

# View Instrument Details



**Instrument No** 8605452.5  
**Status** Registered  
**Date & Time Lodged** 06 October 2010 16:42  
**Lodged By** Rollason, Marie Jean  
**Instrument Type** Encumbrance



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Affected Computer Registers	Land District
404923	Canterbury
450706	Canterbury
507377	Canterbury
CB12A/731	Canterbury

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**Annexure Schedule:** Contains 10 Pages.

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## 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 Blake Eugene Cescon as Encumbrancer Representative on 06/10/2010 03:31 PM

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## 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 Nicola Merle Carter as Encumbrancee Representative on 06/10/2010 09:07 AM

\*\*\* End of Report \*\*\*

**.Form E ONLY BIND REGISTERED PROPRIETOR FOR TIME BEING****Encumbrance instrument**

(Section 101 Land Transfer Act 1952)

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

450706	ALL	
404923	ALL	
CB12A/731	ALL	
507377	ALL	

**Encumbrancer**

ASHBURTON DISTRICT COUNCIL

**Encumbrancee**

SILVER FERN FARMS 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 rentcharge and amount*

Annual Rent Charge of \$500,000.00

**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*

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**Terms**

- 1 Length of term **50 years commencing on the date of this Encumbrance Instrument**
- 2 Payment date(s) **First day of February 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

**Form E** *continued*

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**Annexure Schedule**

*Insert instrument type*

**Encumbrance**

*Continue in additional Annexure Schedule, if required*

See attached

**ANNEXURE SCHEDULE 1**

**BACKGROUND**

- A. The Encumbrancer is registered as proprietor of the Land.
- B. The Encumbrancer has purchased the Property from the Encumbrancee.
- C. The Property has real value to the Encumbrancee. However, the Encumbrancee agreed to sell the Property to the Encumbrancer on the condition that the Encumbrancer enters into and registers this encumbrance.

**1. INTERPRETATION**

1.1 **Definitions:** In this encumbrance instrument unless the context indicates otherwise:

- (a) **"Application"** means an application for resource consent made to the relevant Consent Authority under the RMA in relation to the Encumbrancee and/or any subsidiary or related companies (as defined in the Companies Act 1993) or assignee of the Encumbrancee undertaking the Processing Activities on the Silver Fern Land and includes:
  - (i) Any application for change or cancellation or review of consent conditions; and
  - (ii) Any requirement for a designation, any outline plan submitted, any requirement to alter a designation, and any notice require a decision to be included in a proposed plan, under sections 168, 168A, 176A, 181 or clause 4 of the First Schedule to the RMA;
- (b) **"Consent Authority"** shall have the meaning given to that term under the RMA;
- (c) **"Encumbrancee"** means the Encumbrancee named in this encumbrance instrument and includes any subsidiary or related companies (as defined in the Companies Act 1993) or assignee of the Encumbrancee;
- (d) **"Encumbrancer"** means the Encumbrancer named in this encumbrance instrument and includes the person for the time being registered as proprietor of the Land and any transferee, lessee, mortgagee, chargeholder and their respective successors in title and assigns of any estate or interest in the land, and any other occupier of the Land;
- (e) **"further processing"** means the processing of meat product beyond the carcass state including, without limitation, cutting, boning, packaging and preparation for consumption or sale in whatever form but excluding the further processing of

meat product into smallgoods such as dried meat, minced meat products or cooked meats;

- (f) **"Land"** means the fee simple estate in the following:
  - (i) the Property and the land in CFR 216280;
  - (ii) CFR 404923;
  - (iii) CFR CB12A/731; and
  - (iv) CFR 507377;(All Canterbury Registry);
- (g) **"Livestock"** means lamb, sheep, cattle (including calves), deer, horse, pig, ostrich or goat;
- (h) **"Processing Activities"** means:
  - (i) The processing of any Livestock;
  - (ii) The further processing of meat being the product of any Livestock;
  - (iii) The processing of by-product derived from any Livestock
- (i) **"processing"** means any activity involved in the containment, slaughter, evisceration and dressing of any Livestock to a meat carcass state;
- (j) **"processing of by-product"** means any activity, without limitation, involving the stripping, felling, processing, preservation, treatment, grading, rendering or packaging of any part or substance of Livestock (including offals) other than meat product but does not include the milk of any Livestock being utilised for the purposes of processing dairy products or the further processing of by-products into smallgoods;
- (k) **"Property"** means the fee simple estate in Lot 1 DP 413606 part of computer freehold register 450706;
- (l) **"RMA"** means the Resource Management Act 1991;
- (m) **"Silver Fern Land"** means the fee simple estate in computer freehold register 450707 (Canterbury Registry);

1.2 **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;

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

- 1.4 **Joint and Several Liability:** an obligation by two or more persons binds those persons jointly and severally;
- 1.5 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- 1.6 **Parties:** references to parties are references to parties to this encumbrance instrument;
- 1.7 **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;
- 1.8 **Plural and Singular:** words importing the singular number include the plural and vice versa;
- 1.9 **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;
- 1.10 **Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to this encumbrance instrument's sections, clauses and schedules; and
- 1.11 **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

- 2.1 The intention of this encumbrance instrument is to secure the ongoing performance by the Encumbrancer of the covenants contained in the First Schedule and the payment of the annual rent charge. The Encumbrancee is only required to provide a release of this encumbrance instrument in the circumstances described in clause 7.
- 2.2 If during the twelve months immediately preceding the 1<sup>st</sup> day of February in each year there has been no breach by the Encumbrancer of the covenants contained in the First Schedule, then the annual rent charge payable on the 1<sup>st</sup> day of February shall not be able to be, and shall not be, demanded and the Encumbrancer shall be entitled to an acknowledgement from the Encumbrancee to that effect.

## 2.3 COVENANTS

The Encumbrancer covenants with the Encumbrancee to observe and perform the covenants contained in the First Schedule.

**3. COSTS**

The Encumbrancer shall pay all costs directly or indirectly attributable to the registration, enforcement and discharge of this encumbrance instrument and any documents associated with it and otherwise indemnifies the Encumbrancee against any claims, loss and expense of whatever kind incurred by the Encumbrancee as a consequence of the Encumbrancer failing to comply with the provisions of this encumbrance instrument.

**4. IMPLIED TERMS**

The Encumbrancee shall not be entitled to the powers and remedies given to encumbrancees or mortgagees by the Land Transfer Act 1952 and the Property Law Act 2007 except that the Encumbrancee shall be entitled to the benefit of sections 154 and 156 of the Land Transfer Act 1952 and to sections 23, 203, 283, 289, 290, 301 and 302 of the Property Law Act 2008 and the Encumbrancer shall not be entitled to any of the powers and remedies given to encumbrancers under the Land Transfer Act 1952.

**5. ENFORCEMENT**

The terms and conditions of this Encumbrance Instrument bind and may be enforced by the Encumbrancee against the Encumbrancer and any transferee, lessee, mortgagee, chargeholder and their respective successors in title and assigns of any estate or interest in the Land, and any other occupier of the Land, to ensure compliance with the requirements of this Encumbrance Instrument provided that the terms and conditions of this Encumbrance Instrument shall be enforceable only against the registered proprietor for the time being of the Land and not otherwise against the Encumbrancer or its successors but without prejudice to any person's liability for any breach of the terms and conditions arising before that person ceased to be a registered proprietor of the Land.

**6. FIRST CHARGE**

This encumbrance instrument 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 Encumbrancee's reasonable satisfaction that the covenants in this encumbrance instrument have been fully performed or have become obsolete and any monies that become owing under this encumbrance instrument are fully paid.

**8. UNENFORCEABLE PROVISIONS**

The covenants contained in this encumbrance instrument are considered by the parties to be reasonable in all the circumstances. However, if any provision or covenant shall be held invalid as an unreasonable restraint of trade or for any other reason whatever, but would have been held valid if part of its wording had been deleted or duration reduced, or range of activities reduced in scope, that provision or covenant will be deemed to apply with the appropriate modifications necessary to make it valid and effective and such amendment or modification shall not impair the enforceability of the balance of the terms.

**9. CONTRACTS PRIVITY**

The Encumbrancer acknowledges that the provisions of this encumbrance instrument are intended to confer benefits on the Encumbrancee and/or any subsidiary or related companies (as defined in the Companies Act 1993) whether that subsidiary or related company became such before or after the date of this Encumbrance Instrument and to create obligations on the part of the Encumbrancer or any other registered proprietor of the Land which are enforceable at the suit of any of those companies whether by way of defence or otherwise pursuant to the provisions of the Contracts Privity Act 1982.

**10. ENCUMBRANCEE'S ACKNOWLEDGEMENTS**

10.1 The Encumbrancee acknowledges that:

- (a) The Encumbrancer has entered this Encumbrance Instrument in its capacity as a property owner and not in its capacity as a territorial authority;
- (b) The Encumbrancer, in its capacity as a territorial authority, is required to carry out its statutory consent functions under the Resource Management Act 1991 and the Building Act 2004 in accordance with the provisions of those Acts;
- (c) The granting by the Encumbrancer, in its capacity as a territorial authority, of any consent or approval under any of the above Acts shall not of itself be deemed to be a consent or approval by the Encumbrancer, in its capacity as a property owner, under this Encumbrance Instrument;
- (d) The Encumbrancer, in its capacity as a territorial authority, is bound by statutory obligations to exercise its powers, including discretionary powers, and duties under the above Acts without regard to any relationship it may have with the Encumbrancee under this Encumbrance Instrument; and
- (e) The provisions of this clause 10 only apply while Ashburton District Council is the Encumbrancer under this Encumbrance Instrument.

**FIRST SCHEDULE**

**(Covenants of Encumbrancer)**

1. The Encumbrancer covenants with the Encumbrancee that it will not and nor will it allow any other party at any time to undertake or cause to be undertaken any activity on the Land which involves the following, or sell the Land or part thereof to any party in the knowledge having made reasonable enquiries that such party intends to establish and undertake an activity on the Land which involves the following unless the prior written consent of the Encumbrancee has been expressly obtained to that activity being conducted (and the Encumbrancee shall be under no obligation to provide any such consent):
  - (a) The processing of any Livestock;
  - (b) The further processing of meat being the product of any Livestock;
  - (c) The processing of by-product derived from any Livestock; or
  - (d) The carrying on of any activity that could cause or result in any noxious or toxic fumes or liquid being discharged or omitted from any part of the Land that might or could result in any food processing business on the Silver Fern Land being detrimentally affected (directly or indirectly) or being subject to any restrictions or provisions, statutory, regulatory or otherwise.
2. This Encumbrance shall not prevent the Encumbrancer from using the Land for freezing, chilling or cold storage of any carcass and/or further processed meat product derived from Livestock and where such Livestock have been processed other than on the Land.
3. The Encumbrancer waives all rights which it or any person claiming through it has, or but for this provision might otherwise have had, in relation to any disturbance, annoyance or other effect arising in the course of, or that is incidental to, the Encumbrancee undertaking any Processing Activities on the Silver Fern Land.
4. The Encumbrancer shall not object to, oppose or impede any action in relation to, an Application and without limitation, surrenders the right to:
  - (a) Make submissions about an Application under the RMA;
  - (b) Appeal to the Environment Court or Court of Appeal against the whole or any part of a decision by any relevant Consent Authority, Territorial Authority, Requiring Authority or the Environment Court on an Application under the RMA; and
  - (c) Become a party to proceedings, be represented at proceedings and the right to appear and be heard on any appeal referred to in clause 4(b) above;

And shall not exercise any such right, and these provisions also apply to any right of compliant or Application under Sections 17, 35, 311, 316, 322, 338, 343A of the RMA relating to the Encumbrancee and/or any subsidiary or related companies (as defined in the Companies Act 1993) or assignee of the Encumbrancee undertaking any Processing Activities on the Silver Fern Land.

5. The Encumbrancer shall not at any time after the date of this Encumbrance Instrument aid, abet, counsel, fund, facilitate or procure any other person to take any action the right to which has been waived by the Encumbrancer under clause 3 or exercise any of the rights under the RMA referred to in clause 4.
6. To the extent permitted by law the Encumbrancer and any transferee, lessee, mortgagee, chargeholder and their respective successors in title and assigns of any estate or interest in the Property, releases the Encumbrancee from any liability or obligation and disclaims all claims or rights against the Encumbrancee, whether under any law, contract or tort (including negligence), equity, nuisance, public nuisance or otherwise, in respect of, or arising from or in relation to, all contamination that exists in, on, under or originating from the Property (whether resulting from the Property formerly being used for, or for activities associated with, a freezing works pr however otherwise caused or arising) and the desirability of, any need for, liability for, or obligation to undertake, the clean-up, remediation or mitigation of such contamination.
7. The Encumbrancer agrees that except with the Encumbrancee's prior written consent the Encumbrancer will not sell the Property or any part of the Property without first having completed on the land being sold any clean-up, remediation and mitigation of contamination that exists in, on, under or originating from the Property (whether resulting from the Property formerly being used for, or for activities associated with, a freezing works pr however otherwise caused or arising) required for that land to be suitable for commercial or residential occupation to the satisfaction of Environment Canterbury and to Ashburton District Council or any other body having jurisdiction over that land or the use of that land. The Encumbrancee shall not unreasonably withhold its consent under this clause. The provisions of this clause 7 shall cease to have effect in respect of any land sold with the consent of the Encumbrancee after any required clean-up, remediation and mitigation has been completed in accordance with this clause 7.