



# View Instrument Details

**Instrument No** 9032630.1  
**Status** Registered  
**Date & Time Lodged** 28 September 2012 09:38  
**Lodged By** Donaldson, Sandra-Li Shirley  
**Instrument Type** Encumbrance



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**Affected Computer Registers**    **Land District**  
WN31D/969                                  Wellington

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**Annexure Schedule:** Contains 4 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 Gregory Neale Allen as Encumbrancer Representative on 25/09/2012 03:33 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 Clare Stanley as Encumbrancee Representative on 28/09/2012 09:26 AM

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

<b>Encumbrancer</b>	<b>Fletcher Concrete and Infrastructure Limited</b>
<b>Encumbrancee</b>	<b>Hutt City Council</b>
<b>Nature or security</b>	Annual rent charge of \$1.00 per annum
<b>Length of term</b>	999 years
<b>Payment date(s)</b>	1 <sup>st</sup> of January of each year, if demanded
<b>Rate(s) of interest</b>	
<b>Event(s) in which the sum, annuity, or rent charge becomes payable:</b>	

If demanded or if terms of encumbrance breached by Encumbrancer

## **ANNEXURE SCHEDULE**

### **1 Parties**

- 1.1 Fletcher Concrete and Infrastructure Limited ("the Encumbrancer").
- 1.2 **Hutt City Council**, a body corporate pursuant to the Local Government Act 2002 ("the Encumbrancee").

### **2 Background**

- 2.1 The Encumbrancer applied to the Encumbrancee for a resource consent to undertake work on the land at 541-560 Hebden Crescent, Kelson Lower Hutt being:
  - (1) that parcel of land containing 19.7170 hectares more or less being Part Lot 1 on Deposited Plan 22561 and being all the land comprised and described in Certificate of Title WN31D/969; and
  - (2) that parcel of land containing 52.7260 hectares more or less being Lot 1 on Deposited Plan 60552 and being all the land comprised and described in Certificate of Title WN31B/39,("the Land").
- 2.2 Resource Consent was applied for on 26 September 2011 under consent number RM110304 ("the resource consent").
- 2.3 As a condition of the granting of resource consent the Encumbrancer has agreed to enter into and execute this Memorandum for the purpose of formalising and legalising the

protection of vegetation in a 7 metre wide area adjoining the northern boundary of Certificate of Title WN31D/969 [shown on Covenant Plan 452503 marked "Area A"] ("Vegetation Area") in order that no vegetation may be removed or destroyed from the Vegetation Area, except to control weeds.

**3 Agreement**

- 3.1 The Encumbrancer enters into this Memorandum of Encumbrance for the benefit of the Encumbrancee and covenants with the Encumbrancee as set out in clause 4 below.

**4 Covenants and Conditions**

- 4.1 The Encumbrancer covenants with the Encumbrancee to protect the Vegetation Area [marked " Area A " on Covenant Plan 452503] to the extent that no vegetation will be removed or destroyed from the Vegetation Area, except to control weeds.
- 4.2 The Encumbrancer covenants to otherwise comply with the terms of the resource consent.
- 4.3 The Encumbrancer encumbers the land for the benefit of the Encumbrancee with an annual rent charge of \$1.00 to be paid to the Encumbrancee by the first day of January in each year if demanded by that date. The first payment if so demanded is due on or before the 31<sup>st</sup> day of January next succeeding the date of this Memorandum.
- 4.4 No delay or failure by the Encumbrancee to enforce performance of any of the covenants set out in this Encumbrance and no indulgence granted to the Encumbrancer by the Encumbrancee shall prejudice the rights of the Encumbrancee to enforce any of their covenants or provisions of this Memorandum.
- 4.5 This Memorandum shall be fully binding on all transferees, assignees, successors in title, owners and occupiers of any estate or interest in the Land for the time being.
- 4.6 Section 203 Property Law Act 2007 applies to this Memorandum of Encumbrance as if it were a mortgage, provided however that a prior owner may be personally liable for a breach of a covenant of this Memorandum that occurred while such person was the owner of the Land notwithstanding that the owner for the time being of the Land is also liable for a breach of a covenant of this Memorandum.
- 4.7 Subject to the provisions of this Memorandum, the Encumbrancee will be entitled to all of the powers and remedies given to any party entitled to the benefit of an encumbrance under the Land Transfer Act 1952 and the Property Law Act 2007, but excluding the powers of sale afforded to a mortgagee.

- 4.8 The Encumbrancer shall permit the Encumbrancee (and its employees, contractors and agents) to enter onto the Land at reasonable times to ensure compliance with the covenants in this Memorandum.
- 4.9 The Encumbrancer shall pay the costs of the Encumbrancee relating to the preparation, registration and enforcement of this Memorandum.
- 4.10 The Encumbrancer shall and does indemnify and keep indemnified the Encumbrancee from and against all actions, suits, claims and demands which are made in consequence of or upon the grounds of the exercise of the Encumbrancee of its rights or remedies under this Memorandum.
- 4.11 If the Encumbrancer fails to comply with the covenants of this Memorandum, the Encumbrancee may at its sole discretion and at the cost of the Encumbrancer do all or some of the following:
  - 4.11.1 Require the Encumbrancer to pay the rent charge;
  - 4.11.2 Bring an action against the Encumbrancer for specific performance of the covenants of this Memorandum;
  - 4.11.3 Prevent any person from approaching, using or occupying the Land;
  - 4.11.4 Bring a prosecution under the Resource Management Act 1991, or any Act passed in substitution thereof;
  - 4.11.5 Pursue any other remedies available to it.
- 4.12 The Encumbrancer shall be entitled to a discharge of this Memorandum of Encumbrance if the covenants set out above become obsolete.
- 4.13 In this Memorandum, unless the context otherwise requires:
  - 4.13.1 The expression "the Encumbrancer" shall include and bind the person executing these presents and its transferees, assignees, successors in title, and owners and occupiers for the time being.
  - 4.13.2 Words importing one gender shall include the other as the case may require.
  - 4.13.3 Words importing the singular or plural shall include the plural or singular number respectively.

