

**QLDC Council  
8 February 2018**

**Report for Agenda Item: 1**

**Department: Community Services**

**Proposed New Reserve Lease and Easements to Skyline Enterprises Ltd**

**Purpose**

To consider a new 8,532m<sup>2</sup> (Proposed Lease Area) lease for Skyline Enterprises Limited (SEL) to occupy, construct and operate a multi-level commercial car parking building and associated work (Development), upon land classified as Recreation Reserve, being legally described as Part Section 110 Block XX Shotover SD.

To consider the grant of services and right of way easements over land legally described as Pt Section 110 Blk XX Shotover Survey District, Lots 2, 3, and 4 DP 345184, Pt Section 131 Blk XX Shotover Survey District, and Pt Section 129 Blk XX Shotover Survey District, to serve the multi-level commercial car parking building.

**Recommendation 1: LEASE**

That Council:

1. **Note** the contents of this report;
2. **Approve** a new agreement to lease over approximately 8,532m<sup>2</sup> of land (Proposed Lease Area) comprised in the Recreation Reserve legally described as Pt Section 110 Blk XX Shotover SD and held in Certificate of Title OT109/294. The purpose of the lease shall be to develop, establish and operate a parking area and a commercial multi-level parking building, subject (but not limited to), the following terms and conditions:

Conditions

The agreement to lease shall be conditional upon:

- (a) SEL obtaining a resource consent for the Development prior to 1 September 2019;
- (b) Council approving the plans for the Development (not to be unreasonably withheld provided consistent with the resource consent obtained).
- (b) SEL commencing construction of the Development by 1 December 2020;
- (c) SEL completing the Development by 1 December 2023;

- (d) SEL surrendering the Existing Carpark Lease on or prior to the Commencement Date of the new lease.

Commencement	The date that SEL begins trading from the Proposed Lease Area.
Early Access	Council shall grant SEL early access to the Proposed Lease Area from the date SEL begins active construction of the Development. SEL shall not pay rent during this time but shall hold public liability insurance and contractors all risk insurance of \$2 million each.
Term	An initial term to align with the then current term under the Existing SEL Gondola Lease which expires on 31 March 2020 (Renewal Date).
Renewal	Further terms of 5 years, renewable on the same dates as under the Existing SEL Gondola Lease with the same final expiry date as under the Existing SEL Gondola Lease.
Rent	<p>From Commencement Date a fee of \$72,000.00 plus GST and outgoings.</p> <p>The rent shall be reviewed on the Renewal Date in conjunction with the rent payable under the Existing SEL Gondola Lease to the intent that one rent shall be determined for both the Existing SEL Gondola Lease and the New Carpark Lease on the Renewal Date.</p>
Reviews	On renewal
Insurance	Requirement to have public liability insurance of \$2 million
Assignment and sub-lease:	Written approval of Council in its sole discretion is required to any assignment, subletting, management agreement, or any other parting of possession of the premises
Permitted Use:	Carparking which must cater exclusively for staff and visitors to the business conducted under the Existing SEL Gondola Lease (Permitted Users). The number of permitted carparks shall be a minimum of 350, together with any additional carparks necessary for SEL's activities on the Reserve as determined by the Environment Court hearing SEL's

resource consent application for the carparking building.

Offices to be used exclusively by SEL to administer the carparking building and the business conducted under the Existing SEL Gondola Lease. SEL shall not be permitted to use office space for the administration of the wider SEL business or sublet office space to any third party. SEL shall:

- implement controls (to be approved by Council) to ensure that use of the carpark is restricted to the Permitted Users;
- record and retain data on the users of the carpark in a form approved by Council and provide to Council on request such data to confirm that entry to the carpark has been restricted to the Permitted Users; and
- at the request of Council vary the existing controls and/or implement additional controls to ensure that the use of the carpark is restricted to the Permitted Users.

Reporting on Use	SEL to provide annual data to Council on the occupancy rates and usage of the Development.
Electric Vehicle Charging	SEL to consult with Council on provision of electric vehicle charging stations within the Development.
Fees charged	SEL to consult with Council regarding fees charged for carparking.
Maintenance	SEL to maintain the Proposed Leased Area and all improvements thereon at its sole cost.
Reinstatement	At Council's election, improvements to vest in Council with no compensation payable, or SEL to remove improvements and make good resulting damage.
Reserves Act	Lease to be consistent with the Reserves Act 1977.

3. **Agree** to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting of a lease to SEL over part of Pt Section 110 Blk XX Shotover SD.

4. **Delegate** signing authority to the General Manager, Community Services.

## **Recommendation 2: EASEMENTS**

5. **Note** the contents of this report;
6. **Approve** services and right of way easements over land legally described as:
  - Pt Section 110 Blk XX Shotover Survey District; and
  - Lots 2, 3, and 4 DP 345184; and
  - Pt Section 131 Blk XX Shotover Survey District; and
  - Pt Section 129 Blk XX Shotover Survey District;

in favour of SEL, subject to section 48(1)(d) of the Reserves Act 1977, and the following conditions;

- a. Commencement: To be determined.
  - b. Fees: As per QLDC's Easement Policy 2008. This shall also include any outstanding application fees.
  - c. A bond of \$5,000.00 be payable to QLDC prior to any onsite works commencing in the easement areas;
  - d. Any work site in the easement areas to be evidenced by before and after photographs, video or similar to be provided to QLDC by SEL;
  - e. A comprehensive safety plan 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;
  - f. Certificate of adequate public liability cover to be received;
  - g. 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.
7. **Delegate** authority to approve final terms and conditions of the easements, including confirmed location, and execution authority to the General Manager Community Services; provided all relevant requirements of the Easement Policy 2008 are addressed; and
  8. **Agree** to the exercise of the Minister's consent (under delegation from the Minister of Conservation) to the granting of easements to SEL over Pt Section 110 Blk XX Shotover Survey District, Lots 2, 3, and 4 DP 345184,

Pt Section 131 Blk XX Shotover Survey District, and Pt Section 129 Blk XX Shotover Survey District.

Prepared by:

Reviewed and Authorised by:



Aaron Burt  
Senior Planner:  
Parks & Reserves

22/01/2018



Stephen Quin  
Parks Planning Manager

23/01/2018



Thunes Cloete  
General Manager  
Community Services

23/01/2018

## Background

- 1 Skyline Enterprises Limited (SEL) has requested a lease to occupy, construct and operate a multi-level commercial car parking building and associated work (Development) upon land classified as Recreation Reserve, being legally described as Part Section 110 Block XX Shotover SD ('New Carpark Lease').
- 2 SEL already holds a lease of Section 1 Survey Office Plan 22971 and Section 1 Survey Office Plan 24832 with rolling rights of renewal of 5 years provided that the total lease term shall not exceed 75 years from 1 April 1995 (Existing SEL Gondola Lease). SEL operates a restaurant and gondola service pursuant to the existing SEL Gondola Lease.
- 3 SEL also holds a lease of approximately 1600m<sup>2</sup> of land comprised in Part Section 110 Block XX Shotover SD for the purposes of carparking for a term of 5 years commencing on 1 April 2010 with three rights of renewal of 5 years each (Existing Carpark Lease).
- 4 SEL has also been granted a ROW Easement for vehicular, pedestrian and cycle access over Lot 2 DP 345184. This is yet to be physically established as it is associated with the Skyline Gondola redevelopment project that is currently before the Environment Court.
- 5 SEL has also requested the grant of services and right of way easements over land legally described as Pt Section 110 Blk XX Shotover Survey District, Lots 2, 3, and 4 DP 345184, Pt Section 131 Blk XX Shotover Survey District, and Pt Section 129 Blk XX Shotover Survey District, to serve the multi-level commercial car parking building
- 6 On 11 October 2017, Council notified its intention to grant the lease and easements to SEL, and sought submissions and objections. The notification

period ended on 11 November 2017. No submissions or objections have been received.

### **Comment**

- 7 An initial lease term is proposed to align with the current term under the existing SEL Gondola Lease which expires on 31 March 2020 (renewal date). Following this date, further terms of 5 years are proposed, renewable on the same dates as under the existing SEL Gondola Lease with the same final expiry date as under the existing SEL Gondola Lease.
- 8 From commencement date, it is proposed the rent shall be a fee of \$72,000.00 plus GST and outgoings. The rent shall be reviewed on the renewal date in conjunction with the rent payable under the existing SEL Gondola Lease to the intent that one rent shall be determined for both the existing SEL Gondola Lease and the new Carpark Lease on the renewal date.
- 9 It is noted that the SEL holds the existing Carpark Lease over the land, and that this will need to be surrendered prior to the proposed lease being given ultimate effect.
- 10 The applicant has provided an assessment of the effects of the proposed lease in Attachment A, and this acknowledges Section 54(1)(d) of the Reserves Act 1977.
- 11 The land is subject to the Ben Lomond and Queenstown Hill Reserve Management Plan (RMP). Council concludes that the proposed lease is not incompatible with the RMP and will support the development and productive use of the reserve.
- 12 The process to grant a new lease and easements has been publicly notified, with no submissions or objections being received.
- 13 The ultimate decision to determine the final terms of the lease and easements now rests with the Council. The decision whether or not to enter into the lease, or approve the easements is made by Council under delegated authority from the Minister of Conservation.
- 14 As the proposed lease is inextricably linked with the Skyline Gondola redevelopment project that is currently before the Environment Court, conditions are proposed to ensure that the proposed lease does not commence unless and until resource consent for the Gondola upgrade and the proposed car parking building are obtained. The conditions also include a requirement that the development must commence within a specified time period to ensure that the agreement to grant a lease will expire if the development is not undertaken.
- 15 This report recommends granting the lease and easements subject to the conditions and terms specified.

## Options

- 16 Option 1 To approve a new 8,532m<sup>2</sup> lease over Pt Section 110 Blk XX Shotover SD, and requested easements with the terms and conditions detailed above.

### *Advantages:*

- 17 The new carpark will support the greater expansion of SEL activities, which is likely to promote employment opportunities through increased tourism.
- 18 The development is consistent with the use of the reserve as a recreation reserve and will enable an otherwise un-useable part of the reserve to generating an income for the community.
- 19 The community will receive a fair return for the commercial use of the reserve.
- 20 Council will receive easement fees.

### *Disadvantages:*

- 21 Members of the community will not be able to use part of the reserve for recreation purposes not otherwise associated with the development.
- 22 The reserves will be encumbered by easements.
- 23 Option 2 To approve a new 8,532m<sup>2</sup> lease over Pt Section 110 Blk XX Shotover SD, and requested easements with different terms and conditions.

### *Advantages:*

- 24 As above.

### *Disadvantages:*

- 25 As above.

- 26 Option 3 Not to approve a new lease or easements.

### *Advantages:*

- 27 There will be no change in the current amount of land available for public use.
- 28 The areas of reserve will be unencumbered by easements.

### *Disadvantages:*

- 29 Car parking congestion could be exacerbated and affect the roading network.
- 30 Council would not have the opportunity to receive rental payments that would result from the development.
- 31 Council will not receive easement fees.

- 32 This report recommends **Option 1** for addressing the matter because it would enable the development of the site, and is consistent with Council's position to notify the intention to grant the lease and easements.

### ***Significance and Engagement***

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

### ***Risk***

- 34 This matter relates to operation risk OR011A Decision Making. The risk is classed as moderate as it will alter the existing character and use of an area of the recreation reserve and there is an existing interest associated with the use of the greater reserve.

### **Financial Implications**

- 35 If the lease is approved, Council will receive a rental for the activity

### **Council Policies, Strategies and Bylaws**

- 36 The following Council policies, strategies and bylaws were considered:

- Significance and Engagement Policy.
- Community Facility Funding Policy
- Easement Policy 2008 – the application is consistent with the policy.

- 37 The recommended option is consistent with the principles set out in the named policy/policies

- 38 This matter is not included in the 10-Year Plan/Annual Plan because it does not have any financial impact on Council.

### **Local Government Act 2002 Purpose Provisions**

- 39 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 providing income to Council and a decision in a timely manner;
- Can be implemented through current funding under the 10-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.



**Consultation: Community Views and Preferences**

- 40 The persons who are affected by or interested in this matter are residents and visitors of the Queenstown Lakes District.
- 41 The Kiwi Birdlife Park is considered to be the party most immediately affected if the Council were to grant the proposed lease and easements. SEL have consulted with this party.
- 42 The intention to grant the lease and easements has been publicly notified in accordance with the Reserves Act 1977.

**Attachments**

- A SEL Application for Lease
- B Existing Car Park Lease
- C ROW Approval
- D Proposed Lease and Easement Plan
- E Kiwi Birdlife Park written support

18 September 2017

Queenstown Lakes District Council  
Parks and Reserves Department  
Private Bag 50072  
QUEENSTOWN 9348

**Attention:** Stephen Quinn

Dear Stephen;

**SKYLINE ENTERPRISES LIMITED – APPLICATION FOR A LEASE AND EASEMENTS PURSUANT TO SECTIONS  
54(1)(d) AND 48(1) 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 (resource consent RM160647).

RM160647 is progressing by way of Direct Referral to the Environment Court. The Environment Court hearing was held during the week starting 22<sup>nd</sup> May 2017 and an interim decision has been issued by the Court on 15<sup>th</sup> August 2017.

One of the primary concerns that was raised by both submitters and the Council’s experts with respect to the original RM160647 application and indeed one of the remaining matters to address before a final decision can be issued by the Court, is the lack of on-site car parking that was proposed for visitors and staff to SEL facilities.

Following the receipt of submissions, further detailed traffic engineering advice, receipt of Council’s expert evidence and attendance at the Environment Court mediation and hearing for RM160647, SEL sought to address this issue by proposing to the Environment Court conditions which required the development of a multi-storey car park building providing a minimum of 350 car park spaces for SEL staff and visitors.

Specifically, SEL is now seeking to progress plans for the construction and operation of a multi-level car parking building with associated offices at the rear of the proposed lower terminal building and upon land classified as Recreation Reserve and legally described as Pt Section 110 Blk XX Shotover SD as held in Certificate of Title OT109/294.

The subject site (Pt Section 110 Blk XX Shotover SD) forms part of the wider Ben Lomond Recreation Reserve. and a Lease is therefore required under the Reserves Act for the carrying on of any trade, business or occupation.

The proposal also necessitates the granting of Easements through Pt Section 110 Blk XX Shotover SD and adjacent land for the purposes of installing rock anchors, providing access to the site, conveyance of power, storm water and other infrastructure.

As such, the purpose of this correspondence is to formally request a Lease pursuant to Section 54(1)(d) of the Reserves Act 1977 for the purpose of establishing and operating a future multi-level car park building

with associated office space and Easements pursuant to Section 48(1) of the Reserves Act for the installation and/or relocation of necessary infrastructure and services.

The applicant has liaised with the Council regarding the proposal in the lead up to lodgement of this application and has included commercial terms for the proposal in accordance with Council's recommendations.

The full proposal is described in detail below:

### **Proposal**

As identified above SEL resource consent RM160647 is progressing via Direct Referral to the Environment Court. SEL have sought to resolve the concerns raised by submitters and the Council's experts with respect to on-site car parking by proposing to construct a new car parking building at the rear of the proposed lower terminal building.

SEL acknowledge that the construction of this proposed building and providing for future office use falls beyond the scope of the RM160647 application and requires an additional Lease and associated Easements pursuant to Sections 54(1)(d) and 48(1) of the Reserves Act 1977 as well as a separate resource consent under the provisions of the Resource Management Act 1991.

To address the scope issue in the RM160647 proceedings SEL had volunteered the following consent conditions during the Environment Court proceedings:

### **Transport Conditions**

55. *Prior to the commencement of this consent the consent holder shall submit evidence to the Planning Manager, Queenstown Lakes District Council that confirms the ability to lawfully establish and/or obtain sole rights of occupation to a minimum of 350 car parks for staff and visitors on a site located north of the intersection of Brecon Street and Isle Street, Queenstown.*
56. *Prior to the collective occupation and use of both the expanded and the existing refurbished restaurant building, the consent holder shall ensure that the minimum 350 car parks required by (55) above are established and/or provided for the consent holders sole use and occupation.*

The intention of the conditions was that the additional RMA and Reserves Act approvals were recognised as having to be obtained before work could commence and that the expanded facilities sought by RM160647 could not be utilised until the car parks were fully established.

After hearing the expert evidence of all the parties the Environment Court has released an Interim Decision on the RM160647 application. The two key issues that will need to be resolved before the Court will consider and issue a final decision is the obtaining of the RMA and Reserves Act approvals for the car park and addressing concerns regarding the discharge of storm water.

Accordingly, SEL seeks through this correspondence and in advance of any final decision on RM160647, a Lease and associated Easements from the QLDC that covers the anticipated land area required for the footprint of a future car park building, its potential future use for offices, the area for all necessary excavations, pedestrian, cycle and vehicular access way's and all associated infrastructure Easements.

### Land Affected by the Proposal

The proposed new lower terminal building in the RM160647 application is to be located upon 53 Brecon Street, Queenstown 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.

This site is owned by the Council and is subject to an existing Lease with SEL. Specifically, SEL hold the Lease as per Leasehold Certificate of Title 3417.

SEL also hold a Lease from the Council over an approximate 1,600m<sup>2</sup> area of Pt Section 110 Blk XX Shotover SD (as held in Certificate of Title OT109/294) for the purpose of providing for staff car parking in the area immediately north of Section 1 SO 22971.

It is upon Pt Section 110 Blk XX Shotover SD and overtop of this existing Lease that the applicant seeks the proposed new Lease. Copies of the above mentioned Certificates of Title are contained in **Appendix [A]**.

The existing car parking Lease area upon Pt Section 110 Blk XX Shotover SD is not subject to a specific legal description registered with LINZ as no Survey Plan has been prepared and deposited for this Lease area. The Lease area is only over the existing asphaltic concrete parking area (approximately 1,600m<sup>2</sup>) as illustrated on the approved Lease document contained within **Appendix [B]**.

Due to the technical requirements of the new gondola, SEL's proposed new lower terminal building in the RM160647 application will be located approximately 1.5m from the eastern boundary of Section 1 SO 22971 and there will be insufficient room to maintain the existing vehicular access to the rear of the building and parking area.

Accordingly, SEL previously 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 345184<sup>1</sup>.

Lot 2 Deposited Plan 345184 is a Gazetted Recreation Reserve and is held in Certificate of Title 185162 which is owned by the Council. A copy of this Certificate of Title is also contained in **Appendix [A]**.

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. Neither of these two reserves form part of the Ben Lomond Recreation Reserve.

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 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.

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<sup>1</sup> ROW Easement Application lodged on behalf of Skyline, dated 24<sup>th</sup> May 2016.

SEL proposed 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). 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.

The abovementioned ROW Easement was approved by the Council at the Council meeting of 29 September 2016 following public notification of the application and a hearing which was held on 1<sup>st</sup> September 2016. A copy of the Councils decision is attached in **Appendix [C]**.

While the above land will be affected by the earthworks, car park building and its associated access the proposal also requires Easements over adjoining land areas. These Easements are discussed below.

First, initial geotechnical reports have suggested that depending on the specific ground conditions encountered during excavations for the future car park building it may be necessary to install rock anchors into the cut batters particularly in the north western end of the proposed Lease Area.

Such matters will need to be addressed at detailed design stage and it is not yet known if the rock anchors (if required) would need to extend beyond/underneath the boundary of the proposed Lease area and further into Pt Section 110 Blk XX Shotover SD (Ben Lomond Recreation Reserve).

Accordingly, it is requested that the Council grant the rights for such Easements with the area to be confirmed during detailed design and the registration of the Easements to occur at the completion of construction and prior to operation of any future car park building.

Second, there are existing overhead powerlines that pass through the adjacent Council owned Brecon St Car Park (Lot 3 Deposited Plan 345184), the KBP site (Pt Section 131 Blk XX Shotover SD), across Lot 2 DP 345184 (Council Reserve), Section 1 SO 22971 (SEL Lease Area) and Pt Section 110 Blk XX Shotover SD (Ben Lomond Recreation Reserve and SEL Existing Car Park Lease Area). It is understood that these power lines presently have no Easement and operate by way of existing use right.

The power lines need to be either relocated or undergrounded as part of the RM160647 proposal and the proposal for the car park building. Discussions are ongoing between Skyline and Aurora Energy to determine the most appropriate response and location albeit the options have been narrowed to two specific alignments. It is our understanding that any upgrading or relocation of these lines requires an Easement to be established in favour of Aurora Energy.

Accordingly, SEL proposes to establish an Easement through Lot 3 DP 345184 (Brecon St Car Park), Pt Section 131 Blk XX Shotover SD (KBP site), across Lot 2 DP 345184 (Council Reserve), Pt Section 129 Blk XX Shotover SD and Pt Section 110 Blk XX Shotover SD (proposed Lease Area) and requests an Easement in favour of Aurora to do so.

Third, there are overland storm water flows that drain off the western facing slopes of the Ben Lomond Recreation Reserve into the existing SEL car park. As part of the car park re-development it is proposed to capture these flows at the base of the car park building (on its western side).

The storm water overland flows along with those from the proposed car park building and the lower terminal building will then be conveyed through Pt Section 110 Blk XX Shotover SD (proposed Lease Area), Pt Section 129 Blk XX Shotover SD (Council Reserve) and Pt Section 131 Blk XX Shotover SD (KBP site).

Fourth, it is also proposed to establish an Easement through Lot 2 DP 345184 (the area of already approved ROW) to convey telecommunications, water and sewage to the proposed car park site and Section 1 SO 22971 (lower terminal building site).

Finally, the proposed entrance to the car park building will pass along the western elevation of the proposed lower terminal building and beneath the proposed gondola cableway. Due to the clearance required under the gondola cableway, the earthworks batter slopes and a very small portion of a proposed footpath will extend into Lot 4 Deposited Plan 345184 which is located south west of the current lower terminal building. The existing mountain bike track from the Ben Lomond Reserve to the lower terminal building will also be re-aligned through this Lot.

This site is QLDC owned Recreation Reserve (not part of the Ben Lomond Recreation Reserve) and is also held in Certificate of Title 185162. A copy of this Certificate of Title is contained in **Appendix [A]**. It is proposed to establish a ROW Easement over this Lot in favour of Section 1 SO 22971 (lower terminal site) and the car park lease area to provide for the proposed access ways and the associated earthworks required to implement them.

It is proposed that all Easements be approved with the final areas confirmed during detailed design and registration of the as built Easement areas occurring at the completion of construction and prior to use of the car park building by way of the following condition:

*“A computed Easement Plan shall be submitted to Council for approval showing details of all necessary Easements to legalise any services and infrastructure associated with the development. This shall include new Easements for the power lines, conveyance of storm water and application of rock bolts to cut batters. Once approved by Council, the Easements shall then be registered on the Computer Freehold Register for the sites, prior to commercial operation of the new car park building”*

All of the abovementioned landholdings affected by the proposed Lease Area and the associated Easement locations are identified in the proposed Lease and Easement plan prepared by Patterson Pitts Group and contained within **Appendix [D]**.

#### Proposed Lease Area

The applicant proposes a new Lease over an area of Pt Section 110 BLK XX Shotover SD of approximately 8,532m<sup>2</sup>. A copy of the proposed Lease area plan prepared by Patterson Pitts Group is contained within **Appendix [D]**.

The total land area of 8,532m<sup>2</sup> is sought for the following reasons:

- To accommodate the footprint of a future multi storey car park building;
- To accommodate the provision of on-site coach parking;
- To accommodate the space required for vehicular, pedestrian and cycle access; and
- To accommodate the anticipated earthwork areas and cut batters required to realise construction of the car park building and associated access ways and proposed landscaping.

The proposed Lease area incorporates a portion of Pt Section 110 Blk XX Shotover SD that is currently part of the gondola cableway Easement area pursuant to the applicants existing Lease L5014878.1 for the gondola, restaurant building and associated facilities. The reason for extending the proposed Lease into/over this area and near the carriage way of Brecon Street is to provide for a future one way vehicular access that will service the proposed parking building.

Specifically, it is envisaged that vehicles will access the proposed Lease area and future car park building from the south western side of the lower terminal building and will exit on the south eastern side (along the new access constructed on the recently approved ROW Easement).

#### Proposed Purpose of Lease

The purpose of the proposed Lease for the subject site will primarily be for the provision and commercial operation of car parking and particularly the establishment of a multi storey car park building.

It is also proposed to provide for the future opportunity to establish offices which will be used exclusively by SEL to administer the future car parking building and the business conducted on the Ben Lomond Recreation Reserve under the existing SEL Gondola Lease.

For clarity, any future office use will not permit use for the administration of the wider SEL business or the sublet of such office space to any third party.

The future car park building will have a minimum of 350 car parks for exclusive use by the applicant's staff and visitors. This is the minimum car parking provision volunteered by the applicant during the RM160647 Environment Court hearing and agreed upon by Council's expert traffic witnesses.

Additional parks above the minimum 350 required by the Environment Court may be provided if resource consent is successfully obtained for a building with greater capacity. Any 'additional' car parking will be used for staff and visitors to the business conducted under SEL existing Lease.

#### Proposed Term of Lease

Pursuant to Schedule 1 of the Reserves Act 1977 the applicant proposes an initial term of Lease to align with the current term of the existing SEL Gondola Lease which expires on 31 March 2020.

Further terms of 5 years are proposed, and which will be renewable on the same dates as the existing SEL Gondola Lease with the same final expiry date as under the existing SEL Gondola Lease being 31<sup>st</sup> March 2070.

#### Proposed Rental

It is proposed that an initial annual rental of \$72,000.00 + gst will be payable from the date of commencement of the proposed Lease (the commencement date is proposed to be the date from which SEL commences trading from the proposed Lease Area).

The proposed rental will be reviewable on the Lease renewal date in conjunction with the rent payable under the existing SEL Gondola Lease. The intent of combining the rent review dates of the proposed and existing Leases is to provide for the opportunity that there shall be one rental fee to be determined for both the existing SEL Gondola Lease and the new carpark Lease upon the renewal date.

While the applicant proposes that the rental will apply from the date that they commence trading from the subject site, it is also requested that 'early access' is authorised to enable earthworks and construction of the future car park building.

Specifically, it is proposed that Council grant SEL early access to the proposed Lease Area from the date SEL begins active construction of the development. It is proposed that SEL do not pay rent during this time (as

they will not be generating income) but they will be required to hold public liability insurance and contractors all risk insurance of \$2 million each.

### **Other Statutory Approvals**

While SEL seeks approval for a Lease and Easements under Section 54(1)(d) of the Reserves Act 1977 as outlined above, it is acknowledged that the construction and operation of a future multi storey car park building and associated offices on the subject site will require a range of resource consents under the Resource Management Act 1991 and the provisions of the Operative and Proposed District Plans.

The resource consent application for the above mentioned breaches of the Operative and Proposed District Plan has not been lodged at the time of drafting this application under the Reserves Act.

However it is intended that this resource consent application will be lodged very shortly following the completion of consultation with affected parties. It is expected that the processing of the resource consent application will run almost in parallel with this Lease application under the Reserves Act.

Specifically, the applicant will be requesting that both applications are processed on a publicly notified basis. While the applicant has the option of seeking the resource consent application progresses by way of Direct Referral to the Environment Court this decision has not yet been made and such a request cannot be made of Council until the application is lodged.

If the resource consent application proceeds to a Council hearing it is noted that it would be possible to hold a joint hearing to hear both the Reserves Act and Resource Management Act applications (albeit two separate decisions would result from this situation). The applicant wishes to keep this option open at the current time.

In the interests of clarity, the resource consent application will address only the car park building and its associated effects. If the applicant seeks to use the site for offices as is proposed in the Lease purpose outlined above, this will be the subject of a separate future resource consent application.

### **Assessment of Effects of Proposed Lease and Associated Easements**

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.

In addition, Section 54(1)(d) of the Reserves Act 1977 requires that the relevant trade, business or occupation:

*“must be necessary to enable the public to obtain the benefit and enjoyment of the reserve for the convenience of the persons using the reserve”.*

The subject site over which the proposed Lease area sits as well as all the allotments that will be subject to Easements, are all Recreation Reserves.

It is considered that by virtue of the existing car park Lease the proposed Lease area sought in this application is not 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 primarily due to the existing occupation and the steep topography and vegetation that occupies the proposed Lease area in its current state.

However, as identified above, the proposed Lease area does adjoin Pt Section 129 BLK XX Shotover SD which presently provides a walking track through to Hamilton Road. The ROW Easement proposal described above and already approved by Council illustrated 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 path in Pt Section 129 Blk XX Shotover SD.

The applicant intends to maintain this already approved design and the subsequent facilitation of public walking and cycling access along the access way to be constructed over Lot 2 DP 345184. The proposed use of the Lease area and subsequent vehicular access that will be required over Lot 2 DP 345184 will not compromise this approved requirement.

It is considered that the construction and formalisation of the pedestrian and cycleway access in association with the overall gondola re-development and this car parking Lease proposal is a significant positive effect and will result in an increase of use by pedestrians and cyclists. This is considered to be in accordance with the purpose of providing areas 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.

It is also considered that the proposal will enable the public to obtain the benefit and enjoyment of the Ben Lomond Recreation Reserve and provide a convenience for those persons accessing the Reserve by way of the gondola.

Specifically, the provision of dedicated car parking at the lower terminal site of the gondola is considered to result in a direct increase in the quality of the visitor experience to applicants existing and proposed commercial and commercial recreational facilities located within the Ben Lomond Recreation Reserve.

Providing parking on site provides for ease of access to the gondola for people of all ages and disabilities and saves having to park in the existing on-street car parks within or on the periphery of the Town Centre and then walking up hill to the gondola terminal.

This is particularly important in poor weather conditions especially for major events such as weddings and corporate events where it is not desirable for gondola patrons to get wet and/or walk long distances from alternative car parks.

Further, the on-street car parking situation on and in the vicinity of Brecon Street is that the car parks are operating at over 95% capacity<sup>2</sup>. In short, there are no available car parks for gondola visitors to utilise.

Accordingly, the provision of dedicated on site car parking for gondola customers is considered to be a necessity to directly facilitate the on-going use and enjoyment of the applicants existing and proposed (by RM160647) facilities within the Ben Lomond Recreation Reserve. In short, the proposed car park building (and provision of associated offices) is considered to be compatible with and complimentary to the existing SEL facilities located within the Ben Lomond Recreation Reserve.

Effects on other parties have also been considered as part of this proposed Lease application and associated Easements. Other than the public generally it is considered that the only parties directly affected by the proposal in terms of both the temporary construction effects and on-going car parking operation is Kiwi

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<sup>2</sup> Evidence of Don McKenzie (Traffic Design Group) for the Environment Court Direct Referral of RM160647, paragraph 20.

Birdlife Park who hold a lease over Lot 1 DP 345184 and Pt Section 131 Blk XX Shotover SD which lies to immediate east of the proposed Lease area and Aurora Energy.

There is a private agreement in place between the applicant and Kiwi Birdlife Park which supports the proposed car park concept. Under the terms of this agreement at the time that the required resource consent application is lodged with the Council an affected party approval will be provided by Kiwi Birdlife Park to that application.

Accordingly, Kiwi Birdlife Park have provided some brief correspondence signalling their support for the proposed Lease area. A copy of this correspondence is contained within **Appendix [E]**.

The applicant is continuing to liaise with Aurora Energy and has identified two possible solutions to the movement of their infrastructure and subsequent protection of their infrastructure through the establishment of Easements. Provided that no works commence without Aurora's approval the proposal is considered to have minimal effects on this party.

The granting of a Lease and associated Easements to the applicant will in itself not result in adverse effects on the environment. The Lease is only for the land area with the future ability to construct and operate a car park building subject to Lessors approval.

However, when a car park building is constructed there will be temporary adverse effects arising during the construction period and potential permanent adverse effects arising from the necessary earthworks and the establishment and ongoing operation of the car park building itself.

The extent of these actual and potential effects will be determined once the car park design and subsequent resource consent application is finalised. The proposed car park design will then require assessment of all of the following matters:

- Construction and operational noise,
- Traffic generation and associated effects;
- Earthworks, geotechnical and natural hazards;
- Landscape and visual amenity;
- Engineering –services feasibility;
- NES Contaminated Sites Assessment.

As noted above, the applicant has already engaged consultants to undertake the required assessments and all of the reports, design plans and details of mitigation measures will be provided as part of the resource consent application in due course.

The applicant volunteers that should the Council grant the Lease as sought that it shall be conditional upon resource consent having been granted. The resource consent process will involve a detailed analysis and assessment of all relevant environmental effects.

In addition, the applicant acknowledges that the future proposed car park building will breach a number of Operative and Proposed District Plan provisions and will be undertaken on public Recreation Reserve with a high level of public interest and scrutiny. As such, the applicant will be requesting that the resource consent application be publicly notified pursuant to Section 95A(2)(b) of the Resource Management Act 1991.

Accordingly, the issues of the proposed Lease area and associated occupation will be dealt with in a public forum pursuant to Sections 48(2), 54(2), 119 and 120 of the Reserves Act and the potential environmental

effects of the proposed construction and on-going use of the site for car parking will be dealt with in a public forum under the provisions of the Resource Management Act.

It is therefore considered that all potential adverse effects of the proposed Lease area, its potential future development and use will be afforded a comprehensive assessment before all necessary statutory approvals are obtained and any development is permitted to proceed.

### **Summary**

SEL is seeking a Lease of 8,532m<sup>2</sup> over Pt Section 110 Blk XX Shotover SD to facilitate the provision and commercial operation of car parking and particularly the establishment of a future multi storey car park building. The car park building will provide a minimum of 350 car parks for SEL staff and visitors with the potential for additional parking (if constructed) being available to visitors to the Ben Lomond Recreation Reserve and SEL business under their existing Lease.

The proposed purpose of the Lease also seeks to include future administrative offices directly associated with management of the car park building and SEL facilities on the Ben Lomond Recreation Reserve.

The proposal involves associated Easements for the provision of infrastructure and servicing of a future car park building.

The proposal is sought in association with the applicants overall re-development proposal pursuant to resource consent RM160647. A number of submitters on this application specifically requested that the applicant provide visitor and staff parking and this proposal is a direct attempt to address these requests.

The applicant acknowledges that this Lease application will be publicly notified pursuant to Sections 48(2), 54(2), 119 and 120 of the Reserves Act 1977 and it is requested that this process is formally commenced by the Council's officers as soon as is practicably possible.

I trust that the information contained within 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



Sean Dent  
DIRECTOR

### **SOUTHERN PLANNING GROUP**

16250 – SEL CAR PARK

### **Attachments:**

- A. Certificates of Title;
- B. Skyline Existing Car Park Area Lease
- C. Skyline ROW Approval
- D. Proposed Lease and Easement Plan
- E. KBP Correspondence
- F. Proposed Commercial Terms

DATED

30<sup>th</sup> June

2011

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THE QUEENSTOWN LAKES DISTRICT COUNCIL

SKYLINE ENTERPRISES LIMITED

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**DEED OF LEASE**

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**MACALISTER TODD PHILLIPS**

Barristers, Solicitors, Notaries

Queenstown • Wanaka • Cromwell • Christchurch • Lyttelton

Ph: (03) 441 0125 - Fax: (03) 442 8116

Email: [queenstown@mactodd.co.nz](mailto:queenstown@mactodd.co.nz)

P O Box 653

**QUEENSTOWN 9348**

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## DEED OF LEASE

**THE QUEENSTOWN LAKES DISTRICT COUNCIL** a Body Corporate under the Local Government Act 2002 (hereinafter together with its successors and assigns called "the Lessor") is the administering body of that Recreation Reserve described as Part Section 110 Block XX Shotover Survey District Part Certificate of Title OT9B/769 and known as the Ben Lomond Reserve and DOES HEREBY LEASE that part of the Ben Lomond Reserve outlined in green on the plan attached hereto containing 1600 square metres more or less ("the Car Park Land") with the prior consent of the Minister of Conservation ("the Minister") to **SKYLINE ENTERPRISES LIMITED** (hereinafter together with its successors and assigns called "the Lessee") to be held by the Lessee as tenant for the term of five (5) years commencing on the 1<sup>st</sup> day of April 2010 together with three (3) rights of renewal each of five (5) years yielding and paying therefore an annual rent hereinafter provided.

AND THE LESSEE DOES HEREBY COVENANT WITH THE LESSOR as follows:

**1. Payment of Rental**

- 1.1 That the Lessee will pay unto the Lessor the rent (if any) in the manner hereinafter provided and will also pay and discharge all rates taxes or other charges whatsoever now or hereafter to become payable in respect of its occupation of the Car Park Land or any part thereof during the said term.

**2. Rental and Rent Reviews**

- 2.1 The terms and conditions of this Lease shall be read in conjunction with an existing lease made between the Lessor and the Lessee and dated 14<sup>th</sup> July 1999 and registered under number L5014878.1 ("the Existing Lease").
- 2.2 The Existing Lease is in respect of land adjoining the Car Park Land and contains rent review provisions which have been agreed between the Lessor and the Lessee for the period 1<sup>st</sup> April 2010 to 31<sup>st</sup> March 2020 ("the Rent Review Provisions").
- 2.3 The parties hereto agree that the Rent Review Provisions in respect of the Existing Lease shall include all rentals payable under this Lease so that there shall be no separate rental payable by the Lessee in respect of this Lease prior to the 1<sup>st</sup> April 2020.
- 2.4 The parties agree that should the Lessee exercise the right of renewals for the period 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2030, then the amount of rent payable for that period of the term under

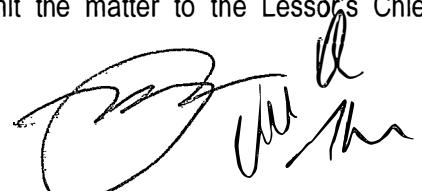
this Lease (if any) shall be addressed by the parties at the time the Lessee exercises the appropriate right of renewal for that period of the term.

**3. Use of Car Park Land**

- 3.1 That the Lessee shall use the Car Park Land for the purpose of establishing, maintaining and utilising a car park subject to the terms and conditions set out in clause 4. The Lessee shall comply with any Act, Regulation or By-law applicable thereto and shall at all times arrange for the disposal of rubbish or waste material of any nature whatsoever and shall remove the same from the Car Park Land and will conduct all operations in a proper and efficient manner to the satisfaction of the Lessor and if at any time the Lessor is of the opinion that the Car Park Land is not being used or is not being sufficiently used for the purposes specified above or in accordance with clause 4 the Lessor after making such inquiries as the Lessor thinks fit and giving the Lessee an opportunity of explaining the usage of the Car Park Land and if satisfied that the Car Park Land is not being used or not being sufficiently used for the purposes specified in this Lease may terminate this Lease on such terms as the Minister of Conservation approves.

**4. Use of the Car Park Land by Third Parties**

- 4.1 The Lessee shall allocate to other commercial operators using the Ben Lomond Reserve a reasonable number of car parking spaces within the Car Park Land for the use of the staff of those commercial operators.
- 4.2 The Lessee shall be entitled to charge each commercial operator a reasonable rental or licence fee for the car parking spaces allocated to them, provided that such rental or licence fee shall not exceed the rental paid by the Lessee to the Lessor pursuant to this Lease from time to time, apportioned per car parking space according to the total number of car parking spaces contained within the Premises. The Lessee shall also be entitled to pass on to such commercial operator any administration and maintenance costs incurred by the Lessee in respect of the Car Park and which have been agreed to by the Lessor.
- 4.3 All commercial operators allocated car parking spaces within the Car Park Land shall have unrestricted access between the Car Park Land and Brecon Street, including such access as is necessary over other land leased by the Lessee from the Lessor outside of this Lease.
- 4.4 Should there be any dispute about the allocation of spaces to any party, or the rental sum to be imposed for each car park, any party may submit the matter to the Lessor's Chief



Executive Officer who shall make a binding decision on the matter based on fairness, and in particular the established reasonable needs of each of the parties. Should any party dispute the decision of the Lessor's Chief Executive Officer, then that decision will stand and be observed by all parties until that dispute is resolved according to the dispute resolution provisions contained in clause 21 of this Lease.

**5. Assignment**

- 5.1 Subject to the provisions of clause 4 the Lessee shall not at any time during the said term transfer, sub-lease, mortgage or otherwise dispose of its interest or any part thereof in the Lease without the prior consent of the Lessor.

**6. Lessee's Covenants**

- 6.1 (a) That the Lessee shall at all times at its own expense:
- (i) Maintain and keep in good order the Car Park Land and any improvements on the Car Park Land at all times.
  - (ii) Manage to the Lessor's satisfaction this discharge of surface water and stormwater from the Car Park Land so as to avoid any adverse affects on neighbouring properties.
  - (iii) Maintain and keep in a tidy condition to the satisfaction of the Lessor, all gardens, grounds, yards, surfaced areas, lawn areas, trees and bush (if any) within the Car Park Land.
  - (iv) Arrange for the disposal of rubbish or waste material of any nature whatsoever and remove the same from the Car Park Land.
- (b) That the Lessee shall not:
- (i) Without the written consent of the Lessor cut down any trees or bush.
  - (ii) Allow any hoardings advertisements or billboards to be erected or displayed without the prior consent of the Lessor.
  - (iii) Erect any structures or buildings on the Land.

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- (iv) Increase the area already cleared of vegetation and used for car parking within the Car Park Land.

**7. Comply with Statute**

- 7.1 (a) That the Lessee shall comply with the provisions of all statutes regulations ordinances and by-laws (present or future) affecting the Car Park Land or any improvement on the Car Park Land and also with the provisions and requirements of all licenses requisitions and notices lawfully issued made or given by any authority of competent jurisdiction.

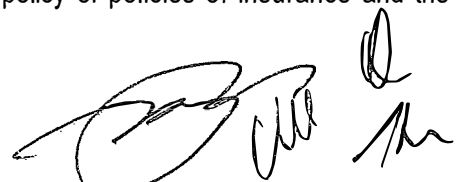
**8. Lessee's Indemnity**

- 8.1 That the Lessee shall indemnify and keep indemnified the Lessor and the Minister against all legal liability in respect of actions, proceedings, costs, claims and demands that may be made against it for which it may be liable at the suit of third parties in respect of any loss or damage caused by or arising out of or in connection with the exercise or purported exercise of the rights hereby granted or resulting from any act or omission on the part of the Lessee or the Lessee's agents, employees, contractors, members, invitees or other persons for whom the Lessee is responsible or otherwise resulting from any use of the Car Park Land in connection with this Lease.

**9. Public Liability Insurance**

9.1 THAT:

- (a) (Without in any way limiting the liability of the Lessee under clause 8 hereof) the Lessee shall forthwith take out and thereafter during the continuance of this Lease keep in the name of the Lessor and the Minister with some insurer to be approved by the Lessor a public liability insurance policy (or policies if the insurer shall require two such policies one in the name of the Lessor and one in the name of the Minister) for not less than ONE MILLION DOLLARS (\$1,000,000.00) for any one accident whereby the Lessor and the Minister shall during the term of this Lease be indemnified against all actions suits claims demands proceedings losses damages compensation sums of money costs charges and expenses to which the Lessor and the Minister shall or may be liable AND the Lessee will pay all premiums and other monies payable in respect of all such insurance as the same shall become due and payable and will produce to the Lessor such policy or policies of insurance and the





receipts for the premiums and other monies payable thereunder within fourteen (14) days of the due date of such premiums and other monies and if default shall be made in keeping the said policy or policies on foot as aforesaid or in the event of the premiums or other monies payable in respect thereof being unpaid or the receipts thereof or the policy or policies not being produced to the Lessor then the Lessor may effect and maintain such insurance and pay the said premium or other monies or any of them and all monies expended for such purposes shall be repaid by the Lessee to the Lessor on demand AND the Lessee will not do or omit or suffer to be done or omitted any act matter or thing whereby any such insurances may be vitiated or rendered voidable and will give true and particular information to the office or company with which the said insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect the said policy or policies of insurance or the payment of all or any monies thereunder in the event of any claim being made against the Lessor or the Minister as therein provided.

- (b) If the Lessor makes any payment due under this clause on behalf of the Lessee and such remains unpaid after fourteen (14) days of demand having been made the Lessor shall have the right to sue for and recover the same as if it were a debt owing to the Lessor.
- (c) The Lessee shall provide evidence of the public liability cover to the Lessor prior to the commencement of the term and at any other time when requested to do so by the Lessor.

## **10. Nuisance**

### **10.1 THAT:**

- (a) The Lessee will not use or allow to be used the Car Park Land or any improvements on the Car Park Land in any way that constitutes a nuisance or annoyance to the Lessor or to any person lawfully on or using the Ben Lomond Reserve or in such a way as may prejudice the Lessor in its control of the said reserve or as may expose the Lessor and/or the Minister to any liability.
- (b) The Lessee shall indemnify and keep indemnified the Lessor and the Minister against any actions proceedings costs claims demands or fines pursuant to any Statute,

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Regulation, Ordinance or Bylaw (present or future) arising from any breach or non-compliance by the Lessee with clause 10(a).

**11. Admission**

- 11.1 That the Lessee shall only make such admission charges as the Lessor may from time to time approve (but subject to the provisions of clause 4).

**12. Management**

- 12.1 That the Lessee may make such rules for the management of the car parking facilities on the Car Park Land and for the conduct of persons using the same as may be proper and necessary PROVIDED THAT all rules so made shall be consistent with these presents and in particular clause 4 and before coming into force shall be submitted to and approved by the Lessor and if any dispute shall arise between the Lessee and the Lessor as to the propriety of any rules such dispute shall be referred to the Minister whose decision shall be final and binding on both parties. The Lessee shall cause all such rules when so approved and adopted to be printed and posted up in some conspicuous place on the Car Park Land for the information and guidance of all persons using the said car parking facilities on the Car Park Land.

**13. No Right to Acquire Fee Simple**

- 13.1 That nothing herein contained or implied shall be deemed to confer on the Lessee the right to acquire the fee simple of the Car Park Land.

**14. Lessor's Right to Enter Car Park Land**

- 14.1 The Lessor and the Lessor's employees, contractors and invitees may at all reasonable times enter upon the Car Park Land and view the condition of the same. If the Lessor shall give the Lessee written notice of any failure on the part of the Lessee to comply with any of the requirements of clause 7 the Lessee shall with all reasonable speed so comply.

**15. Non Objection by Lessee**

- 15.1 The Lessee agrees and covenants that it will sign any required support and/or affected persons approval for, and shall not oppose, hinder, frustrate, take any action or encourage any other party to take action against any future application by the Lessor for any resource consent, or notice of requirement for designation or building consent in respect of the Land or

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the Ben Lomond Reserve or other land owned or administered by the Lessor which adjoins the Ben Lomond Reserve.

- 15.2 The Lessee acknowledges that any breach of clause 15.1 by the Lessee shall be a breach of this Lease which will entitle the Lessor to serve on the Lessee a notice pursuant to Section 246 of the Property Law Act 2007 in accordance with clause 16(b)(ii).

**16. Arrears of Rent and Default**

- 16.1 (a) Without prejudice to the other rights powers and remedies of the Lessor under this Deed of Lease if any rent or other monies owing by the Lessee to the Lessor on any account whatsoever pursuant to this Deed of Lease shall be in arrear and unpaid for ten (10) days after the due day for payment thereof (whether any formal or legal demand therefore shall have been made or not) such monies shall bear interest compounded on quarterly rests and computed from such due date until the date of payment in full of such monies at a rate of 15% and the said interest shall be recoverable in a like manner as rent in arrears.
- (b) (i) If and whenever the rent hereby reserved or any part thereof is in arrear or unpaid for ten (10) working days after the due date for payment thereof and the Lessee has failed to remedy that breach within 10 working days after service on the Lessee of a notice in accordance with section 245 of the Property Law Act 2007, or
- (ii) In case of breach by the Lessee of any covenant or agreement on the Lessee's part herein expressed or implied (other than the covenant to pay rent) and the Lessee has failed to remedy that breach at the expiry of a period that is reasonable in the circumstances after the service on the Lessee of a notice in accordance with section 246 of the Property Law Act 2007; or
- (iii) The Lessee shall be wound up or dissolved or enter into any composition with or assignment for the benefit of its creditors or being a private person shall be adjudged bankrupt or being a Limited Liability Company shall go into liquidation or an Order is made or an effective Resolution is passed for winding-up or a Receiver of the assets or any part thereof is appointed or if the estate or interest of the Lessee shall be made subject to any Writ of Sale or Charging Order or if the Lessee shall cease to function -



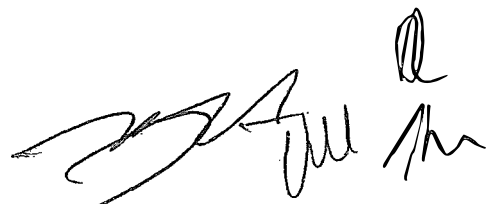
then in any such case it shall be lawful for the Lessor forthwith without further notice or demand to enter into and upon the Car Park Land or any part thereof in the name of the whole and determine this Lease but without discharging the Lessee from liability for rent due or accruing due or from any previous breach of the covenants conditions or agreements herein contained or implied.

## **17. Notices**

- 17.1 (a) Any notice required to be given to the Minister under this Lease may be served by delivering the same to the Conservator, Department of Conservation, Dunedin or by posting the same by registered letter to the Conservator, Dunedin.
- (b) Any notice required to be given to the Lessor under this Lease may be served by delivering the same to the Chief Executive Officer of the Queenstown-Lakes District Council or by posting the same by registered letter to the offices of the Lessor.
- (c) Any notice required to be given to the Lessee if the Lessee is an individual may be served by delivery to him either personally or by posting it by registered letter addressed to that person at his last known place of abode or business in New Zealand. Any notice required to be given by the Lessor to the Lessee if the Lessee is a company or society incorporated under the Incorporated Societies Act 1908 may be served by leaving it at the company's or society's registered office or by sending it through the post in a registered letter addressed to the company or society at that office.
- (d) All notices shall be given in accordance with the Property Law Act 2007.

## **18. Upon Termination**

- 18.1 That subject to the proviso to this clause on termination of this Lease under clause 3 hereof or by effluxion of time surrender breach of conditions or otherwise the Car Park Land together with any improvements thereon shall revert to the Lessor without any compensation whatsoever being payable to the Lessee or any other person PROVIDED HOWEVER that notwithstanding anything herein contained where any improvements are of value to the Lessor, the Lessor may pay to the Lessee the value of the improvements as determined by the Lessor and FURTHER PROVIDED that notwithstanding anything hereinbefore contained the Lessee shall if required to do so by the Lessor within three (3) months after such

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termination reinstate the Car Park Land to its former condition prior to the formation of the car park and the Lessee shall in any event leave the Car Park Land in a clean and tidy condition to the satisfaction of the Lessor.

**19. Reserves Act 1977**

- 19.1 That these presents are intended to take effect as a Lease of a Recreation Reserve under Section 54(1)(d) of the Reserves Act 1977 and the provisions of the said Act and of any Regulations made thereunder applicable to this Lease shall to the extent that the said provisions and regulations are compulsory in their application to this Lease be binding in all respects upon the parties hereto in the same manner as if such provisions had been fully set out herein.

**20. Consents**

- 20.1 That if the Lessee at any time requests the consent of the Lessor or the Minister pursuant to any clause in this Lease which provides for consent by the Lessor or the Minister THEN the Lessor or the Minister shall not unreasonably withhold that consent.

**21. Arbitration**

- 21.1 In the event of any dispute arising between the Lessor and the Lessee as to their respective rights and obligations under this Lease the dispute shall be referred to the arbitration of a single arbitrator in case the parties can agree upon one but if they cannot agree then each party shall appoint his arbitrator and then an umpire (appointed prior to the arbitration) and such arbitration shall be carried out in accordance with the provisions of the Arbitration Act 1996 or any other relevant legislation. No reference to arbitration shall be deemed to suspend rental or other payments due under this Lease and all payments otherwise due shall be made pending the result of any arbitration.

**22. Rights of Renewal**

- 22.1 If the Lessee has during the term of this Lease observed and performed the terms and conditions contained in this Lease and has given the Lessor at least three (3) months notice in writing of its intention to extend the term of this Lease pursuant to the Lessee's rights of renewal, the Lessor shall at the cost of the Lessee extend the term of this Lease for three (3)

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further terms each of five (5) years (subject to the agreement of the Lessor and the Lessee)  
upon and subject to the same terms and conditions contained in this Lease and at a rental to  
be determined in accordance with clause 2.4 hereof.

DATED the 18<sup>th</sup> day of July

2011

SIGNED by the said  
**QUEENSTOWN LAKES DISTRICT COUNCIL**  
as Lessor  
by affixing its common seal in  
the presence of:



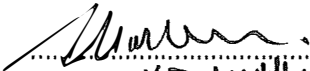
*Chnessa van Uden*  
.....  
Mayor

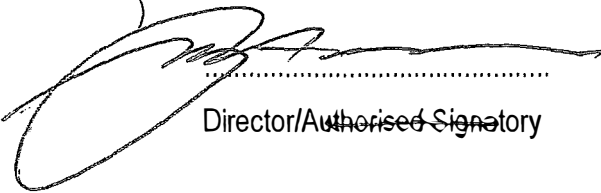
*Debra Hansen*  
.....  
Chief Executive Officer

**SIGNED** for and on behalf of  
**MINISTER OF CONSERVATION** by  
an Officer of the  
Department of Conservation pursuant to  
a designation given to him by the  
Director-General of Conservation and  
dated 30 June 189 in the presence of:

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**SIGNED** for and on behalf of  
**SKYLINE ENTERPRISES LIMITED**  
in the presence of:

)   
.....  
) Director **K. J. Matthews**

)   
.....  
Director/Authorised Signatory

.....  
Signature

.....  
Full Name

.....  
Address

.....  
Occupation

Note: If two directors sign, no witness is necessary. If a director and authorised signatory sign, both signatures are to be witnessed. If the director and authorised signatory are not signing together, a separate witness for each signature.



Handwritten signature and initials in blue ink.





## QUEENSTOWN LAKES DISTRICT COUNCIL

29 SEPTEMBER 2016

Page 6

**2. Proposed New Right of Way Easement application by Skyline Enterprises Limited**

A report from Aaron Burt (Planner, Parks and Reserves) presented the recommendation from the hearings panel which had heard submissions in relation to an application from Skyline Enterprises Ltd ('SEL') for a new right of way easement pursuant to Section 48 of the Reserves Act 1977 over the adjoining land, legally described as Lot 2 Deposited Plan 345184. The panel had recommended that the right of way easement be approved, subject to conditions.

The report was presented by Mr Burt and Mr Quin. Mr Burt confirmed that all other effects would be considered as part of the resource consent. Much of what had been presented at the hearing had been deemed out of scope with this application dealing with the easement only.

*Councillor MacLeod returned to the meeting at 2.26pm.*

**On the motion of Councillors Stammers-Smith and Stevens it was resolved that the Council:**

**1 Note the content 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.

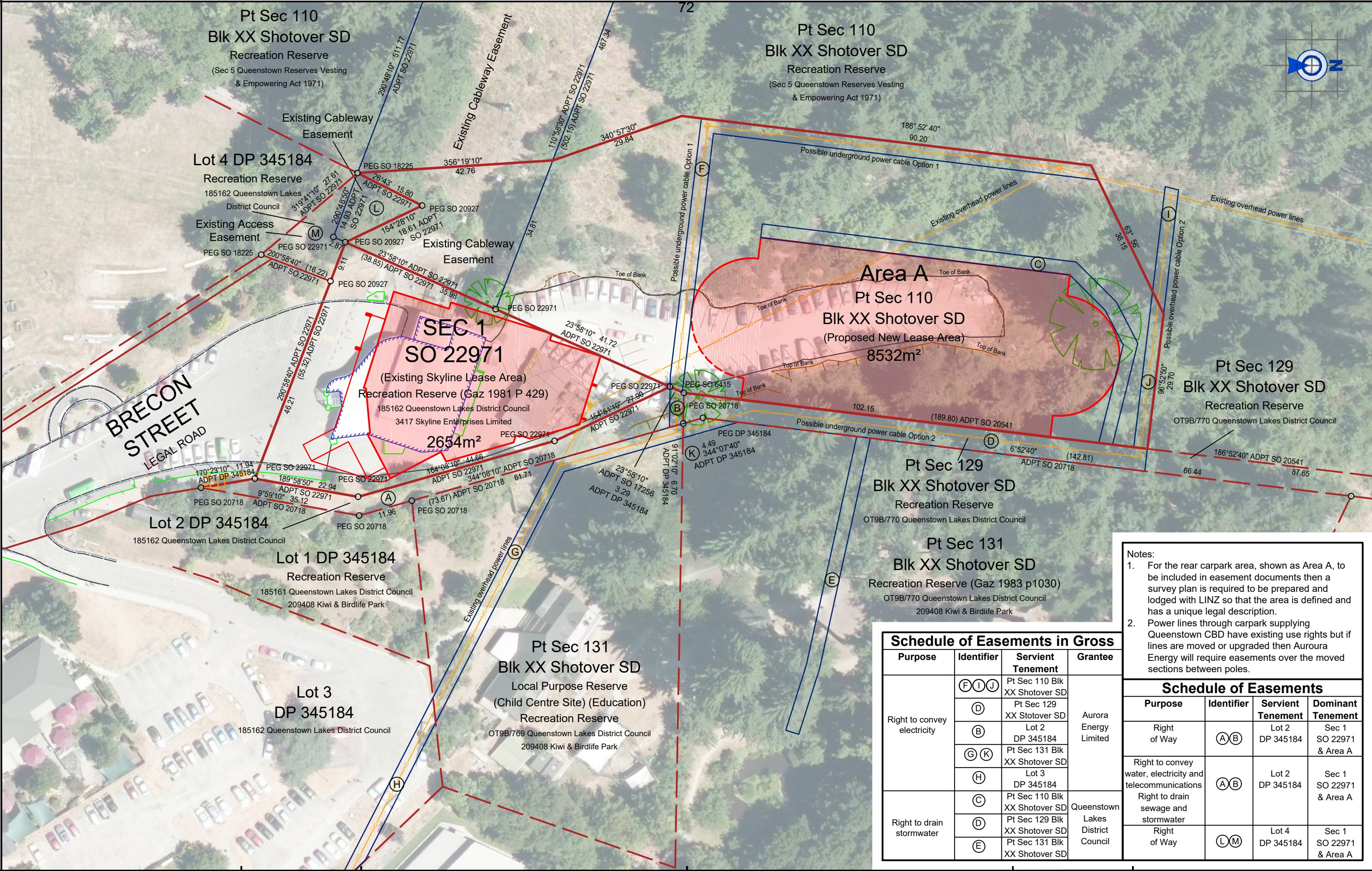
**Fees** As per QLDC's Easement Policy 2008, and subject to the extent of the easement being confirmed. This shall also include any outstanding application fees.

**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.**





- Notes:
- For the rear carpark area, shown as Area A, to be included in easement documents then a survey plan is required to be prepared and lodged with LINZ so that the area is defined and has a unique legal description.
  - Power lines through carpark supplying Queenstown CBD have existing use rights but if lines are moved or upgraded then Auroura Energy will require easements over the moved sections between poles.

Schedule of Easements in Gross			
Purpose	Identifier	Servient Tenement	Grantee
Right to convey electricity	(F)(I)(J)	Pt Sec 110 Blk XX Shotover SD	Aurora Energy Limited
	(D)	Pt Sec 129 XX Stotover SD	
	(B)	Lot 2 DP 345184	
	(G)(K)	Pt Sec 131 Blk XX Shotover SD	
Right to drain stormwater	(H)	Lot 3 DP 345184	Queenstown Lakes District Council
	(C)	Pt Sec 110 Blk XX Shotover SD	
	(D)	Pt Sec 129 Blk XX Shotover SD	
	(E)	Pt Sec 131 Blk XX Shotover SD	

Schedule of Easements			
Purpose	Identifier	Servient Tenement	Dominant Tenement
Right of Way	(A)(B)	Lot 2 DP 345184	Sec 1 SO 22971 & Area A
Right to convey water, electricity and telecommunications	(A)(B)	Lot 2 DP 345184	Sec 1 SO 22971 & Area A
Right to drain sewage and stormwater	(A)(B)	Lot 2 DP 345184	Sec 1 SO 22971 & Area A
Right of Way	(L)(M)	Lot 4 DP 345184	Sec 1 SO 22971 & Area A

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Client/Location:

**SKYLINE ENTERPRISES LIMITED**  
**SEC 1 SO 22971, 53 BRECON STREET**  
**CAR PARK BUILDING**  
**DEVELOPMENT 2018**

Purpose/Drawing Title:

**PROPOSED CAR PARK**  
**LEASE AREA EXTENSION**

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Surveyed by:

Designed by:

Drawn by: sam

Checked by:

Approved by:

Job Ref: Q4115K - 64

Original Size: A3

Scale: 1:750

DO NOT SCALE

Sheet No: 69

Revision No: E

Date Created: 18/09/2017

PLOT DATE: 18 September, 2017 - 10:31 AM

BY: Sean McLeod

J:\JOBS\Q\_4115K\_SKYLINE AS BUILTS, TOPOS AND ORIGINAL GROUND LEVELS\CAD\161101 SKYLINE CARPARK AREA\Q4115-64-69E NEW CARPARK LEASE 170918.DWG



Sean Dent

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**From:** wildlife@kiwibird.co.nz  
**Sent:** Friday, 31 March 2017 9:35 a.m.  
**To:** Sean Dent  
**Subject:** RE: Skyline - Lease Application for Car Park Site



31/03/17

Kiwi Birdlife Park acknowledge SEL's need to develop additional car parking space as part of their proposed development (resource consent RM160647).

We support their application once the terms of our agreement (matter 16004021, signed 28 March 2017) are met, we are kept abreast of developments and noise limit regulations are adhered to as much as possible.

Kind regards,

Paul Kavanagh

A photograph of a handwritten signature in blue ink on a light-colored background.

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Paul Kavanagh Bsc Zool (Hons)  
Park Manager  
Kiwi Birdlife Park  
Brecon St, Queenstown  
New Zealand  
(03) 442 8059  
021 026 09995  
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Paul Kavanagh Bsc Zool (Hons)  
Park Manager  
Kiwi Birdlife Park