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Submission on Behalf of Forest and Bird NZ by Susan Elizabeth Maturin Otago/Southland Field Officer

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The Society wishes to be heard

Introduction

1. Forest and Bird is a national organisation comprising over 40,000 members in 56 branches throughout New Zealand. The main object of the Society is to take all reasonable steps within the power of the Society to preserve and protect New Zealand's remaining flora and fauna, and natural features of New Zealand, for the benefit of the public including future generations. This submission is made on behalf of the Royal Forest and Bird Protection Society.
2. This submission will analyse the law and policies and statutory documents and how they apply to this application.

Summary of key points

- The proposal fails priority gateway tests under Sections 5, 55, and 49 National Parks Act 1980
- The proposal further fails gate way tests under the Conservation Act, specifically sections 17U (3) and 17U (4)
- The proposal has significant adverse impacts for which there is either not sufficient information to enable the minister to assess or to assess the effects of the proposed mitigation and the mitigation methods are inadequate.
- The proposal should be declined.

The Law

National Parks Act 1980

3. The proposed activities require authorisation pursuant to sections, 5, 49 and 55 of the National Parks Act.

Sections 5 and 55 National Parks Act 1980

4. The DoC Officer's Report notes that authorisation pursuant to sections 5 National Parks Act is required, but then appears to only address whether concessions sought under section 49 should be granted. The "prior written consent" of the Minister required under section 5 and the "consent of the Minister" required under section 55 (which are not "concessions") are not addressed.
5. Dealing with those authorisations separately:

Section 5

6. Section 5 requires the Minister's prior written consent to, cut, destroy, plants or parts of plants or disturb, kill animals in National Parks. As this proposal involves activities which contravene section 5, the Minister's consent is required.
7. Section 5(3) states that the Minister shall not give [her] consent under subsection (1) or subsection (2) of section 5 unless the act consented to is consistent with the management plan for the park. The term "shall" used in section 5(3) means that the Minister has a duty not to give her consent where the act consented to is not consistent with the Park management plan. The only consideration for the Minister at this stage is whether the act is consistent with the park management plan.
8. The relevant Mt Aspiring National Park Management Plan (MANPMP) objective is *"To not provide for new roads or other land transport links, except for those required to facilitate access to departmental facilities in the front country zone of Mount Aspiring National Park"*. (Objective 2 Section 6.6.4) The relevant policy is *"A new road should not be authorised anywhere in the park, except in the front country zone"*. (Policy 2 Section 6.6.4) In this case the exceptions are not met, as the road is not required to facilitate access to departmental facilities in the front zone and the road and tunnel are proposed in the back country zone of the National Park.
9. Policy 8 in section 6.2 is also relevant as the proposal involves removal of indigenous flora including several large red beech trees. *'Except as provided for in sections 5.1.2 and 13 ,(which relate to removal for customary use purposes and Haast Highway maintenance), the removal of indigenous flora and fauna from the park will only be considered for conservation management purposes where it is essential for the preservation of the species.'*
10. The relevant Fiordland National Park Management Plan (FNPMP) Objective is *"To consider provision of new roading, or other land transport links, in front country visitor settings only (see Map 7), and then **only if they will improve visitor access and***

enjoyment of Fiordland National Park without impacting significantly on other recreation opportunities and national park values [my emphasis]. See para's below for analysis.

11. The General Policy for National Parks contains an aid to interpretation of National Park management Plans which states that *"policies that carry with them a strong expectation of outcome, without diminishing the constitutional role of the Minister and other decision-makers, state that a particular action or actions "should" be undertaken"*. The reference to "the constitutional role of the Minister" indicates that where there are a range of (potentially competing) relevant considerations, a consideration that provides that something "should" happen (or not happen) is not an absolute barrier to the Minister exercising their discretion against that consideration. However, this will only be relevant to where the Minister is required to take both the Management Plan and other matters into account in reaching a decision (as the Minister could not be obliged to comply with a particular Management Plan policy as it might fetter her statutory discretion). This will not always be the case: the "Constitutional role of the Minister" may involve a duty rather than a discretion.
12. And that is the case with section 5. There are no competing considerations – and therefore no discretion - in section 5. The Minister is obliged not to give consent where the act is not consistent with the management plan for the park. To do so would be unlawful. As new roads are not consistent with the Management Plan, the Minister may not give consent under section 5 for the purpose of a new road.

Section 55

13. Section 55(2) states that except with the consent of the Minister given in accordance with the management plan for a park, no roads may be made over or through the park. Assuming that the road is considered to be "over or through" the park, the Minister can only give consent to it where such consent would be in accordance with the park management plan. In this case, such consent would not be in accordance with the Mt Aspiring Park Management Plan, or the Fiordland National Park Management Plan (FNPMP) for the reasons discussed above.

Section 49

14. Section 49 provides for the Minister to grant concessions in respect of any park. Section 49 incorporates by reference Part 3B of the Conservation Act, but also specifically provides that:
(2) Before granting any concession over a park, the Minister shall satisfy himself or herself that a concession—
 - a. Can be granted without permanently affecting the rights of the public in respect of the park; and*

(b) Is not inconsistent with [section 4](#).

15. The words “before granting any concession” indicate that these particular requirements for concessions in National Parks override the general relevant considerations for concessions set out in Part 3B of the Conservation Act (which apply to concessions on any conservation land). This is confirmed by the Court’s decision in *Franz Joseph Glacier Guides Ltd v Minister of Conservation* HC Greymouth, Pankhurst J, 13 October 1999, in which the High Court stated at paragraph [21]: “With reference to concessions, s9 (2) prescribes **the essential requirement** that the Minister must be satisfied before granting a concession that it will not permanently affect the rights of the public in respect of the park and will not be inconsistent with s4.” (my emphasis).
16. Forest and Bird disagrees with the DoC officer’s advice that “The mandatory nature of the wording in section 4 of the National Parks Act suggests that it would not be lawful under the National Parks Act to allow an activity to occur which undermines the preservation in perpetuity (implying maintenance in its current state) of scenery, ecological systems and natural features of the land. However, the provisions of the National Parks Act 1980 (s. 49) and part 3B Conservation Act 1987 require the Minister to also consider a number of other matters as set out in the Act, including the effects of the proposed activity, and the possible safeguards and mitigation measures proposed. This consideration gives effect to the words in S4(2)(a) “as far as possible” which recognises there may well be some change which could detract from the natural state” In Forest and Bird’s view, you only turn to Part 3B Conservation Act if you have first ascertained that the proposal is consistent with section 4. The section 17U matters should not be used to determine whether the values described by section 4 will be protected “as far as possible” – section 4 is about the purpose of national parks and that purpose should not be read down by reference to what safeguards and mitigation measures can be achieved in relation to a particular concession proposal.
17. To pass the Section 4 gateway the proposed activities must demonstrate they will not undermine the maintenance of the intrinsic values of the Park’s natural ecological systems, scenery, natural features and will maintain the Park’s native plants and animals.
18. Wild lands (2007) refer to the potential adverse effects of clearing approximately 1ha of mature forest at the Hollyford Portal site which would take many centuries to restore. At least 6 large trees would be removed which are potential nesting/roosting trees for nationally critical bats and nationally endangered kaka. Removal of these large trees could adversely effect the persistence of the bat populations (should they be found) in this area, particularly if their removal results in a shortage of communal roosts within the immediate vicinity, (Wildlands 2007).
19. Forest and Bird further contests that a concession is required for any road widening of the formed road where it passes through National Parks, and that these activities

must be considered as part of the overall application. (See below for further argument). Wildlands consider that the adverse effects of road widening may be substantial, removing at least 90 beech trees, with potential adverse effects on threatened scarlet mistletoe particularly on the Routeburn Road.

20. Activities creating major new structures resulting in the removal of plants and animals and destroying the ecological systems and scenery (particularly in the vicinity of the portals) are not consistent with the principle of maintaining the parks in their natural states, and will not result in the preservation of their intrinsic values.
21. The activities pose a risk to the natural state and intrinsic freshwater values of the parks arising from sedimentation, excessive tunnel discharges, failure or overtopping the capacity of the treatment ponds in the event of flooding, washouts of parts of the spoil dump, and side slopes. Beca Infrastructure Ltd's (2007) audit observed the risks of flooding have not been adequately addressed, or adequately quantified to enable identification of appropriate mitigation measures.
22. The road and tunnel and associated facilities are major engineering structures, providing a new route for new significant commercial activity (up to 40 buses a day) into a Park which is renowned as stated in the MANPMP as a largely undeveloped alpine national park. Such activity will detract from the rights of the public to enjoy in full measure the intrinsic and natural values of Mt Aspiring National Park. Further more should the tunnel result in effectively spreading visitor arrivals into Milford,(which the DOC officers report notes is speculative), this could detract from the opportunity for the enjoyment of peace and quiet largely free from vehicular based concessionaire activities prior to 8:30am and after 6pm. Any significant increase in tourism numbers and increase in surface water activities may detract from visitor enjoyment. A 2010 perception study found that 26% of respondents considered there were few or far too many visitors to Milford.
<http://www.doc.govt.nz/about-doc/news/media-releases/2010/monitoring-report-confirms-why-milford-is-so-special/>.
23. The new road and tunnel is not necessary to enable the public to use and enjoy Mt Aspiring National Park, nor Fiordland National Park.
 - a. In Forest and Bird's opinion the proposal does not pass the tests of Section 49, as it will *permanently affect the rights of the public in respect of the parks; and is inconsistent with [section 4](#)*. The proposal will not maintain the natural states of the parks, nor promote the welfare of the national parks, instead it will destroy native plants and animals, natural ecological systems, degrade the intrinsic values of the parks, restrict public access and detract from public enjoyment of the parks. The proposed activities undermine the preservation principles of the National Parks Act 1980.

24. If the proposal does pass the section 4 gateway, then the Conservation Act itself contains another gateway in section 17W: *“Where a conservation management strategy or conservation management plan has been established for a conservation area and the strategy or plan provides for the issue of a concession, a concession shall not be granted in that case unless the concession and its granting is consistent with the strategy or plan.”* As section 17W uses the term “shall not be granted”, it would be unlawful for the Minister to grant a concession that is inconsistent with a conservation management strategy or plan,(to be read as National Park Plan as this would be the type of “necessary modification” to Part 3B contemplated by section 49(1)). The relationship between section 17W and 17U was considered briefly in *Alpine Choppers Ltd v Minister of Conservation* [2008] NZAR 564 at paragraph [26]: *“Section 17U sets out the matters that the Minister must have regard to in considering any application for a concession. Section 17W provides more broadly that a concession shall not be granted unless it is consistent with any conservation management strategy or plan developed for the area. A conservation plan for Fiordland (and therefore Milford) had been developed and s 17W was therefore engaged.”*
25. Forest and bird submits that the proposal fails to pass this gateway as it is inconsistent with the Mt Aspiring National Park Management Plan and the Fiordland National Park Management Plan.

Conservation Act

26. Section 17U(3) contains a further gateway: *“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.”* Forest and Bird agrees with the DoC Officers Report that the provision which determines the purposes for which the land is held is section 4 National Parks Act. Forest and Bird does not agree with the DOC Officers conclusion that the effects of the activities are either minor or subject to mitigation or temporary, and would not be contrary for the purpose for which the land is held. As wildlands notes it is not possible to mitigate for the loss of a mature complex forest ecosystem. Our comments on the section 4 gateway above apply.
27. *Section 17U (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 -*
9a) could be reasonably undertaken in another location that-
(i) Is outside the conservation area to which the application relates.....
(b)could reasonably use an existing structure or facility....”
28. The application as described in the DOC Officer’s Report (p134) as an application ‘...to construct and operate the Dart Passage’ a 11.3km long 5m diameter single lane bus/coach road tunnel...to link the Routeburn and Hollyford roads in Mt. Aspiring and Fiordland National Parks.” The proposal involves the construction and operation of structures and facilities for the establishment of a trade/business to provide a

transport route to Milford Sound. The concession also involves an easement for the tunnel route, a lease for the portal sites and a licence to operate buses in the tunnel and on any road/portals on public conservation land constructed by MDL. The operation of buses in the tunnel and on the road is an activity integral to the building of the structures and facilities. Passage to Milford is already reasonably undertaken by buses on public roads, as well as by car, air and sea on routes that are outside the area to which this application relates.

29. Only once each of the above “gateway” provisions has been passed should the Minister be turning to consider whether the concession can be granted under section 17U (1). In Forest and Bird’s opinion the application fails to pass all of the above gateways, and therefore should fail.

Section 17u. Matters to be considered by Minister

30. The range of effects that the Minister needs to consider include, but are not restricted to:

31. Clearance of 8,500m² (80m by 120m) of mature mixed broad leaf forest including six large podocarp trees (possibly miro and matai) identified as possible nesting or roosting habitat for threatened long and short tailed bat, kaka and rifleman for portal and staging area at Hollyford Road. The impacts on the possible bat and bird populations are not possible to identify as no site surveys have been undertaken, to determine existing use of this habitat. Similarly the DOC Officers Report notes that the extent and severity of the impacts of noise on wildlife and potential displacement are unknown.

- Removal of about 7ha of vegetation from Hollyford Portal and airstrip. Hollyford airstrip area includes vegetation important for red admirals and small area of intact conifer/broadleaf forest.
- Impacts on scenery and naturalness of the Hollyford valley and Routeburn portal and road, for park users. As these areas will be permanently cleared and sealed they will remain permanently unnatural, and will be incongruent with the surrounding naturalness.
- Construction area including concrete batching plant, gravel crushing, workshops, generators, water treatment plant, office accommodation, fuel storage, sedimentation and water treatment ponds. (80-100 people on site during construction) resulting in significant un natural site modification..

- 12m diameter 4m high spoil surge pile and settling ponds and tanks at Routeburn portal site
- Noise, dust and lighting effects on wildlife not known
- Spoil disposal will raise airstrip by 7-7.5m –with potential flooding risks
- Potential change in hydrology of wetland of high conservation value, arising from changes to Hollyford Road, if this occurs the DOC Officers Report states that damage would be severe.
- Gravel extraction for concrete making.
- 30 -35 truck movements per day from portal to airstrip on Hollyford road- significant impact on users of this area and potentially on kiwi.
- Exclusive use of tunnel via a lease against the principles of the National Parks Act 1980.
- Noise and increased activity from regular bus traffic, ventilation fans, will significantly impact on natural quiet at Routeburn road end, Hollyford valley, and part of the Routeburn track.
- Potential acid leachate –tunnel spoil may contain sulphide rich rocks.
- Potential for tunnel discharge water and sediments into Hollyford River, Routeburn and other streams. The potential impact on aquatic fauna has not been assessed. Wildlands (2007) did not accept that there is no an existing aquatic invertebrate or fish fauna. In the absence of any ecological assessment it can- not be stated that the impacts are likely to be no more than minor.
- Potential biosecurity risks associated with introductions of weeds and pests, and creation of a direct route between two parks introduces the possibility of for example the introduction of white tail deer which are present in the Lower Dart but are not present in Fiordland National Park.
- Significant risk of financial failure, and extended construction times. The DOC Officers report notes that the tunnel will be constructed using a Tunnel Boring Machine similar to that used in the construction of the second Manapouri tunnel. The construction time is estimated to be 18 months. The tunnel is to be 11.3km long. The second Manapouri Tunnel is 10km long with a 10m diameter. Construction began June 1998 and breakthrough to Doubtful Sound was achieved 13 March 2001. It was contracted to be completed in August 2000. “In the event, ground conditions - extremely hard and faulted gneisses, quartzites, gabbros, amphibolites and granites ,combined with groundwater flows of sometimes more than 1000 litres/sec at pressures of up to 550psi, caused frequent and extended downtime of the purpose-built Atlas Copco/Robbins tunnel boring machine and hence significant cost and time overruns.”
<http://www.neimagazine.com/storyprint.asp?sc=2015452>
- Degradation of the intrinsic values and natural states of parts of two national parks.

- Potential for change in visitor usage of Milford Sound which may result in increased visitors and spreading of visitor arrivals so that Milford becomes busy all the time instead of the current peak. Increased visitors during the off peak times at Milford threaten natural quiet. The proposal has potentially negative as well as positive effects on Milford. There is no discussion on the possible impacts of increased visitors to Milford.

Road upgrades and Widening need to be considered as part of this concession

32. The applicants are also proposing some road widening, which may transgress onto national park land beyond the formed public road or road reserve. Forest and Bird contends that the Minister in this case must also consider the effects arising from the upgrading and widening of the Hollyford and Routeburn roads.
33. There seem to be two issues with regard to roads. Although the roads through the national park are supposed to be public roads and therefore not conservation land/national park, in some instances the formed roads deviate from the legal road alignment, and may also be beyond any 'road reserve' if indeed there is one.
34. Where the roads are part of a legal public road, it appears that no concession is required. However the DoC Officer's report states: *"The formed carriageways are currently under the control and management of the relevant district councils, and in practice are public roads. Not all the formed carriageway is located on the surveyed legal road however. Although these "deviations" from the legally surveyed road would be on land administered by the Department (Mt. Aspiring and Fiordland National Parks), in practice these sections of the formed roads have not been managed or maintained by the Department and are managed by territorial local authorities (Southland District Council in respect of the Hollyford Road, and Queenstown Lakes District in respect of the Routeburn Road). At this point in time, the potential effects of the activities proposed by MDL which would manifest on the existing formed Hollyford and Routeburn Roads are not considered as "matters of relevance" in determining this concession application, on the basis that despite the legal situation where apparently some sections of these roads are technically on land managed by the Department, to all intents and purposes these roads are public roads and not "park roads".*
35. The activity of widening parts of the roads may encroach onto land that is national park, particularly where the formed road does not follow the legal alignment. In this situation the widening may be beyond the formed road and beyond any laid off carriageway. Such land does not appear to be within the legal definition of "public road" and cannot be excluded from the jurisdiction of the National Parks, and must therefore be a matter of relevance in determining this concession application.
36. The Society is not aware of any statutory power authorising the Minister to abrogate its obligations in respect of land that is legally part of a national park.

37. The effects of road widening and traffic include:

- Increased traffic on roads shared by other park users
- Noise associated with increased traffic on park users
- Sedimentation to waterways
- Loss of mature and large trees – Wildlands (2007) referred to estimate of up to 90 beech trees with subsequent loss of threatened scarlet mistletoe.

The Conservation Act 1987

Section 17 U (2)

38. 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.

39. Wildlands (2007) considered that applicants EIA does not meet industry standards with respect to ecological information. In particular the ecological values of the aquatic habitats have not been identified and the assessment of indigenous fauna requires further work. The inadequacy of this ecological information means the potential effects cannot be fully determined.

40. The DOC officers reports notes that the Hollyford River is a fast moving, clean, clear natural water way containing a range of native and introduced fish and are representative of Fiordland National Park waters. The Routeburn valley also has high quality waterways with important ecological and scenic values. The DOC Officers report does not refer to any freshwater fish survey. As far as I can determine, this has not been done.

41. Wildlands (2007) concluded that although it is likely that the potential ecological effects of the project can be successfully avoided, remedied or mitigated this would require a greater understanding of the existing ecological values and carefully designed avoidance, remediation and mitigation strategies. (see Wildlands 2007 for a full list of outstanding ecological matters that do not appear to have been addressed since 2007.)

42. Wildlands further concluded that *“In general there is too little information on avoidance, remediation, and mitigation proposals to enable assessment of their sufficiency against the scale of effects.”* Forest and Bird observes that no further

ecological information is referred to by the DOC Officers report, and that many of the proposed methods for remedying, mitigating or avoiding adverse effects will be set out in management plans that are not part of this concession application. This makes it impossible for the Minister to adequately assess all the effects. There is either inadequate or no description of the methods to be used to remedy, avoid or mitigate many of the adverse effects such as biosecurity, pest control, and revegetation as these are matters left to future management plans.

43. Forest and Bird considers the mitigation methods are inadequate given the scale of potential effects on the natural, intrinsic and recreational values, scenery, native plants and animals of land, that has been permanently set aside in order to be preserved in perpetuity in National Parks, that are also part of Te Wahipounamu South west New Zealand World Heritage Area. Inadequate examples include:

- Fauna. Mitigation includes the Concessionaire carrying out or contributing to pest/predator control in the Hollyford and Routeburn Valleys. The methodology is subject to further discussion and approval by the Department. There is no description of the scale, duration, methods or assessment of outcomes of such pest and predator control.
- Kiwi. Kiwi maybe at risk of being run over due to the proposed 24hour a day construction activity. The suggested mitigation of advising all drivers that kiwi could be present is unlikely to prevent this. The extent of risk to kiwi has not been assessed.
- Flora
Portal clearance area is intended to be revegetated but as the DOC report notes this would not mitigate for the loss of large trees.
- Weeds
Proponent offers to carry out pest plant control in the Hollyford valley and the application contains an outdated plant pest management plan for the Routeburn. The information contained in the DOC Officers report or the application is not sufficient to determine the appropriateness of these plans.
- Noise and effects on other users
Proposed mitigation includes the setting of noise standards, which are likely to be above the level that is currently experienced, pre-warning visitors so they don't expect to experience natural quiet, and monitoring. This mitigation will not make the noise go away, as an increase in noise and busyness will be inevitable and will

permanently detract from the public's right to enjoy in full measure the benefits of the surrounding impacted areas. There is no mitigation or remedy proposed that would compensate for this loss of enjoyment and degradation of the park's intrinsic values, either in the short or long term.

Planning Instruments

General Policy for National Parks 2005 (GPNP)

44. As stated in the introduction National Parks '*...are places where human interference, modification and control should be minimal, and enjoyment of them should be on nature's terms.*' This encapsulates the public expectation for the management of National Parks under the National Parks Act 1980.
45. The GPNP makes it clear that the expectation for the management of national parks is that activities which have adverse impacts on ;
- indigenous species, habitats and ecosystems –4.1 (b) (iv),
 - quality of scenic..features – 4.5(a);and
 - quality of ecosystem services -4.6(a) are to be avoided.
46. Maintaining and preserving the natural state of National Parks is a priority as set out in policies 4.1 (b) (iv), 4.3 (d), 7(a), 7(f), and 10.1(c).
47. Maintaining natural quiet and minimising impacts on natural quiet and peoples enjoyment are important priorities as set out in policies 8.1(c), 8.6(a), 10.3(a) and effects on people's use and enjoyment 8.1(c), 10.1(c), 10.3 (a).
48. The GPNP states that.'*development of new roads is generally inconsistent with the preservation of national parks in their natural state*' and there is already '*...sufficient roading in existing national parks and further roads are not desirable.*' There are a series of policies that strongly discourage new roads, specifically 8.6 (f), 10.1 (c) (v) and 10.3(h).

Fiordland National Park Management Plan

49. In addition to Sections 5.3.9.1, 5.3.9.2, and 6.15 .a key test in the FNPMP is set out in Section 5.7 Roding.

50. Any new roading is subject to a specific proviso in Section 5.7 Objective 2 which states:

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

51. Given that the proposal occurs within the Front Country of FNPMP it meets the first test. However there are three further tests, as new roading or other land transport links can only be considered if they **will improve**;

- visitor access to Fiordland National Park; and
- visitor enjoyment of Fiordland National Park; and
- they do no impact significantly on other recreation opportunities and national park values.

52. These are high tests and Forest and Bird submits that the proposal fails all three.

53. There is no need to improve visitor access to Milford as this is already effectively provided for thousands of people. People can already choose to take a faster route to Fiordland, by plane or reduce the length of the day journey by staying in Te Anau. The tunnel will not provide visitor access to Fiordland National Park for users other than fare paying passengers using the tunnel, and as they can not access new areas through the tunnel, nor see the renowned scenery that Fiordland National Park has been preserved for it can not be argued that the tunnel improves any access to Fiordland National Park generally.

54. How will the tunnel improve visitor enjoyment of Fiordland National Park? The FNMP on p156 refers to a key matter for resolution is the impression of overcrowding, noise and congestion. Issues that need resolving are identified as the need to change site layout to provide quiet places, and directing key traffic movements away from the foreshore.

55. Other methods for dealing with the impression of overcrowding are set out in Section 5.3.9.1. Examples include; Implementation 9 refers to moving the car park, opportunity for a shuttle service for passengers from parking area to Freshwater Basin and redirecting the state highway are seen as a key measure to address the ‘perceptions’ of congestion and overcrowding at Milford. Other ways of reducing the perception of overcrowding mentioned in the Plan include implementing a parking fee system, controls on new car parking facilities, (Implementation 11) no new vessels be permitted to undertake commercial activities from the marina,

(Implementation 21), consideration of concession requires regard to extra vehicle and parking requirements (Implementation 12) work with tourism operators to find ways of spreading visitor flows throughout the day – mechanisms to be encouraged included increased overnighting at Te Anau, modified scheduling regimes to avoid peak periods, pricing differentials for trips and car parking that are outside of peak periods, (Implementation 22), and investigate options for the use of economic incentives as a tool to assist with spreading visitor flows through out the day, (Implementation 22)

56. These are all methods to improve visitor enjoyment to Milford by dealing with the perceived overcrowding, some of which are already being implemented. However since the FNMP was completed a perception study has been undertaken. The Perception Survey reported that overcrowding is not an issue for 63% of international visitor respondents but for 26% of New Zealand survey respondents and 32% private boaties there were few or far too many visitors. The potential improvements suggested by survey respondents include fewer aircraft, less noise, with some interest in limiting or managing numbers of visitors and cruise boats. (Lindis Consulting 2010). The results of this study suggest that the 2010 numbers is about right, and does not lead to detrimental levels of perceptions of overcrowding... However significant increases should they occur may contribute to increased perceptions of overcrowding especially by New Zealanders and private boaties, which may lead to their displacement from Milford or even Fiordland. Currently there is no demonstrated big demand or need to “spread visitor flows through out the day. There is no evidence to be able to definitely state that the tunnel ***will improve visitor enjoyment of Fiordland National Park***

57. Despite prediction in the FNPMP that tourism numbers are expected to increase, Tourism numbers to Milford have declined since 2006, as shown by the figures below. Ongoing and ever growing tourism numbers can no longer be taken as a given. (VISITORS TO MILFORD <http://www.envirolink.govt.nz/PageFiles/104/40-Esrc201-MilfordReportPaulSirota20-02-06.pdf>)

- **(To March 31 of each year):**
- 2006: 476,152
- 2007 475,966
- 2008: 459,665
- 2009: 418,134
- 2010: 432,578
- 2011: 424,839

Note: these figures are of people who go on cruises in Milford. About 95 per cent who visit the area are believed to go on cruises.

58. Should the tunnel proponents be right and the tunnel results in further tourism growth then it may contribute to creating an overcrowding perception and result in decreasing visitor enjoyment of Milford and potentially other places in Fiordland, as Milford visitors seek greater peace and quiet in other places, so contributing to declines of peace and quiet in the new areas.
59. The DOC officers report observes 'should (my emphasis) the tunnel be used in such a way that would effectively spread visitor arrivals into Milford, grant of this concession would go some way towards achieving those objectives of the Fiordland National Park Management Plan.'
60. The probability of this occurring is entirely speculative, as it is not known how the commercial tourism industry will respond to the tunnel.
61. It is also speculative as to whether the tunnel could or will effectively spread activity through out the day, and even if it did so this will not necessarily improve the enjoyment of Milford for users as it may lead to constant busyness through out the day, or less quiet periods and may result in displacement of some users to other currently less used areas..
62. The proposal also does not meet the third test of Section 5.7 Objective 2 ,as it will impact significantly on other recreation opportunities and national park values, as discussed above.
63. Forest and Bird disagrees with the DOC Officers report that concludes that proposed portal site and staging area is consistent with Fiordland National Park Management Plan. Furthermore we disagree that even if the tunnel was not utilised by the tourism industry its presence would not have a negative effect on visitor experiences to Fiordland. The portal, staging area, spoil dumps, and other associated structures will be permanent and will impact on the scenery and the intrinsic values of the national Park as discussed above.

Section 5.7 FNPMP Implementation 13

64. The FNPMP is silent on the matter of tunnels, as is clear from statements on P105 of the plan, where it only refers to various proposals for roads, monorail, or cableways.and various ideas for transport options along the Milford Road. The DOC Officers Report, (p131) observes that as the Fiordland National Park Management

Plan is silent on the matter of tunnels the tunnel must be considered under the Conservation Act. This overlooks Section 5.7 FNMP which specifically sets out the process for dealing with major facilities for transport options in new locations within Fiordland National Park.

65. *13. If major facilities for transport options in new locations within Fiordland National Park are proposed, the establishment of an amenity area should be considered. The establishment of an amenity area in Fiordland National Park will require an amendment to this plan.'*

66. Consequently as the tunnel option and associated facilities are major facilities for a transport option in a new location the establishment of an amenity area should be considered. It is clear from the DOC Officers Report that this has not been considered. To be consistent with the FNMP the establishment of an amenity area would need to be considered. Failure by the Department to consider this is a failure to administer the Act and the National Park Management Plan.

Section 5.3.9.2 Milford Road

67. The Milford road is an attraction in its own right; it is not a journey to be enjoyed by hurrying. Of note is implementation⁶ requires that all new development proposals will demonstrate that existing facilities are being used to their full capacity and potential and that there is a proven demand for the new facility beyond what the existing infrastructure can cope with

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68. In considering the application of the MANPMP it is important to also consider them in relation to the impacts of potential road widening that is integral to the success of this proposal.

69. In addition to section 6.6.4, Road, vehicles and other transport options, other relevant sections include, Section 4, Section 6.7.1, 6.7.2, 8.2, and 8.3. Several key outcomes are relevant;

- *'even in the busier areas, the sights and sounds of nature predominate and visitors can experience the natural quiet and remoteness, separating the national park from the tourist centres located near it*
- *concessions enhance visitor enjoyment and appreciation and do not impinge on its remote character or existing recreational opportunities.*

70. The concession if granted will authorise the construction and operation of the tunnel, which will result in significant increases in noise including from buses using what is now a relatively peaceful road end, and is predominantly a place where the sights and sounds of nature predominate. The concession application will not enhance visitor enjoyment to MANP, and is most likely to considerably detract from users of the Routeburn picnic site and road end facilities. The MANP directs through Policy 6.7.1 (iv) that activities requiring a concession should not have any adverse effects on the existing recreational opportunities in the area, and (v) should be restricted to the use of existing access. Policy 2, Section 6.7.2 states quite clearly that *“Concession operations will be managed so that they do not detract from other visitors use and enjoyment and the park values in any area of the park.*
71. Section 8 deals specifically with the Routeburn. Constructing what will essentially be a bus terminal, and bus parking in close proximity to the Routeburn picnic and car park and track entrance will not achieve the outcomes for this place, and will not be a place to experience peace and quiet, or a place where nature predominates. Just in case people think using the tunnel might be a thrill seeking adventure, please note Policy 17, no new thrill seeking activities should be authorised for the Routeburn place.
72. Forest and Bird disagrees with the DOC Officers Report’s conclusions that subject to effective avoidance and mitigation of effects the construction and operation of the Dart Tunnel would be consistent with the MANPMP. Read overall the MANPMP shows no appetite for this activity, and all relevant policies indicate it should not be granted, as it does not meet any of the exceptions. There is no effective mitigation to deal with the noise impacts both during construction and operation on users of the Routeburn road, road end and picnic area..

Major conclusions

1. The proposal should be declined in its entirety as it fails the gateway tests under Sections 5, 55, and 49 National Parks Act 1980. It offends the National Parks Act and is not consistent with either the Mt Aspiring National Park Management Plan or the Fiordland National Park Management Plan.
2. The proposal further fails gateway tests under the Conservation Act, specifically sections 17U (3) and 17U (4)
3. The proposal has significant adverse impacts for which there is either not sufficient information to enable the minister to assess or to assess the effects of the proposed mitigation and the mitigation methods are inadequate.
4. The Department has failed to include consideration of road widening on land that is National Parks Land and requires a concession.

Yours sincerely

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