

View Instrument Details



Instrument No 10808379.1
Status Registered
Date & Time Lodged 11 August 2017 09:15
Lodged By Fazakerley, Joanne Marie
Instrument Type Encumbrance



Affected Computer Registers **Land District**
748146 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 John Gordon Neverman as Encumbrancer Representative on 17/07/2017 03:07 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 Matthew Graham Ockleston as Encumbrancee Representative on 07/08/2017 10:25 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
748146	All	

Encumbrancer

INSPIRED PROPERTY LIMITED

Encumbrancee

NEW ZEALAND TRANSPORT AGENCY

Estate or interest to be encumbered

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

Fee simple

Encumbrance Memorandum Number

Not applicable

Nature of security

State whether sum of money, annuity or rentcharge and amount

Rent charge of TEN DOLLARS (\$10.00) per annum, and such other sums of money as are payable by the Encumbrancer to the Encumbrancee pursuant to this Encumbrance Instrument.

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 Annexure Schedule(s) and so as to incorporate in this Encumbrance the terms and other provisions set out in the 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***Annexure Schedule**

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

- 1 Length of term **35 years**
- 2 Payment date(s) **see below**
- 3 Rate(s) of interest **Nil**
- 4 Event(s) in which the sum, annuity or rentcharge becomes payable **See below**

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

Payment date(s) and event(s) in which the sum, annuity, or rentcharge becomes payable:

- (a) In respect of the rent charge, 1 January in each year; and
- (b) In respect of other sums of money, ten working days after written demand is made by the Encumbrancee to the Encumbrancer.

Continued on the attached annexure schedule.

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

Sections 154 and 156 of the Land Transfer Act 1952, Sections 23, 203-205, 289-290 and 301-302 of the Property Law Act 2007 and Section 4 of the Contracts (Privity) Act 1982 shall apply to this Encumbrance Instrument but otherwise (and without prejudice to the Encumbrancee's rights of action at common law as a rent-chargee) the Encumbrancee shall not be entitled to any of the powers and remedies given to encumbrancees by the Land Transfer Act 1952 and the Encumbrancee and its successors and assigns shall not be entitled to any of the powers and remedies given to mortgagees under the Land Transfer Act 1952 or the Property Law Act 2007.

Form E *continued***Annexure Schedule**

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

- A **INSPIRED PROPERTY LIMITED** (together with its successors, assignees, tenants, lessees and persons under its control) ("Encumbrancer") is registered as proprietor of an estate in fee simple in all that parcel of land described on the front page of this Encumbrance Instrument ("Land").
- B The Encumbrancer has appealed against the decision on 6 April 2016 by the Thames-Coromandel District Council ("Council") on the Proposed Thames-Coromandel District Plan in relation to Planning Maps 29 Zones 'Tairua / Pauanui' and 29G Zones 'Pauanui' ("Appeal"). The Encumbrancee has become a party to the Appeal under s 274 of the Resource Management Act 1991 ("RMA").
- C The Encumbrancer and the Council have reached agreement on a resolution of the Appeal. The Encumbrancee has accepted that agreement, subject to the Encumbrancer's covenants under this Encumbrance Instrument.
- D For valuable consideration and in connection with the settlement of the Appeal, the Encumbrancer has agreed to encumber the Land for the benefit of the Encumbrancee with the security specified on this front page of this Encumbrance Instrument, and to covenant with the Encumbrancee to secure compliance by the Encumbrancer with the agreements set out in this Encumbrance Instrument.

OPERATIVE PROVISIONS

- 1 If, on the due date for payment (as set out in Annexure Schedule 1) of the rent charge imposed under this Encumbrance Instrument, the Encumbrancer has fully complied with all of the obligations imposed pursuant to this Encumbrance Instrument, then the rent charge payable on that day shall not be required to be paid by the Encumbrancer.
- 2 The Encumbrancer acknowledges that the covenants in this Encumbrance Instrument are of a permanent nature, and the Encumbrancer shall not be entitled to a discharge of the Encumbrance Instrument during the term, whether by payment of the total security or otherwise.
- 3 The Encumbrancer covenants with the Encumbrancee that the Encumbrancer agrees:
 - (a) the maximum development yield of the Land will be 49 residential lots and will not apply for subdivision of the Land beyond this maximum yield unless clause 3(b) applies;

Form E *continued***Annexure Schedule**

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

- (b) any further intensification or subdivision or number of residential dwellings beyond 49 will require confirmation from the Encumbrancee that it is entirely satisfied in all respects with any traffic impact assessment provided by the Encumbrancer which confirms that the roading network would not be adversely affected by any further intensification above 49 allotments/residential dwellings (taking into account any mitigation);
- (c) if future District Plans provide for smaller allotment areas and/or intensification then these future rules shall apply to the subject site and any subsequent allotments; and
- (d) to surrender the Encumbrancer's existing land use resource consent (RMA2012/28) prior to lodging any certificate under s 224(c) of the RMA in relation to the Land, and will notify the Encumbrancee once the surrender has occurred.

General

- 4 This Encumbrance Instrument shall be binding on all transferees, tenants (to the extent permitted by law), lessees, mortgagees, chargeholders and their respective successors in title and assigns of any estate or interest in the Land.
- 5 Where this Encumbrance Instrument binds or benefits a party, it shall bind or benefit that party jointly and severally.
- 6 The Encumbrancer covenants with the Encumbrancee:
 - 6.1 Encumbrancer and the Encumbrancee shall meet their own legal costs and disbursements in the, execution, registration, enforcement and any ultimate release of this Encumbrance Instrument, in respect of any consents sought by the Encumbrancer from the Encumbrancee to the registration of any instrument, and in respect of the performance and observance by the Encumbrancer of this Encumbrance Instrument including legal costs on a solicitor/client basis; and
 - 6.2 to otherwise indemnify the Encumbrancee against any claims, loss and expense of whatever kind incurred by the Encumbrancee as a consequence of the Encumbrancer failing to comply with this Encumbrance Instrument.
- 7 Each Encumbrancer will only be liable for breaches actually committed by that Encumbrancer itself, and not by any successor or other party.
- 8 No delay or failure by the Encumbrancee to enforce performance of any of the covenants set out in this Encumbrance Instrument and no indulgence granted to the Encumbrancer by the Encumbrancee shall prejudice the rights of the Encumbrancee to enforce any of the

Form E *continued***Annexure Schedule**

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

covenants or provisions of the Encumbrance Instrument.

- 9 In this Encumbrance Instrument a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it, and a regulation or statutory instrument issued under it.
- 10 In this Encumbrance Instrument, "working day" means a day on which registered banks are open for business in Auckland, excluding Saturdays, Sundays, public holidays, and any day in the period commencing on the 23rd day of December in any year and ending on the 10th day of January in the following year, both days included.
- 11 If at any time any part or provision of this Encumbrance Instrument is or becomes invalid, void, illegal or unenforceable in any respect whatsoever, then:
 - (a) that part or provision shall be severed from this Encumbrance Instrument;
 - (b) such invalidity and severing shall not in any way affect or impair the validity, legality and enforceability of any other part or provision of this Encumbrance Instrument; and
 - (c) the parties shall enter into appropriate substitute instrument(s) to give full and proper effect to the agreements and understandings in this Encumbrance Instrument.
- 12 The Encumbrancer:
 - 12.1 acknowledges that this Encumbrance Instrument:
 - (a) has been granted for valuable consideration received, in full compensation for the grant of this Encumbrance Instrument; and
 - (b) is intended to charge the Land and bind the Encumbrancer (and successors) to perform the Encumbrancer's obligations for the period of time set out in this Encumbrance Instrument; and
 - 12.2 therefore covenants with the Encumbrancee:
 - (a) not to seek to discharge, surrender, lapse, vary, amend, withdraw or remove in any manner whatsoever this Encumbrance Instrument prior to the expiry of that period of time, whether by payment of the total security or otherwise;
 - (b) to preserve for the period of time set out in this Encumbrance Instrument the integrity of the agreements in this Encumbrance Instrument; and
 - (c) always to act in good faith and do all acts and things and enter into and

Form E *continued***Annexure Schedule**

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

execute all documents, instruments (including any replacement encumbrance) and/or easement or land covenant whenever reasonably required by the Encumbrancee and otherwise obtain any necessary consents all of which may be reasonably necessary and appropriate to give full force and effect to the intentions and understandings of the Encumbrancer and the Encumbrancee.

- 13 The Encumbrancee will, upon request by the Encumbrancer, discharge this Encumbrance Instrument from any part of the Land that is to be vested as road or reserve in the relevant local authority.
- 14 For the purposes of the Property Law Act 2007 and the Land Transfer Act 1952, the Encumbrancee consents to the following dealings affecting the Land:
- (a) creation, variation or surrender of an easement or covenant (but not including any covenants contained in this Encumbrance Instrument);
 - (b) registration of a mortgage instrument, variation of a mortgage instrument or mortgage priority instrument where the priority of mortgages does not affect this Encumbrance Instrument;
 - (c) registration of a lease, lease variation instrument or surrender of a lease; and
 - (d) any other instrument which is expressed as being subject to this Encumbrance Instrument or which ranks after this Encumbrance Instrument;

and the Encumbrancee's further consent to any such dealings shall not be required.