



View Instrument Details

Instrument No 10786863.12
Status Registered
Date & Time Lodged 10 July 2017 18:10
Lodged By Rollason, Marie Jean
Instrument Type Encumbrance



Affected Computer Registers	Land District
735733	North Auckland
735734	North Auckland

Annexure Schedule: Contains 7 Pages.

Encumbrancer Certifications

I certify that I have the authority to act for the Encumbrancer and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Anthea Mary Coombes as Encumbrancer Representative on 10/07/2017 04:37 PM

Encumbrancee Certifications

I certify that I have the authority to act for the Encumbrancee and that the party has the legal capacity to authorise me to lodge this instrument

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period

Signature

Signed by Alastair James Pettitt as Encumbrancee Representative on 10/07/2017 03:19 PM

*** End of Report ***

Form E

Encumbrance instrument

(Section 101 Land Transfer Act 1952)

Affected instrument Identifier	All/part	Area/Description of part or stratum and type (if applicable)
735733 and 735734	All	

Encumbrancer

Her Majesty the Queen for State Housing Purposes

Encumbrancee

Auckland Council

Estate or interest to be encumbered *Insert e.g. Fee simple; Leasehold in Lease No. etc.*

Fee Simple

Encumbrance Memorandum Number

Not Applicable

Nature of security *State whether sum of money, annuity or rentcharge and amount*

\$20.00 per annum

ENCUMBRANCE

DELETE WORDS IN [], AS APPROPRIATE

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above computer register(s) with the above sum of money, annuity or rentcharge, to be raised and paid in accordance with the terms set out in the [~~above Encumbrance Memorandum~~] [~~Annexure Schedule(s)~~] and so as to incorporate in this Encumbrance the terms and other provisions set out in the [~~above Encumbrance Memorandum~~] [and] [~~Annexure Schedule(s)~~] for the better securing to the Encumbrancee the payment(s) secured by this Encumbrance, and compliance by the Encumbrancer with the terms of this encumbrance.

Form E continued

Terms

- 1 Length of term – 999 years from the registration of this encumbrance instrument
- 2 Event(s) in which the sum, annuity or rentcharge ceases to be payable – otherwise in accordance with Annexure Schedule 1

COVENANTS AND CONDITIONS

CONTINUE IN ANNEXURE SCHEDULE(S), IF REQUIRED

In accordance with Annexure Schedule 1

**MODIFICATION OF STATUTORY PROVISIONS
REQUIRED**

CONTINUE IN ANNEXURE SCHEDULE(S), IF

In accordance with Annexure Schedule 1

ANNEXURE SCHEDULE 1

BACKGROUND

- A. The Encumbrancer holds the Land for State housing purposes and has, through Housing New Zealand Corporation, appointed HLC to carry out certain functions on behalf of the Encumbrancer.
- B. The Encumbrancer and Encumbrancee have agreed the Allocation which is to be binding on all future owners of the Land until the Land has been fully subdivided and developed into Lots and the Lots have been built on.
- C. The Encumbrancer has agreed to grant this encumbrance in favour of the Encumbrancee.

1. INTERPRETATION

In this encumbrance instrument unless the context indicates otherwise:

1.1 Definitions:

"**Allocation**" means the allocation of the use of the Pumping Station agreed between the Encumbrancee (Council) and the Encumbrancer (the Crown), such that the Encumbrancee (the Council) will have the use of 61% of the capacity (estimated as 7.81 litres per second average flow) provided by the Pumping Station in respect of the Council Land, and the Encumbrancer (the Crown) will have the use of 39% of the capacity (estimated as 4.97 litres per second average flow) provided by the Pumping Station in respect of the Land. The average flow is based on a design average flow of 12.78 litres per second;

"**Council**" means Auckland Council and includes its predecessors and successors as territorial authority of the district where the Land is situated and its officers and agents;

"**Council Land**" means the fee simple estate in the land described in computer freehold register 612353 (North Auckland Registry);

"**Encumbrancee**" means the Encumbrancee named in this encumbrance instrument and its successors and includes the person(s) for the time being registered as proprietor(s) of the Council Land only for as long as that person(s) is registered proprietor(s) of the Council Land;

"**Encumbrancer**" means the Encumbrancer named in this encumbrance instrument and its successors and includes the person(s) for the time being registered as proprietor(s) of the Land only for as long as that person(s) is registered proprietor(s) of the Land;

"**HLC**" means Hobsonville Land Company Limited;

"**Infrastructure Funding Agreement**" means the infrastructure funding agreement between the HLC and the Encumbrancee (Council) (then the Waitakere City Council) dated 28 October 2010;

"**Land**" means that part of the fee simple estate in the land described in computer freehold register 735733 and 735734 (North Auckland Registry), which has been or will be subdivided to create the Lots;

"**LINZ**" means Land Information New Zealand or any other Government department or agency which carries out the land registry functions for the Government;

"**Lots**" means all residential or commercial lots to be created from the subdivision of the Land; and

"**Pumping Station**" means the wastewater pumping station known as "Pumping Station 3" and rising main constructed on the Land pursuant to the Infrastructure Funding Agreement.

- 1.2 **Defined Expressions:** expressions defined in the main body of this encumbrance instrument have the defined meaning in the whole of this encumbrance instrument including the background;
- 1.3 **Headings:** section, clause and other headings are for ease of reference only and do not affect this encumbrance Instrument's interpretation;
- 1.4 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 1.5 **Parties:** references to parties are references to parties to this encumbrance instrument;
- 1.6 **Persons:** references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- 1.7 **Plural and Singular:** words importing the singular number include the plural and vice versa;
- 1.8 **Schedules:** the schedules to this encumbrance instrument and the provisions and conditions contained in these schedules will have the same effect as if set out in the body of this encumbrance instrument;
- 1.9 **Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to this encumbrance instrument's sections, clauses and schedules; and
- 1.10 **Statutes and Regulations:** references to any statutory provision includes any statutory provision which amends or replaces it, and any subordinate legislation made under it.

2. INTENTION OF ENCUMBRANCE

The intention of this encumbrance is to secure the ongoing performance by the Encumbrancer of the obligations described in the First Schedule and the Encumbrancee is only required to provide a release of this encumbrance in the circumstances described in clause 7 of this Annexure Schedule.

3. COVENANTS

The Encumbrancer covenants with the Encumbrancee to observe and perform the covenants contained in the First Schedule.

4. COSTS

The Encumbrancer shall pay all reasonable costs directly or indirectly attributable to the preparation, stamping, registration, enforcement and discharge of this encumbrance and any documents associated with it.

5. IMPLIED TERMS

Sections 203 and 205 of the Property Law Act 2007 apply to this encumbrance, but otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rent charger or encumbrancee):

- (a) the Encumbrancee shall be entitled to none of the powers and remedies given to encumbrancees by the Land Transfer Act 1952 and the Property Law Act 2007; and
- (b) no covenants on the part of the Encumbrancer and their successors in title are implied in this encumbrance other than the covenants for further assurance implied by Section 154 of the Land Transfer Act 1952.

6. FIRST CHARGE

This encumbrance shall rank as a first charge in respect of the Land and the Encumbrancer shall, if necessary, enter into a priority with any chargeholder or mortgagee to reflect the same.

7. DISCHARGE

The Encumbrancer shall be entitled to a partial or full discharge of this encumbrance (as the case may be) at the request and cost of the Encumbrancer upon it being established to the Encumbrancee's reasonable satisfaction that:

- (a) as regards a Lot, a separate title has been issued by LINZ for the Lot and a code compliance certificate has been issued by the Council (acting in its regulatory capacity) for a residential dwelling or commercial building on that Lot; or
- (b) the covenants in this encumbrance have otherwise become obsolete.

8. CONSENT OF ENCUMBRANCEE

For the purposes of the Property Law Act 2007 and the Land Transfer Act 1952, the Encumbrancee consents to the following dealings affecting the computer freehold register identifier without having to execute a consent instrument:

- (a) Creation, variation or surrender of an easement or covenant;
- (b) Variation of a mortgage instrument or priority of mortgages;
- (c) Registration of a lease, lease variation instrument or surrender of a lease;
- (d) Deposit of subdivision plan; and
- (e) Any dealing that is expressed as subject to this encumbrance.

9. RENT CHARGE

- (a) The annual rent charge of \$20.00 per annum (if demanded in writing by the Encumbrancee) is payable by the Encumbrancer to the Encumbrancee on each anniversary date of this encumbrance (subject to clause 9(b)).
- (b) If during the 12 months preceding any day on which the annual rent charge under clause 9(a) is payable, there has not been any breach by the Encumbrancer of any of the covenants under this Encumbrance, then the annual rent charge will be deemed to have been paid.

FIRST SCHEDULE

(Covenants of the Encumbrancer)

The Encumbrancer covenants with the Encumbrancee as follows:

1. the Encumbrancer acknowledges that parties have agreed to the Allocation; and
2. the Allocation determines the use of the Pumping Station on the Land and the Council Land.