



View Instrument Details

Instrument No	13110198.1
Status	Registered
Lodged By	Healy-Melhuish, Greta Beatrice
Date & Time Lodged	22 Oct 2024 12:48
Instrument Type	Encumbrance

Affected Records of Title	Land District
NA75B/734	North Auckland

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 Xing Zhan as Encumbrancer Representative on 14/10/2024 11:33 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 Nicholas John Wilson as Encumbrancee Representative on 30/09/2024 12:20 PM

*** End of Report ***

Statement of Passing over Information:

This information has been supplied by a third party. Accordingly, the Vendor and Astar Realty Limited are merely passing over this information as supplied to us by others. While we have passed on this information supplied by a third party, we have not checked, audited or reviewed the records or documents and therefore to the maximum extent permitted by law neither the Vendor nor Astar Realty Limited or any of its' salespersons or employees accept any responsibility for the accuracy of the materials. Intending purchasers are advised to conduct their own investigation.

Form 18

Encumbrance Instrument

(Section 100 Land Transfer Act 2017)

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

NA75B/734	All	
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EncumbrancerWilliam Kim**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

Operative clause*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 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.

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 additional Annexure Schedule(s), if required

Refer Annexure Schedule 2

Modification of statutory provisions

Continue in additional Annexure Schedule(s), if required

Insert instrument type

Encumbrance Instrument

*Continue in additional Annexure Schedule(s), if required***1. DEFINITIONS AND INTERPRETATION****1.1 Definitions:** In this instrument, unless the context indicates otherwise:

Authorised Work means the parking platform and retaining wall as further described 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 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 86 Victory Road, Laingholm being Lot 118 Deposited Plan 19099 comprised in record of title NA75B/734;

Licence means the licence to occupy the Licensed Area, between the Encumbrancee and the Encumbrancer dated 13 September 2024; and

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

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;

*Insert instrument type***Encumbrance 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.
- 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.

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

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

4.1.1 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.

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

For the purposes of the Property Law Act 2007 and the Land Transfer Act 2017, the Encumbrancee consents to the following dealings affecting the Land without having to execute a consent instrument:

- (a) creation, variation or surrender of an easement or covenant;
- (b) the registration of any mortgage instrument against the land which has priority behind this instrument;
- (c) variation of a mortgage instrument or priority of mortgages (where this instrument remains first ranking); and
- (d) registration of a lease, lease variation instrument or surrender of a lease;

provided such consent will not extend to any of the above instruments where either one of the following apply;

- (e) the easement area in any proposed easement instrument or covenant area in any proposed covenant is adjacent to the Authorised Work; or

Insert instrument type

Encumbrance Instrument

- (f) registration of the relevant instrument will have the effect of reducing or adversely affecting the rights and interests of the Encumbrancee under this instrument in relation to the Land.

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 208 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).

Insert instrument type

Encumbrance Instrument

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 in accordance with the provisions of the Licence.
3. It will be a condition of any assignment of the Licence that the assignee executes a form 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.