

Form 26

Covenant Instrument to note land covenant

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

Covenantor

WOOING TREE PROPERTY DEVELOPMENT LP

Covenantee

WOOING TREE PROPERTY DEVELOPMENT 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
required

Continue in additional Annexure Schedule, if

Purpose of covenant	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Land Covenants		Lots *** DP **** (Record of Titles ***)	Lots *** DP **** (Record of Titles ***)

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 Schedules 1, 2 & 3.

Annexure Schedule 1

PROVISIONS APPLYING TO COVENANTS

Background

- a. The Initial Covenantee is subdividing the Servient Land to create the Wooing Tree Estate Development.
- b. The Initial Covenantee intends that certain parts of the Wooing Tree Estate Development be subject to a general scheme applicable to and for the benefit of the Dominant Land to ensure that the Wooing Tree Estate Development is and remains a good quality and well-designed subdivision ("Scheme").
- c. WPD may elect to administer the Scheme for the benefit of the Dominant Land and the burden of the Servient Land.
- d. The parties intend that the obligations and covenants of the Covenantor under this Instrument enure for the benefit of WPD (in accordance with contractual privity provisions of the Contract and Commercial Law Act 2017).

Covenant Terms

1. The Covenantor covenants and agrees with the Covenantee:
 - a. To at all times observe and perform the Covenants set out below unless WPD or its nominee has given its written consent authorising non-observance and performance of the Covenants or any one or more of the Covenants;
 - b. That, subject to clauses 5.1 – 5.9 and clause 7.1 below, the Covenants will forever run with and bind the Servient Land for the benefit of the Dominant Land; and
 - c. To ensure that all tenants, occupiers, employees, contractors, invitees and anyone or thing that is present on the Servient Land under the control of, or at the direction or invitation of the Covenantor, observes and performs all relevant and applicable Covenants at all times.
2. In this Instrument the following words have the following meanings:

"Adjoining Land" means any balance land within Section 3 Survey Office Plan 461514, which is not then part of the Wooing Tree Estate Development.

"Building" means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels) on the Servient Land other than:

- a. Improvements as defined below;
- b. Any conduit, pipes, plant and/or other structures required by utility and/or service providers;
- c. Temporary scaffolding used in the course of the construction process; or
- d. Temporary construction sheds and porta-loos used in the course of the construction process;

"Common Lots" means lots 315 – 332 (inclusive) on DP [***].

"Considerate Construction Covenants" means the covenants detailed in Annexure Schedule 2 of this Instrument.

"Covenantee" means and includes all persons executing this Instrument as Covenantee jointly and severally (if more than one) and their executors, administrators, assigns, successors in title and their tenants, licensees and invitees.

“Covenantor” means and includes all persons executing this Instrument as Covenantor jointly and severally (if more than one) and their executors, administrators, successors in title and their tenants, licensees and invitees.

“Covenants” means the covenants set out in this Instrument.

“Design Guidelines” means the design control guidelines issued by WPD or its nominee from time to time applicable to the Wooing Tree Estate Development and the version current at the date of this Instrument is annexed as Annexure Schedule 3 of this Instrument.

“District Plan” means the Central Otago District Council District Plan as at the date of this Instrument or any replacement of that plan as is applicable.

“Dominant Land” means the land described as Lots *** DP *** and shown on the front page of this Instrument as the Benefited Land.

“Dwelling” means a self-contained building that is used, or intended to be used, solely for residential purposes and to be occupied exclusively as the home or residence of not more than one household and includes normal accessory structures such as a garage, car port, garden shed, and/or glasshouse.

“Governing Body” means any local authority, territorial authority, NZ Transport Agency (or any such replacement entity), or the Crown.

“Improvements” means improvements constructed or to be constructed by the Initial Covenantee on or under the Wooing Tree Estate Development and adjoining roads or reserves, including (but not limited to) roading, plant, pumps, conduits, pipes, footpaths, kerbs, gutters, swale crossings, landscaping, planting, fences, walls, open spaces and walkways.

“Initial Covenantee” means WPD.

“Instrument” means this covenant instrument creating a land covenant to be registered on the Servient Land’s record of title and all its schedules, annexures and amendments.

“Legal Road” means all parts of any road vested in the Territorial Authority as legal road and includes footpaths, parking bays, kerbing, channeling and any grassed or landscaped areas situated on any Legal Road.

“Lodge any Submission” means (without limitation) personally or through any agent or servant, directly or indirectly, lodge or support in any way any objection or submission to any Planning Proposal and includes (without limitation) taking part in any planning hearing, or appeal or reference arising in respect of a Planning Proposal whether as a party or otherwise.

“Lot” means any lot that is recorded as being Burdened Land in this Instrument (and “Lots” shall have a corresponding meaning).

“Lot Owner” means the registered owner(s) of a Lot.

“Planning Proposal” includes (without limitation) any application for resource consent and / or plan change and / or variation of any nature under the relevant District Plan and/or proposed District Plan in respect of any land owned by WPD (or which WPD has an interest in) and which is situated within 2 kilometres of any Lot.

“Private Common Lot” means lot 802 on DP [*****].

“Private Common Lot Frontage Land” means for each of the Common Lots, the entire area of the Private Common Lot that would be bounded by the side boundaries of the relevant Common Lot on the assumption that those side boundaries continued on a straight line through the full depth of the Private Common Lot to the north-easterly boundary of the Private Common Lot.

“Rating Address” means in respect of a Lot, the current address recorded by the Territorial Authority as the address of that Lot for rating purposes.

“Resource Consent” means the resource consents to give effect to the Subdivision issued by the Territorial Authority and any variation, amendment and/or replacement of those resource consents.

“Stage” means a stage of the Subdivision and “Stages” has the corresponding meaning.

“Subdivide” has the meaning set out in section 218(1) of the Resource Management Act 1991 and includes the creation of cross leases or units within the meaning of the Unit Titles Act 2010.

“Subdivision” means the Wooing Tree Estate Development subdivision.

“Scheme” has the meaning given to it in Background Clause b above.

“Servient Land” means the land described as Lots *** Deposited Plan *** and shown on the front page of this Instrument as the Burdened Land.

“Territorial Authority” means the Central Otago District Council or any successor to that Council.

“Truck” means a goods vehicle that has a gross vehicle mass exceeding 3.5 tonnes.

“Vehicle Crossing” means the part of a driveway or vehicle access-way situated on Legal Road between the road carriageway and the boundary of a Lot which is formed to enable vehicle access from the road carriageway to the Lot.

“Vineyard” means any vineyard, cellar door, restaurant, café, function and/or events facility on any part or parts of the Adjoining Land.

“Wooing Tree Estate Development” means the integrated development undertaken by WPD at Shortcut Road, Cromwell (and which may include all or any part or parts of the Adjoining Land) including (but not limited to) Improvements and all other associated infrastructure.

“WPD” means Wooing Tree Property Development LP and, where the context requires, means any other person, association or entity nominated by Wooing Tree Property Development LP to perform or succeed its rights and obligations under this Instrument.

- 2.1 In this Instrument, a covenant to do something is also a covenant to permit or cause that thing to be done, and a covenant not to do something is also a covenant not to permit or cause that thing to be done.
- 2.2 A reference to a statute includes all statutes amending, consolidating or replacing the statute referred to.

The Covenants

Use and Time for Completion

- 3.1 Not to use any Lot or permit the same to be used for any use other than for residential purposes and not to use any Lot or permit the same to be used for any trading, industrial or commercial purposes, provided however that it is acknowledged that the use of a residential dwelling for residential letting, as a show home, for a home enterprise use as permitted by the District Plan, or the use of a Lot as a sales office by WPD will not be in breach of the provisions of this Instrument.
- 3.2 Not to erect and maintain more than one Dwelling on any Lot.
- 3.3 Not to use or permit the use of any Dwelling accessory structures on any Lot as temporary or permanent accommodation.
- 3.4 Not to further Subdivide any Lot provided that this does not apply to any subdivision consisting only of a boundary adjustment which does not create any additional lot.
- 3.5 Not to erect or place, or permit to be erected or placed any caravan, mobile home, hut, boat or any structure or vehicles capable of providing temporary accommodation on any Lot, provided that the storage of a mobile home or a caravan, a boat and cars are permitted on a Lot once a Dwelling has been constructed and completed on that Lot. Any such mobile home, caravan, boat and cars (unless such cars are in regular use) must be screened from any Legal Road.
- 3.6 Not to permit any rubbish or waste material to be or remain on any Lot other than within suitable enclosed structures (which for the avoidance of doubt will include Territorial Authority approved rubbish and/or re-cycling bins) or otherwise appropriately screened from view.
- 3.7 To cause as little interference as reasonably possible with any Improvements and to promptly make good any damage caused by the Covenantor to the Improvements at the sole cost of the Covenantor.
- 3.8 Not to permit the parking of Trucks on or adjoining any Lot or on any road or access-way on the Wooing Tree Estate Development, other than for temporary delivery or unloading purposes.
- 3.9 To ensure that car parking is provided and maintained on each Lot for at least two cars. Parking provided in garages and/ or car ports is counted as car parking for the purposes of this clause.

Building Restrictions

- 3.10 Not to commence construction of any Building or any landscaping on the Servient Land without having first obtained the written approval of WPD or its nominee to the plans and specifications of the design and appearance of the proposed Building or landscaping at the Covenantor's cost.
- 3.11 Not to make any changes to any approved plans and specifications of the design and appearance of any Building or landscaping for the Servient Land unless approval to those changes has been obtained from WPD or its nominee at the Covenantor's cost.

- 3.12 Not to construct or place or permit to be constructed or placed on the Servient Land any Building or landscaping whatsoever except in accordance with the plans and specifications approved by WPD or its nominee and in accordance with the then current Design Guidelines relating to the Servient Land.
- 3.13 To adhere at all times to the requirements and restrictions of the Design Guidelines and any on-going conditions of the Resource Consent in so far as they relate to the Servient Land.
- 3.14 Not to occupy any Building without a current code of compliance certificate issued under the Building Act 2004.
- 3.15 Landscaping and fencing on each Lot must be completed contemporaneously with completion of construction of any Dwelling on a Lot provided that if completion of construction occurs during autumn or winter then planting and associated landscaping work must be completed no later than the following spring. All landscaping must be completed to the standard of a professional landscaper.
- 3.16 Not to construct or place on any Lot any pre-used or second-hand Building, containers (other than for the temporary unloading of materials or furniture) or a Building that has been relocated.
- 3.17 Not to allow a Building to be erected on any Lot other than using new materials except for stonework, and feature timber beams.
- 3.18 To commence construction of a Dwelling on each Lot within 18 months of the completion of a transfer of that Lot from the Initial Covenantor. For the purposes of this Instrument, commencement of construction shall be the date when written approval has been obtained from WPD or its nominee pursuant to clause 3.10 and when material foundation preparatory work has commenced on that Lot.
- 3.19 That once construction of a Building on a Lot has commenced, it will complete construction of that Building in a good and tradesman like manner within 18 months of the commencement of construction. For the purposes of this Instrument, completion of construction of a Building shall be the date when all material exterior work is completed on that Building including but not limited to affixing all roofing, exterior cladding and the completion of exterior finishing.

Construction and Adjacent Land Controls

- 3.20 Not to cause any damage to any part of the Improvements or any Legal Road or Vehicle Crossing on the Wooing Tree Estate Development.
- 3.21 Not to interfere with or cause any damage to any trees or landscaping located on any part of any Legal Road, access-way or reserve including by removing, cutting down or trimming any tree or plant.
- 3.22 For the purposes of clauses 3.20 and 3.21 any damage caused by any employee, contractor or other person carrying out any works or activities on a Lot or by a vehicle driven by any person carrying out such works is deemed to be carried out by the owner of the Lot on which the works or activities are being carried out.
- 3.23 Not to remove, replace or alter any landscaping features, fences, walls and/or plantings installed by WPD and which are located on any Lots without the prior written consent of WPD or its nominee provided that replacement shall be permitted when damage has occurred or such features are in disrepair. Any such replacement shall be undertaken in a good and workmanlike manner and using materials, finishes and/or plantings substantial similar to those being replaced.

3.24 To maintain and irrigate:

- (a) any road verge fronting the Covenantor's Lot if it is not maintained and irrigated by the Territorial Authority or its contractors; and
- (b) any trees, grasses and plants planted by WPD on the Covenantor's Lot and to replace (on a like for like basis) any such trees, grass and plants should they not survive.

3.25 Not to allow the construction of any Building on any Lot other than in compliance with the Considerate Construction Covenants.

Private Common Lot

3.26 Where the title for a Lot includes a share of the Private Common Lot:

- (a) Not to use the Private Common Lot other than as amenity garden land ancillary to the use of the Common Lots;
- (b) Not to construct or place or permit to be constructed or placed on the Private Common Lot any Building (which for the purposes of this clause 3.26 will include scaffolding, temporary construction sheds and portaloos), chattels, items for storage, equipment (including without limitation children's play equipment), plant, machinery and/or hard landscaping features without the prior written consent of WPD or its nominee;
- (c) Not to cause any damage to the Private Common Lot;
- (d) Not to operate any motorised vehicle on the Private Common Lot other than for the purposes of mowing grass;
- (e) Not to park or place any skip or other receptacle, caravan, boat, mobile home, hut, structure (whether temporary or permanent), tent and/or vehicle on the Private Common Lot;
- (f) Not to use the Private Common Lot for any unlawful use or so as to cause any nuisance or material disturbance to any other person having a share of the Private Common Lot;
- (g) Not to deposit any waste, contaminant, pollutant, rubbish, soil or other material on any part of the Private Common Lot or in any other way obstruct the use of the Private Common Lot by any other person having a share of the Private Common Lot;
- (h) Not to remove, replace or alter any landscaping features, fences, walls and/or plantings installed by WPD and which are located on the Private Common Lot without the prior written consent of WPD or its nominee provided that replacement shall be permitted when damage has occurred or such features are in disrepair. Any such replacement shall be undertaken in a good and workmanlike manner and using materials, finishes and plantings substantial similar to those being replaced;
- (i) To maintain and irrigate any trees, grasses and plants planted by WPD on the Private Common Lot Frontage Land for that Lot and to replace (on a like for like basis) any such trees and plants on that Private Common Lot Frontage Land should they not survive; and
- (j) To comply with the Design Guidelines related to the Private Common Lot.

- 3.27 Where the title for a Lot does not include a share in the Private Common Lot, not to use or access the Common Private Lot in any way.

No Objection and Reverse Sensitivity

3.28 Not to:

- (a) object to or Lodge any Submission against any Planning Proposal;
- (b) obtain an order, injunction or any other remedy or make any complaint against any contractor or any consultant which relates to the Subdivision;
- (c) object to marketing methods employed by WPD in an endeavour to sell other lots forming part of the Subdivision, including the use of signs, the placement of signs and the maintenance of display units, and/or a sales office on the Subdivision (but not on the Servient Land once a separate record of title for the Servient Land has been issued); and/or
- (d) object to or make any complaint regarding any use and/or activity on the Adjoining Land, including without limitation the use as a Vineyard.

Fencing

- 3.29 WPD will not be liable to contribute to the cost of, or assist in the erection or maintenance of any boundary or dividing fence between any of the Lots within the Wooing Tree Estate Development or between any of the Lots and any part of the Adjoining Land or any other land owned or occupied by WPD.
- 3.30 Clause 3.29 is intended for the benefit of WPD only and shall not enure for the benefit of any other person or persons.

Animal Controls

- 3.31 No kennel or other facility for raising or boarding dogs, cats or other animals or birds, including poultry, for commercial purposes shall be kept on any of the Lots. The keeping of ordinary household pets such as dogs, cats and birds is approved, provided that no breeding, raising or boarding of such pets for commercial purposes is permitted on any of the Lots.
- 3.32 Each Lot Owner must use its best endeavours at all times to keep its Lot free of rabbits and other pests.

Enforcement

- 4.1 The Covenantor and Covenantee acknowledge and agree that:
- (a) This Instrument is subject to the contractual privity provisions of the Contract and Commercial Law Act 2017 and that the Covenants that are intended to create obligations on the Covenantor, confer benefits on WPD and are enforceable at the suit of WPD as well as by the Covenantee.
 - (b) WPD may (without being obliged) facilitate the observance of this Instrument by the Covenantor by taking all necessary steps to enforce its observance on behalf of any Covenantee.
 - (c) The Covenantee irrevocably appoints WPD to be its attorney and in its name and at its expense to do anything which WPD considers necessary to enforce or attempt to enforce the Covenantee's rights or powers under this Instrument.
 - (d) Without limiting the appointment made in Clause 4.1(c) that appointment may specifically extend to WPD issuing proceedings in the name of any Covenantee(s), provided that in doing so WPD indemnifies such Covenantee(s) against all costs arising from or incidental to those proceedings.
- 4.2 The parties acknowledges that the Covenantee, WPD and any nominee of WPD will not be liable for any losses, damages, claims or expenses which arise from performing any function under the Design Guidelines or approval process pursuant to this Instrument, the failure to enforce the Covenants set out in this Instrument or (in the case of WPD or its nominee) authorising the non-observance and performance of the Covenants or any one or more of the Covenants.
- 4.3 The Covenantor shall provide reasonable access to WPD, its nominee, its designated employees and contractors to inspect the Lots and any Building to check compliance with the applicable Design Guidelines and Covenants.
- 4.4 In the event that the Covenantor fails to observe and perform the Covenants set out in this Instrument, a Covenantee and/or WPD shall have a right (but not an obligation) to do whatever may be reasonably required to remedy such failure on the part of the Covenantor, and the cost incurred by the Covenantee and/or WPD in remedying the default shall be refunded by the Covenantor to that Covenantee and/or WPD as the case may be upon demand.
- 4.5 In addition to clause 4.4, in the event that the Covenantor fails to observe and perform the Covenants set out in this Instrument, WPD may serve written notice on the Covenantor requiring it to remedy the breach of such Covenants and upon the expiry of seven (7) days from the date of receipt of such notice, the sum of \$100.00 per day shall be payable by the Covenantor to WPD until such time as the breach is remedied.
- 4.6 If WPD ceases to exist, and where that entity has not nominated a current and legal person, association or entity to carry out its rights of approval under this Instrument, then the Covenantor shall not be required to obtain such approval.
- 4.7 All notices relating to this Instrument are to be served in writing. The address for service of any notice to the Covenantor is either:
- (a) the Rating Address that relates to the applicable Lot (provided the Lot's Dwelling has obtained a code compliance certificate from the Territorial Authority); otherwise
 - (b) the address of the solicitor who undertook the conveyance for the first Covenantor following ownership by WPD.

Covenantee Consent and Acknowledgments

- 5.1 The Covenantee acknowledges that the Covenantor intends to undertake further Subdivision as part of the Wooing Tree Estate Development after the date of this Instrument and intends to vest or dedicate certain parts of the Servient Land for roads (**Roads**) or reserves (**Reserves**). For the purposes of clause 5, the meaning of Reserves shall also include the following whether or not they are vested as reserves; service lanes, public walkways and/or cycleways, public facilities (including buildings provided for the use or enjoyment of the general public) and other public or open space.
- 5.2 The Covenantee consents to the deposit of any survey plan (Survey Plan) by the Covenantor or any successors in title, which has the effect of vesting or dedicating any of the Servient Land as Roads or Reserves.
- 5.3 The Covenantee consents to all or any part of the Servient Land being declared to be road pursuant to Part 8 of the Public Works Act 1981 (as amended from time to time).
- 5.4 The Covenantee acknowledges and agrees that the Covenants shall cease to apply in respect of the land intended to be Roads and/or Reserves with effect on and from the date of deposit of the relevant Survey Plan or in the case of dedication, upon registration of a transfer of the proposed road to the Governing Body for the purpose of being used as a road.
- 5.5 This clause will be deemed to be the Covenantees (and, if applicable, the Covenantors) written consent required to allow the Roads and/or Reserves to be vested or dedicated or declared as road or reserve (as applicable) (including under section 224(b)(i) of the Resource Management Act 1991 and section 114(2) of the Public Works Act 1981).
- 5.6 Any registered proprietor ("Encumbrancee/s") of an encumbrance and/or interest registered against the Dominant Land which is registered after the date of registration of this Instrument will take their interest/s in the Dominant Land subject to the terms of this Instrument and, in particular (without limitation) will be deemed to have given its consent to the deposit or registration of any Survey Plan (and in the case of dedication, to the registration of a transfer of the proposed road to the Governing Body for the purposes of being used as a road) which has the effect of vesting or dedicating any of the Servient Land as Road and/or Reserves, and further agrees that the Covenants will cease to apply in respect of any of the Servient Land being vested or dedicated as Roads and/or Reserves.
- 5.7 If it is determined that further written consent and/or surrender is required from the Covenantee or any or all of the Encumbrancee/s in respect of the matters provided for under Clause 5 then the Covenantee and/or Encumbrancee/s will immediately, at the request of WPD or (if a different entity) the Covenantor, give that written consent and/or surrender and do all things necessary to procure the provision of consent by any other affected or interested parties.
- 5.8 The Covenantor and the Covenantee agree and acknowledge that WPD is under no obligation to impose any land covenants and/or other interests on any lots of the Subdivision other than this Instrument on the Servient Lots and if WPD may elect to impose any such land covenants and/or other interests then the form and content of such will be at the sole discretion of WPD.
- 5.9 The Covenantor and the Covenantee agree and acknowledge that WPD or its nominee may amend the Design Guidelines from time to time provided that in relation to the construction of any Building or landscaping, the Covenantor shall only be bound by the Design Guidelines issued at the date that construction has commenced.

Liability

- 6.1 Without prejudice to the Covenantor's and Covenantee's other rights, this Instrument binds the Covenantor's and Covenantee's successors in title so that contemporaneously with the acquisition of any interest in the Servient Land all such successors in title become bound to comply with this Instrument. However, the liability of any Covenantor under this Instrument is limited to obligations and liabilities that accrue during that Covenantor's time as registered owner of the Servient Land and only in respect of that part of the Servient Land owned by that Covenantor. A Covenantor will not be liable for any breach of this Instrument which occurs during any period prior to or after its term as registered owner of the Servient Land (however, for the avoidance of doubt, any Covenantor will remain liable for any such antecedent breach following the transfer of its interest in the Servient Land).

Expiry of Covenants

- 7.1 The following Covenants contained in the Instrument shall expiry on and not be enforceable after the date falling 50 years from the date of this Instrument:
- (a) the Covenants contained in clauses 3.2, 3.4, 3.9, 3.10, 3.11, 3.12, 3.13, 3.16 and 3.17.

Nomination

- 8.1 WPD may at any time nominate in writing any person, association or entity to perform or succeed part or all of its rights and obligations under this Instrument.

Costs

- 9.1 The Covenantor will pay all costs directly or indirectly attributable to the enforcement and discharge of this Instrument.
- 9.2 If the Covenantor applies to WPD or its nominee for approval pursuant to any provision of this Instrument or to authorise non-observance and performance of the Covenants or any one or more of the Covenants then the Covenantor will pay WPD or its nominee a fee for considering that application together with WPD's or its nominee's costs and expenses should WPD or its nominee decide that it requires professional advice in order to consider such an application.

Implied terms

- 10.1 No covenants by the Covenantor or by the Covenantor's successors in title are implied in this Instrument other than the covenants for further assurance implied by section 208 of the Land Transfer Act 2017.

Arbitration

- 11.1 The parties agree to use their best efforts to resolve any dispute that may arise under this Instrument through good faith negotiations.
- 11.2 Neither party shall commence any arbitration in relation to this Instrument unless it has notified the other party in writing that there is a dispute (setting out the details of the dispute) and inviting the other party to meet for the purposes of endeavouring to resolve the dispute.

- 11.3 A party may, upon commencing the above negotiation process or receiving notice of a dispute, give notice to the other party requesting that the dispute be resolved by way of mediation. If a request for mediation is made, then the parties shall try to agree upon a mediator. If the parties fail to agree on a mediator within 14 days of the request for mediation the mediator shall be appointed by the then president of the New Zealand Law Society or their nominee.
- 11.4 Any dispute arising under this Instrument which cannot be settled by negotiation or mediation within 28 days of the notice of dispute/mediation (as applicable) being served shall be submitted to arbitration in accordance with the Arbitration Act 1996. In the absence of agreement to the contrary, the arbitration shall be heard by a single arbitrator being a person agreed between the parties or, if they cannot agree within 7 days of commencing discussions on the proposed arbitrator, being a person nominated by the President of the New Zealand Law Society or their nominee. The decision of the arbitrator shall be final.

Annexure Schedule 2 – Considerate Construction Covenants

- a. Normal construction activity and associated noise is only allowable between the hours of:
- Monday to Friday 8.00am to 6.30pm
 - Saturday 9.00am to 5.30pm
 - Sunday 9.00am to 1.00pm
 - Statutory Holidays 9.00am to 3.00pm

Particularly noisy work activity must be scheduled to avoid the earlier and latter part of the day. All unavoidable noise in the earlier and latter part of the day must be carefully controlled and monitored.

- b. The Lot Owner shall ensure that all construction access to the Lot is via the dedicated Vehicle Crossing for that Lot to prevent damage to the street swale.
- c. In the event of damage to the Legal Road and/or Improvements from construction activity the Lot Owner of the building Lot shall be responsible for the prompt repair of the same.
- d. No use may be made of adjacent land, footpaths or reserves abutting any Lot for access (other than access approved by WPD or its nominee) or for the dumping of rubbish.
- e. All contractor's site sheds shall be placed on the respective building Lot no earlier than the commencement of construction of the Building works. The sheds and other temporary construction structures must be immediately removed from the building Lot upon completion of the Building works.
- f. All loading, unloading delivery and storage of materials shall take place within the bounds of the building Lot.
- g. All construction vehicles whether they are contractors, tradesmen or a delivery must not be parked on the footpath, verges, berm areas or adjacent Lots. Any vehicle that deposits oils or other damaging material must be removed from the area and the damage made good.
- h. No toilets other than porta-loo style toilets will be allowed on a building Lot during the construction period.
- i. All exposed earth and disturbed areas of the Lot must be reasonably protected from the wind and water erosion during and after construction. Exposed areas should be watered and/or replanted as soon as possible.
- j. Appropriate rubbish skips shall be kept within the Lot (or in a designated area as approved by WPD or its nominee) for all rubbish and shall be cleared at regular intervals. At no time shall rubbish be permitted to escape outside of the building Lot or be permitted to cause an unsightly mess within the Lot.
- k. Not commence construction on the Lot until temporary fencing has been erected on the entire length of all unfenced boundaries. The temporary fence must comprise removable wire or shade cloth (or other see-through material), be a minimum of 1.2 metres in height and have a rigid frame and in all circumstances provide only one vehicle access to the Lot from the road or right-of-way.
- l. Not permit any construction unless the building site complies at all times with the requirements of the Health and Safety at Work Act 2015.