

View Instrument Details



Instrument No 11507442.1
Status Registered
Date & Time Lodged 09 August 2019 13:11
Lodged By Van Veen, Caryn Daphne
Instrument Type Encumbrance



Affected Records of Title	Land District
866642	South Auckland
866643	South Auckland
866644	South Auckland
866645	South Auckland
866646	South Auckland
866647	South 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 Hamish Roderick Craig Murray as Encumbrancer Representative on 07/08/2019 12:23 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 Chad Allen Wallace as Encumbrancee Representative on 09/08/2019 10:12 AM

*** End of Report ***

ENCUMBRANCE INSTRUMENT

PARTIES:

1. **ENCUMBRANCER: ZARIBA PROPERTIES LIMITED** together with their successors, executors, administrators and assigns (the "Encumbrancers"); and
2. **ENCUMBRANCEE: TAURANGA CITY COUNCIL**, together with its successors, executors, administrators and assigns (the "Council")

BACKGROUND:

- A. The Encumbrancers own:
 - (i) an estate in fee simple in that piece of land containing 303 square metres being Lot 439 on Deposited Plan 530967 comprised in Record of Title 866642 ("Lot 439"); and
 - (ii) an estate in fee simple in that piece of land containing 276 square metres being Lot 440 on Deposited Plan 530967 comprised in Record of Title 866643 ("Lot 440")
 - (iii) an estate in fee simple in that piece of land containing 277 square metres being Lot 441 on Deposited Plan 530967 comprised in Record of Title 866644 ("Lot 441"); and
 - (iv) an estate in fee simple in that piece of land containing 278 square metres being Lot 442 on Deposited Plan 530967 comprised in Record of Title 866645 ("Lot 442")
 - (v) an estate in fee simple in that piece of land containing 279 square metres being Lot 443 on Deposited Plan 530967 comprised in Record of Title 866646 ("Lot 443"); and
 - (vi) an estate in fee simple in that piece of land containing 347 square metres being Lot 444 on Deposited Plan 530967 comprised in Record of Title 866647 ("Lot 444")

(Lots 439 440, 441, 442, 443 and 444 together called "the Encumbrancer's Land").
- B. The Encumbrancers have applied to the Council for Building Consent under number 191200 (the "Building Consent") to erect a retaining wall on the Encumbrancer's Land ("the Retaining Wall").
- C. The Council has agreed to the erection of the Retaining Wall on the basis that the Encumbrancers will be responsible for the construction, maintenance and repair of the Retaining Wall and the Encumbrancers have agreed to encumber the Encumbrancers Land on the basis set out in this Encumbrance Instrument.

ENCUMBRANCE:

1. The Encumbrancers hereby encumbers the Encumbrancer's Land for the benefit of the Council, with an annual rent charge of \$1.00 to be paid on the 1st day of January each year if demanded by that date.

2. The intention of this Encumbrance is to secure the ongoing performance by the Encumbrancers of the obligations described in the Schedule.

COVENANTS:

3. The Encumbrancers covenant with the Council to observe and perform the covenants contained in the Schedule.
4. The Encumbrancers further covenant and agree with the Council that the obligations of the Encumbrancers will run with the Encumbrancers' Land and bind every person who becomes the owner of the Encumbrancers' Land. No person or body will be liable to pay any monies or perform any obligation under this Encumbrance other than in relation to the period in which that person or body is an owner of the Encumbrancers' Land.
5. Notwithstanding clause 4 of this encumbrance registration of a transfer of an owner's interest in any of the Encumbrancers' Land shall not release the transferor from any liability arising pursuant to this Encumbrance prior to the date of registration of such transfer.

PRIORITY OF CHARGE:

6. This Encumbrance shall rank as a first charge in respect of the Encumbrancer's Land and the Encumbrancers shall enter into a priority with any chargeholder or mortgagee to reflect the same.

DISCHARGE:

7. The Encumbrancers shall be entitled to a discharge of this Encumbrance at the request and cost of the Encumbrancers upon it being established to Council's reasonable satisfaction that the covenants in this Encumbrance have become obsolete.

SCHEDULE

1. The Encumbrancers (for themselves and their successors in title) covenant with Council to:
 - a. forthwith and diligently complete erection of the Retaining Wall in accordance with the Lysaght plans and diagrams for the Retaining Wall issued with the Building Consent ("the Plans") and the conditions of the Building Consent;
 - b. maintain the Retaining Wall and any co-dependent components of the Retaining Wall erected pursuant to the Building Consent which are intrinsic to the operation, design and structural integrity of the Retaining Wall ("Co-Dependent Components") in good condition and repair at all times; and
 - c. undertake all work required in terms of 1.a. and 1.b. (the "Building Work"):
 - (i) at the cost of the Encumbrancer;
 - (ii) to Council's satisfaction; and
 - (iii) in accordance with all plans, specifications and reports prepared and lodged as part of the Building Consent; any subsequent building consent required in respect of any maintenance, repair or replacement work on the Retaining Wall; the Building Code provisions applicable at the time any repairs, maintenance or replacement are carried out; and the provisions of all applicable statutes, ordinances, regulations and by-laws.
2. The parties further acknowledge and agree that:
 - a. Construction, maintenance, repair and replacement (including any costs) of that part of the Retaining Wall located on Lot 439 and any Co-Dependent Components located on Lot 439 will be the responsibility of the registered owners from time to time of Lot 439;
 - b. Construction, maintenance, repair and replacement (including any costs) of that part of the Retaining Wall located on Lot 440 and any Co-Dependent Components located on Lot 440 will be the responsibility of the registered owners from time to time of Lot 440;
 - c. Construction, maintenance, repair and replacement (including any costs) of that part of the Retaining Wall located on Lot 441 and any Co-Dependent Components located on Lot 441 will be the responsibility of the registered owners from time to time of Lot 441;
 - d. Construction, maintenance, repair and replacement (including any costs) of that part of the Retaining Wall located on Lot 442 and any Co-Dependent Components located on Lot 442 will be the responsibility of the registered owners from time to time of Lot 442;
 - e. Construction, maintenance, repair and replacement (including any costs) of that part of the Retaining Wall located on Lot 443 and any Co-Dependent Components located on Lot 443 will be the responsibility of the registered owners from time to time of Lot 443; and

- f. Construction, maintenance, repair and replacement (including any costs) of that part of the Retaining Wall located on Lot 444 and any Co-Dependent Components located on Lot 444 will be the responsibility of the registered owners from time to time of Lot 444.
- 3. Subject to the provisions of clause 2 of this Schedule, the Encumbrancers further covenant with Council:
 - a. to keep the Council indemnified against any claims or liability for damage, loss or injury which may occur as a result of the erection of the Retaining Wall and any Co-Dependent Components;
 - b. to permit the Council to have access to the Encumbrancers' Land for the purpose of undertaking any repair, maintenance, replacement or removal of the Retaining Wall and any Co-Dependent Components should the Encumbrancers fail to maintain the Retaining Wall and any Co-Dependent Components in accordance with the provisions of this Encumbrance, it being acknowledged that any such work undertaken by Council will be at the cost of the Encumbrancers and the Council shall not be answerable for any loss resulting from the entry by the Council on to the Encumbrancers' Land or the work undertaken by Council in terms of this clause.
- 4. the Encumbrancers (for themselves and their successors in title) covenant and agree with each other that:
 - a. The construction, maintenance, repair and replacement of the Retaining Wall and any Co-Dependent Components and any costs relating specifically to the Retaining Wall and any Co-Dependent Components will be the responsibility of:
 - (i) the Encumbrancers in accordance with the provisions of clause 2 of the Schedule to this Encumbrance PROVIDED THAT;
 - (ii) any maintenance, repair or replacement (including the cost thereof) of the Retaining Wall and any Co-Dependent Components that is necessary because of any act or omission of the respective registered owners from time to time of Lot 439, Lot 440, Lot 441, Lot 442, Lot 443 or Lot 444 must be carried out promptly by that respective party at its sole cost or in such proportion as relates to the act or omission.
 - b. The Encumbrancers shall have the right to enter upon each other's land to seek access to the Retaining Wall and any Co-Dependent Components for the purpose of carrying out any construction, repair and replacement work as referred to in clauses 1, 2, 3 and 4 of this Schedule.
 - c. It is acknowledged that for the purposes of clause 4(b) of this Schedule above, the Encumbrancers include any of the agents, employees, contractors, subcontractors or invitees of the respective registered owners; and
 - d. The Encumbrancers will each at their cost respectively and at all times:
 - (i) maintain a policy of insurance over their respective parcels of land that includes natural disaster cover; and
 - (ii) if any part of the Retaining Wall or any Co-Dependant Components is damaged or destroyed by natural disaster or other event that the parties are insured for, each party will apply to their insurer (or to EQC

if relevant) for cover in respect of the cost of maintenance, repair or replacement for the proportion of the Retaining Wall or any Co-Dependant Components that sit on their land.

5. The Encumbrancers:
 - a. shall pay the Council's costs of and incidental to the preparation and registration of this Encumbrance Instrument and any subsequent surrender of the Encumbrance Instrument; and
 - b. shall pay the Council's legal costs (as between Solicitor and client) of and incidental to any Court action or prosecution or enforcement action instituted by the Council following a breach by the Encumbrancers of any of the provisions of this Encumbrance.
6. The Council's consent shall not be required for the registration of any instrument against the Encumbrancers' Land which has priority behind this instrument.
7. The Council's consent shall not be required for a transfer of the titles to which this Encumbrance Instrument relates.
8. Sections 203, 204 and 205 of the Property Law Act 2007 apply to this Encumbrance Instrument 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 2017 and the Property Law Act 2007; and
 - b. No covenants on the part of the Encumbrancers and their successor 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. To the fullest extent possible the Encumbrancers indemnify and release Council from any and all liability for loss, damage, costs or proceedings arising out of or in relation to breach of the covenants terms and conditions set out in this Encumbrance Instrument.

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ENCUMBRANCE INSTRUMENT

LAND TRANSFER ACT 2017