

QLDC Council  
27 June 2019

### Report for Agenda Item | Rīpoata mot e Rāraki take: 7

**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 a significant extent of easements over areas of reserve, that are required to give effect to their resource consents RM160647 and RM171172, granted by the Environment Court.
- 3 The intention to grant the easements was publicly notified on 13 December 2018, in accordance with the Reserves Act, and two submissions were received. A hearing of those submissions occurred on 19 March 2019, with the panel comprising Councillor Scott Stevens and Councillor John MacDonald. Following consideration of the submissions, the recommendation now put to Council is to approve the easements.

#### RECOMMENDATION | NGĀ TŪTOHUNGA

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That Council:

1. **Note** the contents of this report;
2. **Approve** easements over Council Reserve Land as detailed in the plans prepared by Paterson Pitts Group entitled Proposed Easements and dated 28 November 2018, subject to the following terms and conditions:
  - a. Commencement: To be determined, and subject to conditions of resource consents RM160647 and RM171172.
  - b. Extent of Easements: To be confirmed prior to commencement, and subject to conditions of resource consents RM160647 and RM171172;
  - 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. 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. A bond of \$5,000.00 be payable to QLDC prior to any onsite works commencing in the easement areas;
  - e. Any work site in any easement area to be evidenced by before and after photographs, video or similar to be provided to QLDC by SEL;
  - f. Comprehensive safety plans must be prepared and implemented, at SEL's cost, to ensure a safe environment is maintained around the subject easement sites for any physical works associated with the easement areas;
  - g. Certificate of adequate public liability cover to be received;
  - h. Reinstatement and landscaping of any disturbed areas to be completed within two months following any associated excavation/construction and to the satisfaction and timeframes communicated by the QLDC's Community Services Department. Reinstatement to include any landscaping, fencing or other structures.
  - i. 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.
3. **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
  4. **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:



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12/06/2019

Reviewed and Authorised by:



Thunes Cloete  
General Manager Community  
Services

13/06/2019

## CONTEXT | HORPOAKI

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- 4 Skyline Enterprises Ltd (SEL) lease an area of the Ben Lomond Recreation Reserve (Reserve) from the Queenstown Lakes District Council (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 sought 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 sought resource consent (RM171172) for a multi-level carpark building to be located behind the lower terminal building at Brecon Street. These consents have recently been granted by the Environment Court, although that decision has been subsequently appealed to the High Court.
- 7 Associated with the SEL development/upgrade, are a series of easements that SEL now seek approval to register over the Ben Lomond reserve and QLDC administered land.
- 8 Southern Planning Group, as the agent of SEL, has outlined the easements and their subsequent request for approval in the document included as **ATTACHMENT A** to this report.
- 9 Patterson Pitts Group have prepared plans showing existing easements, the proposed new easements and a plan incorporating both existing and proposed easements. These are included as **ATTACHMENTS B, C & D**.
- 10 The Easements can be classified into 4 categories;
  - a. New Right of Way Easements over existing tracks/pathways/cableways/rock fall mitigation.
  - b. New Inground Easements over existing services (existing services to be replaced)
  - c. New Inground Easements for new services
  - d. New Easements for the right to store water (water pump stations)

The proposed easements are discussed as follows;

### New ROW Easements

- 11 The ROW easements which are being sought are over historic tracks, paths or cableways which have been in existence for a number of years. The easements are either being sought to formalise an existing arrangement or, in the case of the cableway, extend the easement for both the revised cable route and the extended fire break or clearance line. In a Tree Felling Agreement between QLDC & SEL dated 7<sup>th</sup> April 2016, both parties acknowledged and agreed that the terms and conditions of erecting the improved

cableway and altering the line of Cableway Easement shall be addressed at a later date and shall be subject to a separate agreement.

- 12 As part of their Resource Consent, SEL are required to install rock fall mitigation structures in an area to the east of the existing cableway. SEL are required to maintain these structures and access over the reserve is required for them to do so. As such, it is proposed the new, wider, Cableway ROW include the location of these structures and that appropriate conditions are included with regard to the ongoing maintenance obligations.

#### New Inground Easements over existing Services

- 13 The SEL lease area is currently serviced by reticulated water, waste water and power without existing easements. These services link the SEL lease area to Lomond Crescent.
- 14 Inground Service Easements are sought to formalise these services which have been in existence over 20 years.
- 15 Repairs to the services are proposed which will require them to be dug up and repaired/replaced. Specifically, the water reticulation is to be replaced as it is decaying causing water leaks.
- 16 Along certain lengths of the trench, SEL will take the opportunity to introduce further services including gas, power and telecommunications prior to the trenches being refilled.

#### New Inground Easements for new Services

- 17 Aurora Energy are seeking to replace their existing overhead lines at the toe of the Ben Lomond Recreation Reserve to an underground route along Gorge Rd. To enable this, SEL are proposing easements through Council reserve linking to Hamilton Rd for such services.
- 18 There are also no easements for reticulated power services within SEL's lease area. New Easements are proposed accordingly.
- 19 New services from Lomond Crescent will also run parallel to existing water and waste water services for much of the existing route however SEL are proposing two new underground trenches with a more direct route up to their lease area. These trenches are for services including gas, power and telecommunications. It is noted by SEL that the location of these new trenches are over areas which have recently been felled or are being regenerated. Services will be trenched between 0.6m and 1m depth.
- 20 The installation of these new services, in addition to the repair of existing, will impact the access road in places however SEL have confirmed that access for the public and other lessees will be maintained at all times.
- 21 In order to address concerns raised in the Environment Court, over ground storm water channels are proposed to be created to channel storm water from Skyline's lease area.

### New Easements for the Right to Store Water (Water Pump Stations)

- 22 SEL have an existing water pump station in the reserve by Lomond Crescent not covered by an easement. Skyline have determined they require a further pump station midway between Lomond Crescent and their lease area.
- 23 The pump station comprises of an underground tank approximately 5m x 2m while there will also be an aboveground transformer. SEL acknowledge that the installation will require tree removal in this particular area.
- 24 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 publicly notified on 13 December 2018, in accordance with Section 48 (2) of the Reserves Act. Two submissions were received, with both submitters seeking to be heard. The submitters and their summarised concerns are identified below:

Name	Position	Overview
Basil Walker	Neutral	The submitter assumes a neutral position and raises queries in relation to the Reserve Management Plan, other processes aligned with SEL's greater development, legislation and potential fire hazards.
ZJV (NZ) Ltd	Oppose	Potential conflicts with adverse effects of the easements and JGV(NZ) Ltd.'s Ziptrek business.  Application may be contrary to the Resource Management Act 1991.

- 25 A hearing was held on 19 March 2019, attended by Councillors Scott Stevens (Chairperson) and John MacDonald. Representatives of the applicant appeared, along with those from ZJV(NZ) Ltd, and Mr Basil Walker. 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.
- 26 Having regard to the submissions, and the reasonable opportunity of the persons involved to appear at the hearing afforded under the Reserves Act 1977, the hearings panel have given full consideration to the submissions received, and determined the extent to which the submissions will be accepted or disallowed. The recommendation now before Council reflects the Hearing Panels findings and position.

27 Overall, it is recognised that resource consents RM160647 and RM171172 shall be necessary to enable any formal creation of the easements, and that consideration of the effects of the physical elements of the overall development shall be appropriately considered under the Resource Management Act 1991.

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

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28 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.

29 Council does have the ability to decline the easements and insist the land be retained in its present state.

30 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:

31 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:*

32 The development, and consideration effects upon persons and the environment have been addressed, and are subject to the 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.

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

34 SEL will be able to progress their development.

### *Disadvantages:*

35 Access to the reserve may be temporarily limited in association with physical works.

36 The reserve will be encumbered.

37 Option 2 To approve easements over Council Reserve Land in favour of SEL, with different terms and conditions.

### *Advantages:*

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

*Disadvantages:*

39 Similar to Option 1.

40 Option 3 Decline the easements.

*Advantages:*

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

*Disadvantages*

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

43 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**

- 44 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.
- 45 The intention to grant the easements 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 consents RM160647 and RM171172 have been notified, and submissions heard before the Environment Court. The easements can only be created following any decision to grant resource consent, and subject to any conditions imposed upon such a consent. It is noted that the consents cannot be given effect until the appeal is resolved or dismissed.

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

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- 46 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 | NGĀ RITENGA Ā-PŪTEA**

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- 47 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.

48 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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49 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

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

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

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51 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 [explain how it will help];
- 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	Existing Easements Plan
C	Proposed Easements Plan
D	Combined Easements Plan
E	Minutes of Hearing