

QLDC Council  
12 December 2019

Report for Agenda Item | Rīpoata mot e Rāraki take: 5

Department: Community Services

Title | Taitara: Easements sought by Skyline Enterprises Limited

**PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO**

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- 1 To consider easements sought by Skyline Easements Ltd (SEL), associated with their upgrade of the Skyline gondola and restaurant facilities.

**EXECUTIVE SUMMARY | WHAKARĀPOPOTOTANGA MATUA**

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- 2 This report relates to an application made by SEL for an extent of easements over areas of Queenstown Lakes District Council (QLDC) administered reserve, that are required to give effect to their resource consents RM160647 and RM171172, granted by the Environment Court, and a potential variation to those consents (RM190536). This application is the most recent of a number of different easement requests submitted by SEL since 2016, and relates to areas in the vicinity of the proposed base building and carpark building
- 3 The intention to grant the easements was publically notified on 26 September 2019, in accordance with the Reserves Act 1977. The closing date for submissions was 31 October 2019, and no submissions or objections were received. The recommendation now put to Council is to approve the easements subject to conditions.

**RECOMMENDATION | NGĀ TŪOHUNGA**

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That Council:

1. **Note** the contents of this report and in particular;
2. **Approve** easements over Council Reserve Land as detailed in the plans prepared by Paterson Pitts Group, identified as:
  3. Q4115K-64 Sheet 259 Rev A 12/07/2019
  4. Q4115K-64 Sheet 260 Rev A 12/07/2019
  5. **Q4115K-64 Sheet 261 Rev A 12/07/2019 [NB: most relevant plan]**
  6. Q4115K-64 Sheet 262 Rev A 12/07/2019
  7. Q4115K-64 Sheet 150 Rev B 14/05/2019
  8. Q4115K-64 Sheet 151 Rev B 14/05/2019

9. **Direct** that the approval of any easements over Council Reserve Land is subject to the following terms and conditions:
- a. Commencement: To be determined, and subject to conditions of resource consents RM160647 and RM171172, including any variations to those consents.
  - b. Extent of Easements: To be confirmed prior to commencement, and subject to conditions of resource consents RM160647 and RM171172, including any variations to those consents;
  - c. Fees: As per QLDC's Easement Policy 2008, subject to the extent of the easements being confirmed, and this shall also include outstanding application fees to be payable to the Queenstown District Council. Prior to any onsite works occurring in the easement areas, all easement fees shall be comprehensively established to the satisfaction of the QLDC, unless otherwise authorised in writing by the General Manager Community Services;
  - d. Any landscaping/planting to delineate the Skyline Enterprises Ltd lease area, is to occur within that lease area, and not in easement area D, which shall remain entirely open and useable to the public;
  - e. Any easement formation necessary to accommodate vehicles, the maintenance of such, including costs, shall be the responsibility of Skyline Enterprises Limited;
  - f. Should conflicts between the public users of the reserve, and rights of way sought by SEL become apparent to QLDC, the ability to require SEL to mitigate such conflicts to the satisfaction of QLDC shall be assured;
  - g. A bond of \$5,000.00 be payable to QLDC prior to any onsite works commencing in the easement areas;
  - h. Any worksite in any easement area to be evidenced by before and after photographs, video or similar to be provided to QLDC by SEL;
  - i. Comprehensive safety plans must be prepared and implemented, at SEL's responsibility and cost, to ensure a safe environment is maintained around the subject easement sites for any physical works associated with the easement areas;
  - j. Certificate of adequate public liability cover to be received;
  - k. Reinstatement and landscaping of any disturbed areas to be completed within two months following any associated excavation/construction, or to the satisfaction and timeframes communicated by the QLDC's Community Services Department. Reinstatement to include any landscaping, fencing or other structures.
  - l. Within 3 months of completion of the work in any easement areas for which easements are sought, Skyline Enterprises Ltd to provide QLDC with a surveyed easement and signed Deed of Easement, unless otherwise authorised in writing by the General Manager Community Services.

10. **Delegate** authority to approve final terms and conditions, including commencement, location, extent, fees and execution authority to the General Manager Community Services, provided all relevant requirements of the Easement Policy 2008 are addressed; and
11. **Agree** to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting of the identified easements over Council Reserve Land.

Prepared by:

Reviewed and Authorised by:



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## CONTEXT | HORPOAKI

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- 4 Skyline Enterprises Ltd (SEL) lease an area of the Ben Lomond Recreation Reserve (Reserve) from the QLDC. That lease is registered as encumbrance 5014878.1 on the Certificate of Title for the Reserve.
- 5 SEL have occupied the lease area since the 1960's, providing gondola access to the top of the reserve where they have established and maintain tourism-based facilities including a restaurant and luge course.
- 6 SEL have been granted resource consent (RM160647) for a major upgrade of their existing restaurant and gondola service which operates between Bob's Peak and Brecon Street in Queenstown. SEL have also been granted resource consent (RM171172) for a multi-level carpark building to be located behind the lower terminal building at Brecon Street. SEL have since sought to vary conditions of those consents under variation application RM190536, although there is no decision on that variation at the time of writing this report. As a brief overview, the RM190536 application seeks to change conditions associated with buildings, earthworks, associated landscaping, and infrastructure services. The RM190536 variation is being processed by QLDC Consent Planners (Planning & Development) as the Consent Authority under the Resource Management Act 1991.
- 7 It is noted that Affected Persons Approval is also required from the QLDC as landowner for the RM190536 application, and that approval is delegated to the QLDC Chief Executive. The consequence of this, is that there are different consideration processes underway for different aspects of the same greater SEL development. QLDC as the

Consent Authority is assessing the SEL variation application RM190536, the QLDC Chief Executive is considering effects on QLDC as landowner prior to any grant of Affected Persons Approval for RM190536, and the recommendation now put to Council under this report relates to easements that are necessary to enable the development. For SEL to advance their proposal, all approvals are required, and has been a consistent position that any Council approval for one aspect, should not be taken as constituting a commensurate approval for other aspects. Put simply, any particular endorsement or approval, is not a tantamount approval or support for other matters under consideration.

- 8 Southern Planning Group, as the agent of SEL has outlined the SEL request for new easements in the document included as **Attachment A** to this report. It should be noted that SEL have previously applied for a different extent of easements on the Ben Lomond reserve, and whilst those easements have been approved by Council, none have yet been registered. Accordingly, no associated easement fees have been imposed at this time, because no easements have been registered. A similar requirement is recommended for the easements now proposed. Whilst establishing easement fees at this time would have been preferable, the formal valuations required are extensive and could not occur in a short timeframe. The valuations and easement fees are nonetheless a requirement before any easement is registered.
- 9 Patterson Pitts Group have prepared plans showing existing easements, and the proposed new easements. These plans are included as **Attachment B**.
- 10 The Easements sought are described in the application as follows:
  - a) Right of Support for the establishment of rock anchors beyond the site boundary in favour of Section1 SO 22971& Area A (Car Park Lease);
  - b) Right of Support and Rock Fall Prevention Measures for the bluffs 18, 19 and 20 in favour of Section 1 SO 22971& Area A (Car Park Lease);
  - c) Right of Way in favour of Section 1 SO 22971& Area A (Car Park Lease);
  - d) Right to Convey Electricity in Gross for Aurora Energy Limited.
- 11 The applicant informs that a principal reason for the easements, is that the desired site layout at the base building has changed, and this is described as follows:
  - The roading access into the site has been revised to be direct two-way access to and from the car park building i.e. not a loop road around the lower terminal building.
  - The vehicular access way along the eastern elevation of the lower terminal building has been amended to a pedestrian and cycle way (with occasional vehicle use for SEL maintenance operations).
  - To accommodate the amended coach and delivery parking and manoeuvring areas the car park building has been made shorter in length by 8.4m meaning it has reduced from 94.44m to 86.10m in length.

- The distance of the car park building to the northern boundary of the Skyline lease area has reduced from 8.214m to 1.7m.

12 To explain the request, the two images below are included for ease of reference. Figure 1 illustrates the proposed new layout of the lower terminal and parking building area, and also shows the rock bench extending past the lease area (red outline) towards the right. Figure 2 shows the new easements proposed by this application.



Figure 1: Suggested Redevelopment (note: planting along edge of pathway is excluded)

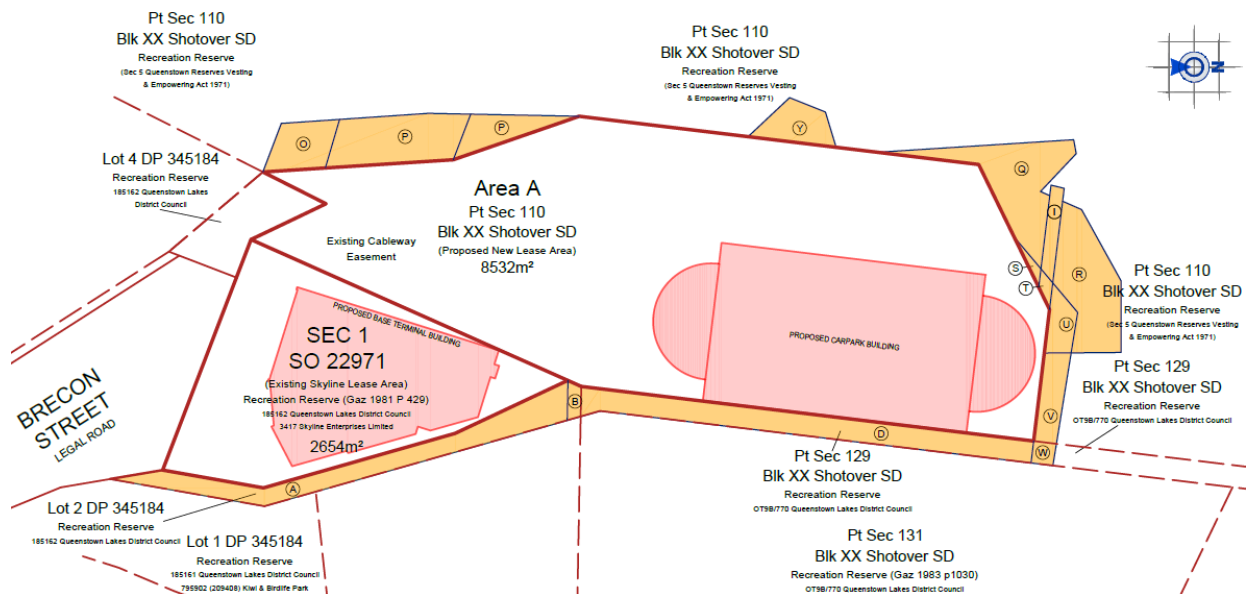


Figure 2: New Easements Requested

- 13 The applicant's geotechnical consultants have identified the need for additional rock anchors, beyond those previously thought necessary under the resource consent associated with the lower terminal/carpark building. This is because additional earthworks are now required in the lease area and beyond into the reserve. The rock anchors necessary to stabilise the 18m high cut, consequently project into the reserve beyond.
- 14 The applicant seeks additional easements to enable a right of support and rock fall mitigation measures. The now requested easements include a right of way to access and maintain the anchors mentioned above, and the support and rock fall mitigation measures necessary to address the hazards from the uphill bluff areas, including the rock bench.
- 15 A right of way is sought along the east of the proposed parking building, in the area currently used as a public pedestrian and cycle way between Brecon St and Hamilton Road. The applicant is required to significantly upgrade this trail through to Hamilton Road as part of the development, but now seeks to use the trail as a right of way to facilitate access between the base building and carpark building, enable construction of localised retaining, rock fall mitigation and drainage works.
- 16 Finally, a right to convey electricity in gross is sought for Aurora Energy Limited. This is associated with the intention to underground that infrastructure, and to co-locate with other infrastructure within the same easement corridor.
- 17 Under the Reserves Act 1977, Ministerial consent is required before an easement can be granted over a Reserve. This consent is now delegated to Council and must be granted prior to an easement being lodged with LINZ. Section 48 'Grants of rights of way and other easements' (Reserves Act 1977), allows for the consideration of proposed easements. The intention to grant the easements was publically notified, in accordance with Section 48 (2) of the Reserves Act. No submissions or objections were received.
- 18 Council's notification of the easements was on the proviso (stated in the notification) that any consideration of Easement Area D is expected to be first subject to Council agreeing to a traffic assessment that provides solutions to delineate public use of the Brecon Street to Hamilton Road connection, and Skyline pedestrian use between the base building and the car parking building. The objective being to ensure shared use of the area and no conflicts between users, with the primary considering being public use of the area. It is Council's position that potential conflicts between public users and SEL clients can be managed.
- 19 It was also stated in the notification that any landscaping/planting to delineate the Skyline Enterprises Ltd lease area, is to occur within that lease area, and not in the easement area. This is to ensure public access to the area, and that SEL uses their own lease area for their lease activities.

## **ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU**

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- 20 Under the Reserves Act 1977, Ministerial consent is required before an easement can be granted over a Reserve. This consent is delegated to Council and must be granted prior to an easement being lodged with LINZ.

- 21 An analysis of the easements is as follows, noting that the rock anchors and rock fall mitigation measures are combined under a single heading.

#### Right of Support and Rock Fall Prevention Measures

- 22 The rock anchors that will extend beyond the lease boundary will be underground, and no conflicts with reserve use or character are anticipated. Given the topography, rock anchors are an inevitable consequence of the nature and extent earthworks required to locate the parking building, although the new position of the parking building means that earthworks are now suggested beyond the lease area. Whilst it was initially expected that all such anchors were to be located within the site and be part of the lease area, the need to establish anchors beyond the lease area as a result of the additional earthworks, is an inevitable consequence.
- 23 The northward repositioning of the parking building also requires additional earthworks beyond the application site to create a benched area. It is over this area, and the adjacent bluff that support and rock fall mitigation needs to be in place. This is also beyond the earthworks anticipated by the resource consents, hence the need for variations. At the time of writing this report, the variation application RM190536 is in an advanced stage of consideration. It is possible that Council (including Parks & Reserves) could identify concerns with that proposal. However, the easement consideration process could run concurrently, noting that for the applicant to undertake their development, they will need both a valid (varied) resource consent, and approved easements. It is recommended that the easements can be approved, but that it is recognised that this does not mean support for the variation application is assured, or that the easements as currently sought may ultimately transpire.
- 24 Works associated with rock bluff stabilisation, and associated structures are accepted as necessary, and it has been previously determined that such measures are best enabled by easements, particular as ongoing access and maintenance will be necessary.

#### Right of Way in favour of Section 1 SO 22971& Area A (Car Park Lease)

- 25 The right of way is intended to enable access for works, and to the rock fall mitigation locations. The applicant advises that this will principally be by foot, but that on occasion limited vehicle use might be required. It is therefore necessary to ensure that the Grade 2 pedestrian/cycle trail (to be upgraded) is constructed to a sufficient standard to enable such use, and that any easement is suitably prescriptive so that use and frequency is clearly defined, to ensure that the public use of the pedestrian/cycle trail is not inhibited.
- 26 The applicant also identifies that Easement Area D is desired to accommodate pedestrian access between the SEL car park and the base buildings, however this is not made clear in the attached application. Council officers identified a potential for user conflict with this suggestion, because the Recreation Reserve associated with Area D (Pt Sec 129 BLK XX Shotover SD) is for the primary purpose of enabling public pedestrian and cycle use between Brecon St and Hamilton Road. That connection is to be substantially upgraded as a consequence of the SEL development. Easement conditions are appropriate to ensure that the areas primary purpose is to serve the public, and that should any user conflicts transpire, public use must be the prevailing consideration.

- 27 It is also relevant to ensure that any landscaping otherwise suggested to delineate the SEL lease area from the adjacent Recreation Reserves to the south, is instead established within the SEL lease area.

Right to Convey Electricity in Gross for Aurora Energy Limited

- 28 The electricity infrastructure is proposed to be located in ground, and will be co-located within an easement corridor already anticipated to accommodate other infrastructure, such as water, electricity, telecommunications, sewerage and stormwater. In this context, the inclusion of an easement in gross to Aurora Energy Limited is logical, and will not affect the use of the reserve.
- 29 As per QLDC's Easement Policy 2008, easement fees will apply. In ground service easements are charged as a percentage of the rateable value of the land, whereas ROW easement fees are determined by valuation. It is recommended that such fees be established before any easement is registered, or associated works on the land undertaken.
- 30 Council does have the ability to decline the easements and insist the land be retained in its present state.
- 31 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002:
- 32 Option 1 To approve easements over Council Reserve Land, with the terms and conditions detailed as above, and subject to the conditions of RM160647 and RM171172.

*Advantages:*

- 33 The development, and consideration effects upon persons and the environment can be addressed, and subject to conditions of resource consents RM160647 and RM171172. This ensures that effects upon persons and the environment associated with the easements and associated physical works have been appropriately avoided, remedied and mitigated.
- 34 Council will receive fees in accordance with the Easement Policy 2008.
- 35 SEL will be able to progress their development.

*Disadvantages:*

- 36 Access to the reserve may be temporarily limited in association with physical works.
- 37 The reserve areas will be encumbered.
- 38 Option 2 To approve easements over Council Reserve Land in favour of SEL, with different terms and conditions.

*Advantages:*



39 Similar to Option 1 however Council may wish to add, amend or remove certain conditions.

*Disadvantages:*

40 Similar to Option 1.

41 Option 3 Decline the easements.

*Advantages:*

42 The reserve land will not be encumbered by new easements.

*Disadvantages*

43 SEL would be unable to give effect to the development otherwise approved under resource consents RM160647 and RM171172.

44 This report recommends Option 1 for addressing the matter because it would allow for the easements to be established only in accordance with resource consents RM160647 and RM171172.

## **CONSULTATION PROCESS | HĀTEPE MATAPAKI:**

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### **SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA**

45 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because it relates to a public recreation reserve.

46 The intention to grant the easements was publicly notified and no submissions were received. The easements can only be created following any decision to grant resource consent, including the variation application RM190536, and subject to any conditions imposed upon such a consent.

### **RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA**

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47 This matter relates to the Community & Wellbeing risk category. It is associated with RISK00009 within the [QLDC Risk Register](#). This risk has been assessed as having a High inherent risk rating. This matter relates to this risk because a perpetual property right contained in the reserve does carry risk to Council for any future development, and this risk needs to be highlighted when considering approving any easement.

### **FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA**

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48 Council will receive easement fees in accordance with the Easement Policy 2008, although for rights of way this is subject to a percentage of market valuation, and no valuation has been provided at this time. It is necessary to undertake a valuation and establish the appropriate easement fees, and this should be done prior to any works occurring on the easement areas.

49 All costs associated with the survey and registration of the easements on Councils title will be paid for by the applicant.

## **COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEAWE ME NGĀ TIROHANGA A TE KAUNIHERA**

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50 The following Council policies, strategies and bylaws were considered:

- Significance and Engagement Policy.
- Easement Policy 2008.
- Ben Lomond and Queenstown Hill Reserve Management Plan (RMP) (2005)
- 10-Year Plan/Annual Plan

51 The recommended option is consistent with the principles set out in the named policies.

## **LEGAL CONSIDERATIONS AND STATUTORY RESPONSIBILITIES | KA TURE WHAIWHAKAARO, ME KĀ TAKOHAKA WAETURE**

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52 The request for easements will be considered in accordance with Section 48 of the Reserves Act 1977, and any subsequent Council decision on whether or not to grant any easement, will be in accordance with Councils statutory responsibilities.

53 It must be acknowledged that any notification of an intention to grant the easements, or subsequent grant of the easements, does not mean that any variation to RM160647 and RM171172 will be supported, or not opposed by Council.

## **LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KĀWANATAKA Ā-KĀIKA**

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54 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses;
- Can be implemented through current funding under the Ten Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

## **ATTACHMENTS | NGĀ TĀPIRIHANGA**

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- A Application on behalf of SEL
- B Easements Plans