

MEMORANDUM OF ENCUMBRANCE

EMC 5022077.5 ENCUMBRANCE
CPY-01/01.PGS-006.02/02/01.08:49



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The Parties

1. **NGAI TAHU PROPERTY GROUP LIMITED** at Christchurch ("Encumbrancer").
2. **HER MAJESTY THE QUEEN** in Right of New Zealand acting by and through the Minister of Lands ("Crown").

Background

- A. Pursuant to Transfers dated the day of January 2001 and the day of January 2001, the Crown transferred to the Encumbrancer a fee simple estate and interest in the land described in Schedule A ("**Land**").
- B. It is believed that the land may be contaminated and that the contamination occurred before such transfer.
- C. The Encumbrancer purchased the land from the Crown upon terms and conditions which included:
 - (a) acknowledgement by the Encumbrancer that it has purchased the Land in the knowledge that the Land has been contaminated and may require clean up action in future. The Encumbrancer agrees that it will be entirely responsible for the carrying out of any clean up action, including the full cost of any such action. The parties agree that the Crown's contribution to any clean up cost has been fully dealt with in the purchase price for the Land;
 - (b) acknowledgement by the Encumbrancer that the purchase price for the Land was agreed having regard to inter alia the acknowledgements referred to in (a) above; and
 - (c) agreement between the parties that the Encumbrancer would enter into this Memorandum of Encumbrance.

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SCHEDULE A

Legal Description of Land

1. All that parcel of land containing 4.6380 hectares more or less being Lot 5 Deposited Plan 81924 as comprised and described in Certificate of Title 47B/395 (Canterbury Land Registry)
2. All that parcel of land containing ^{7.5901}~~8.0698~~ hectares more or less being Lot 4 Deposited Plan 81924 and Lot 1 Deposited Plan 83571 as comprised and described in Certificate of Title 48B/1121 (Canterbury Land Registry)

QR MMR R
Ro

NOW THIS MEMORANDUM WITNESSES as follows:

Land Encumbered

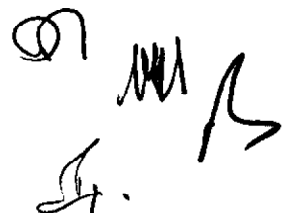
1. The Encumbrancer hereby encumbers the land for the benefit of the Crown for a term of 99 years from the date hereof, determinable however under clause 3 below, with an annual rent-charge of Ten Thousand Dollars to be paid by the Encumbrancer on the last day of January in each year if demanded. The Crown shall only be entitled to make demand for payment of the rent-charge in the event of breach of the covenants given by the Encumbrancer in clause 2 of this Memorandum.

Encumbrancer's Covenants

2. The Encumbrancer covenants, on behalf of itself and its successors in title, with the Crown as follows:
 - (a) The Encumbrancer shall not make any claim or demand on the Crown for any compensation, contribution, costs, losses, damages, expenses, or for any other relief whatsoever, in respect of or otherwise incidental in any way to the contamination of the Land;
 - (b) The Encumbrancer shall indemnify the Crown from and against all claims, costs petitions, suits, actions and demands whatsoever which may be made for or on account of any accident or injury to any person or for any damage to any property arising out of, or cause or contributed (either directly or indirectly) by, the contamination of the Land;
 - (c) The Encumbrancer shall be responsible for and shall accept sole liability for remedying the contamination of the land in accordance with all territorial authority, statutory and other legal requirements, and the Crown shall not be held liable for such actions;
 - (d) The Encumbancer shall pay the costs of the Crown relating to any enforcement by the Crown of the Encumbrancer's covenants set out in this Memorandum.

Crown's Covenants

3. The Crown covenants with the Encumbrancer, and the successors in title of the Encumbrancer as follows:
 - (a) The Crown shall promptly and at its own cost in all respects discharge this Memorandum upon receiving from the relevant territorial authority written confirmation that:
 - (i) The contamination of the Land has been remedied to the satisfaction of the territorial authority; and/or

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- (ii) The territorial authority will not take any further action against any registered proprietor in respect of the contamination of the Land
- (b) The Crown shall pay the costs of the Encumbrancer relating to any enforcement of the Crown's covenants set out in this Memorandum.

AND IT IS DECLARED that:

- 4. Section 104 of Property Law Act 1952 applies to this Memorandum of Encumbrance but otherwise (and without prejudice to the Crown's rights of action at common law as a rent-charger or encumbrancee):
 - (a) The Crown shall be entitled to none of the powers and remedies (including for avoidance of doubt any power of sale) given to encumbrances by the Land Transfer Act 1952 and the Property Law Act 1952; and
 - (b) No covenants on the part of the Encumbrancer and its 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.
- 5. No delay or failure by the Crown or the Encumbrancer to enforce performance of any of the covenants set out in this Memorandum and no indulgence granted to the Encumbrancer by the Crown, or to the Crown by the Encumbrancer, shall prejudice the rights of either party to enforce any of the covenants or provisions of this Memorandum.



SIGNED for and on behalf of **HER MAJESTY THE QUEEN** by **ARTHUR ROSS MARBECK** pursuant to a direction given to the Chief Crown Property Officer by the Minister of Railways under Section 10 (a) of the New Zealand Railways Corporation Act 1981 and a delegation under Section 41 of the State Sector Act 1988 in the presence of:



Signed in my presence by the ("Crown")
Signature of Witness



Witness Name: Paul Stephen Kelly
Occupation: South Island Manager, LINZ
Address: P.O. Box 5501 Wgtn.

SIGNED by **NGAI TAHU PROPERTY GROUP LIMITED** by its ~~Attorneys~~ **Directors** in the presence of:



Brian Kennedy



Graham Sinclair

Signed in my presence by the (Encumbrancer")
Signature of Witness

Witness Name:

Occupation:

Address:

**NGAI TAHU PROPERTY GROUP
LIMITED**

(Encumbrancer)

HER MAJESTY THE QUEEN

(Crown)

**MEMORANDUM OF
ENCUMBRANCE**

Correct for the Purposes of the Land Transfer
Act 1952



Solicitor for the Encumbrancer