

Form 18

Encumbrance instrument

(Section 100 Land Transfer Act 2017)

Land registration district

CANTERBURY

BARCODE

Record of Title (unique identifier)	All/part	Area/description of part
CB31F/131 CB31B/1177 CB31B/1176 CB10A/1195 CB10A/1196 CB10A/1183 CB31B/1175 CB31B/1174 860324 CB31B/1043 CB31B/1045 CB31B/1040 CB31B/1041 CB31B/1042 CB31B/1044 CB31B/1046 CB31B/1047 CB30K/115 CB30K/114 CB30K/113 CB31F/129 CB31F/130 860327 CB34C/1287 CB34C/1288 CB34C/1289 CB10A/1188 CB33B/1294 CB10A/1189 CB33B/1295 CB10A/1190 CB33B/1296 CB10A/1191 860325 CB31B/482 CB31B/486 CB31B/487 CB31B/488 CB31B/489 CB31B/490 CB31B/491 CB31B/492 230490 CB11B/1035 CB31B/1256 CB31B/1257 CB31B/1258 CB30K/57 CB30K/58 CB32B/816 CB30K/60 CB30K/61 CB30K/62 CB31B/947 CB34C/1118 CB34C/1119 CB30K/65 CB30K/66 CB30K/67 CB31B/954 CB33B/595 CB31B/955 CB31B/956 CB31B/957 CB31B/960 CB31B/961 CB13K/383 CB32B/226 CB32B/225 CB32B/224 CB44B/331 CB44B/332 CB32B/222 CB13K/376 CB32A/1162 CB13K/372 CB13K/370 CB32B/70, CB31B/1085 CB31B/1084 26493 26494 26495 26496 47752 237804 237803 397824 CB11B/1039 CB11B/1040 CB11B/1041	ALL	

Encumbrancer

Surname(s) must be underlined.

TE KŌHAKA O TŪHAITARA TRUST

Encumbrancee

Surname(s) must be underlined.

HER MAJESTY THE QUEEN (the "Crown")

Estate or interest to be encumbered

Insert, eg, fee simple, leasehold in lease number, etc.

Fee Simple

Encumbrance memorandum number

N/A

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

Annual Rent Charge of \$1.00

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 Encumbrancer with the terms of this encumbrance.

Terms

- 1 Length of term **999 years commencing on the date of this encumbrance**
- 2 Payment date(s) **1st day of January in each year, if demanded**
- 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

Sections 203 and 204 of the Property Law Act 2007 and all other provisions of that Act and the Land Transfer Act 2017 relating to encumbrances shall apply to this encumbrance, except that the Council shall have no power of sale.

The Council hereby consents pursuant to the Land Transfer Act 2017 to the registration of the following instruments in respect of the land subject to this encumbrance:

- (a) the creation, variation or surrender of an easement or covenant;
- (b) the variation of a mortgage instrument or priority of mortgages;
- (c) the registration of a lease, a lease variation instrument or the surrender of a lease;
- (d) the disposal of a licence or shares to which the licence relates,

and this consent is deemed to be the consent of the Council to the registration of a particular instrument specified in clauses (a) to (d) above.

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Continue in additional Annexure Schedule, if required

ANNEXURE SCHEDULE 1**CIRCUMSTANCES**

The land subject to this encumbrance (the "**Property**") is part of the land being regenerated under the Recovery Plan.

The Crown has transferred the Property to the Encumbrancer subject to the requirement that the Encumbrancer comply with the covenants set out in this encumbrance.

COVENANTS**Land use:**

1.1 The Encumbrancer covenants with the Crown:

- (a) to only utilise the Property in accordance with the Land Uses;
- (b) not to construct any Permanent Structure on the Kairaki Property; and
- (c) not to use the Kairaki Property for Industrial or Commercial Activities (except where such activities are associated with the activities in the adjacent Tūhaitara Coastal Park and are permitted under the Tūhaitara Coastal Reserve & Waikuku Beach Reserves, Reserve Management Plan).

Transfer or Lease of the Property:

1.2 Subject to clause 1.3, the Encumbrancer covenants with the Crown not to transfer or Lease the Property (or any part thereof) within 100 years of the date of this encumbrance.

1.3 Should the Encumbrancer wish to transfer or Lease the Property (or any part thereof) at any time prior the expiry of the period in clause 1.2, the Encumbrancer covenants with the Crown:

- (a) to advise the Crown of the Encumbrancer's intention to transfer or Lease the Property (or any part thereof);
- (b) to offer back the Property (or part thereof) to the Crown at no cost and with the Crown given one (1) month of receipt of the offer to accept or decline the offer;
- (c) that if the Crown declines the offer pursuant to clause 1.3(b), to:

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Continue in additional Annexure Schedule, if required

- (i) seek to maximise financial return, where possible, on the transfer or Lease of the Property (or any part thereof); and
 - (ii) pay the Crown on demand 50% of the Net Proceeds of Divestment on any transfer or Lease of the Property (or any part thereof).
2. The restriction in clause 1.2 and 1.3 shall not apply to any transfer or Lease by the Encumbrancer to a successor trust that continues the Encumbrancer's activities in accordance with the Tūhaitara Coastal Park Reserve Management Plan.
3. **Discharge of this encumbrance:** Upon application in writing by the Encumbrancer, the Crown will execute and provide to the Encumbrancer a discharge of this encumbrance where the Crown is satisfied (in its sole and absolute discretion) that the covenants of this encumbrance have become obsolete.

For the avoidance of doubt, under no circumstances shall payment of the rent charge be sufficient to obtain a discharge of this encumbrance.
4. **Injunctive relief:** The Encumbrancer acknowledges that the Crown shall be entitled to an injunction or other equitable relief for any threatened or actual breach of clause 1 as (without prejudice to any rights or remedies of the Crown) damages alone would not be an adequate remedy.
5. **Non-waiver:** No failure or delay by the Crown to enforce this encumbrance shall constitute a waiver or restrict any further enforcement. Nothing in this encumbrance shall compel the Crown to enforce or maintain this encumbrance.
6. **Costs:** The Encumbrancer shall pay all the Crown's legal costs (on a solicitor/client basis) directly attributable to the enforcement, variation and discharge of this encumbrance.
7. **Indemnity:** To the fullest extent possible, the Encumbrancer indemnifies and releases the Crown from any liability for loss, damage, costs or proceedings arising out of or in relation to a breach by the Encumbrancer of the covenants, terms and conditions set out in this encumbrance.
8. **Definitions:** For the purposes of this Encumbrance:
 - (a) **"Industrial or Commercial Activities"** in respect of:
 - (i) **"Industrial"** means the use of the land for manufacturing, fabricating, processing, repairing, assembly, packaging, wholesaling or storage of products; and

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Continue in additional Annexure Schedule, if required

- (ii) **"Commercial"** means retail, office and other commercial service activities.
- (b) **"Kairaki Property"** means the land set out in Schedule 2;
- (c) **"Land Uses"** mean the land uses that have been applied to the Property under the Recovery Plan;
- (d) **"Lease"** means a lease of land for a period of five (5) years or longer and for which more than a nominal rental is received by the Encumbrancer;
- (e) **"Net Proceeds of Divestment"** means , in respect of the relevant land, the amount(s) received less the following costs (if appropriate) incurred by the Encumbrancer in respect of that land, legal and agent fees in respect of the transfer or lease, management costs, maintenance costs, holding costs (which for the avoidance of doubt shall include annual rates payable to any local authority) and land remediation costs;
- (f) **"Permanent Structure"** means a structure that is intended to remain on the Property for its natural lifespan and is immovable; and
- (g) **"Recovery Plan"** means the Waimakariri Residential Red Zone Recovery Plan dated December 2016.

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ANNEXURE SCHEDULE 2 – KAIRAKI PROPERTY

2 Featherston Ave	LOT 1 DP 9128 KAIRAKI BEACH	CB11B/1035
6 Featherston Ave	LOT 1 DP 52853 KAIRAKI BEACH	CB31B/1256
8 Featherston Ave	LOT 2 DP 52853 KAIRAKI BEACH	CB31B/1257
10 Featherston Ave	LOT 5 DP 9128	CB11B/1039
12 Featherston Ave	LOT 6 DP 9128 KAIRAKI BEACH	CB11B/1040
14 Featherston Ave	LOT 7 DP 9128 KAIRAKI BEACH	CB11B/1041
16 Featherston Ave	LOT 3 DP 52853 KAIRAKI BEACH	CB31B/1258
18 Featherston Ave	LOT 8 DP 9128 KAIRAKI BEACH	CB30K/57
20 Featherston Ave	LOT 9 DP 9128 KAIRAKI BEACH	CB30K/58
14A Featherston Ave	LOT 1 DP 53827 BLK XVI RANGIORA SD	CB32B/816
24 Featherston Ave	LOT 11 DP 9128 KAIRAKI BEACH	CB30K/60
26 Featherston Ave	LOT 12 DP 9128 KAIRAKI BEACH	CB30K/61
28 Featherston Ave	LOT 13 DP 9128	CB30K/62
30 Featherston Ave	LOT 1 DP 52851 BLK XVI RANGIORA SD	CB31B/947
32 Featherston Ave	LOT 1 & 3 DP 58661 BLK XVI RANGIORA SD-SUBJ TO CB34C/1119	CB34C/1119
32A Featherston Ave	LOT 2 DP 58661 BLK XVI RANGIORA SD	CB34C/1119
36 Featherston Ave	LOT 16 DP 9128 PT RES 3658 KAIRAKI BEACH	CB30K/65
38 Featherston Ave	LOT 17 DP 9128 PT RES 3658 KAIRAKI BEACH	CB30K/66
40 Featherston Ave	LOT 18 DP 9128 PT RES 3658 KAIRAKI BEACH	CB30K/67
46 Featherston Ave	LOT 2 DP 52855 KAIRAKI BEACH BLK XVI RANGIORA SD-SUBJ TO CB31B/954	CB31B/954
48 Featherston Ave	LOT 1 DP 54893 KAIRAKI BEACH BLK XVI RANGIORA SD-SUBJ TO CB31B/955	CB31B/955
50 Featherston Ave	LOT 3 DP 52855 WITH INT IN R/W KAIRAKI BEACH	CB31B/955
52 Featherston Ave	LOT 4 DP 52855 KAIRAKI BEACH	CB31B/956
54 Featherston Ave	LOT 5 DP 52855 KAIRAKI BEACH	CB31B/957
60 Featherston Ave	LOT 8 DP 52855	CB31B/960
62 Featherston Ave	LOT 9 DP 52855 KAIRAKI BEACH	CB31B/961
43 Featherston Ave	LOT 19 DP 7293 PT RES 3658 KAIRAKI BEACH	CB13K/383
37 Featherston Ave	LOT 5 DP 54441 BLK XVI RANGIORA SD	CB32B/226
35 Featherston Ave	LOT 4 DP 54441 BLK XVI RANGIORA SD	CB32B/225
33 Featherston Ave	LOT 3 DP 54441 BLK XVI RANGIORA SD	CB32B/224
31B Featherston Ave	LOT 1 DP 77075 BLK XVI RANGIORA SD	CB44B/331
31A Featherston Ave	LOT 2 DP 77075 BLK XVI RANGIORA SD	CB44B/332
29 Featherston Ave	LOT 1 DP 54441 BLK XVI RANGIORA SD	CB32B/222
27 Featherston Ave	LOT 12 DP 7293 PT RES 3658 KAIRAKI BEACH	CB13K/376

Annexure Schedule

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23 Featherston Ave	LOT 3 DP 54440 BLK XVI RANGIORA SD	CB32A/1162
17 Featherston Ave	LOT 8 DP 7293 PT RES 3658 KAIRAKI BEACH	CB13K/372
13 Featherston Ave	LOT 6 DP 7293-BLK XVI RANGIORA SD	CB13K/370
7 Featherston Ave	LOT 1 DP 52645 CH	CB32B/701
3 Featherston Ave	LOT 2 DP 52854 KAIRAKI BEACH	CB31B/1085
1 Featherston Ave	LOT 1 DP 52854 KAIRAKI BEACH	CB31B/1084
45 Featherston Ave	LOT 1 DP 306793	26493
47 Featherston Ave	LOT 2 DP 306793	26494
49 Featherston Ave	LOT 3 DP 306793 - SUBJ TO & INT IN RW	26495
49A Featherston Ave	LOT 4 DP 306793 SUBJ TO & INT IN RW	26496
46A Featherston Ave	LOT 2 DP 358373	237804
44 Featherston Ave	LOT 1 DP 358373	237803
64 Featherston Ave	LOT 1 DP 399709	397824