

# MEMORANDUM OF ENCUMBRANCE

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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

- March
- A. Pursuant to a Transfer dated the 4th day of ~~January~~ 2002, 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.

**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 Encumbrancer 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

(ii) The territorial authority will not take any further action against either the Crown or 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.

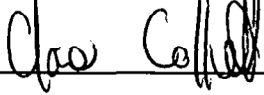
5. No delay or failure by the Crown or the Encumbrancer to enforce performance of any of the covenants set out in this Memorandum and no indulgence granted to the Encumbrancer by the Crown, or to the Crown by the Encumbrancer, shall prejudice the rights of either party to enforce any of the covenants or provisions of this Memorandum.

Dated this 4th day of March 2002

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:

  
ARTHUR ROSS MARBECK

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

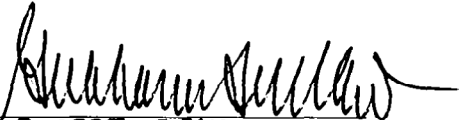
  
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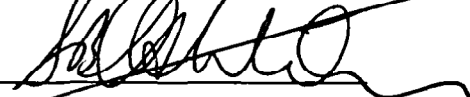
Witness Name: CLARE COLLETT

Occupation: PROPERTY OFFICER

Address: c/o P O Box 5501, WELLINGTON

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

~~x   
ROBERT GRAHAM SINCLAIR~~

~~x   
SIDNEY BOYD ASHTON~~

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

~~  
\_\_\_\_\_~~


~~Witness Name:~~

~~Occupation: A. L. SPENCE  
Solicitor  
Christchurch~~

~~Address:~~

SIGNED by NGAI TAHU PROPERTY LIMITED by its Attorneys in the presence of:

x   
\_\_\_\_\_

x   
\_\_\_\_\_

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

  
\_\_\_\_\_

Witness Name: A M Mathieson

Occupation: Property Secretary

Address: Christchurch.

## **SCHEDULE A**

### **Legal Description of Land**

1. All that parcel of land containing 6979 square metres more or less being Lot 1 Deposited Plan 302499 as comprised and described in Part Certificate of Title 9745 (Canterbury Land Registry)

Annexure Schedule

Insert below  
"Mortgage", "Transfer", "Lease" etc

Dated

Page

of

Pages

**Certificate of Non Revocation of Power of Attorney**

We ANTHONY WILLIAM SEWELL of Christchurch, Chief Executive


and

IAN RICHARD DEWAR of Christchurch, General Manager Property Investment

HEREBY CERTIFY:

1. That by Deed dated the 26<sup>th</sup> day of July 2007, a copy of which is deposited with Land Information New Zealand under number 7482319.1, Ngai Tahu Property Limited appointed us as two of its attorneys on the terms and subject to the conditions set out in the said Deed.
2. That the attached document is executed by us under the powers conferred by the said Deed.
3. That at the date hereof we have not received notice of any event revoking the Power of Attorney.

SIGNED at Christchurch



and



this

19th

day of

February

2009

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.