

Schedule

Encumbrance instrument

(Section 100 Land Transfer Act 2017)

Land registration district

NORTH AUCKALND

Record of Title (unique identifier) All/part Area/Description of part or stratum and type (if applicable)

[Add]

[Add]

[Add]

Encumbrancer

Fulton Hogan Land Development Limited

Encumbrancee

Milldale Infrastructure LP

Estate or interest to be encumbered *Insert e.g. Fee simple; Leasehold in Lease No. etc.*

[Fee simple]/[Fee simple in stratum]

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

The Infrastructure Payments referred to in the Annexure Schedule(s) as more particularly described in Schedule 1.

Operative clause

The Encumbrancer encumbers for the benefit of the Encumbrancee the land in the above computer register(s) with the above sums of money, annuity or rentcharge, to be raised and paid in accordance with the terms set out in Schedule 1 and the Annexure Schedule(s) so as to incorporate in this Encumbrance the terms and other provisions set out in Schedule 1 and 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.

Terms

Commencement Date means [date];

Infrastructure Payments Termination Date means [date]; and

Term means the period from the Commencement Date until the Infrastructure Payments Termination Date (both dates inclusive).

Additional terms are as set out in Schedule 1 and the Annexure Schedule(s). THESE INCLUDE THE REQUIREMENT TO SEEK AND OBTAIN THE ENUCUMBRANCEE'S CONSENT TO ANY TRANSFER OF THE LAND.

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

As set out in Schedule 1 and the Annexure Schedule(s).

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

As set out in Schedule 1 and the Annexure Schedule(s).

Schedule 1

Background

- A. The Encumbrancee has helped fund bulk infrastructure projects (roading and wastewater) in the Wainui East area necessary to enable housing in the area to proceed including within the Milldale development.
- B. A portion of the overall bulk infrastructure project costs are to be recovered from the benefiting land owners as the repayment of, and return on, funding that related to the construction of the bulk infrastructure projects referred to above.
- C. As a condition of the Encumbrancee funding the bulk infrastructure projects described above the Encumbrancer or, from the time of sale, any subsequent purchaser of the Land is bound to pay the Infrastructure Payments to the Encumbrancee on the terms set out in this Encumbrance.

Covenants and conditions *Continued*

- 1. In this Encumbrance, unless the context indicates otherwise:

“Applicable Laws” means the Credit Contracts and Consumer Finance Act 2003, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, and any other laws or regulations with which the Encumbrancee is required to comply in respect of this Encumbrance;

“Collection Purposes” has the meaning given to it in clause 18 of this Encumbrance;

“Commencement Date” has the meaning given to it in the Encumbrance Instrument;

“Designated Website” means www.infrastructurepayments.co.nz or such replacement website as is designated by notice from the Encumbrancee to the Encumbrancer;

“Due Date” means:

- (a) for so long as Auckland Council is Payments Agent, the dates applicable, in any year, for payment of quarterly instalments of General Rates or (if General Rates ceases to be collected on a quarterly basis) such other dates on which General Rates fall due; or
- (b) if Auckland Council is replaced as Payments Agent, each due date selected by the Encumbrancee and notified to the Encumbrancer by notice on the Designated Website or otherwise;

“Encumbrance Instrument” means the encumbrance instrument registered against the Land that creates this Encumbrance;

“Encumbrancee” means the person recorded as such in this Encumbrance, and includes:

- (a) any person to whom the original Encumbrancee assigns or otherwise transfers its rights under this Encumbrance, including on enforcement of any security interest granted by the Encumbrancee; and
- (b) any receiver, receiver and manager, security trustee, lender or other similar party entitled to exercise or enforce the rights of the Encumbrancee;

“Encumbrancer” means the person recorded as such in this Encumbrance, and includes any subsequent registered proprietor of the Land in against which this Encumbrance is registered;

“General Rates” means the general property rates imposed by the Auckland Council;

“GST” means tax chargeable under the Goods and Services Tax Act 1985;

“Infrastructure Payment” means, in respect of any Year, the payment specified in respect of that Year in the Annexure Schedule to the Encumbrance Instrument;

“Land” means the land comprised in the computer register specified on the first page of this Encumbrance;

“Payments Agent” means Auckland Council or any person subsequently appointed to collect payments on behalf of the Encumbrancee, and take certain other actions on its behalf, under this Encumbrance;

“Personal Information” has the meaning given to it in the Privacy Act;

“Privacy Act” means the Privacy Act 1993;

“Term” has the meaning given to it in the Encumbrance Instrument; and

“Year” means a period of 12 months commencing on 1 July in each year of the Term.

2. In each Year, the Encumbrancer will pay the Infrastructure Payment to the Encumbrancee. The Infrastructure Payment will fall due for payment in four equal quarterly instalments (adjusted where applicable, on a per day basis, where the first payment period does not comprise a full quarter), with an instalment due on each Due Date. For so long as Auckland Council is Payments Agent, the Encumbrancer will be deemed to have selected the same periodic payment option, for payments of the Infrastructure Payment, that it elects for its payment of General Rates.
3. The Encumbrancer may pay Infrastructure Payments in any manner accepted by Auckland Council for payment of General Rates (for so long as Auckland Council is Payments Agent) or by any means notified on the Designated Website or otherwise (if Auckland Council ceases to be Payments Agent).
4. Any GST payable on an Infrastructure Payment will be payable by the Encumbrancer at the same time and in the same manner as the relevant Infrastructure Payment.
5. If the Encumbrancer fails to make payment of any instalment of an Infrastructure Payment by the Due Date (a “Late Payment”), the Encumbrancer will pay to the Encumbrancee such additional amounts as would be payable if the Late Payment comprised an overdue payment of General Rates (“Additional Payment”). Additional Payments will be held by the Encumbrancee to the Encumbrancer’s account until the Encumbrancee determines its costs or losses associated with the Late Payment. To the extent the Encumbrancee determines, following payment of the Late Payment, that all or any part of the Additional Payment exceeds the costs and losses of the Encumbrancee resulting from the Late Payment (the difference being the “Excess”), it will repay or credit the Excess to the Encumbrancer.
6. The Encumbrancee may appoint Auckland Council or any other person as its agent to give or receive all notices, to issue payment instructions, to collect all payments and to take any enforcement or other action required under or incidental to this Encumbrance. The Encumbrancee may provide other members of its wholly owned group, its agent, its lenders and persons claiming through them and their respective service providers or representatives with any information (including Personal Information) it holds relating to the Encumbrancer, the Land and the Infrastructure Payments. The Encumbrancer consents to the agent of the Encumbrancee (including Auckland Council if appointed as agent) providing information held by it (including information

relating to General Rates or Personal Information, whether obtained in its capacity as agent or otherwise) to the Encumbrancee. The Encumbrancee (including where acting via its agent) will only disclose Personal Information pursuant to this clause 6 to facilitate or advance the Collection Purposes.

7. The Encumbrancer may prepay all Infrastructure Payments owing or that would become owing under this Encumbrance over the Term, in which case it must pay the aggregate of the amounts determined under clauses 7(a) and 7(b) below (with the final amount as at a specified date to be to be calculated by the Encumbrancee or its agent and notified to the Encumbrancer):

(a) the lesser of a. or b. below:

a. the aggregate of:

i. any unpaid Infrastructure Payments then due and payable (together with any Additional Payments, enforcement costs, arrears or other amounts due and payable under this Encumbrance); and

ii. the remaining scheduled Infrastructure Payments for the Term; or

b. the aggregate amount payable by the Encumbrancee to prepay its debt and equity finance arrangements associated with this Encumbrance and the break costs relating to any management contract associated with this Encumbrance; and

(b) an administration fee to reasonably compensate the Encumbrancee for any administrative cost incurred by the Encumbrancee in relation to the full early prepayment.

This means that the Encumbrancer will never need to pay more than any amounts due and payable under this Encumbrance, plus the unpaid scheduled Infrastructure Payments payable under this Encumbrance (and a reasonable administration fee) to prepay its obligations under this Encumbrance in full. The actual amount payable by the Encumbrancer to prepay amounts payable under this Encumbrance in full may be less than this amount.

The Designated Website sets out the methodology of how the Encumbrancee will calculate the amount required to prepay its debt and equity finance arrangements associated with this Encumbrance and the break costs relating to any management contract associated with this Encumbrance. This methodology forms part of, and is deemed to be incorporated as a term of, this Encumbrance. The Encumbrancee may amend this methodology and the means of calculating prepayment amounts from time to time, but only where such amendment does not impose a greater prepayment liability on the Encumbrancer than the original methodology referred to above. Any amendment will be recorded on the Designated Website.

To request an indicative prepayment figure, the Encumbrancer should contact the Encumbrancee, with its contact details for this purpose set out on the Designated Website.

8. Where the Encumbrancer exercises its prepayment rights under clause 7, the prepayment will be due at the end of the then-current quarterly period notified by the Encumbrancee unless otherwise required by the Encumbrancer.

9. The Encumbrancer is not entitled to make any partial prepayment of any amount payable under this Encumbrance, and the Encumbrancee may decline to accept any partial prepayment tendered by the Encumbrancer.

10. Subject to clause 12, the Land must not be transferred without the prior consent of the Encumbrancee. The Encumbrancee will not withhold or delay such consent where the Encumbrancer provides all information in relation to the proposed transferee necessary to enable the Encumbrancee to comply with its obligations under all Applicable Laws, and the Encumbrancer agrees to take all reasonable steps and provide such reasonable assistance as is requested by the Encumbrancee to allow it to comply with all Applicable Laws. The information required to be provided by the Encumbrancer, on any transfer, will be set out on the Designated Website. If the Encumbrancer fails to comply with this provision and transfers the Land without the consent of the Encumbrancee:
 - (a) the Encumbrancer will remain personally liable for any cost, loss, expense or liability of the Encumbrancer resulting from the Encumbrancer's breach of this clause; and
 - (b) the failure will comprise a breach of covenant under this Encumbrance, entitling the Encumbrancee to (amongst other things) exercise its power of sale following any transfer in breach of this provision, with any cost, loss, expense or liability incurred by the Encumbrancee due to a breach of this clause recoverable from the proceeds of such transfer.
11. Subject to clause 12, the Encumbrancee will provide a written consent to the Encumbrancer, on request, to confirm whether the Encumbrancer or any previous Encumbrancer has complied with the requirements of clause 10 in respect of any proposed transfer. Any such consent issued by the Encumbrancee prior to the date of any proposed transfer:
 - (a) will be conclusive evidence that there is no outstanding liability under clause 10, in respect of any previous transfer of the Land and in respect of the transfer to which the consent relates; and
 - (b) may be relied on by the transferor and the transferee of the Land and any mortgagee of either party.
12. If, at any time, the Encumbrancee is not required to collect any information, in relation to the proposed transferee, to enable the Encumbrancee to comply with its obligations under Applicable Laws:
 - (a) it will include a statement to that effect on the Designated Website; and
 - (b) at any time and for any period during which the Designated Website provides that the Encumbrancee is not required by Applicable Laws to collect any information, clauses 10 and 11 of this Encumbrance will not apply.
13. The Encumbrancee consents to the registration of any mortgage, variation of mortgage, discharge of mortgage, memorandum of priority in relation to subsequent mortgages, easement, variation of easement and/or surrender of easement to be registered against the title of the Land (or any part of it) (provided that in all cases this Encumbrance must be prior ranking to all mortgages or charges). Production of this Encumbrance to the District Land Registrar will be conclusive evidence of such consent.
14. Subject to this clause 14, the Encumbrancer shall not subdivide the Land without the prior written consent of the Encumbrancee. The Encumbrancee will promptly upon request consent to, and do all things and sign all documents as may be reasonably required to give effect to such subdivision, provided that:

- a. the Encumbrancer has made arrangements acceptable to the Encumbrancee to prepay all Infrastructure Payments payable under this Encumbrance until (but excluding) the 1 July immediately following the issue of titles created by the subdivision; and
- b. the titles created upon subdivision will be subject to a first ranking encumbrance enforceable on registration and on terms consistent with this Encumbrance which provide for a fair and reasonable apportionment of the Infrastructure Payments payable under this Encumbrance across all the titles (including any residual land) resulting from the subdivision.

The Encumbrancer will not amalgamate the Land with any other Land without the prior written consent of the Encumbrancee.

15. An Encumbrancer shall only be liable to the Encumbrancee for the payment of instalments of the Infrastructure Payments or other amounts that accrue under this Encumbrance whilst that person is registered proprietor of the Land, (except to the extent of any liability of a former Encumbrancer under clause 10).
16. To the extent that any provision of this Encumbrance is or becomes invalid, void, illegal or unenforceable in any respect whatsoever, then:
 - (a) to the extent that provision relates to the obligation to pay any amount, it will be replaced with an obligation to pay the maximum amount that would be permitted by law to be recoverable in the relevant circumstances;
 - (b) if paragraph (a) does not apply, that provision shall be severed from this Encumbrance;
 - (c) such invalidity and severance shall not in any way affect or impair the validity, legality or enforceability of any other part or provision of this Encumbrance; and
 - (d) the parties shall enter into appropriate substitute provisions to give full and proper effect to the agreements and understandings in this Encumbrance.
17. The obligation to pay the Infrastructure Payments under this Encumbrance must be transferred by the Encumbrancer from time to time to any subsequent purchaser of the Land for nil consideration.
18. The Encumbrancer consents to the Encumbrancee (and any agent of the Encumbrancee) collecting and using Personal Information in order to register, maintain, collect amounts secured by, enforce or otherwise take action with respect to this Encumbrance including all such actions as are required to comply with Applicable Laws (the **Collection Purposes**). The Encumbrancee and its agent will manage all Personal Information collected pursuant to this clause 14 in accordance with its obligations under the Privacy Act. If the Encumbrancer does not provide any Personal Information where requested, this will comprise a breach of covenant under this Encumbrance, enforceable by the Encumbrancee. The Encumbrancee may request access to or correction of their Personal Information by contacting the Encumbrancee at P O Box 105321 as may be amended from time to time.
19. Where the Encumbrancee exercises its power of sale in respect of the Land, it will be entitled to recover (without prejudice to its statutory rights) the same amount as if the Infrastructure Payments were voluntarily prepaid in full on the date on which the proceeds of the power of sale are received.

Modification of Statutory Provisions

Land Transfer Act 2017

20. All rights, powers and remedies given to mortgagees under the Land Transfer Act 2017 shall apply to this Encumbrance.

Property Law Act 2007

21. All rights, powers and remedies given to mortgagees under the Property Law Act 2007 shall apply to this Encumbrance except:

- (a) section 204 liability of former mortgagor not extinguished (except as far as it relates to any liability of a former Encumbrancer under clause 10); and
- (b) the following provisions of Part 1 of Schedule 2 to the Property Law Act:

clauses 2 insurance, 3 application of insurance money, 5 property to be put and kept in good and substantial repair, 6 power to inspect, 7 buildings and improvements must not be removed, dismantled or structurally altered without consent, 10 mortgagee may remedy defaults of mortgagor, 11(1), (c), (d), (f), (g) and (h) power to call up amounts secured, 15(5) Unit titles, 16 farming provisions, 17 covenants implied in mortgages of leasehold estate or interest in land, and 20(1) mortgagor's liability for costs.

22. The Encumbrancee will have no obligation to discharge this Encumbrance under section 97 of the Property Law Act 2007 or otherwise unless and until all Infrastructure Payments, Additional Payments, costs of enforcement and all other amounts secured under this Encumbrance have been paid in full.

23. The Encumbrancer will not take any steps whatsoever to:

- (a) redeem or discharge this Encumbrance other than in accordance with its terms (including without limitation pursuant to section 97 or section 115 of the Property Law Act 2007); or
- (b) have this Encumbrance revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Land (including without limitation pursuant to section 317 of the Property Law Act 2007),

and the Encumbrancer will not support any such steps being taken by a third party.

24. In this Encumbrance, a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

25. To the extent permitted by law, the Encumbrancee may provide disclosures or other information it is required to provide to the Encumbrancers generally by way of the Designated Website.

26. The Encumbrancee may, at any time and in its sole discretion assign and/or transfer any part of its rights and/or obligations to any person (including, without limitation, by way of security).

27. The remedies of damages and cancellation as against any assignee under or in connection with the assignment by way of security of the Encumbrancee's rights under the Encumbrance are hereby expressly excluded for the purpose of section 54 of the Contract and Commercial Law Act 2017.

28. For the purposes of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017, where any provision of this Encumbrance confers a benefit on any person other than either party (a **Recipient**), such provision may be relied upon and enforced by each such Recipient. Any amendment made to this Encumbrance in accordance with its terms will, pursuant to section 15 of the Contract and Commercial Law Act 2017, be binding on each Recipient whether or not that Recipient has consented to the amendment.

Annexure Schedule

Annexure Schedule for Infrastructure Payments	
Year commencing:	<i>New Zealand Dollars p.a. per Lot</i>
[date/ year]	[\$xx]

IPS Ref: xxxx