

QLDC Council
29 September 2016

Report for Agenda Item: 2

Department: Property & Infrastructure

Proposed New Right of Way Easement application by Skyline Enterprises Limited

Purpose

The purpose of this report is to consider a new right of way easement for Skyline Enterprises Limited (SEL).

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Approve** a Right of Way Easement over Council Reserve Land (Lot 2 Deposited Plan 345184) in favour of Skyline Enterprises Limited (Section 1 SO 22971 & Lease 'Area A' (carpark); subject to the following terms and conditions:

Commencement To be determined and only subsequent to any potential grant/and conditions of, resource consent RM160647.

Extent of Easement To be confirmed prior to commencement, having regard to any potential grant/and conditions of, resource consent RM160647, and the advice of SEL and ZJV(NZ) Ltd (trading as Ziptrek Ecotours) communicated at the hearing on 1 September 2016.

Fees As per QLDC's Easement Policy 2008, and subject to the extent of the easement being confirmed. This shall also include any outstanding application fees.

3. **Delegate** authority to approve final terms and conditions, including commencement, location, extent, fees and execution authority to the General Manager – Property & Infrastructure, provided all relevant requirements of the Easement Policy 2008 are addressed; and
4. **Agree** to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting of a Right of Way Easement over Council Reserve Land (Lot 2 Deposited Plan 345184) in favour of SEL.

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13/09/2016

Reviewed and Authorised by:



Stephen Quin
Parks Planning Manager

13/09/2016

Background

- 1 SEL are proposing a major upgrade of the existing gondola, the associated upper and lower terminals and the existing restaurant building on Bob's Peak. The development is subject to resource consent application RM160647, and that application was publically notified on 7 September 2016 (the closing date for submissions is 5 October 2016). It is acknowledged that whilst this report now before Council recommends the granting of a Right of Way Easement, any physical development and effects associated with that easement will be principally subject to the consideration, outcome, and any potential conditions and requirements that might (or might not) be imposed under RM160647. If RM160647 is not granted, then there is no need or ability to formally grant the Right of Way Easement currently sought by SEL under this application now before Council. It is noted that any consideration of effects under RM160647 would certainly have regard to the Kiwi Birdlife Park, who may also submit on that resource consent proposal. It is appropriate that the concerns of the Kiwi Birdlife Park are addressed under the resource consent process.
- 2 Of relevance to this report now before Council is the proposed new lower terminal building on SEL leasehold site located at 53 Brecon Street, Queenstown and which is legally described as Section 1 SO 22971. This landholding is Gazetted as a Recreation Reserve and is held in Certificate of Title 185162.
- 3 This site is owned by the Council and is subject to a lease with SEL. Specifically, SEL hold the lease as per leasehold Certificate of Title 3417. The Certificates of Title are contained within **Attachment A**.
- 4 SEL also hold a lease with the Council over Pt Section 110 Blk XX Shotover SD for the purpose of providing for car parking in the area immediately north of Section 1 SO 22971. This area is not subject to a specific legal description registered with LINZ as no Survey Plan has been prepared and deposited for this lease area. This area is illustrated as 'Area A' on the Patterson Pitts Group plans contained in **Attachment B**. An aerial image identifying the area has been included to this attachment.
- 5 Due to the technical requirements of the proposed new gondola, SEL propose that the new lower terminal building will be located approximately 1.5m from the eastern boundary of Section 1 SO 22971. As a result there will be insufficient

room to maintain the existing vehicular access to the rear of Section 1 SO 22971 and parking 'Area A' on Pt Section 110 Blk XX Shotover SD.

- 6 Accordingly, SEL request that a ROW Easement be granted pursuant to Section 48 of the Reserves Act 1977 over the adjoining land holding to the east of Section 1 SO 22971, which is legally described as Lot 2 Deposited Plan 345184.
- 7 Lot 2 Deposited Plan 345184 is a Gazetted Recreation Reserve and is held in Certificate of 185162 which is owned by the Council. A Consent Notice is registered against this Certificate of Title but does not affect SEL's ability to undertake the proposed works. Notwithstanding this, a copy of this encumbrance is also contained with the Certificates of Title in **Attachment A**.
- 8 Lot 2 DP 345184 is on average approximately 4m wide and immediately adjoins Pt Section 129 BLK XX Shotover SD on its northern boundary. Pt Section 129 Blk XX Shotover SD is also owned by the Council and is a Gazetted Recreation Reserve.
- 9 Presently Lot 2 DP 345184 in conjunction with Pt Section 129 Blk XX Shotover SD acts as a pedestrian and cycleway access strip from Hamilton Road through to Brecon Street. Lot 2 DP 345184 is a partially sloping and somewhat unkempt embankment that contains a mixture of grass embankments and mature Pittosporum and semi mature Beech trees interspersed with Blackberry and other weeds.
- 10 A concrete path is formed over a small section of Lot 2 DP 345184 and this merges with an informal dirt track within Pt Section 129 Blk XX Shotover SD which exits on Hamilton Road.
- 11 Given the existing environment of Lot 2 DP 345184, users of this access way tend to enter and exit the track through the existing SEL carpark and access way on Section 1 SO 22971. Photographs of the existing situation are contained in **Attachment C**.
- 12 To enable the ultimate function of the ROW, SEL proposes to establish a new wooden retaining wall along the eastern boundary of Lot 2 DP 345184 and the Kiwi Birdlife Park site (Pt Section 131 BLK XX Shotover SD). SEL anticipate that this wall will be backfilled and a new traffic bearing surface will be installed on top.
- 13 Specifically, it is proposed to form a 3m wide 40mm asphaltic concrete road surface for vehicular access. Along the eastern edge of this road surface will be a 0.45m wide concrete storm water channel. This will be adjoined by a 1.5m wide asphaltic concrete pedestrian and cycle way to facilitate public access.
- 14 Both of the asphaltic surfaces will have a 4% grade allowing for storm water drainage into the proposed concrete channel. The applicant advises that proposed physical width and design of the vehicular access way complies with the design criteria from the QLDC Land Development and Subdivision Code of Practise for an Urban Shop and Trade Area with cyclists and pedestrians in a shared formation. It is noted that at this stage no construction or methodology

has been reviewed by Council engineers, although this would be assessed under any resource consent associated with physical works.

- 15 The proposed ROW plans including illustrations of a typical cross section of all the proposed physical works are contained in the Patterson Pitts Group plans in **Attachment B** of the attached SEL application. SEL advise that all of these works will be subject to final design by an engineer.
- 16 The Kiwi Birdlife Park will be involved in the RM160647 resource consent process, and any decision by the Council at this stage will not hinder the Kiwi Birdlife Park (or Council) to participate in any process under the Resource Management Act, which would require the consideration of effects on persons who are the owners or occupiers of a site. Similarly, the other submitters to this proposal are also able to submit under the RM160647 notified process.
- 17 The SEL application along with supporting material is included as Attachments A-D. The intention to grant the easement was notified on 22 June 2016 with the submission period closing on 21 July 2016. Three submissions in opposition were received. Below is a brief summary of the submissions received:

Name	For/Against	Overview (please refer to copies attached)
Basil Walker (and Peter Fleming)	Against	The submitter opposes the application in all respects, including potential and unidentified concerns that might arise.
ZJV (NZ) Ltd	Against	Conflict with ZJV's Licence to Occupy; clarity on exclusivity of easement; Skylines wider use of public land; access between Brecon St and Hamilton Road.
Kiwi Birdlife Park	Against	Concerns associated with physical works and their impacts on native birds at the Kiwi Birdlife Park, the operation of the Park, and effects on plantings.

- 18 A hearing was held on 1 September 2016 attended by Councillors Calum MacLeod (Chairperson) and Simon Stammers-Smith. Representatives of the applicant appeared, along with those from ZJV(NZ) Ltd, Kiwi Birdlife Park, and Messieurs Walker and Fleming. The submitters provided copies of further evidence and spoke in support of their submissions. The minutes of the hearing are included as **Attachment E**, and the deliberations are taken to constitute a statement to the extent to which the submissions have been allowed or accepted, or disallowed or not accepted.
- 19 SEL and ZJV(NZ) Ltd confirmed that a reduced extent of easement area would be appropriate to address the concerns of ZJV(NZ) Ltd, albeit that the outcome of the RM160647 might also affect the ultimate easement area necessary to facilitate the development. It is a recommendation of this report that some flexibility be afforded to determine any final extent of the easement, to ensure that the position of SEL and ZJV(NZ) Ltd is reflected in any final easement area. For clarity, the easement will likely exclude a small triangular area at the southern end of Lot 2 DP 345184. Because any ultimate easement fee will be dependent upon a defined area and valuation (and at this stage neither are confirmed), it is recommended that final terms and conditions, including commencement,

location, extent, fees and execution authority be delegated to the General Manager Property & Infrastructure.

- 20 The Kiwi Birdlife Park submission was principally focussed upon the effects to animals under their care, resulting from construction and vibration. It was determined that consideration of these effects would be best addressed under the RM160647 process, and that the easement should only be created if supported by a decision under RM160647.
- 21 The concerns of Messieurs Walker and Fleming were heard. Whilst some concerns were of more immediate relevance, it was acknowledged that those matters associated with potential environmental effects could instead be addressed under RM160647.
- 22 Overall, it is recognised that any potential grant of RM160647 shall be necessary to enable any formal creation of the easement, and that consideration of the effects of the physical elements of the overall development shall be appropriately considered under the Resource Management Act 1991. If resource consent is granted by appointed Commissioners or an Environment Court Consent order, then the formal creation of the easement may follow.

Comment

- 23 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 the Easement being lodged with LINZ. The intention to grant the Easement was publically notified on 22 June 2016 and three submissions were received.
- 24 If the ROW Easement is granted, and particularly through the physical formative works required for the access way, the Recreation Reserve of Lot 2 DP 345184 will permanently be allocated for ROW access by the owners and occupiers of Section 1 SO 22971 and 'Area A' on Pt Section 110 Blk XX Shotover SD. There will be no exclusive right to the reserve or easement, and public use will not be restricted aside from during any associated construction.
- 25 As outlined above SEL also propose to establish a pedestrian and cycleway access that will connect with an existing path network through Pt Section 129 Blk XX Shotover SD and facilitate improved public access from Brecon Street through to Hamilton Road.
- 26 The formalisation of this access to a usable standard is likely to result in an increased use of the Reserve by pedestrians and cyclists.
- 27 SEL also acknowledge that a range of other approvals and processes are required in order to lawfully establish the proposed ROW, if approved by the Council. Information provided in the application by SEL has been included as **Attachment D**, and this elaborates on the matters identified below:
 - Resource consent (RM160647) is required under the Resource Management Act 1991 and the provisions of the Operative District Plan's High Density Residential Zone, Transport chapter and Earthworks chapter;

- Approval under Section 348 of the Local Government Act;
- Deposit of a Survey Plan with Land Information New Zealand to formally identify the car park referred to as 'Area A'; and
- Lessor approval is required pursuant to Clause 6 of SEL existing lease with the Council for the erection or placement of any buildings or other improvements or additions.

28 It is fundamentally important to recognise that the ROW Easement process (or any approval at this time) will not pre-determine any other outcome or approvals sought, or should be taken to convey any support from Council for the greater development. Council shall not be constrained by any position conveyed under this ROW process to otherwise consider effects or satisfy any concerns under the other required processes, such as the Recourse Consent(s) and Lessors Approval. Consideration of the ability to grant an easement at this stage may ultimately facilitate a component of a subsequent development, if it is determined to be appropriate and satisfies the considerations of the other associated processes. However, the recommendation of this report acknowledges that the easement may only be created if RM160647 is granted. Because the outcome of that resource consent process is not determined, it is a recommendation of this report that authority to dictate and approve final terms and conditions, including commencement, location, extent, fees and execution authority, are delegated to the General Manager – Property & Infrastructure.

29 The establishment of a ROW also necessitates approval under Section 348 of the Local Government Act 1974. Such approvals are made through Council's planning department and therefore SEL advises that this will be included in and assessed concurrently as part of the overall resource consent application.

30 As part of this ROW Easement application SEL requests approval from Council to prepare and submit a Survey Office Plan to Land Information New Zealand to afford a unique identifier to car park 'Area A' so that the ROW Easement (if granted) can be registered in favour of this parcel of land. This could be considered as part of any final determination from Council, or delegated to the General Manager – Property and Infrastructure.

31 Council does have the ability to decline the ROW Easement and insist the land be retained in its present passive state.

32 Following the hearing, Councillors MacLeod and Stammers-Smith deliberated on the submissions presented and passed the following resolution:

On the motion of Councillors MacLeod and Stammers-Smith it was resolved that the hearings panel:

1. **Note the contents of this report and in particular;**
2. **Approve a Right of Way Easement over Council Reserve Land (Lot 2 Deposited Plan 345184) in favour of SEL (Section 1 SO 22971 & Lease 'Area A' (carpark); subject to the following terms and conditions:**

Commencement	To be determined and only subsequent to any potential grant/and conditions of, resource consent RM160647.
Extent of Easement	To be confirmed prior to commencement, having regard to any potential grant/and conditions of, resource consent RM160647, and the advice of SEL and ZJV(NZ) Ltd.
Fees	As per QLDC's Easement Policy 2008, and subject to the extent of the easement being confirmed. This shall also include any outstanding application fees.

- 3. Delegate authority to approve final terms and conditions, including commencement, location, extent, fees and execution authority to the General Manager – Property & Infrastructure; and**
- 4. Recommend that Council agree to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting of a Right of Way Easement over Council Reserve Land (Lot 2 Deposited Plan 345184) in favour of SEL.**

33 As the land is recreation reserve, the consent of the Minister of Conservation is also required, such consent having been delegated to Council.

Options

34 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:

35 Option 1 To approve a Right of Way Easement over Council Reserve Land (Lot 2 Deposited Plan 345184) in favour of SEL, with the terms and conditions detailed as above and subject to the outcome of RM160647.

Advantages:

36 The effects of the greater development upon persons and the environment will be subject to consideration under the Resource Management Act 1991. This will also ensure that effects upon the Kiwi Birdlife Park in particular are considered under a process that is more suited to the concerns raised in their submission.

37 The ROW Easement will not be formally created unless RM160647 is granted, and subject to the conditions of any consent.

38 There will be some flexibility to ensure that the final easement aligns with the conditions of RM160647, especially given that conditions may seek to address potential effects and this might alter the extent of the easement.

39 Council will receive fees in accordance with the Easement Policy 2008.

Disadvantages:

40 Access to the reserve may be temporarily limited.

- 41 Option 2 To approve a Right of Way Easement over Council Reserve Land (Lot 2 Deposited Plan 345184) in favour of SEL, with different terms and conditions.

Advantages:

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

Disadvantages:

43 Similar to Option 1.

- 44 Option 3 Decline the easement.

Advantages:

45 The reserve will not be encumbered by a new easement.

Disadvantages

46 Resource consent RM160647 might be granted and SEL would need to repeat this current process to seek an easement that aligns with a resource consent approval.

- 47 This report recommends Option 1 for addressing the matter because it would allow for the Right of Way Easement to be established only if the effects of the greater development are considered under the resource consent proposal, and subject to any conditions imposed on any potential grant of consent.

Significance and Engagement

- 48 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.

Risk

- 49 This matter relates to operation risk OR011A Decision making. The risk is classed as moderate. A perpetual property right contained in the recreational reserve does carry risk to Council for any future development, and this risk needs to be highlighted when considering approving the easement.

Financial Implications

- 50 Council will receive an easement fee in accordance with the Easement Policy 2008, although this is subject to a percentage of market valuation and no valuation has been provided at this time. Because it will first be a requirement that RM160647 is granted, and the date of such an approval is not possible to

determine, it will be necessary to undertake a valuation and establish the appropriate easement fee at that time.

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

Council Policies, Strategies and Bylaws

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

- Significance and Engagement Policy.
- Easement Policy 2008.
- 10-Year Plan/Annual Plan

53 The recommended option is consistent with the principles set out in the named policy/policies.

Local Government Act 2002 Purpose Provisions

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 by helping facilitate a privately run gardens and education facility.
- Can be implemented through current funding under the 10-Year Plan and Annual Plan although some adjustment will be required in future years to facilitate the drafting of the management 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.

Consultation: Community Views and Preferences

55 The intention to grant the easement was publicly notified and submissions have been received. The submitters have been afforded the reasonable opportunity to appear at a hearing in support of their submissions. Furthermore, resource consent RM160647 has been publically notified and submissions are being sought. The ROW Easement can only be created following any decision to grant resource consent, and subject to any conditions imposed upon such a consent.

Attachments

- A Titles and Encumbrance
- B Survey Plans and GIS Image
- C Photographs
- D Application for ROW Easement
- E Minutes of Hearing