



View Instrument Details

Instrument No. 9511689.4
Status Registered
Date & Time Lodged 25 Sep 2013 11:40
Lodged By Law, Alistair Stuart
Instrument Type Encumbrance

Toitu te
Land whenua
Information
New Zealand



Affected Computer Registers	Land District
624548	North Auckland
624549	North Auckland

Annexure Schedule: Contains 6 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 Alistair Stuart Law as Encumbrancer Representative on 25/09/2013 11:37 AM

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 Alistair Stuart Law as Encumbrancee Representative on 25/09/2013 11:38 AM

*** End of Report ***

Encumbrance Instrument

(Section 101 Land Transfer Act 1952)

Affected instrument Identifier and type (if applicable)	All/part	Area/Description of part or stratum
624548 and 624549	All	

Encumbrancer**AUCKLAND RACING CLUB INCORPORATED****Encumbrancee****AUCKLAND COUNCIL****Estate or interest to be encumbered***Insert e.g. Fee simple, Leasehold in Lease No. etc*

Fee simple

Encumbrance Memorandum Number

Nil

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

Annual rent charge of \$20.00 (twenty dollars)

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 and so as to incorporate in this Encumbrance the terms and other provisions set out in the ~~{above Encumbrance Memorandum}~~ ~~{and}~~ Annexure Schedule 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.

Terms

1. Length of term 999 years from the registration of this Encumbrance Instrument
 2. ~~Payment date(s)~~
 3. ~~Rate(s) of interest~~
 4. ~~Event(s) in which the sum, annuity or rentcharge becomes payable~~
 5. Events in which the sum, annuity or rentcharge ceases to be payable
- Otherwise in accordance with the Annexure Schedule**

Covenants and conditions*Continue in Annexure Schedule(s), if required*

In accordance with the Annexure Schedule

Modification of statutory provisions*Continue in Annexure Schedule(s), if required*

In accordance with the Annexure Schedule

Insert instrument type

Encumbrance instrument

Continue in additional Annexure Schedule, if required

BACKGROUND:

- A. The Encumbrancer is the registered proprietor of the Land, which is situated in the Council's district.
- B. The Council has granted a Resource Consent to the Encumbrancer on the condition that the Encumbrancer holds the Land together in such a way that the properties cannot be disposed of independently without the prior written consent of the Council.

NOW THIS MEMORANDUM WITNESSES:

1. INTERPRETATION

In this encumbrance instrument unless the context indicates otherwise:

1.1 Definitions:

"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;

"Encumbrancer" means the Encumbrancer named in this encumbrance instrument and includes the person for the time being registered as proprietor of the Land and any person claiming under the Encumbrancer but only for as long as that person is registered proprietor of the Land;

"Land" means the fee simple estate in the land described in computer freehold register identifiers 624548 and 624549 (North Auckland Registry); and

"Resource Consent" means the Resource Consent no. R/SUB/2013/1853/1 granted by the Council under the Resource Management Act 1991 for the proposed subdivision described therein, as may be varied from time to time.

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 Joint and Several Liability: An obligation by two or more persons binds those persons jointly and severally.

1.5 Negative Obligations: Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

1.6 Parties: References to parties are references to parties to this encumbrance instrument.

1.7 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.

1.8 Plural and Singular: Words importing the singular number include the plural and vice versa.

Insert instrument type

Encumbrance instrument

Continue in additional Annexure Schedule, if required

1.9 **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.

1.10 **Sections, Clauses and Schedules:** References to sections, clauses and schedules are references to this encumbrance instrument's sections, clauses and schedules.

1.11 **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 Council is only required to provide a release of this encumbrance in the circumstances described in clause 7.

3. COVENANTS

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

4. COSTS

The Encumbrancer shall pay all 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 Council's rights of action at common law as a rent charger or encumbrancee):

- (a) the Council 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 enter into a priority with any chargeholder or mortgagee to reflect the same.

Insert instrument type

Encumbrance instrument

Continue in additional Annexure Schedule, if required

7. DISCHARGE

The Encumbrancer shall be entitled to a discharge of this Encumbrance at the request and cost of the Encumbrancer upon it being established to the Council's reasonable satisfaction that the covenants in this Encumbrance are no longer required by the conditions of the Resource Consent.

8. CONSENT OF COUNCIL

The Council's consent shall not be required to the registration of any instrument against the computer register which has priority behind this instrument. The Council will promptly on request from the Encumbrancer consent to the registration of any instrument against the computer registers for the Land which does not breach the terms of this encumbrance.

9. RENT CHARGE

- (a) The annual rent charge of \$20.00 per annum (if demanded in writing by the Council) is payable by the Encumbrancer to the Council 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.

Insert instrument type

Encumbrance instrument

Continue in additional Annexure Schedule, if required

FIRST SCHEDULE

(Covenants of Encumbrancer)

The Encumbrancer covenants with the Council as follows:

1. The Encumbrancer will not transfer or otherwise dispose of any part of the Land except in conjunction with the rest of the Land, to the intent that the Land shall be held in common ownership until satisfaction of the condition in clause 3(1) of the Resource Consent, which provides that:

"Lot 1 and Lot 2 shall be individually and separately serviced for both water and wastewater and stormwater. A drainage as built plan prepared by a registered drain layer shall demonstrate all the individual private wastewater lines and connections to the public wastewater lines, and the location of soak holes and confirm the current buildings and access ways are being serviced by these soak holes individually."

2. Notwithstanding clause 1, and for the avoidance of doubt, nothing in clause 1 shall be construed as preventing the Encumbrancer from:

- (a) leasing, subleasing, or licensing of the whole or any part of the Land; or
- (b) granting any easements over any part of the Land,

provided always that the Encumbrancer remains the registered proprietor of all of the Land.