



Department of Conservation
Te Papa Atawhai

To: Minister of Conservation
From: Graeme Ayres as Delegate of Director General of Conservation
Date: 20 October 2013

REPORT TO DECISION MAKER

Application for Concession and section 55(2) National Parks Act Consent

APPLICANT: RIVERSTONE HOLDINGS LIMITED (RHL)

CONCESSION APPLICATION (NOTIFIED)

**MONORAIL AND MOUNTAIN BIKE TRACK 'FIORDLAND LINK EXPERIENCE',
SNOWDON FOREST AND FIORDLAND NATIONAL PARK.**

FILE: PAC-14-18-34 /PERMISSION RECORD NUMBER: SO-26649-OTH

**SUMMARY OF ALL OBJECTIONS AND COMMENTS RECEIVED IN RESPONSE TO PUBLIC NOTIFICATION AND
RECOMMENDATIONS AS TO THE EXTENT TO WHICH THEY SHOULD BE ALLOWED OR ACCEPTED PURSUANT TO
SECTION 49(2)(D) OF THE CONSERVATION ACT 1987 FOR THE CONCESSION APPLICATION AND
RECOMMENDATIONS FOR THE SECTION 55(2) OF THE NATIONAL PARKS ACT 1980 CONSENT APPLICATION.**

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INTRODUCTION and BACKGROUND

1. Riverstone Holdings Limited (RHL) has applied for a concession for the construction, operation, and maintenance of a 29.5km monorail running from the Mararoa River (near the Mavora Lakes Road) through the Snowdon Forest Stewardship Area, to Te Anau Downs. Two termini buildings (and associated parking and access roads) are proposed, one on marginal strip alongside the Mararoa River, the other on land held as part Fiordland National Park at Te Anau Downs. A construction track is proposed which, after monorail construction, would be maintained by RHL as a public access mountain bike track. This application included a request to build road access to the terminus facilities, and in respect of this roading proposed at Te Anau Downs (Fiordland National Park), this consent is required pursuant to section 55(2) of the National Parks Act 1980 (called the “Road Consent”).
2. The application was received by the Department in November 2009.
3. **Fiordland National Park**
The application in respect of Fiordland National Park (Te Anau Downs) requires 2 separate authorisations. First, consent is required under section 55(2) of the National Parks Act for construction approximately 200m of road in the National Park (Road Consent). Secondly, a concession is required pursuant to section 49 of the National Parks Act for the construction, operation, and maintenance of approximately 400m of monorail track and terminus building, and commercial use of any road constructed by RHL. A concession is not required for construction of the approx 200m of road in Fiordland National Park because section 170(3)(b) of the Conservation Act 1987 states a concession is not required for an activity authorised, in this case, under section 55(2) of the National Parks Act.
4. **Snowdon Forest Conservation Area and Marginal Strip**
In respect of the activities proposed in the Snowdon Forest Conservation Area and Marginal Strip adjoining the Mararoa River, these require a concession. These activities comprise:
 - i. Construction, operation, maintenance and use of a Monorail;
 - ii. Construction and maintenance of a Construction Track (including spur tracks) and adaptation of that construction track at the conclusion of construction of the Monorail to a Mountain Bike Track on stewardship area;¹
 - iii. Construction, operation, maintenance and use of a of terminus building, access roading and car parking and other associated facilities on marginal strip at the Mararoa River (Kiwi Burn Terminus);
 - iv. Construction and maintenance of approximately 17km of Mountain Bike Track Cycle Link Route across public conservation land (starting at the point where the monorail enters private land);

¹ Please note – there is no mountain bike track proposed on National Park as part of this application

- v. Construction and maintenance of a public hut in the Kiwi Burn Valley (Kiwi Burn Valley public Hut);
 - vi. Construction, maintenance and servicing of public toilets at a location or locations along the Mountain Bike track, and any other public recreational facilities (including but not limited to road-end car parking, toilets, day shelters and signage) as provided for or required by any concession granted. (Mountain Bike Track Public Toilets and Other Public Recreational facilities).
5. Unlike concessions which are considered pursuant to Part 3B of the Conservation Act, there is no statutory process for considering an application for consent under section 55(2) of the National Parks Act. Guidance on the things that might be considered can be found in Part 3B of the Conservation Act, and to this end the Officer's Report included consideration of the application for Road Consent within that statutory framework.
6. In response to submissions expressing the view that the Department's process (to date) does not appear to address the matter of the section 55(2) National Parks Act Road Consent [see submission 272 Forest and Bird NZ], I have, in this report, made particular analysis and recommendations to you separately in respect of the two required authorisations.
7. Part One of this report deals with the application for concessions in Fiordland National Park, the Snowdon Forest Conservation Area, and Marginal Strip pursuant to part 3B of the Conservation Act. This process deals with the majority of the activities proposed by RHL.
8. Part Two of this report deals with the application for consent for a road to be made on or through Fiordland National Park pursuant to section 55(2) of the National Parks Act.
9. I note that although 2 separate authorisations are required in respect of activities in Fiordland National Park, they are in reality integrated, in that the Road Consent for road access to the Te Anau Downs terminus would not be required unless there was a concession to construct/operate the terminus facility and monorail, and vice versa.

PROCESS to Date and DEPARTMENT'S OFFICER'S REPORT (1 December 2011)

10. A concession application for a monorail was initially lodged by RHL in August 2006. This application was audited by the Department using external auditors.
11. In response to this audit, RHL prepared another concession application to replace the 2006 application, which was submitted to the Department in November 2009. This application was application for an easement across a 200m-wide corridor 'envelope' within which the monorail, construction track and spur tracks linking the two, would be located. Construction of the monorail and construction/mountain bike track would require the clearance of two separate linear features through the Snowdon Forest Stewardship Area – one 6m wide monorail track and a 3 m wide construction track /mountain bike track (plus spur tracks) - representing a total clearance of approximately 22 ha of forest habitat and 4.35 ha of non-

forest habitat, and associated effects, on public conservation land held for the purposes of protecting its natural and historic resources.

12. This 're-application' was audited by the Department using external auditors (Wildland Consultants, MWH, Morgan Pollard Associates, G Bellhouse, B Kazmierow and Ryder Consulting) and the Department's own technical advisors. These audit reports were provided to, and commented on by the applicant. The application comprises 26 documents submitted by RHL between November 2009 and Oct/November 2011 (including description of the activities, technical assessments, draft management plans and proposed concession conditions) and 8 technical assessments compiled by or for the Department of the application.
13. The process of compiling the Department's Officer's Report (Officer's Report) included extensive peer review by DOC Technical Support Officers (Planning, Recreation, Freshwater and Flora / Fauna) and changes made directly into various versions of the Officer's Report by them.
14. The Officer's Report (including the 34 application documents noted above) is attached as Appendix A and is part of the matrix of information that is relevant to your decision. I strongly recommend you read the Officer's Report in its entirety. By way of summary, the Officer's Report concluded:
 - *That particular challenges in considering the concession application were posed by the 'envelope approach' proposed by RHL whereby final 'on the ground' route location and design (within the 200 m corridor) would be finalised once a concession (subject to conditions) has been granted, and the 'adaptive management' approach whereby final construction specifications and plans and final environmental management plans would be finalised after final route selection (to take into account the detail of exact route once final design has been determined);*
 - *That the 'adaptive management' process requested by the Applicant would require a 'conditional grant' of any concession, and a process of further audit and approval of final design specifications and plans to ensure that the effects of the final design would not significantly exceed those described and assessed in the concession application, prior to any construction commencing. The process would be subject to a number of criteria relating to 'significant habitats' to be avoided and principles to be applied in land and vegetation disturbance;*
 - *That subject to concession conditions, the potential effects of the proposed activities could be reasonably and practicably avoided, remedied or mitigated to the point where they would be minor (see Officer's Report section 5.2 starting page 55);*
 - *That the proposed activities were not contrary to the purposes for which the land concerned was held (see section 5.1 of the Officer's Report starting page 33);and*
 - *That grant of the concession would be consistent with the provisions of the Mainland Southland West Otago Conservation Management Strategy and the Fiordland National Park Management Plan (see section 5.2 of the Officer's Report starting page 55).*

15. The Officer's Report recommended that the Conservator Southland (subject to proposed concession conditions):

"Approve in principle the granting of concession lease for a term of 49 years and concession licences and easements for a term of 60 years to Riverstone Holdings Limited, subject to the outcome of the public notification process, the Departments standard concession conditions, and special concession conditions(identified in Appendix 1 of the Officer's Report) for;

(i) Monorail;

Easement for construction, operation and maintenance of a Monorail on marginal strip, stewardship area, and national park (200 m wide easement increasing to 300 m wide at 'Bluff Slip).

(ii) Construction Track/Mountain Bike Track

Easement for the construction and maintenance of a construction track (including spur tracks) and adaptation of that construction track at the conclusion of construction of the Monorail to a Mountain Bike Track on stewardship area (200 m wide easement increasing to 300 m wide at 'Bluff Slip')

(iii) Kiwi Burn Terminus;

Lease of 1350m² for construction, operation and maintenance of a terminus building, and Easement for access roading and car parking and other associated facilities on marginal strip (Mararoa River);

(iv) Te Anau Downs Terminus;

Lease of 1350m² for construction, operation and maintenance of a terminus building, and Easement for access roading and car parking and other associated facilities on Fiordland National Park (Te Anau Downs);

(v) Cycle Link Route;

Easement for construction and maintenance of a Mountain Bike Track across public conservation land;

(vi) Kiwi Burn Public Hut

Licence for the construction and maintenance of a public hut in the Kiwi Burn Valley, at a final location to be determined in consultation with the Grantor;

(vii) Mountain Bike Track Public Toilets;

Licence for the construction, maintenance and servicing of public toilets at a location or locations along the Mountain Bike track, at a final location to be determined in consultation with the Grantor; and

(viii) Other Public Recreational facilities;

Licence for the construction, maintenance and servicing of any other public recreational facilities (including but not limited to road-end car parking, toilets, day shelters and signage) as provided for or required by this Concession.”

16. Proposed Special Concession Conditions – “Conditional Grant”

The Officer’s Report contained a number of concession conditions proposed as a condition of grant of the authorisations. These are set out in Appendix 1 of the Officer’s Report (starting page 149). Of particular note, the authorisations are subject to RHL preparing final Construction Specifications and Plans for audit and approval of the Grantor, before any construction could commence:

Existing proposed concession condition

*“Special Condition 3. **CONSTRUCTION SPECIFICATIONS AND PLANS***

3.1 *Prior to construction, the Concessionaire shall prepare for the approval of the Grantor Construction Specifications and Plans for all components of the concession activity, to demonstrate compliance with the concession conditions.*

(a) *The Construction Specifications and Plans shall include;*

i *Final Design Specifications including final proposed ‘on the ground’ location of all structures, vegetation disturbance and land disturbance proposed or required by this concession;*

ii *A Construction Management Plan;*

iii *A Recreation Users Management Plan;*

iv *A Vegetation and Habitat Management Plan;*

(b) *The specifications and plans listed in (a) may be prepared and submitted to the Grantor in separate parts, and be submitted to the Grantor at different times.*

(c) *If approved by the Grantor, the specifications and plans set out in (a) shall be implemented by the Concessionaire or its agents.*

(d) *Any amendment to the specifications and plans identified in condition (a) shall be submitted to the Grantor in writing, and approved via the audit process set out in condition 3.2 – 3.8.”*

Existing proposed concession condition

3.2 *Audit of Construction Specifications and Plans*

The Grantor will audit the Construction Specifications and Plans to ensure that final ‘on the ground’ design and construction specifications do not differ substantially in location, type, scale and /or level of effect to the concession application lodged by the Concessionaire (the concession application lodged by the Concessionaire comprises those documents listed in schedule ## (Appendix A(ii) of this report ‘documents comprising concession application’)). The Concessionaire shall ensure that these plans are prepared by a suitably qualified person or persons.

17. The content of these plans is prescribed by concession conditions, as is the process of audit of these plans *“to ensure that final ‘on the ground’ design and construction specifications do not differ substantially in location, type, scale and/or level of effect to the concession application lodged by the Concessionaire”* (condition 3.2 see above).
18. The rationale for this ‘conditional’ grant of the concession is set out in section 5.2 of the Officer’s Report. Essentially this was a result of the Department accepting that a pragmatic approach as sought by RHL was reasonable in the specific circumstances. The approach taken by RHL in applying for an envelope in which to undertake the proposed developments is driven by two objectives. First, as a potential developer, RHL sought a degree of certainty as to whether or not they would be likely to obtain a concession to carry out the proposed developments before commissioning further time-consuming and expensive work related to final design and exact route selection. Secondly, RHL submitted that the "adaptive management" approach is an accepted and common approach to large scale infrastructure projects, and that ongoing monitoring and iterative management is an appropriate way to manage effects as a project progress (see Officer’s Report page 59, and please note also RHL’s right of reply Paul Beverly page 64).
19. In accepting this approach the Minister’s Delegate who approved the in principle grant of the authorisations applied for, subject to the outcome of public notification, accepted a balance between obtaining sufficient information to enable the effects of the concession to be understood (as required by the Conservation Act), and the provision of expensive, detailed and explicit ‘on the ground’ final design specifications and plans, which could be deferred until a later stage. The Officer’s Report acknowledges that this is a somewhat new approach in that, to date, the Department has only received/considered concession applications which are able to describe in detail the exact areas intended for modification. This is because to date concession applications have been for relatively small scale developments, for example short access roads and huts, structures such as dams, weirs and towers occupying relatively small (i.e. small compared to the area potentially occupied by the 29.5km monorail and associated developments) and easily defined physical areas. The use of iterative management processes has been used for concession conditions in certain situations where the detailed knowledge of ground conditions, flora and fauna cannot be known until work starts. The process of adapting /setting further concession conditions has been used by the Department in the past, an example of this is the laying of underground power lines across public conservation land.

Public Notification

20. ‘Approval in principle’ to grant the authorisations subject to the outcome of public consultation (including the Road Consent) was formed by the Minister’s Delegate, Barry Hanson (Conservator Southland) on 1 December 2011. The Minister’s Intention to Grant a Concession was notified for public comment for 40 working days on 9 December 2011 with submissions closing on the 27th of February 2012. This public notification, by implication, included notification of the view to grant consent under section 55(2) of the National Parks

Act, in order to comply with the public consultation provisions of implementation 1 of section 5.7 of the Fiordland National Park Management Plan 2007 in respect of roads.

21. In response to requests from the public that the submission period be extended beyond 40 working days to enable the public to better comment on the proposal, the Conservator Southland extended the submission period by 15 working days, with a new closing date of 19 March 2012.
22. The public submission period therefore lasted 55 working days.

Submissions Received

23. 314 written comments, objections and views (which I refer to as "submissions") were received, 27 in support of the intention to grant the proposal, and 287 in opposition to the intention to grant.
24. Submissions did not specify if they were submitting on activities requiring authorisation under section 55(2) of the National Parks Act (the Road Consent), or activities requiring authorisation under Part 3B of the Conservation Act. This is hardly surprising, as neither the Officer's Report, the public notice calling for submissions, nor the procedure around the hearing of submissions, would have guided the public to present their submissions in this way.
25. This would not, in my view, have affected the outcome of the public notification process. The public were invited to comment on the proposal in its entirety, and relevant submissions were received and are being considered in relation to both applications.
26. 80 submitters requested to be heard and 57 people took the opportunity to be heard over 4 days of hearings held in Te Anau and Invercargill on 2 – 3 and 16 – 17 April 2012.
27. Hearing notes are attached as Appendix B.
28. Riverstone Holdings Limited presented a verbal right of reply to matters raised in submissions on the last day of hearings 17 April 2012, and supplied a written right of reply on 25 May 2012, which is attached as Appendix C.

I strongly recommend that you read this material in its entirety.

RHL's reply comprises;

Part One: Introduction and Executive Summary,
Paul Beverly, Buddle Findlay.

Part Two: Riverstone Holdings Limited,
John Beattie, Riverstone Holdings Limited.

Part Three: The Fiordland Link Experience,
John Beattie, Riverstone Holdings Limited.

Part Four: The Concession Application and Planning Framework,
Louise Taylor, Gary Bramley, Claire Hunter Mitchell Partnerships Limited.

Part Five: The Effects of the Proposal,
Louise Taylor, Gary Bramley, Claire Hunter Mitchell Partnerships Limited.

Part Six: The Statutory Assessment,
Paul Beverly, Buddle Findlay.

Appendix 1 Submission Analysis.

Appendix 2 Opus Letter.

Appendix 3 Evidence of Dr Gary Bramley.

Appendix 4 Statement of Evidence by Louise Taylor.

29. Submissions were received and heard from a wide range of the general public, and users and visitors of the Snowdon Forest Conservation Area.
30. A full list of submissions is provided in [Appendix D \(i\)](#).
31. The Department has prepared a 'submission by submission' summary of all 315 submissions received, which is attached as [Appendix D \(ii\)](#).
32. Copies of all submissions received are attached as [Appendix D \(iii\)](#).
33. As a general observation of the submissions there was a degree of confusion with regard to the status of the land under consideration and some 'cross over' with other applications for similar projects. In my analysis I have been careful to focus on the matters pertaining to this application.
34. For your information, a map is attached as [Appendix E](#) to this report illustrating the land status of the areas under application.

Applicant Comment on Draft Report 15 October 2013

35. RHL were provided a draft copy of this report. Comment was received on 15 October 2013 and are attached as [Appendix F](#). The response comprises a letter from the RHL directly to the Minister and various appendices to that letter, including their Appendices 2 and 3 "Specific Comments on Commissioners Recommendations" and "RHL Suggested Conditions Of Concession".

RHL have proposed a number of revised concessions in response to my recommendations to you in this report. It is beyond my role as Hearing Chair to seek further technical advice to determine whether or not these conditions would adequately address the issues I have identified (accepted and allowed) via the public submission process.

Should you be minded to, I suggest that these are matters which you could seek further advice on, and resolve to your satisfaction.

I have noted and discussed the comments made by RHL as they relate to my discussions below.

36. *Invitation to Visit the Snowdon Forest.* At the hearings the Decision Maker was invited to visit the Snowdon Forest. I assured the submitter that I would bring her invitation to your attention, and it is contained within her submission [see submission 259 Sarah McCrum – Takoro Lodge].

PURPOSE AND FORMAT OF THIS REPORT

37. The purpose of this report is to provide you with a summary of all submissions received in response to public notification of the Intention to Grant, subject to the outcome of public notification, concessions (pursuant to s 17Q(1) of the Conservation Act) and consent (pursuant to section 55(2) of the National Parks Act), and to recommend to you:
- The extent to which submissions should be allowed;
 - The extent to which submissions should be accepted;
 - How suggestions from those submissions could be incorporated where relevant – e.g. amendments to conditions;
 - Any effect submissions may have on the original 'Decision in Principle' to grant concessions (pursuant to section 17Q(1) of the Conservation Act) and consent (pursuant to section 55(2) of the National Parks Act).
38. Note this may result in a recommendation to confirm the original decisions, or to add to or amend special conditions for the proposed concession and consent, or to reverse the original decisions.
39. For the purposes of this report, submissions which are 'allowed' are submissions which are relevant for you to consider pursuant to the Conservation Act 1987 and/or the National Parks Act 1980. Submissions which are 'allowed' are then analysed as to the extent to which they should be 'accepted' by you. Please note that the terms 'allow' and 'accept' are derived from section 49(2)(d) of the Conservation Act which sets out public notification requirements. Strictly speaking this terminology applies only to the application for the concession. Section 55(2) of the National Parks Act does not require the S. 49(2)(d) of the Conservation Act notification process. While use of this terminology therefore is not a requirement of any recommendation I put to you, or your considerations under section

55(2) of the National Parks Act, for consistency of approach and in the absence of any prescribed process for consideration of the views of the public in respect of section 55(2) of the National Parks Act I have applied the terminology of allow/accept to both the concession and the Road Consent processes.

- 40. The implications of “allowed” and “accepted” submissions are noted for you, to assist you in forming a view on them and whether or not you would grant concessions pursuant to Part 3B of the Conservation Act and section 49 of the National Parks Act, and consent pursuant to section 55(2) of the National Parks Act.
- 41. You should note that any recommendation that I make to you, as the Director General’s delegate, does not fetter your discretion to come to a different view on any issues covered in the report. While you should consider my recommendations and the content of the summary of submissions I have provided to you, it is for you alone to decide, subject to administrative law principles, whether or not to proceed with the proposal and grant concessions pursuant to Part3B of the Conservation Act, and/or consent pursuant to section 55(2) of the National Parks Act, as applied for by RHL.
- 42. Given the number of submissions received and the common issues raised between them, this report divides the submissions into ‘issue’ categories. These issues are grouped into two categories, and are discussed in part 1 and 2 of this report respectively:
 - i. Issues raised in respect of and relevant to the activities subject of the concession application pursuant to Part 3B of the Conservation Act 1987,
 - ii. Issues raised in respect of and relevant to the activities subject of the application for road consent pursuant to part section 55(2) of the National parks Act 1980
- 43. Each category is analysed in this report in respect of the application for concession and the application for Road Consent and concludes with the Director-General’s recommendation for each issue.
- 44. The issue categories used in this report are as follows:

Group 1 – Issues in respect of activities subject of Concession Application

Issue 1.1	Summary of Submissions related to effects [submissions related to 17 U (2) of the Conservation Act 1987]
1.1.1	Submissions related to 17U(2)(a) ‘sufficiency / adequacy of information to enable assessment of effects’
1.1.2	Submissions related to section 17 U(2)(b) ‘there are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure or facility’
	(a) Effects on Flora
	(b) Effects on Fauna

	(c) Effects Freshwater
	(d) Effects on other Users of the Snowdon Forest
	(e) Effects at Milford Sound
	(f) Economic Effects
	(g) Effects on Landscape
	(h) Compensation
	(i) Safety
	(j) Other Miscellaneous Effects
Issue1.2	<i>Purpose of land held as National Park, Conservation Stewardship Area and World Heritage Area</i> Submissions that the proposal is contrary to the 'purposes for which land concerned is held'
Issue1.3(a)	<i>Consistency Mainland Southland West Otago Conservation Management Strategy</i> Submissions that grant of the concession / the proposal is not consistent with the Mainland Southland West Otago Conservation Management Strategy [submissions related to s 17W of the Conservation Act 1987]
Issue1.3(b)	<i>Consistency Fiordland National Park Management Plan</i> Submissions that grant of the concession / the proposal is not consistent with the Fiordland National Park Management Plan [submissions related to s 17W of the Conservation Act 1987]
Issue1.3(c)	Submissions that the proposal is not consistent with provisions of the Conservation General Policy.
Issue 1.4	Submissions that the <i>Deed of Covenant</i> relating to the Greenstone Valley Area in the Ngäi Tahu Deed of Settlement is a relevant consideration for the Minister in determining the Concession Application.
Issue 1.5	<i>Alternative locations for the activity</i> Submissions that the activity could be reasonably undertaken in another location [submissions related to s17U(4) of the Conservation Act 1987]
Issue 1.6	Submissions that the proposal is contrary with section 5 of the National Parks Act 1980.

Group 2- Issues in respect of activities subject of Road Consent Application pursuant to s 55(2) of the National Parks Act.

Issue 2.1	<i>Purpose of land held as National Park</i> Submissions that the proposal is 'contrary to' the purpose of land held as National Park [submissions related to section 4 of the National parks Act]
Issue 2.2	<i>Accordance Fiordland National Park Management Plan</i> Submissions that the road proposal is not in accordance with the Fiordland National Park Management Plan [submissions related to section 55(2) of the National Parks Act 1980]

45. Part One of this report deals with the application for concessions in Fiordland National Park, the Snowdon Forest Conservation Area, and Marginal Strip pursuant to Part 3B of the Conservation Act.
46. Part Two of this report deals with the application for consent for a road to be made on or through Fiordland National Park pursuant to the section 55(2) of the National Parks Act.

PART 1: CONSIDERATION OF SUBMISSIONS RELATED TO CONCESSION ACTIVITIES PURSUANT TO PART 3B OF THE CONSERVATION ACT

47. Part 1 of this report deals with the application for concession made pursuant to Part 3B of the Conservation Act, and considers submissions in respect of the following activities;

In respect of the activities proposed in the Snowdon Forest Conservation Area and Marginal Strip adjoining the Mararoa River;

- i. Construction, operation, maintenance and use of a Monorail;
- ii. Construction and maintenance of a Construction Track (including spur tracks) and adaptation of that construction track at the conclusion of construction of the Monorail to a Mountain Bike Track on stewardship area;²
- iii. Construction, operation, maintenance and use of a of terminus building, access roading and car parking and other associated facilities on marginal strip at the Mararoa River (Kiwi Burn Terminus);
- iv. Construction and maintenance of approximately 17km of Mountain Bike Track Cycle Link Route across the above public conservation land (starting at the point where the monorail enters private land);
- v. Construction and maintenance of a public hut in the Kiwi Burn Valley (Kiwi Burn Valley public Hut);
- vi. Construction, maintenance and servicing of public toilets at a location or locations along the Mountain Bike track and any other public recreational facilities (including but not limited to road-end car parking, toilets, day shelters and signage) as provided for or required by any concession granted. (Mountain Bike Track Public Toilets and Other Public Recreational facilities).

In respect of the activities proposed in Fiordland National Park;

- i. Construction, operation, maintenance and use of a of terminus building and monorail track at Te Anau Downs (Te Anau Downs Terminus);
- ii. Commercial use of any roading constructed by RHL³

Issue 1.1: Summary of Submissions related to effects [submissions related to 17 U (2) of the Conservation Act 1987]

Submissions related to effects of the activity can be broadly divided into two matters;

48. Firstly, submissions around the sufficiency or adequacy of information in the application, the assessment of the application and proposed conditions of grant, and that these do not provide certainty as to the level of effect and adequacy of measures proposed to avoid

² Please note – there is no mountain bike track proposed on National Park as part of this application

³ Please note - *construction* of any road in Fiordland National Park is a matter for section 55(2) National Parks Act consent, and discussed in Part 2 of this report.

remedy or mitigate effects. Submissions of this nature seek that the Minister to decline the concession pursuant to section 17 U(2)(a) of the Conservation Act 1987 which states;

*The Minister may decline any application if the Minister considers that—
(a) the information available is insufficient or inadequate to enable him or her to assess the effects (including the effects of any proposed methods to avoid, remedy, or mitigate the adverse effects) of any activity, structure, or facility;*

49. Secondly, submissions that the known potential effects of the proposal, as outlined in the application and assessments around the application, would be significant unmitigated adverse effects. Submissions of this nature seek that the Minister decline the concession pursuant to section 17U(2)(b) of the Conservation Act 1987 which states;

*The Minister may decline any application if the Minister considers that—
(b) there are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility.*

50. These are two related matters, and I discuss each below. The first matter is broadly related to adequacy of information to consider the potential effects (including mitigation of effects), the second matter is related to whether or not the known potential effects have been accurately assessed (i.e., would they in fact be minor subject to mitigation as assessed in the application and the Officer's Report).

1.1.1 Submissions related to section 17 U(2)(a) 'sufficiency/adequacy of information to enable assessment of effects'

51. The 'envelope approach' was criticised for its lack of detail noting that this approach '*by its own admission is incomplete*' [see submission 235 Helen Ritchie] and that as it does not describe specific routes '*creates an unprecedented level of uncertainty in regard to assessing the effects*' [submission 35 Dawn Patterson]. Until the final design is known, it was submitted, there is too much uncertainty as to what is proposed. The result of this uncertainty, it was submitted, is that there is no evidence the proposed developments would have minor effects, and the concession should be declined pursuant to section 17 U(2)(a) of the Conservation Act 1987 [see for example submission 154 Amanda Hasselman, 156 Leslie van Gelder and 134 John Stevenson].

52. Submissions were also received that because the management plans detailing how effects would be avoided, remedied or mitigated are still in draft form, and would not be able to be finalised until final design stage, their effectiveness at mitigating effects cannot be proven [see for example submission 131 Fish and Game Southern Region].

53. Other submitters stated that because (in their view) it is unclear exactly what is going to happen 'on the ground', this in turn means that there are a number of effects which cannot be accurately defined, described or assessed. Specific examples of this given by submitters include; that until it is known exactly the degree to which the monorail route would run through open grassland as opposed to forest habitat, is not possible to assess the potential

effects of the monorail structure on landscape character [see submission 34 Alan Petrie]; that as the exact amounts of vegetation to be cleared cannot be confirmed at this point in time, the actual effects 'on the ground' may be quite different to those outlined in the application [see for example submission 53 Alan Mark and 259 Sarah McCrum]; and that the full effects of earthworks won't be known until the final route is determined [submission 59 Alan McMillan].

54. Submissions were received noting that because the application was incomplete the public did not have an opportunity to submit and comment on a proposal where all effects were clear. It was submitted that this was unfair, in that the public should have the ability to comment on a complete proposal. The nature of envelope approach /conditional grant means that the final on the ground route would be approved by the Department, in the absence of further public input. Some submissions suggested that on this basis, if a concession be granted, it should only be granted for investigations and preparation of final route design specifications and plans, with further public consultation at the next stage before approval [see for example submissions 57 Dorothy and Stanley Bulling, 290 Frana Cardno and 138 R and M Youldon].
55. In respect of the proposed concession conditions, submission 287 Geoffrey Thompson commented that "*the draft conditions and management plans proposed by the applicant are uncertain, unenforceable and ultimately too weak to provide protection required under section 17 U (2) especially considering the importance of the values at risk*". The Minister, it was submitted, "*must consider information in front of her, not information yet to come*". Another submission challenged use of the term 'to the extent practicable', suggesting that this did not provide enough certainty.
56. Other submissions stated that the proposal did not confirm details of compensation required, nor details of commercial terms/bond and that therefore the application does not provide sufficient information to enable the Minister to accurately assess the effects of the proposal, and whether they could be reasonably and adequately avoided, remedied or mitigated [see for example submissions 287 Geoffrey Thompson, 272 Royal Forest and Bird and 182 Nicholas Cooper].
57. I note submission in support of the proposal, confidence '*that DOC will be diligent in assessing the proposal as the design of it is finalised*' [submission 74 Stephen Keach], which expresses a degree of 'comfort' with the conditional grant approach.

Comment

58. I draw to your attention to the Officer's Report which states (emphasis added); "*This report recommends that the concession could be granted on the basis of the information available at this point in time. Because final design specifications and plans have not been developed at this stage, this grant is conditional on further audit and approval of final design specifications and plans to ensure that the effects of the final design would not significantly exceed those described and assessed to date.*

There is a risk to RHL that significant adverse effects would become apparent only at final design stage, and if these effects that could not be avoided, remedied or mitigated as described in their application, the project could not proceed, or it would be significantly delayed.

RHL is confident that this would not occur, and the material submitted by them indicates a certainty from them that there would be no potential significant unmitigated adverse effects arising from their proposed developments. RHL have accepted proposed concession conditions (detailed in Appendix 1 to the Officer's Report) whereby final construction is reliant on further approval of final construction specifications and plans."

My impression is that the analysis and discussions in the Officer's Report supported the envelope/conditional grant approach as acceptable. This "acceptance" in the Officer's Report was qualified to a degree, as evidenced by the statements above and also statements at pages 86 and 87 of that report;

"The effectiveness of RHL's proposed strategies to avoid and minimise potential adverse effects on bats (essentially avoiding large trees, which would also effectively minimise effects on other trees nesting birds) would depend very much on chosen construction alignment. The Department would require certainty that there would not be adverse effects on the bat population, and as a 'bottom line' would not permit any removal of trees which cumulatively would result in significant adverse effects on a local population scale.

...

This does represent an area of risk to RHL, in that 'on the ground' final design might find there to be a cluster or clusters of roost trees which they could not avoid, and which the Department would not agree to their removal.

The investigations made by RHL indicates that this would not be the case, and as noted above, the Department concurs with this assessment, as far as it can be concurred with, in the absence of final route design."⁴

and;

Quantifying the 'direct' effects on flora and fauna of the proposed activities is difficult in the absence of a clearly defined route and detailed construction design plans. RHL has carried out and provided substantial environmental impact assessment reports, which are indicative of the scale of potential effects arising from the activities. They have provided draft environmental management plans, and proposed concession conditions also indicative of the measures available and proposed to avoid, remedy and mitigate potential adverse effects.

It is a fact that vegetation would be removed.

It is a fact that some of this vegetation is currently inhabited by birds, bats or invertebrates.

*It cannot be said that there would be NO effects arising from the clearances, that is, not **all** adverse effects would be avoided.*

⁴ OR pg 86

RHL has gone to considerable effort to quantify the amount and type of respective vegetation that would be removed as a result of these clearances, to identify the likelihood of bats in the proposed clearance areas, and to identify a process of route selection criteria to avoid habitats of significance as the route is selected on the ground. RHL proposes a process of finalisation and adoption of numerous adaptive management plans to monitor and manage effects as works are carried out.

The discussions in this report conclude that these measures would be effective in minimising potential adverse effects, with the proviso that they would have to be effectively implemented 'on the ground'.

In particular, rare and vulnerable habitats (non forest habitats, large trees, and any species identified as threatened or endangered) would need to be avoided as far as possible.

'On the ground' final design and survey will almost certainly identify some areas of such habitat, specific large tree and /or endangered /threatened specimen that RHL considers could not be avoided. This would need to be discussed with the Department, and specific permission from the Department obtained before works could proceed. The Department's 'starting point' in any such discussion will be firstly that these habitats, large trees and endangered /threatened specimens be avoided.

If they cannot be avoided, then having regard to the cumulative effects of removal, works may not proceed unless and until an appropriate solution (in the form of appropriate remediation or mitigation) is found.

As discussed elsewhere in this report this process does represent a risk to RHL. If 'on the ground' route selection and design identifies a requirement to remove specific and significant vegetation, the cumulative adverse effects of which the Department would consider to be significant and adverse, the proposed developments could not take place.

That said - the Department does consider that it would be more likely that final 'on the ground' route selection and design would confirm the scale of effects identified by RHL at this point in time, (and accordingly assessed by the Department as being able to be minimised or mitigated), than identifying a new type or unanticipated level of adverse effect".

and;

"This report recommends that the concession could be granted on the basis of the information available at this point in time. Because final design specifications and plans have not been developed at this stage, this grant is conditional on further audit and approval of final design specifications and plans to ensure that the effects of the final design would not significantly exceed those described and assessed to date.

There is a risk to RHL that significant adverse effects would become apparent only at final design stage, and if these effects that could not be avoided, remedied or mitigated as described in their application, the project could not proceed, or it would be significantly delayed.

RHL is confident that this would not occur, and the material submitted by them indicates a certainty from them that there would be no potential significant unmitigated adverse effects arising from their proposed developments. RHL have accepted proposed concession conditions (detailed in Appendix 1 to the Officer's Report) whereby final construction is reliant on further approval of final construction specifications and plans."

59. The above statements in the Officer's Report, quite clearly, convey a degree of confidence on the part of the Department, that the conditional grant and mechanisms supporting conditional grant (specifically further audit and approval of final construction specifications and plans) would ensure that the on the ground effects of the proposal would be adequately avoided remedied or mitigated. The Officer's Report expresses that effects can be mitigated subject to careful route selection /design and management plans, and that if this is not to be the case, then the concession will not be able to proceed (and essentially the monorail could not be built). The Officer's Report conveys that there is a degree of risk to the applicant in this approach.

Recommendation as to the extent to which submissions that the application does not contain sufficient or adequate information to enable assessment of effects be allowed or accepted;

60. It is my recommendation that submissions related to the sufficiency or adequacy of information available be allowed, as this matter is relevant to the Ministers considerations pursuant to section 17 U (2) (a) of the Conservation Act 1987.
61. I now consider whether submissions that the information is insufficient or inadequate to enable an assessment of effects, be accepted.
62. As I have noted above, I acknowledge that it is the intention of the analysis in the Officer's Report and proposed concession conditions of grant in that report to ensure that no significant adverse effects would occur on public conservation land. I also acknowledge the risk to the applicant identified in the Officer's Report that the mechanism of conditional grant might result in further approval not being given, and works not being able to proceed.
63. It is a fact that the conditional grant approach and mechanisms surrounding it means that there are some effects which can be clearly articulated at this point in time, and others which cannot, because their extent is reliant on final route location and design.
64. I accept that the envelope / conditional grant approach results in a degree of uncertainty and I recommend that submissions noting this uncertainty be accepted. My 'acceptance' of these submissions however does not translate into me considering that there is insufficient or inadequate information in order to assess the effects and proposed methods to avoid, remedy or mitigate those effects.

65. In my consideration of submissions on effects (see discussion below starting paragraph 70) I have identified the matters arising from submissions which I consider would require amendment of concession conditions to provide greater 'certainty of outcome' via the envelope / conditional grant approach.
66. As I understand it, it is beyond my role as the Director General's delegate (as prescribed in section 49 of the Conservation Act 1987) to obtain further specific technical advice around concession conditions. My role as the Director General's delegate is limited to recommending to you the extent to which submissions be allowed and accepted. Although my considerations around submissions cause me to consider that a number of concession conditions should be amended to remove any ambiguity apparent in those conditions, I am unable to seek further technical advice from the appropriate specialist advisors to 'test' whether it is possible, appropriate or reasonable to do so
67. I stress that it is my recommendation, based on my acceptance of submissions, that various concession conditions would need to be amended in response to submissions, to remove any perceived 'ambiguity', and to further remove any uncertainty and risk around what would manifest 'on the ground' should the concession be granted.
68. The 'flow on effect' of my inability to test if concession conditions can be appropriately and reasonable amended, is that I am unable to make a recommendation to you in respect of whether the information in the application contains sufficient information to set appropriate concession conditions. I have received general technical advice that conditions associated with a conditional grant / 'adaptive management' approach require quite specific baseline data and clearly stated conditions around such matters as 'x area of particular vegetation type' may be removed. As I am unable to seek technical input on this matter I am unable to make a clear recommendation to in regards to detailed concession conditions.

As final decision maker you may seek further advice in regards to the particular amendments I have recommended be made to concession conditions (based on my recommendations around allowed and accepted submissions) prior to making your final decision.

Comment RHL 15 October 2013

'Commissioner's Recommendation: Generally "tightening" conditions relating to flora and fauna and seeking further technical advice.

RHL's Response: Accepted. This matter is addressed generally throughout the revised proposed conditions.'

Hearing Chair Comment

RHL propose a number of revisions to proposed concession conditions. It is beyond my role as hearing chair to seek technical advice around these conditions.

I suggest that should be minded to, you seek technical advice to this end.

69.

1.1.2 Submissions related to section 17 U(2)(b) 'there are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure or facility'

70. I have discussed above submissions that the envelope/conditional grant approach results in the information available being insufficient or inadequate to assess effects. I have noted my view that a number of submissions about the effects of activity would further warrant amendment of concession conditions to deal with the issues raised by submitters. I discuss these matters and submissions under the following headings below;

- Effects on Flora and Fauna
- Effects on Freshwater
- Effects on other Users Snowdon Forest
- Effects at Milford Sound
- Economic Effects / Economic Viability
- Effects on Visual Landscape
- Submissions related to compensation
- Safety
- Other Effects.

(a) & (b) Effects on Flora and Fauna

71. Submissions were received that the effects of the proposal on flora and fauna would be adverse, and as such that the proposal should be declined. Submissions challenged the accuracy (and methodology) of the Applicant's and the Department's assessments in respect of effects on flora and fauna. These submissions were predominantly focused on the effects of vegetation clearance within the Snowdon Forest Conservation Area.

72. For the purposes of this report I have chosen to summarise submissions related to flora and fauna separately, however, I note that these two issues are closely inter-related.

(a) Effects on Flora

73. Submissions in respect of effects on flora cover the following matters;

- i. Extent of vegetation clearance (that this will be greater than anticipated and described);
- ii. Degree of modification of significant/rare habitat and vegetation;
- iii. Fragmentation of habitat;
- iv. Edge effects and wind throw risk;
- v. Introduction and ongoing management of weeds.

(i) Extent of vegetation clearance:

74. Submissions were received that the extent of vegetation clearance in the Snowdon Conservation Area (especially within the forest) will be greater than the figures provided in the application [see submissions 272 Royal Forest & Bird Society (RF&B), 282 Mike Abbott and 216 Chris Curran]. Submission 306 [Takaro Lodge] stated that *“consultation has indicated repeatedly that it will not be possible for the construction track to be cleared only to 3m, with the size of traffic it will be required to carry. It will require a 6m clearance”*. Other submissions also expressed doubt that the widths of clearances associated with the monorail track, construction track, and spur tracks were realistic or achievable, or challenged the methodology and calculations put forward by the applicant in this respect, submitting that therefore construction of these tracks will result in greater adverse effects than considered [see for example submissions 216 Chris Carran, 82 John Von Tunzelman, 259 Sarah McCrum and 282 Mike Abbott].
75. Robin McNeill (submission 232) submitted that (in his view) the gradient requirements of the monorail would likely require *“some considerable track alignment from the sketch plans”* as the monorail would need to ‘switchback’ to achieve suitable gradients. These switchbacks, he suggests, would likely cause *“significant intrusion on the landscape”* at the Kiwiburn end of the track (on the basis of, I have assumed, increased vegetation clearance).

Comment

76. The Department’s analysis of the effects of removal of vegetation is set out in section 5.5.2 of the Officer’s Report (starting page 68). The Department’s assessment takes into account the effects of 21.96ha removal of forest habitat, 4.35ha of ‘non forest’ vegetation removal, potential associated ‘edge effect’ of 45.8ha⁵, i.e. a total area of 72.11 ha. The Department’s analysis in the Officer’s Report is that these effects, subject to concession conditions, would not be adverse to the point where they would be inconsistent with the purpose for which the land is held for conservation purposes, and would not compromise the overall conservation values of the Snowdon Forest Stewardship Area. I note that potential ‘edge effect’ was not calculated by the Department or its auditors in respect of the 1.3km of ‘spur tracks’ within forest connecting the monorail track with the construction track. This was alluded to in submission 259 Sarah McCrum and she suggests that edge effects have thus been under-estimated. However, the application states these spur tracks will be rehabilitated, thus they are not intended as a permanent clearance.
77. I note that all assessments of the extent of clearance, including those of the applicant, auditors and Departmental Staff (in the form of the Officer’s Report) are based on the applicant’s figures of a 6m wide clearance for the monorail through forest and 3m wide clearance for the access (construction) track and spur roads, resulting in vegetation clearance of 26.31 ha of vegetation comprising 21.96 ha of forest clearance and 4.35 ha of grassland clearance, calculated by RHL as follows; (emphasis added)

⁵ $22900\text{m} \times 2 = 45800\text{m}$ (length of forest clearance) $\times 10\text{m}$ (potential edge effect – 5 m on either side of those clearances as per Wildlands Report for the Department) = 458000sq m edge effect – 45.8ha.

“With the dual track construction method around 26.31 ha of vegetation removal will be necessary. This comprises 21.96 ha of forest habitat and 4.35 ha of grassland as follows:

- 6 m x 22.9 km long for the monorail route through forest = 13.74 ha.*
- 3 m x 22.9 km long for the construction track through forest = 6.87 ha.*
- 3 m x 6.6 km long for the monorail route through grassland = 1.98 ha.*
- 3 m x 6.6 km long for the construction track through grassland = 1.98 ha.*
- 1.35 ha for approximately 90 spur tracks 3 m wide, spaced along the forested section of the route, and each spur track averaging 50 m long. These areas will be rehabilitated.*
- 0.39 ha for approximately 26 spur tracks 3 m wide, spaced along the grassland section of the route, and each spur track averaging 50 m long. These areas will be rehabilitated.^{6”}*

These clearances are proposed within a 200m wide ‘footprint’ (increasing to a 300m footprint around an identified slip area).⁷

78. Concession conditions suggested by the Department in the Officer’s Report “Route Selection Criteria”, “Limitations on Area to be Disturbed” (conditions 5 and 6 – Officer’s Report page 152 - 153) and “Vegetation and Habitat Management Plan” (condition 18 Officer’s Report page 163) are intended to manage and minimise the extent of clearance required.

These conditions state:

Existing proposed concession conditions:

“5. ROUTE LOCATION SELECTION CRITERIA

5.1 In selecting the final location for the structures, land disturbance and vegetation disturbance provided for by this concession (in accordance with the Implementation Protocol required by condition 2.1(d), and presented as part of the Final Design Specifications required by condition 3.1(a)(i)), the Concessionaire shall protect the following habitats (known as “significant habitats” which are those which are considered ecologically valuable by virtue of their rarity, integrity, habitat value, species diversity and/or representativeness within the region) by avoiding or protecting them from the construction of the concession activities to the extent that is practicable:

- (a) Short tussock grasslands;*
- (b) Wetlands;*
- (c) Bog pine shrubland; and Matagouri shrubland, or other divaricating shrubland;*
- (d) Red tussock grasslands;*
- (e) Threatened plant species such as *Alepis flavida*;*

⁶ Officer’s Report 1 Dec 2011 p 68 – quoting Concession Application; Mitchell Partnerships Limited. 2009. *Terrestrial Ecology of the Proposed Fiordland Monorail Route*. Mitchell Partnerships Limited. Auckland. P. 78

⁷ I note that a small number of submissions, and submitters I heard in person, were of the impression that the proposed clearance was a 200m wide ‘swathe’. This is not the case, the clearances proposed are two linear clearances of 6m and 3 m wide, connected by spur tracks, as discussed in the concession application quoted directly above)

- (f) *Mature red beech forest (with height exceeds 25 m and diameters exceeding 55 cm);*
- (g) *Mature mountain beech or silver beech forest (with heights exceeding 20 m and diameters exceeding 45 cm);*
- (h) *Regenerating shrublands and forest edge; Fertile, well drained flood plains (Environment L1.1c) covered with indigenous vegetation.*

5.2 *In selecting the final location for the structures, land disturbance and vegetation disturbance provided for by this concession (in accordance with the Implementation Protocol required by condition 2.1(d), and presented as part of the Final Design Specifications required by condition 3.1(a)(i)) the following matters shall:*

- (a) *Minimise the amount of earthworks required to the extent practicable so as to reduce the potential for weed invasion;*
- (b) *Maintain the highest practicable canopy cover through the forested sections of the route. This will be achieved by selecting a route requiring reduced vegetation clearance relative to other routes and by judicious felling of individual trees so as to avoid collateral damage;*
- (c) *Protect large trees (with diameters at breast height exceeding 60 cm), and in particular potential bat roost trees, from any disturbance or earthworks within the outer canopy drip line. Such disturbance will be minimised to the extent practicable by appropriate route selection in consultation with the Grantor. At locations where it is agreed that avoiding disturbance within the outer canopy dripline is not practicable, management to protect shallow and surface roots will be considered on a case by case basis in consultation with the Grantor;*
- (d) *During construction, minimise to the extent practicable any adverse effects of river crossings on nests of any threatened river bird species; and*
- (e) *Avoid to the extent that is practicable ridgelines which would result in structures or land disturbance being visible outside of the easement corridor.*

5.3 *The Concessionaire shall not remove any tree with a DBH (measurement of diameter at breast height) exceeding 2 m.*

5.4 *Disturbance of riparian margins shall be minimised to the extent practicable"*

"6. LIMITATIONS ON AREA TO BE DISTURBED

6.1 *The Concessionaire shall work in the smallest area practicable, taking into account the route selection criteria described in condition 5.*

6.2 *The Concessionaire shall use best endeavours to ensure that the vegetated clearance areas for those elements of the concession activity listed below do not substantially exceed the areas set out below;*

	<i>Clearance (m2)</i>
<i>Monorail track</i>	<i>109,800</i>
<i>Construction/ MTB track incl link route</i>	<i>177,730</i>
<i>Spur tracks</i>	<i>19,988</i>

Passing places	8,130
Terminus Buildings	1,350
Roading	5,589

6.5 Anticipated vegetation clearance areas will be included in the Final Design Specifications required by condition 3.1(a)(i), and audited in terms of conditions 3.2 to 3.8.

6.6 If, during the preparation of the Final Design Specifications, the Concessionaire determines that the total clearance areas will exceed the areas set out in 6.2 above, the justification for the areas to be cleared will be included in the Final Design Specifications and audited by the Grantor in accordance with the process set out in conditions 3.2 to 3.8.

6.7 Once audited and approved by the Grantor in accordance with conditions 3.2 to 3.8, the vegetation clearance areas shall form part of the Vegetation and Habitat Management Plan required by condition 18.”

“18. VEGETATION AND HABITAT MANAGEMENT PLAN

18.1 Prior to the commencement of construction of the concession activities, the Concessionaire shall prepare and submit to the Grantor a Vegetation and Habitat Management Plan in accordance with condition 3.1(a)(iv) for approval. The Grantor will audit the Vegetation and Habitat Management Plan in accordance with conditions 3.2 – 3.8.

(a) The overall objectives of the Vegetation and Habitat Management Plan shall be to:

- i. Require that particular regard is had to appropriate ecological criteria in selecting the final route alignment to avoid as far as is practicable significant habitats;
- ii. Minimise the construction footprint as far as is practicable and to avoid, remedy or mitigate effects on significant habitats during construction of the concession activities;
- iii. Establish an appropriate monitoring regime;
- iv. Establish methods to remove and appropriately dispose of vegetation;
- v. Minimise the introduction and spread of weeds and predator species throughout the construction and operation areas;
- vi. Rehabilitate all worked areas and non operational areas as quickly as possible following construction activities; and
- vii. Provide appropriate compensation to offset adverse effects on significant habitats.

(b) The Vegetation and Habitat Management Plan shall contain the following details as a minimum:

- i. Confirmation that the final route has been selected having particular regard to the route location selection criteria set out in condition 5;
- ii. A description of the approximate area and approximate total volume of vegetation clearance during the construction of the concession activities;

- iii. *Details of the proposed monitoring programmes including vegetation health surveys of tussocks, wetlands and forest areas that are to be undertaken prior to construction, during and after construction of the concession activities;*
- iv. *Confirmation of the location of significant wildlife habitats;*
- v. *Methods proposed to minimise the construction footprint to the extent practicable;*
- vi. *Methods to mitigate adverse effects on significant habitats including tussocks, wetlands, and forest areas during construction and methods to minimise collateral damage to vegetation outside the construction footprint;*
- vii. *Methods to ensure the appropriate disposal of vegetation that has been cleared during the construction of the concession activities;*
- viii. *Identification of the vegetation rehabilitation goals to be achieved, methods to achieve those goals and ongoing management requirements to minimise weeds and predators;*
- ix. *Identification of a range of contingency measures which can be implemented if required;*
- x. *Details of the compensation proposed.*

79. I consider that proposed concession conditions could more clearly limit the extent of vegetation clearance that would be permitted, if any concession was granted. To this end I recommend that the maximum clearance corridors be better defined in concession conditions, to provide certainty that clearances will not exceed those presented by the Applicant, and assessed by the Department. This should address concerns raised by submitters as to the extent of clearances permitted by any concession granted. I recommend that the clearance widths of 3m and 6m (for mountain bike track and monorail track through forest respectively) as stated in the Mitchell's 2009 application material, be explicitly stated in the concession conditions.

80. In respect of the potential for the monorail track to 'switchback' (and result in greater vegetation clearances), I note RHL's comment at the closure of hearings that the gradient requirements of the monorail would be largely achieved via variations in pier heights (as opposed to switchbacks in the track). I also note that the monorail track is constrained within a 29.5km 200m wide defined corridor (as shown on maps in the 'application, and contained within the approval in principle/ proposed concession conditions).

81. For greater clarity that any concession granted reflects the basis on which the application was made, and in response to submission that switchbacks would increase the length of clearances, I also recommend (in addition to maximum stated clearance widths as per paragraph 79) that the maximum length of clearance for the monorail track as applied for, i.e 29.5km, be explicitly stated in the concession conditions.

RHL Comment 15 October 2013.

Commissioner's Recommendation: "Explicitly stated clearance widths and lengths as stated by RHL in the in the concession application (paragraphs 79 and 81).

RHL's Response: RHL is happy to commit to clearance widths as provided for in revised proposed condition 7.2, however RHL is reluctant to commit to a defined length on the basis that during final route selection a slightly longer route may reduce overall ecological effects by allowing sensitive habitat to be avoided.

Hearing Chair Comment

The 'revised condition 7.2' proposed by RHL (contained in their appendix 3) is not a revision at all and it does not state that the approved clearance corridors are 3m wide and 6m wide over a length of 29.5km, as I have suggested is necessary to make explicit the undertakings of the application that clearances of 3m and 6 m will be required (as quoted in paragraph 77 above), and thus address the concerns of submitters as to the extent of clearances required.

I maintain my recommendations above that these specifically stated clearance widths and lengths be stated in any concession.

(ii) Degree of modification of significant/rare habitat and vegetation:

82. Concern at the modification of significant/rare habitat (red beech, wetlands and short tussock grasslands) was raised by several submitters [including Royal Forest and Bird submission 272]. It is suggested that "bog pine and shrublands" are present but not identified (Royal Forest and Bird further submission tabled at hearing 3 April 2011). Royal Forest and Bird note that Kahikatea swamp forest is reported to occur in the area.
83. Submission 216 [Chris Curran] raised concerns regarding the effect of construction through wet areas. He suggests (the applicant's contractors) "will need to dig out these areas to create a foundation in order to get construction equipment in to the area. This will create for more extensive damage than has been suggested by the proposal."

Comment:

84. I note the Officer's Report states "Opus estimates that around 17 km of the route comprises forested side slopes (14 km) and swampy forest (2.6 km), where either the greatest clearance is expected to be necessary and/or where the effects of the construction could be expected to be most severe" The potential effects in swampy (wetland) forest are acknowledged by the applicant as being severe.
85. Swampy (wetland) forest is considered to be significant vegetation. I recommend that swampy (wetland) forest is explicitly identified as a "significant habitat" in the "Route Location Selection Criteria" (proposed concession condition 5 p.152-153 Officer's Report), and therefore a habitat to be avoided or protected from the concession activities should the concession be granted.

86. The presence of significant/rare habitats is acknowledged by RHL and the Department. Habitats considered to be of significance are listed in the Officer's Report (page 72). I note the additional areas of bog pine identified by Royal Forest and Bird (272) will be subject to "Route Selection Criteria" listed in proposed concession 5. (page 152). However, the presence of kahikatea swamp forest appears to be a new matter. The presence of kahikatea swamp forest or other swamp forest is of significance, and the presence of individual kahikatea plants/trees (or for that matter other podocarp trees) would be of significance because of their rarity in this forest. I suggest the kahikatea swamp forest, other swampy forest, kahikatea trees and other podocarps could be added as a "significant habitat" identified in the "Route Location Selection Criteria" (proposed concession condition 5 p.152-153 Officer's Report), and therefore a habitat to be avoided or protected from the concession activities should the concession be granted.

RHL comment 15 Oct 2013

Commissioner's Recommendation: *Inclusion of swampy wetland forest, swampy forest, kahikatea trees and podocarps in 'significant habitats' list (to be avoided route selection) (paragraph 86).*

RHL's Response: *We are happy to include those habitats. We consider that "swampy wetland forest" and "swampy forest" is duplication and therefore suggest that wetland forest and kahikatea trees and podocarps be included as per revised proposed condition 4.1.*

Hearing Chair Comment

The proposed revised condition addresses my recommendation in respect additions to the significant habitats list. I note RHL suggest additional new wording: *'the Concessionaire shall, whilst still trying to keep the intent that the journey remains a quality experience, adopt best practice to protect the following habitats:'* This suggestion that intention to retain a quality experience is new, I am not convinced it would be an appropriate or relevant matter to include in a concession document.

Should you minded to I suggest this would be a matter you could seek further advice on and resolve to your satisfaction.

(iii) Fragmentation of habitat/ effectiveness of rehabilitation:

87. Submissions were received [for example submissions 277 Wellington Botanical Society and 216 Chris Curran] regarding fragmentation of the forest resulting from the two linear lines of clearance and regular access tracks between them. The Wellington Botanical Society submits that more attention should have been given to identifying the medium and long term effects of fragmentation and associated edge effects, including how to best avoid these effects, or mitigate and manage them. Chris Curran highlights the extent of impact to the forest understory that he anticipates from moving felled trees further into the forest beyond the monorail or access track alignments.
88. Royal Forest and Bird [further submission tabled at hearing 3 April 2012] submit that *"the proposed conditions provide no certainty that the effects on rare red tussock grasslands can be avoided remedied or mitigated to the point where the effects are minor and not contrary to the protection of natural resources of the area"*. Royal Forest and Bird submit that the

technical advice on which the Officer's Report is based on advises that *"in essence, rehabilitation of forest ecosystems and suggested by RHL are unrealistic and not achievable"*. Royal Forest and Bird provide a statement from Sir Alan Mark (Department of Botany, Otago University) in which he states that attempts to achieve direct transfer of tussock grassland vegetation poses serious challenges. Professor Mark notes *"I have not seen any successful attempt to date and remain to be convinced that the method, as promoted by several environmental consultants, is practicable."*

Comment:

89. Fragmentation of habitat has been identified by the Department in the Officer's Report and five issues have been listed (pg 88). Effects of habitat fragmentation are unavoidable if the proposal proceeds. Rehabilitation of spur tracks will allow for some recovery to occur. I recommend that rehabilitation of spur tracks be explicitly required by the proposed concession conditions, to reflect the undertaking made by RHL in this respect in their concession application (quoted above at paragraph 77). I discuss the matter of vegetation rehabilitation further below.

RHL comment 15 Oct 2013

'Commissioner's Recommendation: *Rehabilitation of spur tracks as stated by RHL in the concession application (paragraph 89).*

RHL's Response: *Accepted. This matter is addressed in revised proposed condition 22.'*

Hearing Chair Comment

I do not consider that the revised condition proposed by RHL reflects the undertaking in their concession application regarding spur tracks (emphasis added) *"1.35 ha for approximately 90 spur tracks 3 m wide, spaced along the forested section of the route, and each spur track averaging 50 m long. These areas will be rehabilitated. 0.39 ha for approximately 26 spur tracks 3 m wide, spaced along the grassland section of the route, and each spur track averaging 50 m long. These areas will be rehabilitated."⁸*

(iv) Edge effects and wind throw risk:

90. Submissions were received that the 'edge effects' resulting from forest clearances would be greater, or more adverse, than those assessed by the Department [see for example submission 53 Alan Mark, and Chris Curran submission 216]. Concerns raised in these submissions were;
- i. Sections of the route are located near to the edge of the forest, which is vulnerable to wind damage.

⁸ Officer's Report 1 Dec 2011 p 68 – quoting Concession Application; Mitchell Partnerships Limited. 2009. *Terrestrial Ecology of the Proposed Fiordland Monorail Route*. Mitchell Partnerships Limited. Auckland. P. 78

- ii. It will be difficult to confine tree fall within the monorail and access track alignments. This will result in damage to adjacent trees, this could shorten their life.
- iii. Beech tree roots are sensitive to damage from vehicles; therefore damage to tree roots could result to additional tree death.
- iv. A wind funnel effect could be created along the monorail and access track alignment.

Comment:

91. It is accepted that these factors could potentially result in edge effects beyond the alignment of the monorail and access tracks. That there will be potential edge effects has been recognised by the Department and considered in the Officer's Report, which estimates edge effects associated with the proposal;
"It is estimated that 10m of edge effects along each margin of the 22.9km monorail corridor and construction track / mountain bike track through forest habitat would result in an additional. 45.8 ha of vegetation and habitat modification to some degree. This does not include spur tracks, or collateral damage to trees." (See Officer's Report page 77).
92. The Officer's Report also refers to a study carried out in North Island podocarp- broadleaf forests (referenced at page 77 of the Officer's Report) which found that North Island podocarp – broadleaf forest edge effects could be greater. I understand the Department's Technical advice in respect of this particular concession application in the habitat through which it is proposed, advised that a 5m 'definite' edge effect on either side of the proposed clearances would be likely.
93. The extent to which increased wind throw may result from this (or any) proposal and the definite extent of edge effects is difficult to determine. This has been raised by submitters, but is not a 'new' issue as it is recognised in the Officer's Report. I accept that there is an uncertainty as to the level of potential edge effect. This is reflected in the Officer's Report, and is reflected in the objectives of the Vegetation and Habitat Management Plan (required by proposed concession condition 18).
94. Edge effect is a potential ongoing effect, and I think it would be useful that the Vegetation and Habitat Management Plan stress that the management plans associated with final design are concerned with management of ongoing effects. I note the draft Vegetation and Habitat Management Plan (Oct 2011) provided by the Applicant and referred to in the Officer's Report (at page 70) contains the following provisions regarding edge effect (plant health issues);

Existing proposed concession condition:

⁹ 22900m x 2 = 45800m (length of forest clearance) x 10m (potential edge effect – 5 m on either side of those clearances) – 458000sq m edge effect – 45.8ha.

“4.1 CONTINGENCY FOR SIGNIFICANT PLANT HEALTH ISSUES

This contingency will be triggered if any one of the following occurs at the three monthly or subsequent monitoring inspections:

- *Obvious dieback in the canopy along the route or within 10m either side of the alignment.*
- *A reduction in average canopy cover of more than 10% along the alignment or within 10m either side of the alignment for more than 100m in one section or for more than 3km along the whole route after vegetation clearance and construction is complete.*
- *More than 10% mortality of understory species along the alignment or within 10m either side of the alignment for more than 100m in one section or for more than 3km along the whole route.’*
- *Discolouration and/or wilting of leaves in more than 10% of the plants along the alignment or within 10m either side of the alignment for more than 100m in one location or for more than 3km along the whole route.*

6.2.1 Actions

The contingency measures would need to rectify the observed vegetation ill-health. In the first instance this will involve identifying the cause of any ill-health. Identifying the cause of ill-health will be undertaken in consultation with the Department of Conservation and other recognised experts where appropriate.

By way of example remediation options could include:

- *Supplying or removing water to affected trees by way of drainage diversion.*
- *In the case of threatened flora, translocation of the affected plants to a better site, if practicable.*
- *Increased herbivore control.*
- *Replacement planting, including species more likely to survive.*
- *Controlled removal of trees that might fall and cause further damage.”*

RHL Comment 15 Oct 2013

‘Commissioner’s Recommendation: *Amendment of objective of Vegetation and Habitat Management Plan to include operation of monorail with respect to ongoing clearances (paragraph 94).*

RHL’s Response: *We intended for this to be addressed in the operational management plans, but accept it could be included in the construction management plans as well. This is addressed in revised proposed condition 19.1(a).’*

Hearing Chair Comment

The proposed revised condition 19.1.(a) (iv) addresses my recommendation in regards to the Vegetation and Habitat Management Plan to include operation of the monorail.

95. I note that suggested concession condition 21.3 is to reduce edge effects: *"The felling of any trees is to be done in a manner so that damage to surrounding vegetation is avoided where practicable"*

(v) Introduction and ongoing management of weeds:

96. Royal Forest & Bird Society [submission 272 and further submission tabled at hearing 3 April 2012] submit that there is an inconsistency in the Officer's Report in respect of management of weeds. The Officer's Report, it is submitted, suggests that weeds could be minimised and managed subject to appropriate concession conditions, yet Royal Forest and Bird understand from the DOC technical advice supporting the Officer's Report that this is not the case. Royal Forest and Bird submit that *"Sir Alan's evidence (see paragraph 88 above), combined with advice from the DOC technical experts and the Wildland's Audit all point to the sheer improbability that the applicant will be able to restore the tussock grasslands and minimise and manage the weeds no matter what conditions are applied. Accordingly the decision maker can have no certainty that the grant of this concession would not be contrary to the protection of natural and historic resources of the land."*

Comment:

97. The challenges of management and minimisation of introduction / spread of weeds are recognised by the Applicant, the Department, and are reflected in the Officer's Report. Various special concession conditions provide for weed management and control, including 5.2(f) (Minimising earthworks), 18.1(c) and (d) (Objectives and Details of Vegetation and Habitat Management Plan), and clause 21 (Vegetation Management during Construction). Condition 22.6 requires *"The Concessionaire shall be required to implement any ongoing management of weeds and pests in accordance with the methods set out in the Vegetation and Habitat Management Plan, for the duration of the concession"*. The Vegetation and Habitat Management plan requires a monitoring regime to be designed, the identification of vegetation and rehabilitation goals to be set, and details of ongoing management practices to manage various aspects of vegetation and habitat, including weed control. This plan is subject to audit as per concession conditions, and approval prior to any works being undertaken.

98. The Officer's Report discusses the effects on Flora and Fauna at section 5.2.2 of that report (starting page 68). Discussion of the potential scale and effects of vegetation removal associated with the proposal commences at page 77, and includes discussion on potential edge effects, area of forest and non forest habitat and weed issues. The concession conditions set out in the Officer's Report specifies clearance limits which are not to be *'substantively exceeded'* and a range of concession conditions relating to avoidance, to the extent practicable, of significant habitats (see special conditions 5 and 6 pages 152 and 153 of the Officer's Report). Special condition 3.2 requires audit of final Construction Specifications and Plans to ensure that final 'on the ground' design do not differ in location, type, scale and/or level of effects to the concession application assessed. As noted above at

paragraphs 79, 81, 86, 89 and 94, I consider that it would be necessary to 'tighten' several of those conditions and I recommend that, should you be minded to, you seek technical advice to this end.

99. The matters raised in submissions (as I have summarised above) are not 'new', they have been identified and considered in the concession consideration process to date. The issues raised by submitters are concerned with the expected magnitude of effects, and the 'risk' that these will be greater than anticipated. In this respect the views of submitters differ from that in the Officer's Report that subject to concession conditions (which include the requirements for provision of, audit and final approval of final design specifications and plans) the potential significant adverse effects of this proposal can be reasonably and practicability avoided, remedied or mitigated to an 'acceptable' level.

Recommendations as to extent to which submissions that the proposal will have adverse effects on flora be allowed or accepted.

100. It is my recommendation that submissions related to effects on flora be allowed, as these are matters relevant to the Minister's considerations.

In respect of submissions that the effects of the proposal would be adverse, it is my view that these submissions contain no information or evidence which would overturn the considerations of effects outlined in the Officer's Report. However, it is my recommendation that submissions related to potential adverse effects on flora be partially accepted to the extent that, as I have commented above, various concession conditions could be better expressed to ensure that the final design either matched, or has a lesser effect, than that stated by RHL (and on which basis the Department assessed those effects). For example, I note that the concession conditions themselves do not explicitly describe the monorail track as being limited in width to 6 m, and the construction /mountain bike track and associated spur tracks being limited to 3 m wide clearances (which are the clearance widths used by RHL and on which their assessments of effects are based – see paragraph 77), or conditions relating explicitly to certain significant habitats as I have commented above (see paragraph 86).

101. In respect of Sir Alan Mark's submission that direct transfer of tussock (as suggested by the applicant to rehabilitate grasslands) would not be effective, I note Dr Gary Bramley's evidence (Right of Reply RHL, attached as Appendix C) that in his experience such rehabilitation would be effective if carried out correctly. Both Sir Alan and Dr Bramley are well respected ecological experts. I have not sought further technical advice to determine which of these two experts is correct. I have noted previously the requirement for final design specifications and plans (condition 3.1) , including Vegetation and Habitat Management Plan (condition 18), and audit /approval of such plans by an independent auditor (if required by the Grantor- condition 3.4).I have suggested changes to these clauses at paragraphs 79, 81, 86, 89 and 94 of this report. The onus therefore is still on the RHL, to confirm that the mitigations they have proposed to date, in the 'pre final design'

stage, would still be effective once final design had been determined. I recommend that Sir Alan Mark's submission on this matter, be accepted to the extent that he highlights a significant challenge faced by the RHL in respect of the effectiveness of direct transfer of tussock in respect of rehabilitation grasslands. This does signify a degree of risk to the Concessionaire, that if their plans are not considered to be effective at mitigating the effects of their final designs, they could not move to the construction phase of the concession. This risk was clearly outlined in the Officer's Report supporting the approval in principle to grant the concession subject to the outcome of public notification.

Comment RHL 15 October 2013

Commissioner's Recommendation: *The Vegetation & Habitat Management Plan should deal with "edge" effects.*

RHL's Response: *RHL experts consider that the issue of edge effects has been overstated. The route selection criteria are intended to address this matter and this is addressed in the revised proposed condition 19.1(a).*

Commissioner's Recommendation: Tussock Grassland rehabilitation needs to be provided for in the Management Plans.

RHL's Response: *Accepted. This matter is addressed in the revised proposed condition 22.4.*

Hearing Chair Comment

RHL propose a number of revisions to proposed concession conditions. It is beyond my role as hearing chair to seek technical advice around these conditions.

I suggest that should be minded to, you seek technical advice to this end.

(b) Effects on Fauna

102. Submissions in support of the proposal stated the proposal would have minimal disruption to fauna [see for example submission 7 Spencer Beasley].
103. Submissions opposed to the proposal stated that the proposal would have adverse effects on fauna. A number of these submissions were simply statements to that effect, or re-iteration of the proposal with a statement that the effects would be adverse [see for example submissions 294 Ernest Li, 298 Christine Poundsford, and 217 Eugenie Sage]. Although I acknowledge the concern expressed in such submissions, I unable to give them any weight as they do not provide any rationale or evidence which would cause me to reconsider the analyses set out in the Officer's Report.
104. A more comprehensive submission concerning the effects of the proposal on fauna was tabled by Royal Forest and Bird at the hearing on 3 April 2012 [in support of their written submission 272 received 19 March 2012]. Forest and Bird submit that the effects on bat habitat would be greater than anticipated (effects of vegetation removal) and that the effect on bats would be significant and adverse.

105. Royal Forest and Bird question the proposed strategy for mitigating the impacts on bats. The proposed strategy has to comply with the current guidelines on removing trees on the Milford Road, i.e. first that every potential roost tree (>60 cm dbh) has to be checked for the presence of bats on the day that it may be removed; and secondly that the temperature has to be above 7 degrees C. Royal Forest and Bird suggests, this protocol relates to small numbers of individual trees and is not applicable to the thousands of trees proposed. Royal Forest and Bird also note that there is no mention of intensive radio-tracking studies over one or two seasons to identify roosting trees so that the monorail can avoid core roosting areas. An intensive radio-tracking study would greatly help planners to design a monorail route that would reduce the impacts on bats.
106. Royal Forest and Bird have highlighted a DOC technical report which states that the proposed vegetation clearances and anticipated loss of further vegetation represents a significant risk to local populations of long-tailed bat¹⁰. They submit that this view is not reflected in the DOC Officer's Report, suggesting therefore that the conclusions made in the Officer's Report (that subject to proposed concession condition potential adverse effects on bats could be reasonably and practicably avoided, remedied and mitigated to an acceptable level) is inconsistent with DOC's own technical advice.

Comment:

107. I note that subsequent to the DOC technical advice of November 2010, RHL provided further detail of how they proposed to avoid potential adverse effects on bats, specifically in the form of a draft Vegetation and Habitat Management Plan (November 2011) and various other draft management plans and suggested draft concession conditions. The DOC technical report referenced by Forest and Bird pre-dates that material, and technical assessment of it, which was inputted directly into the Officer's Report.
108. The process by which analysis and discussion was formulated by the Department aside, the Royal Forest and Bird submission (in particular) expresses a view that the conclusions in the Officer's Report in respect of effects on birds and bats are flawed.
109. The Officer's Report discusses effects on birds and bats in section 5.2.2 of the report (particularly starting page 83). The report acknowledges that more information would be needed to identify potential roost trees along the proposed route which would require clearance (or would be affected by clearance) to confirm the Applicant's assertions that the final route alignment would avoid impacts on bat habitat and population. In my view, the Officer's Report very clearly outlines the challenges and 'risk' in respect of mitigation of effects on bats. The Officer's Report states; (emphasis added);

¹⁰ Edwards 2010

“RHL’s survey of bats along the proposed route¹¹ is accepted by the Department as a good indication of presence /absence of bats along the route in general. However RHL has not specifically surveyed individual trees to ascertain the number of roost trees that could not be avoided, as the exact route within a 200 m corridor is still to be defined.

Although it might be possible that all roost trees could be avoided, it is unlikely that would be the case. This could not be known for sure until a final route has been determined, and trees requiring removal are individually surveyed.

Ultimately the potential effect on bats would depend on how many roost trees are affected. If it is just one or two trees, and bats are not present at the time, the effects on population biology of bats within the Snowdon Forest would be minor. There is other suitable bat habitat available in the area, and bats are currently sparse along the 22 ha clearance area.

However, long-tailed bats do roost in clusters of trees, so if felling was to coincide with one of these clusters, the effects on the bat population could be catastrophic.¹²

The effectiveness of RHL’s proposed strategies to avoid and minimise potential adverse effects on bats (essentially avoiding large trees, which would also effectively minimise effects on other trees nesting birds) would depend very much on chosen construction alignment. The Department would require certainty that there would not be adverse effects on the bat population, and as a ‘bottom line’ would not permit any removal of trees which cumulatively would result in significant adverse effects on a local population scale.

This ‘bottom line’ cannot be defined by the Department at this point in time. At one end of the spectrum, a concession condition prohibiting the removal of any large tree (a ‘large’ tree being any tree > 60 cm dbh) would provide a high degree of certainty. However, in practice not all trees of this size would be potential roosting trees (for bats or cavity nesting birds) and they could be removed with little effect. The Department cannot however prescribe ‘how many’ trees could be removed. The Department’s technical advisors are confident however that collectively RHL and the Department could work together to ensure that ‘on the ground’ the removal of large trees could be minimised to the point where effects on bats and cavity nesting birds would be minor.

This does represent an area of risk to RHL, in that ‘on the ground’ final design might find there to be a cluster or clusters of roost trees which they could not avoid, and which the Department would not agree to their removal.

The investigations made by RHL indicates that this would not be the case, and as noted above, the Department concurs with this assessment, as far as it can be concurred with, in the absence of final route design.”

¹¹ Mitchell Partnerships Limited. 2010 *Spring Survey Report for Proposed Fiordland Link Experience Monorail Route*. Mitchell Partnerships Limited. January 2010.

¹² Colin O’Donnell *pers.comm.*

110. I have noted at paragraph 58 sections from the Officer's Report expressing that the effects of the activity can be mitigated subject to careful route selection/design and management plans, and that if this is not the case, the concession will not be able to proceed (and essentially the monorail could not be built).
111. I note that concession condition 19 requires the RHL to, as part of preparation of Vegetation and Habitat Plan, to identify and map all areas of significant habitats along the route for a range of species, including long-tailed and short-tailed bat. It is my understanding that as part of this exercise, a survey would have to be undertaken as to the number/abundance of bats (and other species). I suggest, however, that requirement for survey of presence and abundance of bats should be explicitly stated in proposed concession conditions.

RHL Comment 15 Oct 2013

'Commissioner's Recommendation: Explicitly stated requirement for pre design to include survey for presence/ abundance of bats along final preferred route paragraph 111).

RHL's Response: Accepted. This matter is addressed in revised proposed condition 4.2.'

Hearing Chair Comment

The proposed revised condition addresses my recommendation in respect of pre-design survey to include survey for presence/abundance of bats.

Recommendations as to extent to which submissions that the proposal will have adverse effects on fauna be allowed or accepted.

112. It is my recommendation that submissions related to potential effects on fauna be allowed as such matters are relevant to the Minister's considerations.
113. It is my recommendation that submissions related to potential effects on fauna be accepted to the extent that these submissions highlight the considerable challenges faced by the applicant to demonstrate at the final design stage that their final 'on the ground' design specifications and management plans would have an acceptable (that is, minor) effect on fauna. To this end, I have recommended that various concession conditions would require amendment. As noted earlier as I am unable in my role as (delegate of) the Director General in respect of section 49 of the Conservation Act 1987 to seek further technical advice around these concession conditions I have not done so. I suggest that in your role as final decision maker you may wish to seek such advice.

(c) Effects on Freshwater

114. A number of 'general' submissions were made stating that the proposal would have adverse effects on freshwater, in the form of increased sedimentation [see for example submission 17 Diane Cowen]. This, and other submissions like it, were simply statements to that effect with little or no explanation or evidence for that view. Although I acknowledge the concern

expressed in such submissions, I unable to give them any weight as they do not provide any rationale or evidence which would cause me to reconsider the analyses set out in the Officer's Report.

115. A more comprehensive submission regarding the effects on freshwater quality is submission 131 [Fish and Game Southland]. Fish and Game note that it is not clear if the in-stream works would be suspended during sensitive periods "*such as spawning for brown or rainbow trout during the angling season (1 October/1 November – 30 April)*" I note the Officer's Report (at page 96 – 97 of that report) states;
"To mitigate the effects on fish spawning RHL would need to avoid in stream construction works, at least in large rivers, during the trout spawning season"
This requirement is not carried over explicitly into concession conditions however (and I recommend it should be). I also note other proposed special conditions on page 104 of the Officer's Report which have not been carried over into the proposed conditions appended to that report, and again I recommend they should be. These comprise;
The Concessionaire must not carry out In River Works during Trout Spawning in the Upukerora and Whitestone Rivers¹³ (May to July inclusive).
The Concessionaire must avoid In River Works in smaller tributaries during spawning of *Gollum Galaxias* (end of August to Mid November inclusive).
Management Plans must include monitoring of and Management of effects arising from changes to surface hydrology.
All waterways requiring crossing must be bridged to a level suitable for construction activities, and then reverting to a standard suitable for ongoing mountain bike use.
116. It was submitted that as the proposed management plans are yet to be finalised there is uncertainty as to whether they will adequately avoid, remedy or mitigate the adverse effects of the proposal on water quality and aquatic biodiversity.
117. Submissions made in respect of effects on recreational fishing experience are discussed below at Issue 1.1(d) *effects on other Users of the Snowdon Forest* starting paragraph 124.

Comment:

118. The Officer's Report discusses the effects of the proposed activities on Water Quality and Aquatic Biodiversity at section 5.2.3 starting page 95 of that report. Seven crossings of 3 major rivers are identified, and 22 crossings of minor streams. The Officer's Report concludes that the avoidance and mitigation of potential adverse effects on Water Quality and Aquatic Biodiversity would be possible, subject to management plans proposed by RHL (and their subsequent audit and approval). RHL have proposed two Management Plans designed particularly to deal with freshwater issues, an Erosion and Sediment Control Plan

¹³ (the Department cannot set such a condition in respect of the Mararoa River as that river is not administered by the Department).

(see proposed concession condition 15) and Construction Management Plan – In River Works Management Plan (see proposed concession condition 16).

119. I note that the Department's Standard Concession Conditions would require RHL to obtain Resource Consent in addition to a concession. The Resource Consent Process will set water quality standards which RHL would need to ensure were complied with.

Recommendations as to extent to which submissions that the proposal will have adverse effects on freshwater be allowed or accepted.

120. It is my recommendation that submissions related to Freshwater issues be allowed, as where those waterways are managed by the Department such matters are relevant to the Minister's considerations. I note, however, that the bed of the Mararoa River is not administered by the Department. If those submissions relate to the Mararoa River I recommend that they not be allowed, as the Mararoa River is not public conservation land.
121. It is my recommendation that submissions that there will be adverse effects of freshwater values from the proposal not be accepted as they present no compelling rationale, argument or evidence that would cause me to reconsider the analysis in the Officer's Report.
122. That said, I recommend that additional concession conditions be included should a concession be granted, which were alluded to in the Officer's Report but not explicitly carried over into proposed concession conditions (paragraph 115 above), regarding avoidance of in-river works during trout spawning and spawning of Gollum Galaxis, management plans to include monitoring of effects arising from changes to surface hydrology, and the requirement to bridge all waterways requiring crossing during construction activities.

RHL Comment 15 Oct 2013

'Commissioner's Recommendation: *Inclusion of conditions noted in Officer's report regarding avoidance of in-river works during trout spawning and spawning of Gollum Galaxis, management plans to include monitoring of effects arising from changes to surface hydrology, and the requirement to bridge all waterways requiring crossing during construction activities (paragraph 122).*

RHL's Response:

Accepted. These matters are addressed in revised proposed condition 17.1.'

'Commissioner's Recommendation: *Management Plans should include monitoring of effects arising from changes to surface hydrology.*

RHL's Response: *Accepted. This matter is addressed in revised proposed condition 17.1.'*

Hearing Chair Comment

As it is beyond my role as Hearing Chair to seek technical advice on concession conditions I am unable to determine if the conditions proposed by RHL met my recommendations in this respect. While I can see quite clearly that the requirement to avoid in-river works during trout spawning and Gollum Galaxis spawning is proposed, and bridging of waterways during construction is proposed by RHL, I cannot see any clauses relating to monitoring for changes in surface hydrology.

Should you be minded to I suggest this is a matter on which you could seek technical advice on and resolve to your satisfaction.

(d) Effects on other Users of the Snowdon Forest

123. Submissions were received that the proposal would have positive effects for other users. Submissions in support of the proposal noted that the new mountain bike track would be a new recreational experience in the Snowdon Forest Conservation Area, and also that the proposal would open up or increase access to the Snowdon Forest Conservation Area, allowing more or a wider range of people to see it [see for example submission 1 Peter Yearbury]. The monorail experience, it was submitted, would be a unique experience, and would provide an opportunity for people to visit the area who would not be able to walk there [see for example submissions 71 Will Harvey and 15 Clare Waddick]. Submissions opposing the proposal challenged that the proposal would provide easy access for elderly/disabled people, because of the number of times users of the Fiordland Link Experience would have to change mode of transport [see for example hearing notes Louise O'Callaghan and Jillian Whitfield 3 April 2012 ¹⁴] One submitter (who stated she was herself disabled) suggested that there was research that indicated disabled people do not support mechanised modes of transport through wilderness.¹⁵
124. A submission (in opposition to the proposal) was made that as there are areas of public conservation land "*accessible within the existing public road network that a child or elderly person can gain access to and experience the remoteness of our untouched areas.*" It was submitted that it would be unjustifiable to 'ruin' the recreational experience of existing users of the Snowdon Forest, and cause these users to be displaced, in the interests of this 'new' user group [see submission 298 Christine Poundsford]. Submitter 209 [Louise O'Callahan] also commented on the suitability of existing opportunities: "*With my disability I can travel through a 7 m corridor and see all the beech trees and would passively look out the window of a bus. There are no additional benefits for travelling on the Monorail.*"

¹⁴ I note that this matter of "ease of access for disabled people/people who can't walk to the area" is a subject that obviously had been discussed by RHL and the public and various public meetings held (which the Department did not attend). This particular issue or aspect did not form part of the concession consideration, as RHL did not suggest in their concession application that improving access to people whose physical access somehow impeded, would be a potential positive effect of the proposal.

¹⁵ Likely to refer to Lovelock, B. (2010) Planes, trains and wheelchairs in the bush: Attitudes of people with mobility-disabilities to enhanced motorised access in remote natural settings. *Tourism Management* 31: 357-366. See abstract here <http://www.sciencedirect.com/science/article/pii/S0261517709000594>

125. Submissions received opposing granting of the concession on the basis of adverse effects on other users were predominantly from existing recreational users of the Snowdon Forest area (hunters, trampers, and anglers). I read and heard submissions from a range of these recreational users of the area, stressing that the Snowdon Conservation Area is particularly important to local Southland / Te Anau recreational users. A number outlined long standing connections, in some cases over a number of decades. Others emphasised connections across generations. For example Submitter 18 [Gary Barnes] commented *“My sons learned to hunt and fish in this area and my grandchildren are now doing the same. Two grandsons have already shot their first deer in these valleys.”* Submitters highlighted a range of aspects of the experience within Snowdon Forest Conservation Area that they valued. These included solitude, peace and quiet, an absence of human modification with only basic tracks and huts, the ability to escape from civilisation, relatively easy access and suitability for family groups. Submitters raised the area’s value as a safe training ground due to its easy country, open bush and tops and, in the context of the region, relatively benign weather. This was contrasted with nearby opportunities in Fiordland which were characterised as either ‘high use/ Great Walk’ or totally undeveloped and difficult to access wilderness.
126. I read and heard submissions from local recreational users that the presence of the monorail would detract from their experience in the area, on the basis of the noise and visual effects. Others [e.g. Submitter 163 Bill Jarvie] noted the relatively unmodified character of the area *‘One of the most important values, if not the most important, that people making the effort to go to New Zealand’s backcountry are rewarded with, is the absence of urban trappings and structures’* Another submitter [submission 259 Sarah McCrum] writes *‘I personally cannot imagine ever wanting to walk up the valley again if there is a monorail track there. I go there because I experience it as absolutely pure nature. It is so extraordinarily beautiful in an intimate way that is unique to Snowdon Forest.... these experiences will be not only ruined by a monorail actually passing within 50m, but by even the thought that a monorail was there a few hours earlier. There is no half-way house. You cannot protect it by damaging it.’*
127. A small number of submissions [e.g. Fiordland Tramping & Outdoor Recreation Club, Submitter 91] suggested that the Kiwi Burn Track was valued as a winter walking / tramping destination as it was accessible and safe. Others noted the ability to take dogs and horses into the Snowdon Forest Conservation Area. Again these were contrasted with opportunities in Fiordland.
128. Some submitters commented on the proposed mitigation of creating a new Kiwiburn hut and possible re-routing of the existing track to create separation between the monorail and trampers, stating that this would not be effective mitigation, because just knowing the monorail was there would detract from the setting. [See for example submissions 186 Jacob Smyth, 209 Louise O’Callaghan, 282 Mick Abbot, 298 Christine Poundsford, and hearing notes 3 April in particular].

129. I read and heard submissions from hunters [see for example submission 87 Gerrit Oudt and submission 151 Glen Dean, and hearing notes 3 April] that in addition to changing the recreational setting, the monorail and mountain bike track would restrict their hunting access in the area, because there would undoubtedly be a 'no shooting' zone extending out from the structure and the new track. I note that under hunting permits issued by the Department shooting is restricted within 500m from any track or structure. The submission by Federated Mountain Clubs [Submission 267] suggested that a much larger zone could be required. *"Due to the range and speed of large calibre fire-arms, hunters would be unlikely to be able to shoot anywhere up to 2 km from the monorail. This is a wide area and would substantially limit their recreation, and quite possibly, the contribution that recreation hunters make to pest control."*
130. A submission was received with a contrary view, also from someone who said they are a keen hunter, that the monorail corridor is narrow and would not make much difference to hunters [submission 60 Mark Deaker]. The Southland Branch of the New Zealand Deerstalkers Association [Submission 181] conceded that the area *"does not hold large numbers of deer"* but highlighted the area's ease of access and suitability for learners.
131. Regarding the fishing experience, it was submitted this would also be diminished first by the presence of the monorail which would detract from the remote backcountry feel of the area, and secondly as a result of changes to water quality which would arise from construction activities in the beds of rivers. It was noted that the monorail would run for many kilometres along riverbeds in some areas with significant effects on the backcountry setting. One submitter felt that the proposal would have a positive effect on fishing *"The route of the proposed monorail opens up to fly fishing the headwaters of rivers that are presently only the precinct of wealthy, largely overseas based, helicopter borne anglers. This benefit comes when the construction track adjacent to the monorail becomes a mountain bike and walking access on completion of the project"* [Submitter 164 John Hare.]
132. In respect of construction activities, I read and heard submissions that the duration of construction works (estimated at 30 months) would result in adverse effects on other users. Geoffrey Thompson [submission 287] noted that the 30 month duration of construction effects *"would have a sense of permanency and should be assessed and weighted realistically"*. The noise of construction activities in particular was expressed as a matter of concern by submitters.
133. One Submission [Geoff Chapple, Te Araroa Trust submission 234] highlighted the effects of the proposal on the Te Araroa Trail. The Trust did not support the concession being granted but proposed a number of conditions that could be applied if it were. The Trust suggested that the new location for Kiwi Burn Hut would not be suitable for trail walkers and proposed building the new facility in an area close to the Mararoa River and Kiwi Burn confluence but out of sight and earshot of the monorail. It also suggested constructing an underpass to prevent use of the trail being impeded and for some mitigation moneys to be directed to the Trust to fund local track construction.

Comment:

134. The recreational users of the Snowdon Forest Area can be considered 'experts' in that they have a history of use, experience and knowledge of the area. In considering the extent to which submissions that the monorail would have unacceptable effects on these particular users (submitters) should be accepted, I have considered whether or not submitters have understood the potential level of physical effect that would result from the proposal, which in turn, I believe, influences to a degree how their 'on ground' recreational experience will be affected. I am very mindful that this could be perceived as an over simplistic 'if it can't be seen or heard it can't create a social impact' approach and it certainly is not my intention to suggest as such. I heard from submitters that even if they were on other tracks where they could not see the monorail, just knowing the monorail is in Snowdon Forest Conservation Area represents a degradation of the natural value of the area, which in turn adversely affects their experience.
135. It is my impression that submitters, generally, have a clear understanding of the potential physical effects of the proposed activity. The exception to this would be some submitters whom appear to think that the proposal involves clearance of a 200m wide corridor (and not one 6 m wide corridor and one 3 m wide corridor) but this is not a common assumption in submissions.
136. The Officer's Report (p 123) gave a view that "*the degree to which the mountain bike track in its entirety would be a positive effect remains difficult to judge in the absence of a clear understanding of the target user group.*" This is still the case after submissions and a number of submitters felt that this part of the application was vague or that the track would not be appealing. No submissions were received from either individuals or representative bodies in support of the mountain bike track. The applicant has not supplied a detailed business assessment of the likely use. There were views in the submissions that the type of route (close to a monorail track, its width, the gradient in places) could have only limited appeal. This can be contrasted with other mountain bike tracks where the attractions are clear and have the support of the specialist advocacy groups. In my view the proposed mountain bike track is not mitigation of the monorail's potential effects on existing recreational users, because it does not relate to values that have the potential to be affected by the proposed project. In particular, two important values of the Snowdon Forest Conservation Area identified by submitters are the relative absence of human modification and the ability to "escape from civilisation." I accept submissions that a modified construction track, which is associated with a monorail is unlikely to appeal to many existing users of the Snowdon Forest Conservation Area.
137. The positive effects of the monorail itself are easier to define. As indicated in the submissions, the monorail will clearly create a new opportunity that will enable more people to enjoy the Snowdon Conservation Area and in a different way. The mode of transport would allow the applicant to carry out education of its clients in a way that is not normally possible. This aligns well with the Intermediate Outcome in the Department's

Statement of Intent of “more people participating in recreation.” It is not clear exactly how big this new user group would be, but even if it captures only a fraction of current visitors to Milford it could be in the order of tens, if not hundreds of thousands of new visitors. Most of these visitors would not have had the opportunity to visit this area otherwise. RHL have proposed to provide an interpretation package as part of their proposal, which they provided further detail on in their Right of Reply in response to submissions (See Right of Reply attached as Appendix C, part 3 John Beattie page 22- 24).

138. There would of course be a loss of opportunity as these visitors would no longer have the ability to appreciate public conservation lands and waters on the existing route between Queenstown and Te Anau Downs. This would include parts of Taka rā haka / Eyre Mountains Conservation Park, the Takitimu Mountains, the red tussock lands between Mossburn and the Key and parts of Lake Te Anau. Furthermore although the Department’s goal is to increase participation, a literal approach that always encouraged development if it resulted in greater numbers, would fail to protect important things that New Zealanders cherish, such as the value of wilderness.
139. The positive effect of providing further recreational opportunities in the Snowdon Conservation Area for a large number of new users may be significant. The trade off between this and the potential adverse effects on existing users and the recreational values of the area is the key recreation issue for you to consider.
140. In terms of the mode of transport at least, this would be a unique opportunity in New Zealand, as suggested. It could, however, be loosely compared with existing opportunities that allow visitors to enjoy scenic areas of conservation land with relative ease and comfort. This would include bus journeys on the Milford Road or South Westland and perhaps the Trans Alpine train between Christchurch and Greymouth. Other submitters challenged the appropriateness of public conservation land for such attractions and viewed them as inappropriate on lands protected for their natural values. It has been noted by a number of submitters that with the changes in mode of transport associated with the route proposed by the application then there are only small, if any, gains in time. I am not in a position to comment on this. If accepted, it then brings into focus that the monorail has to be considered as an attraction in its own right. A number of submitters argued that if the applicant wanted to create a monorail attraction in New Zealand then it would be more appropriate to do so on private land. A monorail trip at Snowdon Conservation Area could be regarded as a new way of experiencing a place to a degree that could not be achieved on private land. However, the question arises as to the extent to which there is a need that cannot be fulfilled off public conservation land, particularly when the new attraction inevitably impacts on natural values and existing users.
141. A number of submissions argued that the monorail would enable access to older, younger or disabled visitors who couldn’t access public conservation land currently. Some of these comments related to Milford Sound / Piopiotahi while others referred to the Snowdon Conservation Area. Some submitters suggested that there were already other places on

public conservation land for these people to visit and that they were already using these places. Other submitters, challenged the view that the monorail as an overall concept would be attractive to older or disabled visitors due to the number of transfers required in the journey (between boat, vehicle and monorail).

142. Comments from submitters about the values they associate with the area represent information that was not captured in the Officer's Report, and this information has become more apparent to the Department via the public consultation process associated with the concession application. Such is the purpose of public consultation.
143. The Snowdon area is clearly significant to local users. Many have long associations with the area, come back time and time again and use the area to introduce their children to the outdoors - perhaps as they were themselves introduced to the outdoors by their own parents. It is likely that the Department would receive similar comments about almost any conservation area in the country so Snowdon may not be special or unique in that regard. The Snowdon Conservation Area appears to have a very high value to local people, probably due to its relatively easy accessibility when compared to the nearby Fiordland National Park.
144. It is likely that some existing users will be displaced or have significantly reduced enjoyment. For many users this will not be mitigated by the measures that have been proposed. Southland is, however, a region with extensive remote and back country areas which are suitable for activities such as fishing, hunting and tramping. Many of these areas including the Takitimus, Eyre Mountains, Longwoods, Eastern Fiordland and the Blue Mountains are within easy reach of the local population. With the exception of Kiwi Burn Hut which is a regionally significant opportunity, visitors displaced from Snowdon should be able to enjoy equivalent high quality experiences elsewhere on public conservation land in the region. Further mitigation could also involve the applicant providing low key access to alternative areas within Snowdon Forest Conservation Area that are away from the monorail.
145. The applicant has proposed shifting Kiwi Burn Hut half an hour further up the valley and re-routing the track away from the immediate vicinity of the monorail. A number of submissions suggested that this mitigation was insufficient as it would be too far for the current user group and was an inferior site. An additional half hour walk each way will be a barrier to some day walkers but the hut facility is predominantly provided for overnight use. An extra half an hour each way is unlikely to be a barrier to tramping parties especially as the hut will still be located very close to the road end.
146. In respect of Construction Effects, conclusions as to the significance of short term construction effects are contained on page 117 and 121 of the Officer's Report. In summary, the Officer's Report concluded that the short term effects of construction could not be avoided, they are potential significant and adverse effects, however they would be temporary and remedied in the long term and that they would cease to exist (once construction was completed).

147. In respect of increased “no hunting zone” (see paragraph 129) I have sought comment from the Te Anau Area Office and they advise they see no requirement for a ‘formal’ increased no hunting zone: They have carried out a Hunting Risk Assessment associated with the proposed monorail, and conclude that any risk associated with hunting around the proposed monorail be mitigated by:
- i. Inclusion of a safety message regarding the monorail and cycleway as a special condition on the Snowdon hunting permit, and
 - ii. Inclusion of a safety message and monorail location in publicity material (brochure, signage, and advocate for inclusion in maps).¹⁶
- These mitigations will be the responsibility of the Department to implement in respect of material produced by the Department.

Recommendations as to the extent to which submissions related to effects on other users of the Snowdon Forest should be allowed and/or accepted.

148. It is my recommendation that submissions related to effects on other users (social effects) are allowed, on the basis that these matters are relevant considerations to the Minister.
149. It is my recommendation that submissions that there will potentially be a ‘new’ recreational benefit in respect of new users of the area in the form of mountain bikers and visitors using the monorail be accepted. Given that this is a potential (positive) effect which is somewhat speculative and open to challenge, I suggest these submissions be given little weight. I recommend however, that should the concession be granted, that the ‘Education and Conservation Awareness Package’ as outlined by RHL in their Right of Reply become a condition of any concession granted, subject to audit and approval by the Department, in the interests of maximising potential conservation advocacy benefit.

RHL Comment 15 October 2013

***Commissioner’s Recommendation:** The ‘Education and Conservation Awareness Package’ as outlined by RHL in their Right of Reply should become a condition, subject to audit and approval by the Department, in the interests of maximising potential conservation advocacy benefits.*

***RHL’s Response:** Accepted. This matter is addressed in revised proposed condition 27.*

Hearing Chair Comment

The “Education and Conservation Awareness “condition proposed by RHL addresses my recommendation in this respect.

150. It is my recommendation that submissions that the presence of a monorail and mountain bike track, regardless of the mitigation proposed by RHL (i.e. provision of a new hut and re-routing of various tracks) will be adverse on some existing recreational users of the Snowdon Forest Conservation Area be accepted. I have found submissions from a range of existing users of the area to be compelling. This effect will be potential displacement of

¹⁶ Te Anau Area Office 25 January 2013.

some existing users (anglers, walkers, hunters) due to the monorail (which runs along river valleys for much of its length).

151. The significance of these adverse effects is moderated by the fact that:
- There are other similar recreational opportunities in the Southland Region, including Mavora Lakes, Takitimus, Eyre Mountains, Longwoods and Blue Mountains.
 - The mitigation proposed by RHL, particularly to provide a new Kiwiburn Hut and track re-routes (in addition to the existing hut) will be mitigation for some (but not all) users of the area.
 - As I have noted above, the presence of a mountain bike track may bring additional and new visitors into the area, and the monorail would bring additional and new visitors into the area.
 - Public Access to the Area will be maintained.

(e) Effects at Milford Sound

152. Various submissions were received regarding how the proposal would affect visitor arrivals at Milford Sound. A number of submissions in opposition to the proposal asserted that the proposal would increase crowding at Milford Sound. These submissions contained little or no evidence why this would be so (see for example submission 88 Glenda Gray, submission 250 Forest and Bird Tasman Branch).
153. Submissions were also received (in support of the proposal) that the proposal had the potential to alleviate crowding at Milford Sound [see for example submission 219 Ross Cockburn, and Dr Bonnie Perry submission 14], but again, there was little or no evidence presented why this would be so. The exception to this was submission 228 Real Journeys LTD (opposed to the proposal) that the monorail would not spread use at Milford Sound, because RHL's estimate of duration of the trip from Queenstown to Milford was unrealistic. Real Journeys, citing their own experience in providing multi mode transport tourist activities, stated that it takes considerable time to transfer passengers from one mode of transport to another. Real Journeys stated that in their experience, the predominantly Asian-based tour bus market would be unwilling to shift from a midday arrival time at Milford Sound as those visitors require a hot meal in the middle of day. Therefore Asian visitors will likely persist with midday arrival times at Milford, to coincide with lunchtime cruises. It was submitted that in this context, even if the monorail trip was shorter than existing alternatives, the presence of the shorter duration trip would be unlikely to have any great effect on spreading visitor arrivals at Milford Sound.

Comment:

154. The 'context' of submissions around the effects of the proposal on Milford Sound is the claim made by RHL that the Fiordland Link Experience would spread visitor arrivals into Milford Sound, and that this would be a potential positive effect of their proposal.

155. The Officer's Report discusses effects at Milford Sound/ Piopoitahi, starting page 128 of that report. This analysis concluded that any potential positive effects, resulting from spreading arrivals into Milford Sound, were largely speculative and should not be overstated. Whether or not visitor arrivals at Milford Sound would be spread would be dependent on a number of factors not directly under the control of RHL and not subject of the concession application (including buses from Te Anau Downs to Milford Sound, other existing modes of transport to Milford and the willingness or ability of existing boat operators to provide services at different times).

Recommendations as to the extent to which submissions related to effects on visitor experience at Milford Sound should be allowed and/or accepted.

156. It is my recommendation that submissions relating to effects at Milford Sound be allowed.
157. It is my recommendation that submission that Fiordland Link Experience would probably have little effect in spreading visitor arrivals at Milford Sound be accepted on the basis that the Real Journey submission on this matter is made by a submitter that can be considered to be an expert in matters relating to commercial tourism use of Milford Sound. That said, I still suggest that the conclusions made in the Officer's Report that the degree to which the monorail in the Snowdon Forest would spread visitor arrivals to Milford Sound are speculative, on the basis that this would rely on how the wider tourism industry would respond to the delivery of passengers at Te Anau Downs, to be valid. In view of this speculation, I consider little weight should be attached to this particular matter.

(f) Economic Effects /Economic Viability

158. Submissions were received in support of the proposal stated that the proposal would have positive economic effects in the region, as a result of job creation associated with construction and operation of the monorail. General comments were received that the proposal would be "*good for tourism*" [see for example submission 20 Stuart Collie] and other positive comments that the monorail was an exciting and innovative tourist initiative which would "open up" the Snowdon Forest and expose more people to Conservation [for examples of these comments please see submission 5 Anne Lawe, 14 Dr Bonnie Perry, 7 Spencer Beasley, 29 Ian Weir and other submissions in support of the proposal]. Some submitters in support of the proposal commented that the income generated by the proposal could be used "*to manage the conservation estate*" [submission 225 Peter Chartres].
159. Submissions were received opposing the proposal stated that the proposal would have adverse economic effects because the monorail would divert tourist traffic from Te Anau. General comments were made by some submitters that the monorail would tarnish "*New*

Zealand's Clean Green Image" [see for example submission 45 Annie Cao] implying that this would be bad for tourism, with resultant adverse economic effects.

160. In addition, a number of submitters raised the question of "*what will happen if the project fails, will we be left with a rusting eyesore in the landscape*" [see for example submissions 90 Erin Gray, 295 Diana Zadavec and 8 Steve Bently]. Submissions were made that the project would be economically unviable (suggesting also that there was a significant risk to the Crown should the project fail, and the Crown left with having to 'clean up the mess' from an either partially constructed, or non operational monorail structure). I consider these to be submissions related to the economic feasibility of the proposal.

Comment:

161. In respect of economic feasibility I note sections 17S(1)(f) and 17U(1)(d) of the Conservation Act requires the provision of and consideration of information relating to the Applicant's ability to carry out the activity. I understand the absence of such ability would enable the application to be declined on the basis of s17T(3) of the Conservation Act.¹⁷
162. Such considerations have not, in the past, required or considered information in respect of economic feasibility, on the basis that determining the economic feasibility of concession applications is not core business of the Department (or Minister) under the purposes of the conservation legislation. On the basis that section 17X of the Conservation Act 1987 enables the Minister to impose and enforce concession conditions relating to a concession activity, concession conditions around bonds, sureties and insurances are set. Such conditions would need to be met by the concessionaire before any concession could be exercised.
163. I note that the 'Approval In Principle' decision is subject to proposed concession condition 28 Bond, and standard concession condition 20.4 (lease) and 15 (Easement) regarding concessionaires obligations at termination of lease/easement, as follows:

"28. Bond

- 28.1 *Prior to commencing the Concession Activity, the Concessionaire must provide as surety a trading bank, insurance company or bond guarantor who is acceptable to the Grantor.*
- 28.2 *The surety must execute (in the case of two or more jointly and severally) in favour of, and on terms acceptable to, the Grantor a performance bond initially set at NZ\$_____ (_____dollars) for due and faithful performance by the Concessionaire of the obligations under the Concession and/or reinstating any disturbed area of the Land to a standard satisfactory to the Grantor where*

¹⁷ Section 17T(3) Conservation Act "*Nothing in this Act or any other Act shall require the Minister to grant any concession if he or she considers that the grant of a concession is inappropriate in the circumstances of the particular application having regard to the matters set out in [section 17U](#)*"

disturbance has been caused by the Concessionaire or any agent of it and/or otherwise remedying or mitigating any adverse effects of the Concession Activity.

- 28.3 *If the initial amount of the bond has not been set in clause ## then prior to the Concession Activity commencing that amount will be set by the Grantor following an independent risk assessment using a methodology approved by the Grantor.*
- 28.4 *The initial amount set under either conditions ## or ## may be reviewed at the discretion of the Grantor at any time.*
- 28.5 *The cost of any independent risk assessment or review will be paid by the Concessionaire within 10 working days of being given a notice by the Grantor.*
- 28.6 *Notwithstanding the expiry, surrender or termination of the Concession document, the bond will not expire and is to remain in full force and effect until such time as all obligations of the Concessionaire under the Concession document have been complied with to the satisfaction of the Grantor.*
- 28.7 *If the Concessionaire breaches any condition or fails to carry out any condition of the Concession or in carrying out the Concession Activity there arise adverse effects not authorised or reasonably foreseen in the Concession document the Grantor may call on the bond entered into under this Document or any portion of it to ensure compliance with the conditions of the Concession document or to remedy or mitigate those adverse effects referred to above”*

“15. What happens on termination or expiry of the Concession?”

- 15.1 *On expiry or termination of this Concession, either as to all or part of the Easement Land, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Easement Land.*
- 15.2 *The Concessionaire may, with the Grantor’s written consent, remove any specified structures and other improvements on the Easement Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Land and other public conservation land affected by the removal in a clean and tidy condition.*
- 15.3 *The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Easement Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Land and other public conservation land affected by the removal in a clean and tidy condition and replant the Easement Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term. If before the expiry of the Term the*

Concessionaire makes an application for a further concession in respect of the same Concession Activity on the Easement Land then the Grantor can not require such removal and reinstatement until such time as that concession application has been determined. If a new concession is granted then removal and reinstatement can not be required until the expiry or termination of the new concession.”

164. These amounts of bond that would need to be held by the Concessionaire, should the concession be granted, have not yet been finalised. I understand they are commonly finalised as part of final contractual requirements around final condition of grant.

Recommendations as to the extent to which submissions related to economic effects should be allowed and/or accepted.

165. It is my recommendation that submissions stating that the proposal would be financially unfeasible and therefore the application be declined not be allowed and not accepted, on the basis that these matters are not relevant to the Minister of Conservation in determining whether or not the concession can be granted or not, they are a matter for him to consider in considering imposing appropriate concession conditions.
166. It is my recommendation that submissions that the proposal would have either positive or adverse economic effects in the region not be allowed as such effect are not able to be considered by the Minister of Conservation pursuant to the Conservation Act.
167. In respect of submissions relating economic feasibility of the proposal, it is my recommendation that these be allowed and accepted to the extent that it is appropriate for concession conditions to include financial safeguards as noted above. To this end the Department would seek external independent technical advice to set all bond / insurance required (which is, I understand, the Department’s standard practice for infrastructure type concessions). I note that the appropriate financial safeguards, such as bonds and insurances required against project completion, mitigation of effects, and potential removal of the structure and replanting of the land at termination or expiry of any concession (currently proposed at 49 years) would likely be substantial. These matters would need to be resolved to the Minister’s satisfaction before any concession could be issued. This requires a 2 step process, an ‘interim grant’ subject to resolution of concession fees and bonds to the Ministers satisfaction, followed by a final grant.

RHL Comment 15 Oct 2013

Commissioner’s Recommendation: *Appropriate financial safeguards, such as bonds and insurances need to be resolved to the Minister’s satisfaction before any concession could be issued.*

RHL’s Response: *RHL and the Department have been engaged in discussions with respect to these matters. It is expected that the outcome of these discussions will be reflected in the final concession document and finalised as part of final contractual requirements around final condition of grant.’*

Hearing Chair Comment

Noted.

g) Effects on Visual Landscape.

168. Submission 34 (Alan Petrie) submits that the Department's assessments of effects on landscape is flawed, as it is limited to an assessment of visibility of the proposed development which fails to consider effects on natural character. Mr Petrie argues that 'natural character' would be adversely affected by the proposed developments because there would be adverse environmental effects. He also submits that the proposed mitigation (to minimise the visual impact of the proposed monorail), specifically, proposals to colour the structure and train in a colour that will blend into the landscape, will not be effective, as the form of the obvious engineered structure will remain out of place in the natural landscape.
169. Various other submissions commented on the visibility of the monorail, and that this would be an adverse effect within the Snowdon Forest Conservation Area. A few submissions noted the visibility of the termini facilities proposed at Te Anau Downs and the Mararoa River, and in respect of the facilities proposed at Te Anau Downs, that these would diminish the landscape character of that area.
170. Submission 306 [Takaro Lodge] points to the Department's independent technical advice¹⁸ in respect of Landscape matters, and note the conclusion of that audit *"there is no doubt the proposal would significantly compromise the outstanding natural values of the landscape and the 'landscape integrity' of the Snowdon Forest Conservation Area and the Te Wāhipounamu South Westland NZ World Heritage Area"*.

Comment:

171. Section 5.2.4 of the Officer's Report discusses "Effects on Visual Landscape" (starting page 105). This discussion in the report is very much a discussion of visibility of the monorail structure, as other environmental effects are discussed elsewhere in the report. In respect of effects on visual landscape of the monorail through the Snowdon Forest, the Officer's Report does acknowledge that it is difficult to assess the extent of effect on the landscape integrity of the Snowdon Forest (in the absence of final on the ground specifications and plans), and states;

"RHL is clear that the presence of a monorail structure would have an effect on the landscape of the Snowdon Forest Stewardship Area.

They state a number potential adverse effects can be avoided or minimised by careful route selection and monorail design. Other effects could be mitigated by 'blending' the proposed structure as far as possible into the landscape by, for example, replanting of disturbed ground, and the use of recessive natural colours for the monorail train.

¹⁸ Morgan Pollard Associates, 2010 *Wildland Consultants Ltd Fiordland Link Monorail/Landscape Audit*. Morgan Pollard Associates.

It is noted that RHL's landscape report makes reference to locating the monorail track within forest as far as possible, to minimise its visibility through open river valleys. With all respect, this is inconsistent with RHL's terrestrial ecology assessment stating that the monorail alignment would be in the open and not in the forest wherever possible, in order to minimise the volume of forest vegetation to be removed (and associated effects of forest removal). The considerations in this report (the Officer's Report) in respect of potential effects on flora and fauna¹⁹ have concluded that avoiding valley floor non-forested areas is desirable to avoid and minimise terrestrial ecology effects in this habitat."

and:

"There is no disputing the fact that the monorail track is an engineered structure, and that any engineered structure in a natural setting is a change to that natural setting.

The question is however, how significant, distinctive and 'special' is this landscape. This is a difficult assessment to qualify. Both RHL and the Department's external auditor agree that the area can be characterised as 'outstanding natural landscape'. Neither of these assessments deal with the matter of 'rarity' of the landscape, as such neither provide context for the decision maker to understand the significance of any potential change to this particular landscape.

Without intending to diminish the intrinsic landscape value of the Snowdon Forest Stewardship Area, in the context of other public conservation lands, the visual landscape values of this area are neither rare, unique, or iconic (in comparison to for example the landscape values of Milford Sound, the Eglinton Valley, or the red tussock reserve at Burwood Bush (Red Tussock) Scientific Reserve) The open valley floors would be avoided as far as possible by RHL as per their route selection criteria. The overall visibility of the monorail structure and train would be reduced as far as possible by structure form and colour. There would be however a permanent 'residual' effect - parts of the monorail would be seen. The extent of this visibility would become apparent once final 'on the ground' route selection and design has been carried out. "

172. The Officer's Report analysis in respect of landscape did not consider matters considered via the RMA, and neither do I in this report as the aspect of natural character being considered here is the visual landscape. Other components of natural character such as flora and fauna are discussed elsewhere in this report,
173. In respect of the visual effects of the 3m wide mountain bike track, the Officer's Report considered that these would be minor, on the basis that such a track would be akin to tracks constructed by and maintained by the Department in backcountry areas. I note that this conclusion is reliant on the track indeed being limited to a 3 m wide width, both where it runs alongside the monorail and where it runs separate to the monorail (for the last 17km

¹⁹ Section 5.2.2 of Officer's Report

to Te Anau Downs), and that spur tracks be rehabilitated as stated in the application. I have recommended changes to concession conditions to deal with these matters (see paragraphs 79 and 89)

Recommendations as to the extent to which submissions related to effects on landscape should be allowed and/or accepted.

174. It is my recommendation that submissions related to effects on landscape be allowed as such matters are relevant to the Minister's considerations.
175. It is my recommendation that submissions suggesting that the visual presence of the monorail will be an adverse effect be accepted to the extent that I have recommended that the monorail would have adverse effects on some existing recreational users be accepted. The visual presence of the monorail is a component of its effect on existing users.

(h) Submissions related to Compensation

176. Submitters have raised the matter of compensation, some suggesting that '*compensation is illegal and probably a bribe*' [see for example submission 32 Graeme Anderson] and others noting that as compensation has not been finalised, the application is incomplete [see for example submission 272 Royal Forest and Bird]. Other submitters stated that the compensation proposed by the applicant (an additional 200ah to Operation Ark) is insufficient to compensate for (what they consider to be) loss of natural values and recreational amenity resulting from the proposed developments [see for example submission 131 Fish and Game Southland].

Comment

177. I draw to your attention to discussion in the Officer's Report regarding 'Off – Site Compensation' offered by Riverstone Holdings Limited (emphasis added):
"RHL propose to offset and compensate for the removal of 22 ha of forest habitat removal resulting from the proposed activities, that they carry out 'off-site pest control' in the form of an additional 200 ha to Department's existing Operation Ark project in Fiordland National Park.²⁰

The Conservation Act 1987 provides for payment of compensation for any adverse effects of activity on the Crown's or public interest in the land concerned, unless such compensation has been provided for in the setting of rent²¹. This compensation could cover both adverse effects that have been remedied or mitigated (because there may still be long term adverse effects on the Crown's or public interest in the land concerned) and adverse effects that remain after RHL has avoided, remedied or mitigated adverse to the greatest extent

²⁰ Mitchell Partnerships 2010. *Riverstone Holdings Ltd, Fiordland Link Experience, Draft Predator and Weed Control Management Plan 30 September 2010*. P 7, also Applicant's draft concession condition 37.

²¹ Conservation Act 1987 section 17X (d).

possible, that is - 'residual' adverse effects. Compensation can take the form of non-monetary compensation.

It is appropriate that compensation be considered in this case for residual adverse effects. For the purpose of this report residual adverse effects are minor effects, as any activity with potentially significant unmitigated adverse effects would be contrary to the purpose for which the land is held, and pursuant to section 17U(2) of the Conservation Act 1987, a concession shall not be granted if that is the case" (See page 62 of the Officer's Report)

And (at page 90 – 91 of the Officer's Report):

"As already noted in this report, RHL has offered compensation for effects in the form of an additional 200 ha to Operation Ark in Fiordland National Park. They propose this compensation package in respect of effects in red beech forest habitat (in particular). RHL recognise that habitat loss is an ongoing threat to indigenous communities. They note that; (while) "... habitat loss is an ongoing threat to indigenous communities, most of the red beech trees in the immediate vicinity of the route are already within the conservation estate and little more can be done to protect them without active management. With respect to the ecological value that large red beech trees have as habitat for fauna, the degradation of that habitat by introduced pests, including possums and predators, is more significant than loss of red beech habitat per se. For that reason (RHL's technical experts) have recommended the management of existing habitat to improve its productivity as mitigation for removal of red beech. This is encapsulated in the ecosystem approach which recommended 200 ha of pest control in the Eglinton Valley to offset effects on red beech species and other indigenous habitat and species."

The Conservation Act provides for payment of compensation for any adverse effects of activity on the Crown's or public interest in the land concerned, unless such compensation has been provided for in the setting of rent. This compensation could cover both adverse effects that have been remedied or mitigated (because there may still be long term adverse effects on the Crown's or public interest in the land concerned) and adverse effects that remain after RHL has avoided, remedied or mitigated adverse to the greatest extent possible – 'residual' adverse effects.

*There **will** be residual effects if the monorail is built, and it is appropriate that these effects are compensated for as provided for in section 17X(d) of the Conservation Act 1987.*

The compensation package offered by RHL has assumed that red beech habitat is 'more significantly' affected than other habitats. The Department would not necessarily agree with this. On the basis that low altitude non-forest valley floor habitat is rarer than forest habitat, it follows that residual effects in this habitat are potentially more significant than residual effects in forest habitat. That said, until final 'on the ground' route design has been determined, it is unclear where the more significant residual effects would occur. The route selection criteria to be applied by RHL in the design stage of the proposal may further reduce

potential effects in non-forest habitats, and this would have a corresponding increase in effects in forested habitats.

*It is noted that section 17X(d) of the Conservation Act relates to compensation 'for any adverse effects of the activity', and does not prescribe any other further process for determining the most appropriate **form** of compensation.*

RHL has offered compensation, and the Department accepts that compensation would be appropriate. Whether the compensation offered (contribution to Operation Ark) is the most appropriate form of compensation, and if not – what would be, cannot be determined at this point in time. Setting compensation will therefore need to be further discussed with RHL, and most likely deferred until final on the ground design has been determined.

That there will be an appropriate form of compensation satisfactory to the Grantor however will be a condition of any grant of the concession"

Recommendations as to extent to which submissions regarding compensation should be allowed and/or accepted.

178. It is my recommendation that submissions that the proposed compensation is illegal not be allowed as the payment of compensation in respect of concessions is expressly provided for in section 17X(d) of the Conservation Act. I also recommend submissions that that the application is incomplete as compensation has not been finalised not be allowed on the basis that this is not a relevant matter to the Minister of Conservation in determining whether or not the concession can be considered or not, as it is a matter for him to consider when imposing appropriate concession conditions under section 17X of the Act.
179. In respect of submissions that the compensation package initially proposed by RHL (addition of 200ha to Operation Ark) is insufficient, the Officer's Report states that this might not be the most appropriate form of compensation. As the Minister has not agreed to this particular form of compensation, submissions on this point are premature and essentially irrelevant, and on that basis I recommend that they not be accepted.
180. That said, I do accept the view that compensation would need to compensate for a range of residual adverse effects should the concession be granted. In particular, as I have noted above, should the concession be granted, the presence of the monorail would have effects on the recreational experience of some existing recreational users, and I suggest that this be included in the matrix of residual effect that would require compensation (should the decision be made that these effects are minor).

(i) Safety

181. Submissions were received that trees falling on the monorail track posed a significant safety risk for the monorail. While these submissions were not suggesting that the operation of

the monorail was inherently unsafe, they were highlighting the need for monitoring of the track to ensure safety of passengers. Submitters also suggested [see for example hearing notes John Von Tunzelman Monday 2 April] that large trees within 'fall distance' of the track would need to be removed for safety reasons (especially if such large trees were weakened by edge effect/ wind throw), further increasing the number of large trees requiring removal along the monorail route.

Recommendations as to extent to which submissions regarding safety should be allowed and/or accepted.

182. Although consideration of safety issues is not a matter explicitly listed in section 17U of the Conservation Act as a 'matter to be considered by the Minister', safety is something that may be considered by the Minister (particularly given the provisions of the Occupiers Liability Act 1962 and the Health and Safety in Employment Act 1992). Section 17U(1)(b) of the Conservation Act requires consideration of 'the effects of the activity, structure, or facility'. Effects encompass a wide range of matters and may include the degree of danger or hazard introduced to other visitors by a new concession activity. Accordingly any measures that can reasonably and practicably be undertaken to avoid, remedy or mitigate adverse effects²² including, obviously, the putting into place of safety measures have a bearing on an applicant's ability to carry out an activity. Safety is also a relevant consideration in the Department's processes via s17S(1)(f)²³ and s17U(1)(d)²⁴. On this basis, it is my recommendation that submissions in respect of safety be allowed.
183. I note that the matter of identification/ management of tree hazard during operation of the monorail are matters that would be included in the Operational Management Plan (see clause 24 Special Conditions Officer's Report page 167). I note however that this Operational Management Plan is required prior to *operation* of the monorail, and not something that requires preparation /approval prior to *construction* of the monorail. I consider the submission from John Von Tunzelman, suggesting that ongoing operational requirements of the monorail in this respect may require tree clearance additional to that required for initial construction, to be valid, and on that basis I recommend this submission be accepted. The Department would not want to find itself in a position of approving a structure on the basis of initial clearances, only then to find that the *operational* requirements of the structure would require further clearances. Therefore, I recommend that the Operational Management Plan be subject to audit and approval prior to construction commencing, and that the objectives of the Vegetation and Habitat Management Plan be extended to include operation of monorail (as well as construction).

²² Conservation Act section 17U(1)(c)

²³ The ability of the applicant to carry out the activity.

²⁴ Any information received by the MOC under sections 17S&17T of the Conservation Act 1987.

RHL Comment 15 October 2013

Commissioner's Recommendation: *that the Operational Management Plan be subject to audit and approval prior to construction commencing, and that the objectives of the Vegetation and Habitat Management Plan be extended to include operation of monorail (as well as construction).*

RHL's Response: *The audit of the operational management plan was intended to take place once construction was completed. These recommendations have been accepted in the revised proposed conditions 24.1 and 19.1.*

Hearing Chair Comment

RHL addresses the first part of the recommendation. In respect of the second part of the recommendation some of the objectives of the vegetation and habitat management plan have been explicitly extended to include operation of the monorail.

If you are minded to approve the application I suggest you seek further advice on whether the remaining objectives should be applied to the operational phase.

(j) Other Effects

184. Foreign Ownership

Submissions were received commenting that the development (if built) could be sold off-shore, and objecting to potential foreign ownership of business interests on public conservation land.

185. Private Commercial Gain

Submissions were also received objecting to 'privatisation' and 'private commercial gain' on public conservation land.

186. Risk concession could not be suspended / terminated

Submissions were received that if the concession is granted, there is a risk that further approvals could not be with-held and risk that the concession could not be terminated or suspended - that is, risk that the concession document does not empower the Minister to stop the monorail being built should the effects identified during the final design stage prove to be unacceptable. There were two themes in these submissions, the first being that concession conditions did not provide enough certainty (and I have discussed these matters above), the second the suggestion that a project of this scale and cost, once underway, would be difficult to stop as the developer would put considerable pressure on to complete the project.

187. Geotechnical Issues

A verbal presentation was given at the hearing of submissions 3 April 2012 on behalf of Royal Forest and Bird by Ian Turnbull, in respect of geotechnical issues along the monorail alignment. Mr Turnbull submitted that the applicant had failed to take into account relevant geotechnical surveys, had failed to identify an area of particular instability along the route,

and had failed to adequately address potential risks associated with the seismicity of the area.

Comment / recommendations as to extent to which submissions on other effects should be allowed and/or accepted.

188. In respect of submissions regarding potential foreign ownership of any developments on public conservation land, it is my recommendation that these submissions not be allowed, as this is not a matter of relevance to the Minister's considerations under the Conservation Act. This is a matter for the Overseas Investment Commission.
189. In respect of submissions objecting to 'privatisation' and 'private commercial gain' on public conservation land, it is my recommendation that these submissions not be allowed, on the basis that part 3B of the Conservation Act explicitly provides for the consideration and grant of concessions on public conservation land.
190. In respect of submissions that the project will be difficult to 'stop' should the effects of the activity become adverse, I accept these submissions to the extent that it is imperative that concession conditions provide clarity and certainty for both parties as to what level of effect is permitted 'on the ground'. I have accepted various submissions in respect of effects that I consider would warrant revision of existing proposed conditions of grant (see paragraphs 79, 81, 86, 89, 94, 122 and 183) I note (existing) standard concession conditions relating to termination, expiry and suspension of the concession²⁵. Further to this I recommend an amendment to existing proposed concession 3.8 (which deals with audit and approval which may result in the concession activity ceasing as approval might not be given) to explicitly state "Such approval must be with-held if the proposal no longer satisfies the statutory tests of Part 3B of the Conservation Act 1987".
191. I also suggest that the concession document could usefully include a special condition that (for the avoidance of doubt) explicitly identifies the Minister's ability under section 17ZC of the Conservation Act to vary a concession in the case of unforeseen adverse effects, by recording that it be the the intention of Construction Specifications and Plans prepared, audited and implemented as per the concession that there will be no significant adverse effects resulting from the activities carried out by the Concessionaire. The concession should then state that should the audit process, or ongoing monitoring of the concession activities, show that this is not the case and that significant adverse effects would arise it is agreed by the Concessionaire that such significant adverse effects were not reasonably foreseeable at the time the concession was granted. For the avoidance of doubt in such a case the Grantor may implement section 17ZC of the Conservation Act and vary the conditions of the Concession.

²⁵ Standard Conditions 14 and 15 Concession Easement, and Standard condition 18 of lease respectively.

RHL Comment 15 Oct 2013

Commissioner's Recommendation: *Inclusion of wording along the lines of 'approval may be withheld if the proposal no longer satisfies the statutory tests of part 3B of the Conservation Act' in regards to all approvals required under the concession (paragraph 190).*

RHL's Response: *RHL considers that such a condition would not be lawful, but that the proposed conditions provide a framework which ensures that effects will reflect the contents and conclusions of the application meaning that such a wording would not be required.'*

Hearing Chair Comment

It is my understanding from the application and the applicant's right of reply that the project could be stopped at the audit stage if the effects were more than minor . This proposed condition provides for that. I consider it is necessary to include this test, or wording to the same effect, for the audit and approval stages of the project.

Commissioner's Recommendation: *Inclusion of 'significant adverse effects' clause to reflect the ability of the Minister under s172C (3)(b) of the Conservation Act to vary the concession.*

RHL's Response: *RHL considers that the Minister has this ability under the Act and this matter should be included in the General Conditions. This matter is addressed in the revised proposed conditions (see in particular Condition 5.9).*

Hearing Chair Comment

I consider that this condition should be included as it records that the concession is granted on the basis that there are no significant adverse effects, and that if they occur, they were not reasonably foreseeable at the time of the grant. This is not covered by the applicant's proposed condition 5.9.

192. In respect of the verbal submission presented on behalf of Royal Forest and Bird in respect of Geotechnical Issues, I noted at the hearing that this submission was not related to matters already referred to in Forest and Birds written submission, it was new information, and to this end I was not prepared to allow or accept it. I record that I allowed Mr Turnbull to present his submission, for the benefit of the applicant who was present at the hearing. The applicant responded to matters raised by Mr Turnbull in their Right of Reply (which is attached to this report as Appendix C – see 'letter from Opus') As this matter exceeded the scope of the submission I consider it cannot be allowed. Thus I make no further comment on this matter.

Issue 1.2; Submissions that the proposal is contrary to the purposes for which the land concerned is held.

Section 17 U (3) of the Conservation Act 1987 requires that *'the Minister shall not grant an application for a concession if the proposed activity is contrary to the provisions of this Act or the purposes for which the land concerned is held'* (emphasis added).

193. Submissions were received that the monorail proposal was inconsistent with the purpose of land is held as national park (in respect of Te Anau Downs) and inconsistent with the purpose of land is held as Conservation Stewardship Area (in respect of the Snowdon Forest Conservation Area), and on that basis the concession should be declined. I note the test in section 17U(3) is "contrary to" this purpose. In my analysis of the submissions I have treated them as if they had referred to "contrary to". These submissions were made in the context of:
- i. Fiordland National Park and Sections 4 and 49 of the National Parks Act;
 - ii. Snowdon Forest Conservation Area
 - iii. World Heritage Status

I summarise and discuss each of these aspects below.

(i) Submissions related to purpose for which land concerned is held Fiordland National Park (Te Anau Downs)

194. Forest and Bird [see submission 272] submitted that the proposal is inconsistent with section 4 of the National Parks Act because *"the proposed activities must demonstrate they would not undermine the maintenance of the intrinsic values of the Park's natural and ecological systems, scenery, natural features and will maintain the Parks native plants and animals"*. The effects of the activity at Te Anau Downs, it was submitted, would degrade the intrinsic values of the area by changing its use from a small-scale access node to Lake Anau, to a major access node to Milford Sound. Another submission that the proposal was inconsistent with the purpose for which the land concerned is held as National Park, commented that the effects of the development of a terminus facility, monorail track and roading at Te Anau Downs would not *"preserve in perpetuity scenery ecological systems and natural features of the Fiordland National Park"* [see submission 287 Geoffrey Thomson].
195. Royal Forest and Bird also submitted that in their opinion *"the proposal does not pass the test of section 49 (of the national parks act) as it does not promote the welfare of the National Park. Instead it will degrade the intrinsic values of the Park, and detract from a significant sector of the public enjoyment of the Park"* (at Milford Sound, resulting from spreading use throughout the day and therefore potentially removing the existing quiet time at Milford).

Comment and Recommendations as to the extent to which submissions that the proposal is contrary to purpose for which land concerned is held as National Park be allowed or accepted.

196. The ‘purposes for which the land concerned is held’ as National Park is set out (primarily) in section 4 of the National Parks Act (NPA) ‘*Principles to be applied in National Parks*’ which states;

“Section 4 *Parks to be maintained in natural state, and public to have right of entry*

- (1) *It is hereby declared that the provisions of this Act shall have effect for the purpose of preserving in perpetuity as national parks, for their intrinsic worth and for the benefit, use, and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality, ecological systems, or natural features so beautiful, unique, or scientifically important that their preservation is in the national interest.*
- (2) *It is hereby further declared that, having regard to the general purposes specified in subsection (1), national parks shall be so administered and maintained under the provisions of this Act that—*
- a. *they shall be preserved as far as possible in their natural state:*
 - b. *except where the Authority otherwise determines, the native plants and animals of the parks shall as far as possible be preserved and the introduced plants and animals shall as far as possible be exterminated:*
 - c. *sites and objects of archaeological and historical interest shall as far as possible be preserved:*
 - d. *their value as soil, water, and forest conservation areas shall be maintained:*
 - e. *subject to the provisions of this Act and to the imposition of such conditions and restrictions as may be necessary for the preservation of the native plants and animals or for the welfare in general of the parks, the public shall have freedom of entry and access to the parks, so that they may receive in full measure the inspiration, enjoyment, recreation, and other benefits that may be derived from mountains, forests, sounds, seacoasts, lakes, rivers, and other natural features”*

197. Section 49 of the National Parks Act (the ‘concession provisions’) requires consistency with section 4 of the National Parks Act and states;

“Section 49 *Concessions*

- (1) *The Minister may, in accordance with Part 3B of the Conservation Act 1987, grant a concession in respect of any park; and the said Part 3B shall apply as if references in that Part to a conservation area were references to a park and with any other necessary modifications.*
- (2) *Before granting any concession over a park, the Minister shall satisfy himself or herself that a concession—*
- a. *can be granted without permanently affecting the rights of the public in respect of the park; and*
 - b. *is not inconsistent with section 4.”*

198. The Officer's Report discusses the application in respect of the purpose for which land is held as National park at page 37-38 of that Report and states;

"The activity proposed by RHL seeks to impact on an area of Fiordland National Park. This area is held for the purpose of preserving in perpetuity as national park, for intrinsic worth and benefit/ use/enjoyment of the public, scenery, ecological systems and natural features so beautiful, unique or scientifically important that their preservation is in the natural interest.

The mandatory nature of the wording in section 4 and section 5 (2) of the National Parks Act suggests that it would not be lawful under the National Parks Act to allow an activity to occur which undermines the preservation in perpetuity (implying maintenance in its current state) of scenery, ecological systems and natural features of the land.

However, the provisions of the National Parks Act 1980 (section 49) and part 3B of the Conservation Act 1987 require the Minister to also consider a number of other matters as set out in the Act, including the effects of the proposed activity, and the possible safeguards and mitigation measures proposed. This consideration gives effect to the words in section 4(2) (a) 'as far as possible', which recognises there may well be some change which could detract from the natural state.

The Minister must consider the conservation values of the area the National Park status seeks to protect, and to question whether the granting of the Application, with or without conditions, would provide protection of those resources.

The values of the natural and historic resources of the National Park under application (part Fiordland National Park) are discussed in section 3 of this report.

Section 5.2 of this report specifically discusses the effects of the proposed activities on these values and concludes that the effects of the activities and developments proposed by RHL could be reasonably and practicably avoided, remedied or mitigated (including via concession conditions) to the point where those effects would be minor.

It is considered that with appropriate conditions, grant of a concession for a short section of monorail and terminus building on part Fiordland National Park at Te Anau Downs would have acceptable levels of effects, and as such would not be contrary with the purposes for which the land is held as national park".

Recommendation

199. It is my recommendation that submissions that the proposal is contrary to purpose for which the land concerned is held as National Park be allowed, on the basis that this is a relevant matter to the Minister's considerations.
200. Section 49 of the National Parks Act does not require that concession applications must promote the welfare of the National Park [as asserted by Royal Forest and Bird submission 272 see paragraph 195]. On that basis I recommend that submissions that the proposal is

inconsistent with this section of the National Parks Act (as it does not “promote welfare of the park”) not be accepted.

201. That said, the National Parks Act provides for concession applications to be considered and granted, subject to the considerations of part 3B of the Conservation Act (and sections 4 and 49 of the National Parks Act), and this requires an assessment of effects and assessment of consistency against statutory plans. To that extent I recommend you accept submissions suggesting that consideration of effects are relevant to determining consistency for purpose for which land concerned is held. My recommendations in respect of submissions regarding the effects of the proposed activity are discussed above as issue 1.1. Submissions received regarding effects focused on effects in the Snowdon Forest. In respect of effects in Fiordland National Park, there were no submissions in respect of effects at Te Anau Downs which I consider to be compelling.

202. It is my view that there is nothing in submissions in respect of effects in Fiordland National Park that would cause me to disagree with the analysis in the Officer’s Report, which is that the effects of the proposal in the area of the National Park under application would be minor. In the context of this application and its location, it is my recommendation, that based on the effects being minor, submissions that the proposal is contrary to the purposes for which land is held as National Park not be accepted.

(ii) Submissions related to purpose for which land is held as Stewardship Area (Snowdon Forest) and sections 2 of the Conservation Act

203. Submissions were received that the proposal was inconsistent with the purposes for which the land concerned is held as Stewardship Area. Submissions on this matter commented that the effects of the proposal (including removal of 22ha of forest habitat and 4 ha of non forest habitat in the Snowdon Forest Conservation Area) would be as such that they would be contrary to the protection of the area’s natural and historic resources [see for example submission 182 Nicholas Cooper and 259 Sarah McCrum].

204. Submissions were received noting that land held under the Conservation Act is held for ‘conservation purposes’, and ‘conservation’ is defined in section 2 of the Conservation Act ;
‘means the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment of the public, and safeguarding the options of future generations’.

It was submitted that the effects of the proposal would be as such that this purpose would be compromised, in that the area’s natural and historic resources would be degraded, and public enjoyment (particularly for existing recreational users) would be diminished by the presence and operation of the monorail. I have discussed submissions on these effects above as issue 1.1.1.

205. There were a number of submissions from people regarding the values of the area. These are noted as peaceful/solitude/naturalness/tranquillity and wilderness. My impression is that the majority of these submissions were from existing recreational users, and as such they are predominately expressions of what they as users of the Snowdon Forest conservation area "value" of the area and how that would be affected by the monorail development (see paragraphs 123 – 133 above). I do accept, however, that a number of submissions expressed views which I would consider to be expressions of 'intrinsic value' - that is, the values of the area independent of whether people visit the area or not. Submissions were received that the presence and operation of the monorail would have an adverse effect on the intrinsic values of the area, for example *"the very values of scenic splendour and beauty will be degraded by the commercial and visual impact of any such large-scale development"* [Gordon Mather submission 46, and see also for example submission 185 Mark Sutton and 188 Jenny Campbell. Noel Walker [submission 278] submits that the cumulative effects should both the proposed tunnel and monorail proceed, would lead to the intrinsic value of a huge area being compromised *"were they both to proceed Fiordland would become known for the scale of its industrial and engineering projects -- not the natural landscapes which are in fact the focus of the National Park and the World Heritage Area"*.
206. General submissions were received that the proposal was inconsistent with section 6 of the Conservation Act [see for example submission 108 Peter Ferguson and 193 Annette Such] in that (it was submitted) *"section 6 of the Conservation Act makes clear that a tourism is a permitted activity as long as it does not compromise conservation values"*.

Comment and Recommendations as to the extent to which submissions that the proposal is contrary to purpose for which land concerned is held as Stewardship Area (Snowdon Forest) be allowed or accepted.

207. As section 6 of the Conservation Act relates to the Department, not the Minister, this section of the Conservation Act is not relevant to the Minister's considerations pursuant to Part 3B of the Conservation Act and therefore I recommend that submissions specific to section 6 of the Conservation Act not be accepted. That said, the Department 'delivers' its obligations set out in section 6 of the Conservation Act via (in this case) application of the statutory process set out in Part 3B of the Conservation Act and this process (including consideration of the effects of the proposed activities on conservation values areas as alluded to by submitters) is subject of this report.
208. Stewardship area is held subject to section 25 of the Conservation Act which states;
- "Management of stewardship areas***
Every stewardship area shall so be managed that its natural and historic resources are protected'.

Protection is defined in Conservation Act as:

'Protection, in relation to a resource, means its maintenance, so far as is practicable, in its current state; but includes—

- (a) its restoration to some former state; and*
- (b) its augmentation, enhancement, or expansion'*

Natural Resources are defined in the Conservation Act 1987 as:

- (a) plants and animals of all kinds; and*
- (b) the air, water, and soil in or on which any plant or animal lives or may live; and*
- (c) landscape and landform; and*
- (d) geological features; and*
- (e) systems of interacting living organisms, and their environment; --*
and includes any interest in a natural resource'.

Historic Resources are defined in the Conservation Act 1987:

'means a historic place within the meaning of the Historic Places Act 1993; and includes any interest in a historic resource.'

Historic place defined in the Historic Places Act 1993;

- (a) Means—*
 - (i) Any land (including an archaeological site); or*
 - (ii) Any building or structure (including part of a building or structure); or*
 - (iii) Any combination of land and a building or structure; or*
 - (iv) any combination of land, buildings or structures, and associated buildings or structures (including any part of those buildings or structures, or associated buildings or structures)**that forms a place that is part of the historical and cultural heritage of New Zealand and lies within the territorial limits of New Zealand; and*
- (b) Includes anything that is in or fixed to such land'*

209. The Officer's Report discusses the application in respect of purpose for which land concerned is held as Stewardship Area on pages 34 – 35 of that report. In summary, the Officer's Report considered that on the basis potential adverse effects could be avoided, remedied or mitigated, grant of a concession (subject to appropriate concession conditions) would not undermine the protection of the natural and historic resources of the land.
210. It is my recommendation that submissions relating the purpose for which land is held be allowed as such considerations are relevant to the Minister's considerations.
211. I have recommended to you that submissions that the proposal would result in adverse effects on some recreational users of the Snowdon Forest Conservation Area be accepted (see paragraph 150).

212. Should you accept my recommendation in that respect, I would recommend to you that submissions that the proposal would be contrary to the purposes of which the land is held as stewardship area be accepted to the extent that existing recreational use is one aspect of "natural and historic resources" of the Stewardship Area, which section 25 of the Conservation Act requires shall be protected.
213. In respect of the area's other natural and historic resources (that is, flora, fauna, freshwater and landscape values, as discussed in respect of submissions received as issue 1.1) it is my recommendation that submissions that the proposal would be contrary to the protection of those resources not be accepted on the basis I have not found submissions that effects on these resources would be adverse to be compelling, and thus I recommend they not be accepted.
214. I am, in essence, advising you that the effects of the proposal on some existing users will be adverse. However this needs to be balanced against a potential increase in recreational use of the area in the form of new and increased number of users. Thus while some existing users might be displaced from the area by the presence of the monorail, there are similar accessible recreational opportunities available within the region. Existing levels of recreational use in the area are relatively low (however this does not diminish the importance of the area to the people who do currently use it).
215. It is my recommendation to you, that, on balance, potential adverse effects of the proposal on some existing users does not result in the proposal being contrary to the purpose to which the land is held (Stewardship Area). There will be a loss of an existing recreation opportunity, which will be replaced by another. The public will still have freedom of access to the area.
216. In respect of submissions that the proposed developments would adversely affect the intrinsic values of the area under application, I have not found these submissions to be particularly compelling and on this basis I recommend they not be accepted.

(iii) Submissions related to purpose for which land is held as World Heritage Area

217. The area under application (part Snowdon Forest and part Fiordland National Park) forms part of the Te Wāhipounamu World Heritage Area. The Fiordland National Park Management plan notes *'there is an obligation on the Department of Conservation to manage the World Heritage Area in such a way that its' integrity is preserved'* (See Officer's Report page 21). Submissions were received that the effects of the activity would be as such that they would be inconsistent with obligation placed on New Zealand to *'take appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, preservation and rehabilitation of this heritage'*²⁶, and that the effects of the activity would be as such that they would be in contravention of

²⁶ World Heritage Convention 1972

Article 4 of the World Heritage Convention because the proposal 'would fail to protect (identify and observe) the natural values of the World Heritage Area' [see submission 287 Geoffrey Thompson].

218. It was submitted that the presence of the monorail would adversely affect the *integrity* of this World Heritage Area. The addition of major infrastructure in the form of a monorail and associated tracks, it was submitted, *'fails to protect, conserve or preserve the natural heritage of the area, fails to keep it in an undeveloped state, fails to preserve its landscape character as wild and unpopulated and threatens one of the world's great areas of wilderness'* [See submission 259 Sarah McCrum].
219. It was submitted that the effects of the monorail would be adverse, and therefore that the monorail would threaten the World Heritage Status of the area, and that this status may be revoked. Submitters referred to the Elbe valley in Germany where World Heritage Status was revoked because (according to submitters) a bridge was built which significantly impacted on the historic integrity of the area, and they point to this as an example of what could happen in response to a monorail development [see for example submission 289 Venture Southland]. Submissions were received noting that the proposal would be 'in conflict with' criteria 9 and 10 of the World Heritage Convention and that therefore the area could presumably lose its World Heritage Status [submission 86 Catherine Young].

Recommendations as to the extent to which submissions that the proposal is inconsistent with World Heritage Status be allowed or accepted.

220. It is my recommendation that submissions that the proposal would be inconsistent with the Te Wahipounamu World Heritage status be allowed as whether the proposal is consistent or inconsistent with the Convention is a relevant consideration for the Minister.
221. It is obvious to me that for a number of submitters the World Heritage Area status means a great deal. World Heritage Status is recognised and valued (and justifiably so) as being an international recognition and an international obligation greater than the "local" protected status and responsibilities conferred on the land via the Conservation and National Parks Acts.
222. The Convention gives rise to general obligations on the part of the government to protect the natural heritage of Te Wahipounamu - South West New Zealand World Heritage Area as described in the statement of Outstanding Universal Value relating to the Area in a manner that is consistent with the purposes of the World Heritage Convention, but these obligations involve a substantial degree of national discretion. In considering the concession application, I am of the view that the Minister must take into account the government's international obligations under the Convention and should interpret the National Parks Act and the Conservation Act as far as possible in a manner that upholds those obligations.

The statement of outstanding universal value associated with the World Heritage Area emphasises among other things the area's world class landscapes where only traces of human influence are evident and then mainly in peripheral areas [criterion (vii)].

223. It is my recommendation that submissions that argue grant of the concession would be inconsistent with the values of Te Wāhipounamu Southwest New Zealand World Heritage Area not be accepted, on the basis that I recommended only partial acceptance of submissions that the proposal would have adverse effects (see issue 1.1.2) and I have recommended that submissions that the proposal is not consistent with the Conservation Management Strategy and Fiordland National Park Management plan not be accepted (see issue 1.3(a) and 1.3(b)).
224. In regards to submissions that grant of the concession would put the World Heritage Status at risk, should the concession be granted, it is my recommendation that these submissions are not allowed, simply because whether or not grant of this concession would result in removal of World Heritage Designation is a matter for UNESCO to determine, and cannot be determined by the Minister of Conservation. The Minister of Conservation must consider the application subject to the provisions of the Conservation and National Parks Acts (and my recommendations in respect of these relevant matters are contained elsewhere in this report).

Issue 1.3(a); Submissions that grant of the concession / the proposal is not consistent with the Mainland Southland / West Otago Conservation Management Strategy (Conservation Management Strategy) 1998 -- 2008 (life extended to 2012) [and s 17W of the Conservation Act 1987]

225. Submissions were received that the decision /proposal is not consistent with the Mainland Southland / West Otago Conservation Management Strategy 1998 -- 2008 (Conservation Management Strategy), and therefore the intention to grant is contrary to s17W(1) of the Conservation Act 1987 which requires (emphasis added):

“17 W Relationship between concessions and conservation management strategies and plans

Where a conservation management strategy or conservation management plan has been established for a conservation area and the strategy or plan provides for the issue of a concession, a concession shall not be granted in that case unless the concession and its granting is consistent with the strategy or plan”.

Mainland Southland / West Otago Conservation Management Strategy

226. Submissions were received stating that the proposal was not consistent with various provisions of the Mainland Southland / West Otago Conservation Management Strategy [see for example submissions 259 Sarah McCrum, 157 Southland Conservation Board, and 272 Royal Forest and Bird].

Conservation Management Strategy Section 6.20 Te Anau Basin Landscape Unit.

227. Submissions were received that the monorail proposal was inconsistent with Objectives and Implementation points of this section of the Conservation Management Strategy [see for example submission 272 Royal Forest and Bird and 259 Sarah McCrum], specifically:

“Opportunity Objective 3

To provide and maintain the central Snowdon Forest area as a remote area with opportunities for low impact recreation remote from high use areas and extensive facilities. An area to which access is not too difficult, but users are required to be self-reliant”²⁷.

Submissions on this point stated that a monorail would be inconsistent with this objective, as the monorail was not ‘low impact recreation’, it would result in the area becoming a high use area, it would be an extensive facility and monorail users would not be self reliant.

228. A submission was received stating that implementation point 6 of section 6.20 of the Conservation Management Strategy rules out aircraft activity in the Snowdon Forest

²⁷ Conservation Management Strategy section 6.0 p 308.

associated with the monorail by anyone but the Department of Conservation [see submission 186 Jacob Smyth].

Implementation point 6 of section 6.20 of the Conservation Management Strategy states:

‘To retain the quiet, remote atmosphere of the Snowdon Forest area, Aircraft access will be permitted only for management and search and rescue purposes’

The Southland Conservation Board submitted [submission 157] that because the Conservation Management Strategy acknowledges the existence of an application for a monorail in the Snowdon Forest at the time the Conservation Management Strategy was being written, this particular provision of the Conservation Management Strategy *‘must be interpreted in this light’*. The Southland Conservation Board suggests that the Conservation Management Strategy provisions in respect of aircraft landings in the Snowdon Forest envisaged aircraft activity associated with construction of a monorail, and prohibited /restricted such activity accordingly.

229. Submissions were received that the proposed mountain bike track, tramping track realignments, and new Kiwi Burn hut proposed by RHL were inconsistent with Implementation point 7 of section 6.20 of the Conservation Management Strategy stating that no further tracks or huts would be developed.

Implementation point 7 of section 6.20 of the Conservation Management Strategy states:

The tramping tracks to Kiwi Burn and Army Huts will be maintained. Other tracks will be maintained as marked routes. In accordance with the area’s remote nature, no further tracks or huts will be developed (changes to the location of the Kiwi Burn track and hut may need to be considered if the monorail proposal proceeds – refer Resource and Estate Use)’

230. Submissions were received that the proposed monorail, which would operate seven days a week and would have a party size of 160, would be inconsistent with Implementation point 9 of section 6.20 of the Conservation Management Strategy [see for example submission on 259 Sarah McCrum and 227 Ron and Robynne Peacock].

Implementation point 9 of section 6.20 of the Conservation Management Strategy states:

Concessions will be limited to low impact day use excluding weekends and statutory holidays. Party size will be a maximum of 12 in the valleys and seven on the more remote ranges of the Snowdon Mountains. (Refer to map for boundaries). The specific restrictions on weekend and statutory holiday use, and on party sizes do not apply to other lands administered by the department outside of the Snowdon mountains in this landscape unit’.

Comment

231. The Officer’s Report considers consistency with the Mainland Southland / West Otago Conservation Management Strategy in section 5.1.2 of that report, starting page 40.

232. I note the Department's comment in the Officer's Report that at the time the Conservation Management Strategy was being prepared, the Department had received a previous concession application for a Monorail, and as a result the Conservation Management Strategy makes specific mention of the existence of a monorail proposal. The monorail proposal 'on the table' at the time the Conservation Management Strategy was in preparation was subject to audit by the Department. As a result of that audit the Applicant (RHL) amended their proposal in respect of intended route and construction methodology.
233. It is apparent from reading submissions that there is confusion in regards to which provisions of the Conservation Management Strategy refer to which particular areas of the Snowdon Forest Conservation Area (D420008). The Conservation Management Strategy refers variably to the "Snowdon Mountains" (Implementation 9 section 6.20) "Central Snowdon Forest Area" (objective 3 section 6.20) "Snowdon Forest Area" (Implementation 6 section 6.20) and "Central Snowdon Remote Area" (map of Te Anau Basin at page 309 of the Conservation Management Strategy). I have sought planning advice on these submissions, which is appended to this report as Appendix I. In summary, the provisions cited above by submitters, to which they submit the proposed monorail is inconsistent with (specifically section 6.20 Implementation 6 regarding aircraft access, and implementation 9 regarding party size) do not apply to the area within the Snowdon Forest where the monorail is proposed.
234. As a result of this wording in the Conservation Management Strategy, it is possible there are existing concessions in the Snowdon Forest which have restrictions on them which have been imposed as it was considered the activity was located in areas of Snowdon Forest affected by these CMS provisions. I heard a submission from Ron Peacock [see hearing notes 2 April 2012] who commented that he has a concession for guided fishing in the Snowdon Forest Conservation Area, that his operation was subject to maximum party sizes of 12, and that he could not guide in the area on weekends and statutory holidays. Given the restrictions and limits in his concession (derived from the Conservation Management Strategy), he submitted that he considered it totally incongruous that the Department could consider the presence and operation of a monorail in the area to be consistent with the Conservation Management Strategy.
235. This is an unfortunate situation. On one hand, I heard from submitters who simply took the provisions of the Conservation Management Strategy 'at face value' and who submitted in good faith on the basis of what they understand the Conservation Management Strategy to mean. On the other hand, I have logical and compelling technical advice on submissions that particular provisions of the Conservation Management Strategy do not apply to the area under application. I note the Officer's Report recognises that the party size limitations do not apply to the area under application (see page 48). In this case my recommendations reflect the technical advice I referred to.

Conservation Management Strategy Section 4.7. Bicycle Use

236. Submissions were received that the mountain bike track would be inconsistent with section 4.7 of the Conservation Management Strategy which states;

“Any areas or tracks where the use of mountain bikes is allowed are identified within the appropriate Landscape Unit strategies (refer Part 6).

Submissions were made that as the Conservation Management Strategy does not identify the Snowdon Forest as an area where mountain bikes are allowed, a mountain bike track in this area is not permitted and cannot be authorised. A submission was also received suggesting that that there has been no consultation as required by the Conservation Management Strategy [submission 233 Jane Riley].

Comment

237. Where a Conservation Management Strategy does not make any provision for the activity (to which the concession application relates), section 17W(2) provides:

“Where—

(a) there is no conservation management strategy or conservation management plan for a conservation area; or

(b) the relevant conservation management strategy or conservation management plan does not make any provision for the activity to which the application relates in a conservation area,—

the Minister, after complying with the provisions of sections 17S, 17T, and 17U, may grant a concession.”

Not specifically referring in the Conservation Management Strategy to mountain biking in the Snowdon Conservation Area does not of itself constrain the Minister from considering an application for an activity as the CMS might not have considered mountain biking in that specific area .

238. In respect of the public consultation requirements of section 4.7 of the Conservation Management Strategy, I note the Officer’s Report states;

“RHL has not undertaken public consultation regarding the appropriateness of the area for use by bicycles. It is noted that although there is a public notification phase associated with any grant of a concession (Section 17T Conservation Act 1987), this public notification of an intent to grant a concession is arguably not strictly ‘involving public input’ on bicycle use of the Snowdon Forest as envisaged by section 4.7 of the Conservation Management Strategy. Pragmatically however, either process invites comment from the public on the effects of proposed bicycle use, and accordingly it is considered that the public process associated with section 17T of the Conservation Act would meet the intent of section 4.7 of the Conservation Management Strategy, to allow the public to have input into any proposal to permit this new type of use.”

Conservation Management Strategy Section 5.14 Roads, Access and Utilities.

239. Submission 197 [Jean Kenney] and submission 239 [Tim and Heather Olsen] raised issues with interpretation of implementation 1 of Section 5.14 of the Conservation Management Strategy regarding no new roads, which states;

“No new roads or other land transport facilities will be constructed on lands administered by the Department, except to provide vehicle access to administrative and residential land or to adjoining private land where there are no practical alternatives, or except where provided for in Part Six of the Conservation Management Strategy.”

240. I note section 6.20 of the Conservation Management Strategy (Te Anau Basin Landscape Unit) acknowledges the existence of an application for a monorail and provides for the possibility of considering a monorail proposal. While part 6 does not ‘provide’ for a monorail, the Conservation Management Strategy acknowledges that such an application will be considered. As the Conservation Management Strategy anticipates the consideration of the monorail application, the concession application for the monorail is not automatically at odds with the implementation of 1 of section 5.14 of the Conservation Management Strategy. I also note that statements in Conservation Management Strategies cannot act as a fetter and prevent the Minister from considering the effects of a concession application and while having regard to the reasons for the CMS approach, reaching a different conclusion from that expressed in the CMS (see discussion in the Officer’s Report on this matter at pages 47 and 48).

Recommendations as to extent to which submissions that grant of the concession / the proposal is not consistent with the Mainland Southland / West Otago Conservation Management Strategy should be allowed or accepted.

241. It is my recommendation that submissions relating to consistency of the proposal with the Mainland Southland / West Otago Conservation Management Strategy be allowed as these matters are relevant to the Minister’s considerations.
242. I stress I do not wish to do submitters disservice by dis-allowing their submissions on the basis that they do not apply to the area under application when I consider that it is not unreasonable for submitters to have interpreted the Conservation Management Strategy as they have. However, the fact that certain provisions relate to different areas than that under application, coupled with the fact that statements in Conservation Management Strategies cannot fetter the Minister from considering the effects of a concession application (see discussion in the Officer’s Report on this matter at pages 47 and 48) it must be my recommendation that submissions that state that the proposal is inconsistent with section 6.20 Implementation 6 regarding aircraft access, section 6.20 implementation 9 regarding party size, and section 5.14 implementation 1 regarding roads, not be accepted.
243. It is my recommendation that submissions that state that mountain biking cannot be permitted in the Snowdon Forest because the Conservation Management Strategy does not make provision for mountain biking to take place in the area, not be accepted. Section 17W(2) of the Conservation Act enables the Minister to grant a concession where the Conservation Management Strategy does not make provision for the activity in this location. Thus the Minister can consider the application.

244. On balance, it is my recommendation that submissions that the proposal is not consistent with the provisions of the Mainland Southland West Otago Conservation Management Strategy not be accepted.

Issue 1.3(b); Submissions that grant of the concession /the proposal is not consistent with the Fiordland National Park Management Plan 2007 [and s 17W of the Conservation Act 1987]

245. Submissions were received [see for example submission 272 Royal Forest and Bird and submission 197 Jean Kenney] that the proposal would not be consistent with objectives (h) and (j) of section 5.3.9.1 of the Fiordland National Park Management Plan. The plan states;

Section 5.3.9.1 - Milford Sound / Piopiotahi

Objective 1 states that

"...The following attributes [of Milford Sound/Piopiotahi] will be protected and enhanced;

...

h) A place which offers a quiet and peaceful experience from early evening through to mid morning; and

i) A place where visitors flow through the site so as to avoid congestion and the feeling of overcrowding."

Submissions on this matter noted that the proposal may redistribute visitor arrivals to Milford, with the result of detracting from the objective to maintain Milford Sound as a quiet and peaceful experience from early evening through to mid morning.

246. Submissions were received that the assessment in relation to Implementation 4 of section 5.3.9.6 of the Fiordland National Park Management Plan is incomplete. The plan states:

Section 5.3.9.6 - Te Anau Downs

Implementation 4 states that:

"Should a request be made to further develop this site as a transport node, the following provisions should apply:

a) Such an activity should only be for the purpose of reducing the perception of congestion and overcrowding at Milford Sound/Piopiotahi and along the Milford road (Refer to sections 5.3.9.1 Milford Sound/Piopiotahi and 5.3.9.2 Milford Road);

b) The applicant should have to demonstrate that this option has been assessed in terms of a wider transportation analysis for options to Milford Sound/Piopiotahi as referred to in section 5.3.9.2 Milford Road;

c) That this option is the preferable option in terms of point b) above";

..."

247. Submissions on this matter note that *"the RHL application does not address these issues and that the Minister has therefore based a decision upon an incomplete assessment"* [see

submission 168 David Lang] and that there is no “demonstrated need” for this particular development project [see submission 289 Venture Southland].

248. Related also to the requirement for “demonstrated need” for the developments, submitters note section 5.7 (specifically objective 2 and implementation 1 and 2).which states: (emphasis added):

Section 5.7- Rooding, Vehicle Use and Other Transport Options (Other Than Aircraft and Boating)

Objective 2:

“To consider provision of new rooding, or other land transport links, in front country visitor settings only (see Map 7), and then only if they will improve visitor access and enjoyment of Fiordland National Park without impacting significantly on other recreation opportunities and national park values”

Implementation 1:

“New rooding should not be authorised anywhere in Fiordland National Park except in the front country visitor setting because of the likely adverse affects on the natural values or recreation opportunities that the other visitor settings are being managed for. Any proposal will require a full assessment of the adverse effects on the natural, historical and cultural, recreational, landscape and amenity values also identifying how the proposal will improve the effective management of Fiordland National Park. An audit of this assessment to determine whether the effects are either acceptable or can be adequately mitigated should be required. Consideration of such proposals should include full public consultation. Refer also to Policies 10.3(h) and (i) of the General Policy for National Parks 2005.”

Note – Implementation 1 refers to rooding- as ‘making of a road’ is subject of consent under section 55(2) of the National Parks Act. I discuss this provision more fully in part 2 of this report (which deals with the application in respect of Road Consent – see particularly paragraphs 299 – 307 below). For completeness, and to reflect the context in which submissions were made on this matter in a general sense, I have included implementation 1 in my considerations around ‘use’ of the road and concession application.

Implementation 2:

“Proposals for rail or monorail transport systems should not be authorised anywhere in Fiordland National Park except in the front country visitor setting or existing road corridors because of the likely adverse affects on the natural values or recreation opportunities that the other visitor settings are being managed for. Any proposal for a rail or monorail transport system should demonstrate the necessity for the project and will be required to identify how the proposal will improve the effective management of Fiordland National Park. Any such proposal will require a full assessment of effects. This assessment should detail how the potential adverse effects on the natural, historical and cultural, recreational, landscape and amenity values resulting from the project will be managed. An audit of this assessment to determine whether the effects are either acceptable or can be adequately

mitigated should be required. Consideration of such proposals should include full public consultation.”

Submissions were received that the proposal has not adequately demonstrated how “*it will improve visitor access and enjoyment of Fiordland National Park*” (objective 2), how it “*will improve management of Fiordland National park*” (implementation 1 and 2) and that “*the necessity for the (rail or monorail) project* (implementation 2) has not been demonstrated [see for example submission 289 Venture Southland and 272 Royal Forest and Bird].

Comment and Recommendations as to the extent to which submissions that the proposal is not consistent with sections 5.3.9.1, 5.3.9.6 and 5.7 and of the Fiordland Park Management Plan be allowed or accepted.

249. It is my recommendation that submissions related to the provisions of the Fiordland National Park Management Plan be allowed, as consistency with the Park Management Plan is relevant to the Minister’s considerations pursuant to section 17W of the Conservation Act.
250. I remind you that the activity under application in Fiordland National Park is 200m of access road from State Highway 96 (largely subject to the application for Road Consent and discussed in part 2 of this report), 350 – 400m of monorail track and the terminus facility located at Te Anau Downs.
251. **Section 5.3.1 of the Fiordland National Park Management Plan.**
Submissions on section 5.3.1 (Milford Sound/Piopiotahi) of the Fiordland National Park Management Plan put forward the view that the proposal would have have adverse effects at Milford Sound (in respect of increased crowding) and thus the proposal would be contrary to the protection and enhancement of the attributes of Milford Sound as stated in the plan. I have summarised and discussed in Part One of this report as issue 1.1.2(e) ‘Effects at Milford Sound’ starting paragraph 152 that whether or not the proposal would reduce the perception of congestion and crowding at Milford Sound/ Piopiotahi is uncertain, and speculative. On this basis, whether the proposal would enhance or detract from the attributes Milford Sound ‘as a place which offers a quite or peaceful experience from early evening to mid morning’ (because, it is submitted, the monorail proposal will ‘deliver’ people to Milford earlier in the day) is also uncertain. I note that RHL suggest that their proposal is not intended primarily as an alternative access to Milford Sound, it is proposed as an experience within the Snowdon Forest terminating at Te Anau Downs (this is a change in emphasis in regards to purpose of the monorail by the applicant from when the proposal was initially mooted). As I have noted previously - whether or not visitor arrivals at Milford Sound would be spread as a result of the small amount of road to provide access to a short section of monorail proposed by RHL in Fiordland National Park (given this monorail is primarily an experience in the Snowdon Forest Conservation Area) would be dependent on a number of factors not directly under the control of RHL. These factors are not subject of the application in the National Park, and include whether or not buses would provide access from the Downs to Milford Sound, and the willingness or ability of existing boat operators to

provide services at different times (thus justifying a change in timing of any arrivals to Milford). This was the view in the Officer's Report, and as I have noted above in paragraph 157, and this view is reinforced by submissions. In light of these factors I consider that submissions regarding non accordance/ non compliance with the Fiordland National Park Management Plan as the proposal might deliver visitors into Milford Sound earlier in the day, and that this would detract from the early evening to mid morning 'quiet and peaceful' attributes of Milford Sound, be given very little weight.

252. **Section 5.3.9.6 of the Fiordland National Park Management Plan**

Section 5.3.9.6 of the Park Plan uses the word 'should' – that is (emphasis added)

"Should a request be made to further develop this site as a transport node, the following provisions should apply:

- a) *Such an activity should only be for the purpose of reducing the perception of congestion and overcrowding at Milford Sound/Piopirotahi and along the Milford road (Refer to sections 5.3.9.1 Milford Sound/Piopirotahi and 5.3.9.2 Milford Road);*
- b) *The applicant should have to demonstrate that this option has been assessed in terms of a wider transportation analysis for options to Milford Sound/Piopirotahi as referred to in section 5.3.9.2 Milford Road;*
- c) *That this option is the preferable option in terms of point b) above";*

I draw your attention to the conventions around usage of the the words 'will', 'should' and 'may' in planning documents (from Policy 1 "Interpretation of Policies" General Policy for National parks 2005);

1(d) The words 'will', 'should' and 'may' have the following meanings:

- i) *policies where legislation provides no discretion for decision-making or a deliberate decision has been made by the Authority to direct decision-makers, state that a particular action or actions 'will' be undertaken;*
- ii) *policies that carry with them a strong expectation of outcome, without diminishing the constitutional role of the Minister and other decision-makers, state that a particular action or actions 'should' be undertaken;*
- iii) *policies intended to allow flexibility in decision-making, state that a particular action or actions 'may' be undertaken.*

As decision maker, you have discretion as to whether the proposal 'should' only be for the purpose of reducing perceptions of crowding at Milford Sound/along the Milford Road, and whether the applicant 'should' be required to demonstrate that their proposal has been assessed in terms of a wider transportation analysis.

253. In exercising your discretion around this matter, I suggest to you the following:

- (i) the degree to which the 'the proposal' occurs in the National Park is relevant. The provisions of the Fiordland National Park Management Plan relate only to the activities proposed in the National Park – these being 200m of access road from State Highway 96 (largely subject to the application for Road Consent and discussed in part 2 of this report), 350 – 400m of monorail track and the terminus facility located at Te Anau Downs;

- (ii) The Officer's Report (section 5.1.2 'Planning Instruments' page 53 notes; *"The plan requires an assessment of any developments at the site in the context of wider analysis of transportation options into Milford Sound. (Implementation point 4). This 'requirement' of the plan is arguably beyond the scope of the plan (and considerations to be made by the Minister of Conservation) as any such transport analysis would consider activities/effects which would not occur on public conservation land administered by the Department (for example bus activity on the Milford Road)"*

254. Submissions on section 5.3.9.6 (Te Anau Downs) of the Fiordland National Park Management Plan put forward the view that as the developments (in general, but including the road) proposed by RHL at Te Anau Downs have not identified or been assessed as solving the 'problem' of perception of congestion and overcrowding at Milford Sound, despite the plan saying that any developments at Te Anau Downs should only be for this purpose, it does not comply with the FNPMP in this respect. It is my recommendation that these submissions be accepted. It is within the scope of a management plan to seek to curtail activities unless particular criteria are met, or to prescribe the manner in which something may be done by reference to criteria. However, as I have summarised and discussed in Part One of this report as issue 1.1.2(e) 'Effects at Milford Sound' starting paragraph 152, whether or not the proposal would reduce the perception of congestion and crowding at Milford Sound/ Piopiotahi is uncertain, and speculative. I note that RHL suggest that their proposal is not intended primarily as an alternative access to Milford Sound, it is proposed as an experience within the Snowdon Forest terminating at Te Anau Downs (this is a change in emphasis in regards to purpose of the monorail by the applicant from when the proposal was initially mooted). Whether or not visitor arrivals at Milford Sound would be spread as a result of the small amount of road to provide access to a short section of monorail proposed by RHL in Fiordland National Park (given this monorail is primarily an experience in the Snowdon Forest Conservation Area) would be dependent on a number of factors not directly under the control of RHL. These factors are not subject of the application in the National Park, and include whether or not buses would provide access from the Downs to Milford Sound, and the willingness or ability of existing boat operators to provide services at different times (thus justifying a change in timing of any arrivals to Milford). This was the view in the Officer's Report, and as I have noted above in paragraph 159, and this view is reinforced by submissions.

255. On this basis, it is my recommendation that submission that the proposal is inconsistent with section 5.3.9.6 of the Fiordland National Park Management Plan, because it does not demonstrate it reduces crowding at Milford Sound/along the Milford Road, and the proposal has not been assessed in terms of a wider transportation analysis to Milford Sound, be given very little weight.

256. **Section 5.7 of the Fiordland National Park Management Plan**

On the basis that the effects of the proposed developments at Te Anau Downs would not be adverse (subject to mitigation via proposed concession conditions including any amendments suggested by this report, and noting that there are no submissions on effects

at Te Anau Downs which would suggest to me that you would need to reconsider the analysis in the Officer's Report in this particular respect) it is my recommendation that the proposal is consistent with the provisions of section 5.7 (implementation 1 and 2) of the Fiordland National Park Management Plan requiring that any effects of the proposal be adequately mitigated. Thus it is my recommendation to you that submissions that the proposed activities at Te Anau Downs are not consistent with the Fiordland National Park Management Plan because (it is submitted) these effects would be adverse, not be accepted.

257. In respect of submissions that section 5.7 'requires' that the proposal (road and monorail) need demonstrate how it '*will improve visitor access and enjoyment*' of Fiordland National Park (objective 2) it is my recommendation that submissions on this matter be accepted to the extent that it is within the scope of a management plan to curtail activities unless particular criteria are met. Whether or not the developments within the park (200m of road and 350 – 400m of monorail track) '*will improve visitor access and enjoyment*' of the park is speculative, for the same reasons as I have noted above. I have agreed with the view in the Officer's Report that the effects of the proposed developments at Te Anau Downs would not be adverse on other users of the park (on the basis that there have been no submissions on this matter which would cause me to reconsider this analysis). It is open for you, the decision maker, to consider that despite this particular proposal not demonstrating it will achieve the improvements referred to in section 5.7 of the plan, having regard to the scale and location of this road, this does not result in this specific case in the proposal not being in accordance with the Fiordland National Park Management Plan. The activities in the park proposed by RHL would not diminish visitor enjoyment of Fiordland National Park. On this basis I recommend submissions that the application to build 200m of road at Te Anau Downs is contrary to section 5.7 of the Fiordland National Park Management Plan be given very little weight.

258. In respect of submissions that section 5.7 implementation 2 requires the proposal to demonstrate 'necessity' (and that as necessity has not been demonstrated the proposal does not comply with the Fiordland National Park Management Plan in this respect) I note the following:

- this provision applies only to "*rail or monorail transport systems*" in Fiordland National park, and thus only applies to the 350m-400m of monorail track at Te Anau Downs.
- The planning advice referred to in this report as examined the park planning process behind provision 5.7 of the Fiordland National Park Management Plan, and advises that the intention of this particular provision is to '*give direction to the management of proposals wholly or in significant part within Fiordland National Park*' (as this plan was written at a time when there were various proposals for roads monorails or cableways through the Greenstone or Caples valleys and up Mt Luxmore, which were wholly or substantively in the National Park).

- The plan states that any proposal for rail or monorail transport system *should* demonstrate the necessity for the project. I have noted in previously in this report that the word *should* in management plans has the following meaning;

“policies that carry with them a strong expectation of outcome without diminishing the constitutional role of the Minister and other decision-makers, state that a particular action or actions ‘should’ be undertaken”²⁸.
- The Southland Conservation Board did not advise the Department of any inconsistency with the Fiordland National Park Management Plan, either in their comment to the Department on the Concession Application (see Officer’s Report appendix a(vi) page 176) or in their subsequent submission in response to public notification [see submission 157].

On the basis that the decision maker has discretion as to whether or not a rail or monorail transport system *should* ‘demonstrate necessity’, in the context of this particular proposal not being substantively in Fiordland National Park (i.e. only 400m of monorail track out of its entire 43.5km length being subject to the provisions of the Fiordland National Park Management Plan) it is my recommendation that submissions that the monorail must demonstrate necessity in order to comply with the Fiordland National Park Management Plan, be given very little weight.

259. Implementation (1) and (2) of section 5.7 states that roading (implementation 1) and rail and monorail transport systems (implementation 2) will identify / will be required to identify how the proposal *“will improve the effective management of Fiordland National Park”*. I consider *“effective management of Fiordland National park”*, in this case, refers to improvement of visitor access and enjoyment of Fiordland National Park as set out in objective 2 of this section of the plan. I have noted above that the degree to which the proposal would influence visitor experience of Milford Sound is speculative, that the provision only applies to activities under application in Fiordland National Park comprising 200m of road and 350 – 400m of monorail track, and that section 5.7 of the plan is intended to *‘give direction to the management of proposals wholly or in significant part within Fiordland National Park’* (as this plan was written at a time when there were various proposals for roads monorails or cableways through the Greenstone or Caples valleys and up Mt Luxmore, which were wholly or substantively in the National Park). On this basis, it is my recommendation that submissions that the road and monorail must identify how they *“will improve the effective management of Fiordland National Park”* in order to be consistent with the Fiordland National Park Management Plan, be given very little weight.

²⁸ General Policy for National Parks 2005 Interpretation of Policies pg 14

Issue 1.3(c) Submissions that the proposal is not consistent with Provisions of the Conservation General Policy 2005

260. Submissions were received that the proposal is not consistent with policies 4.5, 9.1 (c), 9.5 and 11.3 of the Conservation General Policy 2005 [see for example submissions 197 Jean Kenney/Milo Gilmour and 178 Rex Forrest].
261. Submission in regards to policy 4.5 of the Conservation General Policy notes that this policy states:
"Conservation management strategies and plans should identify landscapes, landforms and geological features of International, national or regional significance or of significance to tangata whenua" and "Activities which reduce the intrinsic values of landscape, landform and geological features on public conservation lands and waters should be located and managed so that their adverse effects are avoided or otherwise minimised".
Submissions on this point are that the effects of the proposal are as such that it is inconsistent with this policy.
262. Submission in relation to policy 9.1 (c) of the Conservation General Policy notes this policy states:
"Identification of the outcomes planned for different places and the range of recreational opportunities available should include an assessment of the following:
i. quality and characteristics of the experience to be maintained;
ii. public access and current recreational opportunities available;
iii. uniqueness of some current recreational opportunities;
iv. contribution to, and compatibility with, the wider network of recreational opportunities;
v. suitability for people with different capabilities, skills and interest; and
vi. current and projected levels of use."
The submission states that these matters have not been adequately addressed by the applicant.
263. Submission in relation to policy 9.5 (b) notes this policy directs that:
"Conservation management strategies and plans will identify where use of specified types of vehicles and other forms of transport may be allowed and will establish any conditions for use".
Under Policy 11.3 (Utilities), it is noted that Policy 11.3(a), states:
"utilities may be provided for on public conservation lands and waters where they cannot be reasonably located outside public conservation lands and waters, or if specifically provided for as a purpose for which the place is held".

Suggestion was made that the proposed monorail fails both these tests in that although the Conservation Management Strategy clearly anticipated an application for a monorail, the Snowdon Forest was specifically not identified as a suitable place for it. It is also submitted that as there are already alternative locations providing access to Lake Te Anau and Milford, the proposal does not meet the test of policy 11.3 [See for example submission 197 Kenney/Milo Gilmour].

Comment and Recommendations as to the extent to which submissions that the proposal is inconsistent with various policies in the Conservation General Policy be allowed or accepted.

264. It is my recommendation that submissions relating to the Conservation General Policy be allowed as the provisions of the Conservation General Policy are relevant matters to the Minister's considerations. However, I note that the provisions of the Conservation General Policy are relevant to the Minister's consideration insofar as it is a role of General Policy to reinforce the considerations to be made by the Minister under Part 3B of the Conservation Act. The provisions of General Policy are not specifically stated as a 'Matter to be considered by Minister' as per s 17U of the Conservation Act.
265. Further to this it is my recommendation that submissions that the proposal is inconsistent with policy 9.1(c) of the Conservation General Policy not be accepted on the basis that this policy relates specifically to the objectives of conservation management strategies and plans, and is not a requirement on concession applicants. That said, the Officer's Report discusses the provisions of the Conservation General Policy (section 5.1.2 of that report starting page 38). That analysis noted that the Conservation General Policy requires an analysis of effects of activities, which reinforces the requirements of part 3B of the Conservation Act in respect of commercial activities. The Conservation General Policy sets a 'context' in which effects are considered on land held under the Conservation Act. This context includes the provisions of the relevant Conservation Management Strategy and Park Management Plan. Specific submissions have been made regarding the provisions of these plans which I have summarised above as issue 1.3(a) and (b)
266. In respect of submissions that the proposal is inconsistent with policy 9.5 of the Conservation General Policy in that the Conservation Management Strategy does not specifically provide for a monorail and mountain bike track in the Snowdon Forest Conservation Area, it is my recommendation that such submissions not be accepted. As I have discussed above (see paragraph 240 and Officer's Report page 47) the Conservation Management Strategy recognises the existence of a concession application for a monorail in this area at the time the Conservation Management Strategy was written and places a requirement to consider that activity. The Conservation Management Strategy in itself, or via the provisions of the Conservation General Policy, cannot fetter the Minister from considering the effects of the concession application. To this end, the provisions of the Conservation General Policy are not a 'strike out' that unless an activity is specifically provided for in it then it cannot be considered. Neither, conversely, does the fact that the monorail is mentioned in the Conservation Management Strategy mean that this particular

activity is 'automatically' permitted and would be appropriate, and indeed the Conservation Management Strategy states as such by stating that an analysis of effects will be made.

267. In respect of submissions that the proposal is inconsistent with policy 11.3 of the Conservation General Policy because there is existing access to Lake Anau and Milford, I note this policy reinforces considerations required under section 17(U)(4) of the Conservation Act. I address submissions made in respect of 17(U)(4) below as Issue 1.5. On the basis that as it is my recommendation that these submissions not be accepted, it is my recommendation that submissions in relation to policy 11.5 of the Conservation General Policy likewise not be accepted.

Issue 1.4: Submissions that the Deed of Covenant relating to the Greenstone Valley Area in the Ngāi Tahu Deed of Settlement is a relevant consideration for the Minister in determining the Concession Application.

268. Submissions were received that the *Deed of Covenant Relating to the Greenstone Valley Area* contained in the Ngai Tahu Deed of Settlement 1997 is a matter of relevance to the Minister of Conservation in determining this concession application. Submissions were made that grant of a concession for a monorail in the Snowdon Forest Conservation Area would result in the Minister being 'compelled' to grant consent for any development in the Greenstone Valley, pursuant to this deed.
269. As this matter had not been addressed in the Officer's Report, it was submitted, the considerations made by the Minister were incomplete. As in effect the Minister would be consenting both a concession for a monorail/ mountain bike track in the Snowdon Forest, and an unspecified/unknown development in the Greenstone valley, it was submitted, the concession could not be granted as there is insufficient information to consider the proposal [see for example submission 272 Royal Forest and Bird and 157 Southland Conservation Board].

Recommendation as to the extent to which submissions that the Deed of Covenant relating to the Greenstone Valley Area in the Ngāi Tahu Deed of Settlement is a relevant consideration for the Minister in determining the Concession Application should be allowed or accepted

270. It is my recommendation that submissions that the provisions of the Ngai Tahu Deed of settlement (*Deed of Covenant Relating to the Greenstone Valley Area*) is a relevant matter for consideration to this concession application not be allowed and not be accepted. The Deed of Covenant relates to future possible development on Ngai Tahu freehold land, not public conservation land held pursuant to the Conservation or National Park Acts.

Issue 1.5: Alternative locations for the activity – submissions that the proposal is contrary to s 17 U (4) of The Conservation Act 1987

271. It was noted by submitters that there is already an existing transport to Milford Sound / Piopoitahi and Te Anau Downs in the form of existing roading network and aircraft access (to Milford). It was also noted that there is already access into the Snowdon Forest Conservation Area on existing walking tracks. [See for example submission 168 David Land, 272 Forest and Bird, and 289 Venture Southland]. It was submitted that RHL have not adequately demonstrated that this existing access cannot be used, with submitters putting forward the view that the existing access is perfectly adequate [see for example submission 289 Venture Southland]. Because this alternative access exists, it was submitted, grant of a concession would be contrary to section 17 U (4) of the Conservation Act
272. In the concession hearings I heard from a submitter who suggested that the monorail could travel from the Mavora River to Te Anau Downs entirely on private land, therefore would be no need for this structure (monorail) to be constructed on public conservation land [Bill Jarvie 2 April], and suggesting that therefore the proposal is inconsistent with section 17U(4) of the Conservation Act.

Comment:

273. I note that section 17U(4) requires
- “The Minister shall not grant any application for a concession to build a structure or facility, or to extend or add to an existing structure or facility, where he or she is satisfied that the activity—*
- (a) could reasonably be undertaken in another location that—*
- (i) is outside the conservation area to which the application relates; or*
- (ii) is in another conservation area or in another part of the conservation area to which the application relates, where the potential adverse effects would be significantly less; or*
- (b) could reasonably use an existing structure or facility or the existing structure or facility without the addition.”*
274. The matter for the Minister’s consideration therefore is whether alternatives exist, and if alternatives do exist, whether he is satisfied they could be reasonably undertaken or utilised.
275. The Officer’s Report discusses section 17U(4) of the Conservation Act in section 5.9 of that report (starting page 141), and quotes Riverstone Holdings as stating:
- “Overall it is considered that there are no suitable alternative locations within the conservation estate which the monorail would achieve a lesser level of adverse effects, and*

similarly, no private land options for the monorail in its entirety that would achieve the objectives of the project. Given this, the construction and operation of the monorail could not reasonably be undertaken elsewhere.

In conclusion:

- a) *This activity could not reasonably be undertaken outside the conservation estate given the impossibility in accessing private land; and*
- b) *The experience being sought is one largely within conservation land; and*
- c) *The activity could not be undertaken in another conservation area or part of a conservation area where the effects would be significantly less, as in our view this current proposal minimises potential effects on the conservation area; and*
- d) *There is no existing structure or facility that could be utilised for the monorail.*

With these conclusions made, there are two parts of the proposed monorail route that have the potential to be relocated, which are likely to result in lesser adverse effects, and would still ensure the Fiordland Link Experience would meet its objectives.

276. On this basis the Officer's Report accepted that the proposed structures could not be reasonably undertaken at another location outside the conservation area, or in a different part of the conservation area, where the effects would be less.
277. I note section 17U(4) of the Conservation Act requires you as decision-maker to determine if you are satisfied in regards to whether the activity could reasonably be undertaken elsewhere. Determining satisfaction involves a high level of discretion, as there are no qualifiers or guidelines that you must apply, which are stated in the Conservation Act, in making this finding.
278. It is my view, that there is nothing raised in submissions that would suggest to you that you would not be satisfied in regards to whether the activity could reasonably be undertaken elsewhere.
279. Riverstone Holdings Limited have noted that they have moved their initial proposed site of the Kiwi burn terminus and part of the monorail route from that proposed in 2006, to satisfy the requirements of section 17 U (4)(ii) '*is in another conservation area or in another part of the conservation area to which the application relates, where the potential adverse effects would be significantly less*'.
280. I also note that not all the monorail is on public conservation land, approximately 14km of monorail track runs on private land.

Recommendation as to the extent to which submissions of the proposal is contrary to s 17 U (4) of the Conservation Act 1987 should be allowed and/or accepted.

281. It is my recommendation that submissions in relation to section 17 U (4) of the Conservation Act should be allowed in that this matter is a relevant consideration to the Minister.

282. Existing Access to Te Anau Downs/ Milford Sound.

It is my recommendation that submissions that because there is alternative access to Milford Sound, the application is contrary to section 17 U (4) of the Conservation Act not be accepted. The activity under application is the construction and operation of the monorail and mountain bike track from point A to point B via the Snowdon Forest Conservation Area. The Department accepts that the experience being sought is a monorail experience largely within conservation land. I acknowledge that the proposal is considered by the public as an alternative access to Milford Sound, and this is hardly surprising given the content of the concession application, which does contain material attesting to the benefits of the proposal to Milford Sound. I heard from various submitters that in their view that attempts by RHL to "repackage" the proposal as a monorail experience, was an attempt by RHL them to deflect attention from the (perceived) fact that the monorail is essentially another way to get to Milford Sound. Nevertheless, the activity under application is the construction and operation of a monorail on public conservation land, between the Mararoa River and Te Anau Downs. There is no existing structure or facility that could be utilised for the monorail.

283. Submissions that the monorail structure could be located on Private Land.

It is my recommendation that submissions that as the proposal could be located on private land the proposal is contrary to section 17U of the Conservation Act not be accepted, on the basis that these submission simply assert that there is private land available, but provides no narrative or explanation as to why you should not be satisfied that reasons put forward by the applicant that it would not be reasonable for them to undertake their activity on private land be accepted. I recommend that you consider that the requirements of this section are satisfied as the applicant has demonstrated that it would not be reasonable to locate all or part of the monorail on adjacent (private) land.

Issue 1.6: Submissions that the proposal is contrary to section 5 of the National Parks Act 1980.
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284. Submissions were received that grant of the concession would be contrary to sections 5 of the National Parks Act 1980.
285. Section 5 of the National Parks Act states:
"Indigenous plants and animals to be preserved
(1) *No person shall, without the prior written consent of the Minister, cut, destroy, or take, or purport to authorise any person to cut, destroy, or take, any plant or part of a plant that is indigenous to New Zealand and growing in a national park.*
(2) *No person shall, without the prior written consent of the Minister, disturb, trap, take, hunt, or kill, or purport to authorise any person to disturb, trap, take, hunt, or kill any animal that is indigenous to New Zealand and found within a national park.*
(3) *The Minister shall not give his consent under subsection (1) or subsection (2) unless the act consented to is consistent with the management plan for the park'*
286. Submission 272 Royal Forest and Bird submit that the prior written consent of the Minister required under section 5 of the National Parks Act is not a concession, and that this matter is not addressed in the Officer's Report. Section 5 (3), it is submitted, "*states that the Minister shall not give consent under section (1) or (2) of section 5 unless the act consented to is consistent with the management plan for the park.*" It is submitted that "*the term 'shall' used in section 5 (3) means that the Minister has a duty not to give her consent where the act consented to is not consistent with the Park management plan. The only consideration for the Minister at this stage is whether the act is consistent with the Park Management Plan*". Section 5 of the National Parks Act, it is submitted, is a 'gateway' test.
287. Royal Forest and Bird submit that that the proposal is not consistent with the provisions of the Fiordland National Park Management Plan. I have interpreted this submission to be suggesting that the act of vegetation removal associated with the proposal is not consistent with the provisions of the Park Management Plan - on the basis that section 5 of the National Parks Act, which is the basis of this particular submission point, applies to preservation of indigenous plants and animals.

Comment and Recommendations as to the extent to which submissions that the proposal is inconsistent with section 5 of the National Parks Act be allowed or accepted.

288. It is my recommendation that submissions related to section 5 of the National Parks Act be allowed, as such matters are relevant to the Minister's considerations.

289. It is my recommendation that submission that the Officer's Report does not identify nor make a recommendation in relation to section 5 of the National Parks Act be accepted. This is an omission in the Officer's Report. I suggest to you, however, that this omission is not a major omission, as the matters for consideration under section 5 of the National Parks Act are contained also in part 3B of the Conservation Act (specifically -- in section 17 W(1) of the Conservation Act). For completeness, section 5 of the National Parks Act should have been identified, and any consent required under section 5 discussed. Section 5 of the National Parks Act uses wording very similar to that of section 17 W of Conservation Act regarding consistency with Park management plans. Compare section 5 (3) of the National Parks Act; "*The Minister shall not give his consent under subsection (1) or subsection (2) unless the act consented to is consistent with the management plan for the park*" with section 17 W(1) of the Conservation Act; "*Where a conservation management strategy or conservation management plan has been established for a conservation area and the strategy or plan provides for the issue of a concession, a concession shall not be granted in that case unless the concession and its granting is consistent with the strategy or plan*" (emphasis added). The Officer's Report discusses consistency with the provisions of the Fiordland National Park Management Plan in 5.1.2 of the that report (starting page49) and thus the consideration required under section 5 of the National Parks Act has been made.
290. I note that submissions were received that the proposal was not consistent with the provisions of the Fiordland National Park Management Plan (see Issue 1.3(b)) These submissions do not contain any compelling argument or narrative that the vegetation removal associated with the proposal at Te Anau Downs is as such that it would not be consistent with the provisions of the Park Plan (which I have taken to be the submission made by Royal Forest and Bird in respect of section 5 of the National Parks Act). On that basis it is my recommendation that submissions stating that no consent can be given under section 5 of the National Parks Act for the removal of indigenous vegetation at Te Anau Down in Fiordland National Park not be accepted.
291. In respect of section 5 of the National Parks Act being a 'priority gateway test', the submission on this point is not particularly clear – however, it appears that Royal Forest and Bird (who submitted on this point) are suggesting that the Minister cannot consider concession applications in National Parks pursuant to part 3B of the Conservation Act unless "*the act consented to is consistent with the management plans for the park*". It is my view that this could not be the case, as in order to determine if an act (or activity) is consistent with the management plan for a Park, either under section 5 of the National Parks Act, or section 17 W (1) of the Conservation Act, the Minister must surely turn his mind to the nature of the activity, the effects of the activity, and methods proposed to avoid, remedy or mitigate effects in order to understand the activity. Such is the process clearly outlined in part 3B of the Conservation Act, and such consideration has been made.

CONCLUSIONS AND RECOMMENDATIONS IN RESPECT OF APPLICATION FOR CONCESSION

292. The purpose of this report is to summarise the objections and comments received and recommend to you:
- i. The extent to which submissions should be allowed;
 - ii. The extent to which submissions should be accepted;
 - iii. How suggestions from those submissions could be incorporated (for example amendments to conditions);
 - iv. Any effect submissions may have on the original 'Decision in Principle' to grant the concession.

293. The subject of Part 1 of this report are the activities requiring a concession pursuant to part 3B of the Conservation Act 1987 and comprise:

In respect of the activities proposed in the Snowdon Forest Conservation Area and Marginal Strip adjoining the Mararoa River;

- i. Construction, operation, maintenance and use of a Monorail
- ii. Construction and maintenance of a Construction Track (including spur tracks) and adaptation of that construction track at the conclusion of construction of the Monorail to a Mountain Bike Track on stewardship area²⁹
- iii. Construction, operation, maintenance and use of a of terminus building, access roading and car parking and other associated facilities on marginal strip at the Mararoa River (Kiwi Burn Terminus);
- iv. Construction and maintenance of approximately 17km of Mountain Bike Track Cycle Link Route across public conservation land (starting at the point where the monorail enters private land);
- v. Construction and maintenance of a public hut in the Kiwi Burn Valley (Kiwi Burn Valley public Hut);
- vi. Construction, maintenance and servicing of public toilets at a location or locations along the Mountain Bike track,; and any other public recreational facilities (including but not limited to road-end car parking, toilets, day shelters and signage) as provided for or required by any concession granted. (Mountain Bike Track Public Toilets and Other Public Recreational facilities).

In respect of the activities proposed in Fiordland National Park;

- i. Construction, operation, maintenance and use of a of terminus building and monorail track at Te Anau Downs (Te Anau Downs Terminus);
- ii. Commercial use of any roading constructed by RHL³⁰

²⁹ Please note – there is no mountain bike track proposed on National Park as part of this application

³⁰ Please note *construction* of any road in Fiordland National Park is a matter for section 55(2) National Parks Act consent, and discussed in Part 2 of this report.

294. I have made recommendations to you in respect of the extent to which submissions should be allowed and accepted, which I summarise in the table below;

Issue 1.1	<i>Submission related to effects of the proposed activity [submissions related to 17U(2) of the Conservation Act 1987].</i>	<i>Recommendation</i>	
Issue 1.1.1	17U(2)(a) 'sufficiency/adequacy of information to enable assessment of effects'	Allow	Partially accept
Issue 1.1.2	17U(2)(b) 'there are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure or facility';		
	(a) Effects on Flora	Allow	Partially Accept
	(b) Effects on Fauna	Allow	Partially Accept
	(c) Effects Freshwater	Allow	Partially Accept
	(D) Effects on other Users of the Snowdon Forest	Allow	Accept
	(e) Effects at Milford Sound	Allow	Partially Accept
	(f) Economic Effects	Not Allow	Not Accept
	(g) Effects on Landscape	Allow	Partially Accept
	(h) Compensation	Allow	Not Accept
	(i) Safety	Allow	Accept
	(i) Other Miscellaneous Effects	Not Allow	Not Accept
Issue1.2	<i>Purpose of land held as National Park, Conservation Stewardship Area and World heritage Area - submissions that the proposal is contrary to the 'purposes for which land concerned is held'</i>	Allow	Not Accept
Issue1.3(a)	<i>Consistency Mainland Southland West Otago Conservation Management Strategy</i> Submissions that grant of the concession / the proposal is not consistent with the Mainland Southland West Otago Conservation Management Strategy [submissions related to s 17W of the Conservation Act 1987]	Allow	Not Accept
Issue1.3(b)	<i>Consistency Fiordland National Park Management Plan</i> Submissions that grant of the concession is not consistent with /not in accordance with the Fiordland National Park Management Plan [submissions related to s 17W of the Conservation Act 1987]	Allow	Not Accept
Issue1.3(c)	Submissions that the proposal is not	Allow	Not Accept

	consistent with provisions of the Conservation General Policy.		
Issue 1.4	Submissions that the <i>Deed of Covenant</i> relating to the Greenstone Valley Area in the Ngāi Tahu Deed of Settlement is a relevant consideration for the Minister in determining the Concession Application.	Allow	Not Accept
Issue 1.5	<i>Alternative locations for the activity</i> Submissions that the activity could be reasonably undertaken in another location [submissions related to s17U(4) of the Conservation Act 1987]	Allow	Not Accept
Issue 1.6	Submissions that the proposal is contrary to section 5 of the National Parks Act 1980	Allow	Not Accept

295. I now set out my recommendations to you on any effect that allowed and accepted submissions may have on the original “Decision in Principle” to grant the concession.

296. Submissions regarding the effects of the activity- sufficiency of information.

It is my recommendation that submissions that there is insufficient information to assess the effects of the activity, including mitigation of effects, is inadequate, be accepted to the extent that I identify that concession conditions could be better expressed and provide a greater ‘certainty of outcome’ as to what would eventuate via the envelope / conditional grant approach. I have made suggestions to you as to how various concession conditions could be amended, should the concession be granted, at various points throughout this report.

In summary, I have suggested the following;

- Explicitly stated clearance widths and lengths as stated by RHL in the in the concession application (paragraphs 79 and 81)
- Inclusion of swampy wetland forest, swampy forest, kahikatea trees and podocarps in ‘significant habitats’ list (to be avoided route selection) (paragraph 86)
- Rehabilitation of spur tracks as stated by RHL in the concession application (paragraph 89)
- Amendment of objective of Vegetation and Habitat Management Plan to include operation of monorail w.r.t ongoing clearances (paragraph 94)
- Explicitly stated requirement for pre design to include survey for presence/ abundance of bats along final preferred route (paragraph 111)
- Inclusion of conditions noted in Officer’s report regarding avoidance of in-river works during trout spawning and spawning of Gollum Galaxis, management plans to include monitoring of effects arising from changes to surface hydrology, and the

Comment [C1]: These refs will need checking

requirement to bridge all waterways requiring crossing during construction activities (paragraph 122).

- Inclusion of wording along the lines of 'approval may be with-held if the proposal no longer satisfies the statutory tests of part 3B of the Conservation Act' in regards to all approvals required under the concession (paragraph 190).
- Inclusion of 'significant adverse effects' clause to reflect the ability of the Minister under s17ZC(3)(b) of the Conservation Act to vary the concession (paragraph 193).

297. As I am unable to seek further technical advice in regards to these proposed conditions in my role as (delegate of) the Director General in respect of section 49 of the Conservation Act 1987, I suggest that it would be appropriate for you as final decision maker to do so.

298. Until this specific technical advice around concession conditions has been sought by you and is available for your consideration, I can only recommend to you that the information available to assess the adequacy of information around proposed methods to avoid, remedy or mitigate effects as expressed via concession conditions is incomplete, and note to you that you may (rather than seek further information and advice around concession conditions) decline the application pursuant to section 17U(2)(a) of the Conservation Act 1987.

299. Submissions regarding the effects of the activity- effects would be adverse.
Submissions that the effects of the activity would be adverse, are, in the main, submissions I recommend not be accepted, or accepted only partially to the extent that further concession conditions would be required to ensure that this would not be the case. The exception to this is my recommendation in respect of submissions that the effects of the proposal on some existing recreational users of the Snowdon Forest would be adverse. The proposal will potentially bring new users into the area (mountain bikers and monorail passengers). However, the presence of the monorail will have an adverse effect on some existing recreational users of the Snowdon Forest Conservation Area. I have recommended to you that submissions that the developments proposed by RHL will have an adverse effect on some existing users of the Snowdon Forest Conservation Area be accepted.

300. I note that section 17 U (2) of the Conservation Act confers a degree of discretion on you as Minister around declining applications on the basis of effects. This section of the act states (emphasis added);

- The Minister may decline any application if the Minister considers that—*
- the information available is insufficient or inadequate to enable him or her to assess the effects (including the effects of any proposed methods to avoid, remedy, or mitigate the adverse effects) of any activity, structure, or facility; or*
 - there are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility.*

The applicant, in support of their application put forward a view that it was necessary to strike a balance between;

- '(a) undertaking sufficient investigation so as to provide an informed basis for an assessment of the effects; but*
- (b) not requiring an applicant to undertake such detailed investigations that would be prohibitively expensive and would more logically be carried out in the subsequent detailed design process (subject to the imposition of appropriate conditions of consent).'*³¹

I note this approach was implicitly supported and accepted by the approval in principle decision made by the Conservator Southland via the Officer's Report.

301. The fact that the Conservation Act states that you may (and not that you shall) decline applications on the basis of effects, provides you with discretion as to the degree to which you would balance your considerations in this regard. I have noted in this report my view that the "severity" of the potential adverse effects on existing users could be moderated by potential positive effects on a new user group, the presence of other existing recreational opportunities in the area that the mitigations proposed by the applicant would mitigate the adverse effects on some existing users and that public access to the Snowdon Forest Conservation Area would be maintained.

Overall Recommendation pursuant to section 49 2(d) of the Conservation Act 1987

Because it is beyond my ability as (delegate of) the Director General under section 49 of the Conservation Act 1987 to seek further specialist technical advice around proposed concession conditions I am unable to make a single recommendation to you as to whether or not, in my view, the concession could be granted. My recommendation to you therefore is that you:

1. **Allow and Accept** submissions as I have recommend throughout this report, and;

Either;

- 2 **Approve** the granting of concession lease for a term of 49 years and concession licences and easements for a term of 60 years to Riverstone Holdings Limited, and that your **approval be subject to** resolution and agreement of concession conditions and requirements including concession fees, compensation and bond arrangements, to your satisfaction; **or**
3. **Decline** the concession application pursuant to section 17U(2) (a) of the Conservation Act 1987.

Approved Activity (should concession be granted);

(i) Monorail;

Easement for construction, operation and maintenance of a Monorail on marginal strip, stewardship area, and national park within the area shown on the map attached as Appendix H; (200 m wide easement increasing to 300 m wide at 'Bluff Slip') attach maps

(ii) Construction Track/Mountain Bike Track

³¹ Buddle Findlay as per p 57 Officer's Report

Easement for the construction and maintenance of a construction track (including spur tracks) and adaptation of that construction track at the conclusion of construction of the Monorail to a Mountain Bike Track on stewardship area within the area shown on the map attached; (200 m wide easement increasing to 300 m wide at 'Bluff Slip')

(iii) Kiwi Burn Terminus;

Lease of 1350m² for construction, operation and maintenance of a terminus building, and Easement for access roading and car parking and other associated facilities on marginal strip (Mararoa River) as shown on the map attached as Appendix H;

(iv) Te Anau Downs Terminus;

Lease of 1350m² for construction, operation and maintenance of a terminus building, and Easement for use of access roading and car parking and other associated facilities on Fiordland National Park (Te Anau Downs) as shown on the map attached as Appendix H;

(v) Cycle Link Route;

Easement for construction and maintenance of a Mountain Bike Track across public conservation land as shown on the map attached as Appendix H;

(vi) Kiwi Burn Public Hut

Licence for the construction and maintenance of a public hut in the Kiwi Burn Valley, at a final location to be determined in consultation with the Grantor, but within the area shown on the map attached as Appendix H;

(vii) Mountain Bike Track Public Toilets;

Licence for the construction, maintenance and servicing of public toilets at a location or locations along the Mountain Bike track, at a final location to be determined in consultation with the Grantor; and

(viii) Other Public Recreational facilities;

Licence for the construction, maintenance and servicing of any other public recreational facilities (including but not limited to road-end car parking, toilets, day shelters and signage) as provided for or required by this Concession.

PART 2: CONSIDERATION OF SUBMISSIONS RELATED TO ROAD CONSENT ACTIVITIES PURSUANT TO SECTION 55(2) OF THE NATIONAL PARKS ACT

302. Section 55 of the National Parks Act applies to roads:

“55 Roads within park

1. *This Act shall not confer on the Minister or the Department any jurisdiction or authority with respect to any public road that is within the boundaries of the park.*
2. *Except with the consent of the Minister given in accordance with the management plan for a park, no roads may be made over or through the park”*

303. RHL requires consent under section 55(2) of the National Parks Act to construct approximately 200m of roading from the SH94 (the Milford Road) to the proposed terminus building at Te Anau Downs in Fiordland National Park.

304. This consent is separate and in addition to a concession to operate the road as a commercial activity within the Park. Essentially, the application for Road Consent can be considered an application for formation of the roads. I have noted in paragraph 48 above the other activities under application at Te Anau Downs which require a concession (construction and operation of a terminus building and monorail) and my recommendations to you in this respect are set out in part 1 of this report above.

305. I reiterate that although both a concession and road consent are required in respect of the activities proposed by RHL at Te Anau Downs (Fiordland National Park), these activities and consents are integrated.

306. Unlike concessions which are considered pursuant to Part 3B of the Conservation Act, there is no statutory process for considering an application for consent under section 55(2) of the National Parks Act. Guidance on the things that might be considered can be found in Part 3B of the Conservation Act. The Fiordland National Park Management Plan also sets out matters to be considered in the making of a road. In actioning an application under section 55(2) of the National Parks Act the statutory purpose of National Parks in section 4 of the National Parks Act must be implemented.

307. The process by which roading proposals are to be considered set out in the Fiordland National Park Management Plan essentially requires an assessment of effects and public consultation on any roading, and state (emphasis added):

Fiordland National Park Management Plan section 5.7:

Implementation 1:

‘New roading should not be authorised anywhere in Fiordland National Park except in the front country visitor setting because of the likely adverse affects on the natural values or recreation opportunities that the other visitor settings are being managed for. Any proposal will require a full assessment of the adverse effects on the natural, historical and cultural.

recreational, landscape and amenity values also identifying how the proposal will improve the effective management of Fiordland National Park. An audit of this assessment to determine whether the effects are either acceptable or can be adequately mitigated should be required. Consideration of such proposals should include full public consultation'

308. The process set out in the park plan has been implemented by the Department via the Officer's Report, in respect of audit of application material submitted by RHL, assessment of effects and measures proposed to avoid, remedy or mitigate effects, and calling of public submissions. In this respect, the process used to date to consider the application for Road Consent is in accordance with the process set out in the Fiordland National Park Management Plan for such considerations.
309. This section of the report deals with submissions on matters which are solely a matter for the Road Consent application. As I have noted previously in this report, submitters were not guided to submit separately on the construction of the 200m of road at Te Anau Downs requiring road consent, and the other activities at Te Anau Downs requiring a concession (these being commercial use of any road constructed, and construction and operation of a monorail and terminus facility). This would not, in my view, have affected the outcome of the public notification process. The public were invited to comment on the proposal in its entirety, and relevant submissions were received and are being considered in relation to both applications.
310. As a result, particularly in respect of submissions regarding effects of the activities, although there were general submissions that the effects of the activities proposed at Te Anau Downs would (in the view of some submitters) result in a change of natural character, I cannot determine to the extent to which these submission relate to the concession activities, or the road consent. I have recorded my view that submissions that the effects of the activities proposed in Fiordland National Park would be adverse, not be accepted, on the basis that there is no compelling narrative or evidence in submissions that would cause me to reconsider the analysis in the Officer's Report, that the effects of the proposal in the Te Anau Downs Frontcounty area of Fiordland National Park would be minor.
311. The submissions which I can determine as being relevant directly to the construction of the road, are submissions made in respect of the purposes of land held as National Park, and submissions relating to the Fiordland National Park Management Plan, which I discuss below. This discussion is largely a repetition of my summary and recommendations on these matters made in respect of the application for concession in sections 1.3 ("Submissions that the proposal is contrary to the purposes for which land is held" starting paragraph 193) and 1.4(b) ("Submissions that the proposal is not consistent with the Fiordland National Park Management plan" starting paragraph 245) above. This repetition is necessary to give effect to the two separate authorisations (concession and road consent) required.

Issue 2.1	Submissions that the road proposal is contrary to the purpose of land held as National Park
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312. Forest and Bird [see submission 272] submitted that the proposal is inconsistent with section 4 of the National Parks Act because *"the proposed activities must demonstrate they would not undermine the maintenance of the intrinsic values of the Park's natural and ecological systems, scenery, natural features and will maintain the Parks native plants and animals"*. The effects of the activity at Te Anau Downs which include the road, it is submitted, would degrade the intrinsic values of the area by changing its use from a small-scale access node to Lake Anau, to a major access node to Milford Sound. Another submission that the proposal was inconsistent with the purpose of land held as National Park, commented that the effects of the developments including roading at Te Anau Downs would not *"preserve in perpetuity scenery ecological systems and natural features of the Fiordland National Park"* [see submission 287 Geoffrey Thomson].

Comment and Recommendations as to the extent to which submissions that the proposal is contrary to purpose for which land concerned is held as National Park be allowed or accepted.

313. The 'purposes for which the land concerned is held' as National Park is set out (primarily) in section 4 of the National Parks Act (NPA) *'Principles to be applied in National Parks'* which states;

"Section 4 Parks to be maintained in natural state, and public to have right of entry

- (1) *It is hereby declared that the provisions of this Act shall have effect for the purpose of preserving in perpetuity as national parks, for their intrinsic worth and for the benefit, use, and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality, ecological systems, or natural features so beautiful, unique, or scientifically important that their preservation is in the national interest.*
- (2) *It is hereby further declared that, having regard to the general purposes specified in subsection (1), national parks shall be so administered and maintained under the provisions of this Act that—*
- a. they shall be preserved as far as possible in their natural state:*
 - b. except where the Authority otherwise determines, the native plants and animals of the parks shall as far as possible be preserved and the introduced plants and animals shall as far as possible be exterminated:*
 - c. sites and objects of archaeological and historical interest shall as far as possible be preserved:*
 - d. their value as soil, water, and forest conservation areas shall be maintained:*
 - e. subject to the provisions of this Act and to the imposition of such conditions and restrictions as may be necessary for the preservation of the native plants and animals or for the welfare in general of the parks, the public shall have freedom of entry and access to the parks, so that they may receive in full measure the*

inspiration, enjoyment, recreation, and other benefits that may be derived from mountains, forests, sounds, seacoasts, lakes, rivers, and other natural features”

314. The Officer’s Report discusses the application in respect of the purpose for which land is held as National park at page 37-38 of that Report and states;

“The activity proposed by RHL seeks to impact on an area of Fiordland National Park. This area is held for the purpose of preserving in perpetuity as national park, for intrinsic worth and benefit/ use/enjoyment of the public, scenery, ecological systems and natural features so beautiful, unique or scientifically important that their preservation is in the natural interest.

The mandatory nature of the wording in section 4 and section 5 (2) of the National Parks Act suggests that it would not be lawful under the National Parks Act to allow an activity to occur which undermines the preservation in perpetuity (implying maintenance in its current state) of scenery, ecological systems and natural features of the land.

However, the provisions of the National Parks Act 1980 (section 49) and part 3B of the Conservation Act 1987 require the Minister to also consider a number of other matters as set out in the Act, including the effects of the proposed activity, and the possible safeguards and mitigation measures proposed. This consideration gives effect to the words in section 4(2) (a) ‘as far as possible’, which recognises there may well be some change which could detract from the natural state.

The Minister must consider the conservation values of the area the National Park status seeks to protect, and to question whether the granting of the Application, with or without conditions, would provide protection of those resources.

The values of the natural and historic resources of the National Park under application (part Fiordland National Park) are discussed in section 3 of this report.

Section 5.2 of this report specifically discusses the effects of the proposed activities on these values and concludes that the effects of the activities and developments proposed by RHL could be reasonably and practicably avoided, remedied or mitigated (including via concession conditions) to the point where those effects would be minor.

It is considered that with appropriate conditions, grant of a concession for a short section of monorail and terminus building on part Fiordland National Park at Te Anau Downs would have acceptable levels of effects, and as such would not be contrary with the purposes for which the land is held as national park”.

Recommendation

315. It is my recommendation that submissions that the submission relating to section 4 of the National Parks Act be allowed as the statutory purpose of section 4 of the National Parks Act is a relevant matter to the Minister’s considerations under section 55(2) of the National Parks Act.

316. My recommendations in respect of submissions regarding the effects of the proposed activity are discussed above as issue 1.1. Submissions received regarding effects focused on effects in the Snowdon Forest Conservation Area. In respect of effects in Fiordland National Park, there were no submissions in respect of effects at Te Anau Downs which I consider to be compelling.
317. It is my view that there is nothing in submissions in respect of effects in Fiordland National Park that would cause me to disagree with the analysis in the Officer's Report, that the effects of the proposal in the area of the National Park under application would be minor. In the context of this application, the amount of road proposed to be constructed in the park (400m) and its location within the park (Te Anau Downs), it is my recommendation that, based upon the effects being minor, submissions that the proposal is contrary to the purposes for which land is held as National Park not be accepted.

<p>Issue 2.2 Submissions that proposed grant of the consent for a road to be made over or through the Parks is not in accordance with National Park Management Plan for Fiordland National Park</p>
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318. Submissions received around the Fiordland National Park Management Plan used the terms 'consistency' and 'accordance' interchangeably. For the purposes of consideration of submissions in respect of activities requiring consent pursuant to section 55(2) of the National Parks Act, I take submissions around 'consistency' to be submissions in respect of 'in accordance with' the park plan. I consider these words to be synonymous.
319. Submissions were received that the decision /proposal is inconsistent with the Fiordland National Park Management Plan, and therefore the decision is contrary to section 55(2) of the National Parks Act which requires (emphasis added);
- 55(2) National Parks Acts 1980 "Roads within park;
(2) Except with the consent of the Minister given in accordance with the management plan for a park, no roads may be made over or through the park'*
320. Submissions were received that the assessment in relation to Implementation 4 of section 5.3.9.6 of the Fiordland National Park Management Plan is incomplete. The plan states:

Section 5.3.9.6 - Te Anau Downs

Implementation 4 states that:

"Should a request be made to further develop this site as a transport node, the following provisions should apply:

- a) Such an activity should only be for the purpose of reducing the perception of congestion and overcrowding at Milford Sound/Piopirotahi and along the Milford road (Refer to sections 5.3.9.1 Milford Sound/Piopirotahi and 5.3.9.2 Milford Road);*

- b) *The applicant should have to demonstrate that this option has been assessed in terms of a wider transportation analysis for options to Milford Sound/Piopirotahi as referred to in section 5.3.9.2 Milford Road;*
- c) *That this option is the preferable option in terms of point b) above”;*
- ...”

321. Submissions on this matter note that *“the RHL application does not address these issues and that the Minister has therefore based a decision upon an incomplete assessment”* [see submission 168 David Lang] and that there is no *“demonstrated need”* for this particular development project [see submission 289 Venture Southland].

322. Related also to the requirement for *“demonstrated need”* for the developments, submitters note section 5.7 (specifically objective 2 and implementation 1 which refer to roads) of the Fiordland National Park Management Plan which states:

Section 5.7- Roading, Vehicle Use and Other Transport Options (Other Than Aircraft and Boating)

Objective 2:

“To consider provision of new roading, or other land transport links, in front country visitor settings only (see Map 7), and then only if they will improve visitor access and enjoyment of Fiordland National Park without impacting significantly on other recreation opportunities and national park values”

Implementation 1:

“New roading should not be authorised anywhere in Fiordland National Park except in the front country visitor setting because of the likely adverse affects on the natural values or recreation opportunities that the other visitor settings are being managed for. Any proposal will require a full assessment of the adverse effects on the natural, historical and cultural, recreational, landscape and amenity values also identifying how the proposal will improve the effective management of Fiordland National Park. An audit of this assessment to determine whether the effects are either acceptable or can be adequately mitigated should be required. Consideration of such proposals should include full public consultation. Refer also to Policies 10.3(h) and (i) of the General Policy for National Parks 2005.”

323. Submissions were received that the road proposal has not adequately demonstrated how *“it will improve visitor access and enjoyment of Fiordland National Park”* (objective 2), how *“it will improve management of Fiordland National park”* (implementation 1)

Comment and Recommendations as to the extent to which submissions that the proposal is not in accordance with sections, 5.3.9.6 and 5.7 of the Fiordland Park Management Plan be allowed or accepted.

324. It is my recommendation that submissions related to the provisions of the Fiordland National Park Management Plan be allowed, as accordance with the Park Management Plan is relevant to the Minister’s considerations pursuant to section 55(2) of the National Parks Act.

325. I remind you that the activity under application for Road Consent in Fiordland National Park is 200m of access road at Te Anau Downs.

326. **Section 5.3.9.6 of the Fiordland National Park Management Plan**

Section 5.3.9.6 of the Park Plan uses the word ‘should’ – that is (emphasis added) *“Should a request be made to further develop this site as a transport node, the following provisions should apply:*

- a) *Such an activity should only be for the purpose of reducing the perception of congestion and overcrowding at Milford Sound/Piopiotaahi and along the Milford road (Refer to sections 5.3.9.1 Milford Sound/Piopiotaahi and 5.3.9.2 Milford Road);*
- b) *The applicant should have to demonstrate that this option has been assessed in terms of a wider transportation analysis for options to Milford Sound/Piopiotaahi as referred to in section 5.3.9.2 Milford Road;*
- c) *That this option is the preferable option in terms of point b) above”;*

I draw your attention to the conventions around usage of the the words ‘will’, ‘should’ and ‘may’ in planning documents (from Policy 1 “Interpretation of Policies” General Policy for National parks 2005);

1(d) The words ‘will’, ‘should’ and ‘may’ have the following meanings:

- i) *policies where legislation provides no discretion for decision-making or a deliberate decision has been made by the Authority to direct decision-makers, state that a particular action or actions ‘will’ be undertaken;*
- ii) *policies that carry with them a strong expectation of outcome, without diminishing the constitutional role of the Minister and other decision-makers, state that a particular action or actions ‘should’ be undertaken;*
- iii) *policies intended to allow flexibility in decision-making, state that a particular action or actions ‘may’ be undertaken.*

As decision maker, you have discretion as to whether the proposal ‘should’ only be for the purpose of reducing perceptions of crowding at Milford Sound/along the Milford Road, and whether the applicant ‘should’ be required to demonstrate that their proposal has been assessed in terms of a wider transportation analysis.

327. In exercising your discretion around this matter, I suggest to you the following:
(i) the scale of the road proposed in the National Park is relevant. The provisions of the Fiordland National Park Management Plan relate to 200m of access road from State Highway 96. In respect of eth concession consideration (see section 1.4(b) of this report above) the provisions of the park plan apply also to 350 – 400m of monorail track and the terminus facility located at Te Anau Downs;

(ii) The Officers Report (section 5.1.2 'Planning Instruments' page 53 notes; *"The plan requires an assessment of any developments at the site in the context of wider analysis of transportation options into Milford Sound. (Implementation point 4). This 'requirement' of the plan is arguably beyond the scope of the plan (and considerations to be made by the Minister of Conservation) as any such transport analysis would consider activities/effects which would not occur on public conservation land administered by the Department (for example bus activity on the Milford Road)"*

328. Submissions on section 5.3.9.6 (Te Anau Downs) of the Fiordland National Park Management Plan put forward the view that as the developments (in general, but including the road) proposed by RHL at Te Anau Downs have not identified or been assessed as solving the 'problem' of perception of congestion and overcrowding at Milford Sound, despite the plan saying that any developments at Te Anau Downs should only be for this purpose, it does not comply with the FNPMP in this respect. It is my recommendation that these submissions be accepted. It is within the scope of a management plan to seek to curtail activities unless particular criteria are met, or to prescribe the manner in which something may be done by reference to criteria. However, as I have summarised and discussed in Part One of this report as issue 1.1(e) 'Effects at Milford Sound' starting paragraph 152, whether or not the proposal would reduce the perception of congestion and crowding at Milford Sound/ Piopiotahi is uncertain, and speculative. I note that RHL suggest that their proposal is not intended primarily as an alternative access to Milford Sound, it is proposed as an experience within the Snowdon Forest terminating at Te Anau Downs (this is a change in emphasis in regards to purpose of the monorail by the applicant from when the proposal was initially mooted). Whether or not visitor arrivals at Milford Sound would be spread as a result of the small amount of road to provide access to a short section of monorail proposed by RHL in Fiordland National Park (given this monorail is primarily an experience in the Snowdon Forest Conservation Area) would be dependent on a number of factors not directly under the control of RHL. These factors are not subject of the application in the National Park, and include whether or not buses would provide access from the Downs to Milford Sound, and the willingness or ability of existing boat operators to provide services at different times (thus justifying a change in timing of any arrivals to Milford). This was the view in the Officer's Report, and as I have noted above in paragraph 157, and this view is reinforced by submissions.

329. On this basis, it is my recommendation that submission that the road proposal is not in accordance with section 5.3.9.6 of the Fiordland National Park Management Plan, because it does not demonstrate it reduces crowding at Milford Sound/along the Milford Road, and the road proposal has not been assessed in terms of a wider transportation analysis to Milford Sound, be given very little weight.

330. **Section 5.7 of the Fiordland National Park Management Plan**
On the basis that the effects of the proposed road developments at Te Anau Downs would not be adverse (subject to mitigation via proposed concession conditions including those amended by this report), and noting that there are no submissions on effects of the road at Te Anau Downs which would suggest to me that you would need to reconsider the analysis

in the Officer's Report in this particular respect, it is my recommendation that the proposal is in accordance with the provisions of section 5.7 (implementation 1 and 2) of the Fiordland National Park Management Plan requiring that any effects of the proposal be adequately mitigated. Thus it is my recommendation to you that submissions that the proposed activities at Te Anau Downs are not in accordance with the Fiordland National Park Management Plan because (it is submitted) these effects would be adverse, not be accepted.

331. In respect of submissions that section 5.7 'requires' that the proposal (road) need demonstrate how it '*will improve visitor access and enjoyment*' of Fiordland National Park (objective 2) it is my recommendation that submissions on this matter be accepted to the extent that it is within the scope of a management plan to curtail activities unless particular criteria are met. Whether or not the 200m of road '*will improve visitor access and enjoyment*' of the park is speculative, for the same reasons as I have noted above. I have agreed with the view in the Officer's Report that the effects of the proposed developments at Te Anau Downs would not be adverse on other users of the park (on the basis that there have been no submissions on this matter which would cause me to reconsider this analysis). It is open for you, the decision maker, to consider that despite this particular road not demonstrating it will achieve the improvements referred to in section 5.7 of the plan, having regard to the scale and location of this road, this does not result in this specific case in the proposal not being in accordance with the Fiordland National Park Management Plan. The 200m or road in the park proposed by RHL would not diminish visitor enjoyment of Fiordland National Park. On this basis I recommend submissions that the application to build 200m of road at Te Anau Downs is not in accordance with section 5.7 of the Fiordland National Park Management Plan be given very little weight.

332. Implementation (1) of section 5.7 states that roading proposals will identify how the proposal "*will improve the effective management of Fiordland National Park*". I consider "effective management of Fiordland National park", in this case, refers to improvement of visitor access and enjoyment of Fiordland National Park as set out in objective 2 of this section of the plan. I have noted previously that the degree to which the proposal would influence visitor experience of Milford Sound is speculative, that the provision only applies to activities under application in Fiordland National Park comprising 200m of road and that section 5.7 of the plan is intended to to '*give direction to the management of proposals wholly or in significant part within Fiordland National Park*' (as this plan was written at a time when there were various proposals for roads monorails or cableways through the Greenstone or Caples valleys and up Mt Luxmore, which were wholly or substantively in the National Park). On this basis, it is my recommendation that submissions that the road and monorail must identify how they "*will improve the effective management of Fiordland National Park*" in order to be in accordance with the Fiordland National Park Management Plan, be given very little weight.

CONCLUSIONS AND RECOMMENDATIONS APPLICATION FOR ROAD CONSENT PURSUANT TO SECTION 55(2) OF THE NATIONAL PARKS ACT

333. The purpose of this report is to summarise the objections and comments received recommend to you:
- i. The extent to which submissions should be allowed;
 - ii. The extent to which submissions should be accepted;
 - iii. How suggestions from those submissions could be incorporated (for example amendments to conditions);
 - iv. Any effect submissions may have on the original 'Decision in Principle' to grant the concession.
334. The subject of Part 2 of this report is the consent for a road to be made on or through a National Park pursuant to section 55(2) of the National Parks Act 1980.
335. I have made recommendations to you in respect of the extent to which submissions should be allowed and accepted, which I summarise in the table below;

		<i>Recommendation</i>	
		<i>Allow</i>	<i>Not Accept</i>
Issue 2.1	<i>Purpose of land held as National Park</i> Submissions that the proposal is 'contrary to' the purpose of land held as National Park [submissions related to section 4 of the National Parks Act]		
Issue 2.2	<i>Accordance Fiordland National Park Management Plan</i> Submissions that the road proposal is not in accordance with the Fiordland National Park Management Plan [submissions related to section 55(2) of the National Parks Act 1980]		

336. I have made recommendations to you as to how various concession (consent) conditions could be amended, should the concession be granted, at various points throughout this report.

Overall Recommendation pursuant to section 55(2) of the National Parks Act 1980

On balance, it is my recommendation that, pursuant to section 55(2) of the National Parks Act 1980, you **grant** the application to construct 200m of roading at Te Anau Downs in Fiordland National Park by Riverstone Holdings Limited, that your **approval be subject to** resolution and agreement of concession conditions and requirements including concession fees, compensation and bond arrangements, to your satisfaction;

Graeme Ayres

Date

APPENDICES

Appendix A Officers Report 1 December 2011 (including appendices)

Appendix B Hearing Notes 2 April – 17 April 2012

Appendix C Riverstone Holdings Right of Reply 25 May 2012

Appendix D Submissions

D(i) List of Submissions Received

D(ii) "Submission by Submission" Summary

D(iii) Copies of all Submissions

Appendix E Map of Areas under Application

Appendix F Applicant's Comments

Appendix G Concession Maps

Appendix H Planning Advice