

Minutes of a hearing of submissions on a Proposed New Right of Way Easement Application by Skyline Enterprises Limited held in the Council Chambers, 10 Gorge Road, Queenstown on Thursday 1 September 2016 commencing at 10.00am

Present

Councillor Calum MacLeod (Chairperson); Councillor Simon Stammers-Smith

In attendance

Mr Aaron Burt (Planner, Parks and Reserves), Mr Michael Walker (Senior Solicitor) and Ms Jane Robertson (Senior Governance Advisor)

Election of Chairperson

The Governance Advisor called the meeting to order and invited the elected members to select a chairperson for the hearing.

It was **agreed** that Councillor MacLeod would chair the hearing.

Hearing Opening

Potential conflicts of interest raised by Basil Walker were dismissed.

Staff Summary of Report

Mr Burt provided an overview of his report. He stated that the application from Skyline Enterprises was for an easement over Lot 2 to provide 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. The application had been publicly notified with three submissions received and the hearing had been convened to hear the submissions. He noted that his report provided an overview of the submission and some technical comment but made no recommendation.

Applicant's Presentation

Mr Graeme Todd appeared for the applicant, Skyline Enterprises Limited ('SEL'). He was accompanied by Sean Dent (Planner, Southern Planning Group) and Sean McLeod (Surveyor, Paterson Pitts Group).

Evidence of Mr Todd

Mr Todd stated that he had reviewed the staff report and had no issues with it. He noted that the Right of Way ('ROW') application was the first of a series of applications required to give effect to a proposed redevelopment of SEL's gondola terminal and facility on Bob's Peak. The application for resource consent had recently been filed and included the works around the proposed ROW which was the subject of this hearing. The application was currently being processed and notification was imminent. The redevelopment was a \$60M project and was being undertaken in anticipation of increased tourists over the next 10 years. The ROW sought was necessary to provide access to the staff parking and loading/unloading

areas as the current access would be compromised by proposed redevelopment of terminal. The Resource Management Act and Reserves Act processes were separate which prevents a joint hearing and Mr Todd accepted that some of the matters raised in submissions would also be relevant to resource consent application.

Mr Todd questioned why the submission made by Basil Walker was also identified as being from 'others' He noted that any party seeking to be a submitter should identify themselves in a submission. Whilst others with similar concerns or submissions might be referred to as 'others', this was not applicable in this case. Furthermore, 'others' joining in this fashion were constrained on the matters they could cover by those matters already raised in the original submission.

Mr Todd observed that the Ziptrek interest in this hearing was mainly related to the resource consent they held and an agreement with Council for the location of an anchor post for a new zipline that will run down to be anchored in the Kiwi Birdlife Park. An approved plan had been presented when the zipline resource consent had granted but a different plan was now in the documentation between Ziptrek and the Council required for a Licence to Occupy (LTO) and that LTO was partly included in the area for which an easement is sought.

Mr Todd noted that contrary to what was stated in some submissions there was no exclusivity in terms of the grant of an easement and if granted. SEL would not have exclusive rights of occupation over the easement. In relation to Ziptrek's concerns, SEL acknowledged that if there was an agreement with the Council in place, SEL was required to recognise it and not interfere with it. He believed that physically it would still be possible to gain access through the area if the anchor point was in place. There had been discussion about Ziptrek varying the area for which the easement was sought but Mr Todd did not believe that this is necessary and would not be prudent until the area occupied under the LTO was clarified. He observed that if Ziptrek did occupy the area SEL would still be able to gain access.

Evidence of Mr Dent

Evidence was tabled and read. It highlighted the following key points:

- The new SEL building would be 193mm from the western boundary and vehicular access would no longer be achievable
- The proposed easement was not for exclusive use.
- The proposal met the general purpose of Section 17 of the Reserves Act as the proposal would result in better use and enjoyment of the reserve than at present.
- The physical works would be the subject of a resource consent application which would allow for a full consideration of the potential adverse environmental effects that may occur during construction; this would include effects on the Kiwi Birdlife Park.

Response to submissions

Mr Todd provided further comment in response to each submission.

The breadth of Mr Walker's submission's extended well beyond the scope of the application. Mr Todd confirmed that single application for the overall redevelopment

was underway. The Proposed District Plan submission was a completely separate matter.

Kiwi Birdlife Park had raised concerns about the effects of construction noise and vibration effects on birdlife and the potential adverse effects of the retaining wall on existing plantings. Mr Todd noted that the cumulative effects of the earthworks and the construction method would be addressed in the resource consent application and this was the appropriate forum to address these effects. He asserted that their consideration was not within the scope of the current application.

Mr Todd stated that the proposal had been amended slightly since lodgement and now required fewer earthworks which would serve to address most concerns about noise and vibration. Further, there should not be any loss or damage to existing vegetation.

Overall he considered that the concerns of submitters had been addressed or would be addressed in the resource consent application. Further, the qualities of the recreation reserve would not be adversely affected by this proposal, the values would not be diminished and much greater use and enjoyment would be possible.

Ziptrek submission

Ziptrek ('ZJV (NZ) Limited') was represented at the hearing by Mr John Young (Solicitor). He circulated written evidence.

Mr Young stated that Ziptrek had concerns about the easement but did not oppose it per se. He noted that the easement could conflict with the land covered by Ziptrek's LTO application for which it had an existing agreement to lease/licence with the Council. It did not yet have a LTO but the licences and leases were binding until the LTO was executed. Provided the SEL easement did not prevent public use of the area Ziptrek had no issue with it, but if the public use inhibited SEL's use then Ziptrek might have a problem, but no draft easement had been sighted.

Mr Young presented an attachment which demonstrated how the easement might be reduced. He stated that if this area of land could be removed from the easement Ziptrek would have no concern about proposal.

Mr Young stated that the comments about adverse environmental effects now no longer needed to be presented at this hearing having learned that resource consent application would be publicly notified.

Kiwi Birdlife Park submission

Kiwi Birdlife Park was represented by Vanessa Robb (Solicitor). She was accompanied by Paul Kavanagh (Park Manager) and Paul Wilson (Director).

Ms Robb presented legal submissions. She noted that these had been prepared on the basis that there could be some discussion about the extent to which the effects on Kiwi Birdlife Park could be considered in this forum. She accepted that the broader effects would be dealt with under the resource consent process but she wished to address the effects arising from the ROW as she considered that they had not been appropriately addressed in relation to Kiwi Birdlife Park at present.

She confirmed that no formal agreement had been reached on how to mitigate the adverse effects of the ROW easement on Kiwi Birdlife Park. Further it was necessary for these effects to be taken into account for the panel to be satisfied that granting the easement was in accordance with the RMA.

She tabled an aerial map of area with the site of the easement shown.

Ms Robb presented written evidence which raised the following main points:

- Recreation reserves must be administered in a way to ensure the protection of any indigenous flora or fauna or wildlife. Indigenous flora, fauna and wildlife were on the reserve occupied by Kiwi Birdlife Park and there had been no proper assessment of these effects.
- The panel should consider the foreseeable adverse effects that would arise from construction. The ROW application did not sufficiently assess the proposal as the effects of construction must be considered as part of this process. The panel could not be satisfied that those effects had been assessed if it was just being deferred to another process. Without these assessments she considered that the panel could not be satisfied that approving it would be consistent with the Reserves Act did not have grounds to make an informed and legal decision under the Reserves Act.
- She requested the panel either to decline the application, consider it as part of the RMA processes or defer it until after resource consent was received.

Paul Kavanagh evidence was tabled and read.

Mr Kavanagh's evidence highlighted the following key points:

- Not all the trees were set back from the boundary as the trees did not grow in a straight line.
- Kiwi ability to forage for food would be impacted by vibration and noise. If kiwi were adversely impacted the park would be operating contrary to its permits to hold them as it had a statutory duty to ensure their welfare.
- The effects of noise would be amplified for birds in captivity but there was some uncertainty about how the kiwi would react to the effects. Notwithstanding that the sound would be around 120 decibels which was double that recommended as being safe. In addition, the nocturnal kiwi houses were just 28 metres from the proposed easement and the park's off-display breeding pair was just 2 metres from the easement.

The meeting adjourned at 11.52am and reconvened at 12.01pm.

Basil Walker submission

Mr Walker spoke to a submission that he tabled. He asked the Council to refuse the easement and for the land to remain in its present passive state. He believed that commercial creep should be resisted. He provided other examples of commercial enterprises going beyond their boundary (Skyline at Eichardts site and Fergburger).

He noted that the drive unit for the operation would be up the hill in any case and with clever engineering the easement would not be needed.

He described SEL's royalty payment to Council as 'miniscule' against other lessees' percentage of payment and he believed that renegotiation of the lease royalty was a reasonable condition of granting the easement.

Mr Walker commented further about the SEL car park. He highlighted 12 separate reasons why the application should be declined.

Peter Fleming submission

Mr Fleming tabled a map of Ziptrek Ecotours Course. He alleged that Skyline illegally built the carpark. He asked to see the boundaries of the carpark physically drawn and height and boundary profiles provided so that the size of the carpark and any other requirements could be clarified.

Mr Fleming accepted that the ROW may be necessary but he believed there may be alternatives and he wanted to ensure that the public domain was protected.

In reply to a question raised during Mr Fleming's presentation, Mr Todd observed that as an easement application, no land was being given away although he was in agreement that the area should be legally defined for the lease agreement.

Reporting Officer review of report/recommendation

Mr Burt stated that he had no further comment. He observed that the panel had considerable discretion in its decision.

Applicant's Right of Reply

Mr Todd stated that if there was an issue about a survey of the carpark area it could be easily remedied, but it was a process outside this hearing and all that SEL needed to show was that the exit was to a piece a land. He stressed that SEL was not giving away land or seeking exclusivity and he did not understand the request for profile poles to indicate height, as the areas were clearly shown on the plan. He added that the land was not part of the Ben Lomond reserve and Basil Walker's submission suggesting that the land was part of the Kiwi Birdlife Park was incorrect. Furthermore, SEL did not control who might use their facility and was not seeking any special circumstances and it was not reasonable to suggest that leases were comparable in terms of royalty payment.

Mr Todd stated that negotiations were continuing with the Kiwi Birdlife Park but he believed that all matters of concern could be addressed in the resource consent hearing. He accepted that before the ROW could be used SEL needed a resource consent so approving the ROW now would not pre-empt matters. He added that SEL was being asked to pay the full cost of the new Kiwi House.

Mr Todd acknowledged that granting the easement was subject to the RMA but it was not possible or practical to hold one joint hearing. However another option was to grant the ROW subject to the resource being considered and granted. Further, he volunteered the option that no work is undertaken or the ROW used until resource

consent was granted. However, he stressed that SEL need to have some certainty about the ROW as it impacted upon the size of the building.

He stated that the panel only need to consider effects on the reserve over which the easement was sought.

Mr Todd noted that Ziptrek was in support provided that their concerns were acknowledged and met. Accordingly, there was no reason why the panel could not approve the application and he was happy if the panel was of a mind to add a condition that the ROW is subject to the resource consent being granted.

The hearing adjourned at 12.54pm and reconvened 1.05pm.

The legal counsel for Ziptrek was asked to consider whether the inclusion of a condition to grant the easement subject to no work being undertaken until resource consent was granted would satisfy Ziptrek's concerns.

Mr Young agreed that the resource consent should go first. He acknowledged that the easement was needed for the design of building to be considered at the resource consent hearing, although amendments were still possible at that stage. He stated that Ziprek sought a condition that would provide the ability to vary the area of the easement depending on what flowed from the resource consent process. He pointed out that if some redesign of the retaining wall was required, this may impact on the position of easement.

Mr Todd confirmed on behalf of the applicant that this would be acceptable but stressed that the panel still needed to be satisfied on an effects basis that the easement could be granted. Notwithstanding that, he considered that the panel could still proceed on the basis of the anticipated easement area.

Mr Todd confirmed that Skyline was happy to vary the ROW easement to take into account Ziptrek's concerns.

Deliberations

Deliberations commenced at 1.10pm.

It was agreed that the matters raised by Ziptrek now appeared to be satisfied.

Members agreed that there had been a strong submission from the Kiwi Birdlife Park with the underlying concern not necessarily the development itself but how the effects could impact on the park's wildlife. The Panel agreed that this would be addressed through the resource consent process.

It was agreed to recommend to Council that the easement be granted subject to conditions.

The meeting concluded at 1.22pm.