

# View Instrument Details



**Instrument No** 11513765.1  
**Status** Registered  
**Date & Time Lodged** 25 September 2019 16:13  
**Lodged By** Marbeck, Keely Anne  
**Instrument Type** Encumbrance



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**Affected Records of Title**      **Land District**

WN44C/426      Wellington

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**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 Keely Anne Marbeck as Encumbrancer Representative on 25/09/2019 04:13 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 Keely Anne Marbeck as Encumbrancee Representative on 25/09/2019 04:13 PM

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

Form 18

**Encumbrance Instrument**

(Section 100 Land Transfer Act 2017)

**Land registration district**

Wellington

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

WN44C/426

All

Part Lot 2 DP 71916

**Encumbrancer***Surname(s) must be underlined***HER MAJESTY THE QUEEN** for use in connection with a road**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 **and** so as to incorporate in this Encumbrance the terms and other provisions set out in the Annexure Schedule 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.

*Continue in additional Annexure Schedule, if required*

**Terms**

- 1 Length of term **999 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**
- 5 Event(s) in which the sum, annuity, or rentcharge ceases to be 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 23, 203-205, 289-290 and 301-302 of the Property Law Act 2007 and Section 12 of the Contracts and Commercial Law Act 2017 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 2017 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 2017 or the Property Law Act 2007.

*Continue in additional Annexure Schedule, if required*

#### **BACKGROUND**

- A **HER MAJESTY THE QUEEN** (together with her 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 Land is adjoins/fronts the Mackays to Peka Peka Expressway (**State Highway**).
- C Under sections 61(1) and 80(1) of the Government Roding Powers Act 1989, the Encumbrancee has sole powers of control for all purposes of all State highways and motorways.
- D For valuable consideration 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 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 will ensure that:
  - 3.1 (a) any new buildings or alterations to existing buildings containing noise sensitive activities, in or partly within 40 metres from the state highway edgeline must be designed, constructed and maintained to achieve road-traffic vibration levels complying with class C of NS 8176E:2005;
  - (b) any new buildings or alterations to existing buildings containing noise sensitive activities, in or partly within 100 metres from the state highway edgeline must be designed, constructed and maintained to achieve the indoor design noise levels from road-traffic set out in the table contained in the Schedule to this Encumbrance Instrument;
  - (c) if windows must be closed to achieve the design noise levels set out in the table contained in the Schedule to this Encumbrance Instrument, the building must be designed, constructed and maintained with a ventilation and cooling system. For habitable spaces a ventilation cooling system must achieve the following:
    - i. ventilation must be provided to meet clause G4 of the New Zealand Building Code. At the same time, the sound of the system must not exceed 30 dB LAeq(30s) when measured 1 m away from any grille or diffuser;

Continue in additional Annexure Schedule, if required

- ii. the occupant must be able to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour. At the same time, the sound of the system must not exceed 35 dB LAeq(30s) when measured 1 m away from any grille or diffuser; and
  - iii. the system must provide cooling that is controllable by the occupant and can maintain the temperature at no greater than 25°C. At the same time, the sound of the system must not exceed 35 dB LAeq(30s) when measured 1 m away from any grille or diffuser;
- (d) a design report prepared by a suitably qualified and experienced acoustics specialist must be submitted to the Encumbrancee demonstrating noise and vibration compliance prior to the construction or alteration of any building containing a noise sensitive activity in or partly in the state highway buffer area or effects area. The design must take into account the future permitted use of the state highway; for existing roads this is achieved by the addition of 3 dB to existing measured or predicted noise levels.
- 3.2 all lighting on the Land must be designed, installed and maintained so that it is shielded from or directed away from the State Highway, to ensure that artificial lighting does not result in illumination or glare on transport corridors which may dazzle or distract transport corridor users; and
- 3.3 any signage on the Land that faces or is directed at traffic on the State Highway, or is otherwise visible to traffic on the State Highway, requires prior written approval of the Encumbrancee. This is to ensure that inappropriate signage along the State Highway does not distract transport corridor users.
- 4 The Encumbrancer acknowledges and accepts that the Land is capable of being adversely affected by effects (including without limitation noise, vibration, dust, emissions, visual, landscape or amenity effects) (**Effects**) arising from the construction, operation, upgrading and maintenance of the State Highway (**State Highway Activities**), whether such Effects arise during or after such State Highway Activities, and accordingly the Encumbrancer, in consideration of having received valuable consideration, agrees:
  - 4.1 not to object to, hinder, or otherwise obstruct the grant, confirmation or alteration pursuant to the Resource Management Act 1991 (**RMA**) of any authorisations under the RMA which in any way relate to the State Highway Activities and to sign written approvals in relation to any such authorisation if requested to by the Encumbrancee;
  - 4.2 not to do, permit to be done, or omit to do, any act, matter or thing where that act, matter, thing or omission is intended to restrict, or has the effect of restricting, the State Highway Activities in any way whatsoever, including taking any civil action and/or any enforcement proceedings pursuant to the RMA or any other statute or common law, whether for nuisance, damage to Land, negligence, or interference with Land or otherwise, but only where such act, matter or thing relates to any such Effects;

*Continue in additional Annexure Schedule, if required*

- 4.3 not to claim any compensation in relation to any such Effects arising from State Highway Activities;
- 4.4 not to fund, encourage or otherwise be involved in, any act, matter or thing that if carried out by the Encumbrancer itself would breach paragraphs 4.1 to 4.3 above;
- 4.5 to provide a copy of this Encumbrance to all tenants, lessees, and holders of unregistered interests in the Land (each a **third party**) who acquire rights in the Land while the Encumbrancer is the registered proprietor of the Land:
  - (a) where the Encumbrancer grants the rights in the Land to that third party, prior to the Encumbrancer doing so; or
  - (b) in all other cases, as soon as practicable after the Encumbrancer becomes aware of that third party acquiring any rights in the Land.
- 5 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.
- 6 Where this Encumbrance Instrument binds or benefits a party, it shall bind or benefit that party jointly and severally.
- 7 The Encumbrancer covenants with the Encumbrancee:
  - 7.1 to pay all legal costs and disbursements in the preparation, 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
  - 7.2 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 **provided always** that this clause 7.2 shall not apply during any period that the Encumbrancer is the Crown as defined in section 2(1) of the Public Finance Act 1989.
- 8 The Encumbrancer will only be liable for breaches actually committed by the Encumbrancer itself, and not by any successor or other party, unless those breaches arise wholly or partly due to a breach by the Encumbrancer of clause 4.5.
- 9 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 covenants or provisions of the Encumbrance Instrument.

*Continue in additional Annexure Schedule, if required*

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| 10 | 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.   |
| 11 | In this Encumbrance Instrument, <b>working day</b> means (a) in relation to any time period specified under the Property Law Act 2007, has the meaning given in that Act, or (b) in all other cases, means any day that is not a Saturday, Sunday, day between 23 December in one year to 10 January in the next year (both days inclusive) or statutory holiday in the area where the Land is located.   |
| 12 | <p>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:</p> <p>12.1 that part or provision shall be severed from this Encumbrance Instrument;</p> <p>12.2 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</p> <p>12.3 the parties shall enter into appropriate substitute instrument(s) to give full and proper effect to the agreements and understandings in this Encumbrance Instrument.</p>   |
| 13 | <p>The Encumbrancer:</p> <p>13.1 acknowledges that this Encumbrance Instrument:</p> <p style="margin-left: 40px;">(a) has been granted for valuable consideration received, in full compensation for the grant of this Encumbrance Instrument; and</p> <p style="margin-left: 40px;">(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</p> <p>13.2 therefore covenants with the Encumbrancee:</p> <p style="margin-left: 40px;">(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;</p> <p style="margin-left: 40px;">(b) to preserve for the period of time set out in this Encumbrance Instrument the integrity of the agreements in this Encumbrance Instrument; and</p> <p style="margin-left: 40px;">(c) always to act in good faith and do all acts and things and enter into and 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.</p> |

Continue in additional Annexure Schedule, if required

- 14 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.
- 15 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:
- (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 involve or concern 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.

**SCHEDULE**  
(Refer clause 3.1 (b))

BUILDING TYPE	OCCUPANCY/ACTIVITY	MAXIMUM INDOOR DESIGN NOISE LEVEL $L_{Aeq}(24h)$
<b>Residential</b>	Living spaces, sleeping spaces (including visitor accommodation and retirement accommodation)	40 dB
<b>Education</b>	Assembly halls	35 dB
	Conference rooms, drama studios	40 dB
	Lecture rooms and theatres, music studios	35 dB
	Libraries	45 dB
	Sleeping areas in educational facilities	40 dB
	Teaching areas	40 dB
<b>Health</b>	Overnight medical care, wards	40 dB
	Clinics, consulting rooms, theatres, nurses' stations	45 Db
<b>Cultural buildings</b>	Places of worship, marae	35 dB

**Note:** Excludes areas not deemed to be habitable spaces as defined by schedule 1 of the Building Regulations 1992