

B473087-1 ENC

IN THE MATTER of the Land Transfer

Act 1952

AND

IN THE MATTER of Lots 1, 2, 3, 4

and 5 on Deposited Plan S.78347

MEMORANDUM OF ENCUMBRANCE

SUMMARY OF TERMS OF ENCUMBRANCE AND COVENANT:

- (i) The Encumbrancer is required, as a condition of subdivision consent, to take certain steps to protect the bush on the land.
- (ii) If the Encumbrancer fails to take the required steps to protect the bush, an annual payment will become due to the Council. This provides an incentive to take the required steps, and provides a penalty if those steps are not taken.
- (iii) If the required steps are taken by the Encumbrancer, no penalty or other payment will become due under this encumbrance and covenant.

WHEREAS:

- A. TUATEAWA HILLS LIMITED ("the Encumbrancers") are registered as proprietors of an estate in fee simple in all the land in Certificates of Title Volume 62B Folio 79, Volume 62B Folio 80, Volume 62B Folio 81, Volume 62B Folio 82 and Volume 62B Folio 83 (South Auckland Registry) ("the Land").
- B. The Encumbrancers wish to render the said land available for the purposes of securing to and for the benefit of THE THAMES-COROMANDEL DISTRICT COUNCIL a body corporate under the Local Government Act 1974 ("the Council") the covenants of the owners contained in the schedule hereto by way of rent charge hereinafter mentioned.



NOW THIS MEMORANDUM WITNESSES THAT:

1. That the Encumbrancers HEREBY ENCUMBER each of the parcels of land contained in the said titles for the benefit of the Council forever with the annual rent of TWO THOUSAND DOLLARS (\$2000.00) for each parcel of land to be raised and paid at the times and in the manner following that is to say in one annual sum on the 1st day of July in each year during the currency hereof commencing with a payment on the 1st day of July 1998 PROVIDED ALWAYS that if during the period of twelve (12) months immediately preceding any such payment date there has been no breach by the Encumbrancers (in respect of any parcel of land) of any of the obligations, covenants or agreements of the Deed of Covenant a copy of which is set out in the Second Schedule hereto then the annual rent charge of TWO THOUSAND DOLLARS (\$2000.00) or the accumulated sum payable hereunder on such payment date in respect of that such parcel of land shall be deemed to have been paid and the Encumbrancers shall be entitled to an acknowledgement from the Council to that effect PROVIDED FURTHER HOWEVER that the rent charge payable by the Encumbrancer if not collected in any one year shall increase by the sum of \$2000.00 each year against each parcel of land until the rent charge has reached the sum of \$48000.00 for each parcel of land and then the accumulation shall cease AND PROVIDED FURTHER that this Memorandum of Discharge thereof executed under the Common Seal of the Council against either parcel of land.
2. Section 104 of the Property Law Act 1952 applies to this Memorandum of Encumbrance but otherwise (and without prejudice to the Council's rights of action at common law as a rent charger or encumbrance);
 - (a) The Council shall be entitled to none of the powers and remedies given to encumbrancees by the Land Transfer Act 1952 and the Property Law Act 1952; and

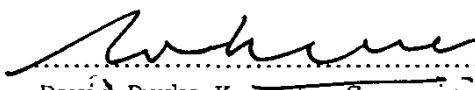


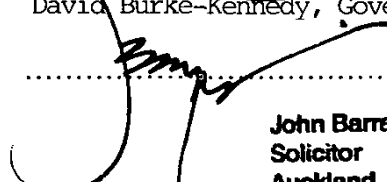
- (b) No covenant on the part of the encumbrancers and their successors in title share implied in this Memorandum other than the covenants for further assurance implied by Section 154 of the Land Transfer Act 1952.

3. The Encumbrancers will pay the costs and disbursements of and incidental to the preparation, stamping and registration of this Encumbrance.

IN WITNESS WHEREOF this Memorandum of Encumbrance has been executed on the 10th day of MARCH 1998

SIGNED for and on behalf of)
TUATEAWA HILLS LIMITED)
as Encumbrancer in the presence)
of:)

.....Director
David Burke-Kennedy, Governing Director

.....Director
John Barratt - Boyes
Solicitor
Auckland

THE FIRST SCHEDULE



~~Estate in fee simple in all the land in Certificates of Title Volume, Folio,~~
~~Volume, Folio, Volume, Folio, Volume, Folio~~
~~and Volume, Folio, (South Auckland Registry).~~



THE ~~SECOND~~ SCHEDULE

THIS DEED is made the 10th day of MARCH 1998

BETWEEN: TUATEAWA HILLS LIMITED ("the Owners") of the one part;
AND: THE THAMES-COROMANDEL DISTRICT COUNCIL a body corporate under the Local Government Act 1974 ("the Council") of the other part.

WHEREAS:

- A. TUATEAWA HILLS LIMITED are the Registered Proprietors of an estate in fee simple in all that parcel of land situated in the Land Registration District of South Auckland and being all the land comprised and described in Certificate of title Volume 11A Folio 166 ("the land").
- B. THE OWNERS wish to subdivide the land in the manner shown on the Scheme Plan lodged with the Council and the subdivision was completed and is now shown on Deposited Plan S.
- C. The Council (within whose jurisdiction the land is situated) approved the said Scheme Plan subject (inter alia) to a condition pursuant to the provisions of Section 279 of the Local Government Act 1974 that THE OWNERS enter into this Deed for the purposes of ensuring the retention of all the indigenous vegetation on the subdivided lots as follows:
- On all that part of:-
- (a) Lot 1 marked Covenant Area "C"
 - (b) Lot 2 marked Covenant Area "E"
 - (c) Lot 3 marked Covenant Area "D"
 - (d) Lot 4 marked Covenant Area "G"
 - (e) Lot 5 marked Covenant Area "F"

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NOW THEREFORE THIS DEED WITNESSES that in consideration of the Council's approval of the said Scheme Plan of Subdivision and in compliance with the above recited term of the conditions of approval stipulated by the Council the Owners HEREBY COVENANT AND AGREE with the Council as follows:

1. The Owners shall execute in favour of the Council a Memorandum of Encumbrance affecting those Covenant Areas of Lots 1, 2, 3, 4 and 5 as previously mentioned in paragraph 3C above to secure the performance of the Covenants hereof such Memorandum to be prepared by the Council's solicitors at the cost in all things of the Owners.
2. The Owner shall:
 - (a) At all times hereafter CARRY OUT AND DO SUCH WORK (if any) as shall be necessary upon and around and manage in a husbandlike manner all those parts of "the Covenant Areas" to preserve all the indigenous species including emergent understorey associations. The Council requires the owner to apply to Council to obtain a resource consent as a discretionary activity in regard to the area to be cleared for a house site and the access to the house site if this requires the felling of any area of indigenous forest.
 - (b) EXCEPT AS abovementioned NOT IN ANY WAY CLEAR any such growth or any plant tree or shrub growing marked in the Covenant Areas as shown on the attached plan whether by cutting, trimming, felling, grubbing out or removal in any way whatsoever.
 - (c)
 - (i) Will in the event of loss or destruction of existing growth thereon as a result of any wilful act on the part of the Owners in breach of the Covenants herein contained replace, nurture and maintain appropriate replacement planting of a nature and kind approved by Council.
 - (ii) Will in the event of loss or destruction of existing growth thereon, other than by the wilful act of the Owners in

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breach of the Covenants herein contained, encourage and permit the natural regeneration and regrowth to occur and to become established and thereafter permit the same to remain within the covenanted area.

- (d) NOT TO CAUSE PERMIT OR SUFFER the entry of any domestic stock or of any person other than the owner and the invitees on the Covenanted areas.
- (e) ERECT AND MAINTAIN in good and stockproof condition such fences on the boundaries of all the Covenant areas and the boundaries of any necessary access strips over any such areas as may be necessary to promote and ensure the continued and unimpeded growth of indigenous vegetation on the Covenanted areas.
- (f) NOT CAUSE PERMIT OR SUFFER to be lit any fire within any of the Covenanted Areas or on any adjacent land owned or occupied by the Owner or under his control when there may be a risk of fire spreading into any of the Covenanted areas.
- (g) PERMIT THE INSPECTORS or other officers or staff of the Council to enter at any reasonable time upon the Covenant areas or any part thereof and upon any adjacent or nearby lands in which the Owners have any interest so as to ascertain whether the covenants herein are being complied with.
- (h) NOT PERMIT any change in the character of the topography of any part of the Covenant areas.
- (i) NOT WITHOUT THE COUNCIL'S PRIOR WRITTEN APPROVAL PERMIT the replacement or erection of any poles structures or hoarding on the Covenant areas or any part thereof nor the laying or placing of any pipes or cables under the surface thereof.



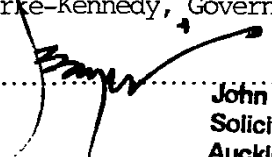
3. The Covenants herein shall be enforceable only against the Registered Proprietors of the land or any part thereof (and not otherwise against the Owners or their successors).
4. The said Memorandum of Encumbrance shall be prepared by the Council's solicitors at the cost in all things of the Owners.

IN WITNESS WHEREOF this Deed has been executed this
1998

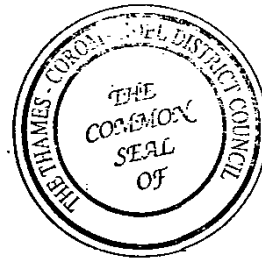
10th day of March


SIGNED for and on behalf of)
TUATEAWA HILLS LIMITED)
in the presence of:)


.....Director
David Burke-Kennedy, Governing Director


.....~~Director~~
John Barratt-Boyes
Solicitor
Auckland

THE COMMON SEAL of THE)
THAMES-COROMANDEL)
DISTRICT COUNCIL)
was hereunto affixed in the)
presence of:)




.....Councillor


.....Chief Executive

DATED

1998

BETWEEN

TUATEAWA HILLS LIMITED
THE ENCUMBRANCERS

AND

THE THAMES-COROMANDEL
DISTRICT COUNCIL
THE COUNCIL

MEMORANDUM OF ENCUMBRANCE

Correct for the purposes of
the Land Transfer Act 1952

R Randall

Solicitor for the Council

MILLER POULGR
SOLICITORS
CORNER SEALEY & MACK

THAMES
R RANDALL



REGISTER

PARTICULARS OF THE
LAND REGISTERED

13.23 27.MAR98 B 473087-1

