

APPENDIX 3

Computer Freehold Registers



**COMPUTER FREEHOLD REGISTER
UNDER LAND TRANSFER ACT 1952**



Search Copy

R. W. Muir
Registrar-General
of Land

Identifier 124841
Land Registration District Wellington
Date Issued 11 November 2004

Prior References

WN123/218 WN325/50 WN356/288

Estate Fee Simple
Area 2158 square metres more or less
Legal Description Lot 1 Deposited Plan 330343

Proprietors

Ludlam Developments Limited

Interests

B440718.1 CERTIFICATE PURSUANT TO SECTION 37 (2) BUILDING ACT 1991 - 27.6.1995 AT 10.28 AM
(affects parts formely in CsT 123/218 and 356/288)
8647420.2 Encumbrance to Mobil Oil New Zealand Limited - 9.12.2010 at 2:38 pm

CERTIFICATE UNDER SECTION 37(2) BUILDING ACT 1991

To the District Land Registrar
Wellington Land Registry

The Hutt City Council hereby certifies pursuant to section 37(2) of the Building Act 1991 that as a condition of the grant of a building consent to construct a building over allotments held by the owner in fee simple the Council requires that none of the allotments set out in the Schedule may be transferred or leased except in conjunction with the other allotments specified in the Schedule.

SCHEDULE

- 1 An estate in fee simple being Lot 2 on Deposited Plan 1155 and being all that land comprised and described in Certificate of Title Volume 356 Folio 288.
- 2 An estate in fee simple being Lot 3 on Deposited Plan 1155 and being all that land comprised and described in Certificate of Title Volume 123 Folio 218.

DATED this 21ST day of June 1995

EXECUTED by the registered proprietor MOBIL OIL NEW ZEALAND LIMITED (by the affixing of its signing ~~Common seal~~) in the presence of:

Malcolm Trevor Friday
Director

Scott Nelson
ASSISTANT COUNSEL
3 KINROSS STREET, THORNDON,
WELLINGTON

THE COMMON SEAL of THE HUTT CITY COUNCIL was hereto affixed pursuant to a resolution of Council in the presence of:



Chris [Signature]
MAYOR

[Signature]
CHIEF EXECUTIVE

REGISTERED IN
DUPLICATE

CERTIFICATE UNDER
SECTION 37(2)
BUILDING ACT 1991

Correct of the purposes of the
Land Transfer Act 1952.

Darav Jensen
Solicitor for The Hutt City
Council



REGAL-F-FILE-LABEL

THE HUTT CITY COUNCIL

and

MOBIL OIL NEW ZEALAND
LIMITED

REGISTERED IN
DUPLICATE

Particulars entered in the Register
as shown in the Schedule of land
herein on the date and at the time
stamped below

Assistant/District Land Registrar of
the District of Wellington

10.28 27.JUN95 B 440718.1

ARTICULARS ENTERED IN REGISTER
LAND REGISTRY WELLINGTON

ASST LAND REGISTRAR DISTRICT OF WELLINGTON

0-7 356/288

123/248





View Instrument Details

Instrument No. 8647420.2
Status Registered
Date & Time Lodged 09 Dec 2010 14:38
Lodged By Kiwha, Melinda Sue
Instrument Type Encumbrance



Affected Computer Registers	Land District
124841	Wellington

Annexure Schedule: Contains 5 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 Michael Gordon Donovan as Encumbrancer Representative on 09/12/2010 11:20 AM

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 Jenny Anne Armstrong as Encumbrancee Representative on 08/12/2010 03:21 PM

*** End of Report ***

Form E

Encumbrance instrument

(Section 101 Land Transfer Act 1962)

Affected instrument Identifier and type (if applicable)	All/part	Area/Description of part or stratum
124841	All	

Encumbrancer

Ludlam Developments Limited

Encumbrancee

Mobil Oil New Zealand Limited

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 rent charge and amount

Rent Charge of \$50,000 per annum payable in accordance with the terms of this encumbrance.

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 rent charge, to be raised and paid in accordance with the terms set out in the [Annexure Schedule(s)] and so as to incorporate in this Encumbrance the terms and other provisions set out in the [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

As per annexure schedule attached.

Covenants and conditions

Continue in Annexure Schedule(s), if required

1. It is covenanted and agreed by the parties that the Encumbrancer as the registered proprietor of an estate in fee simple in the land in the above computer registers ("**Property**") encumbers for the benefit of the Encumbrancee the Property with the rent charge on the terms of this encumbrance instrument for the period of 25 years from 9 December 2010 ("**Term**"). The annual rent charge is the sum of \$50,000.00 ("**Base Annual Rent Charge**") and is to be paid on 1st of December each year if demanded by that date. If during the period preceding 1 December and each successive 12 month period thereafter, there has been no breach of the covenants set out in clauses 2(b) to 2(p), the annual rent charge payable on that date shall be deemed to have been paid. The annual rent charge payable in any given year shall be adjusted annually in accordance with the movement in the Consumer Price Index (All Groups) ("**CPI**"), (or such replacement index as published by Statistics New Zealand (or other relevant government agency). The adjusted annual rent charge shall be calculated by multiplying the Base Annual Rent Charge by the percentage change in the CPI during the previous 12 month period. Notwithstanding the above, the adjusted annual rent charge shall not in any circumstances be less than the Base Annual Rent Charge.
2. It is covenanted and agreed by the parties (and, in relation to the Encumbrancer and its successors in title to the Property) as follows:
 - (a) During the Term, the Encumbrancer will, subject to clause 1, punctually pay the annual rent charge (plus GST) to the Encumbrancee (if demanded) at the times and in the manner appointed for payment.
 - (b) The Encumbrancer will not at any time use or permit the Property to be used for the purpose of obtaining from beneath the surface of the Property any water for any reason whatsoever from any ground water table or similar water basin accessed from the Property, other than to permit an environmental consultant to obtain water for the purpose of detailing the environmental status of the Property.
 - (c) Any existing bore-water or groundwater well located on the Property used for the purposes of obtaining water from beneath the surface of the Property that has been capped, disabled and sealed in accordance with any applicable law and other sound technical practice by the Encumbrancee will not be re-opened and used by or on behalf of the Encumbrancer and must remain capped, disabled and sealed.
 - (d) Should the Encumbrancer's use or development of the Property involve the use of underground areas for any purpose whatsoever then, the Encumbrancer will cause to be installed at its cost into any below ground areas of any development an appropriate vapour ventilation system taking into account the size of the underground area so as to ensure air ventilation is adequate and complies with applicable laws, from time to

time.

- (e) Should the Encumbrancer's use or development of the Property not involve underground areas as part of the improvements constructed then such development will have a slab on-ground foundation or, in the case of a suspended floor, a well ventilated crawl space.
- (f) Subject to clause 2(g) should the Encumbrancer's use or development of the Property involve or comprise any yard, recreation or open space area then such area(s) will at the Encumbrancer's cost be sealed or paved to the maximum extent permitted under the applicable planning scheme.
- (g) The Encumbrancer's use or development of the Property will only proceed on the basis that prior to any such construction proceeding that at the cost of the Encumbrancer an impervious liner of appropriate strength and quality will be installed to act as an effective sealant for soil contamination purposes at a level of one metre beneath ground level, for any unpaved or exposed areas.
- (h) The Encumbrancer will in the case of any development or redevelopment of the Property, at the cost of the Encumbrancer, adopt and use all engineering and related technical assistance reasonably available from time to time for the protection of human health and the environment. The Encumbrancer acknowledges that the engineering controls that may need to be considered for use by the Encumbrancer include: vapour barriers; vapour installation systems; sealed sumps and storm pond liners.
- (i) So as to enable the Encumbrancee to monitor the Encumbrancer's observance, performance of and compliance with its covenants made in favour of the Encumbrancee in this encumbrance instrument, the Encumbrancer further covenants to provide to the Encumbrancee, its employees, agents and authorised contractors the right at any time upon 48 hours prior notice to the Encumbrancer to enter the Property for the purposes described in this provision.
- (j) So as to further enable the Encumbrancee to monitor the Encumbrancer's observance, performance of and compliance with its covenants made in favour of the Encumbrancee in this encumbrance instrument the Encumbrancer further covenants with the Encumbrancee to provide to it copies of all applications and accompanying documents made and/or provided to any relevant local or regional authority by it from time to time. The Encumbrancer hereby expressly authorises and consents to the Encumbrancee making such enquiries, as the Encumbrancee in its sole and honest discretion deems appropriate to make from time to time of any local responsible authority having power to regulate the use of the Property. Any notice or document sent to the Encumbrancee for the purposes of this provision must be sent to:

Mobil Account Manager - Global Corporate Services
CB Richard Ellis
PO Box 11 2241, Penrose
7A Pacific Rise, Mt Wellington
Auckland

with a copy sent to:

Mobil Oil New Zealand Limited

C /- Office of Legal Counsel
P O Box 1709
164-188 Beaumont Street
Auckland

or as otherwise advised from time to time.

- (k) The Encumbrancer covenants with the Encumbrancee that if at any time subsequent to Settlement the current (or future) zoning of the Property permits residential uses that in the event that the Purchaser undertakes any residential development on any part of the Property that such development (or subsequent development) will not involve any underground areas as part of the improvements constructed.
- (l) Should the Encumbrancer breach any provision of this encumbrance, the Encumbrancer acknowledges that damages are not an appropriate remedy and accordingly the Encumbrancer undertakes to consent to any order sought for injunctive relief to restrain a breach or continuing breach of any provision of this encumbrance and agrees that in such circumstances that the Encumbrancee is entitled to costs on an indemnity basis.
- (m) This encumbrance is binding upon and is for the benefit of the Encumbrancer and Encumbrancee and their respective heirs, executors, administrators, personal representatives, successors, transferees and assigns. The Encumbrancer shall ensure that its employees, contractors, agents, invitees and any tenants, licensees or occupiers of any other person having an interest in the Property (in any capacity whatsoever) do not breach the Encumbrancer's obligations set out in this encumbrance.
- (n) The Encumbrancer undertakes to ensure that any instrument transferring or assigning the Encumbrancer's interest in the Property shall state that any such transfer or assignment is subject to this Encumbrance.
- (o) If the Encumbrancer wishes to grant a lease, licence or other right of occupation over all or any part of the Property, the Encumbrancer agrees to grant any such lease, licence or other right of occupation of the Property subject to the terms of this encumbrance and at the request of the Encumbrancee, the Encumbrancer must enforce this encumbrance against the holder of any such right of occupation.
- (p) Throughout the Term, the Encumbrancer will not use, and will not permit the Property to be used for all or any of the following purposes:
 - (i) as a service station and/or as a carwash;
 - (ii) as a truck stop;
 - (iii) as a storage premises for the storage and collection of material for recycling;
 - (iv) as a premises for the handling and sale of oil and automotive fuels; and
 - (v) for automotive repair and maintenance.

- (q) In the event of a breach of the covenants in clauses 2(b) to 2(p), the Encumbrancee may enforce the remedies contained and implied in this instrument against the registered proprietor for the time being of the Property at the time the breach commenced and against the successors and assigns of that person and against any subsequent registered proprietor of the Property but shall not be entitled to enforce the remedies against any prior registered proprietor of the Property or against the successors or assigns of that person.
 - (r) Prior to the rent charge becoming payable pursuant to clause 1, the Encumbrancee must first have given the Encumbrancer one month's written notice of any breach of any of the covenants in clauses 2(a) to (p). If the Encumbrancer fails to remedy any of the breaches specified in such written notice within one month of service of that notice, the Encumbrancer shall be liable to pay the rent charge when the same becomes due pursuant to clause 1 until such time as the breach is remedied.
3. Sections 71, 203 to 205 and 289 of the Property Law Act 2007 apply to this encumbrance instrument except that the liability of the Encumbrancer under this encumbrance shall extinguish upon the transfer to a subsequent purchaser of the Property, but otherwise:
- (a) the Encumbrancee will be entitled to none of the powers and remedies given to an encumbrance by the Land Transfer Act 1952, including for the avoidance of doubt the powers of sale; and
 - (b) no covenants on the part of the Encumbrancer and its successors in title are implied by the encumbrance instrument other than the covenants for further assurance implied by Section 154 of the Land Transfer Act 1952.
4. The annual rent charge created by this deed shall immediately determine at the expiration of the Term and, provided there are no outstanding antecedent breaches by the Encumbrancer of the provisions of this deed, the Encumbrancee shall, when called upon to do so, sign and deliver to the Encumbrancer a discharge of this encumbrance. The cost of documenting and registering the discharge of this deed shall be paid by the Encumbrancer.
5. The Encumbrancer shall pay the Encumbrancee's legal costs and disbursements directly or indirectly attributable to the enforcement of the covenants contained in this encumbrance instrument.

Modification of statutory provisions

Continue in Annexure Schedule(s), if required

With the exception of sections 71, 203 to 205 and 289 of the Property Law Act 2007 and section 154 of the Land Transfer Act 1952, none of the rights, powers, remedies and implied covenants provided pursuant to the Land Transfer Act 1952 and the Property Law Act 2007 will apply to this encumbrance.