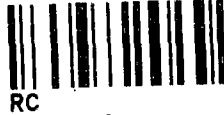
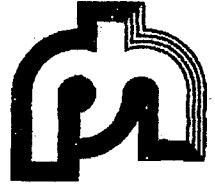


Director:  
Peter J. Hawley M.N.Z.I.S., R.S. FIJI  
Associate:  
Paul J. Andrews B.Surv., M.N.Z.I.S.



**Phipps Hawley**  
LIMITED



REGISTERED SURVEYORS

1110 Haupapa Street  
PO Box 190, Rotorua  
Phone 07 347 6995  
Fax 07 347 6994  
Email: [info@surveying.co.nz](mailto:info@surveying.co.nz)  
Website: <http://www.surveying.co.nz>

Your Ref: 6598135  
Our Ref: JF 5091

13 November 1998

The District Manager  
Rotorua District Council  
ROTORUA

Attention: Andy White

**APPLICATION FOR SUBDIVISION CONSENT: LA GROUW, HARPER &  
BEALE - GEMINI PLACE AND GRAND VUE ROAD, ROTORUA**

In reply to your letter of 10 November requesting further information we make the following comments.

1. We have attached a copy of Encumbrance H.987894.5 as requested.
2. We confirm that the Land Transfer Surveys for the proposed subdivision will proceed in stages so we ask that you continue with necessary processing so that consent can be granted as soon as possible.

We look forward to advice of Council's consent.

Yours faithfully  
Phipps Hawley Ltd

Paul J Andrews

*6 pages*

Land and Engineering Surveyors • Land Development Consultants • Resource Managers  
Town Planning

Members of the Consulting Surveyors of N.Z.  
A Division of the N.Z. Institute of Surveyors

In association with  
B.S.K. Consulting Engineers Ltd, Rotorua

MEMORANDUM OF ENCUMBRANCE

Relating to Lot 2 of a Subdivision  
(To secure performance of Restrictive Covenants in Gross)

WHEREAS:FIRST:

GRAHAM BEALE of Rotorua, Medical Practitioner and ELAINE BEALE his wife (in this Memorandum called "the Encumbrancers") are registered as Proprietors of an estate in fee simple as tenants in common in equal shares in all that parcel of land containing 8785 square metres being Lot 3 DPS 43224 situated in Block XIII of the Rotoiti Survey District being all the land contained in Certificate of Title 38A/565 South Auckland Registry.

SECONDLY:

The Encumbrancers have subdivided the land into two allotments on Plan lodged in the Land Transfer Office at Hamilton as No. LTS 53522 preceded by an appropriate Scheme Plan.

THIRDLY:

The said Plans of Subdivision have been approved by the Rotorua District Council (in this Memorandum called "the Council") a body corporate under the provisions of the Local Government Act 1974 (within whose jurisdiction the land is situated) subject to certain conditions which have been accepted by the Encumbrancers.

FOURTHLY:

Some of such conditions with regard to Lot 2 of the said subdivision (as more particularly described in the Schedule hereto) ("the said Lot 2") result from the fact that the said Lot 2 has access to a street only by means of an extended right of way servicing other lands and so restricting in terms of the Council's Operative District Scheme, the number of dwelling units that may be placed thereon notwithstanding the size of the said Lot 2.

FIFTHLY:

It is accordingly necessary that the owner from time to time of the said Lot 2 is made aware of such restrictions resulting therefrom as are herein set forth and be bound thereby.

SIXTHLY:

The Encumbrancers have accordingly agreed to enter into and to register in favour of the Council this Memorandum of Encumbrance to record and secure in favour of the Council the collateral agreements on the part of the Encumbrancers and grant and make with the Council the rent charge and covenants set forth in this Memorandum.

*grk GB*  
*th.*  
*AKC*

- 2 -

NOW THIS MEMORANDUM WITNESSETH that the Encumbrancers ENCUMBER the said Lot 2 land for the benefit of the ROTORUA DISTRICT COUNCIL aforesaid for a term of 999 years from the 1st day of April 1990 determinable however under Clause 3 of this Memorandum with an annual rent charge of \$10.00 plus Goods and Services Tax to be paid by the 1st day of April in each year if demanded by that date (the first payment if so demanded being due by the 1st day of April 1990).

1. THE Encumbrancers for themselves and their successors in title covenant with the Council not to erect or otherwise affix to the said Lot 2 more than six (6) dwelling or household units (whether under the one roof or otherwise) or require the Council to issue a building permit for more than the first six of such dwellings or household units PROVIDED THAT the covenants in this Clause 1 shall be enforceable only against the owners and occupiers for the time being of the said Lot 2 respectively (and not otherwise against the Encumbrancers and their successors in title when they are not the current owners thereof) AND it is declared that:-

2. SECTION 104 of the Property Law Act 1952 applies to this Memorandum of Encumbrance but that otherwise (and without prejudice to the Council's rights of action at common law as a rent charge):

- (a) The Council shall be entitled to none of the powers and remedies given to encumbrances by the Land Transfer Act 1952 and the Property Law Act 1952; and
- (b) No covenants on the part of the Encumbrancers and their successors in title are implied in this Memorandum other than the covenants for further assurance implied by Section 154 of the Land Transfer Act 1952.

3. THIS rent charge shall immediately determine and the Encumbrancers shall be entitled to a discharge of this Memorandum of Encumbrance if the covenants expressed in this Memorandum otherwise become obsolete or no longer require enforcement.

4. THE Encumbrancers shall pay the Council's costs and disbursements incurred in the preparation completion stamping and registration hereof and in the enforcement of this Memorandum.

*gr* *LSH*  
*ALW*

- 3 -

THE SCHEDULE

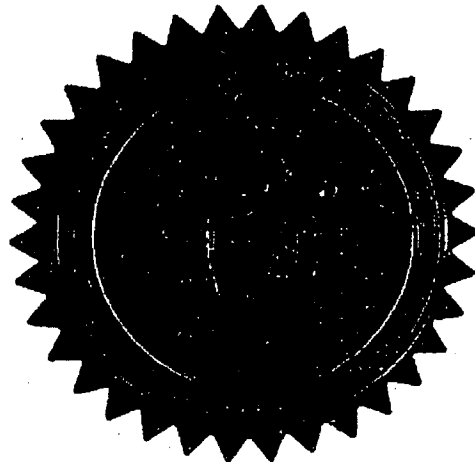
ALL THAT parcel of land held by the Encumbrancers as an estate of freehold in fee simple aforesaid as tenants in common in equal shares containing 5165 square metres more or less being Lot 2 on Deposited Plan S.53522 and ~~being part of the land comprised in Certificate of Title 38A/536~~ (and being all the land comprised in Certificate of Title → subject to and having appurtenant thereto certain easements set out in Easement Certificate H.

Dated at Rotorua this 25th day of October 1990

SIGNED by the said )  
 GRAHAM BEALE and )  
 ELAINE BEALE )  
 as Encumbrancers )  
 in the presence of:- )

*[Signature]*  
 Local Executive to  
 DARYL SWATON HENDERSON  
 Solicitor Rotorua


THE COMMON SEAL of )  
 THE ROTORUA DISTRICT )  
 COUNCIL )  
 was hereto affixed )  
 in the presence of:- )



*[Signature]*  
 MAYOR

*[Signature]*  
 DISTRICT MANAGER

Correct for the Purposes of  
the Land Transfer Act

  
.....  
Solicitor for the Encumbrancee

MEMORANDUM OF ENCUMBRANCE

G. & E. BEALE

Transferor

THE ROTORUA DISTRICT COUNCIL

Transferee

I hereby certify that this transac-  
tion does not contravene the provi-  
sions of Part IIA of the Land  
Settlement Promotion and Land  
Acquisition Act 1952

.....  
Solicitor for the Purchaser/Lessee

Particulars entered in the Register  
as shown in the Schedule of Land  
herein on the date and at the time  
stamped below

.....  
Assistant Land Registrar of the  
District of South Auckland

---

DAVYS BURTON HENDERSON  
SOLICITORS  
ROTORUA

TR8:fmj(skb)4/50-52

10.45 01.NOV90 H 987894.5:

ARTICLES ENTERED IN REGISTER  
AND REPEATED SOUTH AFRICA



uab/116

606/211  
212

REGISTER

not valid for  
01/11