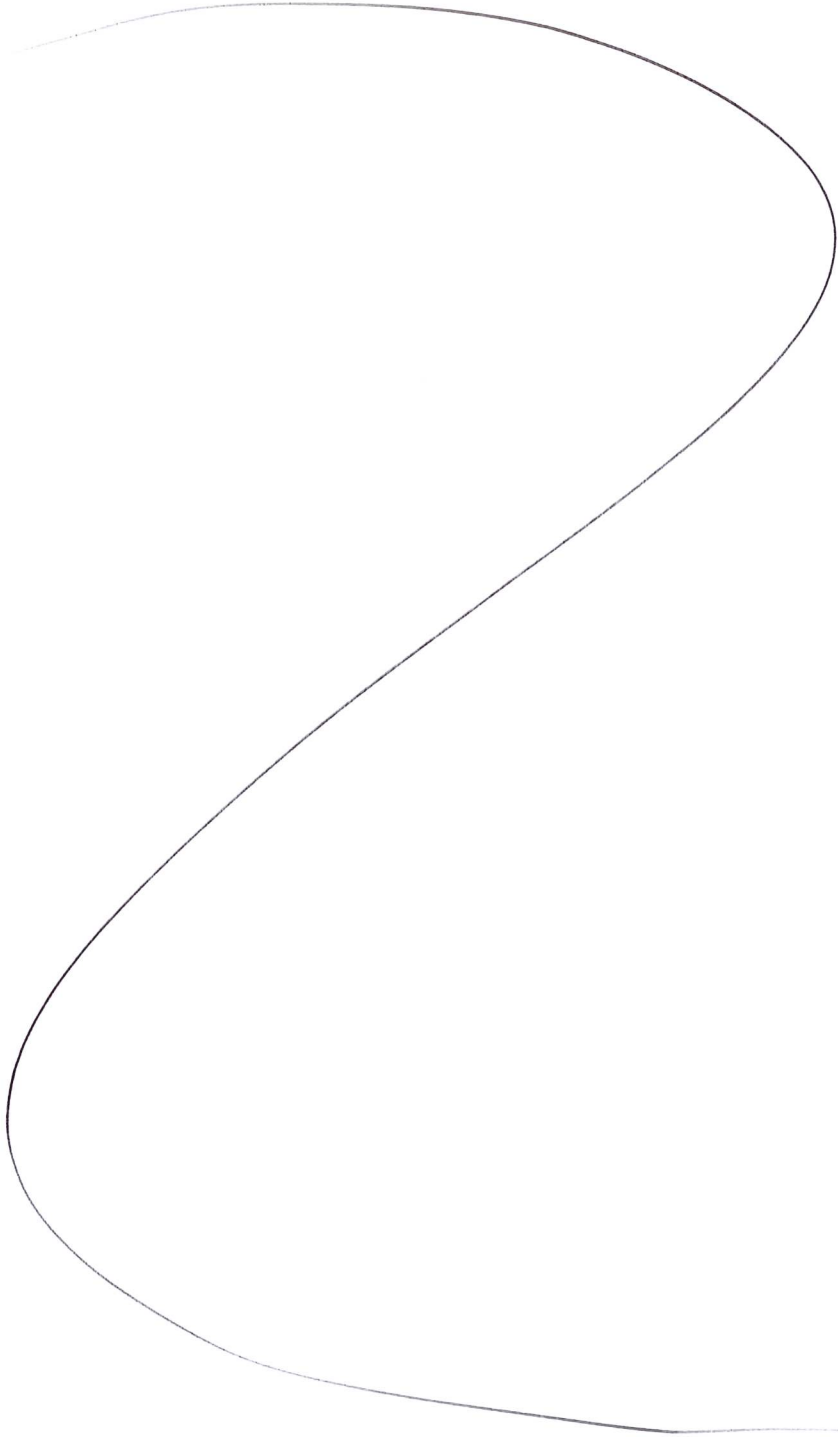


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SCHEDULE D – EASEMENT INSTRUMENT



Easement instrument to grant easement or *profit à prendre*
(Section 109 Land Transfer Act 2017)

Easement instrument to grant easement or *profit à prendre*

(Section 109 Land Transfer Act 2017)

Grantor

Her Majesty the Queen

Grantee

Wellington City Council

Grant of Easement or *Profit à prendre*

The Grantor being the registered owner of the burdened land set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) or *profit(s) à prendre* set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A

Schedule, if required

Continue in additional Annexure

Purpose of Easement, or <i>profit</i>	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Pedestrian Right of Way	Tbc	Tbc	In gross

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Continue in additional Annexure Schedule, if required.

Easements or profits à prendre rights and powers (including terms, covenants and conditions)

Delete phrases in [] and insert memorandum number as required; continue in additional Annexure Schedule, if required

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2018 and/or Schedule 5 of the Property Law Act 2007

The implied rights and powers are hereby **[varied]** ~~[negated]~~ ~~[added to]~~ or ~~[substituted]~~ by:

[Memorandum number _____, registered under section 209 of the Land Transfer Act 2017]

[the provisions set out in Annexure Schedule]

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SCHEDULE A - Rights and Powers of the Easement

The Easement will contain the rights and powers implied by the Fifth Schedule to the Land Transfer Regulations 2018 varied as set out below.

Interpretation:

1. In this Easement, unless the context requires otherwise:

easement means the rights hereby granted;

easement facility means the pedestrian, and wheelchair pathway constructed on the Easement Land to facilitate access between Hobson Crescent and Turnbull Street;

Grantee means the Wellington City Council and where applicable includes its successors and its agents, employees, contractors, tenants, licensees and invitees (including members of the public);

Grantor means Her Majesty the Queen and includes her successors, agents, employees, contractors, tenants, licensees and invitees;

Grant of Pedestrian Right of Way

2. The Grantor grants to the Grantee the right for the Grantee and the general public as invitees of the Grantee, in common with the Grantor at all times, to go over and along the easement area at any time, outside of school hours (before 8.30am and after 3.30pm Monday to Friday on the days that the school is open for instruction) on foot or any other form of human powered transportation and includes the right to go over and along the easement area with or without any kind of:

(a) pram, un-motorised scooter, wheelchair or disability vehicle; or

(b) domestic animal on a lead.

PROVIDED HOWEVER, that nothing in this easement grants the Grantee the right to interfere with the use by the Grantor, the Grantor's invitees and all other persons to whom the Grantor has or may grant rights.

3. For the avoidance of doubt the right to go over and along the easement area does not include the right to go over and along the easement area with any type of powered motor vehicle including but not limited to cars, trucks, vans, quadbikes and motorbikes.
4. The easement is granted under Section 48 of the Public Works Act 1981 and the right of termination in section 48 is hereby expressly excluded. The easement created by this instrument will continue until surrendered by the Grantee and the Grantor has no power to terminate this easement.

Grantor's Rights and obligations

5. Despite anything to the contrary in this instrument or at law, the Grantor may, at its sole discretion, close or permit the closure of the easement facility:
 - (a) in the event of an emergency for the duration of that emergency;
 - (b) if it reasonably considers that a serious threat exists to the safety of the public, or for maintenance purposes.
6. The Grantor may also at its sole discretion limit, restrict, or close off access to all or any part of the easement facility in the event of a public or school event or for security reasons.

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7. No error or omission in the content or absence of any such notice of restriction or limitation to the use of the Easement as referred to in clauses 5 or 6 will affect the validity of the notice or the Grantor's entitlement to exercise the rights.
8. In addition, the Grantor may restrict access to and revoke the invitation to any member of the public at its sole discretion if the security and/or safety of the school or any person may be compromised, or for any reason if other reasonable grounds exist.
9. Subject to clauses 5, 6 and 8, the Grantor covenants with the Grantee that it will not at any time do or permit to be done anything on the easement area which may damage or obstruct the easement facility or which may interfere with or affect the full free use and enjoyment by the Grantee and the members of the public the rights, powers and privileges granted under this easement.

Grantee's Rights and obligations

10. The Easement will be for the use of the general public.
11. The Grantee is entitled to close the easement facility if it reasonably considers that a serious threat exists to the safety of the public.
12. The Grantee will use reasonable endeavours to cause as little disturbance and disruption to the carrying on of the normal or reasonable operations of the Grantor or the lawful use of the Burdened Land by the Grantor or third parties although the Grantor accepts that this provision will not prevent, restrict or hinder the Grantee from exercising its rights in a manner consistent with the terms and conditions set out under this easement.
13. The Grantee will not:
 - (a) damage the easement facility, excluding fair wear and tear;
 - (b) endanger, disturb or annoy any other lawful user of the easement area provided that this provision will not unreasonably restrict or hinder the exercise of the Grantee's rights;
 - (c) leave on the easement area any materials or unreasonable impediments to the use and enjoyment of the easement facility; or
 - (d) do or allow to be done on the easement area or the Burdened Land anything that may interfere with or restrict the rights of the Grantor or interfere with the efficient operation of the easement facility.
14. The Grantee must comply with all reasonable signs and control measures as painted or installed by the Grantor on the Burdened Land.
15. Neither the Grantee nor the Grantor will do or permit on the Burdened Land anything that may interfere with or restrict the rights of the other to use and enjoy the Easement Facility, except as permitted by this instrument.

Variation of Route

16. The parties acknowledge and agree that the Grantor may from time to time request that the Stipulated Course of the Easement Facility through the burdened land be varied.
17. If clause 16 applies the Grantee agrees to surrender this easement subject to:
 - (a) the Grantor granting to the Grantee a pedestrian right of way easement along a varied route with rights and powers similar to those granted under this easement; and
 - (b) the Grantor obtaining all required consents and permits in respect of the new easement facility.

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18. The Grantor agrees to meet all costs associated with the variation of the easement area, including survey, registration, legal and the Grantor's reasonable costs incurred in the attending to any request made by the Grantee.

Repair, Maintenance and Costs

19. The Grantor is responsible for the construction, maintenance and repair of the easement facility to ensure that the easement facility is kept in good order and to prevent it from becoming a danger or nuisance.
20. The Grantee must on demand pay to the Grantor the cost of any repair and maintenance of the easement facility which results from any wilful or negligent act or omission of the Grantee.
21. Except in the case of an emergency, before carrying out any maintenance and/or repair pursuant to clause 19, the Grantor must, to the extent that such works may interfere with or restrict the rights of the Grantee, provide the Grantee with reasonable notice setting out the timing of the works and take all reasonable steps to minimise any inconvenience to the occupiers or lawful users of the easement facility.

General

22. Where there is any conflict between the provisions of the Fifth Schedule of the Land Transfer Regulations 2018 and this instrument, the provisions of this instrument must prevail.
23. For the avoidance of doubt the rights and powers implied by the Fifth Schedule of the Property Law Act 2007 are negated, the grant not being a vehicular right of way (except for mobility devices).

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