



View Instrument Details

Instrument No	13054156.17
Status	Registered
Lodged By	Plumtree, Kim Sheree
Date & Time Lodged	31 Oct 2024 08:06
Instrument Type	Encumbrance

Affected Records of Title	Land District
1169076	North Auckland
1169077	North Auckland
1176472	North Auckland
1176473	North Auckland
1176474	North Auckland
1176475	North Auckland
1176476	North Auckland
1176477	North Auckland
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1176482	North Auckland
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1176496	North Auckland
1176497	North Auckland
1176498	North Auckland
1176499	North Auckland
1176500	North Auckland
1176501	North Auckland

Annexure Schedule	Contains 11 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 ☒

Encumbrancer Certifications

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 Gregory Neale Allen as Encumbrancer Representative on 03/12/2024 11:55 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 Gregory Neale Allen as Encumbrancee Representative on 03/12/2024 11:55 AM

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

Form 18

Encumbrance Instrument

(Section 100 Land Transfer Act 2017)

**Record of Title
(unique identifier)****All/part****Area/Description of part**

Refer Annexure Schedule A	All	
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Encumbrancer**FLETCHER RESIDENTIAL LIMITED****Encumbrancee****FLETCHER RESIDENTIAL LIMITED****Estate or interest to be encumbered***Insert e.g. fee simple; leasehold in lease no. 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 \$10.00 and such other sums of money as are payable by the Encumbrancer to the Encumbrancee pursuant to this Encumbrance Instrument.

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.

Annexure Schedule 1

Encumbrance Instrument

Terms
Continue in additional Annexure Schedule(s), if required

- | | |
|---|--|
| 1 | Length of term – See Annexure Schedule 2 |
| 2 | Payment date(s) – See Annexure Schedule 2 |
| 3 | Rate(s) of interest – Nil |
| 4 | Event(s) in which the sum, annuity or rent charge becomes payable – See Annexure Schedule 2 |
| 5 | Event(s) in which the sum, annuity or rent charge ceases to be payable – See Annexure Schedule 2 |

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

See Annexure Schedule 2

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

See Annexure Schedule 2

Annexure Schedule 2

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*Insert instrument type***Encumbrance Instrument***Continue in additional Annexure Schedule(s), if required***BACKGROUND**

- A. The Encumbrancee is undertaking the residential subdivision and development of the Land.
- B. The Encumbrancee has completed the subdivision of part of the Land into the Lots.
- C. For valuable consideration the Encumbrancer has agreed to encumber the Lots for the benefit of the Encumbrancee, with the security specified on the front page of this Encumbrance Instrument, and to covenant with the Encumbrancee to secure compliance by the Encumbrancer with certain provisions in this instrument.

ENCUMBRANCE**1. DEFINITIONS AND INTERPRETATION**

1.1 Definitions: In this instrument, unless the context indicates otherwise:

Activities means any activities associated with the:

- (a) residential development to be carried out on the Land; and
 - (b) the development and use of any part of the Land for a Village,
- including all earthworks, civil works, building works and landscaping;

Approvals includes any consent, approval, authorisation, exemption, licence, order or permit from any Authority required to construct, operate and maintain the Activities and includes without limitation any subdivision, land use, discharge or other resource consent under the Resource Management Act 1991;

Authority means any corporation, local or regional body (including the Auckland Council), government or other authority having jurisdiction over the Lots or the Land (or any part thereof);

Building Consent means a building consent for any building or structure to be built by the Encumbrancee on the Land;

Covenants means the covenants set out in clause 4;

Encumbrancee means Fletcher Residential Limited and includes its successors and its, or its successors', officers, agents, employees, contractors and invitees (but excludes any third parties registered as the owner of any residential lot, including the Lots, subdivided from the Land);

Encumbrancer means the persons named as the Encumbrancer in this Encumbrance Instrument and includes the persons for the time being registered as the owners of the Lots (or any part thereof) and their successors in title;

Environmental Effects means any effects arising from the Activities including noise, vibrations, dust, the effects of transportation (including noise and

Annexure Schedule 2

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*Insert instrument type***Encumbrance Instrument**

vibration) on access ways and roads, and other incidental effects that may have consequences on the Lots and beyond the boundaries of the Land;

Land means the land contained, or formerly contained, in records of title 1071163, NA988/64, 903595, 903596 and 525638, and any other land adjoining, or in close vicinity to, that land that is acquired by the Encumbrancee;

Lots means any one or more of the residential lots set out in Annexure Schedule A;

Planning Proposal includes any application for resource consent, plan change or a variation of any nature under or to the relevant Authority's District Plan or Proposed District Plan;

Term means the term specified in clause 3 of this instrument;

Village means an independent living retirement village to be operated by Vivid Living Limited; and

Working Day has the meaning given to that term in the Property Law Act 2007.

1.2 Interpretation: In this Encumbrance Instrument, unless the context indicates otherwise:

- (a) **Defined Expressions:** expressions defined in the main body of this Encumbrance Instrument have the defined meaning throughout this Encumbrance Instrument, including the background;
- (b) **Headings:** clause and other headings are for ease of reference only and will not affect this Encumbrance Instrument's interpretation;
- (c) **Parties:** references to any **party** include that party's executors, administrators, successors and permitted assigns;
- (d) **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) **Plural and Singular:** references to the singular include the plural and vice versa;
- (f) **Clauses/Schedules/Attachments:** references to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this Encumbrance Instrument. Each such schedule and attachment forms part of this Encumbrance Instrument;
- (g) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order,

Annexure Schedule 2

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*Insert instrument type***Encumbrance Instrument**

statutory instrument, determination or subordinate legislation made under it;

- (h) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- (i) **Inclusive Expressions:** the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**.

2. OPERATION

The Encumbrancer encumbers the Lots for the benefit of the Encumbrancee for the Term with an annual rent charge of \$10 inclusive of goods and services tax (if any) to be paid by the 31st day of December in each and every year throughout the Term. If, on the due date for payment, the Encumbrancer has fully complied with the obligations in this instrument, then the rent charge payable on that date will not be required to be paid.

3. ENCUMBRANCE TERMS

3.1 Term: The term of this instrument commences on the date of registration of this instrument and ends on the date all the Activities are completed.

3.2 Binding on successors, lessees and assigns:

- (a) This instrument will be binding on all transferees, lessees, mortgagees, charge holders and their respective successors in title and assigns of any estate or interest in any part of the Lots.
- (b) Each Encumbrancer will only be liable for breaches actually committed by that Encumbrancer itself, and not by any successor in title.

3.3 Statutory Provisions: This instrument shall not entitle the Encumbrancee to any of the powers and remedies given to encumbrancees under the Land Transfer Act 2017 or entitle the Encumbrancee to any of the powers and remedies given to mortgagees under the Land Transfer Act 2017 or the Property Law Act 2007, except that the Encumbrancee shall be entitled to the benefit of Section 208 of the Land Transfer Act 2017 and to Sections 23, 203, 204, 205, 289, 301 and 302 of the Property Law Act 2007 or their equivalent sections in any successor, consolidated or amendment Acts.

3.4 Discharge:

- (a) This rent charge shall immediately determine and the Encumbrancee will sign all documentation necessary to discharge this Encumbrance Instrument upon the Encumbrancer requesting such discharge from the Encumbrancee in writing at the expiry of the Term.
- (b) The Encumbrancer irrevocably covenants with the Encumbrancee for the Term that:

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*Insert instrument type***Encumbrance Instrument**

- (i) the Encumbrancee will have no obligation to discharge this instrument under section 97 of the Property Law Act 2007 or otherwise;
- (ii) the Encumbrancer will not take any steps whatsoever, including, without limitation, pursuant to section 97 of the Property Law Act 2007 or section 115 of the Property Law Act 2007 to redeem or discharge this instrument, or pursuant to section 317 of the Property Law Act 2007 to have this instrument revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Lots;
- (iii) the Encumbrancer will not support any such steps being taken by a third party; and
- (iv) the Encumbrancer surrenders and waives any right, entitlement or ability that the Encumbrancer may have to have this instrument discharged, redeemed, revoked, cancelled, surrendered, discharged, lapsed or otherwise removed from the title to the Lots except as provided for in clause 3.4(a).

3.5 Consent to Other Dealings: For the purposes of the Property Law Act 2007 and the Land Transfer Act 2017, the Encumbrancee consents to the following dealings affecting the Lots without having to execute a consent instrument:

- (a) creation, variation or surrender of an easement or covenant;
- (b) variation of a mortgage instrument or priority of mortgages;
- (c) registration of a lease, lease variation instrument or surrender of a lease;
- (d) deposit of subdivision plan;
- (e) transfer of a Lot; and
- (f) any dealing that is expressed as subject to this instrument,

provided that such consent will only extend to any of the above instruments where registration of the same will not have the effect of discharging, reducing or adversely affecting the rights and interests of the Encumbrancee under this instrument in relation to the Lots.

4. OBLIGATIONS OF THE ENCUMBRANCER

4.1 No Objections: The Encumbrancee intends to, or to transfer land to and/or otherwise authorise or permit other persons (including Vivid Living Limited) to carry out the Activities on the Land and the Encumbrancer acknowledges that the carrying out of the Activities in compliance with any Approvals and/or relevant plan may cause Environmental Effects. The Encumbrancer covenants with the Encumbrancee that during the Term the Encumbrancer, either personally or through any agent or employee, will not:

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*Insert instrument type***Encumbrance Instrument**

- (a) at any time directly or indirectly, lodge or support in any way any objection or submission (including, without limitation, taking part in any hearing, appeal or reference) against:
 - (i) any Planning Proposal to rezone, subdivide, develop or use the Land and the associated Environmental Effects; and
 - (ii) any application for a Building Consent,
 for the purposes of the Activities;
- (b) make any demand for damages, costs or expenses, bring any legal action in nuisance or any other action in law or allege any liability arising out of or from:
 - (i) any Planning Proposal to rezone, subdivide, develop or use the Land for the Activities;
 - (ii) any application for a Building Consent;
 - (iii) the Activities, and the Environmental Effects generated by the Activities, provided that the Activities are carried out in compliance with any Approvals and all relevant laws;
- (c) do or permit to be done any act, matter or thing intended to restrict or inhibit, or which has the effect of restricting or inhibiting, any Activities provided the Activities are being carried out in compliance with any Approvals and all relevant laws; and
- (d) aid, abet, counsel or procure any other person or entity to exercise any of the actions restricted in clause 4.1(a) to 4.1(c) (inclusive) above.

4.2 Written Approval: The Encumbrancer will provide written approval to any Planning Proposal or application for a Building Consent by the Encumbrancee for the purposes of the Activities (in a form reasonably required by the Encumbrancee) within 15 Working Days of the date of any request by the Encumbrancee for such written approval.

4.3 Lessees: If the Encumbrancer leases, rents, licences or otherwise parts with possession of the Lots, it will obtain written confirmation from any lessee, tenant, licensee or occupier that it agrees to be bound by the terms of this instrument as if it were the Encumbrancer.

5. BREACH OF COVENANTS

The Encumbrancer:

- 5.1 Acknowledgement:** acknowledges and agrees that damages are not an adequate remedy in the event of a breach by the Encumbrancer of the Covenants; and

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*Insert instrument type***Encumbrance Instrument**

5.2 Indemnity: will indemnify and keep indemnified the Encumbrancee for any damage or loss the Encumbrancee suffers as a result of any breach of the Covenants by the Encumbrancer.

6. PRIVACY / NO WAIVER

6.1 Privacy: The Encumbrancer obligations under clause 4.1 are intended to be for the benefit of, and enforceable by, Vivid Living Limited for the purposes of the Contract and Commercial Law Act 2017, but only to the extent the relevant Activities relate to the development and use of any part of the Land for a Village, Where applicable to give effect to the intent of this clause 6.1, references to the Encumbrancee in this instrument will also be deemed to be a reference to Vivid Living Limited.

6.2 No Waiver: No failure, delay or indulgence by the Encumbrancee in exercising any power or right conferred on it by this instrument will operate as a waiver of such power or right. A waiver by the Encumbrancee of any breach or non-observance of any obligations and covenants in this instrument will not be, nor be deemed to be, a waiver of any other or subsequent breach or non-observance.

7. DISPUTE RESOLUTION

7.1 Negotiation: If any dispute arises between the parties concerning the interpretation of this instrument or anything contained in or arising out of the Covenants, the parties will try in good faith to settle the matter by negotiation or mediation.

7.2 Mediation: If the parties are unable to resolve the dispute within 10 Working Days of either party giving notice to the other that the party is invoking this dispute resolution mechanism, then the dispute will be referred to mediation.

7.3 Referral to Arbitrator If the parties are unable to resolve the dispute within 20 Working Days of either party giving notice to the other that the party is invoking this dispute resolution mechanism, the dispute will be referred to a sole arbitrator.

7.4 Arbitrator: The parties must try to agree on the arbitrator. If they cannot agree, the President for the time being of the New Zealand Law Society (or his or her nominee) will, on either party's application, nominate the arbitrator.

7.5 Award Final: The arbitration will be governed by the Arbitration Act 1996 and the arbitral award will be final and binding on the parties.

8. NOTICES

8.1 Method of Delivery: Any notice or document required or authorised to be given under this instrument may be delivered or sent as follows:

- (a) in any manner mentioned in sections 354-361 of the Property Law Act 2007; or

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*Insert instrument type***Encumbrance Instrument**

- (b) by registered post addressed to the last known postal address of the party intended to be served.

8.2 Deemed Delivery: Any notice or other document will be treated as given or served and received by the other party:

- (a) when delivered by hand to that other party; or
- (b) three days after being posted by registered post with postage prepaid to the last known postal address of the party intended to be served.

8.3 Signing: Any notice or document to be served or given may be signed by any attorney, officer, employee or solicitor for the party serving or giving the notice or by any other person authorised by that party.

9. PARTIAL INVALIDITY

If any provision of this instrument is or becomes invalid or unenforceable, that provision will be deemed deleted from this instrument. The invalidity or unenforceability of that provision will not affect the other provisions in this instrument, all of which will remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision.

10. COSTS

10.1 Registration of Discharge: The parties will each pay their own legal costs and disbursements directly or indirectly attributable to the preparation, execution and registration of any discharge this instrument.

10.2 Enforcement: The Encumbrancer will pay the Encumbrancee's legal costs and disbursements directly or indirectly attributable to the enforcement of this instrument and the Covenants.

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*Insert instrument type***Encumbrance Instrument****ANNEXURE SCHEDULE A – LOTS**

LOT	DP	RECORD OF TITLE
2	600718	1169076
3	600718	1169077
4	600718	1176472
5	600718	1176473
6	600718	1176474
7	600718	1176475
8	600718	1176476
9	600718	1176477
10	600718	1176478
11	600718	1176479
12	600718	1176480
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14	600718	1176482
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20	600718	1176488
21	600718	1176489
22	600718	1176490
23	600718	1176491
24	600718	1176492
25	600718	1176493
26	600718	1176494
27	600718	1176495
28	600718	1176496

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LOT	DP	RECORD OF TITLE
29	600718	1176497
30	600718	1176498
31	600718	1176499
32	600718	1176500
33	600718	1176501