

# View Instrument Details



**Instrument No** 11783569.1  
**Status** Registered  
**Date & Time Lodged** 28 August 2020 18:34  
**Lodged By** McAuley, Beth  
**Instrument Type** Encumbrance



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<b>Affected Records of Title</b>	<b>Land District</b>
NA57D/1393	North Auckland

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**Annexure Schedule** Contains 10 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 Beth McAuley as Encumbrancer Representative on 28/08/2020 06:24 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 Nicholas John Wilson as Encumbrancee Representative on 28/08/2020 05:14 PM

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

Form 18

**Encumbrance Instrument**

(Section 100 Land Transfer Act 2017)

Record of Title (unique identifier)	All/part	Area/Description of part
NA57D/1393	All	

**Encumbrancer**

TMF Waikumete Limited

**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 rentcharge and amount*

Rent charge of \$1.00 per annum plus Goods and Services Tax

**Encumbrance** *Delete words in [ ], as appropriate*

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above record of title(s) with the above sum of money, annuity or rentcharge, 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.

**Annexure Schedule 1**

**Encumbrance Instrument**

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

- 1 Length of term – 999 years from the date of registration 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 2

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

Refer Annexure Schedule 2

**Modification of statutory provisions**

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

Refer Annexure Schedule 2

## Annexure Schedule 2

Page 1 of 6 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:

**Airspace** means the airspace adjoining the Land more particularly described in the Licence, located in Waikumete Street, being legal road.

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

**Body Corporate** means Body Corporate 531007 under the Unit Title Plan;

**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 owner of the Land but only as long as he or she has an interest in the Land;

**Land** means the Encumbrancer's land at 6 Waikumete Street, Glen Eden, Auckland being:

- (a) from the commencement date of the Licence until the deposit of the Unit Title Plan, Lot 1 Deposited Plan 105083 comprised in record of title NA57D/1393; and
- (b) from the date the Unit Title Plan is deposited, the common property under the Unit Title Plan;

**Licence** means the licence to occupy the Airspace, between the Encumbrancee and the Encumbrancer dated 18 August 2020 and

**Unit Title Plan** means Deposited Plan 531007 in respect of the unit title subdivision of the Land.

## Annexure Schedule 2

Page 2 of 6 Pages

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

- 1.2 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;
  - (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;
  - (h) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
  - (i) **Joint and Several Obligations:** where two or more persons are bound by a provision in this encumbrance that provision will bind those persons jointly and each of them severally.

**2. BACKGROUND**

- 2.1** The Encumbrancer is registered as owner of the Land.

## Annexure Schedule 2

Page 3 of 6 Pages

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

**2.2** The Encumbrancer applied to the Encumbrancee to occupy the Airspace 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 and to note that the Body Corporate will be responsible for the Licence once it is assigned.

**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.

**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:

## Annexure Schedule 2

Page 4 of 6 Pages

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

**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.

**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**

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

**6.2** The Encumbrancee's consent will not be required to the registration of any instrument, which has priority behind this encumbrance instrument.

**7. CONSENT OF ENCUMBRANCEE**

**7.1** For the avoidance of doubt and for the purposes of sections and 32(1)(d) and 62 of the Unit Titles Act 2010, and without prejudice to the Encumbrancee's rights and powers existing under this encumbrance, the Encumbrancee consents to:

**7.1.1** the deposit of the Unit Title Plan and the lodgement of the order for new records of title for the subdivision as shown on that plan; and

**7.1.2** the grant and registration of an easement in gross to convey electricity over the common property as set out in the Unit Title Plan in favour of TMF Waikumete Limited.

**7.2** The Encumbrancee's consent in clause 7.1.1 is given strictly on the condition that the Licence is assigned to the Body Corporate in accordance with the terms as set out in the schedule of 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 2017 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 2017.

**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).



## Annexure Schedule 2

Page 6 of 6 Pages

*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 named Encumbrancer and:
  - (a) prior to the deposit of the Unit Title Plan, 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;
  - (b) the Licence must be assigned to the Body Corporate simultaneously with the deposit of the Unit Title Plan (with the assignment immediately following the deposit of such plan); and
  - (c) after the deposit of the Unit Title Plan, the Encumbrancer (being a member of the Body Corporate) will at its own cost:
    - (i) observe and perform the covenants and conditions on the part of the Licensee contained in the Licence for the term of the Licence; and
    - (ii) do all things necessary to ensure compliance by the Body Corporate with the terms of the Licence.
2. Immediately following the deposit of the Unit Title Plan, the Encumbrancer shall, following the prior written approval of the Encumbrancee in accordance with the provisions of the Licence, procure the Body Corporate to sign an assignment of the Licence to the Body Corporate and provide it to the Encumbrancee for execution.
3. It will be a condition of the Encumbrancee consenting to any assignment of the Licence to the Body Corporate that the assignee executes a form of assignment, 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. For the avoidance of any doubt, following a valid assignment of the Licence to the Body Corporate, the Encumbrancee's consent will not be required for the transfer of any individual unit of the Encumbrancer under the Unit Title Plan.