

Covenant Instrument to note land covenant

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

Covenantor

KENEPURU LP

Covenantee

KENEPURU LP

Grant of Covenant

The Covenantor, being the registered owner of the burdened land(s) set out in Schedule A, **grants to the Covenantee** (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 171-184 (incl) and 201-221 (incl) DP 557561	Lots 171-184 (incl) and 201-221 (incl) DP 557561 (RTs 976929-976963 (incl))	Lots 171-184 (incl) and 201-221 (incl) DP 557561 (RTs 976929-976963 (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 Kenepuru LP at their sole discretion.

DEFINITIONS AND INTERPRETATION

- 1.** Definitions: In these Covenants:
 - 1.1 "**Building**" or "**Buildings**" means any residential dwelling-house or primary building on the Lot.
 - 1.2 "**Garage**" means any enclosed garage on the Lot.
 - 1.3 "**Kenepuru**" means Kenepuru LP or any other person or persons nominated by Kenepuru LP. If Kenepuru has been dissolved or wound up or otherwise gone out of existence, "approval by Kenepuru" will mean approval by any party appointed and/or nominated by Kenepuru for this purpose.
 - 1.4 "**Kenepuru Landing Development**" means the land being developed and/or subdivided by Kenepuru known as Kenepuru Landing in Porirua, Wellington.
 - 1.5 "**Local Authority**" means Porirua City Council or any other entity appointed in its place.
 - 1.6 "**Local Authority Owned Land**" means any road or reserve owned or controlled by the Local Authority in the Kenepuru Landing Development.

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- 1.7 **"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.
 - 1.8 **"Plans and Specifications"** means plans, drawings, specifications and other documents from which the Buildings, Garages and Landscaping are to be constructed (including details of materials, colours, location and design).
 - 1.9 **"Resource Consent"** means Resource Consent RC7826-SL0006-19 approved by the Local Authority, and any variations thereof.
 - 1.10 **"Purchaser"** means the registered owner of the Lot in Stage 2b.
 - 1.11 **"Stage 2b"** means all the land contained in Record of Title 858364 (Lot 1508 DP 528689), Wellington Registry and any subsequent title issued from further subdivision ("head title").
 - 1.12 **"Tiny House"** means any secondary Building or other object (whether mobile, temporary or permanent) used for residential purposes.
- 2.** Interpretation: In these Covenants headings are for reference purposes only and words and expressions denoting the singular shall include the plural.

FENCING COVENANTS

1. Kenepuru shall not be liable to pay for or contribute towards the cost of erection or maintenance of any fence between any Lot in Stage 2b of the Kenepuru Landing Development and any adjoining land owned by Kenepuru 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 Kenepuru or the Local Authority.

LAND & BUILDING COVENANTS

1. The Purchaser acknowledges that the Lot is part of the Kenepuru Landing Development which is intended to be established as a modern and well-designed subdivision. In accordance with this intention, Kenepuru will exercise supervision and control in relation to the nature and type of construction permitted in the Kenepuru Landing Development and the standard of surroundings being maintained.
2. The Purchaser will be bound by these Covenants, although Kenepuru may, in writing, at the sole and unfettered discretion of Kenepuru, waive part, any or all of these Covenants, provided that Kenepuru decides in its sole discretion that the amendments or additions are generally in accordance with the aims of the Kenepuru Landing Development on such terms and conditions as Kenepuru may require and shall not be in contradiction to the Resource Consent.
3. In any circumstances where Kenepuru's approval is required in respect of any covenant, then any approval shall be at Kenepuru's sole discretion and in no circumstance shall Kenepuru be required to give any reason for its decision.

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

4. The Purchaser covenants:

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Building Requirements

- 4.1 To construct only one new Building and Garage (if applicable) on the Lot as prescribed in the Resource Consent.
- 4.2 To construct any garden shed to a maximum floor size of 9m² and 2m in height so that it:
- (a) does not extend beyond the front building alignment of the Building; and
 - (b) is screened and not highly visible from the street and neighbouring properties.
- 4.3 To locate any attachments (including but not limited to television antenna) away from the front face of the Building where the main entrance to the Building is located.
- 4.4 The location of all solar panels and power systems shall be approved in writing by Kenepuru prior to installation.
- 4.5 To construct in a proper and tradesman like manner a driveway, or vehicle access in the same standard and colour concrete as that already laid in that precinct of the Kenepuru Landing Development.

Plans and Specifications

- 4.6 Prior to the Purchaser applying for a Building Consent or commencing any works on the Lot (including preparatory work), to have all Specifications for Buildings and Garages, and all Plans and Specifications for Landscaping, approved in writing by Kenepuru.

Landscaping plans shall include (but not limited to) decks, patios, rubbish bin enclosures, fences, paths, driveways, retaining walls, grassed lawns, letterbox and sufficient plants, trees and shrubs to enhance the street appeal of the said Buildings and Garages.

In determining whether or not to approve the plans, Kenepuru will take into account the appearance of the proposed Buildings and Garages and surrounding Buildings and streetscape in the Kenepuru Landing Development. Kenepuru 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 Kenepuru Landing Development.

- 4.7 To construct any Buildings, Garages and retaining walls in compliance with the Resource Consent and in accordance with the Plans and Specifications approved in writing by Kenepuru, and undertake all Landscaping as approved in writing by Kenepuru.

Any modification or variation to the approved Plans and Specifications will require further written approval by Kenepuru (and the Local Authority if required) prior to such work commencing.

- 4.8 Any approval of the Plans and Specifications shall be at the Kenepuru's sole discretion and in no circumstance shall Kenepuru be required to give any reason for its decision.

Construction Materials, Cladding and Finishing

- 4.9 To construct all Buildings and Garages so that:
- (a) the exterior cladding and materials of any Building is as prescribed in the Resource Consent, or any other exterior cladding material for which the Purchaser has first obtained Kenepuru'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;

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- (c) the finished permanent colour(s) of exterior cladding and materials shall be as described in the colour pallet supplied by Kenepuru;
- (d) there are no reflective surfaces on any exterior cladding or roofing on the Building and any other 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 (LRV); and
- (e) all colours of garden sheds are in keeping with the main Buildings.

Construction

- 4.10 Before commencement of construction, the Purchaser will erect either a temporary or permanent fence around the perimeter of the building site 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.
- 4.11 Before the commencement of construction of any Buildings and Garages the stockpiling and storage of materials on the Lot is strictly prohibited.
- 4.12 Before, during and after construction, the use of adjacent or abutting land and footpaths 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 rubbish must be removed.

- 4.13 The Purchaser will ensure that street landscaping, berms, roading, footpaths and kerbs are kept clean and free from debris prior, during and after construction. The Purchaser shall re-instate, replace and be responsible for all costs arising from damage to the street 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.
- 4.14 Notwithstanding Clause 4.33 of these Covenants, during the construction period, a temporary building/container and any other building equipment can be placed either on the Lot or in Kenepuru's designated area to be used in conjunction with the construction of the Buildings and Garages but must be removed within 8 weeks of the practical completion of the Buildings.

Completion of Works

- 4.15 To commence construction of all Buildings and Garages within 9 months from possession of the Lot.
- Further, to complete construction of all Buildings and Garages (including the exterior painting and decorating) and the driveway/vehicle access within 12 months of commencement of excavation of the building site.
- During this 12 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.
- 4.16 That within 3 months from the completion of the Buildings and Garages:
- (a) lawn(s) must be laid, all landscaping work (as detailed in the approved plans) and reinstatement of the Local Authority Owned Land adjoining the Lot must be completed; and
 - (b) permanent interior window furnishings must be hung.

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4.17 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 Kenepuru and approved by the Local Authority.

Fencing and Retaining

4.18 To construct all fences and retaining walls in compliance with the Resource Consent, the approved Building and Landscaping Plans and Specifications and the Local Authority requirements.

4.19 Not to alter, interfere with, paint, add to, or otherwise change the fences, entrance walls or subdivision features erected by Kenepuru, or their fittings or attachments including any hedges and other landscaping, apart from the maintenance thereof without the prior written approval of Kenepuru.

4.20 Any modification or variation to an approved fence will require further written approval by Kenepuru (and Local Authority if required) prior to such work commencing on the proposed modifications or variations.

Land Use

4.21 To ensure all agents, employees, contractors, sub-contractors, tenants, licensees and other occupiers of the Lot are made aware of, and comply with, the restrictions created by these Covenants.

4.22 The Purchaser covenants to allow Kenepuru to enter on to the Lot to undertake any repairs and remedial work required to the land to ensure the Kenepuru Landing Development is maintained to a high standard. Prior to entry, Kenepuru will obtain the Purchaser's consent to enter (such consent not to be unreasonably withheld).

4.23 To site all clotheslines on the Lot as per the Resource Consent and/or in such a way as not to be highly visible from the road where the main entrance to the Building is located, nor placed in the laneways. Where possible, screens shall be used.

4.24 Not to permit:

(a) the Lot to be occupied or used as a residence unless the Buildings and Landscaping has 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) Garages on the Lot to be lived in or otherwise used as dwellings; and

(d) the Lot, Buildings and Garages to be used:

i on a commercial basis; and

ii for any holiday accommodation where a fee is charged,

unless the prior written approval of Kenepuru has been obtained and all Local Authority requirements have been met.

4.25 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 must:

(a) not measure in excess of 750mm x 750mm; and

(b) be kept in good condition at all times.

4.26 Not to allow any Buildings, structures, driveways, landscaping or fencing on the Lot to fall into disrepair.

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- 4.27 Not to allow any graffiti (or similar disfiguring) on the 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.
- 4.28 Not to construct any road on any part of the Lot to provide access to any adjoining Lot.
- 4.29 Not to park or leave any vehicle or anything described in clause 4.33 (a) to (f) on any part of any lane way, right of way or access lot, other than parking of a vehicle only on those parts thereof that are marked out and delineated and have been established as parking bays (if any).
- 4.30 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.
- 4.31 Apart from being placed on the kerbside on collection day only, at all times, ensure that rubbish bins are stored in the designated areas where prescribed in the Resource Consent.
- 4.32 Not to bring on to the Lot any more than 2 animals limited to domestic pets. Livestock, Poultry and Roosters are not permitted on the Lot. Where possible, all animals on the Lot must be controlled:
- (a) so as not to become a nuisance to others within the Kenepuru Landing Development; and
 - (b) to prevent them from roaming the Kenepuru Landing Development at will.
- 4.33 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 Kenepuru Landing 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.
- 4.34 If the Purchaser proposes to locate anything set out in the applicable categories in Clauses 4.33(a) to 4.33(f) beyond the front building alignment of the Building, then the required screening must be approved in writing by Kenepuru and the approved screening must be in place prior to that object being brought on to the Lot.
- 4.35 Not to allow anything set out in the applicable categories of Clauses 4.33(a) to 4.33(f) to be maintained, repaired or have other work carried out on Local Authority Owned Land.
- Repairs to vehicles, or anything set out in the applicable categories of Clauses 4.33(a) to 4.33(e) shall be undertaken in the confinement of the Garage only.
- 4.36 Any caravan, bus, motorhome or recreational vehicle (used for residential purposes) may be used for short term accommodation for visitors on the Lot for no more than 2 weeks in any 6 month period.
- 4.37 To ensure due allowance is made for adequate current and future drainage of all stormwater from 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

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insoluble nature shall occur. The Purchaser is responsible for all costs, claims or demands for any remedial action undertaken for any breach thereof.

- 4.38 That it will at all times save harmless and keep indemnified Kenepuru 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 notice being made by Kenepuru or any of the registered owners of the Lots, then the Purchaser will pay to Kenepuru or the person making such demands:
- (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/or
 - (b) any costs and expenses (including legal costs) incurred by Kenepuru or any registered owner to remedy the breach.
- 5.2 The rights of Kenepuru 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 Kenepuru ceases to be a registered owner of any Lot forming part of the Kenepuru Landing Development; or
 - (b) Kenepuru relinquishing these rights in writing to the successor in title; or
 - (c) Kenepuru 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 From the applicable date set out in clause 5.2 the right to enforce the rights and benefits so conferred will in accordance with normal legal principles vest in the registered owners of any Lot forming part of the Benefited Land.
- 5.4 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.
- 5.5 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) Kenepuru reserves the right to waive or consent to the vesting of such land in the 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 Kenepuru as its attorney to exercise the powers set out in 5.5 (a); and
 - (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 5.5 (a).
- 5.6 Notwithstanding Clause 5.5 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 Contract and Commercial Law Act 2017. The rights

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conferred by this clause are in addition to, and do not exclude, any rights which the Local Authority may have at law.

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 Kenepuru's further subdivision of this land or surrounding land owned directly or indirectly by Kenepuru and will sign all and any authorisations and approvals required by Kenepuru 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 Kenepuru's further subdivision of any surrounding land owned directly or indirectly by Kenepuru; and
- (c) object to any construction, noise, dust or activity on the balance of the subdivision land owned by Kenepuru.

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.