

Form 26**Covenant Instrument to note land covenant**

(Section 116(1)(a) & (b) Land Transfer Act 2017)

Covenantor**CARRUS LIMITED****Covantee****CARRUS LIMITED****Grant of Covenant**

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covantee** (and, if so stated, in gross) the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

Schedule A*Continue in additional Annexure Schedule, if required*

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land covenant	Lots 1339-1373 (incl), 1408 & 1410-1418 (incl) on DP 571061	Lots 1339-1373 (incl), 1408 & 1410-1418 (incl) DP 571061 (RTs 1033594-1033638 (incl))	Lots 1339-1373 (incl), 1408 & 1410-1418 (incl) DP 571061 (RTs 1033594-1033638 (incl))

Covenant rights and powers (including terms, covenants and conditions)*Delete phrases in [] and insert memorandum number as required.**Continue in additional Annexure Schedule if required.*

The provisions applying to the specified covenants are those set out in:
 [~~Memorandum number~~], registered under section 209 of the Land Transfer Act 2017].
 [Annexure Schedule].

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ANNEXURE SCHEDULE**BACKGROUND**

- A.** The Covenantor is registered as owner of the estate described in Schedule A as the "Burdened Land".
- B.** The Covenantee is registered as owner of the estate described in Schedule A as the "Benefited Land".
- C.** The Covenantor has agreed with the Covenantee to accept restrictions upon the Burdened Land for the benefit of the Benefited Land.

COVENANTS

The Covenantor for itself and successors in title to the Burdened Land hereby covenants and agrees with the Covenantee and its successors in title to the Benefited Land, that the Covenantor will henceforth and at all times hereafter observe and perform the stipulations and restrictions contained in this Annexure Schedule to the end and intent that each of the stipulations and restrictions shall in the matter and to the extent prescribed, enure for the benefit of, and be appurtenant to, the whole of the Benefited Land and every part thereof.

This instrument shall be registered against the estate described in Schedule A as the Burdened Land by the Covenantor and shall run forever in favour of the registered owner of the Benefited Land or any part thereof from time to time PROVIDED ALWAYS that the owners of the Burdened Land shall as regards to the stipulations and restrictions be personally liable only in respect to breaches thereto which shall occur while they are registered owners of the Burdened Land in respect of which any such breach shall occur (or is alleged to have occurred).

All Covenants set forth in this instrument shall remain in force until the earlier of 31 December 2040 and are enforceable by Carrus Limited ("Aotea") at their sole discretion.

DEFINITIONS AND INTERPRETATION

- 1. Definitions:** In these Covenants:
 - 1.1 "**Ancillary Building**" or "**Ancillary Buildings**" means any non-habitable building or structure associated with the Buildings on the Lot which requires Local Authority Consent.
 - 1.2 "**Aotea**" means Carrus Limited or any other person or persons nominated by Carrus Limited. If Aotea has been dissolved or wound up or otherwise gone out of existence, "approval by Aotea" will mean approval by any party appointed and/or nominated by Aotea for this purpose.
 - 1.3 "**Aotea Development**" means the land being developed and/or subdivided by Carrus Limited known as "Aotea" in Porirua, Wellington.
 - 1.4 "**Benefited Land**" means all the land contained in Records of Title 1033594-1033638 (inclusive).
 - 1.5 "**Building**" or "**Buildings**" means any residential dwelling-house or primary building on the Lot.
 - 1.6 "**Burdened Land**" means all the land contained in Records of Title 1033594-1033638 (inclusive).
 - 1.7 "**Garage**" means any enclosed garage on the Lot.
 - 1.8 "**Local Authority**" means Porirua City Council or any other entity appointed in its place.

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- 1.9 **"Local Authority Owned Land"** means any road or reserve owned or controlled by the Local Authority in the Aotea Development.
- 1.10 **"Lot"** or **"Lots"** means the relevant Lot contained within the Burdened Land or any part of it. For avoidance of doubt, any reference to "Lot" in these Covenants includes a reference to a Lot created from further subdivision should it be permitted.
- 1.11 **"Plans and Specifications"** means plans, drawings, specifications and other documents from which the Buildings, Ancillary Buildings, Garages and Landscaping are to be constructed (including details of materials, colours, location and design).
- 1.12 **"Purchaser"** means the registered owner of the Lot in Stage 18(b) and includes the Purchaser's agents, employees, contractors, subcontractors, tenants, licensees, and other invitees.
- 1.13 **"Stage 18(b)"** means all the land contained in Lot 200 DP 564485 (RT 1006036) and Lot 273 DP 498135 (RT 1006037), Wellington Registry.
- 1.14 **"Tiny House"** means any secondary building or other object (whether mobile, temporary or permanent) used for residential purposes.

2. Interpretation

- 2.1 In these Covenants headings are for reference purposes only and words and expressions denoting the singular shall include the plural.

FENCING COVENANTS

1. Aotea shall not be liable to pay for or contribute towards the cost of erection or maintenance of any fence between any Lot in Stage 18(b) of the Aotea Development and any adjoining land owned by Aotea but this condition shall not enure for the benefit of any subsequent Purchaser of such adjoining land or any part of that adjoining land.
2. The Purchaser agrees to meet the total cost of construction of any fence to be constructed on the boundary of adjoining land if that land is owned by the Local Authority and the Purchaser will not seek contribution from Aotea or the Local Authority.

LAND & BUILDING COVENANTS

1. The Purchaser acknowledges that the Lot is part of the Aotea Development which is intended to be established as a modern and well-designed subdivision. In accordance with this intention, Aotea will exercise supervision and control in relation to the nature and type of construction permitted in the Aotea Development and the standard of surroundings being maintained.
2. The Purchaser will be bound by these Covenants, although Aotea may, in writing, at the sole and unfettered discretion of Aotea, waive part, any or all of these Covenants, provided that Aotea decides in its sole discretion that the amendments or additions are generally in accordance with the aims of the Aotea Development on such terms and conditions that Aotea may require.
3. In any circumstances where Aotea's approval is required in respect of any covenant, then any approval shall be at Aotea's sole discretion and in no circumstance shall Aotea be required to give any reason for its decision.

Any written approval provided by Aotea is for subdivision design standard control purposes only and implies no warranty as to the product, design, quality or suitability of the Buildings, Ancillary Buildings, Garages and/or Landscaping on the Lot in any manner whatsoever.

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- 4.** The Purchaser covenants:
- Building Requirements*
- 4.1 To construct only one new Building and if required, one associated new Ancillary Building on the Lot.
- 4.2 To construct a Building with a floor area of not less than 130 square metres (with the floor area measurement to be exclusive of any Garage, decking, breezeways, entry porches, verandas or roof overhang).
- 4.3 To construct a minimum of one Garage on the Lot which is to be attached to the Building. The Garage must be constructed in the same architectural style with the same cladding materials as the Building.
- 4.4 To construct any Ancillary Building so that:
- (a) it does not extend beyond the front building alignment of the Building; and
 - (b) it is constructed in the same architectural style with the same cladding materials as the Building.
- 4.5 To locate:
- (a) all garden sheds;
 - (b) any attachments (including but not limited to television antenna), around or on the Building, Ancillary Building and Garages; and
 - (c) all washing lines, rubbish and garden bins, gas systems/bottles and airconditioning units, so they are not highly visible from any road and/or neighbouring properties.
- 4.6 All solar panels must be approved in writing by Aotea prior to installation.
- 4.7 To construct in a proper and tradesmanlike manner a driveway and vehicle access in a permanent continuous surfacing of concrete, concrete block, brick paving or sealing.
- Plans and Specifications*
- 4.8 Prior to the Purchaser applying for a Building Consent and/or commencing any works on the Lot, (including preparatory work), to have all Plans and Specifications for Buildings, Ancillary Buildings, Garages and any retaining structures approved in writing by Aotea.
- In determining whether or not to approve the Plans and Specifications, Aotea will take into account the appearance of the proposed Buildings, Ancillary Buildings, Garages and retaining walls and the appearance of other buildings in the Aotea Development. Aotea will pay particular attention to those elevations viewed from any road. The intention is that there should be a range of styles, designs and appearance of buildings within the Aotea Development.
- 4.9 To construct any Buildings, Ancillary Buildings, Garages and retaining walls in accordance with the Plans and Specifications approved in writing by Aotea. Any modification or variation to the approved Plans and Specifications will require further written approval by Aotea prior to such work commencing.
- Any approval of the Plans and Specifications shall be at Aotea's sole discretion and in no circumstance shall Aotea be required to give any reason for its decision.

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- 4.10 To construct any Buildings, Ancillary Buildings and Garages so that:
- (a) a minimum of 60% of the non-glazed exterior cladding of any Building consists of any of the following materials: kiln fired or concrete brick, plaster or cement texture finish, stone, linea or timber weatherboard (with a maximum erected width not exceeding 150mm), or any other exterior cladding material for which the Purchaser has first obtained Aotea's consent in writing;
 - (b) all exterior surfaces (which are not pre-colour coated or finished) are painted, or stained prior to the Building being occupied. Where a Building has a basement, exposed subfloors, framing and/or decks, the exposed areas shall be clad in permanent materials in conformity with the main parts of the residence;
 - (c) at least one wall on the Buildings and Garages predominantly facing the road must include windows or features;
 - (d) the finished permanent colour(s) of exterior cladding and materials are subdued and non-vibrant colours;
 - (e) there are no reflective surfaces on any exterior cladding or roofing on the Buildings and any other Ancillary Buildings or garden sheds. In order not to create a glare offensive to adjoining property owners, not to use any metal clad roofing that has not been factory pre-painted or use any roofing material which exceeds 49% light reflective value (LVR):
 - (f) all colours of the Ancillary Buildings, Garages and garden sheds are in keeping with the main Buildings.

Construction

- 4.11 To ensure all agents, employees, contractors, sub-contractors, tenants, licensees and other occupiers of the Lot are made aware of the restrictions created by these Covenants and are required to comply with these Covenants.
- 4.12 Before commencement of construction, the Purchaser will erect either a temporary or permanent fence around the perimeter of the Lot to define the construction zone. Any temporary fencing erected for the construction phase of the Buildings shall be removed within 8 weeks of construction being completed.
- 4.13 Before the commencement of construction of any Buildings, Ancillary Buildings and Garages the stockpiling and storage of materials on the Lot is strictly prohibited.
- 4.14 Before, during and after construction, the use of adjacent or abutting private land for access, is strictly prohibited, provided however, that the Purchaser can only have access across any other site upon obtaining prior written approval from the owner.
- Stockpiling and dumping of rubbish is strictly prohibited.
- Once construction has commenced, the Purchaser shall ensure container bins are kept on the Lot for the accumulation, containment and disposal of all rubbish. When necessary all such rubbish must be removed.
- 4.15 The Purchaser will ensure that all landscaping, berms, roading, footpaths and kerbs are kept clean and free from debris. The Purchaser shall re-instate, replace and be responsible for all costs arising from damage to the landscaping, berms, roading, footpaths, kerbs, streetlights, fencing, street signs, concrete or any other structures in the subdivision arising from the Purchaser's use of the land directly or indirectly through the Purchaser's actions.

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- 4.16 Notwithstanding Clause 4.36 of these Covenants, during the construction period, a temporary building/container and any other building equipment can be placed on the Lot to be used in conjunction with the construction of the Buildings, Ancillary Buildings and Garages but must be removed within 8 weeks of practical completion of the Buildings.
- Completion of Works*
- 4.17 To complete any construction of all Buildings, Ancillary Buildings, Garages (including the exterior painting and decorating of Buildings, Ancillary Buildings, Garages) and the driveway/vehicle access within 9 months of commencement of excavation of the building site. During this 9 month period, not to allow construction of the Building to be delayed so that substantial progress is not made for any period exceeding 3 months.
- 4.18 Within 9 months of the completion of the Buildings, Ancillary Buildings and Garages:
- (a) submit to Aotea for written approval full landscaping plans for the said Lot, and further within that 9 months, undertake all landscaping as detailed in those approved plans, together with reinstating the Local Authority Owned Land surrounding the Lot. Such plans must encompass (but not limited to) fences, paths, driveways, retaining walls, grassed lawns, letterbox and sufficient plants, trees and shrubs to enhance the street appeal of the said Buildings, Ancillary Buildings and Garages. In determining whether or not to approve the plans, Aotea will take into account the appearance of the proposed Building, Ancillary Buildings and Garages and surrounding Buildings and streetscape; and
- (b) permanent interior window furnishings must be hung.
- 4.19 That except for driveways, not to carry out landscaping on the road frontage of the Local Authority Owned Land except in accordance with the general overall landscaping plan prepared by Aotea and approved by the Local Authority.
- 4.20 The vehicle crossing for Lots 1364, 1417 and 1418 shall only be constructed on the left hand side of the building platform (closest to the western boundary of the Lot), to the road.
- Fencing and retaining*
- 4.21 Except during the time of construction, not to erect any fence constructed of shade cloth, netting, plastic, steel of any profile, long-run or corrugated iron, un-textured wood-fibre cement panels, plywood, fibrolite or post and wire.
- 4.22 Not to alter, interfere with, paint, add to, or otherwise change the fences, entrance walls or subdivision features, or their fittings or attachments including any hedges, erected by Aotea, apart from the maintenance thereof without the prior written approval of Aotea.
- 4.23 To construct all fences in compliance with the Local Authority requirements and any approved plan by Aotea and:
- (a) for fences within 3 metres of the boundary of the Lot (where that boundary borders any Local Authority Owned Land, access lot or right-of-way) those fences must be approved in writing by Aotea prior to construction of the fence. Within this 3 metre area no fence can exceed 1.0 metre in height from Aotea's finished ground level of the Lot (taken from where the fence is to be built). In determining whether or not to approve the construction of the proposed fence Aotea will take into account:
- (i) the appearance of the proposed fence in regards to the Aotea Development. The intention is that there should be a range of styles, designs and appearance of fences within the Aotea Development that compliment both the surrounding houses and landscaping features;
- (ii) the use of visually permeable materials and soft landscaping. Visually permeable

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	fences are required - solid fences are not permitted; and
	(iii) whether screening is required for the privacy of the Lot.
	(b) For all other fences (being those outside the 3 metres area) no fence can exceed 1.8 metres in height from Aotea's finished ground level of the Lot where the fence is to be built.
4.24	To construct all retaining structures in compliance with the Local Authority requirements and any approved plan by Aotea, and
	(a) for all retaining structures to be erected within 3 metres of the boundary of the Lot (where that boundary borders any Local Authority Owned Land, access lot or any right-of-way), those retaining walls must be approved in writing by Aotea prior to construction.
	In determining whether or not to approve the proposed retaining structure, Aotea will take into account the appearance in regards to the Aotea Development. It is Aotea's intention that where all structures measure over 1.5m, they shall be stepped and softened with planting.
	(b) for all retaining structures to be erected elsewhere on the Lot measuring over 2 metres, these must be approved in writing by Aotea prior to construction.
4.25	Notwithstanding Clauses 4.23 and 4.24, where a fence and retaining structure is to be built as one, the measurements shall not exceed 2.5 metres above Aotea's finished ground level from where the structure is to be built.
4.26	Any modification or variation to the approved fence or retaining structure will require further written approval by Aotea prior to such work commencing on the proposed modifications or variations.
	<u>Land Use</u>
4.27	Except for Lots 1354, 1371 and 1373 not to subdivide the Lot further.
4.28	The Purchaser covenants to allow Aotea to enter on to the Lot to undertake any repairs and remedial work required to the land to ensure the Aotea Development is maintained to a high standard. Prior to entry, Aotea will obtain the Purchaser's consent to entry (such consent not to be unreasonably withheld).
4.29	Not to permit:
	(a) the Lot to be occupied or used as a residence unless the Buildings have been completed in accordance with the Covenants and the Local Authority Code of Compliance Certificates have been issued for the Buildings;
	(b) a Tiny House to be placed on the Lot;
	(c) Ancillary Buildings or Garages on the Lot to be lived in or otherwise used as dwellings;
	(d) the Lot, Buildings, Ancillary Buildings and/or Garages to be used
	(i) on a commercial basis; and/or
	(ii) for any holiday accommodation where a fee is charged
	unless the prior written approval of Aotea has been obtained and all Local Authority requirements have been met.
4.30	Following construction of the Buildings not to display more than one advertisement, sign or hoarding of a commercial nature on the Lot. Any advertisement, sign or hoarding:

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- (a) must not measure in excess of 1000mm x 1000mm; and
 - (b) must be kept in good condition at all times.
- 4.31 Not to allow on any buildings, structures, driveways, landscaping, signs or fencing on the Lot to fall into disrepair.
- 4.32 Not to allow any graffiti (or similar disfiguring) on the Buildings, Ancillary Buildings, Garages, fences, retaining structures or any other structure on the Lot to remain in place for more than 5 working days from the date the Purchaser became aware of the graffiti or disfiguring.
- 4.33 Except for Lots 1354, 1371 and 1373 (where they have been subdivided), not to construct any road on any part of the Lot to provide access to any adjoining Lot.
- 4.34 To, at all times, keep mown and maintained in a neat and tidy condition (and prevent from becoming unsightly) the Lot and adjoining Local Authority Owned Land.
- 4.35 Not to bring on to the Lot any more than 3 animals limited to domestic pets. Livestock, Poultry and Roosters are not permitted. Where possible, all animals on the Lot must be controlled:
- (a) so as not to become a nuisance to others within the Aotea Development; and
 - (b) to prevent them from roaming the Aotea Development at will.
- 4.36 Not to bring on to, or to allow to remain on the Lot or Local Authority Owned Land, anything set out in the applicable categories in this clause, unless they are garaged or adequately screened from the road and surrounding properties (so as to protect the aesthetic qualities of the Aotea Development and prevent noise likely to cause offence to residents). The applicable categories are:
- (a) vehicles with a gross laden weight exceeding 3,500kgs (including recreational and trade vehicles);
 - (b) more than one sign written vehicle;
 - (c) temporary buildings (including sheds and containers);
 - (d) buses, caravans, motorhomes, recreational vehicles or pleasure-craft/boats;
 - (e) trailers or any other equipment, materials or machinery; and
 - (f) trampolines or large play equipment.
- 4.37 If the Purchaser proposes to locate anything set out in the applicable categories in Clauses 4.36(a) to 4.36(f) beyond the front building alignment of the Building, then the required screening must be approved in writing by Aotea and the approved screening must be in place prior to that object being brought on to the Lot.
- 4.38 Not to allow anything set out in the applicable categories of Clauses 4.36(a) to 4.36(e) to be maintained, repaired or have other work carried out on Local Authority Owned Land.
- 4.39 Repairs to vehicles, or anything set out in the applicable categories of clauses 4.36(a) to 4.36(e) shall be in the confinement of the garage only.
- 4.40 Not to bring on to, or to allow to remain on the Lot any vehicle, caravan, bus or motorhome which is used for residential use other than for the short term occupation by visitors which must not exceed 2 weeks in any 6 month period.
- 4.41 To ensure due allowance is made for adequate current and future drainage of all stormwater from

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the Lot, such stormwater drainage not to be detrimental to the water quality of the stormwater network. The Purchaser will also ensure that no discharge from the Lot whether of a soluble or insoluble nature shall occur. The Purchaser is responsible for all costs, claims or demands for any remedial action undertaken for any breach thereof.

- 4.42 The Purchaser will at all times save harmless and keep indemnified Aotea from all proceedings, costs, claims and demands in respect of breaches by the Purchaser of these Covenants.

5. Breach of Covenants & Enforcement

- 5.1 If there is a breach of any of these Covenants (and without prejudice to any other liability which the Purchaser may have to any person having the benefit of this Covenant) and the Purchaser does not rectify the breach within 10 working days of written notification of such breach, then the Purchaser will pay to the party notifying them of such breach ("Notifying Party"):

- (a) liquidated damages of the sum of \$300.00 per day for every day that the breach or breaches continue after the date of written demand until the breach or breaches are remedied; and
- (b) any costs and expenses (including legal costs) incurred by the Notifying Party to remedy the breach.

- 5.2 The rights of Aotea to enforce the terms of the rights and benefits conferred by these Covenants will remain in place until the earlier of 31 December 2040 or:

- (a) 60 calendar months from the date on which Aotea ceases to be a registered owner of any Lot forming part of the Aotea Development; or
- (b) Aotea relinquishing these rights in writing and nominating a replacement entity; or
- (c) Aotea relinquishing these rights in writing and confirming the right to enforce the rights and benefits conferred in these Covenants will, in accordance with normal legal principles, vest in the registered owners of any lot forming part of the Benefited Lot.

- 5.3 In the event that one or more provisions of these Covenants are at any time found to be invalid or otherwise rendered unenforceable, such provision or provisions will be severable from these Covenants, so that the validity or enforceability of the remaining provisions of these Covenants are not affected.

- 5.4 The burden of these Covenants shall not apply to any land vested or to be vested in the Local Authority as open space, reserve (within the meaning of the Reserves Act 1977) or road (within the meaning of Section 315 of the Local Government Act 1974, as contained by the Local Government Act 2002) so long as it remains open space, reserve or road, and

- (a) Aotea reserves the right to waive or consent to the vesting of such land in Local Authority as open space, reserve or road, free of any such covenants;
- (b) the Purchaser, for itself and any person claiming an interest in the land through or under the Purchaser, appoints Aotea as it's attorney to exercise the powers set out in 5.4(a);
- (c) the production of an agreement signed by the Purchaser containing or annexing these Covenants shall be sufficient authority for the exercise of the powers set out in 5.4(a).

- 5.5 Notwithstanding Clause 5.4 the benefits of these Covenants so far as they are applicable to any land within a distance of 0.5 kilometres from any open space, reserve or road vested in the Local Authority, shall extend to the Local Authority, and the Purchaser agrees that these Covenants confer a benefit on the Local Authority for the purposes of the Contracts (Privity) Act 1982. The rights conferred by this clause are in addition to, and do not exclude, any rights which the Local Authority may have at law.

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- 6.** Expiry of Covenants
- 6.1 These Covenants will continue in force for the benefit of the registered owners of any Lot forming part of the Benefited Land until 31 December 2040 at which time they will expire.
- 7.** Dispute Resolution
- 7.1 If a dispute in relation to any Covenant arises between the parties who have a registered interest under these Covenants:
- (a) the party/parties initiating the dispute must provide full written particulars of the dispute to the other party/parties;
 - (b) the parties must, in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
 - (c) If the dispute is not resolved within 20 working days of the written particulars being given (or any longer period agreed by the parties):
 - (i) The dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
 - (ii) The arbitration must be conducted by a single Arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.
- 8.** No Objection
- 8.1 The Purchaser consents that they will not directly, nor indirectly (nor procure any person to do so):
- (a) object or hinder, or otherwise obstruct, grant confirmation or alteration pursuant to the Resource Management Act 1991 ("RMA") of any authorisations under the RMA which in any way hinders Aotea's further subdivision of this land or surrounding land owned directly or indirectly by Aotea and will sign all and any authorisations and approvals required by Aotea including any variations to these Consents;
 - (b) fund, encourage or otherwise be involved in any act, matter or thing that, if carried out by the Purchaser, would restrict Aotea's further subdivision of any surrounding land owned directly or indirectly by Aotea;
 - (c) object to any construction, noise, dust or activity on the balance of the subdivision land owned by Aotea.
- 9.** Vesting
- 9.1 Notwithstanding any provision herein contained, the within Covenants shall cease to have effect (and shall automatically surrender) as to any Lot which shall vest or be dedicated as road or reserve at any time (including, by way of example but not limitation, where a Lot vests as road or is dedicated as road in respect of any subsequent stages of the subdivision). Such date of cessation and surrender shall be the date of approval of the Subdivision Plan for the relevant stage by the territorial authority.