



# View Instrument Details

**Instrument No** 10108656.1  
**Status** Registered  
**Date & Time Lodged** 30 October 2015 12:35  
**Lodged By** Dempsey, Rebecca Alice  
**Instrument Type** Encumbrance



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**Affected Computer Registers**    **Land District**  
NA1870/93                              North Auckland

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**Annexure Schedule:** Contains 7 Pages.

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## 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 Keith Andrew McClure as Encumbrancer Representative on 29/10/2015 03:54 PM

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## 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 Gregory Neale Allen as Encumbrancee Representative on 07/10/2015 11:43 AM

\*\*\* End of Report \*\*\*

## Form E

## Encumbrance Instrument

(Section 101 Land Transfer Act 1952)

| Affected instrument Identifier and type (if applicable) | All/part | Area/Description of part or stratum |
|---|----------|-------------------------------------|
| NA1870/93   | All      |                                     |

## Encumbrancer

Jacob Wilkins and Karyn Margaret Wilkins

## Encumbrancee

Auckland Transport

## Estate or interest to be encumbered

*Insert e.g. Fee simple; Leasehold in Lease No. etc.*

Fee Simple

## Encumbrance Memorandum Number

N/A

## Nature of security

*State whether sum of money, annuity or rent charge and amount*

Rent charge of \$1.00 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 rent charge, to be raised and paid in accordance with the terms set out in this Encumbrance Instrument and ~~[above Encumbrance Memorandum]~~ [Annexure Schedule(s)] and so as to incorporate in this Encumbrance the terms and other provisions set out in this Encumbrance Instrument and 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*

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**Terms**

|   |  |
|---|--|
| 1 | Length of term – 999 years from the date of this encumbrance instrument                          |
| 2 | Payment date(s) – 1 June in each year if demanded prior to that date                             |
| 3 | Rate(s) of interest – Nil  |
| 4 | Event(s) in which the sum, annuity or rent charge becomes payable – if demanded                  |
| 5 | Event(s) in which the sum, annuity or rent charge ceases to be payable – Refer Annexure Schedule |

**Covenants and conditions**

*Continue in Annexure Schedule(s), if required*

|                         |
|-------------------------|
| Refer Annexure Schedule |
|-------------------------|

**Modification of statutory provisions**

*Continue in Annexure Schedule(s), if required*

|  |
|--|
|  |
|--|

## Form L

## Annexure Schedule

Page 1 of 5 Pages

Insert instrument type

Encumbrance Instrument

Continue in additional Annexure Schedule, if required

## 1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this instrument, unless the context indicates otherwise:

**Authorised Work** means the authorised work referred to in Schedule 1 of the Licence;

**Encumbrancee** means Auckland Transport established under section 38 of the Local Government (Auckland Council) Act 2009 and its successors and, where appropriate, its officers and agents;

**Encumbrancer** means the person named as the Encumbrancer in this instrument and includes the person for the time being registered as proprietor of the Land but only as long as he or she has an interest in the Land;

**Land** means the Encumbrancer's land at 394 Huia Road, Titirangi, Auckland being Lot 6 Deposited Plan 42669 comprised in computer freehold register NA1870/93 (North Auckland Registry);

**Licence** means the licence to occupy the Licensed Area, between the Encumbrancee and the Encumbrancer dated 25 September 2015; and

**Licensed Area** means the licensed area adjoining the Land more particularly described in the Licence, located in Huia Road, being legal road.

1.1 **Interpretation:** In this instrument, unless the context indicates otherwise:

(a) **Defined Expressions:** expressions defined in the main body of this instrument have the defined meaning throughout this instrument, including the background;

(b) **Headings:** clause and other headings are for ease of reference only and will not affect this instrument's interpretation;

(c) **Parties:** references to any **party** include that party's executors, administrators, successors and permitted assigns;

(d) **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;

## Form L

## Annexure Schedule

Page 2 of 5 Pages

*Insert instrument type*

Encumbrance Instrument

*Continue in additional Annexure Schedule, if required*

- (e) **Plural and Singular:** references to the singular include the plural and vice versa;
- (f) **Clauses/Schedules/Attachments:** references to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this instrument. Each such schedule and attachment forms part of this instrument;
- (g) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it; and
- (h) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done.

**2. BACKGROUND**

- 2.1 The Encumbrancer is registered as proprietor of the Land.
- 2.2 The Encumbrancer applied to the Encumbrancee to occupy the Licensed Area adjoining the Land. The Encumbrancee granted the Licence on condition that the Encumbrancer and any successors in title to the Land enter into and register this encumbrance as a first charge against the title to the Land.
- 2.3 The Encumbrancer acknowledges and confirms the matters set out in this clause 2.

**3. COVENANTS**

The Encumbrancer covenants with the Encumbrancee to perform the obligations in the schedule.

Form L

Annexure Schedule

Page 3 of 5 Pages

Insert instrument type

Encumbrance Instrument

Continue in additional Annexure Schedule, if required

**4. DISCHARGE OR REDEMPTION**

**4.1** In recognition of the background matters in clause 2, the Encumbrancer irrevocably covenants with the Encumbrancee for the term that:

**4.1.1** the Encumbrancee will have no obligation to discharge this encumbrance under section 97 of the Property Law Act 2007 or otherwise;

**4.1.2** the Encumbrancer will not take any steps whatsoever, including, without limitation, pursuant to section 97 of the Property Law Act 2007 or section 115 of the Property Law Act 2007 to redeem or discharge this encumbrance, or pursuant to section 317 of the Property Law Act 2007 to have this encumbrance revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Land;

**4.1.3** the Encumbrancer will not support any such steps being taken by a third party; and

**4.1.4** the Encumbrancer surrenders and waives any right, entitlement or ability that the Encumbrancer may have to have this encumbrance discharged, redeemed, revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Land.

**4.2** To avoid doubt:

**4.2.1** if the Encumbrancer's covenants are of a restrictive nature, for example by requiring the Encumbrancer not to do something, the performance of those obligations will require the Encumbrancer to observe and comply with those restrictions; and

**4.2.2** where the Encumbrancer's covenants are of a continuing nature, they will be treated as not having been fully performed for as long as they are capable of still being performed, observed or complied with.

**Form L****Annexure Schedule**

Page 4 of 5 Pages

*Insert instrument type***Encumbrance Instrument***Continue in additional Annexure Schedule, if required***5. COSTS**

The Encumbrancer will pay all legal costs directly or indirectly attributable to the preparation, registration, enforcement and discharge of this encumbrance.

**6. FIRST CHARGE**

This encumbrance will rank as a first charge in respect of the Land.

**7. CONSENT OF ENCUMBRANCEE**

The Encumbrancee's consent will not be required to the registration of any instrument against the Land which has priority behind this instrument.

**8. IMPLIED TERMS**

Sections 203, 204 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 chargee or encumbrancee):

**8.1** the Encumbrancee is entitled to none of the powers and remedies of encumbrancees by the Land Transfer Act 1952 and the Property Law Act 2007; and

**8.2** no covenants by the Encumbrancer or his, her or its 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.

**9. DISCHARGE**

The Encumbrancee will discharge this encumbrance following the expiry or earlier termination of the Licence, subject to the Encumbrancee being provided with evidence that the Encumbrancer's obligations under the Licence have been satisfied (including but not limited to the removal of the Authorised Work in accordance with the Licence).

Form L

Annexure Schedule

Insert instrument type

**Encumbrance Instrument**

*Continue in additional Annexure Schedule, if required*

**SCHEDULE**

**(Covenants)**

1. The Encumbrancer acknowledges that the Encumbrancee has granted the Licence to the Encumbrancer and the Encumbrancer will observe and perform the covenants and conditions on the part of the Licensee contained in the Licence for the term of the Licence.
2. The Encumbrancer may not transfer the Land, except in conjunction with an assignment of the Licence and with the prior written approval of the Encumbrancee in accordance with the provisions of the Licence.
3. It will be a condition of the Encumbrancee consenting to any assignment of the Licence that the assignee executes a deed of covenant, prepared by the Encumbrancee's solicitors at the Encumbrancer's cost, covenanting to observe and perform the covenants and conditions of the Licensee expressed or implied in the Licence.