

24 May 2016

Queenstown Lakes District Council
Private Bag 50072
QUEENSTOWN 9348

Attention: Peter Hansby & Richard Pope

Dear Peter and Richard;

**SKYLINE ENTERPRISES LIMITED – APPLICATION FOR A ROW EASEMENT PURSUANT TO SECTION 48
OF THE RESERVES ACT 1977**

Introduction

As you are aware Southern Planning Group act for Skyline Enterprises Limited (“SEL”) who are presently embarking upon a major upgrade and re-development of the iconic Skyline Gondola and Restaurant that operates between Bob’s Peak and Brecon Street in Queenstown.

The proposed re-development includes a new higher capacity gondola. This gondola requires a new lower terminal building which will be located slightly north and east of the current terminal building that is located within Section 1 SO 22971.

The underground vault drive that will operate the new gondola is larger than the existing gondola and therefore necessitates that the new building be constructed such that it will be located approximately 1.5m from the eastern boundary of Section 1 SO 22971.

As a result there will be insufficient room for service vehicles and staff vehicles to gain access to the rear of the new building for loading/unloading and parking as presently occurs. In order to resolve this issue SEL requests that the Queenstown Lakes District Council (“the Council”) grants a ROW easement over the adjoining strip of land legally described as Lot 2 Deposited Plan 345184.

The proposal is described in detail below:

Proposal

As identified above SEL limited are proposing a new lower terminal building on a 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.

The subject 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. Copies of both Certificates of Title are contained in **Appendix [A]**.

SEL also hold a lease from the Council over a small part of 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 within **Appendix [B]**.

Due to the technical requirements of the new gondola SEL proposed new lower terminal building will be located approximately 1.5m from the eastern boundary of Section 1 SO 22971 and therefore there will be insufficient room to maintain the existing vehicular access to the rear of the building and parking area.

Accordingly, it is requested that a ROW Easement be granted pursuant to Section 48 of the Reserves Act 1977 over the adjoining land holding to the east which is legally described as Lot 2 Deposited Plan 345148.

Lot 2 Deposited Plan 345148 is a Gazetted Recreation Reserve and is held in Certificate of Title 185162 which is owned by the Council. A Consent Notice is registered against this Certificate of Title but does not affect the ability to undertake the proposed works. Notwithstanding this, a copy of this encumbrance is also contained in **Appendix [A]**.

Lot 2 DP 345148 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.

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 345148 is currently 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.

A concrete path is formed over a small section of this landholding and this merges with a small dirt track within Pt Section 129 Blk XX Shotover SD.

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 Section 1 SO 22971.

Photographs of the existing situation are contained in **Appendix [C]**.

SEL proposes to establish a new wooden retaining wall along the eastern boundary of Lot 2 DP 345148 and the Kiwi Birdlife Park site (Pt Section 131 BLK XX Shotover SD). This wall will be backfilled to a maximum depth of 3.2m and a new traffic bearing surface will be installed on top.

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.

Both of the asphaltic surfaces will have a 4% grade allowing for storm water drainage into the proposed concrete channel. The 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.

Notwithstanding this, SEL also proposes two passing bays adjacent to the proposed new lower terminal building to reduce any potential conflict with pedestrians/cyclists and enhance the functioning of the access way.

As identified above, the eastern boundary of Lot 2 DP 345184 will be retained. This retaining wall will comprise a concrete foundation with timber retaining. This will be overlaid with wire to prevent predators climbing and will cease 0.6m above the surface of the proposed pedestrian and cycle way.

A timber rub rail and 600mm steel vehicle safety beam will also be incorporated to prevent vehicles falling over the retaining in the event of an accident. On top of this will be a predator proof fence of 2.0m in height.

The proposed ROW plans including illustrations of a typical cross section of all the proposed works are contained in the Patterson Pitts Group Plans in **Appendix [B]**. All of these works will be subject to final design by an engineer.

Other Statutory Approvals

While SEL seeks approval for a ROW Easement under the Reserves Act 1977 it is acknowledged that a number of other approvals will be necessary. These are outlined in detail below:

Resource Management Act

Under the Operative District Plan the subject site is located within the High Density Residential Zone (Sub-Zone A). Under this Operative Zoning the proposal will require the following resource consents:

- A **Restricted Discretionary Activity** Consent pursuant to Rule 22.3.2.3 as the proposal will breach Site Standard 22.3.3(i) as the proposal will exceed 400m³ of earthworks in any twelve month period;
- A **Restricted Discretionary Activity** Consent pursuant to Rule 22.3.2.3 as the proposal will breach Site Standard 22.3.3(ii)(b)(ii) as the proposal will result in a depth of fill that exceeds 2.0m in depth;
- A **Restricted Discretionary Activity** Consent pursuant to Rule 22.3.2.3 as the proposal will breach Site Standard 22.3.3(ii)(b)(iii) as the proposal will result in a vertical height of retained fill on the property boundaries that exceeds 0.5m in height;
- A **Controlled Activity Consent** pursuant to Rule 7.5.3.2(iii)(a) for buildings for non-residential buildings (the proposed wall and associated fencing will meet the definition of a building);
- A **Restricted Discretionary Activity** Consent pursuant to Rule 7.5.3.4(vi) as the proposal will contravene Site Standard 7.5.6.2(ii)(a) whereby the proposed retaining wall and fence (building by definition) will be located within the internal boundary setback between Lot 2 DP 345184 and Pt Section 131 Blk XX Shotover SD and Lot 1 DP 345184;
- A **Restricted Discretionary Activity** Consent pursuant to Rule 7.5.3.4(vi) as the proposal will contravene Site Standard 7.5.6.2(v)(a)&(b) whereby the proposed retaining wall and fence (building by definition) will exceed the 16m continuous building length and 30m aggregate building length;

- A **Restricted Discretionary Activity** Consent pursuant to Rule 7.5.3.4(vi) as the proposal will contravene Site Standard 7.5.6.2(ix) whereby the proposed retaining wall and fence (building by definition) will not include a minimum landscape coverage of 20% of the subject sites;
- A **Non-Complying Activity** Consent pursuant to Rule 7.5.3.5 as the proposal will contravene Zone Standard 7.5.6.3((iii)(b)(i) whereby the proposed retaining wall and fence (building by definition) will be deemed an accessory building and will not comply with the height recession plane measured on the site boundary of Lot 2 DP 345184;
- A **Restricted Discretionary Activity** Consent pursuant to Rule 14.2.2.3(ii) whereby the proposal does not comply with Site Standard 14.2.4.1(vi) as the proposed access will not comply with NZS4404:2004 in terms of carriageway width.

It is proposed that the abovementioned resource consents will be sought as part of the resource consent that will be applied for shortly for the lower terminal building, the gondola cableway and new upper terminal and restaurant building expansion.

Section 348 Local Government Act 1974

Under Section 348 of the Local Government Act 1974 no party is authorised to grant or reserve a right of way over any private way without the express prior permission of the Council.

In the Queenstown Lakes District a Section 348 approval is sought through Council's regulatory arm and is assessed by the Council's engineering department similarly to a resource consent application necessitating engineering input.

Accordingly, it is proposed that at the same time the resource consent is sought for the overall re-development proposal a Section 348 application will be lodged concurrently.

Registration of ROW Easement with LINZ

In order to be able to register the proposed ROW easement with LINZ such that it affords legal access to both Section 1 SO 22971 and the car park shown as 'Area A' on the Patterson Pitts Group plans a Survey Office Plan is required to be prepared and lodged with LINZ so that this area is defined with a unique legal description.

Approval is therefore also sought from the Council to enable the survey of this area and submission of the relevant Survey Office Plan to LINZ.

Lessor Approval Pursuant to the Existing Lease with SEL

As identified above SEL holds an existing lease from the Council which was issued under Sections 48 and 54 of the Reserve Act 1977 for the operation of the gondola, restaurant, ski field lift and luge track.

Pursuant to Clause 6 of this Lease SEL is not permitted to erect or place any buildings or other improvements or make any addition to any existing building or structure without the prior written approval of the Lessor (Council) and the Minister of Conservation. I note that the Council holds delegation to issue such approvals on the Ministers behalf.

This approval process is more commonly referred to as 'Lessors Approval'. As the overall upgrade and re-development of SEL's facilities will result in a significant number of matters requiring Lessor Approval it is proposed that one comprehensive application will be put to the Council as opposed to each element such as the physical works for this ROW being submitted individually.

It is proposed to meet with the relevant Council staff to discuss this approval request in June with the intention of submitting a full application for lessor approval by the end of June so that it may be considered by the Council at their regular monthly meeting.

Summary of Other Approvals

As outlined above there are a number of approval processes that must be undertaken in addition to the granting of an Easement pursuant to Section 48 of the Reserves Act 1977. As the ROW Easement application will be publicly notified SEL seeks to progress this approval as a priority.

It is acknowledged that the approval of ROW Easement under the Reserves Act 1977 will not pre-determine the outcome of the other statutory processes outlined above.

Assessment of Effects of Proposed ROW

Under Section 17 of the Reserves Act 1977 it is declared that the purpose of a Recreation Reserve is for providing areas for recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.

Lot 2 DP 345184 is a Recreation Reserve but by virtue of its small overall area and width it is not on its own capable of providing for any significant areas for recreation or sporting activities. Neither does it provide any large areas of open space, natural areas of high amenity or areas of outdoor recreation.

The proposed works will require the removal of a strip of existing native trees approximately 40m in length. At present these afford some screening between the SEL and Kiwi Birdlife Park sites. There will be no room to offer re-instatement of this vegetation which is a minor adverse effect of the proposal.

However, as identified above this landholding does connect with Pt Section 129 BLK XX Shotover SD which presently provides a walking track through to Hamilton Road. The current topography and unkempt state of Lot 2 DP 345184 does not allow this track to continue through to Brecon Street and instead users have been observed using Section 1 SO 22971 for access onto Brecon Street.

The proposal contained within this correspondence and the attached plans in **Appendix [B]** illustrates that a formed and sealed pedestrian and cycleway access will be created within Lot 2 DP 345184 as part of the physical ROW formation works and which will join with the existing footpath in Pt Section 129 Blk XX Shotover SD.

It is considered that the formalisation of this access to a high standard is a significant positive effect of the proposal and will result in an increase of use by pedestrians and cyclists. This is considered to be in accordance with the purpose of providing area for the physical welfare and enjoyment of the public and the provision of recreational tracks. It will certainly be a significant improvement on the status quo.

Effects on other parties have been considered and in particular Kiwi Birdlife Park who hold a lease over Lot 1 DP 345184 and Pt Section 131 Blk XX Shotover SD which immediately adjoins the proposed retaining and ROW Easement.

SEL met with Nicole Kunzmann (Park Manager) on 03rd May 2016 to discuss the proposal (and the overall re-development). The following concerns were raised:

- Will construction affect the breeding area (square silver/grey corrugated iron structure up towards the road)?
- Where does the road/fence work start and finish?
- Kiwi Breeding is July and August. Will the majority of noisy work be completed by then?
- Mentioned previous issues with storm water run-off into the park.
- Will the power lines into the SEL carpark be affected?
- The preference for predator proof fencing would be metal – and definitely not wood
 - Needs to be at a height of 2 meters
 - Concerns about passers by throwing bottles etc. over the top
- Will the cycleway and walking path be upgraded through to Pinewood Lodge?

The following response is offered in the same order as outlined above:

Effects on the Breeding Area

This is a small corrugated iron structure located within Pt Section 131 Blk XX Shotover SD and to the east of the proposed retaining works and formation of the ROW.

The proposal will not involve any physical works on or modification of this site or any of its existing structures. All works will be designed to ensure that all materials and construction occurs within the boundaries of Lot 2 DP 345184.

Where Does the Road/Fence work Start and Finish?

The proposed location of the works is clearly illustrated on the Patterson Pitts Group plans in **Appendix [B]**.

Specifically, on Sheet 02 the proposed retaining and ROW commences at chainage 0.000 on Brecon Street and will result in a new retaining wall and predator proof fence on the boundary up to chainage 89.160. From there the existing fence along the boundary will remain.

When will The 'Noisy' Work be Completed?

As outlined above the proposed works will all be subject to a resource consent approval in combination with the overall re-development proposal that will shortly be put forward by SEL.

As part of that resource consent proposal a report has been commissioned from Acoustic Engineering Services to confirm how compliance with the Construction Noise Standard NZS 6803:1999 can and will be achieved.

This report and any proposed mitigation measures will be assessed as part of the processing of the resource consent for the proposed physical works.

Notwithstanding the above, SEL intend to undertake the construction of the ROW outside of the July/August breeding period for kiwi.

Storm Water Run-Off

In the past there has been issues with storm water run-off from Section 1 SO 22971 entering Pt Section 131 Blk XX Shotover SD. It is understood that presently this has been resolved through the addition of kerb and channelling.

As illustrated in the Patterson Pitts Group plans in **Appendix [B]** the formed surface of the ROW along the boundary between Lot 2 DP 345184 and Pt Section 131 Blk XX Shotover SD will have a 4% fall toward a 450mm wide storm water drain. This will capture any storm water run-off and prevent it from entering the Kiwi Birdlife Park site.

Effects on the Overhead Powerlines

Patterson Pitts Group advise that this ROW proposal will not affect the existing power pole which sits within Section 1 SO 22971 and is subject to Easement Instrument 5488403.1.

However, the proposed new terminal building will affect this power poles location and this will need to be addressed as part of the resource consent application for the overall re-development.

Discussions are commencing with Aurora Energy regarding the possible relocation of the existing pole as part of that proposal.

Predator Proof Fence

As illustrated in the Patterson Pitts Group plans in **Appendix [B]** the retaining wall facing into the Kiwi Birdlife site will be wooden with wire mesh overlaid to deter climbing pests from within their site.

From the proposed finished ground level a steel 2.0m tall predator proof fence will be established to prevent pest species gaining access to the park. This fence will also be cantilevered back towards Section 1 SO 22971 to assist in predator proofing the structure but also to make it more difficult for people to climb and/or throw refuse over as suggested by the Kiwi Birdlife Park manager.

Upgrade of the Cycleway to Pinewood Lodge

As described in the above correspondence and illustrated on the plans in **Appendix [B]** SEL proposes to create a specific pedestrian and cycle lane within Lot 2 DP 345184 as part of the physical works associated with the ROW formation.

This will significantly enhance the existing pedestrian and cycleway access link through Pt Section 129 Blk XX Shotover SD through to Hamilton Road. However, SEL is not proposing any physical works or easements over Pt Section 129 Blk XX Shotover SD and therefore does not propose to undertake any upgrades of the track on this land tenure.

Summary

SEL is seeking a ROW easement over Lot 2 DP 345184 to facilitate vehicular access to its proposed new lower terminal building and car parking area. Details of the physical works have been presented to afford the Council and general public a comprehensive understanding of the completed works.

It is considered that in terms of the Reserves Act 1977 the proposed works can be completed in a way that compliments the Reserves purpose through the provision of pedestrian and cycleway access in an otherwise derelict piece of Recreation Reserve. As such, the effects are considered to be minor.

It is however acknowledged by SEL that the grant of a ROW Easement under the Reserves Act 1977 does not pre-determine the outcome of the necessary resource consent and Section 348 approvals that are also required for the proposal.

As outlined above, these approvals will be lodged with the Council shortly as part of the resource consent application that will be sought for the overall upgrade and re-development of SEL facilities. I trust that the information contained with and attached to this correspondence provides a comprehensive understanding of the proposal. Should you have any questions, please do not hesitate to contact the writer directly.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Sean Dent', written in a cursive style.

Sean Dent
RESOURCE MANAGEMENT PLANNER

SOUTHERN PLANNING GROUP
16015 – SEL ROW EASEMENT