

FIRST SCHEDULE**BACKGROUND**

- A The Land is situated within the Wharekauhau Country Estate.
- B As a result of the Encumbrancer agreeing to the registration of the Land Covenants over the Land and improvements on the Land, for the better management and control of the Wharekauhau Country Estate and to give full and proper effect to the objectives of the Wharekauhau Country Estate referred to in clause 3 of the Land Covenants, the Encumbrancer has further agreed to do certain acts and observe certain covenants and to also encumber and agreed to make with the Encumbrancee the rent charge and covenants set out in this Encumbrance for the benefit of the Encumbrancee and the preservation of the integrity of the Wharekauhau Country Estate.

IT IS AGREED AS FOLLOWS**Operative Part**

- 1 The Encumbrancer ENCUMBERS the Land for the benefit of the Encumbrancee for a term of 999 years with an annual rent charge of \$10 to be paid by the day of each and every year throughout the term of this Encumbrance, if such sum is demanded by the Encumbrancee by that date.
- 2 This Encumbrance shall otherwise be upon the terms and condition of the following Second Schedule.

SECOND SCHEDULE**INTERPRETATION AND DEFINITIONS**

- 1 In the interpretation of this Encumbrance, unless the context otherwise requires:
- (a) **Changes in legislation**
a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- (b) **Clauses and Schedules**
references to clauses are to clauses of this Encumbrance;
- (c) **Contracts (Privity) Act**
notwithstanding that there may be no privity of contract existing between the Encumbrancer and other Estate lot owners nevertheless such third parties shall have the right to enforce any of the obligations and indemnities in this Encumbrance which are of benefit to them;
- (d) **Corresponding meanings**
where a word or expression is defined in this Encumbrance, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

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SECOND SCHEDULE (Continued)

- (e) **“Cottages”** means the stormwatch, wetland and pasture cottages established or to be established around Wharekauhau Lodge and includes any replacement or new cottages of whatever kind;
- (f) **“Country Estate levies”** means those levies set out in clause 6 of this Encumbrance;
- (g) **“Design Team”** means:
 - (i) one reputable Designer or Architect appointed by the Encumbrancee;
 - (ii) two further appointees of the Encumbrancee as advised to the Encumbrancer from time to time;
 - (iii) The Manager; and
 - (iv) three Estate lot owners appointed by the Estate lot owners from time to time;
- (h) **“Estate Homes”** means the residential dwellings erected on residential lots established within the Wharekauhau Country Estate;
- (i) **“Estate lot owners”** means the registered proprietors of residential lots established within the Wharekauhau Country Estate;
- (j) **Headings**
headings appear as a matter of convenience and are not to affect the interpretation of this Encumbrance;
- (k) **Meaning of writing**
references to “written” or “in writing” include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form;
- (l) **New Zealand currency**
references to monetary amounts are to New Zealand currency;
- (m) **“relatives”** shall have that meaning ascribed in section OB1 of the Income Tax Act 1994;
- (n) **Severability**
the illegality, invalidity or unenforceability of any provision in this Encumbrance shall not affect the legality, validity or enforceability of any other provision;
- (o) **Singular and plural**
the singular includes the plural and vice versa, and words importing one gender include the other gender;
- (p) **“the Conservation Plan”** means the Conservation Plan referred to in the resource consent obtained from the South Wairarapa District Council in respect of the Wharekauhau Country Estate which Plan, as varied from time to time shall be implemented and sustained by the Encumbrancee throughout the term of this Encumbrance;

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SECOND SCHEDULE (continued)

- (q) **“the Land Covenants”** means those land covenants registered under Transfer number [] ;
- (r) **“the Manager”** means the person from time to time appointed manager of the Wharekauhau Lodge or his or her nominee;
- (s) **“Wharekauhau Country Estate”** means the area designated within the existing Wharekauhau Sheep Station comprising residential estate lots, Wharekauhau Lodge, the Cottages and surrounding amenities and conservation areas;
- (t) **“Wharekauhau Lodge”** means the Lodge established within the Wharekauhau Country Estate and any replacement Lodge so established to provide catering and other services to Estate lot owners, guests and invitees to the Wharekauhau Country Estate.

Statutory Provisions

- 2 This Encumbrance shall not entitle the Encumbrancer to any of the powers and remedies given to encumbrancers under the Land Transfer Act 1952 or entitle the Encumbrancee to any of the powers and remedies given to mortgagees under the Land Transfer Act 1952 or the Property Law Act 1952 except that the Encumbrancee shall be entitled to the benefit of Sections 154 and 156 of the Land Transfer Act 1952 and to Sections 63, 64, 70, 73 and 104 of the Property Law Act 1952 or their equivalent sections in any successor, consolidated or amendment Acts.
- 3 **IN CONSIDERATION OF THE ENCUMBRANCEE ENTERING INTO THIS ENCUMBRANCE THE ENCUMBRANCER COVENANTS THAT THE ENCUMBRANCER WILL:**
 - 3.1 **Abide by objectives:** Observe and abide by the objectives of the Wharekauhau Country Estate as set out in clause 3 of the Land Covenants and not do or permit anyone in occupation of the Land or anyone visiting the Land whether as a guest or otherwise to breach or do any act or thing which may breach or threaten to breach such objectives;
 - 3.2 **Abide by restrictive covenants:** Not build or construct or undertake any building work on the Land other than in strict adherence with the restrictive covenants set out in clauses 3-14 inclusive of the Land Covenants and then only with the approval of the Encumbrancee prior to commencement of any building work;
 - 3.3 **Quality of building work:** Maintain, repair and renew Estate Homes and any other building structures or improvements on the Land to a high quality standard of repair, maintenance and renewal consistent with maintaining the integrity and quality of the Wharekauhau Country Estate development;
 - 3.4 **Prior approval of Design Team required:** Not carry out any external or internal structural alteration or addition to any existing Estate Home, building structure or other improvement without obtaining the consent of the Design Team;

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- 3.5 **External colours to be compatible:** Only adopt external colour schemes which have been first approved by the Design Team and which at all times remain compatible with the surrounding landscape and with Wharekauhau Lodge, Estate Homes, Cottages and building structures situated with the Wharekauhau Country Estate and in situations where Estate Homes are allowed to be used by guests for the purpose of complementing the Wharekauhau Lodge business then the Design Team shall be permitted the right to approve and recommend internal design features as a pre-condition to approving any Estate Home for Wharekauhau Lodge guest use;
- 3.6 **Insurance cover:** Insure and keep insured all building and other improvements on the Land for full replacement value thereof (including demolition costs and architect's fees) against fire, flood, explosion, wind, storm, hail, fire caused by earthquake, snow, aircraft and other aerial devices dropped there from, impact, riot and civil commotion, malicious damage caused by burglars, and earthquake in excess of indemnity value;
- 3.7 **Rebuild to same quality:** Immediately apply insurance money received by the Encumbrancer and any mortgagee (subject to any subrogation rights) over the Land in respect of damage to any building or improvements in rebuilding or reinstating to the same quality and integrity existing prior to any destruction or damage being caused;
- 3.8 **Pay all outgoings:** Punctually pay all rates, taxes, charges, assessments, levies, Country Estate levies and insurance premiums payable in respect of the Land and any improvements on the Land and resulting from use of Wharekauhau Country Estate and not allow any charging orders or liens to be registered over the Land provided that if the Encumbrancer defaults in the punctual payment of any such charges the Encumbrancee may (without being obliged to) pay any such unpaid rates, taxes, assessment, levies or charges. Any amount so paid by the Encumbrancee shall be a debt from the Encumbrancer to the Encumbrancee payable upon demand and be deemed secured by this Encumbrance as if it were part of the rent charge hereby secured;
- 3.9 **Right of entry to utility operators:** Permit the Encumbrancee or any utility operator who retains rights under any easement over the Land or by statute at all reasonable hours except in the case of emergencies to enter into and upon the Land for any of the following purposes (directly associated with their respective rights whether arising under this Encumbrance or the Land Covenants or their easement rights):
- viewing the condition of any Estate Home and associated buildings and landscaping the Land; and/or
 - maintaining, repairing and renewing any pipes, conduits, wires, cables or ducts for the time being under, upon or passing through the Land and used in connection with the enjoyment of any other land being part of Wharekauhau Country Estate; and/or
 - ensuring that the restrictive covenants in the Land Covenants and the stipulations and restrictions set out in this Encumbrance are observed by the Encumbrancer and if not permit the Encumbrancee (but without having any lawful obligation to so do) to carry out any work necessary to remedy any breach by the Encumbrancee with any charges, costs and expenses arising being payable on demand and being deemed secured by this Encumbrance as if they were part of the rent charge hereby secured;

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- 3.10 **Compliance Health and Safety:** Comply with any health and safety management plan adopted by the Wharekauhau Country Estate from time to time and otherwise comply in all respects with all statutes, Regional and District Plans, by-laws and regulations and conditions of any resource and building consents held relevant to the use and occupation of the Land and any improvements on the Land;
- 3.11 **Advise address changes:** On completion of any sale or other disposal of the Land to new owners to immediately advise the Manager in writing of the names and addresses including any facsimile or electronic address of such new owners;
- 3.12 **Cause no obstruction to heliport area:** Not cause or bring about the cause of any obstruction or interference of any kind whatsoever or permit or allow any person under the control or at the invitation of the Encumbrancer to so cause or bring about such obstruction or interference with the heliport area designated within the Wharekauhau Country Estate;
- 3.13 **Abide by Conservation Plan:** Observe and abide by the Conservation Plan or covenants or protocols in place or otherwise adopted by the Encumbrancee over the Wharekauhau Country Estate and any rules published from time to time by the Design Team which rules complement the rules in this Encumbrance and otherwise which govern the good management and control of the Wharekauhau Country Estate including the conduct of the Wharekauhau Lodge business, recreational activities, protection of the environment and farming business;
- 3.14 **No offensive language:** When upon Wharekauhau Lodge and in its immediate surrounds be adequately clothed and not use language or behave in a manner likely to cause offence or embarrassment to any other person lawfully occupying Wharekauhau Lodge;
- 3.15 **Guests to respect quiet enjoyment:** Take all reasonable steps to ensure that the Encumbrancer's guests and invitees do not behave in a manner likely to interfere with the quiet enjoyment of the occupiers of any Estate Home of the Wharekauhau Country Estate or of any person lawfully using the Wharekauhau Country Estate;
- 3.16 **Keep clean:** Keep clean all internal and external surfaces of all windows and glass which form part of the exterior windows of the Estate Home and any improvements on the Land;
- 3.17 **Infectious Illness:** Should any notifiable infectious illness transpire in or about the Land give immediate notice of such illness to the Manager and will if necessary thoroughly fumigate any improvements on the Land at the Encumbrancer's own expense and to the satisfaction of the local Health Officer;
- 3.18 **Notify accidents or defects:** Promptly notify the Encumbrancee of any accident to or defect in the water pipes, electric installations, fixtures or the Estate Home which comes to the Encumbrancer's knowledge and the Manager shall have authority by its employees, consultants, contractors or agents in the circumstances having regard to the urgency involved to examine or make such repairs or renovations as they may deem necessary for the health and safety and preservation of the Land and Estate Home or other improvements on the Land as often as may be necessary;

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3.19 **Security:** Observe all security requirements adopted or imposed within the Wharekauhau Country Estate by the Encumbrancee from time to time and in particular securely fasten all doors and windows to the Estate Home or other improvements on the Land left unoccupied and granting to the Manager the right to enter and fasten the same if left insecurely fastened;

3.20 **Effluent disposal:** Comply with the requirements and conditions of any resource consent held from any Authority governing the disposal of effluent, including the need to provide appropriate approved septic tanks;

3.21 **Not cause breach of resource consents:** Comply with and not cause or bring about a breach of the conditions set out in any resource consents held by the Encumbrancee for the Wharekauhau Country Estate or cause or bring about the cause of any breach of any Section 221 Resource Management Act 1991 consent notices registered against any land within the Wharekauhau Country Estate.

4 IN CONSIDERATION OF THE ENCUMBRANCEE ENTERING INTO THIS ENCUMBRANCE THE ENCUMBRANCER COVENANTS THAT THE ENCUMBRANCER WILL NOT:

4.1 **No illegal purpose:** Use or permit the Land or any improvements on the Land to be used for any purpose which is illegal or which may be injurious to the reputation of the Wharekauhau Country Estate;

4.2 **No noise:** Make undue noise or create any nuisance in or about the Land or the Wharekauhau Country Estate;

4.3 **Pets not to cause nuisance:** Allow any animal, bird or pet (collectively called "Pet") to cause a nuisance and otherwise:

- ensure at all times that any Pet outside the Land is kept under strict control and supervision;
- any laws pertaining to Pets are adhered to at all times;
- not allow dogs such as pit bull terriers or similar breeds onto the Wharekauhau Country Estate without the written approval of the Manager;
- at all times ensure that any farm animals and birdlife in or about the surrounding farm and conservation areas are not put under any threat or stress by any Pet.

4.4 **Not use land to cause a disturbance:** Use the Land or any improvements on the Land in a manner or for such purpose as to cause a nuisance or disturbance to any other occupier or guests of the Wharekauhau Country Estate;

4.5 **Quiet enjoyment:** Obstruct or interfere with or disturb or trespass upon the rights of quiet enjoyment of any other property owner or occupier or their guests within the Wharekauhau Country Estate;

4.6 **Cause no obstruction:** Do or permit to be done anything whereby any obstruction, interference, restriction or hindrance may be caused or brought about to any of the Wharekauhau Country Estate facilities or to the roads and pathways or common landscape areas within the Wharekauhau Country Estate;

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- 4.7 **No vermin:** Permit any Estate Home or other improvements on the Land to become infested by vermin or insects and if such infestation is threatened the Encumbrancer shall take all immediate and necessary measures to properly and adequately eradicate any such vermin or insects;
- 4.8 **No free standing clotheslines:** Install or erect any free standing clothesline nor hang or display on or from windows, dormers, balconies or other parts of the Encumbrancer's Estate Home or other improvements on the Land in such a way as to be visible any laundry, towels, clothing, bedding, or other articles and then only with the approval of the Design Team;
- 4.9 **No flags etc:** Display or put on any part of the Land including the exterior of the Estate Home or any other improvements on the Land any hoardings, flags, advertising signs or any notices, nameboards or name plates except those approved by the Design Team;
- 4.10 **No Satellite dishes:** Install or erect any satellite dishes or telecommunication apparatus on the Land or on the exterior of the Estate Home or other improvements on the Land without first obtaining the written consent of the Design Team as to location and size;
- 4.11 **No loud music:** Play or have in use any musical instrument, stereo, radio, television, washing machine, clothes dryer, wastemaster or any other machine at any time day or night in such manner as to disturb, irritate or annoy any occupant within the Wharekauhau Country Estate and shall immediately cease to operate the same if requested to do so by the Manager;
- 4.12 **No open day sales or auctions:** Hold any open day sale or auction sale on the Land;
- 4.13 **Don't rubbish:** Allow any rubbish or litter (including without limitation trees, grass, shrubs, clippings, chemical and plant waste, metals or bulk material) to accumulate nor dispose of any other waste anywhere except into bins or receptacles stored in an enclosed structure screened from view for removal nor allow odours to emanate or escape from such bins or receptacles so as to be unsightly, cause offence or create a nuisance;
- 4.14 **Contain inflammable liquids:** Use or store in or upon the Land any inflammable chemical liquid or gas or other inflammable material other than a reasonable amount of liquids gases or other materials used or intended to be used for domestic purposes only or which are stored as fuel in the tank of a motor vehicle or other internal combustion engine;
- 4.15 **Don't block drains:** Use for any purpose other than for which they were constructed any toilet or other water apparatus or put in such toilet or water apparatus any sweepings, rubbish bags or other unsuitable substance;
- 4.16 **Don't waste water:** Waste any water or fail to ensure that any water taps on the Land are turned off after use by the Encumbrancer;
- 4.17 **Supervision of work:** Employ any consultant, contractor or workperson:
 - for the purpose of carrying out any structural additions or alterations or repairing or making good any part of the Estate Home or other improvements on the Land or any fittings or fixtures in the Estate Home or such improvements or any services rendered to the cottage or such improvements other than contractors or workmen duly appointed or approved by the Design Team; or

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- to perform any building work in connection with the Encumbrancer's use of the Land except under the supervision (if required) and to the satisfaction of the Design Team which may specify condition as to how and under whose supervision the work shall be done;
- 4.18 **Park only in concealed areas:** Park any car or other vehicle and store or leave any boat, trailer, boating equipment, or the like on the Land or on any part of the Wharekauhau Country Estate unless within a concealed area;
- 4.19 **Compatible alarm systems:** Install any private alarm system which shall conflict or interfere with the central alarm system if installed on the Wharekauhau Country Estate;
- 4.20 **No contamination:** Cause any contamination to their Land or any part of the Wharekauhau Country Estate or discharge any noxious dangerous or offensive substances into or about the Land or any part of the Wharekauhau Country Estate;
- 4.21 **No water tanks above surface:** Install any water tank above the surface of the Land unless such tank is constructed and is concealed within an Estate Home or associated building;
- 4.22 **Fire hazards:** Permit anything to be done or bring or keep anything on the Land or any improvements on the Land which may create a fire hazard;
- 4.23 **Farm gates:** Leave open any farm gates;
- 4.24 **Don't disturb stock:** Disturb or create a noise or a nuisance to any stock whether in paddocks or not or to any birds or wildlife;
- 4.25 **Restriction on renting Estate Homes:** Lease, rent or grant any occupation rights over or in respect of the Land, Estate Home or any improvements on the Land to any person (unless a relative who shall be permitted to stay as of right) at any time without the prior written consent of the Design Team and then only on the basis that such occupation if approved does not exceed 6 months of continuous rented occupation and does not in any circumstances, in the reasonable opinion of the Design Team, compete with the principal business of the Wharekauhau Lodge in encouraging guests to stay at the Wharekauhau Country Lodge and the Cottages and that all restrictions and rules relevant to the Land are made known to such persons who must agree to abide fully by their terms, and the Design Team will if required by the Encumbrancee arrange all such leasings, rentings, tenancies or occupancies through the agency of the Encumbrancee upon such basis as the Design Team may reasonably require to ensure security and observance of the rules under this Encumbrance and the Land Covenants.

THE ENCUMBRANCEE SHALL PROVIDE THE FOLLOWING SERVICES AND FACILITIES

- 5 In consideration of the Encumbrancer entering into this Encumbrance the Encumbrancee shall undertake and provide the following services and facilities and arrange payment of any reasonable charges incurred in order to protect and otherwise enhance the use and enjoyment of the Wharekauhau Country Estate by owners and their guests and ensure that the quality and integrity of Wharekauhau Country Estate and the use and enjoyment by the owners and their guests is sustained throughout:

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- roading, drainage and footways;
- common services for the provision of electricity, telephone, sewage and water supply;
- the engaging of competent consultants, contractors and tradespeople for the purpose of carrying out any works to common services to the Wharekauhau Lodge, the cottages or other improvements within the Wharekauhau Country Estate;
- common amenities;
- payment of any rates, assessments, charges or levies imposed on Wharekauhau Country Estate relevant to the use and enjoyment of the Wharekauhau Country Estate but excluding such charges imposed on subdivisional lots, Wharekauhau Lodge and the Cottages;
- water and sewage catchment and rubbish collection and disposal or recycling of such;
- insurance cover of all improvements used or made available to the owners and their guests or otherwise for the benefit and security of such persons including adequate public liability cover;
- effluent treatment and disposal;
- water supply and reticulation;
- health and safety management programme including provision of fire prevention measures and evacuation procedures;
- general administrative and management necessary to provide the services required to maintain and enhance the objectives of the Wharekauhau Country Estate;
- such other services required from time to time in order to maintain the good management and well being of the Wharekauhau Country Estate.

THE ENCUMBRANCER SHALL PAY WHAREKAUHAU COUNTRY ESTATE CHARGES:

- 6 The Encumbrancer shall duly and punctually pay all the Country Estate levies imposed by the Encumbrancee at such times and in such manner as the Encumbrancee may from time to time direct provided that such levies shall be the lesser of actual costs incurred or a maximum of \$500 per month plus GST (which maximum may be adjusted for inflation) as determined at the commencement of each year by the Design Team during the term of this Encumbrance in order to meet and pay to the Encumbrancee the Encumbrancer's reasonable share and proportion of Country Estate levies comprising the following costs and expenditures reasonably incurred by the Encumbrancee plus any government tax imposed from time to time in respect of:
- garbage collection and disposal and recycling and costs and expenses associated with any effluent disposal regime adopted from time to time;
 - administration and management charges which must not exceed at anytime 6% of the total annual levies imposed in any one year;

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- water and sewage connection fees to the boundary of the Land;
- water and sewage catchment and reticulation and provision of utilities;
- roading maintenance;
- landscape work and maintenance;
- provision of amenities associated with recreational pursuits.

The amount of such levies for Country Estate levies shall be determined as the Design Team considers fair and reasonable and in any event the Design Team shall use best efforts to ensure that minimal or no levies accrue to unsold residential lots within the Wharekauhau Country Estate and otherwise levies shall be due for payment to the Encumbrancee without deduction or set off on the 20th of each month throughout each year following the posting of accounts to the Encumbrancer or otherwise as the Encumbrancee may determine.

ALL ESTATE LOTS ENCUMBERED

- 7 The Encumbrancer covenants to at all times observe and perform all the restrictions and stipulations set out in this Encumbrance to the intent that each of the restrictions and stipulations will forever enure for the benefit of and be appurtenant to each and all of the Lots and each and all of the registered proprietors of the Lots provided that the Encumbrancer will be liable only for breaches of the restrictions and stipulations contained in this Encumbrance which occur whilst the Encumbrancer is the registered proprietor of the Land or any part of the Land.

BREACH AND REMEDIES

- 8 If there should be any breach or non-observance on the Encumbrancer's part of any of the restrictions and stipulations contained in this Encumbrance and without prejudice to any other liability which the Encumbrancer may have to the Encumbrancee and any person or persons having the benefit of these restrictions and stipulations the Encumbrancer will upon written demand being made by the Encumbrancee:
- 8.0.1 pay to the Encumbrancee making such demand as liquidated damages the sum of \$100 per day while any breach or non-observance remains unremedied; and/or
 - 8.0.2 upon receiving reasonable notice from the Encumbrancee remedy any breach if capable of remedy on terms and conditions imposed by the Encumbrancee which may involve being required to remove any vehicle or moveable items, structure or building material which breaches the terms of these restrictions and stipulations; and/or
 - 8.0.3 allow the Encumbrancee the right to lodge a caveat against the Land to protect the sum of any unpaid debt owing to the Encumbrancee under this clause on the basis that any unpaid debt shall be deemed to constitute a contractual charge owing to the Encumbrancee over the Land until such time that any debt is fully discharged or otherwise satisfied.

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INDEMNITY

- 9 In all other respects the Encumbrancer will at all times indemnify and keep the Encumbrancee indemnified from all losses, costs, claims and demands including from any fines or penalties involved as a result of any statutory breach in respect of any breach or non-observance by the Encumbrancer of the restrictions and stipulations contained in this Encumbrance.

DISPUTES

- 10 The Encumbrancer and Encumbrancee shall use their best endeavours to avoid disputes and they will actively, openly and in good faith discuss any dispute or difference arising out of and from this Encumbrance and/or the Land Covenants with a view to a speedy resolution.
- 11 If any dispute remains unresolved then such dispute shall be referred to Expert determination based on the procedures set out below. Any party may initiate the Expert determination by giving written notice to the other parties.

APPOINTMENT OF EXPERT:

- 12 (a) The Expert, who must be a person with relevant experience having regard to the particular subject matter in dispute, shall be a person agreed on by the disputing parties, but if the disputing parties cannot agree on one within 5 business days of the Expert determination having been initiated then the Expert shall be appointed by the President or his or her nominee for the time being of the Wellington District Law Society or its successor whose decision shall be final and binding on the disputing parties.
- (b) By accepting appointment the Expert:
- (i) confirms that the appointment does not give rise to any conflict of interest or circumstance which is likely to lead to a presumption of bias;
 - (ii) agrees to comply with the requirements placed on an appointee by this clause.
- (c) If the Expert fails to act, or is or becomes incapable of acting, or dies, then any party may give notice to the others requiring a replacement Expert to be appointed. In such a case the appointment process in clause 12(a) is to be used. If necessary, this provision for the appointment of a replacement Expert may be used on more than one occasion.

WRITTEN SUBMISSIONS:

- 13 Within 30 business days of the Expert's appointment the parties must each provide the Expert with written submissions and with any relevant supporting material. As soon as the Expert has received all of the submissions the parties must exchange submissions and will have a further 15 business days within which to make a further written submission. The Expert must then begin the determination promptly.

EXPERT TO ACT AS EXPERT AND NOT AS ARBITRATOR

- 14 The Expert is to act as an expert and not as an arbitrator and accordingly the parties expressly agree that the provisions of the Arbitration Act 1996 do not and shall not apply to this process. While being required to consider the written submissions of the parties and take them into account, the Expert may also:

- (i) rely on his or her own knowledge, skill and experience in relation to the matter in dispute; and
- (ii) make his or her own enquiries without reference to the parties.

PROCEDURE

15 The Expert may:

- (i) arrange to meet with the parties either together or alone to discuss the dispute;
- (ii) require the parties to provide such evidence as he or she considers necessary to determine the dispute;
- (iii) establish procedures and a timetable for the conduct of the determination;
- (iv) impose time constraints on the disputing parties;
- (v) determine whether the dispute hearing should take place by telephone or video conference call or with the disputing parties physically present in New Zealand at a time and place to be determined by the parties.

THE DETERMINATION:

- 16
- (i) The Expert must give his or her determination as soon as practicable.
 - (ii) The Expert must give his or her determination in writing, with reasons unless the parties mutually agree otherwise.
 - (iii) The Expert may decide how the reasonable costs, fees and other expenses (including the solicitor/client costs) of the parties in relation to the determination are to be borne.
But if the Expert makes no decision as to costs, the parties are to share them equally.