

AUCKLAND TRANSPORT
("Covenantor")

A N D

AUCKLAND COUNCIL
("Council")

DEED OF COVENANT

BETWEEN **AUCKLAND TRANSPORT** ("Covenantor")

A N D **AUCKLAND COUNCIL** ("Council")

BACKGROUND

- A. The Covenantor is the Lessee of the Land held under the Lease.
- B. The Covenantor requested the Council grant a Building Consent for a project described as "Otahuhu Transport Interchange – Stage 2 – ticketing hall, concourse connection to rail platform & bus parking" on the Land.
- C. The Council has agreed to grant the Building Consent on the condition (amongst other things) that the Encumbrancer and Covenantor enter into the Encumbrance and this Deed of Covenant.

INTERPRETATION

In this deed unless the context indicates otherwise:

Definitions:

"Building Consent" means the Building Consent number BCO10266679 granted by the Council under the Building Act 2004 for the building work described therein;

"Lease" means the Deed of Lease (Otahuhu Station) dated 29 September 2003 between "The Minister of Finance, The Minister for State-owned Enterprises and New Zealand Railways Corporation" as Lessor and "Auckland Transport (formerly Auckland Regional Transport Network Limited)" as Lessee.

"Council" means Auckland Council and includes its predecessors and successors as territorial authority of the district where the Land is situated and its officers and agents;

"Encumbrance" means the Memorandum of Encumbrance entered into between the Council (as Encumbrancer) the Covenantor and the Council (as Encumbrancee) and registered as a first charge over the land contained in Record of Title 836274.

"Encumbrancer" means Auckland Council in the capacity as registered owner of the land contained in Record of Title 836274.

"Land" means the land held under the Lease.

"Stormwater Rain Garden and Wetland System" means the onsite Stormwater Rain Garden and Wetland System established on the Land in accordance with the Building Consent;

"Pump Wastewater System" means the onsite pump wastewater system constructed on the Land in accordance with the Building Consent;

Defined Expressions: expressions defined in the main body of this encumbrance instrument have the defined meaning in the whole of this encumbrance instrument including the background;

Headings: section, clause and other headings are for ease of reference only and do not affect this encumbrance instrument's interpretation;

Joint and Several Liability: an obligation by two or more persons binds those persons jointly and severally;

Negative Obligations: any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

Parties: references to parties are references to parties to this deed;

Persons: 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;

Plural and Singular: words importing the singular number include the plural and vice versa;

Schedules: the schedules to this Deed and the provisions and conditions contained in these schedules will have the same effect as if set out in the body of this Deed;

Sections, Clauses and Schedules: references to sections, clauses and schedules are references to this encumbrance instrument's sections, clauses and schedules; and

Statutes and Regulations: references to any statutory provision includes any statutory provision which amends or replaces it, and any subordinate legislation made under it.

COVENANTS

Stormwater Rain Garden and Wetland System

1. The Covenantor acknowledges:
 - 1.1 a modification of clause E1.3.3(a) of the NZ Building Code has been granted in respect to the presence of a Stormwater Rain Garden and Wetland System on the Land; and
2. The Covenantor shall:
 - 2.1 Operate, monitor, and maintain the onsite Stormwater Rain Garden and Wetland System in accordance with the approved Device Specific Operational and Maintenance detail form.
 - 2.2 Inspect, service and maintain the Stormwater Rain Garden and Wetland System on the Land on a regular basis and that all Council's requirements and the Building Consent conditions are complied with on an ongoing basis; and
 - 2.3 Not modify or remove the Stormwater Rain Garden and Wetland System without the express written permission of the Council.
3. The Council may:
 - 3.1 At any time upon prior written notice by its officers, employees, agents or contractors enter the Land:
 - (a) To inspect or test the Stormwater Rain Garden and Wetland System; and
 - (b) To inspect the Covenantor's records in relation to the service and maintenance of the Stormwater Rain Garden and Wetland System.
 - 3.2 By notice in writing, instruct the Covenantor to carry out any actions or works that are reasonably required in relation to the service and maintenance of the Stormwater Rain Garden and Wetland System. If the Covenantor fail to carry out those actions or works within 10 working days of receiving the notice, the Council may carry out the work and recover the costs of carrying out the work from the Covenantor.

However, the Council is not obliged to exercise any of its rights under this clause.

Pump Wastewater System

4. The Covenantor acknowledges:

- 4.1** A modification of clause G13.3.2(a) of the NZ Building Code has been granted in respect to the presence of a Pump Wastewater System on the Land; and

5. The Covenantor shall:

- 5.1** Inspect, service and maintain the Pump Wastewater System on the Land on a regular basis and ensure that all requirements are complied with on an ongoing basis.
- 5.2** Not modify or remove the Pump Wastewater System without the express written permission of the Council.

6. The Council may:

- 6.1** At any time upon prior written notice by its officers, employees, agents or contractors enter the Land:
- (a) to inspect or test the Pump Wastewater System; and
 - (b) to inspect the Covenantor's records in relation to the service and maintenance of the Pump Wastewater System.
- 6.2** By notice in writing, instruct the Covenantor to carry out any actions or works in relation to the service and maintenance of the Pump Wastewater System. If the Covenantor fail to carry out those actions or works within 7 working days of receiving the notice, the Council may carry out the work and recover the costs of carrying out the work from the Covenantor.

However, the Council is not obliged to exercise any of its rights under this clause.

To the fullest extent possible, the Covenantor indemnifies and releases the Council from any and all liability for loss, damage, costs or proceedings arising out of or in relation to a breach of the covenants, terms and conditions set out in this memorandum.

7. Costs

The Covenantor shall pay all costs directly or indirectly attributable to the preparation and enforcement of this Deed and any documents associated with it.

EXECUTED as a deed the day and year written above

SIGNED by)
Auckland Transport)
in the presence of:)

Name and signature of authorised person

Signature of Witness

Name and signature of authorised person

Name of Witness

Occupation of Witness

City/Town of Residence of Witness

SIGNED for and on behalf of)
Auckland Council)
In the presence of:)

Name and signature of authorised person

Signature of Witness

Name and signature of authorised person

Name of Witness

Occupation of Witness

City/Town of Residence of Witness

Encumbrance instrument

(Section 100 Land Transfer Act 2017)

Land registration district

NORTH AUCKLAND

BARCODE

Record of Title (unique identifier)

All/part

Area/description of part

836274

All

Encumbrancer

Surname(s) must be underlined.

AUCKLAND COUNCIL

Encumbrancee

Surname(s) must be underlined.

AUCKLAND COUNCIL

Covenantor

Surname(s) must be underlined.

AUCKLAND TRANSPORT

Encumbrance memorandum number

Nil

Nature of security

State whether sum of money, annuity, or rentcharge, and amount.

Annual rent charge of \$1.00 (one dollar) (if demanded)

Operative clause

Delete words in [], as appropriate.

The **Encumbrancer encumbers for the benefit of the Encumbrancee** the land in the above record of title(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 Covenantor with the terms of this encumbrance.

Terms

1. **Length of term** 999 years from the registration of this encumbrance instrument.
2. ~~Payment date(s)~~
3. ~~Rate(s) of interest~~
4. ~~Event(s) in which the sum, annuity or rentcharge becomes payable~~
5. **Event(s) in which the sum, annuity or rentcharge ceases to be payable**
Otherwise in accordance with the annexure schedule.

Covenants and conditions*Continue in Annexure Schedule(s), if required*

In accordance with the annexure schedule.

Modification of statutory provisions*Continue in Annexure Schedule(s), if required*

In accordance with the annexure schedule.

ANNEXURE SCHEDULE

BACKGROUND

- A. The Encumbrancer is registered as owner of the Land.
- B. The Covenantor carries out operations on the Land and is the Lessee of land referred to in the Lease which adjoins the Land.
- C. The Covenantor requested the Council grant a Building Consent for a project described as "Otahuhu Transport Interchange – Stage 2 – ticketing hall, concourse connection to rail platform & bus parking" on the Land.
- D. The Council has agreed to grant the Building Consent on the condition (amongst other things) that the Encumbrancer and Covenantor enter into and register this encumbrance.

1. INTERPRETATION

In this encumbrance instrument unless the context indicates otherwise:

Definitions:

"Building Consent" means the Building Consent number BCO10266679 granted by the Council under the Building Act 2004 for the building work described therein;

"Lease" means the Deed of Lease (Otahuhu Station) dated 29 September 2003 between "The Minister of Finance, The Minister for State-owned Enterprises and New Zealand Railways Corporation" as Lessor and "Auckland Transport (formerly Auckland Regional Transport Network Limited)" as Lessee.

"Covenantor" means Auckland Transport.

"Council" means Auckland Council and includes its predecessors and successors as territorial authority of the district where the Land is situated and its officers and agents;

"Encumbrancer" means the Encumbrancer named in this encumbrance instrument and includes the person for the time being registered as owner of the Land and any person claiming under the Encumbrance but only for as long as that person is registered owner of the Land;

"Land" means the fee simple estate in Record of Title Identifier 836274 (North Auckland Registry);

"Stormwater Rain Garden and Wetland System" means the onsite Stormwater Rain Garden and Wetland System established on the Land in accordance with the Building Consent;

"Pump Wastewater System" means the onsite pump wastewater system constructed on the Land in accordance with the Building Consent;

Defined Expressions: expressions defined in the main body of this encumbrance instrument have the defined meaning in the whole of this encumbrance instrument including the background;

Headings: section, clause and other headings are for ease of reference only and do not affect this encumbrance instrument's interpretation;

Joint and Several Liability: an obligation by two or more persons binds those persons jointly and severally;

Negative Obligations: any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

Parties: references to parties are references to parties to this encumbrance instrument;

Persons: 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;

Plural and Singular: words importing the singular number include the plural and vice versa;

Schedules: the schedules to this encumbrance instrument and the provisions and conditions contained in these schedules will have the same effect as if set out in the body of this encumbrance instrument;

Sections, Clauses and Schedules: references to sections, clauses and schedules are references to this encumbrance instrument's sections, clauses and schedules; and

Statutes and Regulations: references to any statutory provision includes any statutory provision which amends or replaces it, and any subordinate legislation made under it.

2. INTENTION OF ENCUMBRANCE

The intention of this encumbrance is to secure the ongoing performance by the Covenantor of the obligations described in the First Schedule and the Council is only required to provide a release of this encumbrance in the circumstances described in clause 7. The Covenantor shall contemporaneously with its execution of this encumbrance enter into a Deed of Covenant with Council in its capacity as Lessee under the Lease such Deed of Covenant to be in the form annexed to this encumbrance.

3. COVENANTS

The Covenantor covenants with the Council to observe and perform the covenants contained in the First Schedule.

4. COSTS

The Covenantor shall pay all costs directly or indirectly attributable to the preparation, stamping, registration, enforcement and discharge of this encumbrance and any documents associated with it.

5. IMPLIED TERMS

Sections 203 and 205 of the Property Law Act 2007 apply to this encumbrance, but otherwise (and without prejudice to Council's rights of action at common law as a rent charger or encumbrancee):

- (a) the Council shall be entitled to none of the powers and remedies given to encumbrancees by the Land Transfer Act 2017 and the Property Law Act 2007; and
- (b) no covenants on the part of the Encumbrancer and their successors in Records of Title are implied in this encumbrance other than the covenants giving effect to instruments implied by Section 208 of the Land Transfer Act 2017.

6. FIRST CHARGE

This encumbrance shall rank as a first charge in respect of the Land and the Encumbrancer shall enter into a priority with any chargeholder or mortgagee to reflect the same.

7. DISCHARGE

The Encumbrancer shall be entitled to a discharge of this encumbrance at the request and cost of the Encumbrancer upon it being established to the Council's reasonable satisfaction that the covenants in this encumbrance have become obsolete.

8. CONSENT OF ENCUMBRANCEE

8.1 For the purposes of the Property Law Act 2007 and the Land Transfer Act 2017, the Encumbrancee consents to the following dealings affecting the Record of Title without having to execute a consent instrument:

- (a) Creation, variation or surrender of an easement or covenant;
- (b) Registration of a mortgage or variation of a mortgage instrument which has priority behind this encumbrance;
- (c) Registration of a lease, lease variation instrument or surrender of a lease;
- (d) Deposit of subdivision plan; and
- (e) Any dealing that is expressed as subject to this encumbrance.

9. RENT CHARGE

- (a) The annual rent charge of \$1.00 per annum (if demanded) in writing by the Encumbrancee is payable by the Covenantor to the Encumbrancee on each anniversary date of this encumbrance (subject to clause 9(b)).
- (b) If during the 12 months preceding any day on which the annual rent charge under clause 9(a) is payable, there has not been any breach by the Covenantor of any of the covenants under this Encumbrance, then the annual rent charge will be deemed to have been paid.

**FIRST SCHEDULE
(Covenants of Covenantor)**

The Covenantor acknowledges and covenants with the Council as follows:

Stormwater Rain Garden and Wetland System

1. The Covenantor acknowledges:
 - (a) a modification of clause E1.3.3(a) of the NZ Building Code has been granted in respect to the presence of a Stormwater Rain Garden and Wetland System on the Land; and
 - (b) The Building Consent requires the presence of the Stormwater Rain Garden and Wetland System be noted on the freehold Record of Title on the Land.

2. The Covenantor shall:
 - (a) Operate, monitor, and maintain the onsite Stormwater Rain Garden and Wetland System in accordance with the approved Device Specific Operational and Maintenance detail form.
 - (b) Inspect, service and maintain the Stormwater Rain Garden and Wetland System on the Land on a regular basis and that all requirements are complied with on an ongoing basis; and
 - (c) Not modify or remove the Stormwater Rain Garden and Wetland System without the express written permission of the Council.

3. The Council may:
 - (a) At any time upon prior written notice by its officers, employees, agents or contractors enter the Land:
 - (i) To inspect or test the Stormwater Rain Garden and Wetland System; and
 - (ii) To inspect the Encumbrancer and Covenantor's records in relation to the service and maintenance of the Stormwater Rain Garden and Wetland System.
 - (b) By notice in writing, instruct the Covenantor to carry out any actions or works in relation to the service and maintenance of the Stormwater Rain Garden and Wetland System. If the Covenantor fails to carry out those actions or works within 7 working days of receiving the notice, the Council may carry out the work and recover the costs of carrying out the work from the Covenantor.

However, the Council is not obliged to exercise any of its rights under this clause.

Pump Wastewater System

1. The Covenantor acknowledges:
 - (c) A modification of clause G13.3.2(a) of the NZ Building Code has been granted in respect to the presence of a Pump Wastewater System on the Land; and
 - (d) The Building Consent requires the presence of the Pump Wastewater System be noted on the freehold Record of Title on the Land.

2. The Covenantor shall:
 - (a) Inspect, service and maintain the Pump Wastewater System on the Land on a regular basis and ensure that all Council's requirements and the Building Consent conditions are complied with on an ongoing basis.

- (b) Not modify or remove the Pump Wastewater System without the express written permission of the Council.

3. The Council may:

- (a) At any time upon prior written notice by its officers, employees, agents or contractors enter the Land:
 - (i) to inspect or test the Pump Wastewater System; and
 - (ii) to inspect the Covenantor's records in relation to the service and maintenance of the Pump Wastewater System.
- (b) By notice in writing, instruct the Covenantor to carry out any actions or works that are reasonably required in relation to the service and maintenance of the Pump Wastewater System. If the Covenantor fail to carry out those actions or works within 10 working days of receiving the notice, the Council may carry out the work and recover the costs of carrying out the work from the Covenantor.

However, the Council is not obliged to exercise any of its rights under this clause.

To the fullest extent possible, the Covenantor indemnifies and releases the Council from any and all liability for loss, damage, costs or proceedings arising out of or in relation to a breach of the covenants, terms and conditions set out in this memorandum.