

View Instrument Details



Instrument No 9268051.1
Status Registered
Date & Time Lodged 06 March 2013 15:19
Lodged By Foley, Susan
Instrument Type Encumbrance



Affected Computer Registers Land District

CB24A/1268 Canterbury

CB561/63 Canterbury

Annexure Schedule: Contains 11 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 Susan Foley as Encumbrancer Representative on 04/03/2013 02:28 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 Blake Eugene Cescon as Encumbrancee Representative on 06/03/2013 11:56 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
CB24A/1268 and CB561/63	ALL	

Encumbrancer

COLOMBO PROPERTIES LIMITED

Encumbrancee

CHRISTCHURCH CITY COUNCIL

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*

Annual Rent Charge of \$1.00

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

Terms

- 1 Length of term 300 years commencing on the date of this Encumbrance Instrument
- 2 Payment date(s) First day of January in each year
- 3 Rate(s) of interest 0%
- 4 Event(s) in which the sum, annuity or rentcharge becomes payable If demanded by the Encumbrancee by the payment dates
- 5 Event(s) in which the sum, annuity or rentcharge ceases to be payable In accordance with Annexure Schedule 1

Covenants and conditions

Continue in Annexure Schedule(s), if required

In accordance with Annexure Schedule 1

Modification of statutory provisions

Continue in Annexure Schedule(s), if required

In accordance with Annexure Schedule 1

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Annexure Schedule

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Insert instrument type

Encumbrance

*Continue in additional Annexure Schedule, if required***ANNEXURE SCHEDULE 1****1. DEFINITIONS**

In this Encumbrance Instrument unless the context indicates otherwise:

"Penbury" means the property held in Computer Freehold Register CB561/63;

"446 Colombo" means the property held in Computer Freehold Register CB24A/1268;

"Access and Egress" means the pedestrian access by users of 446 Colombo and the means of escape from fire from the building to be constructed on 446 Colombo, through Penbury, to Penbury Street;

"Building Code", **"building consent"**, **"building work"** and **"certificate of acceptance"** have the respective meanings given in the Building Act 2004;

"Building Consent" means building consent number ABA10120583 in respect of 446 Colombo;

"Council" means the Encumbrancee in its capacity as territorial authority;

"Owner of 446 Colombo and Penbury" means the registered proprietor for the time being of Penbury and the registered proprietor for the time being of 446 Colombo; and

"Upgrading Work" means undertaking building work and any other activities necessary to ensure that the building located on 446 Colombo complies with all of the provisions of the Building Code relating to access routes and means of escape without using any part of the Access or Egress located on Penbury.

2. THE CIRCUMSTANCES

2.1 The Owner of 446 Colombo and Penbury has requested that the Council issue the Building Consent complying with the Building Code through the use of the Access and Egress located partly on Penbury.

2.2 The Council has agreed:

(a) that the Access and Egress will meet the current requirements of the Building

Form E**Annexure Schedule**

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Code; and

- (b) to issue the Building Consent,

on the condition that the Owner of 446 Colombo and Penbury enters into this Encumbrance Instrument (including obtaining the consent of any existing mortgagees) to ensure the ongoing performance by the Owner of 446 Colombo and Penbury of the covenants set out in this Encumbrance Instrument.

3. THE COVENANTS**3.1 The Upgrading Work:**

- (a) The Owner of 446 Colombo and Penbury shall immediately complete the Upgrading Work in any one or more of the following events:
- (i) 446 Colombo and Penbury are not all in common ownership;
 - (ii) 446 Colombo and Penbury are not all in common occupation;
 - (iii) the Access and Egress is unusable, no longer available or no longer practicable;
 - (iv) 446 Colombo do not have full use of the Access and Egress at all times;
 - (v) if the Council is requested to issue a building consent or certificate of acceptance for, or becomes aware of any unconsented building work on, 446 Colombo and/or Penbury and Council decides, in its sole and absolute discretion, that due to the effect of the building work on the Access and Egress it will require the Owner of 446 Colombo and Penbury to complete the Upgrading Work;
 - (vi) unless otherwise agreed by the Council, prior to any party taking any action intended to procure or which would have the effect of procuring a discharge of this Encumbrance Instrument; or
 - (vii) where Council takes the view that any one or more of the events described in clauses 3.1(a)(i) to 3.1(a)(vi) above has occurred or that the Owner of 446 Colombo and Penbury is otherwise in default of the

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covenants of this Encumbrance Instrument, and in its sole and absolute discretion issues a demand in writing that the Owner of 446 Colombo and Penbury immediately complete the Upgrading Work.

- (b) Where the Owner of 446 Colombo and Penbury is required or otherwise commences or continues to do the Upgrading Work, such work shall be completed at the Owner of 446 Colombo and Penbury's own cost, with all due speed and diligence, in a workmanlike manner and in accordance with the Building Act 2004 (including the obtaining of any requisite building consent) and all other legal requirements in force at the time the Upgrading Work is undertaken.

- (c) Where the Owner of 446 Colombo and Penbury obtains a building consent or is undertaking unconsented building work of the type described in clause 3.1(a)(v) without having completed the Upgrading Work, the Owner of 446 Colombo and Penbury shall immediately stop and not continue any such building work unless and until the Upgrading Work is complete.

3.2 Inspection: The Council's officers, employees, agents or contractors may at any time upon prior written notice enter 446 Colombo and Penbury for the purposes of ensuring compliance with the covenants of this Encumbrance Instrument.

3.3 Indemnity: The Owner of 446 Colombo and Penbury will indemnify and shall keep indemnified the Council from and against all losses, damages, Council's staff costs (including officers', employees' and agents' costs), legal costs (on a solicitor/client basis) and other costs, and expenses for which the Council shall or may be or become liable or suffer or in respect of or arising from any loss, damage or injury from any cause to property or persons, occasioned or contributed to by any one or more of the following:

- (a) any act, omission, neglect, breach or default by the Owner of 446 Colombo and Penbury or its employees or agents in the course of performing the Owner of 446 Colombo and Penbury's obligations under this Encumbrance Instrument or arising from the Owner of 446 Colombo and Penbury's failure to perform any of its duties under this Encumbrance Instrument;

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

- (b) the Council agreeing that the Access and Egress will meet the current requirements of the Building Code.
- 3.4 **Costs:** The Owner of 446 Colombo and Penbury shall pay all the Council's staff costs (including officers', employees', and agents' costs), legal costs (on a solicitor/client basis) and other costs (including contractors' costs) and expenses directly or indirectly attributable to any one or more of the following:
- (a) the negotiation, preparation, registration, inspection (other than monitoring under clause 3.5), enforcement and discharge of this Encumbrance Instrument and any documents associated with it, including any Deed of Guarantee under clause 3.6;
- (b) Council undertaking the Upgrading Work under clause 3.7(b).
- 3.5 **Liquidated Damages for Council's monitoring costs following breach:**
- (a) Forthwith upon the issue of a demand in writing by the Council under clause 3.1(a)(vii) (the "Default Notice"), the Owner of 446 Colombo and Penbury shall pay to the Council the Liquidated Damages at the expiry of each month or part thereof from the date of the Default Notice until such time as the Upgrading Work is complete to Council's satisfaction.
- (b) The Owner of 446 Colombo and Penbury acknowledges that the Liquidated Damages are a genuine and reasonable pre-estimate of Council's costs and expenses in monitoring the Owner of 446 Colombo and Penbury's compliance with clause 3.1, and that it is reasonable and appropriate for the Owner of 446 Colombo and Penbury to bear those costs and expenses.
- (c) This clause, clause 3.3 and clause 3.4 are each of mutually exclusive coverage, and accordingly a cost or expense falling under any one of those clauses is necessarily excluded from the coverage of any other of those clauses.
- (d) In this Encumbrance Instrument, "Liquidated Damages" means \$1000.00 adjusted on each anniversary of the date of registration of this Encumbrance Instrument by an amount equivalent to the change in the Consumers Price Index

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Continue in additional Annexure Schedule, if required

All Groups published quarterly by Statistics New Zealand since the date of registration of this Encumbrance Instrument (in the case of the first adjustment) or the date of the last adjustment (in the case of each subsequent adjustment).

- 3.6 **Guarantee:** If the Owner of 446 Colombo and Penbury is not a natural person, the Council may by written notice to the Owner of 446 Colombo and Penbury at any time require personal guarantee(s) from person(s) acceptable to Council to better secure the compliance of the Owner of 446 Colombo and Penbury with the covenants of this Encumbrance Instrument. Any such personal guarantee(s) shall be in the Council's standard form.
- 3.7 **Enforcement:** The Council (including its officers, employees, agents or contractors) may at any time on or after issuing a demand in writing under clause 3.1(a)(vii):
- (a) issue a demand in writing that specified building(s) on 446 Colombo and/or Penbury be vacated immediately and secured against re-entry by any persons, other than those entering for the purpose of undertaking the Upgrading Work, until such time as the Upgrading Work has been completed. The Owner of 446 Colombo and Penbury shall comply with all the terms of any such demand immediately upon receipt; and/or
 - (b) following at least one month's notice in writing to the Owner of 446 Colombo and Penbury, enter Penbury and 446 Colombo and complete the Upgrading Work. The Owner of 446 Colombo and Penbury irrevocably appoints the Council as the Owner of 446 Colombo and Penbury's agent in relation to any consent(s) required to complete the Upgrading Work. For the avoidance of doubt, all costs and expenses associated with Council undertaking the Upgrading Work are covered by the Owner of 446 Colombo and Penbury's obligations under clause 3.4, and not as part of Liquidated Damages under clause 3.5.
- 3.8 **Injunctive relief:** The Owner of 446 Colombo and Penbury acknowledges that the Council shall be entitled to an injunction or other equitable relief for any threatened or actual breach of the covenants of this Encumbrance Instrument as (without prejudice to any rights or remedies that Council may have) damages alone would not be an adequate remedy for any breach of the terms of this Encumbrance Instrument by the Owner of 446 Colombo and Penbury.

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Annexure Schedule

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

- 3.9 **Limitation of liability:** The covenants in this Encumbrance Instrument shall be enforceable only against:
- (a) the registered proprietor for the time being of 446 Colombo and the registered proprietor for the time being of Penbury; and
 - (b) any previous registered proprietor who has breached any of the covenants in clause 3.1 while a registered proprietor of 446 Colombo and/or Penbury.
- 3.10 **Discharge:**
- (a) Upon application in writing by the Owner of 446 Colombo and Penbury, the Council will provide a discharge of this Encumbrance Instrument where the Council is satisfied that the covenants in this Encumbrance Instrument have become obsolete. Where the Council believes on reasonable grounds that the covenants in this Encumbrance Instrument are not obsolete, Council may reject the application and refuse to grant a discharge.
 - (b) For the avoidance of doubt, under no circumstances shall payment of the rent charge be sufficient to obtain a discharge of this Encumbrance Instrument unless and until the Upgrading Work has been completed or a discharge has been granted under clause 3.10(a).
- 3.11 **Non-Waiver:** No failure or delay by the Council to exercise any right under this Encumbrance Instrument shall constitute a waiver of that or any other right, nor shall the failure or delay restrict any further exercise of that or any other right. No single or partial exercise of a right shall preclude or restrict the further exercise of that or any other right.
- 3.12 **Exercise of powers:** Nothing contained or implied in this Encumbrance Instrument shall be construed so as:
- (a) to abrogate, limit, restrict or abridge any of the rights, powers or remedies vested in the Council by law; or
 - (b) to compel the Council to exercise all or any of the rights, powers or remedies granted by this Encumbrance Instrument, and accordingly the Council may in its sole and absolute discretion commence, discontinue or resume the exercise of

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

all or any such rights, powers or remedies at will.

- 3.13 **Severance:** If any provision of this Encumbrance Instrument is or becomes illegal, invalid or unenforceable in any respect, that provision shall be read down to the extent necessary to make it legal, valid and enforceable or, if it cannot be read down, deemed severed from this Encumbrance Instrument. Such change shall not affect the legality, validity and enforceability of the other provisions of this Encumbrance Instrument.
- 3.14 **Interpretation:** The following rules of interpretation apply to this Encumbrance Instrument:
- (a) words importing one gender import all other genders;
 - (b) section, clause and other headings are for ease of reference only and do not affect this Encumbrance Instrument's interpretation;
 - (c) an obligation by two or more persons binds those persons jointly and severally;
 - (d) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
 - (e) references to persons include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
 - (f) the word "including" and other similar words do not imply any limitation;
 - (g) words importing the plural or singular import the singular or plural respectively; and
 - (h) references to any statute or subordinate legislation or to any specific provision thereof includes any statute or subordinate legislation or specific provision thereof which amends or replaces it. References to any statute includes any subordinate legislation made under it.

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*Insert instrument type***Encumbrance***Continue in additional Annexure Schedule, if required***4. MODIFICATION OF STATUTORY PROVISIONS**

- 4.1 Sections 203 and 204 of the Property Law Act 2007 apply to this Encumbrance Instrument, but otherwise the Council shall not be entitled to any of the powers and remedies given to encumbrancees by the Land Transfer Act 1952 and the Property Law Act 2007.
- 4.2 The Council hereby consents to the registration of the following instruments executed by the Owner of 446 Colombo and Penbury in respect of 446 Colombo or Penbury:
- (a) the creation, variation or surrender of an easement (section 90E(3) Land Transfer Act 1952);
 - (b) the variation of a mortgage instrument or priority of mortgages (section 102(4) and section 103(3) Land Transfer Act 1952);
 - (c) the disposal of a licence or shares to which the licence relates (section 121I(1) Land Transfer Act 1952),
- and this consent shall be deemed to be the consent of the Council to the registration of a particular Instrument specified in clauses 4.2(a) to 4.2(c) above.

From:Lending Services

To:1033658428

01/03/2013 16:05

#867 P.003/036

From:BNZ RICCCARTON PARTNERS

To:Lending Services

01/03/2013 09:02

#398 P.003/018

23. Feb. 2013 14:17

No. 0045 P. 2

Approved by Registrar-General of Land under No. 2003/6150
Annexure Schedule - Consent Form
 Land Transfer Act 1952 section 238(2)



Insert type of instrument
 "Caveat", "Mortgage" etc

Mortgage

Page ☐ of ☐ pages

Consentor
 Surname must be underlined or in CAPITALS

Capacity and interest of Consentor
 (eg. Caveator under Caveat no./Mortgagee under Mortgage no.)

BANK OF NEW ZEALAND LIMITED

Mortgage under Mortgage No 9279176.1

Consent

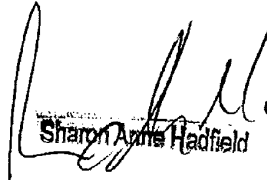
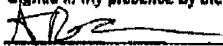
Delete Land Transfer Act 1952, if inapplicable, and insert name and date of application Act.
 Delete words in [] if inconsistent with the consent.
 State full details of the matter for which consent is required.

Pursuant to [section 238(2) of the Land Transfer Act 1952]

~~Section~~ of the ~~Act~~~~(Without prejudice to the rights and powers existing under the interest of the Consentor.)~~

the Consentor hereby consents to:
 registration of Encumbrance to the Christchurch City Council as per copy attached.

Dated this 1st day of March 2013**Attestation**

 Sharon Anne Hadfield	Signed in my presence by the Consentor  Signature of Witness
	Witness to complete in BLOCK letters (unless legibly printed) Witness name Occupation Address
Signature of Consentor	AMY ELIZABETH ROBINSON Bank Officer Bank of New Zealand Wellington

An Annexure Schedule in this form may be attached to the relevant instrument, where consent is required to enable registration under the Land Transfer Act 1952, or other enactments, under which no form is prescribed.