicant that the Removal Application should be granted in the light of the provisions of the existing zoning scheme, must be rejected. It is trite that it is common cause that restrictive conditions take precedence over the municipality's zoning and planning schemes.^{xiv}
53. In addition, the mere fact that a restrictive condition may be in conflict with the applicable zoning scheme, does not establish that the removal of such conditions would be in the interest of the township, area or public space and if the Provincial Government should be swayed by this consideration, it will be fundamentally unsound, inappropriate and irregular.^{xv}

(iv) Purpose of additional dwelling unit

54. The Applicant does not make the slightest attempt to advise or explain its motivation for seeking to construct an additional dwelling unit on Erf 2228 in the public interest.
55. It is suspected that the purpose of the additional dwelling units is to provide holiday accommodation to visiting family members and friends.
56. As such, our client is, further, of the view that the Applicant is clearly not acting in the public interest but in its own selfish interests.

57. It does so with little regard to the fact that it was advised of the servitude when it acquired Erf 2228 and the fact that the servitude was registered against the title deed of such property.

58. Accordingly, the Applicant is essentially requesting the Provincial Government to rid it of an obligation it regards as cumbersome despite the fact that it was imposed contractually and that it had knowledge of such obligation when acquiring its property. This is unconscionable conduct on the part of the applicant.

(v) Desirability of the removal

59. The applicant alleges, on page 13 of the Motivation, that desirability is not a matter for consideration in so far as the Removal Application is concerned.

60. This contention is clearly not correct, be it in terms of the Restrictions Act or the Planning Act.

(vi) Detrimental effect of removal

61. It is absurd of the Applicant to suggest that the rights of our client will not be adversely affected by the required removal and/or an amendment of the Servitude.

62. Firstly, the Servitude was not registered unilaterally. The then-owner of Erf 2228, Margaret's Trust (Pty) Ltd, clearly agreed to the registration of the Servitude in return, it is assumed, for the payment of compensation.

63. Secondly, upon acquiring Erf 2226, our client paid a premium for such property precisely because of the protection afforded against unbridled future development by the Servitude. In fact, of a purchase consideration of R231 000.00, the sum of R11 000.00 was expressly negotiated and paid in respect of the Servitude.

64. Thirdly, the Servitude is not simply aimed at protecting the views from Erf 2226. It is also aimed at protecting the privacy of our client^{xvi}, the character of the area (being low-density single residential land as described in GU6) and the value of Erf 2226 especially as the properties in that block are highly sought after.^{xvii}

65. In addition, as far as concerns the allegations of the Applicant as to how the proposed additional dwelling on its property will affect the views from Erf 2226, it is clear that such allegations must be rejected. In particular, it is clear that the photograph appearing on page 13 of the Motivation was taken from much higher than the roof level of the dwelling on Erf 2226 and presenting such photograph as proof that our client's views will not be affected is dishonest.

(d) Conclusion

66. We reiterate that our client is of the view that this Application must be rejected purely due to the repeal of the Restrictions Act.

67. Even if our client is not correct in his view in this regard and the Provincial Government can consider the Application, it is nonetheless clear that the Applicant is seeking the removal and/or amendment of the Servitude in an unconscionable attempt to rid itself of an impediment that was contractually agreed upon and registered against the title deed of Erf 2228 with little to no regard to the actual public interest, the interests of our client or the desirability of such a removal. Furthermore, it offered no compensation whatsoever to our client for what will be a deprivation of its Property.

68. Accordingly, the Removal Application must be refused.^{xviii}

The Departure Application

69. It is clear that if the Removal Application is refused, the Departure Application will not even arise for consideration.

70. However, in the event that it should arise for consideration, such application must be refused.

71. It is clear that, in terms of Section 36 of the Land Use Planning Ordinance 15 of 1985 ("LUPO"), the applicant has the onus of persuading or satisfying you of:

71.1 the desirability of the contemplated departure;

71.2 the guidelines for a structure plan insofar as it relates to desirability; and

71.3 the effect of the proposed departure on existing rights.

72. The test of the desirability is conclusive and any application for a departure should be refused solely on the basis of a lack of desirability.^{xix}

73. Despite having to discharge this rather severe onus, the Applicant did not make a single allegation in the Motivation as to why the lateral building lines applicable in respect of Erf 2226 should be halved.

74. As such, it is clear that the Applicant failed to discharge its onus in this regard and the Departure Application must be refused on this ground alone.

Conclusion and prayer

75. It is again submitted that the Removal Application and the Departure Application must, accordingly, be refused and he looks forward to notification that this indeed occurred.

76. Our client is of the view that any failure to do so will constitute a reviewable administrative action and he reserves all his rights to take the appropriate action in such regard.

77. Please do not hesitate to contact the writer, Mr S L Reilly, should you have any queries in the interim.

Yours faithfully

REILLYS

Per: 

S L REILLY

Endnotes

- i Promulgation 26 of 2015 published in Government Gazette 38828 on 27 May 2015
- ii This is in accordance with Section 156(1)(a) of the Constitution of the Republic of South Africa 108 of 1996 ("the Constitution"), as well as Part B of Schedule 4 thereto
- iii According to Aneen van der Stoep Of the Overstrand Municipality, the Provincial Act will be promulgated in respect of the such municipality during or about February 2016
- iv LAWSA Volume 28 (2nd Edition) at 370
Ex Parte Optimal Property Solutions CC 2003 (2) SA 136 (C)
- v Badenhorst et al: Silberberg and Schoeman's: The Law of Property ("The Law of Property") at page 536
"Constitutional property protection would probably also extend to those rights that are protected in private law of property, such as limited real rights, because they are universally binding, and because they are already acknowledged and protected in private property law. Such rights would include mortgage, pledge, servitude and lien, and real rights emanating from lease. For the same reasons, statutory real rights should pass the threshold test. Since these rights and interests are recognised in private law or statutory law, they must be important. The rule of law requires that their importance be confirmed by at least allowing them to pass the threshold requirement of constitutional property protection. However, no case law exists as yet to confirm this point."
Ex Parte Optimal Property Solutions CC (*supra*) at [19] to [20]
- vi D(ii) on page 66 of GU6
- vii B(i) on page 65 of GU6
- viii B(iv) on page 65 and C on page 66 of GU6
- ix C on page 66 of GU6
- x C on page 66 of GU6
- xi D(ii) on page 66 of GU6
- xii Page 68 of GU6
- xiii Sheet G to GU6
- xiv Van Rensburg and Another NNO v Naidoo and Others NNO
Naidoo and Others NNO v Van Rensburg No and Others 2011 (4) SA 149 (SCA) at 34 to 37
- xv Camps Bay Ratepayers & Residents Assoc v Minister of Planning, Culture & Administration, WC 2001 (4) SA 294 (C) at 324E – G
- xvi The proposed construction on Erf 2228 will be adjacent to living rooms and bedrooms of the dwelling on Erf 2226
- xvii In fact, during or about 2011, the property adjacent to Erf 2228 on the eastern boundary thereof, being Erf 2231, Hermanus, in the Overstrand Municipality, division Caledon, Province of the Western Cape, in extent 991m², was acquired by the Van Zyl Waterside Trust for the sum of R17 million. Although such property was also subject to certain servitudes registered against it in favour of Erf 2226 by virtue of Notarial Deed of Servitude No. K2/1964, such servitudes were cancelled by agreement with our client in 2014 upon registration of the Notarial Deed of Cancellation of Servitude K385/2014
- xviii Camps Bay Ratepayers & Residents Assoc v Minister of Planning, Culture & Administration, WC (*supra*) at 321H
- ix Hayes v Minister of Finance & Development Planning, Western Cape 2003 (4) SA 598 (C) at 624 and 625

7
my

"JVZI"

T 18856/86

Deed of Transfer

BY VIRTUE OF A POWER OF ATTORNEY

C. & A. FRIEDLANDER,
Attorneys, Notaries & Conveyancers,
101, St. George's Street,
CAPE TOWN

Prepared by me,
[Signature]
Conveyancer
F W MUGGLESTON

KNOW ALL MEN WHOM IT MAY CONCERN

That FRANK WILLIAM MUGGLESTON

appeared before me, Registrar of Deeds at
authorised thereto by a Power of Attorney, executed at
on the 21st day of
by

CAPE TOWN, he being duly
CAPE TOWN
MARCH 1986

VICTORY INVESTMENT COMPANY (PROPRIETARY) LIMITED
Company No. 05/15749/07

which power, witnessed in accordance with law, was exhibited to me on this day. And the
Appearer declared that ~~the~~ ^{the} said ~~Principal~~ ^{Company} had truly and legally sold on 18th March 1986
and that He in his capacity as attorney
aforesaid/ . . .

page - 2 -

aforesaid did by these presents, cede and transfer, in full and free property to and on behalf of

JOHANNES JACOBUS MARTHINUS VAN ZYL
 Identity number 390213 5009 003
 married out of community of property

- WHITE GROUP -

His Heirs, Executors, Administrators or Assigns

1. ERF 2226 HERMANUS situate in the Municipality of Hermanus Division of Caledon;

IN EXTENT: 495 (Four hundred and ninety-five) Square Metres

FIRST TRANSFERRED by Deed of Transfer No. 9036/1936 with Diagram annexed thereto and held by Deed of Transfer No. 12107/1945

SUBJECT :-

- A. To such conditions as are referred to in Deed of Transfer No. 9036 dated 16th September 1936.
- B. To the special condition contained in amended Deed of Grant dated 22nd November 1904 (Caledon Quitrents, Volume 10, No. 19) reading:-

"The land thus granted being further subject to all such duties and regulations as either are already or shall be in the future be established respecting lands granted on similar tenure".

- C. To and with the benefit of the terms of a Servitude, reference to which is contained in the endorsement dated 11th October 1920 on the aforementioned amended Deed of Grant, which endorsement reads as follows:

"Portion /

WHITE GROUP
 BLANKE GROEP

- page 3 -

"Portion of this property has been set aside for grazing purposes as will appear from the Conditions of Sale attached to a Transfer No. 12857 of 9th September, 1920 of Erven shown on the General Plan M. 56A".

D. To and with the benefit of the special conditions of Sale marked A annexed to Deed of Transfer No. 9036 dated 16th September 1936 imposed by the Mossel River Estate Company Limited, which conditions read as follows :

- (a) "The Seller reserves to himself the sole right to all Hotels and Liquor Licences and no purchasers of erven or their successors in title shall erect any Hotel or hold any Liquor Licence without the written consent of the Seller first had and obtained. Unless specially stipulated to the contrary herein, no owner of the property hereby purchased shall be entitled to carry on or to erect any building for the purpose of carrying on on the said property any Retail or Wholesale dealers business or business of any trade or industry, or the business of Cafe Proprietor, Dairyman or any other similar occupation.
- (b)
- (c) That all buildings shall stand back at least ten feet from the line of the street or avenue on which the Lot or Lots hereinmentioned may front, that all outbuildings shall stand back at least thirty feet from any Street or twenty feet from any avenue on which the Lot or Lots herein mentioned may front.
- (d) The Company reserves to itself the sole right to all water arising on or flowing over the Company's property. There shall, however, be excluded from this reservation any water obtained by the owner of any land within the Township by means of wells or boreholes sunk on such land."

NOT /

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- page 4 -

NOT SUBJECT to Condition (b) thereof by virtue of the provisions of Section 28 of Act 101 of 1969. A

ENTITLED to the benefit of the Servitude a reference whereto is contained in the endorsement dated 13th January 1949 on the said Deed of Transfer No. 12107 dated 7th September 1945 reading as follows:

"By Notarial Deed No. 3 dated 11.12.1948 the owner and its successors in title of Para. 1 held hereunder has acquired a Servitude over Para. 2 held under Transfer No. 763 dated 31.1.1940 relative to certain Building restrictions as will more fully appear on reference to the said Notarial Deed."

FURTHER ENTITLED to the benefit of the Servitude a reference whereto is contained in the endorsement dated 20th January 1964 on the said Deed of Transfer No. 12107 dated 7th September 1945 reading as follows:

"By Notarial Deed No. 2/1963 registered this day, conditions imposed in Notarial Deed 515/1954 referred to in endorsement hereon dated 24.8.1954 are hereby cancelled and Erf 2231 Hermanus held thereunder is subject to conditions restricting the type of buildings, boundary wall or fences and for the removal of trees, and for concealment of washing in favour of Erf 2226 Hermanus held under Para.1 of Transfer No. 12107/1945. Subject to conditions as will more fully appear from the said Notarial Deed."

2. ERF 2227 HERMANUS situate in the Municipality of Hermanus, Division of Caledon;

IN EXTENT 495 (Four hundred and ninety-five) square metres;

FIRST TRANSFERRED by Deed of Transfer No. 6804/1933 with a Diagram annexed thereto and held by Deed of Transfer No. 4134/1949

WHITE GROEP
 BLANKE GROEP

A. SUBJECT / ...

A

- page 5 -

- A. SUBJECT to the conditions referred to in the said Deed of Transfer dated 23rd October 1933, No. 6804 and to the following special condition contained therein as repeated from the Amended Title dated 22nd November, 1904 (Caledon Quitrents Volume 10, No. 19) namely :-

"The land thus granted being subject to all such duties and regulations as either are already or shall in future be established respecting lands granted on similar tenure."

- B. FURTHER SUBJECT to the terms of a certain servitude a reference whereto dated 22nd September 1933, was endorsed on aforesaid Amended Title dated 22nd November 1904, which servitude relates to the apportionment of water in terms of an Order of the Water Court (Water Court District No. 1 dated 5th April 1922) copy whereof is annexed thereto.
- C. FURTHER SUBJECT to and with the benefit of the conditions set out in the Conditions of Sale annexed to the said Deed of Transfer dated 23rd October, 1933, No 6804 which reads as follows :
- (a) All purchasers of Erven or their successors in title shall be subject to any rules, regulations and by-laws which the Company or any Board of Management or Municipality may hereafter see fit to promulgate for the good conduct and government of the village.
- (b) The Company reserves to itself the sole right to all Hotels and all Liquor Licencees and no purchasers of erven or their successors in title shall erect any Hotel or hold any Liquor Licence without the written consent of the Directors of the Company first had and obtained.

(c) The /.....

R.

- page 6 -

- (c) The Company guarantees that no further erven shall be sold between Lots sold as Seafront Lots and the sea.
- (d) That every Purchaser of an erf or the successor in title of such Purchaser who shall have built thereon a Dwelling House or any other equivalent building to the satisfaction of the Directors, shall whilst actually in occupation of such building have the right of grazing upon such portion of the Company's property as may for the time being or from time to time be set apart by the Directors for the that purpose, such large stock, cows, oxen, horses or mules, not exceeding four in number, as he shall keep in connection with such erf, such right being also granted to the occupier of such premises, other than the owner, it being understood however, that the owner and occupier shall not be permitted to exercise this right at one and the same time and that not more than four head of cattle shall be allowed to graze by virtue of any one erf, provided that the Directors may at any time after one month's notice in writing to such erf-holder or publishing in the Gazette withdraw the whole or any part of such portion of the property so set apart for the purpose of selling or otherwise disposing of the same and thereupon the said right of grazing shall cease and determine in respect of the property so withdrawn.
- (e) The Seller reserves to itself the right at any time hereafter to the free and undisturbed passage of electric, telegraph or telephone wires over and upon any portion of the Lot or Lots herein described, with further right of causing them to be affixed to any building or erection not less than ten (10) feet from the ground, with access at any time to such wires for the purpose of removal or maintenance.
- (e1) That no obligations shall rest upon the Company under any circumstances to construct, repair or maintain the Streets laid out on the Township.
- (f) The Seller further reserves to itself the right at any time hereafter to lay and to maintain piping under any portion of the Lot or Lots hereby sold or elsewhere, and at all times have

access /

Handwritten mark

- page / -

access to such piping for removal, maintenance, extension or any other purpose, and to do all such acts and things as shall be required for the convenience of the inhabitants of the township, in regard to the supplying them with water.

- (g)
- (h) That there shall not be erected on any portion of the Lot or Lots herein mentioned any building, the Plans and Specifications or which have not, prior to the commencement of building operations, been submitted to and approved by the Seller.
- (i) That all buildings shall stand back at least ten feet from the line of the street or avenue on which the Lot or Lots herein mentioned may front.
- (j) That all outbuildings shall stand back at least thirty feet from any Street or twenty feet from any avenue on which the Lot or Lots herein mentioned may front.
- (k) The Company reserves to itself the sole right to all water arising on or flowing over the Company's property. There shall, however, be excluded from this reservation any water obtained by the owner of any land within the Township by means of wells or bore holes sunk on such land.
- (k1) Unless specially stipulated to the contrary in the application form and on the Deed of Sale issued in confirmation thereof, no owner of the property purchased shall be entitled to carry on or to erect any building for the purpose of carrying on on the said property, any Retail or Wholesale Dealers business or business of any Trade or Industry, or the business of a Cafe Proprietor, Dairyman or any other similar occupation.
- (l) Clauses (a) to (k1) inclusive shall be inserted in the Title Deeds of the Purchaser and shall be construed as covenants running with the Lot or Lots mentioned herein. Clauses (a), (b), (d), and (k) shall remain in force for ever; the Seller reserving to itself, however, the right to alter, modify or annul clauses (e), (f), (h), (i) (j) and (k1).

NOT SUBJECT to condition (g) above by virtue of the provisions of Section 28 of Act 101 of 1969.

WHEREFORE /

A

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~~Wherefore~~ the Appearer in his said Capacity, renouncing all the right and title the said TRANSFEROR COMPANY

heretofore had to the premises, did, in consequence also acknowledge the said TRANSFEROR COMPANY

to be entirely dispossessed of, and disentitled to the same; and that by virtue of these presents, the said TRANSFEREE

His Heirs, Executors, Administrators or Assigns, now is and henceforth shall be entitled thereto conformably to local custom: State, however, reserving its rights; and finally acknowledging the said

TRANSFEROR COMPANY

to be satisfactorily paid the whole of the purchase money amounting to the sum of R231 000,00 (TWO HUNDRED AND THIRTY-ONE THOUSAND RAND)

In Witness whereof, I, the said Registrar, together with the Appearer q.q. have subscribed to these presents and have caused the Seal of Office to be affixed thereto.

Thus done and executed, at the Office of the Registrar of Deeds, in CAPE TOWN on the 21st day of May in the Year of our Lord, One Thousand Nine Hundred and Eighty-Six (1986).

[Signature]
q.q.

In my presence,

[Signature]
Registrar of Deeds

Mortgage Endorsements (if any) at head of Deed

Registered in the

Register of

Book Folio

Clerk in Charge.

9-

T 18846/1986

001533/09

Certified a true copy of the duplicate original filed of record in this Registry, issued to serve in place of the original thereof under the provisions of Deeds Regulation No. 68

Deeds Registry
Cape Town

[Signature]
23 MAR 2009... Asst. Registrar of Deeds

DIE IDENTITEITSNOMMER VAN DIE	THE IDENTITY NUMBER OF THE
<i>T. J. ...</i>	
IS VERANDERD	HAS BEEN CHANGED TO
<i>390213 5009 086</i>	
000000309/2009	<i>[Signature]</i>
23 MAR 2009	
	REGISTRAR/REGISTRAR

for the ed page 10

~~9~~ -10-

In terms of Notarial Deed of Servitude No. K 309/2009 S the withinmentioned property In Extent 495 square metres is entitled to the condition over Erf 2246 Hermanus, in the Overberg Municipality, Division of Caledon, Province of the Western Cape, In Extent: 1487 Square Metres, held by Deed of Transfer No. T76928/1999, that the owner and his successors in title of the said Erf 2246 shall be prohibited from erecting any structure of building of any nature whatsoever, including but not limited to a bar, patio, garage(s) and maidsquarters, but excluding a security wall on the boundary, within 6 (six) metres of the Northern boundary of the servient tenement as indicated on Diagram No. 1008/1914 annexed to Deed of Transfer No. T7075/1914 and shall only access the property through and entrance/exit at the north-east corner of the servient tenement as indicated on the said Diagram No. 1008/1914 which entrance/exit will not be more that 4,5 (four comma five) metres in width. Furthermore the servient tenement will not have more than 1 (one) pedestrian gateway not wider than 1,5 (one comma five) metres on any part of its boundary.

AS will more fully appear from the said Notarial Deed.

DEEDS OFFICE
CAPE TOWN

~~REGISTER OF DEEDS~~

"JVZ2"

J J M VAN ZYL
P O BOX 23301
CLAREMONT, 7735
CAPE, SOUTH AFRICA

TEL: (021) 6741130

FAX: (021) 6836989

e-mail: jjmvzyl@mweb.co.za

FACSIMILE TRANSMITTAL SHEET

TO: JAN & KAREN NEWMAN

FROM: JJM VAN ZYL

FAX NO: 011 646-2119

FAX NO: 021 683-6989

DATE: 23 June 2000

Dear Jan

Thank you for your fax of 22 June.

I regret if my lawyers are causing delays. However I understand that your lawyers are requesting my total abdication of my rights with regard to the servitude my property has over your property and that wasn't in the spirit of our discussions.

Best regards

BOETIE VAN ZYL

J J M VAN ZYL
P O BOX 23301
CLAREMONT, 7735
CAPE, SOUTH AFRICA

TEL: (021) 6741130 FAX: (021) 6836989
e-mail: jjmvzyl@mweb.co.za

FACSIMILE TRANSMITTAL SHEET

TO: JAN & KAREN NEWMAN FROM : JJM VAN ZYL

FAX NO: 011 646-2119 FAX NO: 021 683-6989

DATE: 9 March 2001

Dear Karen

71 10th Street Hermanus

When you purchased the adjoining property at Hermanus you were fully advised of the restrictions pertaining to the land. However I did agree to consider the construction of a garage for parking your vehicles and boats while you are away. This has now developed into a fully built house with staff quarters and sleeping quarters.

As we are currently moving our upstairs bedroom from the eastern side to the western side of the property, we do not wish to have any persons occupying the adjoining space.

Therefore I am unable to meet with your request. However, you may construct a double garage, subject to my approval of the plans.

Regards

BOETTIE VAN ZYL

21/03 '01 WED 13:11 FAX 27 11 6462119

NEWMAN

001



NEWMAN ARCHITECTURE AND DESIGN

FAX MESSAGE

TO: Boetie van Zyl
 FAX NO: 021 - 693 6989
 FROM: Karen Newman
 DATE: 20th March 2001

2 pages

DEAR BOETIE

71 10th STREET, HERMANUS

I am so sorry that my letter of last week did not point out a change to the roof height. In fact, it was only after I received your letter that I referred back to the original elevation proposal in my file, and realised that my draftsman had altered the elevation / section, utilising the full 21ft. height restriction. We are also concerned about blocking out our beautiful mountain view, and I have therefore made some changes to reduce the height of the proposed structure.

Please find enclosed the amended proposal drawing no. 2001-01/04, revision no. 02. This drawing shows a reduction in the roof height, to match the height of the back (North) facing section of the existing house (5.8m). The proposed plan remains as previously faxed to you.

Once again, my sincere apologies for this oversight. I hope that this solution will be acceptable to you, and look forward to hearing from you soon.

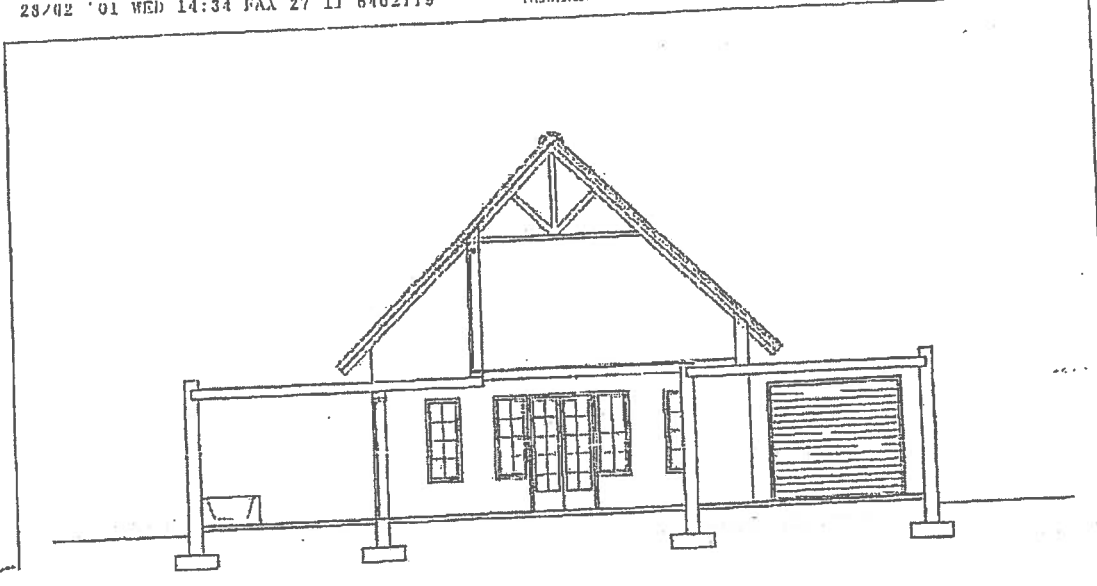
Kind regards,

KAREN

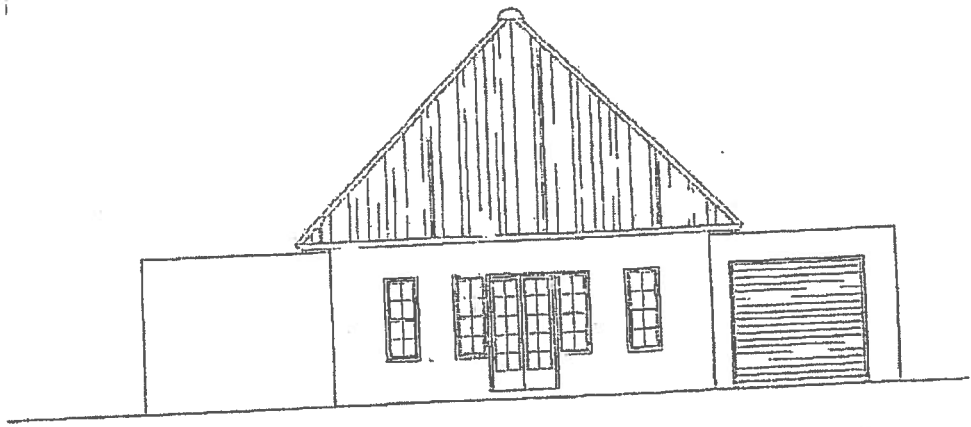
28/02 '01 WED 14:34 FAX 27 LJ 6462119

NEWMAN

2005



SECTION A-A
SCALE 1:100



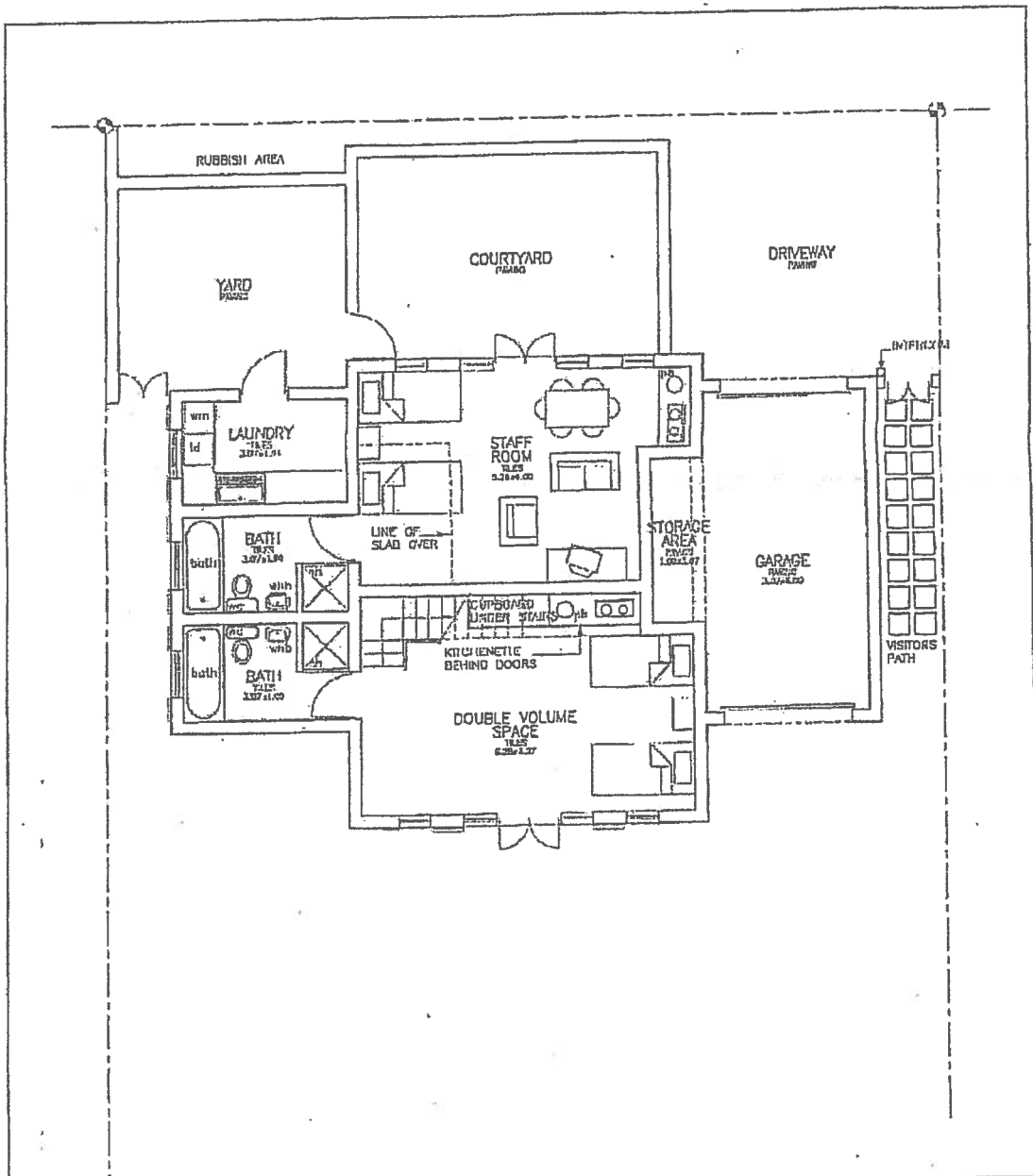
ELEVATION
SCALE 1:100

PROJECT : 71 107 th ST		
HERMANUS COTTAGE		
SECT & ELEV		
SCALE: 1:100		
DWG NO	2001-01/04	
COMP NO	08-004	
DRAWN	CARON	REV NO
DATE	20.01.2001	01


28/02 '01 WED 14:34 FAX 27 11 6462119

NISYMAN

003



PROJECT: 71 10TH ST
 HERMANUS
 COTTAGE
 GROUND FLOOR



SCALE: 1:100

DWG NO 2001-01/02
 COMP NO 06-002

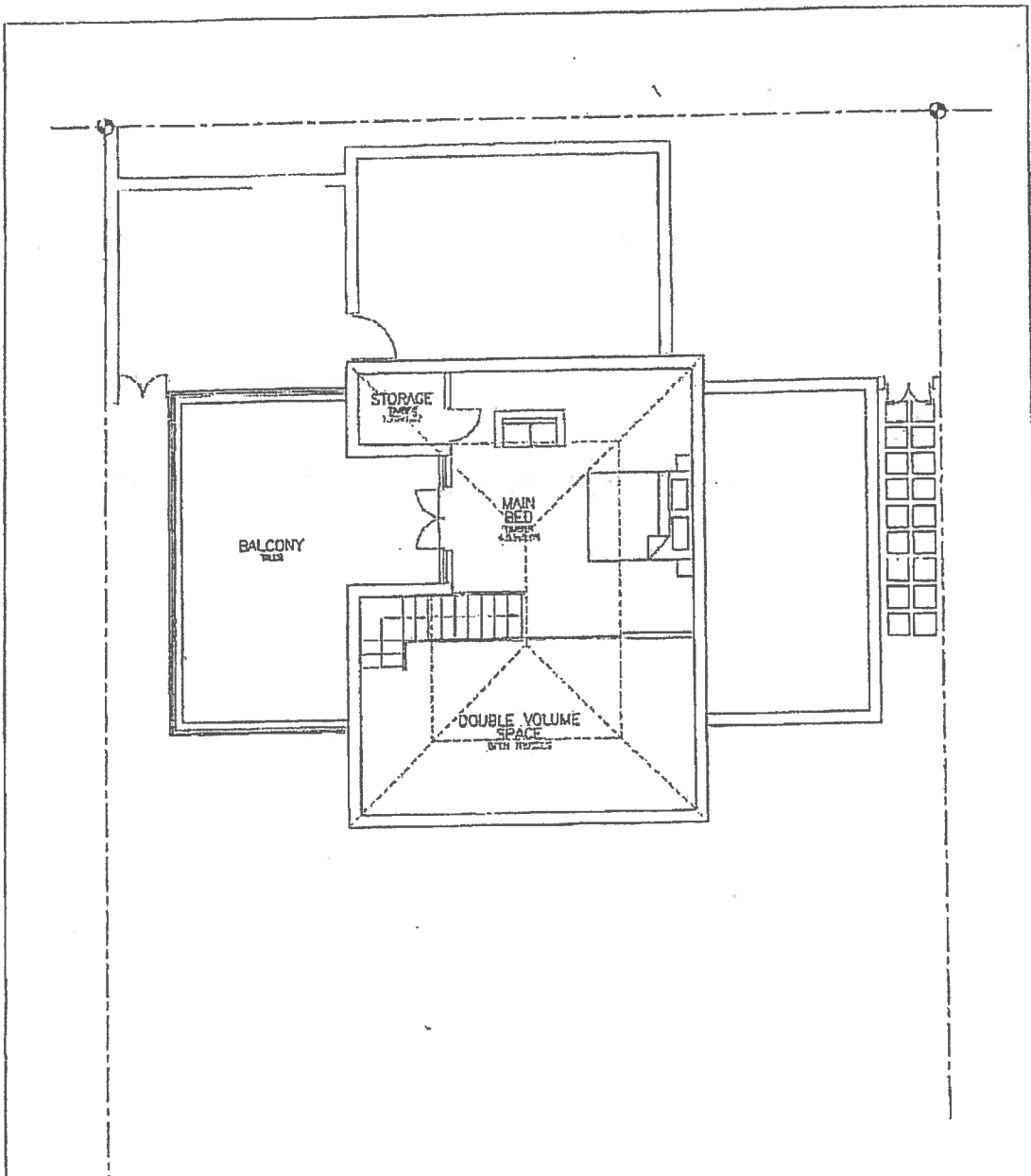
DRAWN CARON
 DATE 20.01.2001

REV NO
 01


28/02 '01 WED 14:34 FAX 27 11 6462119

NEWMAN

001



PROJECT: 71 10TH ST.
 HERMANUS
 COTTAGE
 FIRST FLOOR



SCALE: 1:100

DWG NO 2001-01/03
 COMP NO 06-003

DRAWN CARON
 DATE 20.01.2001

REV NO
 01

Newman

From : GUTHRIE & THERON

FAX No : 0823122732

15 JUN, 2000 10:38

P 2



ATT Andre Du Toit
 COMPANY Guthrie & Theron
 FAX NO (0283) 122732
 FROM John Lamont
 DATE 13 June 2000
 OUR REF WJL/YA/126109
 PAGES (including this page) 1

Direct Line +27 21 410 2274
 Telephone +27 21 410 2210
 Fax +27 21 410 0061
 E-MAIL: eric@mallinicks.co.za
 Internet: www.mallinicks.com
 District 34 Cape Town

2nd Floor Corner Bay Court
 Beach Road, V&A Waterfront
 Cape Town 8001
 PO Box 3647 Cape Town 8001

Windhoek, Conville & Durrant

CONFIDENTIAL CAUTION: This message is intended only for the use of the individual or entity to whom it is addressed and contains information that is privileged and confidential. If the reader of this message is not the intended recipient, please notify us immediately by telephone and destroy the original message.

Dear Sirs

OUR CLIENT : ONSHELF PROPERTY EIGHTY SEVEN (PTY) LTD : ERF 2228 HERMANUS

We refer to the telephone conversation between the writer and your Mr Du Toit this morning.

Please note that the conditions which our client requires to be removed are as follows:

1. conditions (i) and (j) as appeared on page 5 of the title deed being Deed of transfer No T.10151/2000;
2. conditions 3 and 4 as appear on page 2 of Notarial Deed of Servitude No. K.3/1949S - our client wishes to erect a cottage on the back portion of Erf 2228 Hermanus which necessitates these conditions to be purged. Please note that our client will not be contravening condition 4(c) as appear on page 3 of the Notarial Deed and therefore it is not necessary to address this condition.

We confirm you are taking instructions from your client as to him being agreeable to enter into the requisite Notarial Deed of Amendment of Title Deed conditions. Our client wishes to commence with building operations on the back portion of Erf 2228 Hermanus as soon as possible and we therefore kindly request to receive your response as soon as possible.

Yours faithfully
 MALLINICKS INC


 Prof.
 W.J. LAMONT

must be cast in concrete
 result First Right on
 No subdivision etc

Directors: Gerald Mallinick (Chair), Jeffrey Eisenberg, John Levin (Managing), Milton Gleason, Michael Radovsky, Pierre de Prover, Alan Jahn, Jill Singer.
 Nicholas Parling, Frederick Hurran, Michael Evans, Barry Adams, Stefan Salswender, Selim Young, Anthony Lamont, Christopher Kolkatzkyng, Marjorie Potgieter
 Associates: Meredith Budge, Larry Jahn, Axel Gossler
 Assistant: Orla Cooney, Sijne Mathys, Bryan Joseph, Alida Christie, Lesame Maseti, Dean Viegas, Jay-Anne Jacobs, Kate Reynolds
 Business Manager: Alan Price
 Mallinicks Inc Reg. No. 2002872/21

*01 600 10:28 P.M. 10 01 0492119

10/1



NEWMAN ARCHITECTURE AND DESIGN

FAX MESSAGE

TO: Boetie and Caroline van Zyl
 FAX NO: 021 - 683 6989
 FROM: Jan and Karen Newman
 DATE: October 1, 2001

DEAR BOETIE & CAROLINE

71 10th STREET, HERMANUS

Thank you so much for meeting with us on Monday last week in Hermanus.

We have a better understanding for your concerns regarding privacy and noise. You made some interesting suggestions regarding our further accommodation requirements, pointing out that you would prefer to see any new structures / extensions to be on the side closest to the Botha-boundary. We will be re-looking at our proposals with these in mind, and hope to get back to you shortly with some further drawings.

Kind regards,

JAN & KAREN

J J M VAN ZYL
P O BOX 23301
CLAREMONT, 7735
CAPE, SOUTH AFRICA

TEL: (021) 6741130

FAX: (021) 6836989

e-mail: jjmvzyl@mweb.co.za

FACSIMILE TRANSMITTAL SHEET

TO: JAN & KAREN NEWMAN

FROM: JJM VAN ZYL

FAXNO: 011 646-2119

FAXNO: 021 683-6989

DATE: 4 OCTOBER 2001

Dear Jan & Karen

71 10th Street Hermanus

Thank you for your fax of 1 October.

My preference is no structures – however if you come up with a small structure in the far corner and maybe at the end of your house on the neighbours side, I would give it careful consideration as a special concession, provided we can sort out the legal aspects of protecting my rights. This is of paramount importance as I don't want to create a precedent.

Kind regards

BOETTIE VAN ZYL

J J M VAN ZYL

1st FLOOR, KOH-I-NOOR BUILDING
82 MAIN ROAD CLAREMONT 7700
P. O. BOX 23301 CLAREMONT 7735
SOUTH AFRICA
TELEPHONE (021) 674-1130
FAX (021) 683-6989
e-mail: jjmvzyl@mweb.co.za

11 December 2002

Mr J J C Newman
71 10th Street
HERMANUS
7200

Dear Mr. Newman

RE: **PROPOSED IMPROVEMENTS: ERF 2228 HERMANUS (BEING NO. 71, 10TH STREET, HERMANUS)**

I refer to your request for permission to erect certain buildings on Erf 2228 Hermanus ("your property") owned by Onshelf Property Eighty Seven (Pty) Ltd, Registration number 1999/017178/07 ("Onshelf" or "the company"), notwithstanding the fact that they fall within the area referred to in Clause 3. of the Deed of Servitude No. 3/1949 and within the area mentioned in the restrictive Title Deed Condition number C(j) contained in the Title Deed (No.T18856/86) in respect of your property.

Please be advised that I am prepared to consent on the following terms and conditions:

1. The registration by my attorneys, Messrs Reillys of Cape Town ("my attorneys"), in the Deeds Office of a Notarial Deed of Amendment in accordance with the draft annexed hereto marked "X" ("the Notarial Deed of Amendment") read with the servitude diagram referred to therein to be prepared (at your cost and expense) by a surveyor representing the sketch plan annexed hereto marked "Y" ("the plan"), amending and amplifying the existing Deed of Servitude (Number 3/1949) registered against your property and in favour of Erf 2226 Hermanus ("my property"), all costs and expensed relating thereto being for your account and payable on demand to my attorneys.
2. An amount of R50 000.00 (fifty thousand Rand) must be lodged with my attorneys to be held by them in trust in an interest-bearing account to ensure completion of the improvements in terms of this undertaking, the Notarial Deed of Amendment and the plan and, also, to ensure that no damage to or removal of trees or shrubs occurs with the exception of those which are on the direct route of access to the garage or where the building itself is going to be erected. If any such damage or removal occurs, then these funds will be available to be utilised to make good the damage or loss. Repayment of your deposit (or the balance thereof), together with accrued interest thereon, will be effected by my attorneys on completion of the work in accordance with this letter, the Notarial Deed of Amendment and the plan to my reasonable satisfaction.

- 3 It must be clearly understood that my consent is only in respect of the proposed improvements reflected on the plan and in accordance with the Notarial Deed of Amendment and it must not be taken to be a consent to any extensions/additions or alterations to those improvements or to the erection of any other improvements. Furthermore, my consent is only given on the express condition that the components of the buildings which are to be improved are not under any circumstances ever to be used for the purpose of accommodation.
4. I hereby consent to the relaxation of the restrictive title deed condition number C(j) contained in Title Deed No.T18856/86 in respect of your property but only to the limited extent necessary to enable you to effect the improvements on your property strictly in accordance with the plan and in compliance with the Notarial Deed of Amendment and not for any other purpose. It will be your responsibility to obtain such waivers/dispensations/removal or amendment of title deed restrictions as may be required from the Local Authority or from any relevant authority having jurisdiction to give effect to my consent as recorded in this letter.
5. The property is not owned by yourself personally but by Onshelf of which company I assume that you are the sole or major shareholder and a director. As a *quid pro quo* for my consent, you and your company must give me (for so long as I am the owner of Erf 2226) and my successors-in-title (as owners of Erf 2226) an irrevocable right of first refusal to purchase your property (Erf 2228) or shares representing a controlling interest in the company owning the property. In other words, if the company decides to sell the property or if you should decide to sell shares representing a controlling interest in the company, or if the company should receive an offer to purchase the property or you should receive an offer to purchase shares representing a controlling interest in the company (which offer the company or you, as the case may be, wish to accept), I (for so long as I am the owner of erf 2226) or my successors-in-title as the owner(s) of Erf 2226, Hermanus ("my successor(s)-in-title") will have the right (which will be prior to the right of the offeror or prospective purchaser) to purchase the property or the controlling interest in the company so on offer, as the case may be, at the same price and upon the same terms and conditions. The right of first refusal referred to herein shall operate as follows:-
- 5.1 If the company should receive a written offer for the property or if you should receive a written offer for shares representing a controlling interest in the company (which offer you or the company, as the case may be, wish to accept), then you shall not be entitled to accept such offer unless you will first have delivered a copy of the offer to me or to my successor(s)-in-title and in such event I (or they, as the case may be) will have a period of forty five (45) days within which to indicate to you, in writing, whether or not I (or they) wish to exercise the right of first refusal to purchase the property or the shares, as the case may be, at such price and upon such terms. Should I (or they) fail or refuse to so exercise the right of first refusal to so purchase the property or the shares on offer within that period, then the company or you, as the case may be, would, of course, be free to sell the property and shares to that offeror or prospective purchaser, provided that it or you do so at a price and upon terms which are not more favourable to the offeror or purchaser than those on which I or my successor(s)-in-title were given the opportunity of exercising the right of first refusal, whereupon the right of first refusal shall lapse: or

5.2 If the company or you, as the case may be, should give me (or my successor(s) in title) written notice that the company wishes to sell the property or you wish to sell shares representing a controlling interest in the company, indicating in the notice the price and terms upon which the company or you, as the case may be, wish to so sell the property or shares, then I (or my successor(s)-in-title, as the case may be) will have a period of forty five (45) days after receipt of such written notice within which to indicate to you in writing whether or not I (or they) wish to exercise the right of first refusal to purchase the property or shares at such price and upon such terms. Should I (or my successors-in-title, as the case may be) fail or refuse to so exercise the right of first refusal at such price and upon such terms within that period, then the company will be free to sell the property (and you will be free to sell such shares in the company) to any third party, provided that the sale is done at a price and upon terms which are not more favourable to the third party than those contained in such notice, whereupon the right of first refusal shall lapse.

Notwithstanding the foregoing, the right of first refusal in my favour and in favour of my successor(s)-in-title referred to herein shall not apply to any sale or transfer which qualifies as a permitted transfer in accordance with the provisions of Annexure "Z" hereto.

6. Onshelf, as the registered owner of Erf 2228 Hermanus, must bind itself in writing to all the terms and conditions of this consent, as must you personally in your capacity as sole or majority shareholder in the company. Furthermore, by your signature hereto the company and you personally will undertake to procure compliance with all the terms and conditions of this consent by the company and its successor(s)-in-title.

Kindly indicate your and your company's acceptance of the above terms and conditions by signing and dating the endorsement at the foot of the duplicate copy of this letter, and return it to me.

Yours sincerely,

J J M VAN ZYL



I, John James Christopher ('Jan') Newman, in my personal capacity and in my capacity as the duly authorised representative of Onshelf Property Eighty Seven (Pty) Ltd (No 1999/01718/07) do hereby accept all the terms and conditions set out above and agree to be bound by them.

Date:.....

.....

J.J.C NEWMAN
In my personal capacity and
for Onshelf Property Eighty
Seven (Pty) Ltd duly

128
MALLINICKS INC.

Protocol No _____

**NOTARIAL DEED OF
AMENDMENT OF NOTARIAL DEED OF SERVITUDE
NUMBER K3/1949**

BE IT HEREBY MADE KNOWN :-

THAT on this the _____ day of the month of _____ Two Thousand and Two
(2002) before me:-

2

Notary Public, by lawful authority duly sworn and admitted, residing in the Division of the Cape and practising at Cape Town in the Province of the Western Cape and in the presence of the subscribing witnesses, personally came and appeared:

being duly authorised thereto by:

1. a Power of Attorney executed at CAPE TOWN on the _____ day of _____ 2002

by:

JOHANNES JACOBUS MARTHINUS VAN ZYL

Identity Number 390213 5009 00 3

[MARITAL STATUS TO BE COMPLETED]

(hereinafter referred to as "Van Zyl")

2. a Power of Attorney executed at CAPE TOWN on the _____ day of _____ 2002 by:-

JAN NEWMAN [FULL NAMES TO BE COMPLETED] in his capacity as duly authorised Director of **ONSHelf PROPERTY EIGHTY-SEVEN (PROPRIETARY) LIMITED**

No 1999/171178/07

(hereinafter referred to as "Onshelf")

Which said Powers of Attorney have this day been exhibited to me and remain filed of record in my protocol.

AND THE APPEARER DECLARED THAT:

1. Van Zyl is the registered owner of the property known as:-
ERF 2226 HERMANUS, situate in the Overstrand Municipality,
Division of Caledon, Province of the Western Cape

IN EXTENT: 495 (FOUR HUNDRED AND NINETY-FIVE) SQUARE METRES

HELD BY DEED OF TRANSFER NO. T18856/1986

("THE DOMINANT TENEMENT")

2. Onshelf is the registered owner of the property known as:-
ERF 2228 HERMANUS, situate in the Overstrand Municipality,
Division of Caledon, Province of the Western Cape

IN EXTENT: 991 (NINE HUNDRED AND NINETY-ONE) SQUARE METRES

HELD BY DEED OF TRANSFER NO. T10151/2000

("THE SERVIENT TENEMENT")

NOW THEREFORE the parties agree and record as follows:-

- A. Paragraph 3 of said Notarial Deed of Servitude Number 3/1949 is hereby amplified by the addition of the following at the end of the said paragraph:-

"Notwithstanding the provisions of this paragraph 3, the owner of the Servient Tenement shall be entitled to erect certain buildings (described below) within the area described in this paragraph 3 subject to the following:-

- (a) Such buildings shall be limited to the servitude area on the Servient Tenement as reflected on the annexed Diagram SG No. _____. For the avoidance of doubt it is recorded that the servitude area on the said diagram represents external dimensions of any such building erected thereon and not internal dimensions of such buildings.
- (b) Access to the garage component of the said buildings on the Servient Tenement shall be off 10th Street, Hermanus, situate at the northern boundary of the Servient Tenement.
- (c) The said buildings shall be single-storeyed with no loft or other form of "In roof" construction and shall comply with paragraphs 5 (a), (b), (c) and (d) hereof.

(d) All roofs of the said buildings shall be thatched.

(e) Access to the store and laundry components of the said buildings shall be taken from the west side of the Servient Tenement only and there shall not be any windows on the east side of the said buildings.

B. The following paragraph is hereby added to the said Notarial Deed of Servitude No. K3/1949:

"8. The provisions of Notarial Deed of Servitude No. K3/1949, as amplified hereby shall be binding on the respective owners of the Dominant Tenement and the Servient Tenement, and their respective successors-in-title."

C. This Notarial Deed shall be registered by attorneys Reillys at the Deeds Registry, Cape Town against title deeds of the Dominant Tenement and Servient Tenement.

D. No consideration shall be payable in respect of this Notarial Deed of Amendment by either party.

- value for dominant tenement?

E. The costs of drawing this Notarial Deed of Amendment and the registration thereof shall be borne by Onshelf.

Thus done and signed on the day, month and year first aforewritten in the presence of the subscribing witnesses.

AS WITNESSES:

1. _____

q.q. J J M VAN ZYL

2. _____

qq. Onshelf Property Eighty-Seven
(Pty) Ltd

QUOD ATTESTOR

NOTARY PUBLIC

Suite 372, 36 Wale Street
Cape Town, 8001

3126, Cape Town, 8000
e-mail: p.pearson@reillys.co.za

☎ (021) 487 3000
☎ (021) 487 3001

FACSIMILE TRANSMISSION

TO: MR JIM VAN ZYL
 SUBJECT: AMENDMENT OF SERVITUDE: ERF 2228 HERMANS: YOURSELF /
 ONSHELF PROPERTY EIGHTY-SEVEN (PTY) LTD
 OUR REF: VAN89/0003/CP/kn (oh)
 FAX NO: (021) 683 6989
 FROM: PETER PEARSON
 PAGES: 1
 DATE: 19 November, 2003

Dear Boetie,

I regret to advise that Mr Newman and his Cape Town attorneys have still not supplied me with the information which I require to finalise my documents and have them signed. I gather that Mr Newman has been known to be slow in furnishing instructions in the past. I am keeping pressure on his attorney who has promised to do all he can to get the required information and documentation.

Kind regards,

Yours sincerely


 P. PEARSON
 REILLYS

Storm Langdon Reilly B.A. LL.B., Peter Pearson B.A. LL.B.
 assisted by Claire Lisa Reilly B.A. LL.B., Johanna Van Es B.A., Marie Christodoulou B.A. B.Proc

TOTAL F.01

22-DEC-2003 12:15 FROM

REILLYS

TO BERGERS

P. PEARSON

REILLYS

ATTORNEYS, NOTARIES & CONVEYANCERS

Suite 302, 35 Wale Street
Cape Town, 80013126, Cape Town, 8000
e-mail: law@reillys.co.za(021) 487 3000
Fax: (021) 487 3001

FACSIMILE TRANSMISSION

NO ACTION ✓

TO: MR J.J.M VAN ZYL
 SUBJECT: AMENDMENT OF SERVITUDE : ERF 2228 HERMANUS : YOURSELF /
 ONSHELF PROPERTY EIGHTY-SEVEN (PTY) LTD
 OUR REF: VAN89/0003/CP/kn
 DIRECT LINE: (021) 487 3006
 FAX NO: (021) 683 6989
 FROM: PETER PEARSON
 PAGES: 1
 DATE: 22 December, 2003

Dear Boetie,

I refer to my telefax dated 19th November. I am disappointed to have to report to you that I have made no progress whatsoever with this matter. Mr Newman simply fails to supply his attorney with the information/documentation which I requested as long ago as 16th October 2003. Mr Newman was apparently overseas until 12th December, and his attorney is doing what he can to obtain his co-operation. Perhaps if you see him over the wall/fence if you are in Hermanus over the festive season, you could express your irritation that he is holding up finalisation of this transaction. Of course it does not matter to you whether or not the transaction comes to fruition; it is very much in Mr Newman's interests.

Kind regards, and all the best for the festive season.

Yours sincerely,


P. PEARSON
REILLYS

Storm Langdon Reilly B.A. LL.B., Peter Pearson B.A. LL.B.
 Assisted by Claire Lisette Reilly B.A. LL.B., Johanna Van Es B.A., Maria Christodoulou B.A. B.Proc

TOTAL P. 01

REILLYS

ATTORNEYS, NOTARIES & CONVEYANCERS

Suite 302, 3rd Floor
35 Wale Street, Cape Town, 8001

3126, Cape Town, 8000
e-mail: law@reillys.co.za

(021) 487 3000
Fax: (021) 4873001

Mr JJM Van Zyl
PO Box 23301
CLAREMONT
7735

e-mail: p.pearson@reillys.co.za

Our Ref: VAN89/0003/CP/kn (oh)

Your Ref:

Date: 13 February, 2004

Dear Boetie,

**AMENDMENT OF SERVITUDE: ERF 2228 HERMANUS: YOURSELF / ONSHELF
PROPERTY EIGHTY-SEVEN (PTY) LTD**

I regret to advise that I have still not received the required information from Mr Newman's attorney. The attorney has informed me that he cannot get anywhere with Mr Newman either. We are both agreed that the amendment of the servitude is to Mr Newman's benefit rather than to yours, and that little purpose would be served in wasting time and effort constantly chasing after him when he does not respond in any way. Should I in the circumstances simply send Mr Newman's attorney an interim account for services rendered over the last five months, or do you want to make personal contact with Mr Newman to find out why he is not responding to my request for information?

Kind regards,

Yours sincerely


P PEARSON
REILLYS