



**Ministry of Business,
Innovation & Employment**

**Credit Contracts and Consumer Finance (Crown Infrastructure Partners
Limited - Milldale Development) Declaration 2020**

This declaration is issued pursuant to section 137B(1)(b) of the Credit Contracts and Consumer Finance Act 2003 and declares that certain encumbrances relating to funding for the Milldale housing development are not credit contracts.

Issued at Wellington this 9th day of June 2020.

A handwritten signature in blue ink, appearing to read 'Kris Faafoi', written over the printed name.

Hon Kris Faafoi
Minister of Commerce and Consumer Affairs

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Declaration

- 1 Title**
This declaration is the Credit Contracts and Consumer Finance (Crown Infrastructure Partners Limited Milldale Development) Declaration 2020.
- 2 Commencement**
This declaration comes into force on 15 June 2020.
- 3 Application**
This declaration applies to the CIP SPV.
- 4 Interpretation**
In this declaration, unless the context requires otherwise —
Act means the Credit Contracts and Consumer Finance Act 2003.
CIP means —
(a) Crown Infrastructure Partners Limited (NZBN 9429031820400); and
(b) includes any Crown-owned company or other entity established by the Crown to succeed the business of Crown Infrastructure Partners Limited.
CIP SPV means any one or combination of —
(a) Milldale Infrastructure LP (NZBN 9429047020160);

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(b) Milldale Infrastructure GP Limited (NZBN 9429047008717).

Bulk Infrastructure means water and roading infrastructure.

Developer means Fulton Hogan Land Development Limited (NZBN 9429038085802).

Final Encumbrance means an encumbrance registered against the title to a block of land by the Developer, with the CIP SPV as the encumbrancee, to create the obligation to pay and secure the payment of Infrastructure Payments by the registered proprietor of that block of land, in connection with a Milldale Development transaction entered into between the Developer and the CIP SPV.

Infrastructure Payment means payments secured against a block of land by a Final Encumbrance, under which the registered proprietor of that land from time to time is required to make specified periodic payments to a CIP SPV for a specified term.

Milldale Development means the Milldale development located at Wainui, Auckland, to be undertaken by the Developer, initially comprising the staged development of approximately 264 hectares located at Wainui, between Silverdale and Dairy Flat.

5 Declaration that Final Encumbrances are not credit contracts

- (1) The Final Encumbrance is not a credit contract for the purposes of the Act.
- (2) The declaration in this clause is subject to clause 6.

6 Further description of Declaration

- (1) For the purposes of clause 5 a Final Encumbrance is not a credit contract if—
 - (a) a CIP SPV makes advances to the Developer for the predominant purposes of undertaking the construction of Bulk Infrastructure for the Milldale Development;
 - (b) landowners other than the Developer have no ability to re-draw any Infrastructure Payments once paid;
 - (c) no interest charges or other credit fees (excluding default and administration costs or charges as set out below) are payable by landowners in addition to the Infrastructure Payments as set out in the Final Encumbrances;
 - (d) default charges or fees payable by the landowners are no greater than those payable to the Auckland Council on late payment of general rates;
 - (e) the collection policy and remissions policy are at least as beneficial to landowners as those applied to landowners by the Auckland Council on late payment of general rates;

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- (f) the amount payable by landowners on full prepayment of the Final Encumbrance is no greater than the sum of all Infrastructure Payments, as set out in the Final Encumbrance plus administration costs;
- (g) Final Encumbrances are registered against the land and provide a clear description of the:
 - (i) term for which they apply;
 - (ii) amount payable in each year of the term;
 - (iii) periodic dates of payment (to the extent known); and
 - (iv) website which includes further information in respect of the Final Encumbrance;
- (h) CIP or a CIP SPV maintains a website that provides the following information:
 - (i) copies of the standard terms of the Final Encumbrance(s);
 - (ii) details of the periodic payments to be made by landowners;
 - (iii) the consequences of default;
 - (iv) default fees that may be payable;
 - (v) the process to be followed if a landowner wishes to make a full prepayment of an Infrastructure Payment;
 - (vi) details of the collection policy and remissions policy; and
 - (vii) details of who to contact with any questions relating to a Final Encumbrance.

Explanatory Note

This note is for explanatory purposes only.

This declaration provides that a Final Encumbrance which forms part of the funding model for the Bulk Infrastructure for CIP's Milldale Development is not a credit contract for the purposes of the Act.

CIP is a non-listed company in which the Crown is sole shareholder. The Government has tasked CIP with assisting in the facilitation, funding and financing of bulk infrastructure which supports new housing developments, including the Milldale Development which will deliver

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over 3,800 properties. As part of this work, CIP has designed a bulk infrastructure finance model under which money is loaned to the Developer by a CIP SPV. The financing provided is repaid over a specified term by the Developer and, as the sections in the Milldale Development are progressively sold down, by the owners of the properties.

To initially secure payment of the Infrastructure Payments by the Developer, a mortgage is placed over all titles that are to be developed by the Developer. This developer mortgage will secure repayment of a CIP SPV's development funding by the Developer, until released and replaced with Final Encumbrances obliging the residential owner to make the Infrastructure Payments.

Ministerial statement of reasons

The following statement of reasons is published for the purposes of section 137B of the Credit Contracts and Consumer Finance Act 2003.

The Minister of Commerce and Consumer Affairs, being satisfied as to the matters set out in section 137B(2)(a) of the Credit Contracts and Consumer Finance Act 2003 (the Act), having had regard to the economic substance of the relevant arrangement under section 137B(2)(b) of the Act and having consulted the relevant parties under section 137B(2)(c) of the Act, considers the declaration made section 137B(1)(b) of the Act to be appropriate because—

- there is uncertainty about whether the Final Encumbrances used in the Milldale Development used to secure payments of the Bulk Infrastructure are or are not credit contracts; and
- a declaration would give certainty and confidence that the Act does not apply to the Final Encumbrances and that compliance with the responsible lending obligations is not applicable; and
- declaring the Final Encumbrances not to be credit contracts will not cause significant detriment to consumers because –
 - it is unlikely that consumers would enter into the arrangements without understanding the terms and conditions and obligations:
 - the purpose of the Final Encumbrances is limited to securing payment of the Bulk Infrastructure and will likely meet the requirements and objectives of the consumer without need for further inquiry:
 - the risk of financial hardship is low, and lending institutions providing finance to borrowers are likely to consider affordability with reference to the consumer's fixed financial commitments, including the Infrastructure Payments; and
- the declaration is not inconsistent with the purposes of the Act to protect the interests of consumers, to promote confident and informed participation of consumers in markets for credit, to promote fair, efficient, and transparent markets for credit, and to provide remedies for consumers in relation to oppressive conduct.