

**IN THE MATTER** of the Conservation Act 1987 and the National Parks Act  
1980

**AND**

**IN THE MATTER** of an application by Riverstone Holdings Limited to  
construct, operate, and maintain a monorail and  
associated facilities

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**WRITTEN REPLY ON BEHALF OF RIVERSTONE HOLDINGS LIMITED**

**Date: 18 May 2012**

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**PART ONE: INTRODUCTION AND EXECUTIVE SUMMARY**

**PAUL BEVERLEY, BUDDLE FINDLAY**

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## **1. INTRODUCTION AND EXECUTIVE SUMMARY**

### **INTRODUCTION**

- 1.1 Riverstone Holdings Limited ("Riverstone") has lodged an application for a concession in relation to the monorail component of the FiordlandLink Experience.
- 1.2 That application has been processed by the Department of Conservation ("Department") and was the subject of a Department report dated 1 December 2011.
- 1.3 The Minister of Conservation has indicated an "intention to grant" and has publicly notified this intention.
- 1.4 Submissions were made on the application and the public hearing held on 2, 3, 16 and 17 April 2012.
- 1.5 Riverstone is exercising a right of reply in two parts:
  - (a) an oral reply on 17 April 2012 in Invercargill; and
  - (b) this written reply.
- 1.6 Riverstone understands that this is a right of reply and that any material must be limited to replying to matters raised in submissions. However, the matters raised in submissions were very broad, and hence there is considerable scope for reply. Given the nature of the submissions, it is important that Riverstone provides some context to the application.
- 1.7 At the outset Riverstone wishes to acknowledge the time and effort submitters have gone to in making submissions. This is a detailed application and Riverstone acknowledges not only the time taken to digest that information, but also the value that submitters have added to this process. Riverstone has sought to respond to the submissions in a respectful and positive manner.

### **EXECUTIVE SUMMARY**

- 1.8 Riverstone's vision is to create a world class experience with the FiordlandLink Experience, which will allow a broad range of people to access and appreciate this area of public conservation land.
- 1.9 This application was first lodged in August 2006. Since that time Riverstone has, following discussions with the Department and its experts, undertaken significant further work to refine the proposal and provide further analysis and information. The application has been amended on a number of occasions to deal with issues that have arisen through the audit and consultation processes.
- 1.10 Riverstone has been advised by leading experts including in the fields of:
  - (a) civil engineering;

- (b) recreation;
- (c) landscape architecture;
- (d) terrestrial ecology;
- (e) freshwater ecology, hydrology and geomorphology;
- (f) noise;
- (g) sustainable building;
- (h) cultural values;
- (i) traffic;
- (j) tourism; and
- (k) planning.

1.11 These experts have undertaken significant analysis which has included time on site. As an example, in total the ecological team has spent 38 days on site.

1.12 Expert reports were attached to the application and updated reports, information and management plans have been provided subsequently by Riverstone. This is likely to be the most extensive and carefully prepared application for a concession that has been processed by the Department to date.

1.13 The Minister has notified an intention to grant this application. That decision was based on the Department report in December 2011. That report was based on a detailed and sound understanding of the legal and planning framework, and a careful analysis of the application including the expert reports and the nature and level of effects.

1.14 Consequently, the proper approach is for the hearing panel to consider whether:

- (a) any material matters have been raised in the submissions;
- (b) any such matters are supported by appropriate evidence;
- (c) any such matters have nevertheless been adequately addressed by Riverstone;  
and
- (d) any such matters are of such significance to justify the Minister departing from the notified "intention to grant" this concession.

1.15 Riverstone's submission is that:

- (a) there are no such matters in the submissions that justify that change in approach;

- (b) there was no evidence provided to the hearing panel that would support a change in approach, in particular on technical expert matters;
  - (c) this should be contrasted with the extensive input from technical experts on behalf of both Riverstone and the Department; and
  - (d) the position in the Department report that this application should be granted remains valid and has not in any way been discredited through the submissions.
- 1.16 Riverstone agrees with the submissions that the recommendation to the decision-maker needs to be made in a lawful manner in accordance with the statutory frameworks. What is required is a careful and accurate analysis of the legal and planning frameworks and how those frameworks apply in the context of this application. Many of the submissions did not describe the statutory or planning frameworks in an accurate manner.
- 1.17 A number of the submissions also suggested that the granting of this concession would be "unlawful" and that this type of activity simply cannot be undertaken in a conservation area or is inherently inconsistent with conservation legislation. That is not the position under the conservation legislation.
- 1.18 The potential effects of the proposal have been carefully assessed by the relevant experts for Riverstone and the Department. While there were a number of comments in relation to effects made in the submissions, these matters have been addressed in the application, by Riverstone's experts and in the Department report. For example, in relation to access, there will be access provided across the easement area to the Snowden Forest and for four wheel drive vehicles to Army Hut.
- 1.19 The conclusion in the Department report that the effects of this proposal will be avoided, remedied or mitigated to the point that they are minor remains valid. With respect, there was no expert or other analysis provided through submissions that could form the basis for a change in the conclusions reached in the application or the Department report.
- 1.20 Riverstone acknowledges that there is further work to do and further information that will be provided in the subsequent stages. That is always the case with large infrastructure projects, where the Courts accept that information will be provided in stages through the application and construction processes. The adaptive management approach proposed by Riverstone and accepted in the Department report is well-known to be best practice in large infrastructure projects. The Minister can have confidence in the assessment of and ability to manage the effects of this proposal, including because:
- (a) there has been significant work and expert assessment undertaken to date;
  - (b) there is a stringent and detailed set of concession conditions proposed, including a number of management plans to address specific processes and effects (for

example construction, vegetation and habitat, and recreation and user management plans);

- (c) these conditions and plans provide a very sound and well-accepted basis for managing the scale and nature of effects going forward (including for example the route selection approach involving both the Department and Riverstone's experts);
- (d) the Department has significant control over the process going forward to ensure that effects can be managed, including that the approval of the Department is required before construction can commence; and
- (e) this approach is supported by the relevant experts and in the Department report.

1.21 Riverstone submits that this application should be viewed in the broader context, including as follows:

- (a) while acknowledging the values of this area, the application area is stewardship area under the Conservation Act, and the application has been designed to avoid other higher status conservation protected areas such as national park (for the most part), nature reserve, scientific reserve and ecological area. That is not to say that the Snowden Forest is not an important area, but rather that Riverstone has successfully designed the application to avoid areas of higher conservation status;
- (b) while there will be effects from, for example, some forest removal, this should be seen in the context of the very large areas of public conservation land in Southland including in Fiordland National Park;
- (c) from an ecological perspective, there will be significant gains from the pest control, and pests are a far greater long term risk to the ecological values of this area; and
- (d) the design of the route through consultation and through an iterative process has resulted in a significant amount of mitigation since the application was first conceived. For example, avoidance of national park status land, avoidance of key wetland areas, and more recently the avoidance of the Kiwi Burn swing bridge area.

1.22 The Conservation Act defines "*conservation*" to include "*providing for ... appreciation and recreational enjoyment by the public*" of natural and historic resources. The Act also refers to promoting the benefits of conservation and allowing natural and historic resources to be used for tourism. Part 3B expressly provides for an application of this nature to be made, and in appropriate circumstances, granted. Riverstone's position is that this application is consistent with the Conservation Act. It is important to emphasise that the Conservation Act is not a "*no use*", "*no effects*" or "*no change*" statute.

- 1.23 A number of submitters referred to the conservation planning documents. This application is not inconsistent with the relevant Conservation Management Strategy or National Park Management Plan. In both documents an application for a monorail is expressly referred to or contemplated.
- 1.24 In terms of other issues raised:
- (a) the granting of this application has no precedent effect in law or practically in relation to other public conservation land;
  - (b) the World Heritage status does not prevent the granting of this concession; and
  - (c) the Ngāi Tahu Deed of Covenant is not a relevant consideration for the decision-maker.
- 1.25 This proposal provides an opportunity for a broad range of national and international visitors to access and experience this area of public conservation land in Southland. This is consistent with the strategy adopted by the Department of seeking to build a broader base of support for conservation. The proposal significantly enhances the ability of people to appreciate these conservation resources. It also provides for a commercial partnership between the private sector and the Department of Conservation and enhances the ability for New Zealand to care for its conservation resources. In the context of a shrinking government budget for conservation, this is exactly the type of partnership that conservation needs.
- 1.26 If a project of this nature is not able to occur in this area, and subject to the stringent conditions imposed, then it is difficult to envisage where on public conservation land it could occur.
- 1.27 In overall terms, Riverstone submits that, as concluded in the Department report and the Minister's notification of the intention to grant, this application can and should be granted under Part 3B of the Conservation Act (and section 49 of the National Parks Act).



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**PART TWO: RIVERSTONE HOLDINGS LTD**  
**JOHN BEATTIE, RIVERSTONE HOLDINGS LIMITED**

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## **2. INTRODUCTION**

- 2.1 This section of the reply on behalf of the Applicant Riverstone Holdings Ltd ("Riverstone") has been prepared by John Beattie, a Director of Riverstone and the executive within the Infinity Investment Group with primary management responsibility for the project.
- 2.2 Mr Beattie has read all 316 submissions made and he has sat through the whole of the public hearing process over the four days allotted in both Te Anau and Invercargill.
- 2.3 Mr Beattie presented on behalf of the Applicant on 17 April 2012 when it partly exercised its right of reply following the conclusion of public submissions.
- 2.4 Mr Beattie's section of the written reply is intended to:
- (a) clarify the position of the Applicant on issues raised in public submissions where the Applicant's approach or purpose has been questioned. It is acknowledged that some of those matters raised in submissions fall outside the Panel's consideration under section 17U of the Conservation Act;
  - (b) provide more detail and greater specificity to his submissions made on 17 April which were not able to be fully tendered at that time;
  - (c) supply factual responses to matters raised including updating data or statistics that have been released since both the application was lodged and the Department report was completed; and
  - (d) where appropriate identify submitters on a particular issue that appeared or spoke by telephone in support of their written submission. Elsewhere in this reply the Applicant has provided a summary analysis of all submitters and the topics raised within their submissions (refer Appendix One).
- 2.5 Mr Beattie has visited the location of the proposed monorail route and its proposed terminals on numerous occasions over the past eight years. In addition to his personal knowledge of the route, Mr Beattie is also familiar with the proposed route for the mountain bike track from the boundary of Te Anau Downs Station to Fiordland National Park Lodge.
- 2.6 Since 2004 Mr Beattie has personally participated in all consultations at public meetings, with neighbours, District and Regional Councils, Conservation Boards, the Department and all other stakeholders.

### **RIVERSTONE HOLDINGS LTD - CAPABILITY**

- 2.7 One matter raised in a number of submissions was the feasibility of this project being undertaken and completed. It is therefore important for Riverstone to respond by describing the background, approach and key directors in the company.

- 2.8 Riverstone is substantially owned by Infinity Investment Group. The other shareholder is Philip Phillips, the former CEO of the Mount Cook Airlines Group and a former Chairman of Queenstown Airport Corporation. While Philip Phillips was the founder of Riverstone, it is Infinity Investment Group that has actively managed the concession application process since 2003.
- 2.9 The Directors of Riverstone are Bob Robertson (Chair), Philip Phillips and John Beattie.
- 2.10 Bob Robertson is the founder and Managing Director of the Infinity Investment Group which currently manages a portfolio of property valued at in excess of \$1billion. Bob has over 25 years of experience in international trading, marketing and commercial property. His experience includes four years as Chief Executive Officer and a Director of TV Media Holdings Limited, an international media company operating in Asia, the United Kingdom, the United States, Russia and South Africa.
- 2.11 For the past 12 years, Bob has initiated and delivered the wide range of Infinity Investment Group's property transactions, and has specialised in all aspects of the firm's commercial property investment, development and management throughout New Zealand. Bob's experience has included the development of residential community projects, resorts, estates, apartments, commercial and retail premises and fully master-planned community developments. Bob's experience also extends to the management and development of deer farms and safari parks in New Zealand.
- 2.12 Bob won the Ernst & Young Master Entrepreneur Award 2007.
- 2.13 John Beattie has been an Executive Director of Infinity Investment Group since 2004. John has specialised in development and infrastructure projects. John has over 35 years commercial experience, including being a founding partner in national law firm Kensington Swan and a General Manager of Brierley Investments Limited. He is also a former Chairman of the Hanmer Institute Limited, founder Chairman of Genesis Research & Development Limited, a listed biotech company, a former director of Union Shipping Group Limited and a member of the Cornell University Council. John is currently a Trustee of the Malaghan Institute of Medical Research; an advisor to the World Wide Fund for Nature; and Chairman of both the NZ Diabetes Foundation and the NZ Sports Hall of Fame. John holds a law degree and is a Fulbright Scholar and Prince Phillip Scholar and is a director of a number of Infinity Group companies including Pegasus Town Limited.
- 2.14 In addition to the above, the Infinity Investment Group Directors have a recognised profile on community, environmental and conservation matters.
- 2.15 The Waitaki Protection Trust was formed by Bob Robertson to address water, flora and fauna conservation issues associated with the North Bank Hydro Scheme proposed by Meridian Energy Ltd. John Beattie became a Trustee and together Messrs Robertson and Beattie negotiated in April 2009 various protective measures

that included the creation of 80 hectares of riparian wetlands and a monitoring regime that ensures the flow characteristics of the Waitaki River are optimised for all stakeholders with habitat and conservation interests. In addition, no new hydro power development would be permitted and no on-sale of water is permitted.

- 2.16 In 2005 the Queenstown Lakes District Council awarded to Infinity Investment Group the "Heart of the District Award" for outstanding achievements in the District.
- 2.17 In 2007 Bob Robertson's farming activities in the Hakataramea Valley received the National Fish & Game Environment Award for Excellence in Riparian Management.
- 2.18 Infinity Investment Group has been a sponsor of the restoration activities on Coal Island in Preservation Inlet.
- 2.19 At Pegasus Town in North Canterbury Infinity Investment Group has restored 100 hectares of wetlands. This involved the elimination of a massive amount of willow infestation, re-introduction of water movement to land previously drained for farming purposes and the planting of very substantial areas in native wetland plants and grasses, podocarp seedlings and coastal native shrubs.
- 2.20 In addition, at Pegasus Infinity Investment Group has funded the largest ever private sector archaeology project in New Zealand carried out under the authority of the NZ Historic Places Trust. The Group has been commended for its commitment in NZHPT's Heritage publication. Similarly, the Group's environmental and cultural focus has also been recognised by Te Runanga o Ngai Tahu (TRONT) who have acknowledged the commitment and outcomes. Mark Solomon, the Kaiwhakahaere of TRONT has described Infinity Investment Group as the most culturally appropriate developer that his runanga has had occasion to deal with.
- 2.21 John Beattie has had over 20 years' experience as a National Trustee of the World Wide Fund for Nature in New Zealand. He remains a member of its Finance and Fundraising Committee. Additionally, Mr Beattie represented WWF NZ at a number of international conferences.
- 2.22 John Beattie is also the Founding Chairman of Sustainable Wanaka, an organisation committed to improving the long-term decision making carried out by the Upper Clutha community on environmental, social, economic and conservation matters.
- 2.23 Infinity Investment Group's current projects include two projects in Christchurch at Pegasus Town and Ravenswood, multiple land development projects in Wanaka and existing investments in tourism accommodation in Fiordland and tourism accommodation development land in Wanaka.
- 2.24 Across our projects Infinity Investment Group has a reputation for high quality land development with well-engineered solutions. Infinity Investment Group's commitment to best practice by engaging top advisors and consultants in any given discipline was never better demonstrated than with the experience of Pegasus following the swarm of

earthquakes in the Canterbury region since September 2010. The assets of the town both publicly and privately owned remain unaffected by any of the seismic activity experienced.

#### *Requiring Authority Status*

- 2.25 Riverstone has requiring authority status pursuant to s167 of the Resource Management Act.
- 2.26 As a network utility operator under the RMA, in 2008 Riverstone was granted approval as a requiring authority by the Minister for the Environment. By virtue of this approval Riverstone has the same power (in terms of notices of requirement under the RMA) as a Minister of the Crown or a territorial local authority.
- 2.27 A network utility operator cannot achieve approval as a requiring authority unless the Minister for the Environment is satisfied "the applicant is likely to carry out all the responsibilities (including financial responsibilities) of a requiring authority under this Act and will give proper regard to the interest of those affected and to the interests of the environment" (section 167(4)(b) of the RMA).
- 2.28 After a comprehensive assessment by the Minister for the Environment and in particular, of the financial capability of Riverstone and its principal shareholder, the application was granted.
- 2.29 In both the content of the written submissions and in the hearing itself when parties (both in support and against the application) made reference to the capability of the Applicant at no time was any question of competency or capability raised other than in a positive manner. Indeed, in a number of submissions opposed to the application the submitters acknowledged the ability and reputation of Infinity Investment Group to complete projects to the highest standards with recognised and well-engineered solutions.

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**PART THREE: THE FIORDLANDLINK EXPERIENCE**  
**JOHN BEATTIE, RIVERSTONE HOLDINGS LIMITED**

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### **3. THE FIORDLANDLINK EXPERIENCE<sup>1</sup>**

#### **JOURNEY DESCRIPTION**

- 3.1 From a terminus in Queenstown Bay travellers will embark on a 20km catamaran trip across Lake Wakatipu to Mt Nicholas Station. Alternatively, travellers will be able to take a more leisurely trip by the TSS Earnslaw to Walter Peak Station.
- 3.2 The next stage by All-Terrain Vehicle is 45km in length and will take travellers to a terminus on the Mavora Lakes Road adjacent to where the Kiwi Burn stream meets the Mararoa River.
- 3.3 Travellers will then embark on a 41km monorail journey (of which 29km is within public conservation land) from the terminus at the Kiwi Burn to a terminus at Te Anau Downs on the shore of Lake Te Anau and some 30kms north of Te Anau township.
- 3.4 From the terminus at Te Anau Downs travellers can proceed to Milford Sound by coach (a further 90kms) or explore other parts of the Fiordland region by coach, by boat or by rental car.
- 3.5 The distance by the different modes of transport (catamaran 20km + ATV 45km + monorail 41km) is 106km. This compares with 200km by coach to Te Anau Downs from Queenstown. Crossover times between the different modes of transport are seen by some submitters as problematical. Riverstone's advice is that good design solves any such issue. Luggage will travel separately in dedicated facilities on the same monorail and will not be capable of being accessed until journey's end.<sup>2</sup>

#### **EXPERIENCE OF A LIFETIME<sup>3</sup>**

- 3.6 Riverstone's vision with the FiordlandLink Experience is to create an experience of a lifetime.
- 3.7 The experience in either direction is about the quality of the journey and not about the reduction in the time taken.<sup>4</sup> The magnificent lakes, the back-country scenery, braided rivers, significant mountain ranges, beech forest and tussock country traversed typically at farm fence height and at a suitable speed will combine to make the journey Riverstone believes into one of the top 10 global day trips. In addition, with the 90km coach trip through the Eglinton Valley to Milford Sound, the experience is even further enhanced before arriving at Milford Sound. Submitter 53 who was involved in the establishment of the World Heritage Area acknowledged it would be "an exciting trip".
- 3.8 The journey is focussed on growing visitor traffic to Fiordland generally but relies on the Milford Sound visitor flow to financially underpin the investment involved. The 580km round trip by road to get to and from Milford Sound is tired and Riverstone

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<sup>1</sup> In response to submission 228 and others.

<sup>2</sup> See also submission 89.

<sup>3</sup> In response to submissions 117, 141 and 306.

<sup>4</sup> See submission 91.

aspires to create a world class experience, assist in attracting visitors to New Zealand, and continue to grow tourism in Fiordland and restore the Milford Sound experience overall.

## **GROW FIORDLAND<sup>5</sup>**

- 3.9 Visitor numbers have fallen at Milford Sound every year since 2006 and are now down 20% from the peak. From 476,152 in 2006 the 2012 figure was 378,702.<sup>6</sup>
- 3.10 However, visitors to Fiordland have grown in the same period from 1,045,000 in 2005 (actual) to a projected 1,156,000 in 2012.<sup>7</sup> This is a 10.5% increase and compares with a 5% increase in visitor numbers to Queenstown over the same period. What is also noteworthy is that there has been growth in both domestic and international visitors to Fiordland.
- 3.11 In 2006 the Department of Conservation published a report on the total economic impact of Fiordland National Park on the combined Southland and Queenstown Lakes Regions in the 2005 year.<sup>8</sup>
- 3.12 A summary of the findings is set out below:
- (a) output - \$196m;
  - (b) employment – 1580 FTE's;
  - (c) value added income - \$78m;
  - (d) household income - \$55m.
- 3.13 The authors of the report concluded that output was equivalent to 1.6% of total regional value added income and that the employment created was equivalent to 2.7% of total regional employment numbers. Using the same methodologies Riverstone has carried out a 2012 estimate based on 100,000 less visitors to Milford Sound. The Riverstone 2012 estimate is set out below:
- (a) output - \$155m;
  - (b) employment 1250 FTE's;
  - (c) value-added Income - \$62m;
  - (d) Household Income - \$40m.
- 3.14 The circa 20% reduction in visitor numbers to Milford Sound has a corresponding significant impact on regional employment numbers and on the multiplier effect on regional value added income and household incomes.

<sup>5</sup> In response to submissions 275 and 147 and others on dropping tourism numbers.

<sup>6</sup> Source: Milford Sound Development Authority.

<sup>7</sup> Ministry of Economic Development – Regional Tourism Activity Forecasts 2010 to 2016.

<sup>8</sup> Regional Economic Impacts of Fiordland National Park. DOC October 2006.



3.15 It is in everybody's interest that growth be restored to Milford Sound visitor numbers and accordingly to the revenues of the concessionaire sector in Fiordland National Park and the revenues and employment numbers of the wider Fiordland region.

### **LOW IMPACT VISITOR GROWTH<sup>9</sup>**

3.16 The monorail represents a form of transport that will deliver an experience that is up close, low impact, low carbon and genuinely delivers on the promise of Pure New Zealand.

3.17 Monorail track construction is far less invasive than constructing a road or ordinary rail.

3.18 Pre-cast piers every 20 metres and beams laid progressively from existing track allow for a narrow 6m wide corridor to be proposed and a clearance approach that involves minimal disturbance.

3.19 The construction and operations phases of the monorail are indifferent to growth in passenger volumes. Construction design does not alter and operations do not vary as the visitor impact is the same for 50,000 travellers as it is for 500,000 travellers.

3.20 Thus effective controls on handling growing visitor volumes mean no attendant growth in impact on the DOC estate.

### **WHY A MONORAIL?<sup>10</sup>**

3.21 Monorails have an excellent global safety record. Inherently the design of monorail track and rolling stock together with appropriate operating speeds has made for a robust safety record for more than 50 years. Wind throw issues are dealt with in the concession application but that information was not referred to by the submitters that commented on this issue. Submissions were otherwise generally silent on safety matters.

3.22 Riverstone believes that given the journey will be the longest monorail journey in the world, and given the locality of operation, the monorail will be a significant attraction in its own right

3.23 The monorail will be whisper quiet, non-polluting and will use high performance electric motors with a host of energy savings systems employed (including the ability to put energy generated on downhill sections back into the grid).

3.24 The energy required will be clean and renewable. The closest source of energy generation will be the White Hill wind farm at Mossburn operated by Meridian Energy.

3.25 By comparison, with roads or other forms of rail there will be low operating costs and an almost zero carbon footprint due to virtually no emissions being detectable from the electric drives.

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<sup>9</sup> In response to submission 198 and others.

<sup>10</sup> In response to submission 134 and others.

## **ENVIRONMENTAL BENEFITS<sup>11</sup>**

- 3.26 In addition to the de-carbonising benefits of a monorail when compared to buses on tarmac and as outlined above there will be a significant alleviation of visitor pressure on Milford Sound.
- 3.27 By growing the daily operating window at Milford Sound and reducing middle of the day visitor peaks Riverstone can deliver an improved experience for many.
- 3.28 This will afford the Department the opportunity, should the concession be granted, of reviewing all transport arrangements inside the Fiordland National Park including, if desirable, park and ride measures operating from Te Anau Downs.<sup>12</sup>
- 3.29 However, the greatest benefit of all is the desire and ability for Riverstone to spread visitors travelling on the monorail over more of Fiordland and thereby providing DOC with the ability to better manage the impact of a growing visitor stream to Milford Sound again.

## **TE ANAU AND FIORDLAND WILL BENEFIT<sup>13</sup>**

- 3.30 The Infinity Investment Group has a strong reputation for its sales and marketing acumen. As the main shareholder in Riverstone it brings that same commitment to Riverstone.
- 3.31 Currently specific offshore marketing of the Fiordland region in historical and emerging visitor markets is negligible. Destination Fiordland's marketing budget is approximately \$150,000 per annum and Riverstone's analysis indicates a very considerable portion is survey costs and administrative and salaried costs.
- 3.32 Riverstone proposes to spend \$3million per annum on actual marketing of the region to travellers in those traditional and emerging overseas markets who are weighing up the various destination alternatives they have. Riverstone's investigations indicate that the Fiordland region has never had a dedicated marketing budget of anything like this size applied to it.
- 3.33 In promoting the region, Riverstone recognises it must also promote New Zealand and the Queenstown Lakes and Southern Lakes regions as part of its overall strategy, however, there will be a heavy reliance on identifying the various locations and activities, particularly in the Fiordland region, that are capable of attracting more visitors.
- 3.34 Te Anau is proposed as the operations base of Riverstone. It is expected that Riverstone's peak season employment will be around 100 employees with more than half being full time employees.

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<sup>11</sup> In response to submission 228 and others.

<sup>12</sup> See submission 46 on the park and ride comment.

<sup>13</sup> In response to submission 147 and others.

3.35 Riverstone's business plan demonstrates that it will become the biggest Fiordland concessionaire to DOC and that it has the potential to create new concessionaires associated with the monorail who can generate an equivalent level of concession revenues to DOC.

### **MOUNTAIN BIKE TRAIL IS A BONUS<sup>14</sup>**

3.36 The mountain bike trail arose out of Riverstone's desire to reconcile on the one hand, the advice DOC's engineering auditors had earlier submitted concerning the technical challenges Riverstone would face by constructing from a sole track and on the other, the advice of Riverstone's new advisors that if Riverstone continued to propose to do so it would be vulnerable to delays and bottlenecks with no ability to construct around and away from those pressures.

3.37 The ability to construct on multiple fronts and thereby redeploy work teams, plant and equipment that would otherwise be stalled or limited from operating efficiently is fundamental as to how Riverstone intends to construct the monorail.

3.38 As a result, the concept of a separate construction service track was introduced together with a design to create spur tracks linking the monorail track to the construction service track.<sup>15</sup>

3.39 The procedure for selecting the monorail track route and the construction service track route is covered elsewhere in appropriate detail in the concession application and the Department's report.

3.40 Should the application be approved, then the following elements best describe the morphology of the construction service track into a mountain bike trail that becomes part of what Riverstone will seek to promote as the Three Lakes Ride:

- (a) it will involve a multi-day approximately 150km mountain bike journey between Queenstown, Te Anau and Manapouri;
- (b) it will become a significant tourism venture in its own right;
- (c) it will not be dependent on NZ Cycle Trails Fund monies as created by the Prime Minister;
- (d) it will pass over or alongside more large natural water bodies than any other trail in New Zealand;
- (e) the lakes can include Wakatipu, North and South Mavora, Te Anau and Manapouri; and
- (f) the rivers will include the Von, Oreti, Mararoa, Whitestone, Upukerora and Waiau.

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<sup>14</sup> In response to submission 91 and others.

<sup>15</sup> See submission 282.

- 3.41 Riverstone will create the Three Lakes Ride by virtue of the conversion of the construction service track between the Kiwi Burn and the boundary of Te Anau Downs Station (29km), creation of a bike track between the same boundary and the terminus at Te Anau Downs (approximately 17km) and then the creation of a bike track around the water's edge of Lake Te Anau between Te Anau Downs and the outlet of the Upukerora River on the northern boundary of Te Anau township (approximately 30km).
- 3.42 To connect to the track at the Kiwi Burn terminus cyclists will bike from Mt Nicholas Station, a distance of 45km using the same section of the Mt Nicholas/Mavora Lakes Road managed by the QLDC and SDC as is proposed in the Around the Mountain Cycle Trail.
- 3.43 It is expected that local trails trust interests will create the final section between Te Anau and Manapouri townships.
- 3.44 The Department has sought Riverstone's intentions as to management of any DOC approved concessionaires on that part of the trail that concerns the DOC estate. Riverstone has indicated it is prepared to actively manage any relevant concessionaires.
- 3.45 Riverstone acknowledges that there are a number of matters associated with the Three Lakes Ride that will require either solution or further detail. The commitment to the creation of the additional track around the eastern edge of Lake Te Anau from Te Anau Downs is dependent upon the concession being granted. Further, while most of the bike track between the boundary at Te Anau Downs Station and the terminus at Te Anau Downs has been generally determined, the remainder can be completed contemporaneously with the process of final route selection as is proposed in the Department's Report.

## **CONSULTATIONS**

- 3.46 Riverstone has carried out comprehensive consultations over an extended period.
- 3.47 Section 49 of the Conservation Act sets out the public notice provisions and the public's right to make submissions both written and oral on a proposal. An applicant for a concession may adopt a narrow view and purely respond to submissions made or it can do what Riverstone has done and consult with the community at key stages of the concession application process over a period of years.
- 3.48 Consultation began in 2004 with the present application. Public meetings were held in Te Anau, Mossburn and Queenstown together with a wide range of meetings with neighbours, user groups, environmental groups, territorial authorities, tourism businesses, existing concessionaires, regional tourism organisations, chambers of commerce and the Conservation Board.
- 3.49 A revised application which included such material alterations as the avoidance of Dunton Swamp altogether was submitted in August 2006. Progressive meetings were

held over the next nine months with DOC personnel and with Takaro Lodge and Glen Echo Station to address a wide range of preliminary issues including avoidance of remote areas in the central Snowdon Forest.

- 3.50 Following a period where Riverstone addressed issues arising out of the draft Department report Riverstone began a further process of consultation late in 2011 and early in 2012 as a result of the modifications to its final application.
- 3.51 Riverstone held public meetings in Te Anau, Queenstown and Invercargill as a prelude to the public hearings process carried out in April 2012.
- 3.52 In addition to the physical meetings held Riverstone has maintained a website [www.fiordlandlink.com](http://www.fiordlandlink.com) which contains a complete copy of Riverstone's application, encourages visitors to the site to go also to the DOC site and also encourages visitors to communicate with Riverstone personnel through the site about any issues they might wish to raise.
- 3.53 It is part of the culture of Riverstone to provide an open flow of information and as with all entities within the Infinity Investment Group feedback is strongly encouraged.

#### **ITERATIVE APPROACH**

- 3.54 A commitment to extensive consultation involves a number of consequential elements. These include a degree of patience in assembling a critical path and a commitment to what is generally recognised as adaptive management planning.
- 3.55 The Riverstone concession application process has been prolonged due to Riverstone's strategy of research, inquire, consult and modify where relevant stakeholder issues arise. Examples of significant changes made are:
- (a) avoiding land with National Park status – Infinity Investment Group immediately amended any Riverstone exposure to National Park land when it acquired an interest in Riverstone;<sup>16</sup>
  - (b) avoiding wetlands e.g. Dunton Swamp. Prior to wetlands becoming a key issue in the Southland Conservancy Riverstone was alert to the sensitivities surrounding Dunton Swamp and redesigned the route to avoid it altogether;
  - (c) avoiding remote areas in the Central Snowdon Forest. As with land of National Park status, Riverstone designed its route to avoid land with remote status;<sup>17</sup>
  - (d) moving away from the Kiwi Burn swing bridge site for the location of the eastern terminus. Having considered the request from the Southland Conservation

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<sup>16</sup> See submission 240.

<sup>17</sup> See submissions 259 and 91.

Board to consider an alternative Riverstone submitted a new and satisfactory solution within six weeks;<sup>18</sup>

- (e) construction Service Track/Mountain Bike Track – as outlined above, the proposal arose from consultation with DOC's engineering auditors and advice from Riverstone's new engineering advisors being reconciled and then informally assessed with various DOC personnel before it became a formal part of Riverstone's application; and
- (f) width of easement – Riverstone has sought a 200m wide easement with allowance for a 300m width at a strip on the Upukerora River known as Bluff Slip. Riverstone has characterised this approach as an envelope approach. Some submitters suggested that use of this approach was tantamount to a lazy or inadequate approach and not meeting the information requirements of the Conservation Act.<sup>19</sup>

3.56 It has long been a tactic of objectors to proposals seeking approval or consent to table a claim of insufficient information. No justification was tendered by any submitter to support any such allegation.

3.57 The envelope approach as proposed by Riverstone is consistent with methodologies used and standards applied by major engineering or construction firms worldwide.

3.58 Use of top tier engineering and construction firms ensures the translation of global best practice into the details of management plans and thus a high level of adherence to the conditions specified by DOC.

3.59 Reference was made earlier to Riverstone's adoption of an adaptive management model approach. This approach is most commonly associated with the pre-commissioning, commissioning, operational and maintenance stages of projects.

3.60 The model requires a commitment typically to three factors:

- (a) recognition that there is always the ability to learn more and to apply new knowledge acquired and thus improve the performance of the current operation;
- (b) active monitoring of environmental and ecological data to improve decisions made above; and
- (c) communication of performance to key stakeholders i.e. to DOC, Environment Southland, SDC, Iwi to ideally demonstrate the successful application of sustainable methodologies.

3.61 In reality, Riverstone has been applying an adaptive management model even to the application stages since 2004. The level of consultation and the examples cited above

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<sup>18</sup> See submission 157.

<sup>19</sup> See submissions 103, 259, 163, 134, 89, and 240. A similar submission 289 on this point was surprising given the submitter's assumed experience with projects of a large scale.

of the amendments to the application through an iterative approach reflect an adaptive approach.

3.62 Riverstone can further point to the public submissions and hearing phase as another example of applying the adaptive management model. Following the submissions being made Riverstone proposes that a Community Liaison Group be established to perform a “stewardship” role and advise Riverstone on strategies to enhance environmental and recreational performance by Riverstone in the area generally impacted by the activities of the monorail.<sup>20</sup>

3.63 Membership of the Community Liaison Group would be drawn substantially from amongst Te Anau and Fiordland residents and involve plant and animal enthusiasts, conservation personnel, trampers, hunters and fishermen.

### **THE CONSERVATION ECONOMY<sup>21</sup>**

3.64 In the oral reply Riverstone submitted that while conservation contributes strongly to tourism, Riverstone is committed to demonstrating that the reverse should become equally true.

3.65 Riverstone considers that conservation and business are not mutually exclusive. Riverstone as potentially the largest concessionaire in Fiordland is focussed on demonstrating that by investing in conserving and protecting our natural resources, we are investing in NZ’s long-term wellbeing and prosperity. Economic growth and sustainability go hand in hand.

3.66 Section 6(c)(i) of the Conservation Act identifies the role of the Department in promoting the benefits to present and future generations of the conservation of natural and historic resources generally and the natural and historic resources of NZ in particular.

3.67 Sections 6(d) and 6(e) when read together identify the function of the Department to provide where appropriate education on conservation matters and to include tourism in such provision.

3.68 Riverstone in its oral reply and in response to the content of some submissions set out briefly its vision for the promotion of conservation while conveying passengers through public conservation land.

3.69 Riverstone said there is a very real opportunity to educate and inform while visitors are aboard the monorail. Riverstone indicated it intended to fully use that opportunity. Riverstone’s philosophy is that the more people that understand the role of conservation the greater the likelihood of long-term investment in kaitakitanga by the nation and its international visitors and the greater the economic benefits that will flow from manaakitanga.

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<sup>20</sup> See submissions 82 and 291 in particular but also others such as 87.

<sup>21</sup> In response to submissions 228, 290 and column K of the summary of submissions.

3.70 Riverstone then said it proposes to bring to the attention of all the history of the land they are passing through, the history of the people associated with the land and the history of the biodiversity. We then indicated that when it comes to the latter we will be proposing to put a focus on mainland island conservation strategies particularly in the area.

3.71 There was not time at the public hearing to submit the detail of our preliminary strategy on dissemination of information and education about NZ conservation when aboard the various modes of the Fiordland Link Experience. However, we submit our provisional scoping proposal below.

### **PROVISIONAL OUTLINE OF EDUCATION AND CONSERVATION AWARENESS PACKAGE**

3.72 This is a provisional outline of the education and conservation awareness package to be provided on the FiordlandLink Experience at its terminals and primarily on the monorail (but also possibly aboard marine vessels on Lake Wakatipu).

3.73 Methodologies for the provision of information are yet to be determined but will include consideration of audio-visual presentations, visitor centre information strategies, outdoor panels at terminals, guides, displays and inter-active panels. It is expected that any audio-visual presentations on board the monorail will be available in a range of languages.

3.74 This approach assumes that international visitors have not been afforded any opportunity prior to embarking on the FLE journey of understanding New Zealand's natural environment, its heritage or its approach to conservation management.

3.75 The content is divided into six parts: Early History; Biodiversity; History of Biodiversity Loss; Emergence of Biodiversity Protection and Resuscitation, Interpretation Specific to the Journey; and Benefits from Concessions. The content of these six parts is summarised below.

#### **Part One: Early History**

- 85 million years ago NZ separates from Gondwana
- 65 million years ago – land dinosaurs become extinct but kokako, huia, bats, wrens and weta survive
- development of ground dwelling birds including moa – tallest bird ever, all in the absence of mammalian predators
- 20 million years ago – Southern Alps and Kaikoura Ranges appear
- 800 years ago – humans arrive and the impact of animal and human predators begins



## **Part Two: Biodiversity**

- description of our native biodiversity on land – 70,000 terrestrial species – gives a general description of numbers in each category
- description of introduced species – including mammals, birds and vascular plants (note NZ has highest number of introduced mammals and second highest of introduced birds)

## **Part Three: History of indigenous biodiversity loss**

- Maori settlement – e.g. loss of moa and many other bird species
- James Cook et al – arrival of Norwegian rat etc
- sealers, whalers, traders – dogs, cats, deforestation for spars
- European settlement – rabbits, possum, gorse, stoats, ferrets etc
- acclimatisation societies and others – red deer, upland game, trout etc

## **Part Four: Emergence of indigenous biodiversity protection and resuscitation**

- Tongariro National Park – Ngati Tuwharetoa 1887
- Scenery Preservation Act 1903
- Little Barrier Island and Kapiti Island Reserves 1897
- identification and reservation of further national parks. Egmont to Kahurangi NP
- 1950's – creation of State Forest Parks
- 1948 – Dr Geoffrey Orbel – Takahe
- 1980 – Don Merton – Black Robin
- 1986 – Ministry for Environment, DOC – 1987
- 1990 – Te Wahipounamu World Heritage Status
- history of marine island and mainland island conservation initiatives – Whenua Hou, Breaksea, Operation Ark, Puketi etc

## **Part Five: Interpretation specific to the journey**

- how the area's deep lakes and sounds were created
- the alpine/high country formation
- forest types and in particular beech forest and how its composition is influenced by altitude, slope, rainfall, geology and now human impacts

- relevant indigenous species – plants and animals
- pests and pest control
- the takahe story (as the Murchison Mountains appear on journey)
- bats – NZ's only indigenous terrestrial mammals
- history of Maori in the area

**Part Six: Benefits to conservation from concessionaires**

- strict adherence to concession conditions = protection of environment and low impact
- concessionaires either sponsor or undertake their own pest eradication and species protection programmes
- safe and enjoyable visitor experiences that initiate and develop a valuable stewardship approach in both domestic and international visitors
- extends the opportunities that DOC itself offers in ways that DOC is unable to do so itself
- introduces pest control and safety measures (including fire safety) that would otherwise be unable to be provided by DOC
- creates concession revenues that assist DOC to manage public conservation commitments. Riverstone - to demonstrate the direct conservation benefits on specified protection programmes arising from an FiordlandLink Experience ticket purchase
- jobs and income – Riverstone - to demonstrate the benefits received by the local economy from the operation of the monorail by Riverstone and of the other concessionaires and businesses directly associated with the Journey

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**PART FOUR: THE CONCESSION APPLICATION AND PLANNING FRAMEWORK**

**LOUISE TAYLOR, GARY BRAMLEY, CLAIRE HUNTER**

**MITCHELL PARTNERSHIPS LIMITED**

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## **4. THE APPLICATION PROCESS**

- 4.1 Many submissions suggested that the application does not provide sufficient detail for the Minister to have confidence in the level of adverse effects the monorail will generate. In addition, there are some claims that some Department audit reports have not been fully considered by either the applicant, or the Department.<sup>22</sup>
- 4.2 We therefore summarise the process that has occurred since the application was first lodged in 2006, as the time spent and detailed work carried out has been extensive.

### **Original application and Department peer review**

- 4.3 The application for the construction and operation of a monorail was first lodged with the Department in August 2006. The Department obtained peer reviews of the application by external consultants in 2007. In summary, that review process was critical of the Concession application, and in particular the level of detail and robustness provided from an engineering and environmental impacts perspective.

### **Mitchell Partnerships' role**

- 4.4 Mitchell Partnerships Limited was commissioned by Riverstone in December 2008 to:
- (a) review the technical reporting (engineering, design and construction methods in particular) to ensure they were robust and achievable; and
  - (b) prepare an amended Concession application including supporting technical reports which remedied the matters of concern raised by the Department.

### **New Specialist Team**

- 4.5 At this point in the process, a new specialist team was commissioned, the members of which are all leaders in their respective fields. This team reviewed the work done to date and carried out additional assessments where required. The new team consisted of:
- (a) Opus International Consultants led by Will Parker – civil engineering;
  - (b) Rob Greenaway and Associates – recreation specialist;
  - (c) Stephen Brown – landscape architect;
  - (d) Mitchell Partnerships ecology team led by Dr Gary Bramley and Dr Ruth Bartlett;
  - (e) NIWA – freshwater ecology and hydrology and geomorphology – led by Dr Helen Rouse, Dr Marty Bonnett and Dr Joanna Hoyle;
  - (f) Marshall Day Acoustics Consultants, noise effects led by Stuart Camp;

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<sup>22</sup> See for example, submission 290; submission 103; submission 169; submission 134.

- (g) Salmond Architecture and Seed Building Consultancy – leaders in commercial, eco-friendly buildings led by Anne Salmond;
  - (h) Te Ao Marama Inc – Cultural Impact Assessment led by Michael Skerett;
  - (i) Traffic design Group – led by Don McKenzie; and
  - (j) Tourism – John Moriarty.
- 4.6 The Opus team carefully reviewed the engineering work carried out to date and recommended significant changes in terms of design and construction methodology. These methods have been accepted by Riverstone and form part of the amended application lodged in November 2009.
- 4.7 The Opus team worked with the ecology team in particular, to develop construction methods and route selection criteria that will ensure a minimal on the ground environmental impact.
- 4.8 All specialists visited the site and many undertook extensive field work to assist their understanding on the area. Each applied best practice to inform their assessments and conclusions for their respective fields.
- 4.9 Overall the approach has been to ensure the engineering, including design and construction methods are robust, and also to ensure the environmental effects assessment are based on solid, robust field work combined with a good understanding of the engineering methods.

#### **CONCESSION SOUGHT**

- 4.10 Several submissions suggested the application is unclear in terms of what is proposed and the extent of the area it covers.<sup>23</sup>
- 4.11 A revised application was lodged with the Department in November 2009 which included reports from each of the specialist consultants to form part of the assessment of environmental effects.<sup>24</sup> A full assessment against the relevant statutory documents was also included in the application.<sup>25</sup>
- 4.12 The application included a series of draft management plans and recommended concession conditions, which would ensure the concession was given effect to in accordance with the application.<sup>26</sup> The conditions and management plans and their adaptive management approach are explained in more detail later in this reply.
- 4.13 The Department report describes the application and the nature of the project in detail, in particular in the executive summary (pages 9 – 16).

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<sup>23</sup> See for example submissions 169; submission 159; submission 134.

<sup>24</sup> See Appendices E – P, November 2009 Application.

<sup>25</sup> See Chapter 7, November 2009 Application.

<sup>26</sup> See Appendices A – C, November 2009 Application.

4.14 In summary, the application seeks a concession for a 200m (300m at Bluff Slip) wide corridor, within which a monorail and construction track/mountain bike track will be construction, operated and maintained. While a preliminary route has been identified in the application, the corridor is required to provide flexibility for final route selection.

4.15 As summarised in the Department report, the concession would be made up of the following elements:

(a) easements – 60 years for:

- (i) the monorail;
- (ii) construction/mountain bike track (including spur tracks);
- (iii) roading, carparking and other associated facilities around each building; and
- (iv) a cycle link route (where monorail exits Department land at the border of Te Anau Downs Station);

(b) lease – 49 years for:

- (i) the terminus buildings at Kiwi Burn and Te Anau Downs;

(c) licences – 60 years for:

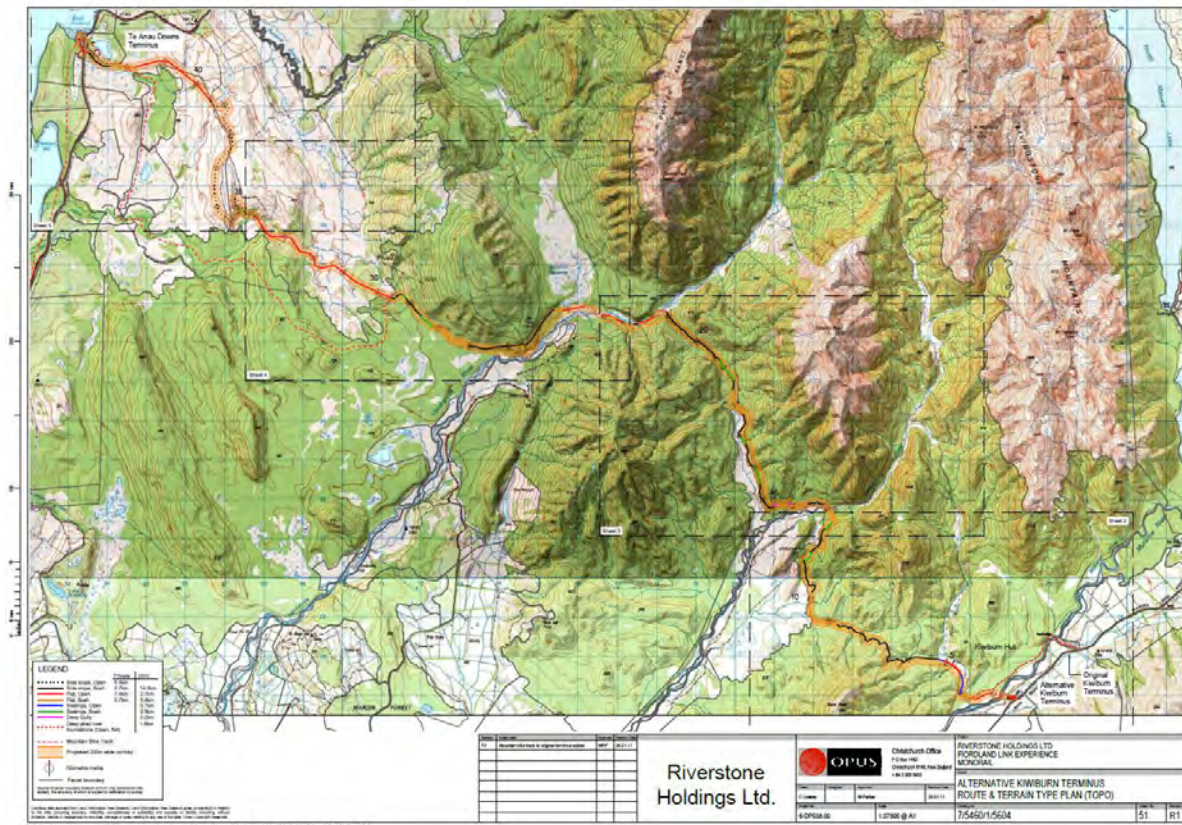
- (i) construction and maintenance of public hut at Kiwi Burn;
- (ii) mountain bike track public toilets; and
- (iii) construction, maintenance and servicing of any other public recreational facilities.

4.16 Figure One below shows the envelope sought, and the likely route within that corridor. Vegetation types are depicted and explained in the Legend.<sup>27</sup>

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<sup>27</sup> Note that all Figures are either from the November 2009 application, or updated to reflect new Kiwi Burn terminus location, so were provided to the Department subsequent to the November 2009 application. All have been provided to the Department in advance of the issue of the Department Report (December 2011).

**Figure One: Monorail – Route and Terrain Types**



## CONSTRUCTION OVERVIEW

- 4.17 A number of submitters asserted that there is insufficient detail or understanding as to how the monorail will be constructed and the engineering detail required, and therefore the environmental effects are either unknown or potentially underestimated.<sup>28</sup> The following section therefore explains the engagement of an internationally experienced engineering firm, and the process they carried out to determine the conceptual design and construction methods proposed. The construction methodology is explained for each terrain type to demonstrate the thinking behind the conclusions made with respect to clearance areas and level of effect.
- 4.18 In 2008 Riverstone commissioned Opus to undertake civil and structural engineering on the monorail in the revised concession application (in addition to the work already carried out by Stewart Consulting Services), where it crosses land administered by the Department. The Opus report is attached as Appendix E to the November 2009 application. In conjunction with a contractor, and both extensive field and desktop investigations, Opus developed a conceptual design (route alignment) and construction methodology for the proposed monorail.
- 4.19 A key aspect in defining the alignment is the capability of the monorail train, especially in terms of grade, radius, super elevation and associated speed, warp rate etc.

<sup>28</sup> Refer for example submission 134; submission 89; submission 131.

Information obtained from monorail suppliers indicates that the grades and curves required for the proposed route can be achieved by a conventional monorail train.

4.20 The construction methodology and its environmental impact has also been refined during a series of workshops with the team assembled by Riverstone for this project. A key aspect in this regard has been to minimise the environmental impacts to the extent that this has been possible, while still achieving a feasible construction methodology.

### **Construction Methodology**

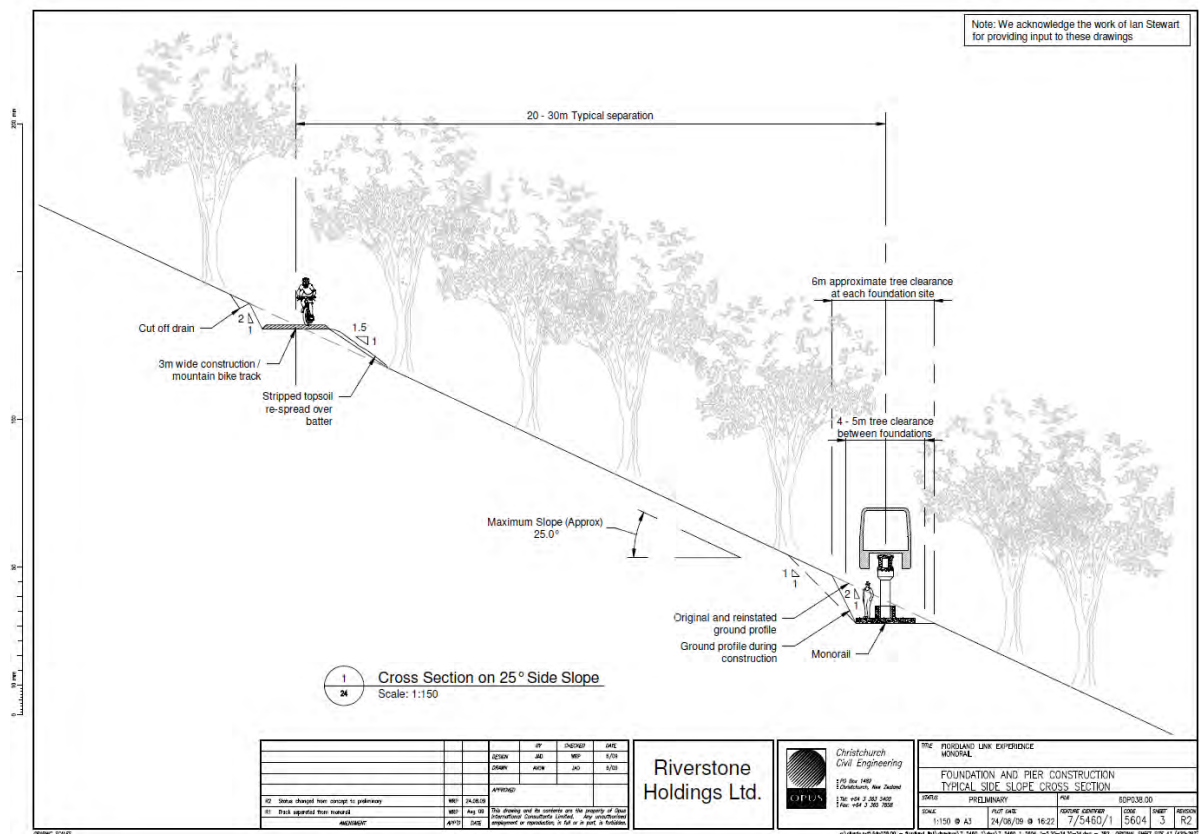
4.21 A more detailed construction methodology and techniques has been provided by Opus in the report which accompanies the application (Appendix E). Below we provide a summary of the key features.

4.22 As noted above a 200m wide easement is being sought for the monorail route. This width would accommodate the monorail and the construction/mountain bike track, and has been proposed for the following reasons:

- (a) to provide a visual and experiential separation from the monorail, expected to be typically 70-80m in flat terrain;
- (b) the mountain bike track could be on either side of the monorail, but is intended to be on the uphill side in sloping terrain (refer to Figure Two below); and
- (c) to provide some flexibility to suit topographic features, such as streams, gullies, steep banks etc.

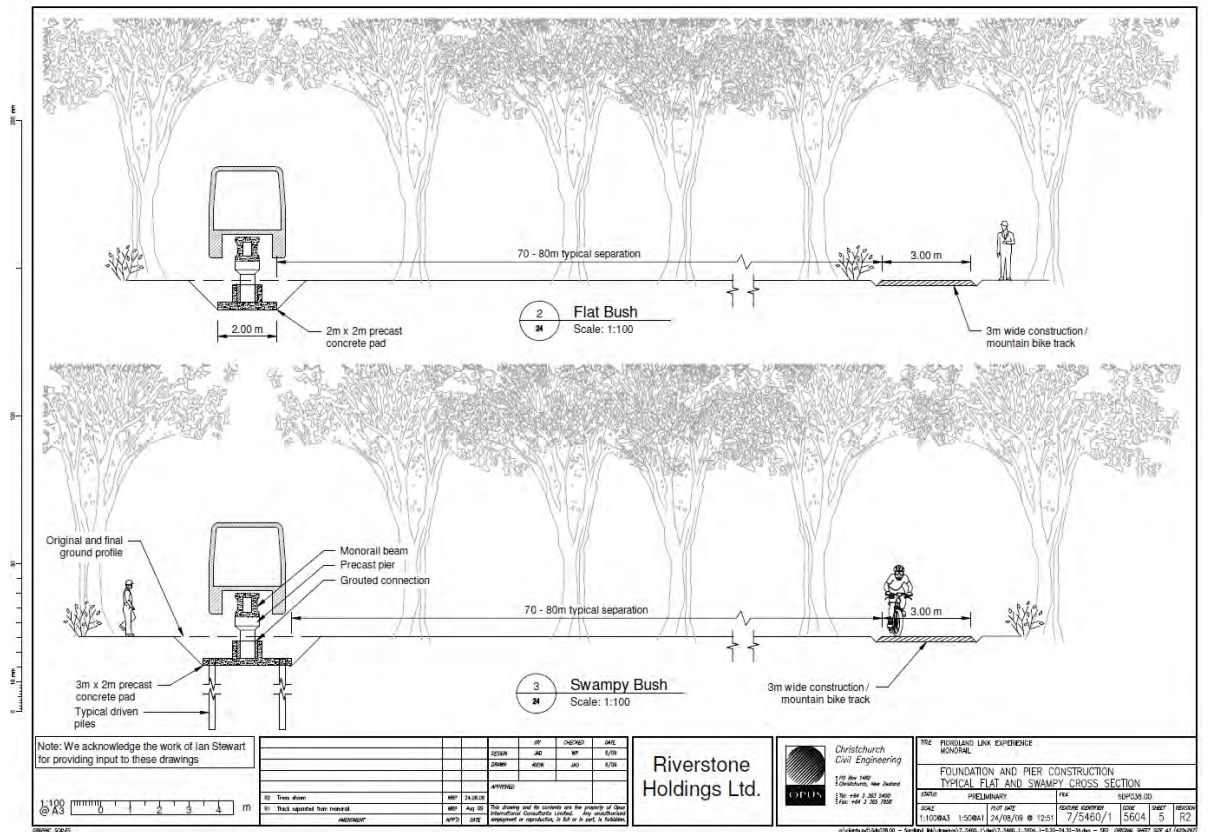


**Figure Two: Foundation and Pier Construction Typical Side Slope Cross Section**



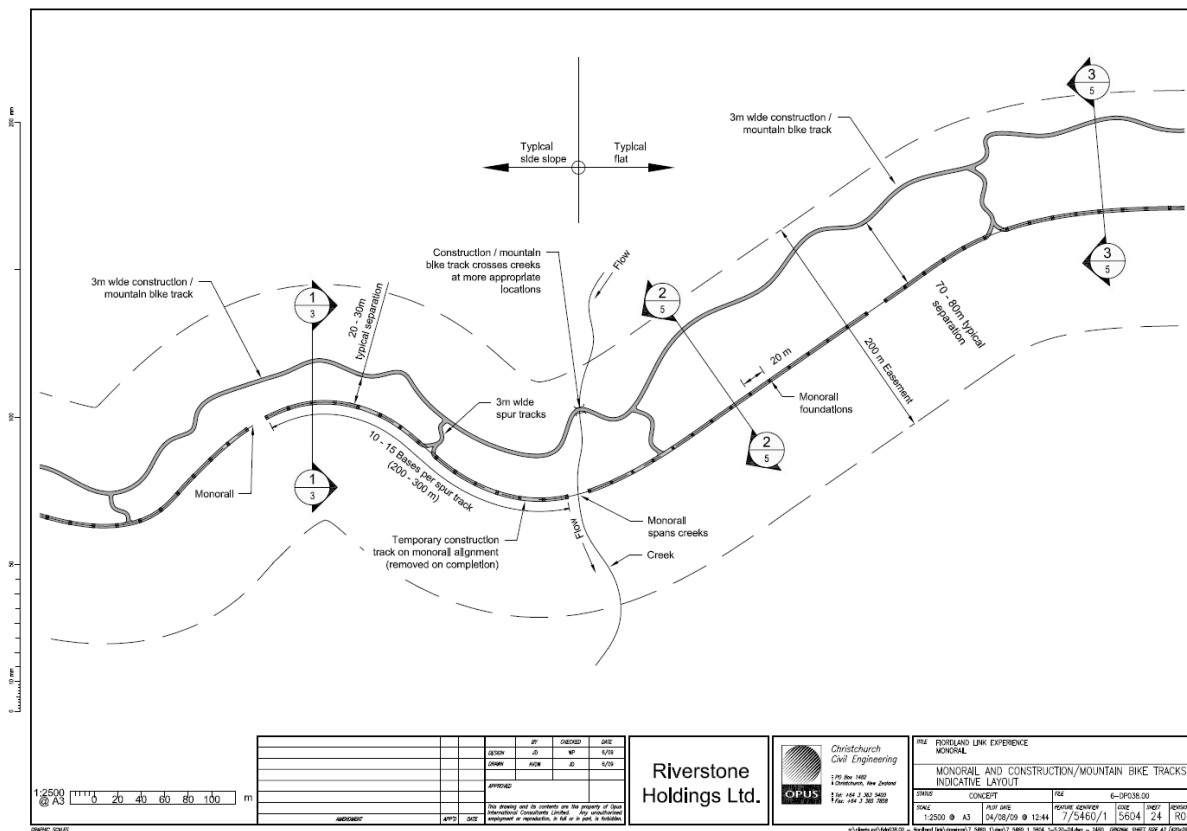
4.23 It has been confirmed that the construction/mountain bike track can be located to avoid trees, minimise impact on vegetation and to take advantage of the topography to minimise earthworks. It is envisaged that the construction track would become a permanent mountain bike track at the completion of the monorail construction. The 3m wide mountain bike track would also be located to provide a visual and experiential separation from the monorail. At this stage this is intended to be typically 20-30m on sloping ground with the track generally on the uphill side (refer to Figure Two above), and typically 70-80m in flat country (refer to Figure Three below).

**Figure Three: Foundation and Pier Construction Typical Flat and Swamp Cross Section**



4.24 A number of 3m wide spur tracks (refer to Figure Four below) would also be required to gain access to the monorail track during construction of foundations and piers. It is envisaged that one spur track would provide access to a number of foundations (10-15) that can be constructed linearly (i.e. from the farthest foundation back) without affecting overall project progress.

**Figure Four: Monorail and Construction/Mountain Bike Tracks Indication Layout**



- 4.25 The construction track would be located to cross streams at the most advantageous location (e.g. where the stream is at its narrowest or the bank's highest) reducing or eliminating the impact on the stream environment. At stream crossings, the construction track or spur track would make use of light bridging units spanning bank to bank, thereby minimising disturbance to the stream itself. At the major rivers, permanent lightweight bridges will be required for mountain bikes. Precast concrete pad foundations and piers are proposed where practicable to minimise site work and environmental impact. Deep reinforced concrete piles will be required for crossing the active flood channel of the three main rivers. Further detail regarding the construction machinery and techniques can be found in the Opus report.
- 4.26 The construction track and the spur tracks would be routed to avoid trees wherever possible, thereby preserving as much of the canopy as possible. The construction and spur tracks would follow a route that takes advantage of better topography and avoids where practicable crossing any sensitive ground that the monorail crosses.
- 4.27 The construction/mountain bike track will require maintenance and will therefore need to be designed for long term vehicle traffic. This track could also be used for emergency access for the mountain bike track users or for the monorail.

4.28 A construction programme of 30 months has been identified. This has been confirmed by contractors as being achievable. Will Parker responds, on behalf of Opus, to specific matters raised in the two submissions regarding construction matters (attached as Appendix Two).

### **Management of Construction Effects**

4.29 The Construction Management Plan will guide construction activities and management of effects. A key component of this plan will be the management of erosion and sediment mobilisation. The details of this plan will be developed during the detailed design phase and finalised prior to construction commencing. Possible methods to control erosion and sedimentation include diversion channels or bunds, contour drains, sediment retention ponds, grit traps and silt fences. The particular method adopted will be specific to each situation. Three construction depots are planned along the route and they will all be located on existing highly modified private land so as to minimise the adverse effects on public conservation land. Safety and effects on other users of the area, including trampers, hunters, fishers and farmers will also be managed through the various management plans. Over and above physical control methods, management techniques will include signage and education of contractors. Following construction extensive rehabilitation will be undertaken. This is discussed below.

### **Rehabilitation Process**

4.30 Some submissions claimed the application was unclear about, or inadequately described the type or level of rehabilitation proposed for vegetation clearance areas. One submitter suggested that the direct vegetation transfer ("VDT") system proposed for some parts of the tussocks would be unlikely to be viable.<sup>29</sup>

4.31 The Vegetation and Habitat Management Plan requires rehabilitation of vegetation cleared land, including appropriate weed and pest control. Where feasible, VDT is proposed, which is most likely to be successful for tussocks (compared with other vegetation such as large trees). Dr Gary Bramley describes his recent and relevant experience with the success of VDT in his statement of evidence (attached at Appendix Three to this reply).

4.32 We consider (and as concluded in the Department report) that the concession conditions as drafted, and the associated management plans will ensure successful rehabilitation of cleared land, and that weed and pest risk will be managed appropriately.

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<sup>29</sup> Refer in particular to submission 53; submission 272.

## **DEPARTMENT PROCESS**

- 4.33 Once lodged, the Department proceeded to review and audit (including continuing to use external consultants) the revised application and its technical supporting material. That initial process was completed in May 2010.
- 4.34 The period between May 2010 when the initial Department audit was complete, and December 2011 was a busy time for the project with much communication between the Riverstone project team Department staff and consultants.
- 4.35 In particular letters, reports and updated management plans and conditions were provided by Riverstone to the Department in October 2010, February 2011, April 2011, October 2011 and November 2011. In between times various meetings and discussions took place between our team and the Department to work through issues as they arose. This communication was generally in reply to Department requests for various pieces of further information in response to comments and questions from technical advisors (including the independent specialists who audited the application) and internal Department staff, along with the Southland Conservation Board.
- 4.36 For example in response to comments made by the Conservation Board a decision was made to relocate the Kiwi Burn terminus location to the south west of the original proposed site. This is discussed in more detail below.
- 4.37 The Department tested each element of the Riverstone proposal in a careful, thorough manner which we consider has resulted in a robust Departmental report, and extensive and carefully designed, sound draft concession conditions. We expect that should the Minister decide to grant the concession, a collaborative approach between the Department and the Riverstone team will endure through the detailed design, pre-construction, construction and operational phases of the project.

## **LAND CATEGORISATION**

- 4.38 Several submitters and written submissions referred to various “land categorisation terms” when talking about the area near to and within which the monorail would traverse.<sup>30</sup> In some cases, these terms are incorrectly applied to the area the monorail will be near to and in other cases they were not applied in their legal sense. For those reasons, we summarise each major land classification which is relevant to this application below.

### **Snowdon Forest**

- 4.39 The monorail primarily is within the Snowdon Forest – a stewardship area in terms of section 62 of the Conservation Act.<sup>31</sup>

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<sup>30</sup> Refer for example Southland District Council 240

<sup>31</sup> Refer Department report page 17 and Figure Five, below.

**Figure Five: Map Showing Snowdon Forest Extent**



### **Fiordland National Park**

4.40 The only part of the proposal to enter the Fiordland National Park is where the monorail leaves privately owned Te Anau Downs Station and re-enters Department land at Te Anau Downs (refer to Figure Six for map). The terminus at Te Anau Downs will be situated at the existing Fiordland National Park lodge, inside a lease already owned by an associate of the applicant with already existing extensive facilities including accommodation of 94 beds, restaurant and café facilities and extensive carparking for Milford Track users.

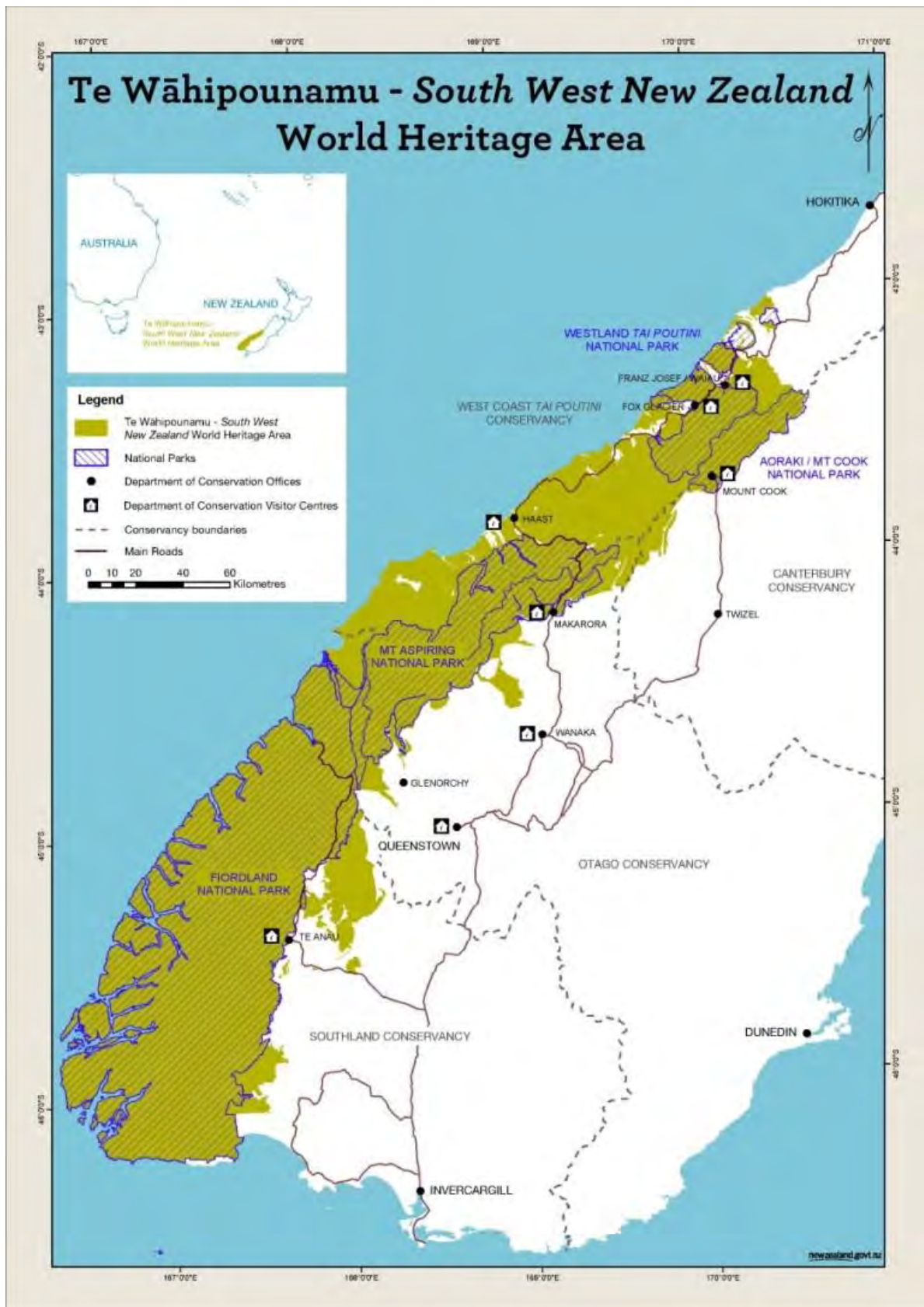
## **Te Wahipounamu World Heritage Area**

- 4.41 Much discussion has taken place regarding the presence and status of the Te Wahipounamu World Heritage Area. The map at Figure Six below shows the extent of the area, which takes in most of western Southland and extends up the west coast to and include both Mount Cook and Westland Tai Poutini National Parks. The World Heritage Area also includes both Fiordland and Mount Aspiring National Parks.
- 4.42 The total area of the Te Wahipounamu World Heritage Area is 2.6 million hectares.
- 4.43 The World Heritage Area status has been carefully considered and assessed in both the application<sup>32</sup> and the Department report (commencing at page 21).
- 4.44 Overall it is concluded that the application is not inconsistent with the intent of the World Heritage Area, and there is no evidence that the status of the land will be at risk.

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<sup>32</sup> Refer in particular to section 7.4.2, pages 74 - 75 of the application and in the Ecology Report, Appendix I, section 2.2, page 7.

Figure Six: Map Showing Extent of Te Wahipounamu – South West New Zealand World Heritage Area and Fiordland National Park





## **ADAPTIVE MANAGEMENT**

- 4.45 A theme in the submissions is that the envelope and the use of management plans via an adaptive process is somehow an inappropriate or incomplete way to manage a project.<sup>33</sup>
- 4.46 Adaptive management is a broad term used for many types of management situations. In this context, it refers to a methodology which enables the management of the project to be changed or adapted during the project's life.
- 4.47 This approach enables appropriate response to situations as they arise, and good decision making over the life of a project. An adaptive management approach is the accepted method for developing and managing infrastructure projects.
- 4.48 We are aware that a successful adaptive management regime approved via a concession needs to be bound by appropriate conditions, which guide the development and enforcement of the management plans.

### **Management Plans**

- 4.49 A series of early draft management plans were included in the application lodged in November 2009. These have evolved over the time since that date due to work by the Riverstone team and as a result of extensive testing and discussion with Department staff and consultants.
- 4.50 The most recent management plans are attached to the Mitchell Partnerships Limited letter and attachments dated 4 November 2011. The following is a summary of the nature and content of each of the management plans.

### ***Implementation Protocol***

- 4.51 An Implementation Protocol is proposed which will guide the relationship and communication between Riverstone (and/or its representatives) and the Department. It will set out the role of the Project Liaison Advisor which is described in more detail shortly. It will also set out the obligations on both Riverstone and the Department, including how the final route selection process will proceed. The protocol will also set out a dispute resolution process to be followed should any conflicts arise.

### ***Construction Management Plan***

- 4.52 The Construction Management Plan will guide the way in which the concession activities are constructed in order to minimise the adverse effects on the environment to the extent that is practicable. A number of components will form part of the Construction Management Plan including:
- (a) health and safety plan;

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<sup>33</sup> Refer for example Southland District Council submission 240; submission 118; submission 272

- (b) hazardous substances plan;
- (c) traffic management plan;
- (d) noise and lighting management plan;
- (e) risk management plan;
- (f) waste management plan;
- (g) archaeological and heritage protocols and plans;
- (h) erosion and sediment control plan; and
- (i) in river works plan.

### ***Recreation Users Management Plan***

4.53 The Recreation Users Management Plan will be in place to ensure the adverse effects on (other) recreational users within the site are avoided, remedied or mitigated to the extent that is practicable. This plan relates to the effects on such users during both the construction and operational phase of the project. The plan will require Riverstone to provide alternative recreational facilities in specified areas, including tracks and huts during construction. The plan will also set out the ongoing management functions for certain facilities including the new Kiwi Burn Hut.

### ***Vegetation and Habitat Management Plan***

4.54 The Vegetation and Habitat Management Plan will manage the effects on terrestrial ecology values during both the construction and ongoing operation of the monorail and associated facilities. The plan will set out the pre-construction obligations including the requirement to have regard to the ecological criteria when selecting the final route, and specifying the total amount of vegetation clearance. The plan will also set out mitigation requirements including transfer or relocation of species, where it is appropriate and practicable to do so. The plan will also include monitoring obligations prior, during and post construction activities and will set out the rehabilitation requirements, and weed and pest control if required.

### ***Operational Management Plan***

4.55 The purpose of the Operational Management Plan is to manage the ongoing use and maintenance of the monorail and associated facilities. It seeks to ensure that the monorail tracks and infrastructure are regularly maintained and that the health and safety of employees and the public is of the utmost priority. Ongoing environmental obligations including monitoring of rehabilitated areas, weed and pest control is provided for in the Vegetation and Habitat Management Plan. Maintenance and use of recreational facilities provided for by the concession is dealt with in the Recreation Users Management Plan.

## **Project Liaison Advisor**

4.56 A Project Liaison Advisor will be employed by the Department (although funded by Riverstone) to ensure the process that is set out in the application documents and conditions is adhered to. This role is a critical part of the adaptive management process.

4.57 The Project Liaison Advisor will:

- (a) review the “implementation protocol” that has been described in paragraph 4.51 above;
- (b) participate in the final route selection process;
- (c) review construction plans prior to construction;
- (d) facilitate the audit of plans prior to construction; and
- (e) monitor compliance with the concession.

## **Conditions**

4.58 The proposed concession conditions are critical in terms of giving the Minister confidence that the monorail will be constructed within the scope of the effects as assessed and presented in the application. The key features of the proposed concession conditions are:

- (a) requiring the development and implementation of each management plan, including setting out objectives and content requirements for each plan;
- (b) as an additional layer of approval Final Plans and Specifications are required to be prepared and submitted with the Department for audit and approval. These plans will enable verification to ensure the level clearance is not more than estimated, and that the ecological route selection criteria has been applied properly in determining the final route. No construction can commence until the Department has audited and approved these plans;
- (c) requiring a comprehensive audit process through which the Department will audit each management plan. Each relevant plan must be approved prior to the relevant stage commencing. The conditions set the parameters for this audit process;
- (d) additional bottom line or specific requirements are imposed in the conditions. For example, a detailed set of accidental discovery archaeological protocols and specific waste management standards are included in the conditions; and
- (e) the conditions require the establishment of the Project Liaison Advisor, and sets out the nature and general responsibilities of that role.

- 4.59 Draft conditions which would be required to be adhered to by Riverstone were lodged with the application in November 2009, and have evolved since that time during further work both within the Riverstone project team and with extensive discussions with Department staff and consultants.
- 4.60 The Department report recommends that the concession be granted, subject to compliance with a series of “special conditions”.<sup>34</sup> Riverstone considers that these conditions are appropriate.
- 4.61 No stage of work can commence until the previous stage has been audited and approved by the Department. For example, no construction can commence until the Construction Specifications and Plans have been submitted by Riverstone, audited and then approved by the Department (refer conditions 3 and 4).
- 4.62 The operation of the monorail cannot commence until the Operational Management Plan has been submitted by Riverstone, and audited and approved by the Department.
- 4.63 The conditions require on-going monitoring and reporting obligations (for example condition 22.1 – 22.6 for vegetation rehabilitation), and the role of the Project Liaison Advisor is defined (refer conditions 1.1 – 1.7).
- 4.64 The conditions will enable the project to be managed adaptively, with the Department remaining in control of each step in the process. Overall it is concluded that adverse effects on key values (such as terrestrial ecology) will be avoided, remedied and mitigated at each step of the process, thus leading to an acceptable environmental outcome.

#### **CONSERVATION MANAGEMENT STRATEGY ASSESSMENT**

- 4.65 A common theme in submissions is claims that the proposal is contrary to the relevant Conservation Management Strategy (CMS) (Mainland Southland/West Otago CMS). Some submitters claimed that the Department has acted unlawfully by making the decision of ‘intending to grant’ the application and publicly notifying the application.<sup>35</sup>
- 4.66 A full assessment of the proposal against the CMS is included in the application and also extensively considered in Department report (refer pages 40 – 48). Refer also to the evidence of Louise Taylor (attached at Appendix Four) which provides a planning opinion on the matters raised in submissions in relation to the CMS.
- 4.67 In summary:
- (a) section 17D of the Conservation Act provides that the purpose of the CMS is to implement general policies, and to establish objectives for integrated conservation management;

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<sup>34</sup> Refer Appendix 1 of the Department report – page 149.

<sup>35</sup> Refer for example to submission 306; submission 298; submission 259.

- (b) integrated management is achieved by referring to outcomes planned for areas, which may be a combination of different outcomes including those for management of natural resources, historic and cultural heritage and recreational opportunities;
- (c) at times these outcomes might appear to be conflicting in nature (i.e. protection of natural habitats, as well as allowing concessions for certain activities);
- (d) in this regard each policy needs to be considered in conjunction with all other policies contained within the CMS;
- (e) the majority of the monorail is within the Te Anau Basin landscape unit;
- (f) Te Anau Downs is the only part within the Fiordland Landscape Unit;
- (g) section 4.3 (page 122) discusses recreation and tourism development proposals including facility development/upgrading proposals by the Department, commercial operators or other agencies;
- (h) section 4.4 of the CMS discusses Recreation and Tourism Concessions. The CMS recognises that recreation and tourism concession can enable a wider visitor enjoyment and appreciation of areas administered by the Department (refer objective 1 and implementation methods 5 and 8 in particular);
- (i) section 6.20 of the CMS refers to the Te Anau Basin which has particular relevance to the monorail. Throughout this section there are various references to the monorail project;
- (j) implementation methods also include reference to the monorail noting that the kiwi burn track and hut may need to be relocated if the monorail proceeds;
- (k) implementation method 9 (page 309) was referred to by many submitters. It states:

*“concessions in the area 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”<sup>36</sup>*

- (l) this method goes on to state that this area is shown on the accompanying map.<sup>37</sup> It is then confirmed that:

*“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”.*

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<sup>36</sup> Implementation 9 – page 309  
<sup>37</sup> Page 310 of the CMS

(m) the relevant map of the CMS (page 310) identifies an area referred to as the Central Snowdon Remote Area. Although there is some differences in terminology (Central Snowdon Remote Area versus Snowdon Mountains), it is considered that the implementation method referred to above only applies to this area shown on the map. This is because the relevant objective, in which this implementation method relates to, seeks that:

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 for which access is not too difficult, but users are required to be self reliant.*

[emphasis added]

(n) Figure 9 of the Greenaway recreation assessment lodged with the November 2009 application (refer Appendix L) illustrates that none of the area covered by the concession application is within the Snowdon remote area. Accordingly, it is concluded that implementation method 9 is not relevant to this application.

4.68 In conclusion, the concession application is not inconsistent with those CMS provisions relevant to the proposal.

#### **FIORDLAND NATIONAL PLAN MANAGEMENT PLAN**

4.69 Several submitters claimed that the proposal was contrary to various parts of the Fiordland National Park Management Plan ("FNPMP").<sup>38</sup> As noted above, the only part of the proposal which will enter the Fiordland National Park is the Te Anau Downs terminus. The terminus is to be located at the site of the existing Fiordland National Park Lodge, at Te Anau Downs. The terminus does not represent new or out of character development within the National Park.

4.70 Louise Taylor discusses the relevance of the FNPMP to the proposal, and assesses those elements against relevant provisions in evidence (attached as Appendix Four). In summary, she notes that Te Anau Downs is zoned within the management plan as being a "front country setting". She considers that the location of the Te Anau Downs terminus will result in a sense of arrival to the Fiordland National Park, without detracting from the national park values the FNPMP aims to protect.

4.71 Section 5.7 and method two are particularly relevant to the monorail. Those provisions refer to the monorail proposal specifically, and state (in summary) that a full assessment of effects will be necessary in order to consider the appropriateness of such a proposal. It is our view that the Riverstone application has done just that, as is further demonstrated in this reply.

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<sup>38</sup> Refer for example submission 289; submission 240.

4.72 In conclusion, nothing in the Riverstone concession proposal offends any relevant part of the FNPMP.

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**PART FIVE: THE EFFECTS OF THE PROPOSAL**  
**LOUISE TAYLOR, GARY BRAMLEY, CLAIRE HUNTER**  
**MITCHELL PARTNERSHIPS LIMITED**

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## 5. EFFECTS

### TERRESTRIAL ECOLOGY

- 5.1 Submissions raised particular concerns about the clearance of vegetation to provide for the monorail and ancillary activities and the associated impact that this would have on terrestrial ecological values.<sup>39</sup> Claims were made by some submitters that the works required to construct the monorail would destroy the ecological values of the Snowdon Forest. There was concern that the extent of vegetation clearance and consequential effects has been underestimated and the effects had therefore not been adequately assessed or understood. Submitters were also concerned about the potential for the construction and operation of the monorail to exacerbate the presence of weeds and pests within the area.
- 5.2 It is acknowledged that the proposal is situated within an ecologically significant area. In this regard a team of experienced expert ecologists comprising of Dr Gary Bramley, Dr Ruth Bartlett and Dr Rhys Buckingham undertook extensive field studies (totalling 38 individual days in the field) in order to determine the significance of the ecological values and quantify the effects. This work resulted in the preparation of the Terrestrial Ecology Report which accompanied the concession application as Appendix I. Additional spring surveys undertaken by the team of ecologists resulted in a subsequent report being submitted to the Department post lodgement of the application.
- 5.3 These studies determined that parts of the “envelope”, including the red tussock grasslands, are of international importance which is recognised in the World Heritage Status of the wider area. Other vegetation types along the envelope, such as tall red beech forest, are of national importance as habitat for kaka, bats and other species. The Snowdon Forest Conservation area generally is regarded as having regional importance in terms of ecological values. It is evident that these values are generally accepted and no new values were identified by the submitters.
- 5.4 The key effect on terrestrial ecological values arises from the construction of the monorail route (i.e. the clearance of vegetation). As explained in the evidence of Dr Bramley which accompanies this reply (as Appendix Three),<sup>40</sup> the estimate of the vegetation clearance required has been based on plots of abundance, with no effort made to avoid large trees. In final route selection avoidance of large trees would be a priority. On this basis, the applicant believes that the estimate is conservative. The figures set out in the application, and carried through to the draft conditions of concession have been used in order to understand and quantify the likely effects. Once the final route has been selected the exact extent of vegetation clearance required will be confirmed, and as noted this is likely to be less than the estimated figure.

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<sup>39</sup> Refer for example to submission 275, 306, 298, 169.

<sup>40</sup> And also described by Dr Bramley during the oral reply presentation in Invercargill.

- 5.5 Within the envelope identified for the proposed route, effects on ecological values will be avoided to the extent that this is practicable. This will be achieved as follows:
- (a) application of the ecological criteria, as proposed by a condition of the concession. The ecological criteria are designed to protect key ecological values along the route including both vegetation and fauna (i.e. bats);
  - (b) two tracks are proposed to avoid removing extensive amounts of canopy (two narrow tracks rather than one wide one which would open up more canopy and have greater effects);
  - (c) the final route selection will involve the ecologist, engineer and project liaison officer working together to reduce effects. Two of those three are focussed on ecology; and
  - (d) these activities and requirements a condition of the concession (refer condition 5 of the Department report) and will also be guided by the implementation of the Vegetation and Habitat Management Plan (refer condition 18 of the Department report).
- 5.6 The focus on managing terrestrial ecological effects has been to minimise the extent of clearance where this is practicable. Locating the route along the edge of the forest will also assist in this regard. Where clearance is deemed to be unavoidable, the effects on vegetation and fauna will be mitigated or offset through:
- (a) the appropriate timing of construction (i.e. to avoid nesting periods);
  - (b) extensive rehabilitation methods; and
  - (c) the use of predator and weed control.
- 5.7 This mitigation and management will be implemented via conditions of the concession (refer conditions 21 and 22 of the Department report) and/or the obligations inherent within the management plans.
- 5.8 Dr Bramley discusses specific consideration given to bats and birds as part of the ecological work, including in the route selection criteria in his evidence (refer to Appendix Three).<sup>41</sup> This is discussed in more detail in both the October 2009 Terrestrial Ecology Report (accompanied the November 2009 application as Appendix L), and the Spring Survey Report (January 2010). The later report concludes that *“the effects on the biodiversity and overall viability of the habitats through which the monorail will pass are expected to be minor at any one location due to the narrow, linear nature of the two tracks”*.<sup>42</sup>

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<sup>41</sup> Concern about potential effect on Bat population raised (for example) in submission 272.

<sup>42</sup> Page 21, Spring Survey Report, Mitchell Partnerships Limited.

- 5.9 Several submitters claimed that the creation of the monorail and construction track is likely to create significant die back or “wind throw” effects on the forest. Dr Bramley assessed this risk in his October 2009 Terrestrial Ecology Report and further summarises his conclusions on this matter in his evidence (refer to Appendix Three). Dr Bramley concludes, based on his experience of similar environments that *“additional clearance is not expected to be significant”*.
- 5.10 Subject to adherence to concession conditions, the Department determined that the effects of the monorail and ancillary activities could be reasonably and practicably avoided, remedied or mitigated to the point where those effects on flora and fauna values would be minor. It was also determined that there would be residual effects in the form of habitat modification and loss, however it was identified that these effects can be appropriately compensated for (refer condition 23 of the Department report).
- 5.11 Submitters questioned the soundness of certain rehabilitation methods particularly those relating to vegetation direct transfer (VDT). Dr Gary Bramley has extensive experience in the use of these methods, and has confirmed that VDT has been successful for other projects throughout New Zealand. The methodology and monitoring to ensure rehabilitation has been successful will be set out within the conditions (refer condition 22 of the Department report) and the Vegetation and Habitat Management Plan.

## **RECREATION AND ACCESS**

- 5.12 A number of submitters expressed concerns that the presence of the monorail would restrict or even destroy access into the Snowdon Forest for the likes of tramping and hunting<sup>43</sup>. There were also concerns that the monorail will detract or displace users from the existing remoteness or wilderness experience. Submitters said they value the fact that they can access a level of remoteness relatively easily currently, via both the Kiwi Burn and around the Army Hut area. Some claimed that the presence of the monorail would destroy or forever change this experience, and that level of remoteness would no longer be attainable.
- 5.13 The impact of the monorail on recreational values was addressed by Mr Rob Greenaway. This assessment was attached as Appendix L to the application and was updated to reflect the amendment to the Kiwi Burn terminus proposed location away from the Mavora Swing Bring subsequent to that report.<sup>44</sup>
- 5.14 The 2009 assessment identifies that there are six recreational activities or facilities that currently exist in the area which could be potentially affected by the proposal. The assessment determines that for the most part the adverse effects on these facilities will be minor, provided appropriate mitigation is in place. The proposed mitigations are:

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<sup>43</sup> Refer for example submission 185; submission 103; submission 169.

<sup>44</sup> Refer Mitchell Partnerships Limited letter to Department dated 4 February 2011, and in particular Attachment 2, Recreation Assessment.

- (a) at the Kiwi Burn parking area, ensure facility development respects existing users, by, for example, retaining specific areas for trampers, campers and kayakers to park;<sup>45</sup>
- (b) develop a 4WD underpass at the intersection of the monorail and Army Hut vehicle access;
- (c) redevelop existing recreation facilities (Kiwi Burn Hut, parts of the Kiwi Burn „round trip’ track, and parts of the Whitestone to Retford Stream route) to retain existing walking, tramping and hunting values; and
- (d) upgrade existing recreation facilities (Lake Mistletoe and the existing Kiwi Burn Hut for mountain biking use).

5.15 It was also identified that it will be necessary to minimise effects of construction for users such as hunters who are not restricted to the established infrastructure of tracks and huts for their recreation. Methods to achieve this will include signage (including at the Mavora camp ground), noise control, sedimentation control, rehabilitation and construction management as specified in the health and safety, noise, erosion and sediment control, terrestrial ecology and construction plans respectively. These methods are secured by proposed conditions (refer condition 17 of the Department report).

5.16 In response to a specific concern raised by several submitters that access would no longer be available to key hunting areas, such as access to Army Hut, access will be maintained via the establishment of an underpass for 4WD vehicles at the intersection of the proposed monorail route and Army Hut access. This is required by the Recreation Users Management Plan and secured by concession conditions.

5.17 In terms of safety concerns it is noted that any hunting in the area is allowed by permit only. On this basis Riverstone considers it appropriate that any permits issued by the Department require a 500m no fire zone from the bike track or monorail. A condition on the Riverstone concession to this effect would not be appropriate, as it could not be enforced by the concession holder.

5.18 In order to retain access for existing walking, tramping and hunting values which is of concern to a number of submitters, the Kiwi Burn loop track will be realigned (if necessary) so as to limit the mixing of recreational users with the monorail as far as practical and to therefore minimise potential displacement effects.

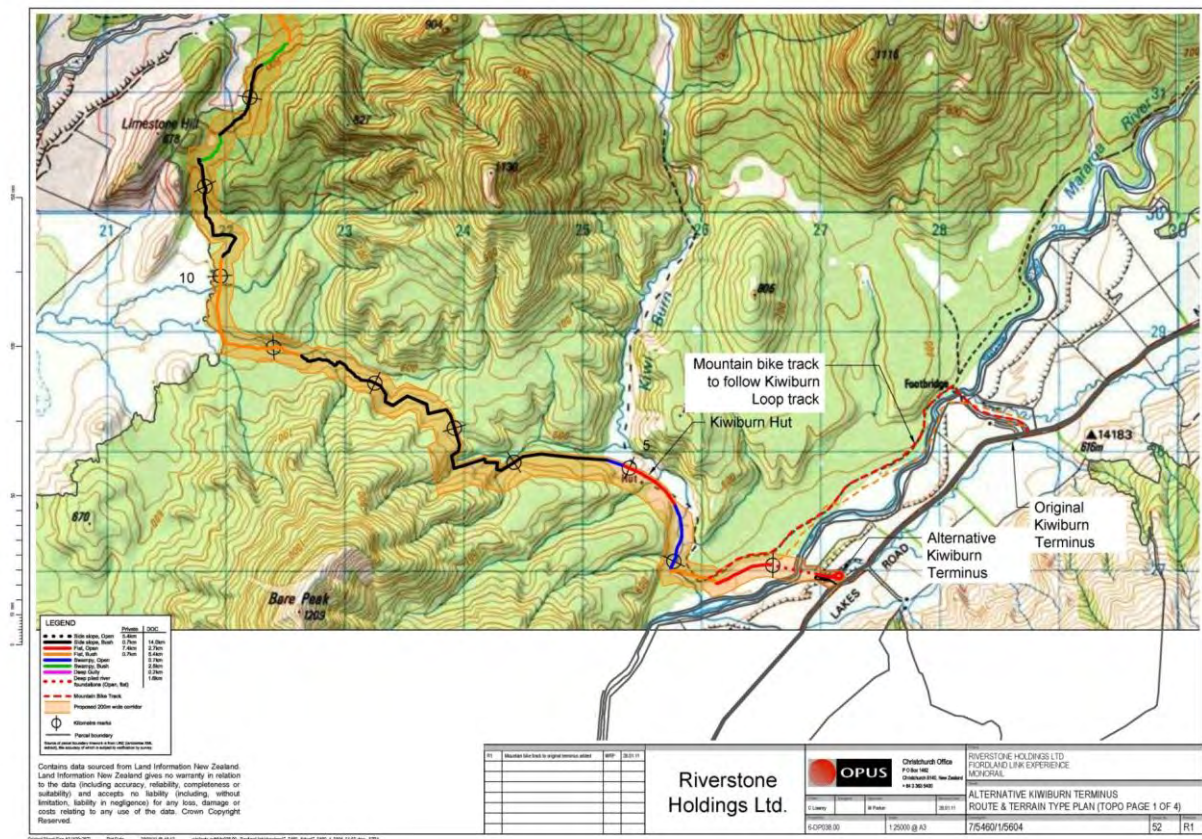
5.19 The positioning of the Kiwi Burn terminus downstream from the commencement of the loop track (which is at the Mararoa swing bridge) goes a long way to achieve this separation (refer to Figure Seven below). A new hut will also be constructed for trampers. It is also proposed to realign parts of the Whitestone to Retford Stream

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<sup>45</sup> Although note that the new Kiwi Burn terminus location is some distance from the Mararoa Swing bridge, and accordingly this potential effect is now mitigated.

track (if necessary to achieve separation from the monorail). The final location and timetable for construction of these tracks will be decided in consultation with the Department once the monorail route is finalised during the detailed design phase of the project. The Recreational Users Management Plan will guide this process and conditions proposed by the Department will ensure that these mitigation measures are implemented (refer to condition 17).

**Figure Seven: Relocation of the Kiwi Burn Terminus**



5.20 Several submitters raised concerns about the intended location of the new Kiwi Burn hut. Whilst it is acknowledged that the final location of the new Kiwi Burn hut is a decision for the Department, Riverstone confirms it is happy to liaise with submitters, along with Department staff in deciding the best location and aspect for the hut.

## EFFECTS ON WATER AND RIVERS (WATER QUALITY, AQUATIC ECOLOGY, FLOOD RISK)

5.21 A number of submitters were concerned about the effects of the monorail in particular the construction activities on water quality, and aquatic ecology values of streams affected by the proposal.<sup>46</sup> It is agreed that without mitigation adverse effects on water quality will potentially arise during the construction of the monorail route. Effects on water quality and aquatic ecology were therefore assessed by a team of experts at

<sup>46</sup> Refer for example submission 169; submission 89; submission 131.

NIWA. In May 2009 NIWA staff undertook field surveys in rivers and streams along the proposed monorail route in order to confirm the values that exist. This assessment is contained as Appendix G to the November 2009 concession application.

- 5.22 Overall it was determined from this assessment that the headwater catchments of the Upper Waiau system are relatively pristine, and provide a variety of habitat types for aquatic organisms. Most of the taxa found were known from rivers or wetlands elsewhere in the South Island. The assessment also confirmed that the invasive diatom *Didymo* is present in large rivers along the proposed route (The Mararoa, Kiwi Burn, Whitestone, and Upukerora Rivers) but was not found in smaller tributary streams. Invertebrate communities present within the area are diverse and generally consist of a high proportion of “pollution-intolerant” taxa, which reflects the quality of the instream habitat available. Some of the small tributary streams surveyed were found to support a very diverse community of bryophytes, although, most of the larger rivers showed no, or relatively low, species richness of bryophytes.
- 5.23 The assessment also confirmed that fish utilise a variety of habitats within the waterways surveyed, and non-migratory galaxiids are widespread, and in some places common or abundant, but this fluctuated probably because of the presence of trout.
- 5.24 The construction of the monorail and associated waterway disturbance, and/or potential discharges into waterways from adjacent works were identified as the key effects by NIWA.
- 5.25 NIWA determined that the key mitigation measures to ensure the works do not affect the water quality either within the project footprint or downstream of the construction, or during operation include:
- (a) implementing best practice construction methodologies at all times;
  - (b) avoidance of work within active river beds as far as practicable except where necessary to cross large rivers;
  - (c) avoidance of any activities which affect the stream bed and bank structure as far as practicable;
  - (d) cleaning of all machinery and equipment before entering or shifting between waterways to prevent the spread of *didymo*;
  - (e) constructing the monorail within waterways during the summer months where practicable. During summer insect flight and instream invertebrate drift increases, enhancing invertebrate community recovery times;
  - (f) ensuring construction in river beds is completed as quickly as possible;

- (g) ensuring that hazardous substances such as petroleum products are managed in accordance with the Hazardous Substances Management Plan to prevent these substances entering waterways; and
- (h) erosion and sediment mobilisation will be managed as prescribed in the Erosion and Sediment Control Plan to avoid or minimise loss of soils into waterways.

5.26 These recommended mitigation measures are captured by either proposed conditions and/or the Construction Management Plan which has a specific section dealing with in-river construction activities and erosion and sediment control (refer conditions 15 and 16 of the Department report).

5.27 It has also been identified that the construction of the monorail has the potential to impact aquatic stream habitat by disturbing the bed and/or banks of rivers and streams, and by mobilising sediment along the route during the construction. The use of machinery in waterways also has the potential to introduce and further spread the presence of Didymo and other aquatic weeds to streams where they are currently absent. Such activities will be strictly controlled (refer condition 16).

5.28 The exact location where the monorail will cross rivers and streams is yet to be determined, but one of the considerations to be applied during the detailed design phase of the construction is that crossings will be located in the most ecologically appropriate sites (both terrestrial and also aquatic), that is where adverse effects on the water can be avoided or minimised (refer condition 16).

5.29 Prior to the construction of the monorail starting, a survey of all streams crossed by the route will be undertaken to determine the distribution of didymo through the catchments. This will form the basis of determining whether the streams are didymo free and whether didymo control methods are required where didymo is later found (refer condition 16).

## **FLOOD CONTROL**

5.30 The potential for flood risk was also raised in submissions. This was also addressed by NIWA. The key concern in this regard was identified during construction. In order to minimise any flooding risk during construction, NIWA recommended regular weather monitoring be undertaken, and an appropriate response plan be implemented should there be any forecast of heavy rainfall in catchments that could lead to flooding of rivers and streams in the project footprint. This plan will be set out within the Construction Management Plan and implemented accordingly (refer condition 12 of the Department report).

## NATURAL HAZARDS

- 5.31 The potential for natural hazard risk to the project was raised by at least one submission,<sup>47</sup> and discussed by Mr Ian Turnbull called at the hearing as a witness by Forest and Bird. Riverstone takes the potential for natural hazard risk seriously, as does their advising engineers, Opus International Consultants.
- 5.32 Will Parker, on behalf of Opus respond specifically to Mr Turnbull's evidence and also the submission of David Boniface in a letter (attached, Appendix Two). The letter confirms that, along with the work carried out by NIWA in relation to flood risk (and referred to above), Opus have largely considered the matters raised by the two submitters in their report attached to the November 2009 application (refer Appendix E). Riverstone is confident the risk to the project by natural hazards is one that can be appropriately managed, in the same way as natural hazards must be managed in any infrastructure project.

## NOISE

- 5.33 Submitters raised concerns that noise from both construction activities and operation of the monorail would detract from the back country experience and adversely affect the amenity and intrinsic values of the area.<sup>48</sup> Marshall Day Acoustics were engaged to measure ambient noise measurements. Marshall Day staff flew to several of the remote parts of the monorail route and walked the Kiwi Burn loop track. The Marshall Day Acoustics report is attached as Appendix H of the application. Monitoring in the field assisted to determine the baseline noise levels.
- 5.34 This assessment determined that there is a lack of human generated noise on most of the land surrounding the monorail route. However, it was also found that despite the remoteness and apparent tranquillity of the area ambient noise measurements showed that the walking tracks and routes in the area were not particularly quiet. Because the tracks often follow streams and rivers, water noise is always present. The background noise level (LA90) at the quietest locations was always greater than 27dB and at locations close to water it was up to 70dB. Areas well away from rivers and streams would probably have lower noise, but these locations are also well separated from the proposed monorail route.
- 5.35 During construction there will be noise effects, the severity however of this is dependent on the distance from the proposed works. Calculations by Marshall Day Acoustics show that construction will result in noise levels of 65 – 70 dBA at distance of 50 metres. The assessment determined that at distances beyond 400m in bush covered areas, construction noise will be essentially inaudible. The proposed realignment of walking tracks as discussed above will provide a reasonable buffer distance. Marshall Day Acoustic recommends that this realignment work be undertaken prior to construction commencing on the monorail route. In addition, a

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<sup>47</sup> Refer for example to submission 131; submission 272.

<sup>48</sup> Refer for example to submission 131; submission 140; submission 267; submission 109.



Construction Noise Management Plan is proposed which would address issues such as:

- (a) locating potentially noisy fixed items of equipment such as generators and pumps in areas well away from recreational users, and/or enclosing them;
- (b) replacing equipment with quieter technology;
- (c) ensuring that machinery is well maintained;
- (d) undertaking construction at off peak times of the year as far as is practicable; and
- (e) locating construction sites/depots well way from major recreational areas such as the Mararoa swing bridge.

5.36 These obligations will be inherent within the Construction Management Plan and implemented in accordance with conditions of the concession (refer condition 11 of the Department report). On this basis noise effects will be appropriately managed, and in any case as identified by the Department the effects of noise during construction will be temporary.

5.37 Operationally, noise effects arising from the monorail will be mitigated by maintaining a separation distance of at least 200 – 400m between walking tracks and the monorail route where this is possible.

5.38 Noise impacts on Takaro Lodge were raised as a concern by submitters. The noise impact on this locality was specifically assessed by Marshall Day Acoustics. The lodge is approximately 1km from the proposed monorail alignment. Taking into account the terrain and vegetative cover, the noise assessment determined that the lodge would experience a resultant noise increase of 26 – 28 dBA as a result of the monorail passing. This level will be inaudible under almost all weather conditions, and on this basis Marshall Day Acoustics determined that noise effects on owners and visitors to the lodge will be negligible.

5.39 The noise assessment also determined that any noise effects on wildlife arising from the operation of the monorail will be minor.

## **TRAFFIC**

5.40 Several submitters are concerned about the effect of the proposal on the surrounding road network both during construction and operation of the monorail. There was also concern that transportation and access solutions should not be a private initiative and should be part of a wider strategy.<sup>49</sup>

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<sup>49</sup> Refer for example to submission 242; submission 121.

- 5.41 The concession being sought does not include any road administered by the Department, however since the proposal is ultimately concerned with transportation, Riverstone engaged Traffic Design Group to assess and report on traffic issues. This assessment is attached as Appendix N to the application. This considered the effects of both construction and operational effects.
- 5.42 This assessment determined that any temporary increase in traffic generation during construction can be adequately provided for by the local roads. It was however recommended that a traffic management plan shall be prepared as a component of the Construction Management Plan. The objectives of this plan shall be to reduce construction traffic as far as is possible, and to reduce the impact of traffic associated effects including safety, noise and traffic flow on land administered by the Department in particular. The Plan shall detail the traffic management measures to be put in place during construction, including as a minimum management procedures for onsite traffic during construction and measures to minimise traffic noise and traffic dust generation (refer to condition 10 of the Department report).
- 5.43 Once operational, the overall experience would contribute to less traffic on local roads, except the Mavora Lakes Road and the Mount Nicholas/Von Road.
- 5.44 It is also noted that the overall experience is intended to spread the load of visitors, and hence visitors to Milford Sound from the current midday peak to a more even distribution throughout the day. There are both environmental, safety and social benefits arising from this.

## **LANDSCAPE/VISUAL**

- 5.45 Effects on landscape, visual and natural character values arising from the construction and operation of the monorail was raised by a number of submitters.<sup>50</sup> These effects were assessed and reported by Stephen Brown who is nationally recognised for carrying out landscape assessments in many sensitive and large scale environments. This assessment was undertaken in May 2008 and included site visits to a range of locations round the Von Valley, Mavora Lakes and Milford Sound and a variety of rural landscapes between Queenstown and Te Anau as well as the proposed route itself. These visits revealed a diversity of landscapes within, and at the edge of Fiordland National Park. The assessment involved analysis of the proposed monorail route in the field and „subdivision’ of the corridor into 21 segments, each of which have a particular biophysical and visual landscape character that differentiates them from adjacent sections of the route. The assessment is attached as Appendix J to the application. It is not disputed that the area has significant landscape and natural values, and although this is not a Resource Management Act process would be considered an outstanding natural landscape.

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<sup>50</sup> Refer for example submission 3; submission 4; submission 8; submission 28.

- 5.46 The assessment determines that in some localities there will be potential or actual adverse effects on the landscape and/or resulting visual effects. These effects can however be avoided or minimised by careful route selection and monorail design. Other effects can be mitigated by blending the proposed structures (i.e. terminus buildings) into the landscape by, for example, rehabilitation of disturbed areas, and the use of recessive natural colours.
- 5.47 Subject to conditions proposed by the Department including an audit and approval of final 'on the ground' design plans to confirm actual effects, and integration of structures into the surrounding landscape (i.e. by colour and design), it was determined by both Stephen Brown and the Department that the effects of the proposed monorail and ancillary activities could be reasonably and practicably avoided, remedied or mitigated to the point where those effects on the visual landscape values would be minor (refer to conditions 3 and 4, as well as those that manage terrestrial ecology).

## **TOURISM**

- 5.48 There was some criticism from submitters that the monorail proposal is inconsistent with New Zealand's clean green image and that this may be detrimental to tourism.<sup>51</sup> Other submitters supported the application due to potential tourism benefits<sup>52</sup> J & H Moriarty Limited was commissioned to undertake an assessment of the impact the proposed monorail and mountain bike track is likely to have on tourism at a local, regional and national level. This report is attached as Appendix K to the November 2009 application.
- 5.49 This report determined that Fiordland, Central Otago and the Southern Lakes are popular tourist destinations primarily due to the spectacular natural and physical environment, consisting of lakes, rivers, forests, plains and mountains. Infrastructure in both regions has developed over time to attract and cater for tourists. However there remains a challenge to overcome the principal inhibiting factor of time inefficient travel for the majority of visitors accessing Fiordland, Milford in particular, from their popular overnight base in Queenstown. The FiordlandLink Experience has the objective of addressing these issues by providing an alternative route from Queenstown to Fiordland. It proposes a multi-modal journey that would be: more time efficient than current surface transport alternatives, offers controlled access to wilderness vistas en route, reduces congestive loads at Milford Sound and creates new visitor opportunities by establishing a substantial "port of entry" into Fiordland at Te Anau Downs.
- 5.50 While the assessment recognises that the establishment of any tourism product includes a degree of impact, it is noted that successful ventures not only provide favourable commercial returns for their community and investors but also improve social well-being through more effective use of resources. The tourism assessment

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<sup>51</sup> Refer for example submission 6; submission 17; submission 35.

<sup>52</sup> Refer for example submission 5; submission 7; submission 14; submission 15.

determines overall that the FiordlandLink Experience is an innovative tourism product that will be expected to have very significant favourable commercial and social impacts on its peripheral communities.

## **CULTURAL AND HISTORICAL**

- 5.51 It is noted that there are no submissions received from the local runanga in regard to this proposal. This is likely to be reflective of the consultation that occurred with local iwi, and the cultural impact assessment ("CIA") that was prepared by Te Ao Marama (submitted to the Department in October 2010). There was however at least one submitter who raised concern that the proposal was inconsistent with the principles of the Treaty of Waitangi and that it would be inconsistent with the concept of kaitiakitanga, and that there would be heritage sites affected by the construction of the monorail.<sup>53</sup>
- 5.52 It is identified within the CIA that the proposal has the potential to affect Ngāi Tahu values and beliefs if it is not managed appropriately. These values include the mauri, mahinga kai and mahinga mātaītai, terrestrial vegetation, aquatic biota and water quality. It is determined overall that provided other environmental effects (i.e. on terrestrial and aquatic ecology values) can be avoided or appropriately mitigated, there are no significant effects on cultural or historical values.
- 5.53 In this regard the Department has proposed a number of conditions (refer condition 14) that would avoid or mitigate potential effects on cultural and historical values, including identification of the location of Hodges Stock Track, avoidance of any modification of the existing Kiwi Burn Hut that would compromise its historical integrity, adherence to accidental discovery protocols, and ongoing liaison with local runanga.

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<sup>53</sup> Refer submission 148.

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**PART SIX: THE STATUTORY ASSESSMENT**

**PAUL BEVERLEY**

**BUDDLE FINDLAY**

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## 6. STATUTORY ASSESSMENT

### INTRODUCTION

- 6.1 The task for the hearing panel is to consider the application, the submissions made, and this reply by Riverstone, and prepare a recommendation to the final decision-maker under the Conservation Act 1987.
- 6.2 The concession process under Part 3B involves the relatively unique step where the Minister forms an "intention to grant" an application under section 17T. This can be contrasted with other statutory application processes such as for resource consents under the RMA, when no "intention to grant" is indicated in a public notification process (the application itself is notified).
- 6.3 The Minister has notified an intention to grant this application. That decision was based on the Department's report. That report was based on a detailed and sound understanding of the legal and planning framework, and a careful analysis of the application including the expert reports and the nature and level of effects.
- 6.4 Consequently, the proper approach is for the hearing panel to consider whether:
- (a) any material matters have been raised in the submissions;
  - (b) any such matters are supported by appropriate evidence;
  - (c) any such matters have nevertheless been adequately addressed by Riverstone;
  - (d) any such matters are of such significance to justify the Minister moving away from the "intention to grant".
- 6.5 Riverstone's submission is that:
- (a) there are no such matters in the submissions that justify that change in approach;
  - (b) there was no evidence provided to the hearing panel that would support a change in approach, in particular on technical expert matters;
  - (c) this should be contrasted with the extensive input from technical experts on behalf of both Riverstone and the Department;
  - (d) the Department report remains a very sound basis for the decision on this application; and
  - (e) the position in the Department report that this application should be granted remains valid and has not in any way been discredited through the submissions.

6.6 It should also be noted that the proposed concession conditions/management plans are critical in forming the basis for the conclusions reached in the Department's report, and those conditions were the subject of minimal comment in the submissions.

## **ADMINISTRATIVE LAW**

6.7 It is clear that the hearing and reply process and the recommendation to the decision-maker must be undertaken in a manner consistent with administrative law principles. These principles include a need to (for example):

- (a) act lawfully and in accordance with the relevant statutory frameworks;
- (b) take into account relevant considerations;
- (c) not take into account irrelevant considerations;
- (d) act fairly; and
- (e) act reasonably.

6.8 In the context of this application and the hearing, these principles give rise to the need for the hearing panel to treat submissions and evidence (and in particular expert evidence) in an appropriate manner. In particular, where the hearing panel has the benefit of credible expert evidence from Riverstone or the Department, then in law it should prefer that evidence unless there is credible and more compelling evidence to the contrary.

6.9 Riverstone agrees with the submissions made that this recommendation needs to be made in a lawful manner in accordance with the statutory frameworks. What is required is a careful and accurate analysis of the legal and planning frameworks and how those frameworks apply in the context of this application. With respect, many of the submissions did not describe the statutory or planning frameworks in an accurate manner.

6.10 Further, a number of the submissions claimed that the granting of this concession would be "unlawful" and that this type of activity cannot be undertaken in a conservation area or is inherently inconsistent with conservation legislation. That is simply not the case.

## **CONSERVATION ACT**

6.11 With the exception of a small part of the application that covers Te Anau Downs, this application relates to stewardship area administered under the Conservation Act. This application for a concession is made under Part 3B of the Conservation Act.

6.12 The Conservation Act, as with most conservation legislation, is founded on the principle of striking an appropriate balance between protection and use/enjoyment of those places and resources. Elements of this principle can be seen in other

conservation legislation such as the National Parks Act 1980, Reserves Act 1977, Marine Reserves Act 1971, and the Marine Mammals Protection Regulations 1992.

- 6.13 The key point is that the Conservation Act is not premised on absolute preservation/protection with no provision for use of conservation land or resources. For example, the definition of "conservation" under the Conservation Act is as follows (emphasis added):

*"the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations"*

- 6.14 A key element of very definition of conservation is *"appreciation and recreational enjoyment by the public"*. As described earlier in this reply one of the key objectives of the monorail proposal is to provide a world class experience of the natural and historic resources of this area of public conservation land.

- 6.15 Other aspects of the Conservation Act demonstrate that the scheme of the legislation is not focussed on absolute protection or preservation. These include the provisions referred to below (emphasis added):

- (a) *"Preservation" is defined in section 2 as "in relation to a resource, means the maintenance, so far as is practicable, of its intrinsic values".*
- (b) *"Protection" is defined in section 2 as "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"*

- 6.16 Section 6(c) of the Conservation Act states that a function of the Department is:

*"to promote the benefits to present and future generations of ...*  
*the conservation of natural and historic resources..."*

- 6.17 Section 6(e) states that a function of the Department is:

*"to the extent that the use of any natural or historic resource for recreation or tourism is not inconsistent with its conservation, to foster the use of natural and historic resources for recreation, and to allow their use for tourism..."*

- 6.18 These provisions all reflect that the Conservation Act is not about preserving the status quo. The Act specifically refers to matters such as:

- (a) providing for appreciation and recreational enjoyment by the public;
- (b) promoting the benefits of conservation to future generations; and



- (c) allowing the use of natural and historic resources for tourism (to the extent that is not inconsistent with conservation).

6.19 Again, it is submitted that the monorail proposal fits well with these concepts, such as providing for appreciation and recreational enjoyment by the public, promoting the benefits to future generations of conservation and allowing for tourism.

6.20 In 1996 Part 3B was introduced into the Conservation Act to provide a specific and more detailed regime allowing for applications of this nature on public conservation land. The Act clearly contemplates the potential for applications for physical infrastructure in conservation areas.

6.21 Further, the Conservation Act is not a "no-use", "no-change" or "no-effects" statute. Part 3B envisages that there can be use, changes to and effects on public conservation land and resources. For example:

- (a) section 17U(1)(c) refers to "*any measures that can reasonably and practicably be undertaken to avoid, remedy or mitigate any adverse effects of the activity*";
- (b) section 17U(2)(c) refers to there being "*no adequate methods or no reasonable methods for remedying, avoiding or mitigating the adverse effects of the activity, structure, or facility*".

6.22 These sections contemplate that there can be residual adverse effects of an activity, as long as reasonable and practicable steps have been taken to avoid, remedy and mitigate those effects. This is reflected in the Department report.

6.23 In summary, contrary to a number of submissions, there is nothing unlawful about granting an application of this nature, nor is a monorail inherently inconsistent with the scheme of the conservation legislation.

## **SECTION 17U**

6.24 Section 17U(1) of the Conservation Act states:

- (1) *In considering any application for a concession, the Minister shall have regard to the following matters:*
  - (a) *The nature of the activity and the type of structure or facility (if any) proposed to be constructed:*
  - (b) *The effects of the activity, structure, or facility:*
  - (c) *Any measures that can reasonably and practicably be undertaken to avoid, remedy, or mitigate any adverse effects of the activity:*
  - (d) *Any information received by the Minister under section 17S or section 17T of this Act:*

- (e) *Any relevant environmental impact assessment, including any audit or review:*
- (f) *Any relevant oral or written submissions received as a result of any relevant public notice issued under section 49 of this Act:*
- (g) *Any relevant information which may be withheld from any person in accordance with the Official Information Act 1982 or the Privacy Act 1993.*

6.25 Riverstone has provided extensive information and expert technical input as part of its application and further information provided. This includes:

- (a) a detailed description of the nature of the concession activity;
- (b) a detailed description and expert assessment of the potential effects;
- (c) a detailed description and expert assessment of the measures that can be undertaken to avoid, remedy and mitigate adverse effects; and
- (d) a detailed environmental impact assessment.

6.26 One key matter for the hearing panel will be to ensure that it only takes into account those matters that it can properly consider under the Conservation Act and in particular section 17U(1). With respect, a number of submissions covered points that are not strictly relevant under that legislation. Reference is made to some of these points later in this reply.

#### **LEVEL OF INFORMATION AND ADAPTIVE MANAGEMENT APPROACH**

6.27 Section 17U(2) of the Conservation Act states:

- (2) *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; or*
  - (b) *There are no adequate methods or no reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility.*

6.28 The Department report is correct in concluding that there is sufficient and adequate information to assess the effects of the proposal (and the methods to avoid/remedy/mitigate those effects), and that there are reasonable methods for avoiding, remedying and mitigating the effects.

6.29 In terms of the level of information provided as part of this application, the following points should be emphasised:

- (a) this is a very detailed application that reflects the significance of this proposal;
- (b) there has been extensive use of highly regarded technical experts;
- (c) those experts have collectively spent extensive time on the application site – for example members of Riverstone's ecological team spent 38 individual days on site;
- (d) the expert's information has been subject to expert technical review – both internal and external to the Department;
- (e) Riverstone has proposed an extensive suite of concession conditions and management plans; and
- (f) there has been very little in the way of expert assessment to challenge the level or quality of that information provided by Riverstone and its experts.

6.30 It is important to emphasise that in the context of all statutory application processes (including for example for resource consents under the RMA, concessions under the Conservation Act and approvals under the Hazardous Substances and New Organisms Act) both the applicant and the consenting authority are faced with the task of predicting the nature and level of effects that may arise as a result of a proposal. This is simply because it is impossible to predict with any certainty what effects may arise until the activity itself is actually undertaken. For that reason the environmental impact assessment process relies on:

- (a) the predictions of experts in the relevant disciplines (such as ecology, landscape and water issues); and
- (b) a judgment by a decision-maker as to what is an appropriate level of information.

6.31 In the context of large infrastructure projects, it is well accepted that a pragmatic approach needs to be taken to the amount of information required in the application document. As an example, the Environment Court commonly accepts that an applicant, having undertaken an environmental assessment, is not able to provide all of the information on the effects that may arise. There needs to be a balance struck between:

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

6.32 The envelope approach is very common in large infrastructure projects. As an example, for a wind farm it is not feasible to identify precisely the final locations of the

wind turbines, given that to do so would involve very detailed engineering design at a very significant cost. Importantly, effects can be better managed in an adaptive manner through the final design process.

- 6.33 The Environment Court in the *Meridian Energy* (West Wind windfarm) decision stated:<sup>54</sup>

*“Over the course of the hearing we heard extensive evidence from the parties. Meridian’s application, understandably, did not include exact locations of turbines, volumes of fill, turbine type, and so on. Until Meridian receives its consent, the cost of extra detail work is not, presumably, warranted in its view. Therefore, the evidence presented was sometimes of a general nature, concerning groups of turbines rather than specific turbines and distances. The evidence was at least sufficient for us to determine the effects of a turbine anywhere within 100 metres of the application’s indicative locations. We are satisfied therefore that, in general, we have sufficient evidence to assess the relocated and new turbine locations against that evidence. ...”*

- 6.34 Similarly, in *Unison Networks Ltd v Hastings District Council* windfarm decision the Environment Court noted:<sup>55</sup>

*“It seems no detail design work has been done on storm water management systems either for the construction period or for the life of any possible consent. We accept this as appropriate because such design is more effectively done during the detailed design of roading and turbine sites. Details of how the storm water would be managed would need to be submitted to the council as part of an Environmental Management Plan (EMP) which we now discuss.”*

- 6.35 The use of adaptive management systems has been accepted by the Environment Court and Boards of Inquiry as an appropriate method for avoiding, remedying and mitigating adverse effects in large infrastructure projects (including in relation to significant ecological values such as wetlands).<sup>56</sup> In the draft decision on the Transmission Gully proposal (released earlier this month), the Board of Inquiry described adaptive management as:<sup>57</sup>

*“a system for managing the effects of (generally) large projects where the nature and extent of those effects is uncertain and the outcome of methods proposed to avoid, remedy or mitigate them is similarly uncertain. Adaptive management regimes are commonly established through conditions of consent incorporating management plans which seek to manage the effects of any given activity in a flexible and responsive manner.”*

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<sup>54</sup> Environment Court, W31/2007, at [484].

<sup>55</sup> Environment Court W11/2009, at [37].

<sup>56</sup> See for example *Lower Waitaki River Management Society Incorporated v Canterbury Regional Council* (Environment Court C80/2009).

<sup>57</sup> Draft Report and Decision of the Board of Inquiry into the Transmission Gully Proposal, May 2012, at [170].

6.36 In considering whether or not the use of adaptive management regimes is an appropriate means of managing environmental effects, the Board of Inquiry stated that *"the answer is clearly yes"*<sup>58</sup>, adding that:<sup>59</sup>

*"The essential test of any method of managing effects under RMA is whether or not it achieves the purpose of the Act set out in s5(2). There is no reason why an adaptive management regime cannot achieve that purpose."*

6.37 The use of adaptive management regimes has been accepted by the Environment Court in a number of other cases (again in highly sensitive environments), including *Clifford Bay Marine Farms Limited v Marlborough District Council*,<sup>60</sup> *Lower Waitaki River Management Society Incorporated v Canterbury Regional Council*<sup>61</sup> and *Crest Energy Kaipara Limited v Northland Regional Council*.<sup>62</sup>

6.38 There is no reason why the adaptive management approach accepted by the Courts under the RMA cannot be accepted under the conservation legislation. In both the RMA and Part 3B of the Conservation Act, an "effects" based approach is taken to the assessment of applications. While there are differences between the RMA and the conservation legislation, it is submitted that both regimes allow for the adoption of an adaptive management approach to avoiding, remedying and mitigating effects.

6.39 The use of management plans (as part of the adaptive management approach) is very common in the context of large infrastructure projects. The management plan approach includes the following important components:

- (a) clear conditions are imposed to ensure that criteria, objectives and performance standards are clearly articulated and form part of the enforceable conditions of the statutory authorisation;
- (b) the conditions contain enough information and criteria to give the decision-maker confidence that environmental effects can be appropriately managed during the detailed design and subsequent construction process. In other words the conditions themselves contain the important criteria, objectives and performance standards and the applicant is bound to comply with and achieve these conditions; and
- (c) the conditions set out a clear process for the preparation and approval of management plans, including a clear description of the roles of various parties (including in this case the control that the Department of Conservation will have).

6.40 In the monorail example, a 200m easement corridor has been applied for (300m in one area) and if the concession is granted Riverstone will then proceed to identify the actual monorail route. While a route has been identified on a preliminary basis,

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<sup>58</sup> *Draft Report and Decision of the Board of Inquiry into the Transmission Gully Proposal*, May 2012, at [180].

<sup>59</sup> *Ibid.*

<sup>60</sup> Environment Court, C131/2003.

<sup>61</sup> Environment Court, C80/2009.

<sup>62</sup> Environment Court, A132/2009.

flexibility is required for adjustments during final route selection. The information provided by Riverstone's experts provides a good understanding of the effects on, for example, vegetation. The conditions will require an ongoing process between the Department and Riverstone to select the actual route and undertake construction in a manner that minimises the ecological effects of the monorail. The selection of the actual route will:

- (a) be guided by ecological criteria that will be included in the conditions of consent (including in particular the treatment of large trees);
- (b) be a collaborative process between the Department and Riverstone; and
- (c) provide significant control for the Department in ensuring that the route is selected in a manner that minimises adverse effects.

6.41 The view of the ecological experts is that a better overall ecological outcome is likely if route selection is dealt with in the manner outlined above, rather than through seeking to identify the monorail route at this point.

6.42 It is submitted that in the absence of any compelling expert evidence to challenge the expert assessment provided by Riverstone, there is no justification for departing from the conclusions reached in the Department report as to the level and quality of information provided.

## **PURPOSE OF LAND**

6.43 Section 17U(3) of the Conservation Act states:

- (3) *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.*

6.44 As discussed above and as concluded in the Department report, this application is not inconsistent with the provisions of this Act or the purpose for which this land is held (stewardship area under the Conservation Act).

## **ALTERNATIVES**

6.45 Section 17U(4) of the Conservation Act states:

- (4) *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.*

6.46 This matter has been considered in the Department report and the conclusion is that there are no reasonable alternatives as contemplated by section 17U(4). While some submitters commented on the potential for alternatives, no evidence was provided. The requirement for a decision-maker to be "*satisfied*" is a very high statutory threshold,<sup>63</sup> and there is nothing in the submissions to support a change to the position in the Department's report.

## **NATIONAL PARKS ACT**

6.47 One matter that was raised extensively in submissions was the application of the National Parks Act and the Fiordland National Park Management Plan. It is clear that only a very small part of this application applies to the National Park and the relevant planning provisions have been addressed above.

6.48 In relation to concessions, section 49 of the National Parks Act imports the provisions at Part 3B of the Conservation Act. Consequently the statutory provisions that apply in both the stewardship area and the national park are almost identical.

6.49 There are some additional matters for consideration under section 49 of the National Parks Act, but it is submitted that nothing in those provisions prevents the granting of this concession. In particular, the application will not permanently affect the rights of the public in relation to the Fiordland National Park, and the application is not inconsistent with the purpose under section 4 of the National Parks Act. It must be emphasised that the Te Anau Downs site is already the subject of extensive development and facilities.

## **CONSERVATION MANAGEMENT STRATEGY**

6.50 The relevant provisions of the CMS have been addressed in the evidence of Louise Taylor (refer to Appendix Four).

6.51 A number of submissions asserted that this application would be inconsistent with the CMS.

6.52 Those submissions have been responded to above but the following points are reiterated:

(a) it is important to emphasise the legal status of a CMS in conservation legislation;

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<sup>63</sup> *Discount Brands Ltd v Westfield (New Zealand) Ltd* [2005] 2 NZLR 597, at [52].

- (b) the CMS is an important document to guide the concession decision-making process, but the CMS cannot fetter the Minister's decision on the application. Even if there were provisions in a CMS that appeared problematic for an application, the Minister must still consider the broader context of that document and the broader statutory framework in making the concession decision;
- (c) the Minister has not declined this monorail application under section 17T(2) on the Conservation Act (on the basis of the application being inconsistent with the CMS). That is the correct approach and there has been no information or evidence provided through the submission process to demonstrate that this application is inconsistent with the CMS;
- (d) the CMS must be read as a whole, without undue focus on particular provisions; and
- (e) a number of submissions did not contain an accurate description of the provisions or application of the CMS.

6.53 It is submitted that one relatively unique feature in this case is that the CMS expressly contemplates that an application may be made (but not necessarily granted) for a monorail in this area. In that context it is extremely difficult to maintain an argument that this monorail application is inconsistent with the CMS, when the CMS expressly contemplates that application.

6.54 The CMS could have noted that an application was likely to be made for a monorail, and that any such development in this stewardship area would be inconsistent with the CMS and the purposes for which the land is held. The CMS did not do that. Rather the CMS expressly acknowledges an application of this nature, and on that basis an argument cannot reasonably be made that the application is inconsistent with the CMS.

## **NATIONAL PARK MANAGEMENT PLAN**

6.55 For the reasons set out in Part Four above and in the evidence of Louise Taylor, this application is not inconsistent with the FNPMP nor the purpose of the National Parks Act.

## **OTHER LEGAL MATTERS**

6.56 There were some other particular legal matters raised in submissions that are addressed further below.

## **World Heritage Status**

6.57 There were a number of submissions made in relation to world heritage status ("WHS"). There is no doubt that WHS is a key contributor to the value of this broader area. Riverstone acknowledges and respects the importance of the WHS.



- 6.58 However, it is important to record the legal status of WHS and the extent to which it may influence the decision on this concession application. The legal position is that international obligations (such as under the World Heritage Convention ("WHC")) are not binding on domestic decision-makers unless those international obligations are incorporated into domestic legislation.<sup>64</sup> The WHC is not incorporated into New Zealand legislation, including the Conservation Act. The Conservation Act could have incorporated the WHC (which was ratified by New Zealand in 1984), but Parliament did not adopt that course.
- 6.59 In other jurisdictions (such as at the federal level in Australia under the Environment Protection and Biodiversity Conservation Act 1999) the WHC has been specifically incorporated into legislation and is a key criteria for decision-making. That is not the case in New Zealand. That is not to suggest that WHS is not a matter that provides important context, but it is submitted that that the panel needs to be very careful to focus on the statutory framework under the Conservation Act rather than the WHC itself.
- 6.60 In any case, there no evidence that the monorail would have any negative effect on the WHS. There were a number of assertions to this effect in submissions, but no evidence to support those assertions.
- 6.61 The WHS covers a very wide area (2.6million hectares), and includes developed settlements and infrastructure such as in Mt Cook Village and the Fox and Franz Josef Villages, as well as state highways and a range of other developments. The WHS is clearly not a status that precludes appropriate development of infrastructure. Riverstone's application is very carefully designed in this respect, and an example is the avoidance (in most part) of the Fiordland National Park.

### **Ngāi Tahu Deed of Settlement**

- 6.62 A number of submitters referred to the issue of the *Deed of Covenant Relating to the Greenstone Valley Area* which is located in Attachment 10.3 of the Ngāi Tahu Deed of Settlement. The position taken in the submissions was that clause 5.3 of this Covenant meant that if this monorail concession was granted, that would mean that a development would also have to be granted in the Greenstone Valley (ie a precedent type effect).
- 6.63 The background to this issue is the Ngāi Tahu Deed of Settlement 1997 and Ngāi Tahu Claims Settlement Act 1998. Through that settlement, an area of land in the Greenstone Valley was vested in Te Rūnanga o Ngāi Tahu. As a condition of that transfer, the Crown and Ngāi Tahu agreed a Deed of Covenant restricting Ngāi Tahu's use of that land. The Covenant was referred to in the Ngāi Tahu Claims Settlement Act, but as far as Riverstone can ascertain it has not been registered.

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<sup>64</sup> *New Zealand Airline Pilots Association Inc v Attorney-General* [1997] 3 NZLR 269 (CA) at 280-281.

6.64 Clause 5.3 of the Covenant states:

*If the Minister permits the undertaking of any development or any form of road or railway between Lake Wakatipu and the Milford road through the Snowden conservation area (the permitted development), the Minister will not withhold consent under clause 5.1 for any proposed development of the same kind or a similar kind by [Ngāi Tahu] on the Land if the area affected by the permitted development has ecological and recreational values of equal or greater significance to those parts of the Land which would be affected by the Landholder's proposed development, and the Landholder's proposed development has no greater impact on the environment than the permitted development.*

6.65 The important point to emphasise under the Covenant is that the consent of the Minister that is referred to in clause 5.3 is consent under the Covenant (ie under clause 5.1 of the Covenant), not under conservation legislation.

6.66 Riverstone's submission is that this is an "*irrelevant consideration*" in terms of administrative law principles and the Conservation Act 1987, and that the decision-maker should not take it into account. The key reasons for this include:

- (a) this relates to possible future development on Ngāi Tahu land, not on land administered by the Minister or the Department under the Conservation Act;
- (b) as this is not conservation land, the issue is not relevant under Part 3B of the Conservation Act;
- (c) this is a contractual matter between the Minister of Conservation and Ngāi Tahu, and the Minister's statutory decision under the Conservation Act should not be affected by separate contractual matters in relation to non-conservation land; and
- (d) for these reasons, it would be unlawful for the decision-maker to take this issue into account.

6.67 In any event, even if the decision-maker did take this issue into account, there can be very little (if any) weight given to this issue because:

- (a) there is no evidence at all that such a development would proceed and what form it may take;
- (b) adopting the rationale from the Court of Appeal RMA decision in *Hawthorn*,<sup>65</sup> it would be unreasonable and unfair for a decision-maker to take into account future developments that may occur but for which there are no RMA or other consents in place and no certainty at all that such a development would proceed;

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<sup>65</sup> *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 at [84].

- (c) there are so many uncertainties in terms of whether this other development would proceed, including:
  - (i) whether the thresholds in clause 5.3 of the Deed of Covenant could be met;
  - (ii) whether RMA consents could be secured; and
  - (iii) whether concessions/other authorisations could be secured from the Minister (the significant impediment for the previous gondola proposal was the provision in the clause 10.5(a) of the General Policy for National Parks concerning gondolas having to be in amenity areas).

6.68 For the reasons outlined above, this issue should not be taken into account by a decision-maker under Part 3B of the Conservation Act, and even if that were possible, very little (if any) weight could be given to the issue.

### **PRECEDENT**

6.69 Contrary to the suggestions in some submissions, the granting of this application has no precedent effect in law or practically in relation to other public conservation land. The definition of "*effect*" in the Conservation Act does not include a precedent effect. Further, there was no evidence presented that any precedent would be set. In any application the precedent argument can be raised, but it can be given no real weight, as no decision maker under the concession process is bound by a previous decision. A reading of previous concession decisions reveals that this is the case, as each application must be considered on a case-by-case basis.

### **SCALE OF EFFECTS**

6.70 A number of submitters claimed that the monorail would "*ruin*" or "*destroy*" their recreational experience of the relevant area. With respect to those views, there was no description of the scale or significance of the potential effects – rather those effects were described in absolute terms. The Minister must consider not only the potential for effects to occur, but also the nature, scale and frequency of any such effects. Riverstone's experts have sought to assist by identifying and describing effects in this way.

### **SUBMISSION BY MR GEOFFREY THOMPSON**

6.71 On 17 April legal submissions were presented on behalf of Mr Geoffrey Thompson, and Mr Thompson also presented evidence.

6.72 An initial response was made to those legal submissions and evidence in Riverstone's oral reply. There is no intention to expand on that response in any detail in the written reply. In summary:

- (a) the legal submissions contained a number of assertions that were critical of the application and the Department report. For example, paragraph 2.3 and the footnotes contain a number of assertions around the level and nature of detail provided;
- (b) what is missing is any real expert analysis to support those assertions. It would not be appropriate for the Minister to consider or rely on assertions on expert matters made only in legal submissions, but without expert analysis to support those assertions. While there are some references to experts in the legal submissions, care must be taken to ensure that those persons are experts in the appropriate fields;
- (c) for example, it is not clear that Ms Maturin was giving expert evidence; it is not clear exactly what Dr Abbott's expertise is or how it relates to the material covered by Riverstone's experts; and Mr Petrie did not appear at the hearing in an expert capacity to provide his views to the hearing panel.

6.73 The suggestion in the legal submissions that a monorail should be treated as a "*road*" for the purposes of the CMS is not correct, particularly (and as acknowledged in those legal submissions) as the CMS specifically refers to the monorail application.

6.74 The other matters raised in the legal submissions and the evidence have been dealt with in the application, the Department report or elsewhere in this reply.

**APPENDIX ONE**  
**SUBMISSION ANALYSIS**

This analysis has been undertaken by Riverstone to assist it to prepare this reply. Riverstone has used its best endeavours to analyse and summarise the submissions accurately, but the actual submissions should be relied upon rather than this summary.

**APPENDIX TWO**

**OPUS LETTER**

**APPENDIX THREE**  
**BRAMLEY EVIDENCE**

**APPENDIX FOUR**  
**TAYLOR EVIDENCE**