

**Final Report to the Conservator,
West Coast *Tai Poutini* Conservancy
(Approve/Decline)**

**Application for a concession by
Air Walks NZ Limited**



Department of Conservation
Te Papa Atawhai

Executive Summary

The Department of Conservation (“the Department”) received a concession application from Air Walks NZ Limited in October 2003 for a lease and licence to allow the construction of a canopy walkway, visitor centre, toilet block and car parks on land administered by the Department in the vicinity of the Hokitika Gorge. In July 2004, the application was approved in principle, subject to the outcome of public notification. The Department then advertised its intention to grant a concession, and submissions closed on 15 of September 2004. A draft report was then compiled and forwarded to the applicant for comment on 11 of October 2005. The applicant’s letter and comments were received on 15 February 2006 and are attached to this report as Appendix K.

This final report examines the content of submissions from submitters and the applicant in relation to B of the Conservation Act 1987 and the Reserves Act 1977, and makes final recommendations on the application.

These recommendations are that:

- the decision maker accept the submissions received during the public notification process as detailed in section 3 of this report;
- the decision maker accept the recommendation to decline the application in full; and
- if the decision maker does not accept the recommendations and decides to approve the application, any concession granted should be subject to the Department’s standard concession conditions, the special conditions proposed in the First Determination Report (“FDR”) and the further special conditions identified in this report.

The structure of this report is as follows:

- 1.0 Introduction
- 2.0 Relevant Legislation and Matters of Relevance
- 3.0 Submissions in favour of the application
- 4.0 Submissions against the application - issues raised by submitters;
- 5.0 Content of Submissions in relation to the Conservation Act 1987 and the Reserves Act 1977;
- 6.0 Conclusions;
- 7.0 Applicant’s Comments; and
- 8.0 Recommendations.

1.0 Introduction

In October 2003, Air Walks NZ Limited applied for a lease and licence to allow the construction of a canopy walkway, visitor centre, toilet block and car parks on land administered by the Department of Conservation in the vicinity of the Hokitika Gorge. The cost of the investment planned by the applicant is approximately \$6m. The land involved is scenic reserve administered under the Reserves Act 1977 and stewardship land administered under the Conservation Act 1987. A copy of the application accompanies this report for your reference (see Appendix A).

The Hokitika Gorge Scenic Reserve (“the Reserve”) is administered under the Reserves Act 1977. Section 59A of that Act provides that B of the Conservation Act 1987 (the concessions provisions) also applies to reserves vested in the Crown, with necessary modifications. The application was processed under B as it applies to the Reserves and Conservation Acts.

This report is prepared as the basis for the Minister’s delegate’s decision under section 17U of the Conservation Act 1987 and makes recommendations in respect to that the decision. It summarises submitters’ objections and submissions and applies section 17U of the Conservation Act 1987 in the context of provisions relating to scenic reserves (section 19 Reserves Act 1977).

The Department prepared the FDR setting out the analysis which led to the decision to intend to grant a concession. (See Appendix B). It should be noted that the conclusions and recommendations contained in the FDR were based on the information the Department had available at the time of consideration. This information was sourced from the application, the applicant and the Department’s staff. The conclusions and recommendations in the FDR were preliminary (hence the phrase “approval in principle”) because new material is often presented during the public notification process. This information must be considered before final recommendations are made.

As required by section 17T(4) of the Conservation Act 1987, notice under section 49 Conservation Act 1987 of the intention to grant was given in July 2004.

The date for public submissions to be received by was 15 September 2004.

- 347 submissions were received;
- 325 of these opposed the proposal;
- 18 supported the proposal; and
- 4 were neutral.
- 111 of the submissions were original written submissions and 236 were form submissions circulated by “Friends of the Hokitika Gorge”.
- All submissions received on or before 15 September 2004 accompany this report, as well as summaries of these submissions (Appendix C).

Many of the submitters opposing the application were not opposed to the concept of an airwalk, but did not believe that the Hokitika Gorge Scenic Reserve which they see as their special place, was the appropriate place for one as they submitted that it would totally change the nature of the Reserve. Those in favour also acknowledged the gorge as a special place, but they expressed a desire to share it with others.

A public hearing was held from the 18th-21st April 2005 at the Hokitika Golf Clubrooms. 28 written submissions were spoken to, and some submitters provided written and visual material. Notes from the hearing have been incorporated into the summaries of submissions. A number of queries were raised during the hearing, and those not responded to at the time are addressed in Appendix H.

This report is in addition to the FDR and does not repeat the analysis in that report. It includes a summary of the issues raised during the public notification process and addresses the issues

required by section 17U of the Conservation Act 1987 with reference to those submissions. It also makes recommendations to the decision maker as to the extent to which the objections and comments should be allowed or accepted, as required by section 49(2)(d) of the Conservation Act 1987.

A draft of this report was sent to the applicant for comment pursuant to section 17S(5) of the Conservation Act 1987 on 11 October 2005. Some of the applicant's comments are provided in section 7 of this report and others are inserted where applicable.

A full copy of the applicant's comments and the covering letter are attached as Appendix K.

Other expressions of views

This information is included for your information. The proposal has been the subject of considerable community interest both in Hokitika and the West Coast generally, and nationally. These are matters that the decision maker may not take into account, but they are matters that relate to the broader context.

Prior to public notification of the application, the applicant organised a public meeting in Hokitika to present the proposal to the local community. While this meeting was dominated by vehement opposition from a number of people, staff attending the meeting considered that there was also a degree of support for the proposal. The applicant has said that a number of people spoke to or contacted him after the meeting and expressed their support. A survey was handed out at the meeting by the applicant and a number of forms were completed and returned. It is understood that feedback from these surveys was generally positive, although it is not considered that this necessarily provides an accurate representation of views.

Another meeting was later organised by a community member in favour of the proposal. A submission in support of the application was signed by 81 people as a result of this meeting.

A petition of 1309 signatures opposing the development was presented to Barry Hanson, the Hokitika Area Manager at the end of the public notification period. The petition is headed "All those against any development (commercial or otherwise) of the Hokitika Gorge and its environment". The petition was organised by members of "Friends of the Hokitika Gorge".

2.0 Relevant Legislation and Matters of Relevance

The relevant statutory provisions are set out in Appendix D.

In summary they include:

Conservation Act 1987

- B, in particular section 17U (Matters to be considered by the Minister);
- section 49 (Public notice and rights of objection);
- section 6 (functions of the Department); and
- s25 (management of stewardship areas).

Reserves Act 1977

- section 59A (Granting of concessions on reserves administered by the Crown);
 - the title of the Act;
 - section 3 (General purpose of this Act);
 - section 19 (Scenic reserves);
- and to some extent
- section 42 (Preservation of trees and bush) and
 - section 55 (Powers (other than leasing) in respect of scenic reserves)).

Conservation General Policy

The Conservation General Policy was approved in May 2005. In the context of this application the policy now applies to land administered under the Conservation and Reserves Acts, and to the Wildlife Act 1953. The Conservation General Policy refers frequently to Conservation Management Strategies and Management Plans neither of which have been finalised for West Coast *Tai Poutini* Conservancy or for the Reserve.

It should be noted that the hearing was before the Conservation General Policy had been approved so there was no opportunity for public comment in relation to it in the context of this application.

3.0 Submissions in favour of the application

18 submissions were in favour of the application. These submitters considered that an airwalk at the gorge would provide a high quality and unique experience for tourists, with minimal impact on the environment. While some expressed similar concerns to those opposed to the application, they considered that these issues could either be worked around or would be outweighed by the benefits of the proposal, particularly the economic benefits associated with tourism. Some had been on airwalks in Australia and viewed them positively. Like other submitters, those in favour acknowledged that the gorge is a special place, but they expressed a desire to share it with others.

Benefits of the proposal noted by those in favour included that:

- The visitor centre would provide an opportunity to display and sell local craft;
- The toilets would be available for all gorge visitors to use;
- The airwalk would provide access for those with disabilities;
- It would offer an amazing experience and a different way to commune with nature; and
- It would provide a wonderful alternative for those not able to take scenic flights.

Comment

The educational and recreational benefits of the proposal are noted on page 19 of the FDR and are discussed in Part 5 of this report. These benefits relate to the Department's functions under section 6 of the Conservation Act 1987 and are also relevant under the Reserves Act 1977 and can therefore be considered as positive effects. While comments regarding other perceived benefits should be noted, they are beyond the decision maker's statutory considerations so cannot be considered.

Recommendation

It is recommended that the decision maker accept that the airwalk and visitor centre, if approved, would have some positive effects by providing a unique nature experience and the opportunity for visitors to learn about New Zealand's native forests.

4.0 Submissions against the application Issues Raised by Submitters

Due to the number of submissions received, they are not discussed individually. Instead, this section of the report summarises the issues raised. Where appropriate, cross references are made to the further discussion of particular issues in this report.

Full copies of all written submissions accompany this report in a separate volume (Appendix J) as well as a summary of submissions (Appendix C), and a list of the issues raised by submitters (Appendix E).

Issue 1: The Reserves Act 1977

1. The proposal is not consistent with the purpose for which scenic reserves are held (section 19(1)(a) of the Reserves Act 1977).

If approved, the proposed visitor centre and airwalk would be located in the Hokitika Gorge Scenic Reserve. Many submitters consider that an airwalk and visitor centre would compromise the Reserve's scenic and intrinsic/aesthetic values, and would therefore be inconsistent with the purpose for which scenic reserves are held. Submitters have noted that the reserve, its bush, fauna and views are already able to be enjoyed by the public, including the young, elderly and disabled. While some acknowledge that the current facilities could be upgraded, most do not consider that any further enhancement is necessary. The proposed development would dominate the Reserve due to its size and scale, and the Reserve's sense of peace and tranquillity would be lost. Submitters consider that it would not be possible to mitigate the effects of the activity on the Reserve itself as the development would so fundamentally change its nature and character i.e. its intrinsic worth.

Comment

These matters are discussed further in relation to sections 17U(2)(b) and 17U(3) of the Conservation Act 1987 in section 5 of this report.

2. The proposal is not consistent with section 19(2)(c) of the Reserves Act 1977 (open portions).

Section 19(2)(c) of the Reserves Act 1977 states:

“To the extent compatible with the principal or primary purposes of the retention and preservation of the natural or scenic values, open portions of the reserve may be developed for amenities and facilities where these are necessary to enable the public to obtain benefit and enjoyment from the reserve”.

Some submitters consider that this section of the Act precludes any development of facilities in areas that are not open areas. One submitter has suggested that this section shows that benefit, enjoyment and use are subject to preservation requirements. Many consider that the current facilities already enable public enjoyment, so claim that the proposed airwalk is not necessary to allow for benefit, use and enjoyment of the Reserve.

Comment

This matter is discussed further in relation to section 17U(3) of the Conservation Act 1987 in section 5 of this report.

3. Scenic reserves should be preserved as naturally intact as possible.

Most submitters opposing the application indicated that they think scenic reserves are to be preserved intact as far as possible. Some consider that scenic reserves have the highest status among reserves and that the word “preservation” is used deliberately in the scenic reserve provisions to indicate that a lesser degree of modification is acceptable in scenic reserves compared with other reserve types. It is clear that many submitters believe that if an area is to be preserved, no degree of modification is acceptable in that area, and that many also have the impression that scenic reserve status indicates that an area has high ecological values.

Comment

These matters are discussed further in relation to section 17U(3) of the Conservation Act 1987 in section 5 of this report.

4. Commercial operations are not appropriate in scenic reserves.

Many submitters consider that such a development is inappropriate for a scenic reserve, and some have indicated that they do not consider that scenic reserves should be used for any kind of commercial operation.

Comment

It should be noted that there is nothing in the legislation that precludes applications being made to use scenic reserves for commercial purposes. B Conservation Act 1987 provides for applications to be made for commercial activities. The Minister must consider any application on its merits in accordance with B and other relevant legislation and plans. Prior to the enactment of B in 1996, section 56 Reserves Act 1977 applied and it too allowed for leases and licences for any trade or business to be granted.

5. Such a development would be contrary to the spirit of the Act, if not the letter.

One submitter has stated that approving such a development would be contrary to the spirit of the Reserves Act, if not the letter, and others have indicated that they think the Reserves Act did not intend or envisage this type of development occurring in a scenic reserve. One submitter has also suggested that the amenities and facilities allowed for in the Reserves Act are not intended to be for commercial gain.

Comment

It is recommended that these comments are noted however it is considered that there is no statutory basis on which the application could be declined based on these concerns. The Act provides a process for considering such applications. It does not preclude such applications nor the making of a commercial gain.

6. Recreation reserves are the only type of reserve where such a development might be lawful.

Some submitters consider that such a development could only be appropriate in a recreation reserve, not a scenic reserve.

Comment

It is accepted that the provisions relating to recreation reserves place emphasis on recreation and sporting use which includes building facilities for that. Many recreation reserves are open areas such as domains and playing fields rather than areas with substantial native forest cover, though it should be noted that some do have areas of bush and section 17(1) Reserves Act 1977 (which relates to recreation reserves) provides for the protection of the natural environment and beauty of the countryside.

All concession applications must be considered on their merits and there is nothing in the legislation that precludes the consideration of applications to undertake commercial activities in scenic reserves.

7. The Department has misinterpreted the Reserves Act.

Several submitters have suggested that that Department has misinterpreted the Reserves Act in a way that undervalues the area. It has been suggested that the Department should take a precautionary approach to interpretation “on the side of preservation”.

Comment

This matter will be further discussed in relation to section 17U(3) of the Conservation Act 1987 in section 5 of this report of this report.

Issue 2: The Conservation Act 1987

1. The activity could reasonably be undertaken at an alternative site

Many submitters have stated that they do not object to the concept but to the proposal occurring at this particular site. They believe that such a development would be inappropriate at the Hokitika Gorge due to the special values associated with this particular site.

Some submitters considered that the activity could reasonably be carried out elsewhere with lesser effects. Concerns were also raised about the Department’s role. Points raised include the following:

- The Department should primarily be concerned with ensuring that its own criteria are met, not the applicant’s criteria.
- There are plenty of other sites that may not meet all the applicant’s criteria, but which would still be excellent sites for an airwalk. This may require compromise but this is a reality for all business people, and shouldn’t threaten the business’s viability, only its profits.
- Water views, while providing an additional attraction, are not necessary for a canopy walkway.
- The Department’s primary responsibility is to preserve heritage for all people, not to help business people find the perfect location for their enterprise. The Department should not compromise its key mandate.
- Granting such a concession would be inconsistent with the Department’s general approach which is to disallow structures on land administered by the Department of Conservation.
- The visual and social effects would be less at other sites where the scenic values are not so high and where the site is not so treasured by the local community.
- There is not enough discussion in the FDR regarding why the Department believes that the scenarios in section 17U(4) do not apply in this case. The Department needs to provide clear analysis.
- The applicant has not properly investigated enough other sites – there are many other sites on the West Coast and elsewhere where the effects on the natural character of the area and the existing recreational setting would be significantly less. Other possibilities include forest in private ownership, as well as sites in ex-Timberlands forests, which have large, tall lowland trees and in many cases a suitable roading network to reach them.

- There are suitable sites elsewhere that could provide the same kind of experience, without needing to compromise places such as the Hokitika Gorge which have additional special qualities.
- Tourism ventures of this nature should occur in areas that have already been modified and where the appropriate infrastructure is already in place. They should be located close to the present tourist highway and existing accommodation services.
- Development should only be considered in places that have already lost their remote values and sense of solitude due to high visitor numbers and the presence of accommodation providers, cafes, vehicles, boats, aircraft etc, and where there is already an expectation that visitor experiences will come “pre-packaged”.
- If the company hasn’t found any other sites that meet all its criteria, perhaps they should reconsider their criteria or lower their expectations.
- The activity would be more appropriate on land of lesser status.
- There is better forest canopy elsewhere. More appropriate alternative sites suggested by submitters include Franz Josef, Fox Glacier, Pelorus Bridge in Marlborough and Tartare Stream and Callery Gorge in South Westland, Lake Kaniere, Lake Ianthe, Punakaiki.

Comment:

These matters are discussed further in relation to section 17U(4) of the Conservation Act 1987 in section 5 of this report.

2. Approving the proposal would be contrary to the Department’s responsibility to preserve our natural treasures in as natural a state as possible for the enjoyment of all.

Comment

The Conservation Act 1987 provides for both preservation and protection and use. Section 6(e) provides for recreation and tourism to the extent that it is not inconsistent with conservation, and the concessions provisions in Part IIIB allow for commercial use. Nor does the Reserves Act 1977 preclude commercial activity. Given this, the Department has to balance competing responsibilities.

3. Approving the proposal would be contrary to the spirit and intention of the Act.

Comment

Refer to the comment for 2 above.

4. Approving the proposal would be contrary to stewardship land provisions.

Comment

This matter is further discussed in relation to section 17U(3) of the Conservation Act 1987 in section 5 of this report.

5. Approving the proposal would be contrary to the Department's responsibility to maintain intrinsic values. The Department could achieve this best by not approving the proposal.

Comment

The Department must weigh up the protection of intrinsic values with the need to provide for public use and enjoyment.

This matter is further discussed in relation to sections 17U(1)(b) and 17U(3) of the Conservation Act 1987 in section 5 of this report.

6. Approving the proposal would be contrary to the Department's responsibility to safeguard options for future generations. Future generations should be able to experience the Hokitika Gorge as it is now.

Comment

It is acknowledged that approving the proposal would fundamentally change the type of visitor experience available at the gorge, and that some of the effects would be irreversible in the short to medium term, for example, removal of vegetation for the carparks.

These matters are discussed further in relation to issue 11 (effects on vegetation) and sections 17U(1)(b) and 17U(3) of the Conservation Act 1987.

7. The Department is required to foster recreational activities and has no mandate to promote tourism at the expense of these activities.

Comment

Section 6 of the Conservation Act states the Department's functions. Section 6(e) states:

"To the extent that 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."

This matter is further discussed in relation to section 17U(3) of the Conservation Act 1987 and in section 5 of this report.

8. The advantages of a concession application should not be a basis for looking more favourably upon the negative impacts.

Comment

Part IIIB of the Conservation Act requires that the effects of proposed activities are considered. Section 17U of the Act does not limit consideration of effects to adverse effects. “Effects” is defined in the Act as having “the same meaning as it has in the Resource Management Act 1991, which defines effects as:

- Any positive or adverse effect; and*
- (b) Any temporary or permanent effect; and*
- (c) Any past, present, or future effect; and*
- (d) Any cumulative effect which arises over time or in combination with other effects—
regardless of the scale, intensity, duration, or frequency of the effect, and also includes—*
- (e) Any potential effect of high probability; and*
- (f) Any potential effect of low probability which has a high potential impact.*

Positive effects can therefore be considered under this definition. It is agreed that the negative effects of a proposed activity should be assessed objectively irrespective of any positive effects which may arise, however it is clear from the legislation that positive effects can and should be taken into consideration. In some cases the positive effects of a proposed activity may be considered to offset or outweigh the negative effects.

9. The information available is insufficient to assess the effects, including the effects of the proposed measures to avoid, remedy and mitigate these effects (section 17U(2)(a)).

This matter is discussed further in relation to section 17U(2)(a) of the Conservation Act 1987 in section 5 of this report.

Issue 3: The Treaty of Waitangi and Section 4 Conservation Act 1987

Under section 4 Conservation Act 1987 the Department is required to interpret and administer the Act as to give effect to the principles of the Treaty of Waitangi. Central to this is to be informed about what tangata whenua’s views on the proposal are.

Information on cultural values has now been received from Te Rūnanga o Ngāti Waewae, in the form of their written submission (Appendix F). They have identified that the site does in fact have cultural significance.

Te Rūnanga o Ngāti Waewae have stated that they oppose the application because:

- They believe the application is contrary to their values, the Treaty of Waitangi, the Reserves Act and the Conservation Act, particularly section 4.
- They believe they have not been given sufficient consultation rights “as requested at an earlier stage.”
- “Areas such as the Hokitika Gorge Scenic Reserve have significant cultural values that are linked to the reasons that the area is gazetted Scenic Reserve.”
- There are cultural/spiritual values associated with the site – it is “A place where we can quietly communicate with the atua (gods) that we believe we are connected to by the whenua (land).”
- “..to grant exclusive rights to this public reserve for the purpose of a high impact development would deny many of our tangata their rights under the various statutes.”
- “We request that this application be declined and that we be given the right to articulate our values, via an applicant funded Cultural Impact Assessment of the proposal...”
- “To leave the Cultural Impact Assessment to the RMA is not appropriate or consistent with the Conservation Act. Should the DOC grant this concession it must be with thorough consultation with the Papatipu Rūnanga in whose rohe the activity is proposed.”
- The application should be declined at this stage, until a thorough Cultural Impact Assessment is carried out.

Several other submitters have also expressed concern that the Department did not commission a Cultural Impact Assessment (CIA) for the purposes of the FDR. They believe that this shows disrespect and insensitivity to Ngāi Tahu. One submitter has said that the site is located on trails used by the earliest Maori, and believes that the history of the site has been ignored.

Comment:

Both Te Rūnanga o Ngāti Waewae and Te Rūnanga o Ngāi Tahu were consulted regarding this application prior to the preparation of the FDR. Although a response was received, it did not identify any particular cultural values associated with the site, nor did it recommend that the application should be declined or altered due to impacts on cultural values. As a result, the FDR lacked information on Maori cultural values. It is unfortunate that the information contained in the submission from Te Rūnanga o Ngāti Waewae was not made available to the Department when consultation was originally undertaken.

Recommendation

It is recommended that these comments are noted. If the decision maker wishes to pursue the possibility of granting of a concession, it is recommended that further consultation with Te Rūnanga o Ngāti Waewae is first undertaken in order to clarify the site’s cultural values and how these might be affected by the proposal. The potential impacts on cultural values would need to be considered with reference to section 4 of the Conservation Act 1987 (which relates to the Treaty of Waitangi) before a concession could be granted.

The applicant has commented on this matter on page 18 of the applicant’s comments (Appendix K). He suggests that further consultation is not likely to produce further insight and is concerned by Ngāti Waewae’s request for a Cultural Impact Assessment, which he claims would give them the “*ability to create cost for a competitor and delay their progress*”

almost at will. It is hard to imagine a better example of conflict of interest. Therefore the recommendation should be struck off from the draft report or declined by the decision maker.”

It should be noted that although this report recommends further consultation in order to clarify cultural values, a Cultural Impact Assessment has not been recommended.

The Department does not believe there is a conflict of interest as asserted by the applicant. It is obliged to consult with Ngāti Waewae and notes that as the local rūnanga, they are responsible for the interests of those who hold mana whenua in their area. Each rūnanga deals with applications in accordance with its own kawa and it is important to properly understand this.

Issue 4: Draft West Coast Conservation Management Strategy (“CMS”)

A number of submitters have argued that the proposal is inconsistent with various provisions in the draft CMS, as they consider that (among other things):

- It would be inconsistent with the character of the place;
- It would detract from the enjoyment and appreciation of other visitors;
- It would not be compatible with protection of natural resources at the site;
- It would be inappropriate given the current visitor management setting, (the Hokitika Gorge is not identified as an intense interest site);
- It would take people away from the SH6 to somewhere that is important to locals as a place of escape; and
- The developer could reasonably undertake the activity outside conservation land.

Comment

Although inconsistency with the draft CMS is not in itself a relevant statutory basis for declining the application (Note that there is not an approved West Coast CMS. It is still draft), most of the concerns raised are relevant considerations that are discussed elsewhere in this report. For example, the character of the place is discussed in relation to effects on intrinsic/aesthetic values such as natural quiet and solitude.

Issue 5: The Department’s Visitor Strategy

A number of submitters consider that the proposal is inconsistent with the Department’s Visitor Strategy 1996, as they believe it would compromise the experiences of other users by impacting on intrinsic values such as natural quiet and solitude.

Comment

Although inconsistency with the Visitor Strategy is not in itself a relevant statutory basis for declining the application, effects on intrinsic/aesthetic values are relevant considerations and are discussed further in relation to sections 17U(1)(b) and 17U(3) Conservation Act 1987 in section 5 of this report.

Issue 6: Impacts on natural quiet and other intrinsic/aesthetic values

Virtually all submitters, both for and against the proposal, have acknowledged that the Hokitika Gorge is a unique place with exceptional intrinsic/aesthetic values. It is highly valued for its peace, tranquillity, and natural beauty. Most who oppose the proposal have expressed great concern that the development would compromise these intrinsic/aesthetic qualities, which are fundamental to the character of the place.

Comment

The FDR acknowledged the gorge's intrinsic/aesthetic values and suggested that the proposal's effects could be mitigated by the following special conditions:

- The Concessionaire shall include in the management plan submitted to the Hokitika Area Manager, proposed actions to:
 - Maintain, as far as possible, the natural quiet of the sites under application.
 - Minimise, as far as possible, the impact of the operation on other visitors to the gorge, (for example by actively encouraging airwalk users to use the track to the airwalk entrance instead of walking up the road.)
 - Spread airwalk visitor numbers throughout the day.
- The management plan shall also include a description of the nature and extent of interpretation to be provided in the visitor centre and along the airwalk.
- The Concessionaire shall select the final alignment of the walkway to ensure that live emergent and major canopy tree crowns are avoided, and that visibility of the airwalk to other recreational users in the area is minimised. The final alignment of the airwalk and bush track shall be approved by the Hokitika Area Manager prior to construction commencing.
- The Concessionaire shall ensure that the visual impact of the carparks is minimised by retaining existing border vegetation where practicable.

It appears that many submitters do not consider that these proposed conditions would satisfactorily address the likely effects of the proposal on the site's intrinsic/aesthetic values (this matter is discussed further in relation to section 17U(2)(b) of the Conservation Act 1987), and believe the proposal would compromise the very qualities that both locals and overseas visitors come to the gorge to experience.

It should be noted that prior to public notification of this application, it was not clear what people considered to be the gorge's intrinsic/aesthetic values. Public notification has greatly informed the consideration of this concession application by helping to define these values. It is now clear that not only do some people value the physical beauty of the Reserve, they also greatly value its sense of peace and tranquillity and the solitude enjoyed there.

The main concerns raised by submitters in relation to intrinsic/aesthetic values are discussed below.

1. Natural quiet

Many submitters have expressed great concern that the natural quiet currently enjoyed at the gorge would be lost if the development was approved. The natural quiet and sounds of nature experienced at the site are clearly a very important part of the gorge experience for many users, and contribute to the sense of peace and tranquillity experienced there. Submitters have expressed great concern about noise generated by:

- People on the airwalk itself;
- People at the visitor centre;
- Cars, buses and car stereos etc;
- The increased numbers of people using the Reserve; and
- Noise from wind blowing through the guy wires and around the towers.

One submitter has suggested that sounds may also be amplified by the shape of the gorge which is described as a “natural amphitheatre”, drowning out the natural sounds of birds, water and insects. As a result, submitters believe the current natural quiet would be lost, as would the sense of peace and tranquillity and the current visitor experience.

Comment

This matter is discussed further in relation to section 17U(1)(b) of the Conservation Act 1987 in section 5 of this report.

2. Natural setting and visual effects

Many submitters have indicated that they place a very high value on the rugged natural beauty of the gorge and like it the way it is. Although some submitters have suggested that the current facilities could be upgraded, many have said that they think the current facilities are fitting and appropriate, and that the proposed development would take away from rather than enhance the natural setting of the gorge. They consider that the proposed structures would dominate the site and change its essential character from a place characterised by raw natural beauty to one characterised by commercialism. Overseas and local examples have been cited by submitters to illustrate how special places have been ruined by commercial development. Many submitters consider that people come to New Zealand and the West Coast to experience natural places that are still “untouched”.

Specific visual effects that submitters have objected to are:

- Seeing the cantilevered section from the gorge (and being seen from it);
- Seeing the towers and guy cables from within the Reserve; and
- Seeing the airwalk from the valley road.

Submitters consider that these structures would be intrusive, unattractive and out of place. A number of submitters have referred specifically to the fact that the walkway would be constructed from steel, which they consider would clash with the natural beauty of the

Reserve. Submitters have also commented on the visual effects of signage and other works that would be associated with the proposal, and two submitters are concerned about lighting.

Comment

The proposal's visual effects and effects on the site's natural setting are discussed further in relation to section 17U(1)(b) of the Conservation Act 1987 in section 5 of this report.

The effects of signage and other activities on land not administered by the Department can not be considered by the decision maker.

3. Solitude

A number of submitters have indicated that they value the gorge as a place of solitude. The absence of people at the gorge is clearly appreciated by submitters and makes it a place where people can escape the stresses of daily life. Many submitters recognise that the proposal would fundamentally change the current gorge experience and are greatly concerned by this. One submitter stated:

"People come to the quiet, unhurried rugged beauty of the coast to get away from intense tourist sites like Queenstown. The pristine nature of the Hokitika Gorge and the unhurried countryside is what locals and tourists alike anecdotally seem to want....in today's "climate", God knows we all need these pockets of serenity; these places to meet nature on her own terms."

Comment

This matter is discussed further in relation to section 17U(1)(b) of the Conservation Act 1987 in section 5 of this report.

4. Spiritual qualities

A small number of submitters have noted that the gorge has unique spiritual qualities and have described it as having a special energy that makes visiting it a spiritual experience. Several submitters have mentioned that they use it as a place for deep contemplation and meditation, and say that they would no longer be able to do so if the development went ahead. One submitter felt that the spiritual energy of the place would be depleted by large numbers of visitors.

Comment

The Department was not previously aware that some users consider the gorge to be a place with unique spiritual qualities.

This matter is discussed further in relation to section 17U(1)(b) of the Conservation Act 1987 in section 5 of this report.

Issue 7: Increased visitor volumes and resulting impacts

Most submitters opposed to the application have expressed concern about the likely impacts associated with a dramatic increase in the number of people visiting the Reserve, including:

- Littering in the Reserve including litter being dropped from the airwalk;
- Fumes from cars and diesel buses;
- People toileting in the Reserve;
- People trampling through the bush;
- More people staying overnight in campervans etc and associated impacts;
- Crowding and intrusion, large groups of people;
- More pests due to rubbish etc; and
- Barriers etc that would be needed on the rocks.

Submitters have also said that they think the Department should not restrict its consideration of effects to those that would occur on public conservation land. They consider that the Department is part of the community and therefore has a social responsibility to consider the wider implications of attracting large numbers of tourists to the site, including likely issues such as rubbish and toilet waste along roads, and the proliferation of signage and general infrastructure that would be required to service these visitors.

Comment

While these comments about the wider implications of the application should be noted, it is not considered that there is a statutory basis on which the application could be declined based on concerns relating to land which is not administered by the Department. These matters are more for consideration under the Resource Management Act 1991.

Matters relating to land administered by the Department of Conservation are discussed further in section 17U(1)(b) of the Conservation Act 1987 in section 5 of this report.

Issue 8: Social effects – changes in use

A number of submitters have expressed concern regarding the social effects of the proposal. Currently the site attracts picnickers, anglers, hunters, trampers, kayakers and other day visitors. Users are generally independent and self-sufficient, and many are New Zealanders. As well as being a popular site for day visitors, submitters have pointed out that the gorge is also a gateway to a number of hunting and tramping routes. Submitters have expressed concern that if the proposal was approved, the characteristics of the setting would change such that current users would be displaced. The natural setting would be changed by intrusive structures, there would be large groups of overseas tourists, the site would become noisy, and commercial and social exchange would become part of the visitor experience. The character of the place would be changed to the extent that it would no longer provide the experience that users currently go there for. The proposal would effectively change the site from one that presently meets the needs of many New Zealanders to one that essentially caters for highly dependent overseas tourists in a manner that is incompatible with current use.

Comment

This matter is discussed further in relation to section 17U(1)(b) of the Conservation Act in section 5 of this report.

Issue 9: Incompatibility with current use, possible future restrictions etc

A number of submitters have expressed concern that the proposal would not be compatible with existing use, which includes hunting, tramping, fishing, scenic tours, recreational sightseeing, heli-kayaking, helicopter sightseeing, jet boating, trail bike riding, cycling, horse riding, and use of the swing bridge for stock movement*, among other things. Some submitters are concerned that the applicant may try to restrict use of the area for activities not compatible with the proposal. One submitter has stated:

“The company should co-exist with all present and future residents, property owners and operators in the district and in particular, their land use and activities. The applicant’s activity should not be the tail that wags the dog with demands and restrictions made to facilitate their private enterprise at the expense of others. It is essential that urban expectations and conditions are not demanded of the rural community with restrictions on stock movements or compulsory underpasses. The applicant’s desire to see the area maintained as a quiet zone should in no way diminish or extinguish nor preclude any activity of any person or group who currently uses, or will use in the future, the HG. Current use includes hunting, scenic tours, recreational sightseeing, heli-kayaking, helicopter sightseeing, jet boating, trail bike riding, cycling, horse riding etc. Future applications for development should be assessed on their own merit, irrespective of AWNZ. No application should be declined because it is at odds with this application.”

One submitter has pointed out that the gorge is a gateway for backcountry wilderness experiences and that backcountry users often leave their vehicles at the road end. This would no longer be a practical or sensible option for users if the proposal was approved.

Comment

This matter is discussed further in relation to section 17U(1)(b) of the Conservation Act 198 in section 5 of this report.

** Westland District Council has advised that the swing bridge is no longer used for stock.*

Issue 10: Inadequacy of proposed measures to avoid, remedy or mitigate effects

Many submitters opposed to the application do not agree that the proposed mitigation measures would be adequate, and consider that some of the proposed measures are unrealistic or unworkable. They are also concerned about compliance with the proposed measures. Specific concerns raised include the following:

- The presence of visitors on the cantilevered structures overhead, the visitor noise on and around the walkway, the presence and inevitable flow of visitors to the swing bridge and the gorge rocks simply cannot be mitigated against;

- There are no mitigation measures that could maintain the natural quiet of the area when large numbers of people would be present;
- It is not possible to even partially mitigate against the inevitable loss of the current visitor experience by the means suggested;
- It's not realistic to spread visitor numbers throughout the day;
- It's not realistic to require the Hokitika Area Manager to approve the removal of trees;
- Swales wouldn't be enough to prevent material ending up in the creek;
- Ensuring contractors comply with conditions is not achievable;
- It is not enough to mitigate or minimise effects. These effects could be completely avoided by declining the application; and
- The application is compared to the Mt Cavendish concession which has meant that "quiet enjoyment of the summit of Mt Cavendish is [now] essentially impossible".

Comment

It is considered that the Department's standard concession conditions and the special conditions proposed in the FDR would be sufficient to ensure that effects on water quality resulting from stormwater are adequately avoided, remedied or mitigated.

It is not considered that it would be unrealistic to expect that contractors could be required to comply with concession conditions, or for removal of large trees to require approval from the Hokitika Area Manager or his delegate.

The other matters raised in this section are discussed further in relation to section 17U(2)(b) of the Conservation Act 1987 in section 5 of this report.

Issue 11: Effects on vegetation

Many submitters have expressed great concern regarding the proposed removal of dead and senescent trees and clearance of vegetation. They object to the loss of habitat that would result as well as the associated effects on native wildlife. The ecological value of dead and senescent trees has been recognised by submitters, who have noted that they can provide homes for bats and epiphytes. Their scenic value has also been noted.

Some submitters believe that the effects on vegetation have been understated in the application and have concerns regarding:

- Damage to trees resulting from helicopter downdraft;
- Damage to tree roots resulting from soil compaction;
- Vegetation clearance that may be undertaken to enable fill material to be dumped;
- Potential windthrow resulting from vegetation removal;
- Potential ponding and death of adjacent trees resulting from tree removal; and
- Possible removal of more trees than identified in the application due to health and safety requirements.

Some submitters are concerned that the removal of trees and clearance of vegetation will open up the under storey and also the canopy in places, resulting in windthrow. They note that there are a number of dead and dying trees in the area and that the area is prone to strong winds.

One submitter has noted that removal of individual trees can result in ponding, causing the death of neighbouring trees.

Many submitters appear to consider that any tree removal and vegetation clearance is unacceptable.

Comment

While the proposal would have adverse effects on vegetation, including long-term effects, the key issue to be determined by the decision maker is not whether or not these effects would occur, but rather whether or not they are acceptable. The effects on vegetation must therefore be considered in relation to the purpose for which the land is held. This matter is discussed further in relation to section 17U(3) of the Conservation Act 1987.

The FDR acknowledges the proposal's impacts on vegetation and identifies measures to avoid, remedy and mitigate these effects (refer to section 5.2 of the report). The FDR did not identify that helicopter downdraft during construction might damage vegetation, however it is not considered that the degree of any damage likely to be caused would be significant (refer to technical advice in the following italicised paragraphs).

It should be noted the applicant has not applied to clear vegetation for the purpose of dumping fill, and any concession granted would not authorise this.

It is acknowledged that health and safety requirements could potentially mean that more trees might need to be removed than indicated in the application. This possibility and its implications are discussed further in section 17U(1)(b) of the Conservation Act 1987.

The FDR did not identify windthrow or ponding as potential effects, and further technical advice sought suggests that these effects would not be significant.

Extracts from technical advice received on windthrow are provided below (a full copy of the memo is on file PAC 11 07 320, volume 2). This was provided to Merryn Bayliss from Phil Knightbridge, Technical Support Officer, West Coast *Tai Poutini* Conservancy, in response to a request for further advice after the hearing.

Windthrow is one of the most common natural disturbances occurring in New Zealand's forests. Examples of catastrophic damage caused by windthrow have been well documented throughout the country, including the West Coast. A good recent example was the extensive windthrow of mainly rimu near Hannah's Clearing in South Westland about four years ago. High winds similar in nature to those that caused extensive windthrow at Hannahs Clearing are likely to cause extensive windthrow at the Hokitika Gorge regardless of whether a tree top walkway and associated structures are constructed.

Trees on the edge of stands tend to be less susceptible to windthrow as they have better developed root systems and a more resistant tree form (Wardle 1984). Creating new edges in forests exposes the trees along this edge to a higher risk of windthrow until their root systems and form adjust to the new conditions. If these trees have had their root systems damaged by

clearance there is a greatly increased risk that they will fall in high winds. Tall trees that are left exposed by the removal of surrounding forest will also be at increased risk of windthrow.

The construction of the main carpark would move the existing forest edge about 40 m. The forest in this area is low statured (5-6m) secondary forest dominated by kamahi and other hardwood species. Trees along the new forest margin would be exposed to an increased risk to windthrow, but provided that damage to root systems of the taller individuals at the forest margin was minimal, most should survive. Over time this edge would become more resilient to windthrow as the root systems of trees along the edge would grow stronger. It would be unlikely that there would be any increased risk of windthrow to trees beyond about 5m of the new forest edge.

The construction of the towers would require the clearance of a footprint of 5 x 5 m (25m²). This vegetation includes ground cover including young trees, saplings and lianes but does not include trees (Appendix 5 of the application). Thus clearance of this vegetation would not be expected to increase the risk of windthrow as disturbance to tree root systems would be minor.

The excavation to 1 m deep of an area of 4 to 5 m² (pg 15 of the application) for each tower would disturb tree roots. Given that tall rimu rootplates are likely to have a mean maximum dimension of 3.2m (Adams & Norton 1991), provided the footprint of towers were positioned beyond this distance from these trees, they would not be likely to increase the risk of windthrow due to clearance. The applicant has listed distances of trees from towers in Appendix 2 of the application. There are two trees which fall within about 3m¹ from a tower foundation centre (Table 1). Neither of these trees fall within 1.25m of the tower centres, thus neither would have their root systems severely impacted by excavation for tower centres. Given that both are 2.6m from the tower centre, it is possible a small proportion of the root system of these two trees could be disturbed by tower construction, but this is not expected to greatly increase the risk of windthrow to these two trees. In addition, they are relatively small trees, so even if they were exposed to a greater risk of windthrow, if they did fall the damage caused would not be great.

Table 1: List of trees within 3m of tower centres. These trees could experience some disturbance to root systems as a result of tower construction. This list is derived from Appendix 2 of the application.

Tower number	I.D. #	Species	DBH (cm)	Distance (m)
8	20	Miro	20	2.6
11	37	Kamahi	22	2.6

Helicopters would be used in the construction phase. The most common use of large helicopters above forest is in selective logging of indigenous forest such as that practised by Timberlands West Coast in the late 1990s. There is no evidence to my knowledge that the use of helicopters increased the risk of windthrow or directly caused trees to fall in forests where large helicopters were used for this purpose.

¹ Considering trees 3 m from the tower centre allows 1.5m for the rootplate radius plus a 1.25m radius circle for the area to be excavated (which equates to the 5 m² area to be excavated) plus a buffer. In the application it is suggested some fine root severing is possible for trees closer than about 2.85m from the tower centres.

In conclusion, the construction of a tree top walkway and associated structures would at worst be likely to slightly increase the risk of windthrow along the new forest margin created by the proposed carpark, and for two small trees near tower sites. At best there would be no effect on the frequency of windthrow as a result of the construction.

References

- Adams, J.A.; Norton, D.A. 1991. Soil and vegetation characteristics of some tree windthrow features in a South Westland rimu forest. *Journal of the Royal Society of New Zealand* 21: 33-42.
- Wardle, J. 1984. The New Zealand beeches. Ecology, utilisation and management. New Zealand Forest Service.

Issue 12: Potential impacts on wildlife

Many submitters have expressed concern regarding the potential effects of the proposal on wildlife. Concerns raised include that:

- Birds and bats might fly into the airwalk;
- Ongoing tree trimming etc might result in ongoing disturbance to birds and bats;
- More pests might be attracted to the area by rubbish and food scraps etc resulting in increased predation and competition;
- Vegetation clearance would directly affect invertebrates, birds, bats, lizards etc by removing habitat and food sources;
- Human disturbance might impact on foraging and reproductive behaviour of birds which could affect bird populations;
- Removal of dead and senescent trees might result in loss of bat roosting trees and may contribute to the decline of long-tailed bats; and
- Not enough is known about what is there so how can the effects on wildlife be properly assessed.

Comment

These matters are discussed further in relation to section 17U(1)(b) of the Conservation Act 1987 in section 5 of this report.

Issue 13: Potential for increased slippage

A number of submitters have expressed concern that soil disturbance resulting from the construction of the airwalk may facilitate slippage in the area, which is said to be prone to slips. Submitters have noted that the vegetation is shallow rooted and that the soil rests on solid bedrock. They consider that removal of areas of vegetation and disturbance/removal of tree roots may effectively destabilise the forest, potentially causing it to slip into the gorge.

Comment

The potential for increased slippage was not identified as an effect in the FDR. Further technical advice on this matter was sought from Phil Knightbridge, Technical Support

Officer, West Coast *Tai Poutini* Conservancy, in response to a request for further advice after the hearing.

This matter is discussed further in relation to section 17U(1)(b) of the Conservation Act 1987 in section 5 of this report.

Issue 14: Water pollution

Some submitters have expressed concern regarding the proposed sewerage disposal system. There are concerns that the high number of visitors and high rainfall at the site would result in pollution of Granite Creek and the Hokitika River. One submitter has suggested that the proposed system seems a bit basic and has asked if the Department will monitor water and soil at the site. There is concern that the effluent would affect freshwater fish and invertebrates through changes to water sediment loads, pH and chemical levels. It has been suggested that the porous rocks of Granite Creek are unsuitable for sewerage disposal and submitters have referred to a similar system that was used by a hotel at Lake Kaniere, with unsatisfactory results. Several submitters have expressed concern that the septic tanks might cause pollution in the event of an earthquake.

Comment

This matter is discussed further in relation to section 17U(1)(b) of the Conservation Act 1987 in section 5 of this report.

Issue 15: Potential loss of access to the swing bridge (road closure etc) and reserve

Many submitters have expressed great concern that the proposal would or could potentially affect access to:

- The swing bridge;
- Tramping routes accessed via the Whitcombe Valley Road;
- Tramping routes accessed via the swing bridge;
- Hunting areas accessed via the swing bridge;
- Parts of the Hokitika Gorge Scenic Reserve; and
- The existing car park.

Many submitters understand that the applicant wishes to try and close the existing road and strongly object to this. One has suggested that even if the road remains open, members of the public wanting to drive to the existing car park would be hindered by pedestrians and other vehicles. Another submitter is concerned that the large numbers of people attracted to the gorge would mean that access to the swing bridge might have to be restricted or controlled for safety reasons.

Comment

Most of these concerns can not be given further consideration by the decision maker because:

- The swing bridge is not administered by the Department;
- The existing road and car park are not administered by the Department; and

- There is no apparent reason why use of the Whitcombe Valley Road would be impeded if the proposal was approved.

Westland District Council has advised that although a 10 person limit has been placed on the swing bridge, this is very conservative limit. If necessary, the bridge could potentially be strengthened.

Recommendation

If a concession is to be granted, it is suggested that the decision maker consider drawing the local authority's attention to work required to strengthen the bridge.

Issue 16: Safety issues

Submitters have raised a variety of concerns related to client safety while on the airwalk structure. These primarily relate to the extreme weather events known to occur at the gorge (spectacular electrical storms, lightning strikes and huge wind gusts) and the proximity of the proposed airwalk to the Alpine Fault. Submitters have expressed concern regarding the possibilities that:

- Clients could be injured by falling tree limbs;
- The airwalk structure could be blown down while clients are on it;
- The airwalk could fall down in an earthquake while clients are on it;
- Clients could be blown or thrown from the airwalk; and
- Clients could be struck by lightning while on the airwalk.

Adverse weather

Submitters have noted that the gorge is prone to extreme weather events, including huge wind gusts, spectacular electrical storms and flash floods. It has been suggested that the steel towers would act as lightning conductors. Some submitters have suggested that there may not be adequate warning that these events may be about to occur and consider that greater consideration needs to be given to client safety.

Proximity to the Alpine Fault

Many submitters have noted the proximity of the proposed airwalk to the Alpine Fault and consider that this has implications for the safety of the structure.

Comment

Most of these safety-related concerns are not discussed in the FDR because both the Department and concessionaires have safety responsibilities under the Building Act 1991, the Health and Safety in Employment Act 1992 and the Occupiers Liability Act 1962 which would deal with them. All of the required permits and approvals under these Acts would need to be granted before the structure could be used by the public. Generally the Department endeavours to meet these responsibilities via standard concession conditions, and in some cases by including additional special conditions that are considered appropriate. It may be that further special conditions are required if a concession is to be granted and expert advice sought so that the highest possible standards of public safety are achieved.

This matter is discussed further in relation to section 17U(1)(b) of the Conservation Act 1987.

Issue 17: Impacts on the rural character of Kowhitirangi/Kokatahi/Kaniere

Many submitters have objected to the Department's approach of limiting its consideration of effects to land administered by the Department. They believe that the Department has a moral, if not a legal responsibility to consider the wider implications of the proposal, and in particular the implications for the rural communities it would affect. Specific concerns include that:

- The influx of people and traffic would change the character of small rural communities such as Kowhitirangi, Kokatahi and Kaniere;
- The peace and quiet of these areas would be lost as would the established culture in these close-knit communities;
- These communities do not have the infrastructure in place to cope with the demands of high visitor numbers; and that
- Safety and security would be compromised.

Comment

These matters do not relate to land administered by the Department so are beyond the Minister's statutory considerations. These matters are more for consideration under the Resource Management Act 1991.

Issue 18: Issues related to increased traffic

Submitters have raised various concerns related to increased traffic, as follows:

- Road safety would be compromised by the resulting high volumes of traffic on roads that are not designed for high traffic volumes. High volumes of buses and other tourist traffic combined with milk tankers, sharp bends and one-way bridges would result in increased accidents.
- There would be increased pressure on volunteer emergency services.
- Increased traffic would interfere with farming practices.

One submitter does not believe that more accidents would result, as high numbers of milk tankers already use the roads without too much of a problem.

Comment

These matters do not relate to land administered by the Department and are beyond the Minister's statutory considerations. These matters are more for consideration under the Resource Management Act 1991.

Issue 19: Concerns regarding financial input via rates

A number of submitters have expressed concern regarding the potential burden on ratepayers. The company has made a number of requests to Westland District Council, and submitters are concerned that ratepayers would have to subsidise the infrastructure and road improvements required to cope with large volumes of tourists going to the gorge. Submitters object in principle to ratepayers funding these works.

Comment

Submitters' concerns regarding rates are acknowledged however this matter is beyond the Minister's statutory considerations. It is recommended that submitters' comments on these matters are forwarded to Westland District Council if a concession is to be granted.

Issue 20: Concerns regarding the applicant

Various concerns have been raised regarding the applicant. Concerns raised include:

- The applicant is a new company and the directors have no experience in air walks or tourism in New Zealand.
- Not enough information regarding the applicant's ability has been made available to submitters. Testimonials should have been made available.
- The Department has not undertaken sufficient due diligence.
- There are a number of other companies associated with the applicants that appear to warrant further investigation.
- One of the original partners went bankrupt.
- The applicants' motive is financial gain.
- The applicants are from overseas and the profits would go overseas.

Comment

The FDR at paragraph 2.7 sets out relevant information. The directors' ability to direct the company to undertake the activity is a relevant consideration and is important given the scale of the activity and the long-term nature of the effects, such as vegetation removal for the carparks and visitor centre. It is noted that the person referred to by submitters who became bankrupt is no longer a director. The long term effects of the activity are discussed further in relation to section 17U(1)(b) of the Conservation Act 1987. Financial gain and remitting of profits overseas are not relevant considerations in the context of matters to be considered under Part IIIB Conservation Act 1987.

Issue 21: Concerns regarding setting a precedent

A number of submitters have expressed grave concern that approving the airwalk would set a precedent which would encourage further inappropriate commercial development of land administered by the Department of Conservation. Submitters believe that granting a concession in this case would result in increased pressure to develop other iconic areas for commercial purposes, ultimately resulting in commercial interests prevailing over

conservation and guardianship values, and the interests of New Zealanders being subjugated to tourism.

Comment

Each application needs to be considered on its merits.

Issue 22: Concerns regarding future development at the gorge

Some submitters have raised concerns regarding future commercial development that may occur at the gorge as a result of a concession being approved, as other businesses may want to establish there. It has been noted that Franz Josef used to be a tiny village but is now a busy commercialised town catering to huge volumes of tourists. The character of the place has completely changed. One submitter expressed concern that the development would result in increased signage and facilities such as barriers etc at the gorge rocks.

Comment

The indirect and cumulative effects of the activity can be considered. The possible establishment of other businesses at the gorge can not be considered as this would not be a cumulative effect of the activity that has been applied for. Future applications would need to be considered on their merits and cumulative effects would have to be considered in the context of these future applications.

Cumulative effects of the activity applied for may well include additional signage and barriers etc. These effects will be further discussed in relation to section 17U(1)(b) of the Conservation Act 1987.

Issue 23: Concerns regarding the economic viability of the operation and what would happen if the venture failed

A number of submitters have expressed doubt that the venture will succeed, and are concerned about what would happen if this was the case. They consider that the site would be ruined and could not easily be restored. There is concern that ratepayers and/or taxpayers would be left to bear the cost, and that the site would be “scarred forever”. One submitter has suggested that the bond should cover removal of the deadman anchors as well as the structure itself.

Comment

The economic viability of the business is not a relevant consideration in itself however the implications of the project failing can be considered as effects. Although a bond would allow for site restoration in the event that the project failed, full site restoration would only be possible in the medium to long-term. The long-term effects of the activity are discussed further in relation to section 17U(1)(b) of the Conservation Act 1987.

Issue 24: Donation of land – the “Godfrey Gift”

Many submitters have objected in principal to the proposal, in light of “the Godfrey Gift”. This “gift” involved the relinquishment of an area of land from a lease, so that it could be added to the Reserve. It has been said that the proposal would be contrary to the Godfreys' intentions for the land. Mr F.S. Godfrey has said that he and his brother had understood at the time that scenic reserve status was the best mechanism for protecting the land, and it was never their intention that the land would be used for commercial purposes.

Comment

It is the purpose for which the land is held (which allows for applications for leases, licences etc to be made in respect of it) not the manner in which the land was added to the Reserve, that is a relevant matter for the decision maker. It is noted that the Department appreciates the importance of such gifts. If the gift had included specific conditions about the use of the land, section 5 Reserves Act 1977 would have applied and the land would have been subject to those.

Issue 25: Concerns regarding exclusive possession

Many submitters have expressed great concern regarding the proposed granting of exclusive possession over parts of the Reserve. This appears to be partly due to misinterpretation of what is proposed, as a predator control boundary on Map C06 was interpreted as being the boundary for exclusive possession. Hence many submitters had the impression that the company would be granted exclusive possession (and therefore control) over a very large area, when in fact, the FDR recommended the granting of exclusive possession only over the footprints of the visitor centre and the airwalk. Nevertheless, many submitters were opposed in principle to the granting of exclusive possession in a scenic reserve, and argued that it would effectively privatise public land. Submitters were very much opposed to the idea of a private company controlling what could and could not occur on land administered by the Department of Conservation at the Hokitika Gorge and suggested that the applicant should buy their own land instead.

Comment

These concerns should be noted however Part IIIB Conservation Act 1987 and section 59A Reserves Act 1977 provide for the granting of leases (exclusive possession) so applications for them must be considered.

Issue 26: DOC mission statement

Several submitters have argued that the proposal is inconsistent with the Department's mission statement, which states that the Department's mission is *“To conserve New Zealand's natural and historic heritage for all to enjoy now and in the future.”*

Comment

Although some submitters may perceive that the proposal would be inconsistent with this statement, this does not provide a statutory basis for declining the application.

Issue 27: Concerns regarding the economic impact on Hokitika

A number of submitters believe that the proposal would not benefit the Hokitika economy, and some believe it would actually be detrimental. The main concern is that the airwalk would draw people out of town, to the detriment of local businesses.

Comment

These matters are beyond the Minister's statutory considerations.

Issue 28: Concerns regarding the Department's processing of the application

Some submitters have raised concerns regarding the Department's processing of this application, as follows:

1. Lack of information

Concerns were raised regarding the lack of detail in the FDR about the design of the airwalk and visitor centre, how the car park and soakage bed would be constructed, and the lack of landscape assessments examining how the structures would look from various vantage points. It was pointed out that the lack of detail in the report meant that submitters could not comment on these matters.

Comment

It is accepted that further detail in the FDR would have enabled submitters to comment more comprehensively on the application. The applicant advised the Department that it had a large amount of technical information available, and this was requested as required for the writing of the FDR. Details regarding some aspects of the application were not available as the final designs had not been determined, however it was considered that exact plans were not needed in order for the application to be processed to the First Determination stage. The uncertainty regarding some aspects of the application was taken into account when formulating special conditions, with the aim being to allow a degree of flexibility while still establishing clear boundaries and making a number of matters subject to the approval of the Hokitika Area Manager. While the submission that some matters should have been addressed more comprehensively in the report instead of being included in a management plan to be written at a later date is noted, it is not considered that the FDR was generally lacking in detail to the extent that submitters were unable to comment adequately on relevant matters.

This matter is discussed further in relation to section 17U(2)(a) of the Conservation Act 1987.

2. Proposed management plan

Several submitters have expressed concern regarding the management plan proposed in the FDR. The FDR suggested that a management plan could be produced at a later date by the applicant to address specific adverse effects identified in the FDR. A special condition would require the plan to be approved by the Hokitika Area Manager on an annual basis. It has been pointed out however that such an approach to managing these adverse effects would fail to give submitters the opportunity to critique proposed mitigation measures and judge whether or not they would be adequate. There has also been concern that a management plan would not prevent visitor effects, only reduce them.

Comment

These comments should be noted. The adequacy of measures to avoid, remedy or mitigate the effects of the activity are discussed further in relation to section 17U(2)(b) of the Conservation Act 1987.

3. Quality of FDR

One submitter expressed concern that the FDR was written by a relatively inexperienced staff member and the report was described as “poor” and “incompetent”.

Comment

By its very nature a FDR may lack some detail that members of the community think is important, but this does not justify the criticism of it nor the staff concerned with the writing of it. It is by publicly notifying the intention to grant that is recommended in the FDR, that the Minister is able to listen to what the public thinks and include it in the report for the decision maker. This is the nature of the process in the Conservation Act 1987.

4. The application should have been considered at the same time as an application under the Resource Management Act 1991.

One submitter considered that the application should have been processed in conjunction with Westland District Council and that issues related to the Whitcombe Valley road should have been sorted out beforehand.

Comment

It would not have been practical to process the application jointly with Westland District Council. Westland District Council has not received any resource consent applications to date, as the applicant is awaiting the outcome of this process. The Department did attempt to co-ordinate with the Council to some extent however, and held a meeting with Council staff early in the process to discuss the aspects of the proposal that each agency may need to consider. It is not considered that it would have been reasonable to resolve roading issues before processing the application either, as the application received by the Minister does not relate to any legal roads. The Whitcombe Valley road is on public conservation land however there is nothing in the application that would prevent use of this road. Note too that the applicant is able to choose which process is run first.

5. Disagreement with approval in principle.

A number of submitters thought the application should never have been approved in principle and some thought the Minister should never have accepted the application.

Comment

The statute provides for applications to be made and for the Minister to process complete applications. This stage of the process allows for public submissions to be made on applications.

6. The final decision should be made by the Minister himself and not the Conservator, who is believed to support the application.

Several submitters suggested that the final decision should be made by the Minister himself and not the Conservator, who is believed to support the application.

Comment

It is considered that the Conservator of West Coast *Tai Poutini* Conservancy is the most appropriate person to make a final decision on this application.

Issue 29: Concerns regarding commercialism/development/tourism

Many submitters have expressed great concern that New Zealand's special places are being modified and exploited for profit, at the expense of locals and future generations. Franz Josef, Punakaiki and Milford Sound were cited as examples of special places that have been ruined by tourism, among others. Many submitters have indicated that they do not believe that any economic benefits resulting from the proposal could possibly compensate for the negative consequences, and that they strongly object to the use of land administered by the Department of Conservation for such purposes. They are greatly concerned about what increasing commercialism will ultimately lead to, and some have said they do not believe that increasing accessibility for tourists is necessarily a good thing.

Comment

It is acknowledged that commercialisation of sites can change their character by compromising intrinsic/aesthetic values to the extent that the visitor experience is fundamentally altered and previous users are displaced. These matters are further discussed in relation to sections 17U(1)(b) and 17U(3) of the Conservation Act 1987 in section 5 of this report.

It should be noted that while submitters may be opposed to commercialism in general, the Minister must consider each concession application on its merits and under the legislation that provides for it.

Issue 30: The Department's motivation

A number of submitters have suggested that the Department has been tempted by the prospect of earning additional revenue.

Comment

The Minister is obliged to consider all applications. The Department processes them and makes recommendations for the Minister's consideration.

Issue 31: Disabled access concerns

One submitter presented a detailed submission regarding compliance with New Zealand Standard NZS 4121: 2001 (Design for Access and Mobility Buildings and Associated Facilities). He considers that the proposed activity cannot comply with this standard, primarily due to the gradient of the terrain between the proposed visitor centre and the airwalk entry/exit structures.

Comment

While these comments should be noted, it is not considered that the decision maker needs to give these concerns further consideration. The applicant's intention is to ferry disabled persons to and from the airwalk, and the Department's standard concession conditions would ensure that the proposed structures comply with the appropriate building standards. Clause 11.6 in the standard concession document states:

“When undertaking any work under this clause the Concessionaire must comply with all statutory requirements including obtaining building consents and code compliance certificates under the Building Act 1991.”

Miscellaneous matters

Many comments made by submitters are beyond the scope of the issues that have been identified and discussed in this report. Nevertheless, many points have been made, and these comments are provided in Appendix G.

5.0 Content of submissions in relation to the Conservation Act 1987 and the Reserves Act 1977

In this section, relevant submission content is discussed in relation to the Conservation Act 1987 and the Reserves Act 1977.

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

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 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 the 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.*

Section 17U(1)(a) - Nature of the activity

This is described in sections 2.2 and 5.1 of the FDR. Some submitters have criticised both the report and the application for not providing enough detail regarding what is proposed. They consider that not enough detailed information has been provided on aspects such as the design of the visitor centre, the design of the airwalk itself, the construction of the main carpark and the sewerage system.

Comment

It is not considered that a lack of precise detail has significantly impaired the Minister's ability to process the application or submitters' ability to comment on it adequately.

Section 17U(1)(b) - Effects of the activity

The effects of the activity are described in section 5.2 of the FDR. Submitters have identified a number of effects that require further consideration by the decision maker, as discussed below.

Discussion regarding effects on intrinsic/aesthetic values

Natural quiet/tranquillity

It is considered that concerns raised by submitters regarding loss of natural quiet and tranquillity are valid concerns that need to be considered by the decision maker. Most submitters clearly consider that these qualities are fundamental to the character of the place. The applicant has stated that the river would drown out noise from the airwalk, but this claim is based on measurements from an airwalk at another location. In fine still weather the river at the gorge is generally very smooth and quiet, and sound carries very easily. It is likely that the voices of people on the cantilevered sections of the airwalk would be able to be heard by people on the rocks, at least in still weather, and it is not considered that the noise of the river would drown out these sounds. The sounds of cars and buses, and people in the visitor centre would also contribute to the loss of natural quiet and would drown out the sounds of nature.

Recommendation

It is recommended that the decision maker accept submitters' concerns regarding the loss of natural quiet and tranquillity at the Reserve that would be likely to result from the proposal being approved. While the applicant has suggested that these effects would occur

incrementally anyway with increasing tourism, it is not considered that the effects on natural quiet etc that would result from the airwalk can reasonably be compared with those likely to occur as a result of an incremental increase. Based on the applicant's projected numbers, the airwalk would result in a sudden and dramatic increase in visitor numbers, on a scale that would not otherwise be likely to occur.

Natural setting and visual effects

Many submitters consider that the presence of man-made structures would compromise the natural setting. The visitor centre, airwalk, towers, cantilevered sections, guy cables and exit structure would all be visible from various vantage points, including from within the Reserve itself.

Comment

While these concerns are valid and must be considered, it should be noted that the applicant has expressed a clear intention for the buildings and structures to blend in with the surrounding environment. The application states, for example:

“Sensitive choice of materials and colours will help harmonise the building with its environment.”

“The ecological survey mentions trees of seven metres or more in height growing in the proposed area for the deck. These are to be retained by providing gaps in the deck, which will visually link the building to its surroundings.”

“AWNZ wish to avoid cutting or trimming of vegetation wherever possible as this detracts from the natural aesthetics and outlook from the walkway.”

It is acknowledged however that the proposed special conditions in the FDR may not be sufficient to ensure that the visual effects of the proposal are adequately mitigated if a concession is to be granted.

Recommendation

It is recommended that the decision maker accept that the proposal would have visual effects and that these would impact on the Reserve's natural setting. If a concession is to be granted, it is recommended that the following additional special conditions are applied:

- The Concessionaire shall ensure that works do not commence at the site unless or until written approval has been received from the Hokitika Area Manager in relation to the design, including building materials and colours to be used, of the visitor centre and airwalk.
- The Concessionaire shall take all practical measures to ensure that all aspects of the activity, including building materials, colours used and any night lighting, are aesthetically appropriate to the natural forest setting, and that all structures blend in with the surrounding environment as far as possible.

The applicant has objected to the requirement for the airwalk alignment to be selected so as to minimise its visibility to other recreational users (refer to page 20 of the applicant's comments, 6.10). It should be noted that this comment relates to a special condition recommended by the FDR (special condition 2 relating to the construction phase), which is not a new requirement. However, if a concession is granted, it is agreed that the words "as far as practicable" could be inserted. The revised condition is listed along with additional proposed special conditions on pages 73-75 of this report.

Solitude

Many submitters have identified that they value the experience of solitude at the Reserve.

Comment

Clearly, this element of the current visitor experience would be lost if the proposal was approved. This is a valid concern which must be given due consideration.

Recommendation

It is recommended that the decision maker accept submitters' concerns regarding the loss of solitude that would result from the proposal. It is not considered that this could be avoided, remedied or mitigated by any proposed special conditions. This matter is discussed further in relation to section 17U(2)(b).

Spiritual qualities

The Minister was not previously aware that some users perceive the gorge to be a place with unique spiritual qualities. It is acknowledged that these users would probably not be able to experience the gorge in the same way they have done if the development was to go ahead. It should be noted that Te Rūnanga o Ngāti Waewae was among those submitters who identified the gorge as a place of spiritual significance.

Recommendation

It is recommended that the decision maker accept that the Reserve is considered by some to have unique spiritual qualities which would be compromised by the proposal. This effect may not be able to be avoided, remedied or mitigated.

The applicant has made various comments regarding intrinsic values (page 7 of the applicant's comments). These comments are accepted in part, however:

- While the general absence of people may not be an intrinsic value in itself, it is nevertheless important to the character of the place;
- Intrinsic values are linked to people's perceptions and can change, however this does not alter the fact that the site currently has qualities that submitters wish to be protected. The Conservation Act 1987 defines conservation as "*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”, (s2 Conservation Act 1987).

- Spiritual values are no different to any other kind of intrinsic value in that they are subjective and difficult to measure or evaluate. This does not mean that they shouldn't be recognised and protected.
- It is agreed that scenic beauty could be largely protected, however the proposal would still have visual and other effects.
- The likely effects on peace and quiet may have been exaggerated by submitters, however these effects would still be significant.

The applicant has also made various comments regarding the likely level of visitation, traffic and noise (refer to page 8 of the applicant's comments). The applicant states that an average of 435 people per day and 35 per hour would be likely to visit the airwalk during the summer months. While the applicant appears to consider that this is relatively low, this would undoubtedly change the character of the place, as submitters have claimed.

Other points made by the applicant in relation to this matter are noted, however they do not alter the fact that the proposal would significantly change the character of the place.

In regard to noise, the primary concern is whether people on the cantilevered section of the air walk could be heard from the swing bridge or rocks. The Department does not accept the evidence provided by the applicant, which suggests that river noise would mask this. The evidence provided (refer to the report from Marshall Day Acoustics on file PAC 11 07 320) is based on measurements from other sites where river noise is significant. This is not generally the case at the Hokitika Gorge, where river noise is virtually nonexistent. While submitters may have exaggerated the likely behaviour of airwalk users, this does not alter the fact that air walk users would most likely be heard by people on the swing bridge and gorge rocks, even if they are not yelling etc.

The applicant claims that air walks in Australia are a peaceful experience. The statements from Australian airwalk managers and other points made are acknowledged, however none of this changes the Department's assessment that the proposed development would cause the character of the place to change significantly. This would result from the large increase in visitor numbers alone, regardless of whether or not these air walk visitors were quiet and well-behaved.

Discussion regarding the effects of increased visitor volumes

Concerns regarding litter, fumes, toileting, trampling and crowding are all potential effects that would be likely to occur if the proposal was granted, due to the large volumes of visitors that would be attracted to the Reserve. Some of these effects may be able to be mitigated to an extent, and this possibility is discussed further in relation to section 17U(1)(b). There is a possibility that food scraps and waste may attract pests to the Reserve, however it is likely

that this could be managed via further special conditions or the provisions of the management plan proposed by special condition 2 (page 22 of FDR).

Recommendation

It is recommended that the decision maker accept submitters' concerns regarding the adverse effects that would be likely to result from the high volumes of people that would be attracted to the Reserve if the proposal was approved. It is considered that these effects could be dealt with by way of the proposed management plan.

Discussion/comment regarding changes in use

If the proposal was approved, current users who enjoy the peace and tranquillity of the gorge would be likely to find that it no longer provides an experience that they desire, and may choose to go elsewhere. The FDR did not identify displacement of current users as a potential social effect as it was considered that the proposal would not significantly limit access. However, although the proposal would not prevent recreational use of the gorge and surrounds, it would clearly impact on the character of the place and the nature of the visitor experience, with the likely result being that current users would no longer be able to enjoy the site in the way that they do presently. The site would change from a relatively low-use site where locals and independent travellers can enjoy a tranquil nature experience, to an intensely used tourist-dominated site no longer characterised by peace and tranquillity and where solitude is no longer possible.

Recommendation

It is recommended that the decision maker accept that displacement of current users, particularly locals, would be likely to occur if the proposal is approved and that the character of the Reserve would be fundamentally changed.

The applicant has commented that very little would change during the off-peak season (page 10 of the applicant's comments). This is acknowledged, but nevertheless, between November and April, visitor volumes would greatly exceed present visitor numbers. Anyone visiting during peak season would be highly unlikely to be able to enjoy the site in the way it can be experienced at present. Even in the off-peak season, it is unlikely that anyone would be able to go there and be the only person there, which is presently more often the case than not. Many submitters have said that they highly value the solitude that can be experienced at the gorge at present. This would be lost if the air walk was to proceed.

The applicant has also provided what he considers to be a true description of the Hokitika Gorge area at present (pages 6-7 of the applicant's comments), claiming that it has been idealised by submitters. He describes a place that is busy, noisy and which is abused by many users. While it is agreed that some, if not all, of the activities described may be occurring from time to time, the character of the Hokitika Gorge is generally as has been described by submitters. It is not pristine and unmodified, but it is nevertheless a stunningly beautiful place, which is ordinarily quiet and can be enjoyed in peace, most often without encountering more than a handful of people. It is not at all untenable that the local population values peace and quiet at the gorge.

The applicant also says that measures to improve the situation were proposed by the company, but were rejected by locals. These were to move the car park further out and to ban jet boating. These were raised at a public meeting. It should be noted that these proposed measures were not part of the application and therefore could not be considered by the decision maker.

Discussion regarding effects on current and future use of the gorge

It is acknowledged that approval of the proposal could potentially make some current activities more difficult or impractical. For instance, it would no longer be practical to drive to the existing carpark, due to the large numbers of people in the area. Submitters have also suggested that it would no longer be safe for backcountry recreationalists to leave their vehicles at the carpark overnight (although it could equally be argued that site security would be improved).

Recommendation

It is recommended that the decision maker accepts that approving the proposal would potentially impact on existing use of the gorge and the way it is used in the future.

Discussion/comment regarding effects on vegetation

One potential issue that has been raised is the possibility that health and safety rules and regulations may require the company to trim or remove more trees than is intended by the applicant. If the Minister issued a concession, it may find itself in the difficult position of being asked for approval to remove more trees than is indicated in the application for health and safety reasons. It is unlikely that the Minister could reasonably decline such requests given the huge investment in the project. Ultimately this may result in greater effects on vegetation than have been considered during the processing of the application.

The application states that a full arboriculture assessment would be required to identify all trees that would pose a significant hazard, and special conditions proposed in the FDR would require any tree removal to be approved by the Hokitika Area Manager. In light of concerns raised by submitters, it is considered that it would be appropriate for a health and safety expert to be involved in the arboriculture assessment if a concession was granted. This would ensure that all trees requiring removal or trimming were identified prior to any works being undertaken.

Recommendation

If a concession is to be granted it is recommended that special condition 13 on page 21 of the FDR is replaced by the following conditions:

When all details relating to the design and alignment of the airwalk have been decided, the Concessionaire shall ensure that a full assessment is undertaken by a qualified arborist in conjunction with a health and safety expert to identify all trees that would require removal, trimming or guying back. This assessment shall involve:

- (1) Measurements of tree positions in distance along each span and at right angles to it, to enable mapping of tree position relative to the walkway structure, each tree surveyed being assigned a unique number;
- (2) Production of a map of individual trees by species and walkway span that are within a distance of the airwalk structure equal to or less than their individual height i.e. which could reach any part of the airwalk if that entire tree or some part of it were to fall;
- (3) A full arboriculture risk/hazard assessment of each tree identified under (2) according to an approved arboriculture methodology and that includes prescriptions for individual tree hazard/risk elimination or minimisation, for monitoring individual tree status (health and risk) over time and for health and safety maintenance work for trees; and
- (4) An evaluation of the applicability of methods in accomplishing simulated tree fall and physical damage as a means of eliminating hazard trees or tree parts.

No trees or tree parts shall be removed, trimmed or guyed back without the prior written approval of the Hokitika Area Manager. The Concessionaire shall ensure that no works occur at the site until the Hokitika Area Manager has received and approved in writing the results of the full arboriculture and health and safety assessment. All trees felled or removed remain the property of the Crown.

The applicant has queried which trees would need to be mapped under this condition (page 18 of the applicant's comments, 6.2). The condition relates to "*all trees that would require removal, trimming or guying back*", as per the first paragraph. This special condition is based on recommendations made by MWH in the application (refer to page 22 of the Preliminary Ecological Assessment contained in the application).

Discussion regarding potential impacts on wildlife

The Department's technical support staff have provided the following responses to concerns raised by submitters:

1) Birds and bats might fly into the air walk

In the short term as individual birds adjust to their new surroundings the chance of some collisions cannot be dismissed. The bird species occurring in the Hokitika Gorge are however adapted to negotiate the many obstacles of a natural temperate rainforest and the solid structure of the proposed walkway is very unlikely to prove more of a problem than the changed flightscape caused by a naturally fallen rimu tree.

There are very few if any reports of dead and injured wildlife associated with collision with structures in the local environment, e.g. swing-bridge, power poles, fences. The lack of reports does not mean it does not happen, however if it was happening regularly and was significant there would most likely be documented cases. There are papers on significant bird

strike on powerlines from overseas, with raptors the main cause of concern. Increasing the visibility of the thin ground wires was shown to significantly reduce this cause of mortality.

Long tailed bats are an open country/forest edge species rather than deep forest species, and little use is made of forest interior. When asked about the risk to bats of collision, Dr Colin O'Donnell (DOC specialist in NZ Bats) could recall no reported incidences of collision, and based on the animals' ability to detect and avoid mist nests when they were targeted for capture and their ability to capture a sandfly on the wing in the dark at 40+ km on hour, he believed the air walk would pose no risk.

If a concession is to be granted, it is considered that the following measures could further reduce the risk of bird strike:

- Building design should ensure that windows do not create 'tunnels' that invite species, particularly kereru, to collide with glass.
- Wires and other thin construction components that are difficult to see should be kept to a minimum. If bird strike occurs, these components they should be made as visible as possible (bright colours, hang streamers, get climbing plants to attach etc).

NOTE: These proposed measures have been slightly modified in response to comments made by the applicant on page 20 of the applicant's comments. The words "if bird strike occurs" have been inserted so that these measures would not be required unless bird strike became an issue.

Recommendation

If a concession is to be granted, it is recommended that the measures suggested above are either included as additional special conditions or included in the proposed management plan.

2) Ongoing tree trimming etc might result in ongoing disturbance to birds and bats

Given the amount of habitat available relative to the amount that would be disturbed, it is considered that the effects of ongoing tree trimming etc on the species present would be minor. However, if a concession is to be granted, it is suggested that where possible, any tree removal and trimming should be undertaken outside spring and summer months to reduce the likelihood of disturbing nests, and if unavoidable during these months, contractors should take particular care to avoid disturbing any nests.

Recommendation

If a concession is to be granted, it is recommended that the suggested measures are either included as an additional special condition or are included in the proposed management plan (refer to pages 73-75 for recommended wording).

3) More pests might be attracted to the area by rubbish and food scraps etc resulting in increased predation and competition

This could be a risk if poorly managed. It has been shown through many studies that the reproductive success of all the significant introduced mammalian predators, stoats, rats and

cats, is directly correlated to the amount of food resource available. More food - and in particular more easily accessible food - will mean more predators and competitors.

Suggested measures to minimise/eliminate the risk are as follows:

- Strict management of rubbish and food scraps. This could include secure bins, clear advocacy to visitors reminding them of the importance of responsible waste disposal, no food allowed on walkway.
- Localised predator control. A grid of rat, possum, stoat and cat kill traps on a scale of several hectares in the local environment would not only prevent an abundance of predators but also reduce the present densities to a level where local bird and bat life improved.

Recommendation

If a concession is to be granted, it is recommended that the suggested measures for managing rubbish and food scraps are included as additional special conditions and in the proposed management plan if necessary (refer to pages 73-75 for recommended wording).

The applicant has stated that “*Waste disposal and keeping the reserve tidy is a shared responsibility between AWNZ, District Council and DoC*” (refer to page 20 of the applicant’s comments). While this is accepted in principle, the applicant needs to acknowledge that the proposal would directly result in an increase in rubbish and accept responsibility for mitigating this effect.

The applicant has stated that predator control should be avoided if possible (same paragraph). It should be noted that predator control was proposed in the application - “*Air Walks NZ recognises the value of resident native bird populations to the venture and proposes to formulate a predator control programme within the Hokitika Gorge Scenic Reserve in consultation with DOC*” (page 10 of the application).

4) **Vegetation clearance would directly affect invertebrates, birds, bats, lizards etc by removing habitat and food sources.**

Again, given the amount of habitat available relative to the amount that would be disturbed, it is considered that any effects would be minor, provided that the proposed special conditions regarding vegetation clearance are adhered to.

5) **Human disturbance might impact on foraging and reproductive behaviour of birds which could affect bird populations.**

Many studies have been done on the effects of tourism on wildlife. In New Zealand these have not concentrated on the bush bird species and bats that may occur at Hokitika Gorge but instead on specific nature tourism operations such as marine mammal watching (seals, dolphins and whales) and seabird colony visits including gannets on Cape Kidnappers and albatross at Taiaroa Head. In some cases highly negative results have been recorded, such as reduced breeding success of regularly disturbed pairs of gannet during poorly controlled viewing at Cape Kidnappers, and unacceptably high levels of disturbance at seal breeding

rookeries at Kaikoura. To address these problems, in the former case a guidewire and signs were erected to keep people away and in the latter case barriers and the targeting of haulouts at an approach distance increased from 10 to 20m.

Impact studies invariably note that the most common change in the behaviour of target animals is habituation to human activity. They are initially alarmed and take fright or flight. Over time they learn that no threat is posed by this particular human presence, get used to it, and no longer show outward signs of alarm. Some researchers argue that there is still a cost to these habituated animals as inwardly there are physiological responses taking place that cost energy and therefore affect individual fitness.

A key aspect to minimising the risk to these popularly viewed species is restricting viewing to only a fraction of the total population. A good local example of this is management of tawaki (Fiordland crested penguin) where commercial viewing is restricted to only the Moeraki and Munro Beach colonies. Tight controls on behaviours and visitor numbers are also in place and the Department has recently reviewed the situation, capped numbers and increased the approach distances.

Relatively speaking the issues at the Hokitika Gorge are on a much smaller scale. Bush birds and bats are thinly distributed - there is no focused area/colony to which animals are confined by behaviour, so targeted viewing is not possible. The only exception to this would be a bird nest constructed within viewing distance of the walkway structure or if a bat roost exists or was to develop close by. Impacts in such instances could easily be managed.

Individual species will respond differently. Small bush birds such as fantails, grey warbler and tomtit habituate readily to human presence. It is likely that kereru would be shy of the area initially but over time would get used to the activity and ignore the structure. Tui and bellbird would also most likely ignore the structure.

With common sense constraints such as promoting responsible quiet behaviour of visitors, it is considered that the effects on foraging and reproductive behaviour of birds as a result of the construction and operation of the air walk would be minimal. There is a possibility that habituation may have adverse physiological effects, however animals' ability to get used to the presence of people could equally be considered beneficial.

Recommendation

If a concession is to be granted, it is recommended that the proposed management plan include measures to encourage visitors to behave appropriately on the airwalk structure.

6) Removal of dead and senescent trees might result in loss of bat roosting trees and may contribute to the decline of long-tailed bats

In a Canterbury study the loss of roost sites was identified as an issue for long-tailed bats where significant areas of habitat were being cleared. This report recommended that if roost trees absolutely had to be removed that it should be done between February and October when maternity roosts have dispersed and that any roost removed should be replaced. Given the small scale of disturbance this proposal would involve, the chances of a roost being disturbed are extremely remote but possible. A survey to confirm the absence of roosts, (they

should be easy enough to detect through the observation of animals at dusk and the presence of guano and smell near dead and senescent trees), and avoidance of any found would address this issue.

Recommendation

If a concession is to be granted, it is recommended that a bat survey is undertaken before the airwalk route is finalised, so that any roost trees can be avoided.

NOTE: The wording of the proposed additional special condition has been modified slightly in response to the applicant's comments (page 18 of the applicant's comments, 6.3). The condition now reads "*The Concessionaire shall follow any directions from the Hokitika Area Manager with regard to the siting of structures in relation to any bat roost that may be located.*"

7) Not enough is known about wildlife values to assess the effects on wildlife

The assessment of wildlife habitats and values provided in the application is a fair representation of what is known and what is likely to be present. It is considered that additional survey effort would be highly unlikely to identify any unique or outstanding values, with the possible exception of long-tailed bats and kiwi. While it would be desirable to follow up on sightings of kiwi and long-tailed bats, their presence would not necessarily preclude the construction of an airwalk, as they would most likely be in low numbers.

A recent report of a kiwi sighted in the area is of interest. It was seen scurrying along the roadside near the carpark. This report was followed up by Department staff but no sign of it was found. Kiwi used to range over the entire West Coast but are now very localised in distribution with the closest significant remaining population being that of great spotted kiwi in Arthur's Pass. Although kiwi are believed extinct in this area the sighting is entirely feasible and could be one of three species. If this record was confirmed it is likely to represent a highly fragmented population of one or few individuals.

On the West Coast, long-tailed bat are widespread but nowhere common. They are rare but have been recorded from Karamea to the Landsborough, including records in the Hokitika catchment and the immediate gorge area. Long-tailed bats roost in tree cavities during the day and during breeding, mostly in senescent and dead trees. They selectively choose well-insulated cavities with specific microclimates. These bats have large home ranges and move to new roost trees regularly so are not always present at a site. Given the rarity of bats throughout the West Coast it is highly unlikely that a roost tree occurs in the airwalk area but it is nonetheless possible.

Overall comment regarding effects on wildlife

While all the concerns raised by submitters have some validity, none represents significant issues that would individually or collectively impact on terrestrial fauna species at a population level, provided that the airwalk was constructed and managed in a considered and sensitive way in accordance with the proposed special conditions and the provisions of the management plan that would be developed in consultation with the Department. The main

threat to wildlife present at the Hokitika Gorge is predation by introduced mammalian predators.

Discussion regarding potential for increased slippage

Some submitters have raised concerns regarding the potential for slippage to occur as a result of the soil and root disturbance required to construct the airwalk tower bases and ground anchors. Excavations of 2.5m x 2.5m x 1m deep would be required for the tower bases, and excavations of 1.5m³ would be required for the ground anchors. Slippage was not identified as a potential effect in the application.

In response to submitter concerns, the Department considered amending special condition 2 (pg 20 of FDR) so that each individual tower site would require prior approval by the Hokitika Area Manager, and developed a further special condition requiring the applicant to undertake any mitigation measures considered necessary to protect against potential slippage, as directed by the Hokitika Area Manager. In response to this, the applicant has commented that *“slippage and any other geological engineering issue will have been dealt with by the qualified specialists employed by the applicant before the final alignment would be submitted to DoC...It is difficult to see what would be gained by asking for a second opinion”* (refer to pages 18-19 of the applicant’s comments). This is accepted, however it is still considered that the possibility of unforeseen slippage occurring needs to be addressed. If slippage was to occur, it would be appropriate for this to be remedied by the company’s expense.

Recommendation

If a concession is to be granted, it is recommended that an additional special condition is included to address the possibility of unforeseen slippage occurring. Recommended wording is as follows:

“If any slippage occurs, the Concessionaire shall follow any directions from the Hokitika Area Manager with regard to measures to be undertaken to remedy this and protect against any further potential slippage. This may include commissioning an engineering report and implementing its recommendations, at the concessionaire’s expense.”

Discussion regarding water pollution

It is considered that concerns raised by submitters in regard to water pollution are valid concerns. The FDR proposed the following special condition to address the potential adverse effects of effluent discharge:

“To mitigate the effects of wastewater discharge, the Concessionaire shall:

- Treat wastewater by septic tank and outlet filter followed by a separate treatment process if necessary, before it is discharged into the ground.
- Discharge treated wastewater via specifically constructed subsurface soakage beds designed to filter the wastewater.
- Take all practicable measures to adhere to the principles described under the section “Key Drivers for Water and Wastewater Management” in the Water Services Scoping Report dated 16/1/04, produced by MWH New Zealand Ltd.”

Standard concession conditions would also require the Concessionaire to get the appropriate consents from the West Coast Regional Council, which is the agency responsible for managing discharges to land and water.

In light of submitter concerns, an additional special condition was developed requiring the proposed effluent treatment to be independently audited at the applicant's expense. This has been withdrawn in response to comments made by the applicant on page 19 of the applicant comments, 6.5, however a special condition allowing the Hokitika Area Manager to request post-installation water monitoring may be appropriate.

Recommendation

If a concession is to be granted, it is recommended that an additional special condition is included, as follows:

“The Concessionaire may be required to undertake post-installation water quality monitoring as directed by the Hokitika Area Manager.”

Discussion regarding safety issues

It is clear that the nature of the site and the proposed activity present unique hazards. In particular, the applicant will need to carefully consider the challenges posed by extreme weather if a concession is to be granted.

Standard concession conditions relating to safety are as follows:

The Concessionaire is to carry out the Concession Activity on the Site in a safe and reliable manner and must comply with:

- (a) the Health and Safety in Employment Act 1992 and its regulations; and
- (b) all other statutes, regulations and bylaws and all notices and requisitions of any competent authority relating to the conduct of the Concession Activity.

The Concessionaire must notify the Grantor of any natural events or activities on the Site or the surrounding area which may endanger the public or the environment.

The Concessionaire must:

- (a) take all reasonable steps to protect the safety of all persons present on the Site and must, where necessary, erect protective signposts warning the public of any dangers they may encounter as a result of the Concessionaire's operations;
- (b) take all reasonable steps to eliminate any dangers the public may encounter as a result of the Concessionaire's operations and must clearly and permanently mark any that remain and of which the Concessionaire is aware.

Before commencing the Concession Activity the Concessionaire must, if required by the Grantor, prepare a safety plan and have it audited by a suitably qualified person approved by the Grantor.

The Concessionaire must not commence the Concession Activity until:

- (a) the person appointed to audit the safety plan has certified the safety plan is suitable for the Concession Activity; and
- (b) the Concessionaire supplies the Grantor with a copy of the safety plan certified under clause 16.5(a).

Receipt of the certified safety plan by the Grantor is not in any way to limit the obligations of the Concessionaire under clause 16 and is not to be construed as implying any responsibility or liability on the part of the Grantor.

In addition, the following special conditions were proposed in the FDR:

- The Concessionaire shall obtain all relevant statutory consents prior to commencing any activities at the site; and
- The Concessionaire shall produce audited safety plans for the construction and operation of the airwalk.

In light of the concerns raised by submitters regarding the Hokitika Gorge microclimate and the proposed airwalk structure, an additional special condition was developed requiring the final designs of the airwalk to be independently audited by a structural engineer familiar with the characteristics of the site. The applicant considered that such a condition would create an unfair and unreasonable burden and his comments on this proposed condition have been accepted (refer to page 19 of the applicant's comments, 6.6). For the reasons outlined by the applicant, it is considered that the special conditions originally proposed would suffice.

Recommendation

It is recommended that the decision maker accept that the special conditions proposed in the First Determination Report would adequately address this matter.

Discussion regarding indirect/cumulative effects of additional signage, barriers etc

The indirect/cumulative effects of additional signage and barriers should be considered by the decision maker. It is likely that the high volumes of people attracted to the gorge would necessitate the construction of additional structures, particularly at the gorge rocks. Submitters have clearly stated that they object to the raw natural beauty of the site being compromised by too many man-made structures, and any further signs and barriers would only serve to exacerbate this.

Recommendation

It is recommended that the decision maker accept that the proposal would be likely to have indirect/cumulative effects as additional signage and structures would be required if a concession was to be granted.

The applicant does not consider that additional signage should form part of the Department's consideration (refer to page 19 of the applicant's comments, 6.7). This is rejected. Additional signage/infrastructure would be required to protect the site as well as to address safety concerns, and would not be limited to legal road as suggested by the applicant.

Discussion regarding effects if the venture fails

It should be noted that the nature of the activity means that it would have long-term effects, whether or not the venture fails. In particular, vegetation clearance for the main carpark would most likely be permanent, as would removal of dead and senescent trees. Vegetation at the visitor centre site and bus park would eventually re-establish, although this would take many years. A bond would cover the costs of removing structures, however this in itself would be likely to cause damage to vegetation. It would potentially be less damaging to leave the tower foundations and ground anchors in place, rather than attempting to remove them.

Recommendation

It is recommended that the decision maker accept that the activity would have long-term and possibly permanent effects on the site. If a concession is to be granted, it is recommended that more specific special conditions relating to the bond are devised. These should specify exactly what works would be required to restore the site, and the bond amount should include all these works (not just removal of the structures) and should also take inflation into account.

The applicant objects to "*the conclusion that even after such a bond has been lodged long term effects could arise that could not be remedied or mitigated...if such a claim were to be made it would require an example*" (refer to page 20 of the applicant's comments).

To clarify, the point being made here is that money can only go so far towards remedying effects. Even with assistance, regeneration is a long-term process. If the venture failed, use of the bond money to help restore the site would not be able to undo the effects of vegetation removal. Only time would return the site to what it was.

Section 17U(1)(c) – Measures to avoid, remedy or mitigate the effects of the activity

The proposed measures to avoid, remedy or mitigate the effects of the activity are discussed in section 5.2 of the FDR, together with proposed special conditions. As a result of the public notification process, some additional measures have been identified. These additional proposed measures, as well as the applicant's comments on these, are discussed in the relevant sections of this report (ie where the relevant effect is discussed).

Recommendation

If a concession is to be granted, it is recommended that the proposed measures identified in this report are either applied as additional special conditions (pages 72-74) or as actions to be included in the proposed management plan.

Section 17U(1)(d) – Information received under sections 17S or 17T

Refer to section 5.4 of the FDR (pages 24-27). Further information sought from technical support staff has been incorporated into the discussion of effects (section 17U(1)(b)). The content of a submission received from Te Rūnanga o Ngāti Waewae is discussed in the context of issue 3 (The Treaty of Waitangi and s4 Conservation Act 1987).

Comment

Note that section 17S(2) has specific requirements for information to be provided by the applicant, if the application is for, among other things, a lease or licence. The applicant is required to supply reasons for the request and sufficient information to satisfy the Minister in terms of section 17U that it is both appropriate and lawful to grant the lease or licence.

Section 17U(1)(e) – Any relevant environmental assessment

At the time the FDR was written, it was considered that the application contained an adequate assessment of effects. No further assessment of environmental effects was required.

Comment

It is considered that there sufficient information available on the potential effects of the activity for a final decision to be made on the application.

Section 17U(1)(f) – Any relevant oral or written submissions

Issues raised by submitters are summarised in section 3 of this report and are discussed in relation to the relevant legal provisions in section 4.

Comment

A number of issues raised by submitters are not relevant matters for consideration in the context of Section 17U of the Conservation Act 1987 (Matters to be considered by the Minister). Issues identified as not being relevant matters for consideration by the Minister are not discussed beyond section 3 of this report.

Section 17U(1)(g) – Any information which may be withheld

Submitters have not been individually identified to protect the privacy of natural persons.

Comment

On the same basis, the applicant has requested that names be deleted from the applicant's comments before the final report is released to the public. It is recommended that this request is accepted.

Section 17U(2)(a) – Insufficient information to assess the effects and/or proposed measures

Section 17U(2)(a) of the Act states:

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

A number of submitters believe that insufficient information was provided by the applicant and in the FDR, including detail regarding the design of the airwalk and visitor centre, information regarding how the car park and soakage bed would be constructed, and landscape assessments examining how the structures would look from various vantage points. As discussed previously, details regarding some aspects of the application were not available as the final designs had not been determined. Although it is not considered that the lack of certainty regarding some technical aspects has significantly impaired the Minister’s consideration of this application, submitters’ comments are noted. If a concession is to be granted it is considered that the following matters should be subject to approval prior to construction or installation:

- The design of the visitor centre, including colours and cladding; and
- The design and colour of the airwalk itself.

Recommendation

If a concession is to be granted, it is recommended that the following additional special condition is applied:

“The Concessionaire shall not commence any works at the site unless or until written approval has been received from the Hokitika Area Manager in relation to the design (including building materials and colours to be used) of the visitor centre and airwalk.”

Section 17U(2)(b) – There are no adequate methods to avoid, remedy or mitigate the effects.

Section 17U(2)(b) of the Act states:

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

A number of submitters do not believe that many of the adverse effects of the activity could be adequately avoided, remedied or mitigated if a concession was granted. They consider that the current visitor experience would be lost due to the effects of noise, numerous other visitors and vehicles, and changes to the setting due to intrusive man-made structures. While various measures could be taken to mitigate these various effects, submitters do not accept that any measures taken could possibly preserve the Reserve’s sense of peace, tranquillity and solitude. These are qualities that currently characterise the site and which submitters treasure. Most submitters therefore consider that the Minister should decline the application, on the

basis that there are no adequate methods for avoiding remedying or mitigating the adverse effects of the activity.

Recommendation

It is recommended that the decision maker accept that there are no mitigation measures that could be effective to the extent that natural quiet, peace and solitude at the site would be preserved. These qualities currently characterise the site and are fundamental to the visitor experience. It is therefore recommended that the decision maker determine that there are no adequate methods for avoiding, remedying or mitigating the effects of the activity on intrinsic/aesthetic values at the site.

Inclusion of consideration of issues under sections 17U(3) and (4)

The Conservation Act 1987 sets out the steps that must be followed. This report deals with them in the same order. It looks first at the matters set down in sections 17U(1) and (2), then (3) and (4) to make recommendations on whether those matters are satisfied. After having considered the applicant's response to submissions and the recommendations in the draft report, the view reflected in those recommendations has not changed. The recommendation is that the application fails on consideration of the matters set out in sections 17U(1) and (2) in that there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects of the activity as identified in this report. It also fails on grounds in sections 17U(3) - (4) which are set out below for the sake of completeness.

Section 17U(3)

Section 17U(3) prohibits the granting of an application which is contrary to the provisions of the act under which the land is administered or the purposes for which the land is held. The test requires that an application cannot be granted if it is opposite in nature, direction or meaning or opposed to the provisions of the relevant act or the purposes for which the land is held.

The land on which the airwalk, visitors' centre and part of a car park are proposed is held under the Reserves Act 1977. Most of the proposed car parks are proposed to be built on land held under the Conservation Act 1987.

The relevant provisions in the Reserves Act 1977 (see Appendix A) are as follows:

- The long title
- section 3
- section 16
- section 19
- section 59A

Reserves are acquired and managed for their preservation (including the protection of the natural environment), development, and use, and to make provision for public access to the coastline and the countryside.

Section 3 sets out specific purposes and these too include preservation and use. Section 3(c) which provides for:

'...the preservation of access for the public to and along the sea coast, its bays and inlets and offshore islands, lakeshores, and riverbanks, and fostering and promoting the preservation of the natural character of the coastal environment and of the margins of lakes and rivers and the protection of them from unnecessary subdivision and development'.

This should be noted particularly in respect of the siting of the visitor centre on the bank of the Hokitika River (but not in the gorge itself) and the cantilevered sections of the airwalk which would overlook the gorge.

Section 16 requires that reserves should be classified to ensure management, use and preservation are appropriate for their purpose.

The Reserve has been classified under section 19(1)(a) which provides that scenic reserves are suitable areas possessing such qualities of scenic interest, beauty, or natural features or landscape that their protection and preservation are desirable in the public interest. They are to be protected and preserved in perpetuity for:

- (a) their intrinsic worth; and
- (b) the benefit, enjoyment, and use of the public.

At issue here is balancing

- (a) protecting and preserving the Reserve for its intrinsic worth and
- (b) the requirement for:
 - i. public benefit
 - ii. public enjoyment and
 - iii. public use.

Submissions included the view that the Minister should take a precautionary approach to interpretation on the side of preservation. Rather, section 19(1)(a) requires a balance as set out above.

The requirements of section 19(2), which relate to how scenic reserves classified under section 19(1)(a) are to be administered, must also be considered.

Applicant's solicitor's arguments (copy of opinion in Appendix I)

In his response to the draft report the applicant has noted that parts of its legal advice are quoted and commented on in the report. This was done to recognise that the applicant had sought legal advice and submitted it to the Department, and to address the arguments raised in it. Sections are quoted, as well as the full text attached, so that points raised would be dealt with in their context. This was considered necessary as the opinion of the applicant's adviser on legal issues differs to the Department's.

Section 170 Conservation Act 1987

The applicant's solicitor has made a detailed submission as to how section 17U(3) Conservation Act 1987 should be interpreted and it is recommended that you read it in full. Some of his arguments are referred to below.

He argues that there are two main flaws within the submissions in opposition. First, the way in which the Conservation and Reserves Acts are erroneously interpreted and applied; second, contentions which are based upon either irrelevant facts or an incorrect view of the facts.

In support of this, in paragraphs 22-24, he says that:

"It is important to note that section 170 provides that an individual or organised group need not obtain a concession for an activity done for the benefit of the individual or members (individually or collectively) of the group if the activity is not [sic] undertaken for any specific gain or reward. Thus, every person has a right to enter and walk around in the conservation area.

Therefore, this application must be considered against the backdrop created by those legal rights, that a person may exercise in the area, rather than as against people being excluded from the use of the resource in all circumstances.

It is in this regard that the submitters make a common factual error. They first consider both the Reserve and the land managed by the Department under the Act to be pristine area that is locked away. The submitters do not have regard to what happens now on the land and what may occur as of right on the land."

Comment

It is not in dispute that the public as of right has access to land administered by the Department (other than for limited specific categories of land) although it is the case that access can be controlled in scenic reserves (see section 19(2)(b)). Part IIIB is about commercial use of the land and sets out the procedures and tests for allowing such use. The application raises issues about the use of public land for private business, not issues about land that cannot be used for any purpose at all or to which the public does not have access as of right.

Applicant's solicitor's view on section 19(2) Reserves Act 1977

In relation to section 19(2) the applicant's solicitor says in paragraphs 55-60:

"Applying the same approach of statutory interpretation to s19(1)(a) the Act provides that the device of a scenic reserve may be utilised for a range of purposes, namely the purpose of protecting and preserving in perpetuity for their intrinsic worth and for the benefit, enjoyment and use of the public suitable areas possessing such qualities of scenic interest, beauty or natural features of landscape and that their protection and preservation are desirable in the public interest.

By these words it is clear that the protecting and preserving of scenic areas is recognised by the act. Importantly, however in the context of this application this section provides they are to be so protected and preserved for a reason and that reason is for the use of the public while at the same time protecting and preserving those areas. Again, for and in the public interest.

Section 19(2)(b) is important in that it establishes a back drop against which the current application can be viewed. Section 19(2)(b) explicitly recognises and provides for the public freedom of access and entry to reserves. Explicitly the Act utilising the critical word "shall" give the public a legal right to have freedom of access and entry to reserves subject to the powers conferred by the Act on administering bodies and subject to any by-laws those administering bodies may make. However, those conditions and restrictions as imposed by the administering body are to be necessary for the protection and well-being of the reserve and for the protection and control of the public using it. They are not for the purpose of preserving only the area in perpetuity.

Accordingly, the proposal squarely fits s19(2)(b) in that it is a mechanism which enables the public to utilise their statutory right of freedom of entry and access to reserves. The proposal does so in a way which meets with the need for the protection and well-being of the reserve and also for the protection and control of the public utilising both the reserve and the proposal.

Section 19(2)(c) provides for the development of amenities and facilities where they are necessary to enable the public to obtain benefit and enjoyment from the reserve. Clearly statute [sic] here is expressly and specifically recognising for utilisation of open portions of the reserve for amenities and facilities enabling the public to obtain the benefit and enjoyment of the reserve.

Again, it is contended that this proposal is in-keeping with this purpose."

Comment

It is reiterated that public access to the Reserve is not at issue. The public have that as of right. It is also accepted that section 19(1)(a) requires that as well as weight being given to protecting and preserving areas possessing scenic interest, beauty or natural features etc in perpetuity for their intrinsic worth, weight also needs to be given to public use, benefit and enjoyment. It is a balance between the two.

Section 19(2)(b) provides for public entry and access subject to any restrictions for the protection and well-being of the Reserve and for the protection and control of the public using it. It is accepted that these controls are not only for the purpose of preserving the area in perpetuity. It is questionable however, whether the proposal would provide for access and use in a way that would also provide for the protection and well-being of the Reserve and for the protection and control of the public using the Reserve, as the applicant's solicitor claims. This is a matter that was strongly disputed by submitters.

The applicant's solicitor has suggested that the proposal is 'necessary' to enable the public to obtain benefit and enjoyment from the Reserve (section 19(1)(a) and section 19(2)(c)) and for the protection and wellbeing of the Reserve and the protection and control of the public using it (section 19(2)(b)). In these contexts, the meaning of the term 'necessary' is closer to 'essential', than to 'expedient or desirable'. While the airwalk would attract people to the Reserve, allow for a novel use that would provide a different perspective on the beauty of the gorge and the Reserve, it is clear that the Reserve is already accessible. It is being used, enjoyed, preserved and protected at present so additional development is not necessary or

essential. Given this, it does not meet the statutory requirements. This is a matter that has been commented on widely by submitters.

It is acknowledged that the Minister has discretion to allow flora to be removed but the wording and context indicates an emphasis against removing it. Section 19(2)(a) provides that except where the Minister otherwise determines, the indigenous flora and fauna, ecological associations, and natural environment and beauty shall as far as possible be preserved. Any determination by the Minister is made with the purpose for which the Reserve is classified as scenic in mind. Section 19(1) sets out the primary considerations. In addition, section 19(2)(c), which specifically deals with the development of open portions of the Reserve for amenities and facilities, must be factored in.

Section 19(2)(c) provides that ‘open areas’ of the Reserve may be developed for amenities and facilities where these are necessary to enable the public to obtain benefit and enjoyment from the Reserve. In the context of a bush covered reserve it is assumed that an open area would be an area without bush cover or that has only limited cover. The Reserve is not open nor does it have substantial open areas.

While section 19(2)(c) does not contain a specific prohibition against development in a scenic reserve, it indicates that it is open areas that may be developed and puts specific requirements in place. It should be noted too that it is not a given that development should be allowed, even if the area is open.

The applicant has said that the draft report is in error as it claims that the reserve is not open nor has substantial open areas (see page 13 of the applicant’s comments). While the proposed visitor centre site is close to an open area adjacent to Granite Creek, it is not within this open area (refer to MWH site plan 007455-01-CO2 in Appendix 2 of the application). Vegetation clearance and disturbance would clearly be required for development of the visitor centre. The main proposed carpark site is not within the Hokitika Gorge Scenic Reserve and although there are open areas in this vicinity, they are relatively small in comparison to the proposed carpark area.

Applicant’s solicitor’s response to submissions on current use

The applicant’s solicitor has responded to submissions relating to the current use of the Reserve and the effects on it. His response includes the following (see paragraph 62(f)).

“The submitter makes a further factual error, as the proposal does not impact upon existing users of the area. This is because, as detailed in the application, the very nature of the structure (its height, location, position, colour and design) means that it will be either screened by the surrounding trees or otherwise not noticeable. Thus, even if a member of the public were walking through the reserve in close proximity to the structure it is highly unlikely they would notice its presence.

Furthermore, it is noted that the Act does not pick winners. By this it is meant that existing groups do not take precedence over another group. The Minister must assess use from the criteria in the Act and if this proposal will not adversely impact upon the environment, then the concession ought to be granted (see section 17U above).”

Comment

This relates just to the structure of the proposed airwalk. Apart from the issue of how imperceptible it would in fact be, there is the rest of the activity to consider. The applicant has stated that the facility would have capacity for up to 600 visitors a day, with an average of 425 of whom 125 would be transported by bus and the other 300 (on an average of 2.5 people per car) in 120 cars. The noise of the presence of such numbers of people and their vehicles would impact on the Reserve's intrinsic values. The nature of the experience would fundamentally change as the Reserve would no longer be a place of tranquillity and peace but one of high interest and visitor impact. Again, this is an issue that was widely commented on by submitters.

It is accepted that existing groups do not take precedence over another group. At issue is the Minister's consideration under section 17U(3) Conservation Act 1987.

Recommendation in respect of section 17U(3) Conservation Act 1987

It is recommended that you accept the advice that the application is contrary to the provisions of the Reserves Act 1977 and to the purpose for which this Reserve is held. Reasons for this are set out following.

The public is already able to enjoy the land. Any effects on the matters listed in section 3(a)(ii)-(v) Reserves Act 1977 could not be mitigated as the airwalk, its associated facilities and the large numbers of visitors attracted to it would fundamentally change the nature and character of the Reserve as well as have an impact on the natural character of the river banks.

Visitors can already enjoy the indigenous species of flora and fauna (section 3(b)) so enhancement is not necessary. Note that many submitters commented on this particular aspect. The Reserve is a special place to them where they can go and enjoy the bush and the beauty of the gorge in peace and solitude.

The impact of the development on the river bank is a major issue. While it is accepted that only the two viewing extensions and not walkway itself would be visible from the river, the development would change the natural character of the area considerably. Those enjoying a quiet time on the banks would be disturbed by those on the viewing extensions. Noise from the walkway may also be an issue. The siting of the visitors' centre would develop, rather than protect the river margins from unnecessary subdivision and development. Given this, neither the airwalk nor the visitors' centre would be consistent with the principle in section 3(c).

The applicant has responded to this issue by stating that:

- Cantilevers do not overhang the gorge
- Visitor centre has views but is not visible from the gorge – It's sited on open grass land within the reserve
- Major trees will be retained
- Clusters of trees along the river retained.

(See page 12 of the applicant's comments)

It is accepted that the cantilevers would not overhang the gorge and that major trees would be retained. However, it should be noted that the applicant's plans indicate that the visitor centre and a car park would be sited on river banks and that the viewing extensions of the walkway would be visible from the river banks.

Important too is the focus on the specific classification. This is a scenic reserve. This classification confers on it a special status and rules are in place to limit the development that can take place on such a reserve. If it were a recreation or local or government purpose reserve, the requirements for development are not so strict. It is clear that the bar is much higher for a scenic reserve.

Section 19(1)(a) requires that weight be given both to protecting and preserving areas possessing scenic interest, beauty or natural features etc in perpetuity for their intrinsic worth, and to public use, benefit and enjoyment. It is a balance between the two so that where the level of public use, benefit and enjoyment increases it tips the scales to the detriment of protection and preservation in perpetuity. It is considered that the appropriate balance has been achieved in the Reserve.

The obligation to protect and preserve the Reserve in perpetuity for its intrinsic worth for the benefit, enjoyment and use of the public is currently being met. Scenic interest, beauty, and natural features – the vegetation, natural character, landscape - are being preserved, protected, used, enjoyed and are beneficial for the public. People in their submissions related the quality of the experience, the enjoyment and benefit that they get there because of these features. They also spoke of taking the elderly, young and disabled with help to the gorge to enjoy its beauty and tranquillity.

The applicant states:

“AWNZ has made presentations to the Probus Club and Rotary Club at Hokitika, both representing older people living in Hokitika. At both meetings the attending members embraced the development. When people were told about the opposition to the development they asked whether the gorge was only meant for young people. We have to ask the same question.” (see page 11 of the applicant's comments)

The answer to this question is that it is not the case. Some of the submitters included those with elderly relatives who said that they were able to access the swing bridge with assistance. No submissions were received from the groups the applicant refers to.

If the development was allowed, it is apparent that the intrinsic values of the Reserve would be overwhelmed, not protected and preserved. The applicant's solicitor's contention that the physical structures would be imperceptible is difficult to accept and is not borne out by the application with its photos of walkways in Australia. While some effects may be able to be mitigated, the infrastructure in itself is large and the numbers of people it is hoped to attract would make a considerable difference to the Reserve and impact on its intrinsic worth. It is

accepted in the light of the applicant's comments that more elderly people may visit the Reserve, but this is not significant in itself.

In addition, the area of the Reserve that is most often used and where the development is planned is relatively small - about 15 ha. It would dominate and fundamentally change the nature of this area. While this type of development may work well in larger areas, the proposed development would overwhelm this particular area.

It should be noted that most of the submitters opposing the application did not object to the concept of an airwalk. Their opposition was about one in this part of this Reserve.

Section 19(2)(a) provides that except where the Minister otherwise determines, the indigenous flora and fauna, ecological associations, and natural environment and beauty shall as far as possible be preserved, so it is possible that trees etc could be removed. However, any such determination must be made with the purpose for which the Reserve was classified as scenic in mind. Section 19(1)(a) is the first consideration. Section 19(2) follows from it. It should be noted that section 19(2)(a) is precautionary in that it uses the words, 'as far as possible'. In addition, section 19(2)(c) which specifically deals with the development of open portions of the Reserve for amenities and facilities, should be factored in. There are no suitable open areas so both the airwalk and the visitor centre would require the removal of flora. Given that the balance envisaged by section 19(1)(a) has been achieved in this Reserve, it is unlikely that there is the basis for an exercise of discretion under section 19(2)(a).

Section 19(2)(b) provides for public entry and access, subject to any restrictions the administering body considers necessary for the protection and well-being of the Reserve and for the protection and control of the public using it. It is accepted that the airwalk would provide for a different perspective on the beauty of the Reserve and the gorge, and the visitors' centre and other facilities would provide for the enjoyment and comfort of the public. However, it does not follow that these facilities are necessary for the protection and wellbeing of the Reserve, and for the protection and control of the public. Nor is it the case that increasing the numbers satisfies section 19(2)(b). The Reserve is already open to all. It is being used, enjoyed, preserved and protected.

Section 19(2)(c) provides that 'open areas' of the Reserve may be developed for amenities and facilities where these are necessary to enable the public to obtain benefit and enjoyment from the Reserve. In the context of a bush covered Reserve, an open area is an area without bush cover or having only limited cover. The Reserve is mostly bush covered and any open areas are small. Even if there were open areas, the facilities or amenities proposed are not considered to be necessary to enable the public to obtain benefit and enjoyment from the Reserve. People do that at present without the need for sophisticated facilities.

The Mt Cavendish² case held that a gondola and buildings could be built on a scenic reserve. However, that case can be distinguished on the basis that that reserve was open. In addition, the Court held that 'a substantial proportion of the public would be deprived because of their physical frailty from the benefit of this view'. In this case, the Reserve has bush cover. It is understood that that is the main reason why it has been selected for the proposal. Moreover,

² *Summit Road Society Inc v the Minister of Conservation* CP429/89 18 May 1990 HC Christchurch.

people are not deprived of access. They can walk or be helped down a short track through bush to the gorge.

The applicant refers to the Mt Cavendish case and emphasises that the Court held that a gondola and buildings could be built on a scenic reserve because without it ‘a substantial proportion of the public would be deprived because of their physical frailty from the benefit of this view’. (see page 12 of the applicant’s comments) The view spoken of in that case is the view from the reserve.

In respect of this application, the applicant describes the main purpose of the air walk as giving access to an unmodified piece of bush, and a new vantage point to observe the tree canopy and birdlife and educate them about the interdependencies. The view from the reserve is of the gorge and the adjoining unmodified forest and in terms of the application, appears to be a secondary consideration. Also, the Mt Cavendish Scenic Reserve is a very different scenic reserve to the Hokitika Gorge Scenic Reserve. It is a tussock covered hillside with no trees so in comparison is ‘open’.

On the basis of the points set out above, it is considered that the application is contrary to the relevant provisions of the Reserves Act 1977 and the purposes for which the Reserve is held.

Conservation Act 1987 (stewardship land)

Most of the proposed carparks would be on stewardship land adjacent to the Reserve. Stewardship land is a type of conservation area administered under the Conservation Act 1987. Around 2,250m² of forest would need to be cleared to create the main carpark, which is equivalent to an area of 50m x 50m. The bed of this carpark would incorporate a subsurface effluent disposal system.

The Conservation Act 1987 defines conservation as “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”.

Section 6 sets out the functions of the Department. Section 6(a) requires the Department to manage all land held under the Act for conservation purposes. It should be noted that the definition of conservation contains within it elements that require a balance to be struck i.e. preservation versus use and enjoyment. While it is clear from the definition of conservation and s6 that the Department’s primary function is to protect and preserve natural resources, section 6(e) of the Act provides for recreation and tourism provided that the use is not inconsistent with conservation. Part IIIB provides for the granting of concessions authorising private and commercial activities on public conservation land. Accordingly, the Department must balance its responsibilities for protecting and preserving natural resources with its other responsibilities under the Act.

Section 25 Conservation Act states that

“Every stewardship area shall be so managed that its natural and historic resources are protected.”

Applicant’s solicitor’s argument

In his conclusion on the Conservation Act the applicant's solicitor states at paragraph 53 that:

“In conclusion to this point it is contended that the proposal is not contrary to the provisions of the Act. It is supportive of them to the extent that it is in accord with the purpose and principles of the Act. Further, it is contended that the proposal is not contrary to the purposes for which the land concerned is held. The proposal in short provides a mechanism by which present and future generations can gain access to recreation and be educated in relation to conservation. It also provides a means by which this locality can be utilised for tourism.”

Comment

It is not clear if the applicant's solicitor is referring just to the parts of the application that relate to stewardship land or to the whole proposal. While it is noted that it is difficult to assess these parts of the proposal in isolation, they must be considered in their own right because the land is of a different classification.

On the face of it, the proposed carparks and sewerage disposal system could be considered to be consistent with the provisions of the Act, as they would facilitate access and use of the Reserve. However this needs to be looked at in the context of the balance to be struck.

It is noted the majority of submitters consider that the proposal would impair rather than enhance the public's ability to appreciate and enjoy this area. Furthermore, it has been argued that approving the proposal would fail to safeguard the options of future generations, as the loss of natural quiet, peace and solitude would mean they would be unable to use and enjoy the area in the way it is enjoyed now.

It is considered that there is an insufficient basis on which to conclude that the actual and potential adverse effects of the proposed carparks and sewerage disposal system could be balanced by any benefits in terms of recreational enjoyment.

Recommendation

The FDR recommended that the development of carpark 3 be declined and that carparks 1, 2 and 4 be in the licence, not the lease area.

It is now recommended that the decision maker determine that the parts of the proposal affecting stewardship land would fail to strike an appropriate balance between preservation and use, and would therefore be inconsistent with the provisions of the Conservation Act 1987 and the purpose for which these lands are held. It is recommended that these parts of the application are declined.

Section 17U(4)

For completeness and in the event that the recommendations above are not accepted, the following is an analysis of section 17U(4) Conservation Act 1987 for your consideration.

Section 17U(4) relates specifically to structures.

It is as follows:

“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.”*

Note the words ‘shall not’ in the first line. If there is a basis on which the Minister can be satisfied that the activity could reasonably be carried out else where, s/he shall not grant the application to build a structure or facility.

The Concise Oxford 10th Ed definition of ‘satisfy’ includes ‘provide with adequate information about or proof of something’.

It should be noted too that part of the test in section 17U(4) is ‘could reasonably be undertaken in another location’. It is not a question of finding the best site, but one where the activity could reasonably be undertaken.

The test is additional to that for other commercial activities. It is related to building structures and facilities on, in this case, a scenic reserve.

Applicant’s solicitor’s view of the tests (copy in Appendix I)

The applicant’s solicitor has put a detailed view as to how section 17U(4) should be interpreted and it is recommended that you read it in full.

Some of his submissions are referred to below.

Limits of the scope

The applicant’s solicitor in paragraphs 18 and 19 states:

‘We think that the deliberate choice to use the word "satisfied" results in the outcome that the Minister must be satisfactorily convinced that the activity could not reasonably be undertaken in another location if consent for the concession is to be forthcoming. Translated into a legal context we take this to mean that there must be sufficient evidence to show on the balance of probabilities a certain circumstance exists.

Accordingly to obtain this level of satisfaction does not in our view necessitate an in-depth investigation into the benefits and detriments of each and every possible alternative to so satisfy the Minister. We say that there are limits on the scope of the considerations and we discuss them further below. In our view the opening part of s17U(4) is about providing the Minister with a sufficiency of information and evidence to a level which leads to satisfaction as opposed to proving the proposition beyond any doubt whatsoever.’

Comment

It is accepted that the criminal standard of proof does not apply but the interpretation in respect of the limits of that consideration are queried. There are some things that may be important to the application and the applicant's business such as this site attracting more visitors so have an impact on the viability of the business and rate of return on investment. However, they are not matters that the Minister can consider under conservation legislation.

Adverse effects and section 17U(4)(a)(ii)

The applicant's solicitor's view is that if the proposed activity does not give rise to adverse effects on the environment of the conservation estate sufficient to raise the issue of alternatives under section 17U(4)(a)(ii), the Minister is not permitted to reject the application on the basis of 'available alternative sites.'

Comment

This is not what section 17U(4)(a)(ii) says. It applies if a structure is proposed. There is no express or implied requirement that there are adverse effects before it applies.

Could the activity be reasonably undertaken in another location?

The applicant's solicitor argues that the applicant's choice of criteria for the type of development it wants to undertake, is key. He says that the criteria chosen by the applicant are reasonable and appropriate so the application of section 17U(4) requires consideration of whether the activity could be undertaken in another area with the same characteristics and values. He includes the interrelationship of the proposal and proposed location, availability of transport and proximity to population bases.

Comment

This view overlooks the fact that in making a business decision the applicant must factor in different considerations to those that the Minister, under conservation legislation, must. The applicant's criteria may be reasonable and appropriate for its business, but they may not be for the Minister who is constrained by the legislation he is making the decision under. In addition, there may be factors that are taken into account in any application under the Resource Management Act 1991 but cannot be taken into account under conservation legislation such as economic benefit.

It should be noted too that this is an application to build a structure or facility on publicly owned land. It is an additional factor for the Minister to address than for other types of activity. It cannot be the case that the applicant is able to so adapt its activity to a particular site that it would be impossible for the Minister to consider reasonable alternatives. It would limit the Minister's role under section 17U(4) if that were the case.

The words 'reasonably undertaken' are emphasised. This does not mean undertaken in a way that fulfils the applicant's requirements. If this were the case, it is unlikely that the Minister could never decline any application.

It is accepted that there must be a reasoned approach as Parliament cannot have intended that no application to build a structure could ever be granted, and the use of the term 'reasonably' is significant in that regard. Other sites must be considered and it is not necessarily the case

that like must be considered with like. As the structure proposed is a walkway among the tree tops, it could be located in many different locations that have a canopy in good condition. In this particular case, the view of the water is an attraction, but it is not a necessary component of a canopy walk experience.

It is significant that section 17U(4) applies specifically to structures and facilities. It is an additional test for these activities. Use of the word “shall” is also significant. This indicates that this is not a matter of discretion for the Minister. The Minister is required to decline the application if he is satisfied that the activity could reasonably be undertaken elsewhere.

Should the considerations of alternative locations be in the vicinity?

The applicant’s solicitor has argued that the words ‘...to which the application relates’ in section 17U(4)(a)(i) must mean an area in the vicinity of the area under consideration for the concession.

Comment

This is not accepted. The words are simply there to identify that if the Minister is satisfied that the activity (which requires a structure) can be reasonably undertaken outside the conservation area, or in this case, reserve, applied for, a concession shall not be granted. There is nothing to indicate that the Minister is limited as to where he can consider. It could be other reasonably available locations anywhere in NZ, including those on private land.

Section 17U(4)(a)(ii) uses the same words but the context is very different. The words there relate to another conservation area or another part of the conservation area to which the application relates. It is the latter that is clearly in the vicinity.

The applicant has raised the point that in relation to the issue as to whether the proposal could be carried out elsewhere, this report differs to the FDR. (see pages 11 & 13 of the applicant’s comments) This is correct and is because there has been more work and analysis done on this issue.

It also says that AWNZ reviewed a number of sites on suitability but could not find a site that was equally suited as the Hokitika site.

It must be emphasised that is not a question of other sites being ‘equally suited’, but rather whether the activity i.e. building the structures and carrying on the business, could reasonably be undertaken in another location outside the conservation area to which the application relates, or in another conservation area or another part of the conservation area to which the application relates, where the potential effects would be significantly less.

It has also said that if the law really meant to only allow structures inside the conservation estate which cannot be built anywhere else, there would not be a piece of rock, timber or concrete on conservation land, because everything imaginable proposed for conservation land can be built or done somewhere else. (See pages 15 & 16 of the applicant’s comments) This report has dealt with this in that it states that it is accepted that Parliament cannot have intended that no application to build a structure could ever be granted. Parliament has set out a positive test that incorporates the concept of reasonableness. i.e. the Minister needs to

have sufficient information before him on which he can be satisfied that the structure or facility could reasonably occur somewhere else, or on another reserve with fewer effects. If that is the case, s/he shall not grant the application. The word 'shall' indicates that at this stage it is not a matter of discretion. The Minister is required to decline the application if s/he is satisfied that the activity could be undertaken elsewhere.

In addition, the point should be made that it is clear that there are visitor facilities on land the Department administers. Some are provided by the Department and others by private companies. However, each is looked on a case-by-case basis. The conclusion can not be drawn that because there is one in one place that there should be another in another place.

Some broader context is also useful. Some leases were entered into before the advent of Part IIIB Conservation Act in 1996. Leasing, building and running businesses on public land became more controlled after Part B was passed. Some areas have been leased because of safety implications. It should also be noted that roads administered by Transit NZ are not part of a national park or other protected areas.

This report relates to this application in this particular scenic reserve. In another area where the adverse effects would be less, the recommendation could well be different.

Many of the considerations that the applicant has considered about the siting of the air walk in the Reserve are relevant to its business but not relevant to the statutory role that the Minister has. The work the applicant has done in providing a comparative analysis is acknowledged but it doesn't take the matter further from the Minister's stand point. The Minister has to ask: Could the activity be reasonably undertaken elsewhere? Or could it be on other DOC land where the potential adverse effects are significantly less?

The applicant has said that the draft report takes a simplistic view that tall trees are the only consideration for the siting of the airwalk. It is accepted that big trees are not the only consideration from both view points and that there are other important considerations.

The applicant states that the South Island of New Zealand attracts nature-loving tourists. Most of them will visit the West Coast and its two main attractions, the glaciers to the South and Pancake Rocks to the North. An airwalk will attract people interested in nature. Therefore an airwalk in the South Island would be ideally located on the West Coast. (See pages 15-17)

No issue is taken with the logic of this but it is noted that these are broad tourism related concerns and not things that the Minister can consider under the Reserves and Conservation Acts.

The applicant has said that the law requires that the request to shift to an alternative location must be reasonable to both the lessor and the lessee and that that must mean, among other things, that the grantor cannot require the applicant to move to a site that is not commercially viable. (See page 17 of the applicant's comments)

It is accepted that reasonableness is important in this context but reasonableness cannot mean that equal weight is given to the concerns of the applicant and the owner of the land

as that would otherwise effectively nullify the Minister's decision-making role. His decision-making functions are statutory and he must make his decision based on the statute. Clearly Parliament had concerns about approval being given to building structures and facilities on public land so imposed thresholds on that decision-making power. It is noted too that the Minister cannot require the applicant to go anywhere. This application is for this particular site and the decision is focused solely on it. It is an application for a statutory consent. There is no element of coercion.

Recommendation in relation to section 17U(4)

It is recommended that you accept the view that the activity could reasonably be undertaken in another location that is outside the Reserve. The reasons for this are set out following.

Section 17U(4) applies specifically to building structures and facilities on public land. It is an additional requirement and it is not sufficient for the Minister to approve an application simply because a particular site is chosen by an applicant for its business.

The Minister needs to be satisfied that the activity could reasonably be undertaken in another location that is outside the Reserve or in another reserve [or conservation area,] or in another part of the Reserve to which the application relates, where the potential adverse effects would be significantly less.

The applicant's solicitor's view that section 17U(4) is about providing the Minister with a sufficiency of information and evidence to a level which leads to satisfaction as opposed to proving the reverse proposition (that there are no alternatives) beyond all doubt, is accepted.

While it is open for applicants to apply to build the structures necessary for them to run their businesses on land administered by the Department, including scenic reserves, this does not mean that they will necessarily be granted their optimum site. The Minister's considerations under the legislation are focused on the requirements of conservation legislation rather than broader considerations that may be considered under the Resource Management Act 1991 or are important to the business imperatives of the investors.

While the Hokitika Gorge Scenic Reserve is no doubt a beautiful place with its bush and azure water on which the walkway and its associated facilities could be built, it is not the only such place. The applicant's solicitor's argument that the test is met is not sufficiently compelling. It neglects section 17U(4)(a)(i) which does not require an assessment of effects, and in respect of section 17U(4)(a)(ii) which does, assumes that the application will not give rise to effects that are more than minor. This is simply not the case. The adverse effects on this Reserve are considerable as the development would totally change the character of the Reserve and its intrinsic values. There is not sufficient to mitigate that. Even if that were not the case, in respect of section 17U(4)(a)(i) the Minister needs only to be satisfied that the activity could reasonably be undertaken in another location.

Submitters stated that there are many other sites on the West Coast and elsewhere and where the effects on the intrinsic values and natural character of the area and the existing recreational setting would be significantly less. Other possibilities include forest in private ownership, as well as sites in ex-Timberlands forests, which have large, tall lowland trees and in many cases a suitable roading network to reach them. They also said that suitable sites

elsewhere could provide the same kind of experience, without needing to compromise places such as the Hokitika Gorge which have additional special qualities. In addition, some said that tourism ventures of this nature should occur in areas that have already been modified and where the appropriate infrastructure is already in place. From the submitters' perspective, these should be located close to the present tourist highway and existing accommodation services. More appropriate alternative sites suggested by submitters included Franz Josef, Fox Glacier, Pelorus Bridge in Marlborough, and Tartare Stream and Callery Gorge in South Westland, Lake Kaniere, Lake Ianthe, and Punakaiki.

There are a number of locations along SH 6 where private land has been developed and adjoins conservation land with intact forest systems suitable for a tree top walk way. The purchase of a freehold property suitable for the building of associated infrastructure such as car parks and visitor centre would mitigate the impacts on public conservation land.

The applicant's further comments on alternative sites do not adequately address the issues from a legal perspective (see above). Rather they are addressed from the view of the applicant's business. Please refer to the tables attached to the applicant's response for his detailed analysis.

It is reiterated that it is accepted that Parliament cannot have intended that no application to build a structure could ever be granted. It has set out a positive test that incorporates the concept of reasonableness. i.e. the Minister needs to have sufficient information before him on which he can be satisfied that the structure or facility could reasonably occur somewhere else, or on another reserve with fewer effects. If that is the case, s/he shall not grant the application. This indicates that it is not a matter of discretion. The Minister is required to decline the application if s/he is satisfied that the activity could be undertaken elsewhere.

The structure proposed is a walkway among the tree tops so could be located in many different locations that have a canopy in good condition. In this particular case, the view of the water is an attraction, but it is not a necessary component of a canopy walk experience. Sites exist in other areas, including on private land where the structures could be built and the activity reasonably undertaken. Indeed, the FDR states that the applicant has investigated a number of different sites around the South Island as well as sites in the North Island and on private land. They may not have suited all of the applicant's business requirements, but that is not the test. In addition, it is noted that it isn't necessary that the activity occur in the vicinity of Hokitika, on the West Coast or even in the South Island. The proposal does have adverse effects on the Reserve, in particular on its intrinsic values. It is more probable than not that it could be built in another area administered by the Department with fewer such effects.

In addition, some of the comments are on more general tourism issues rather than in respect of this Reserve.

It is reiterated that while reasonableness is important in this context the reasonableness cannot be of equal weight to the applicant and the landowner/decision maker as that would effectively nullify the Minister's decision-making role. Clearly Parliament had concerns about approval being given to building structures and facilities on public land so imposed thresholds on that decision-making power. The thresholds are quite high and after consideration of the

issues, the submissions and the applicant's comments it is recommended that this application does not reach them.

Notwithstanding the applicant's comments, it is considered that the Minister can be satisfied that the activity could reasonably be undertaken elsewhere as required in both section 17U(4)(i) and (ii). Given this and the directive wording of section 17U(4) it is recommended that this could also be a ground to decline the application.

Section 17U(4)(b) – Could any existing structures or facilities be used

There are no existing structures or facilities at the site which could be used for the applicant's purposes.

Section 17U(5) is as follows:

“(5) The Minister may grant a lease or licence (other than a profit a prendre) granting an interest in the land only if –

(a) The lease or licence relates to one or more fixed structures and facilities (which structures and facilities do not include any track or road except where the track or road is an integral part of a large facility); and

(b) In any case where the application includes an area or areas around the structure or facility, -

(i) Either –

(A) It is necessary for the purposes of safety or security of the site, structure or facility to include any area or areas (including any security fence) around the structure or facility; or

(B) It is necessary to include any clearly defined area or areas that are an integral part of the activity of the land; and

(ii) The grant of a lease or licence granting an interest in land is essential to enable the activity to be carried on.”

This provision limits the Minister's powers in respect of granting a lease or licence. It is noted that if the grounds to grant the application were made out under s17U(1)(4) were made out, both a lease and a licence could be granted under this provision.

Section 17U(6) is as follows:

“(6) No lease may be granted unless the applicant satisfies the Minister that exclusive possession is necessary for –

(a) The protection of public safety; or

(b) The protection of the physical security of the activity concerned; or

(c) The competent operation of the activity concerned.”

It is noted that these requirements are alternatives. They are not all required. It is considered that exclusive possession would be required as recommended in the FDR if the application were to be granted.

Section 17U(7) is as follows:

“(7) For the purposes of subsection (6) of this section, the competent operation of an activity includes the necessity for the activity to achieve adequate investment and maintenance.

This provision is relevant if subsection (6)(c) is relied on.

6.0 Conclusions

Conclusions in respect of relevant matters raised by submitters in section 4 of this report:

Issues 1 and 2: The Reserves and Conservation Acts

- The proposal for the airwalk, visitor centre and part of one carpark is contrary to the provisions of the Reserves Act 1977 and to the purpose for which scenic reserves are held.
- Approving the proposal for most of the carparks and the underground sewage disposal system would be contrary to stewardship land provisions of the Conservation Act 1987.
- The activity could reasonably be undertaken at an alternative site.

Also see conclusions in respect of section 5 of this report.

Issue 3: The Treaty of Waitangi and Section 4 of the Conservation Act

The proposal would impact on Maori cultural values at the site. These effects may not be able to be avoided, remedied or mitigated. Further consultation should be undertaken if the decision maker does not accept the recommendation of this report.

Issues 4 and 5 – Draft West Coast Conservation Management Strategy, and the Department’s Visitor Strategy

Neither of these are relevant in themselves to the considerations.

Issue 6: Effects on natural quiet and other intrinsic/aesthetic values

The proposal would have significant effects on the site’s natural quiet, natural setting, solitude and spiritual qualities. These effects could not be adequately avoided, remedied or mitigated to the extent that these values would be maintained.

Issue 7: Increased visitor volumes and resulting impacts

The effects of a dramatic increase in visitor numbers would fundamentally change the nature of the visitor experience currently enjoyed at the site.

Issue 8: Social effects – changes in use

The site would no longer provide an experience that current users seek so use of the area would change. The proposal would change the site from being a place that presently meets the needs of many New Zealanders to one that caters for tourists from overseas in a manner that is incompatible with current use.

Issue 9: Incompatibility with current use, possible future restrictions

The proposal could potentially make some forms of current use no longer practical.

Issue 10: Inadequacy of proposed measures to avoid, remedy or mitigate the effects

There are no measures that could adequately avoid, remedy or mitigate the effects of the proposal on the intrinsic values of the site to the extent that the character of the place would remain intact.

Issue 11: Effects on vegetation

The proposal would have adverse effects on vegetation. To an extent, it is considered that these effects could be avoided, remedied or mitigated.

Issue 12: Potential effects on wildlife

The proposal may have adverse effects on wildlife (although it is considered that these could adequately be avoided remedied or mitigated).

Issue 13: Potential for increased slippage

It is possible that the proposal could result in a degree of slippage (although it is considered that this potential effect could be adequately avoided, remedied or mitigated).

Issue 14: Water pollution

The proposal could cause water pollution (although it is considered that this potential effect could be adequately avoided, remedied or mitigated).

Issue 16: Safety issues

The proposal would involve some risks to public safety (although it is considered that these could be adequately avoided remedied and mitigated).

Issue 22: Concerns regarding future development at the gorge.

The proposal would have indirect/cumulative effects as additional signage and structures would be required at the gorge rocks.

Issue 23: Concerns regarding the economic viability of the operation and effects of failure

The proposal would have long-term effects that may not be able to be remedied or mitigated if the business venture failed (although a bond to cover removal of all structures would help to address this issue).

Issues 24-31 Refer to body of report

Positive effects

The development would be likely to have some positive effects by providing a unique nature experience and the opportunity for visitors to learn about New Zealand's native forests.

Conclusion in respect of section 5 of this report.

It is considered that there are no adequate or reasonable methods to avoid, mitigate or remedy the adverse effects of the activity as identified in this report.

In addition, the main part of the proposal would be contrary to the provisions of the Reserves Act 1977 and to the purpose for which this Reserve is held. The carparks that are proposed on stewardship land would be contrary to the provisions of the Conservation Act 1987 Act 1977 and to the purpose for which this land is held

The requirements of section 17U(4) are met in that the Minister can be satisfied that the activity could reasonably be undertaken elsewhere as set out in both sections 17U(4)(i) and (ii).

Given the above, it is recommended that the application is declined.

7.0 Applicant Comments

A draft of this report was sent to the applicant for comment. The full text of the company's response and the associated appendices are attached as Appendix K.

The applicant has provided wide ranging comments, including on the processing of the application, public opinion, the likely effects of the proposed development, legal matters and the proposed additional special conditions. It is recommended that the decision maker read the full text of the applicant's response as well as the associated appendices.

Response to comments in the preface (page 3 of the applicant's comments)

These comments have been noted. In response, the applicant's comments on effects, legal issues and the proposed special conditions have been inserted into the relevant sections of this report. Other matters raised are discussed in this section.

Response to comments on the processing of the application (page 4 of the applicant's comments)

The Department rejects assertions that the process has been unfair to the applicant. The process allows for both submitters and the applicant to have their say at the appropriate stage in the process. The applicant may have an expectation that the Department's concessions process mirrors that of the Resource Management Act 1991, but this is not the case. The procedure is that set by the Director-General under the Conservation Act 1987 and the decision is that of the Minister as landowner.

The Department advised the applicant that it would not be appropriate to provide additional information after public notification of the application, due to its obligation to follow the usual process, which has at its basis natural justice considerations. The primary purpose of the public notification stage of the process, including the hearing, is to allow submitters to have their say. The applicant then has the opportunity to respond to submitter allegations at the applicant comment stage. Similarly, meetings sought with the commissioner prior to the hearing were declined as this was not considered appropriate in the context of the process.

The applicant has claimed that *"Staff positive about the proposal were removed from the process. Staff openly opposed were appointed to handle further work."* These are serious allegations and are refuted. No staff have been *"removed from the process"* and there is no basis for these claims.

A number of other statements made perhaps suggest a lack of understanding of the concessions process. Applicants do not have a right of reply at the hearing itself, but they do have the opportunity to respond to the points raised by submitters once the final report is

drafted and is sent to the applicant for comment. Comments on this draft report are taken into consideration before the report is finalised, and there is still potential for the report's recommendation to be changed at this stage.

While the applicant did not have right of access to the names of submitters (due to the provisions of the Official Information Act 1981), the hearing itself was open to the public so no anonymity was afforded to submitters who spoke to their submissions.

The Department's guidelines recognise that there may be occasions where an open hearing is more appropriate. In this case, it was considered that an open hearing would provide for a more transparent process given the large degree of public interest in the application.

The applicant has commented that only submitters' views were reflected in the newspapers, as only the submitters had speaking rights. The Department had no control over what would be reported but notes that again, this is simply how the process works - the hearing is primarily for the submitters to have their say, and the applicant's opportunity comes later, and because the hearing was attended mainly by those opposing the application, they had more profile. It should be noted that members of the media also interviewed Mr Frank and he was quoted in some newspaper articles.

Also Mr Frank commented at the close of the hearing that he respected the process and people's right to be heard even though he didn't agree with most of their views.

It is acknowledged that the nature of the process means that the draft final report mainly reflects the views of submitters, and this is why it is a draft report. The applicant then has the opportunity to provide comment on this draft report before it is finalised. The applicant has stated that that this step in the process is merely "*to give the appearance of both sides being heard*", but this is not the case. Relevant points made by the applicant are given no less consideration than relevant points raised by submitters, and as previously noted, the report's recommendation may be changed at this stage.

Response to comments regarding public opinion (page 5 of the applicant's comments)

The applicant has discussed a survey that the company circulated at a public meeting prior to the application being publicly notified. This meeting and survey are discussed on page 4 of this report. The submission process and hearing are the means by which relevant information is provided and then taken into consideration. For this reason, further discussion on whether or not the results of the survey are representative is not considered relevant.

The applicant describes opposition to the application as a "campaign". A group of people banded together as 'Friends of the Hokitika Gorge' in opposition to the application and made their views clear in both written and oral submissions. They also conducted a wider public campaign which included some misleading and inaccurate information. Some of what they said and did is relevant and some is not. The applicant should note that information known to be false has not been given any weight in forming the recommendation of this report. It should also be noted that the petition presented to the Department by 'Friends of the Hokitika Gorge' is not a relevant consideration for the Minister in the context of section 17U of the Conservation Act as it was outside the submission process.

The applicant has questioned whether the concerns raised by submitters are “real” and therefore whether they are valid. It is acknowledged that some submitters may have overestimated or exaggerated the likely changes that would result from the development. However, there is little doubt that significant, largely irreversible changes would result if the airwalk was built, which would fundamentally change the current qualities of the reserve.

Responses to comments on legal issues

Some comments are dealt with here while others are in Part 5 of the report.

The applicant has addressed the legal arguments relating to the scenic reserve status of the land in quite general terms. This has made it quite difficult to address them in depth. However, the legal opinions that were provided earlier go into detail and that has been addressed.

It should be noted that the difficulties arise in respect of this particular scenic reserve and not the concept of the aerial walkway in itself. It is acknowledged that there are benefits of aerial walkways and the experience they offer.

It is accepted that some of the advice in this report differs to that in the FDR. The applicant has commented on that. The reasons for this are that there is now a better understanding of application and its effects. This has been the result of public notification and its submission and hearing processes. The views expressed have been considered and taken into account in the making of the recommendations. As an example of this, some submitters informed the panel that they found access adequate and that older or disabled people could be assisted down the path to enjoy views of the gorge. This was taken into account when dealing with access issues.

The applicant has stated that comment on the positive effects of the application is missing from the report. What the applicant has said in relation to positive effects has been taken into account but does not outweigh the adverse effects. The fundamental change to the reserve and the current nature of the experience is such that there are no adequate or reasonable methods for remedying, avoiding or mitigating the adverse effects.

The educational functions of the proposed air walk and visitor centre and the information that AWNZ has made a significant investment into obtaining the most advanced interactive displays available anywhere in the world are acknowledged. No issue is taken with the quality of the proposal in itself. It is its effects in this particular scenic reserve that are at issue.

8.0 Recommendations

- (1) It is recommended that the decision maker note, and accept as recommended in this report, the submissions received in the public notification process.
- (2) It is recommended that the decision maker note, and accept as recommended in this report, the applicant’s comments in its response to the draft final report.

- (3) It is recommended that the decision maker decline the granting of a concession to build and operate an airwalk, visitor centre and associated infrastructure in the Hokitika Gorge Scenic Reserve and on adjacent stewardship land.
- (4) If this recommendation is not accepted, then it is recommended that any approval be subject to the Department's standard concession conditions, the special conditions proposed in the FDR, the further special conditions detailed below, and the inclusion of recommended provisions in the proposed management plan, as discussed in this report.

Additional special conditions

- The Concessionaire may be required to undertake post-installation water quality monitoring as directed by the Hokitika Area Manager.
- The Concessionaire shall not commence any works at the site unless or until written approval has been received from the Hokitika Area Manager in relation to the design (including building materials and colours to be used) of the visitor centre and airwalk.
- The Concessionaire shall ensure that all aspects of the activity, including building materials, colours used and any night lighting, are aesthetically appropriate to the natural forest setting, and that all structures blend in as far as possible with the surrounding environment.
- When all details relating to the design and alignment of the airwalk have been decided, the Concessionaire shall ensure that a full assessment is undertaken by a qualified arborist in conjunction with a health and safety expert to identify all trees that would require removal, trimming or guying back. This assessment shall involve:
 - (1) Measurements of tree positions in distance along each span and at right angles to it, to enable mapping of tree position relative to the walkway structure, each tree surveyed being assigned a unique number;
 - (2) Production of a map of individual trees by species and walkway span that are within a distance of the airwalk structure equal to or less than their individual height i.e. which could reach any part of the airwalk if that entire tree or some part of it were to fall;
 - (3) A full arboriculture risk/hazard assessment of each tree identified under (2) according to an approved arboriculture methodology and that includes prescriptions for individual tree hazard/risk elimination or minimisation, for monitoring individual tree status (health and risk) over time and for health and safety maintenance work for trees; and

(4) An evaluation of the applicability of methods in accomplishing simulated tree fall and physical damage as a means of eliminating hazard trees or tree parts.

- No trees or tree parts shall be removed, trimmed or guyed back without the prior written approval of the Hokitika Area Manager. The Concessionaire shall ensure that no works occur at the site until the Hokitika Area Manager has received and approved in writing the results of the full arboriculture and health and safety assessment. All trees felled or removed remain the property of the Crown.
- The Concessionaire shall ensure that:
 - (1) Buildings are designed so that windows do not create 'tunnels' that invite species, particularly kereru, to collide with glass.
 - (2) Wires and other thin construction components that are difficult to see are kept to a minimum. If bird strike occurs, such components should be made as visible as possible (bright colours, hang streamers, get climbing plants to attach etc).
- The Concessionaire shall ensure that any tree removal or trimming is undertaken outside spring and summer months to reduce the likelihood of disturbing nests, and if unavoidable during these months, the Concessionaire shall ensure that contractors take particular care to avoid disturbing any nests.
- The Concessionaire shall take all practicable measures to contain and secure rubbish and food scraps. This may include secure bins, clear advocacy to visitors reminding them of the importance of responsible waste disposal, and no food allowed on the walkway.
- The Concessionaire shall, if required by the Hokitika Area Manager, undertake localised predator control. This may include a grid of rat, possum, stoat and cat kill traps on a scale of several hectares.
- The Concessionaire shall take all practical measures, including as directed by the Hokitika Area Manager, to ensure that visitors behave appropriately on the airwalk structure.
- The Concessionaire shall not begin any works at the site unless the Hokitika Area Manager confirms in writing that no bat roosts have been located in any trees that would be felled.
- The Concessionaire shall follow any directions from the Hokitika Area Manager with regard to the siting of structures in relation to any bat roost that may be located.
- If any slippage occurs, the Concessionaire shall follow any directions from the Hokitika Area Manager with regard to measures to be undertaken to remedy this and protect against any further potential slippage. This may include commissioning

an engineering report and implementing its recommendations, at the concessionaire's expense.

In addition

- Amend special condition 2 (pg 20 of FDR) so that each individual tower site would require prior approval by the Hokitika Area Manager, as follows:
The Concessionaire shall select the final alignment of the walkway to ensure that live emergent and major canopy tree crowns are avoided, and that visibility of the airwalk to other recreational users in the area is minimised as far as practicable. No works shall be undertaken at the site unless or until the final alignment of the airwalk and bush track and the siting of individual towers has been approved in writing by the Hokitika Area Manager.

G. Graeme Ayres

Graeme Ayres
Principal Business Analyst, Southern Regional Office
Acting as the Director-General's delegate

Date:

Recommendations Accepted/Rejected

Recommendations 1-3 accepted

Recommendation 4 declined.

M. Slater

Michael Slater
Conservator, West Coast *Tai Poutini* Conservancy
Acting as the Minister's delegate

Date: *11 May 2006*

APPENDIX D

Relevant Statutory Provisions

Conservation Act 1987

17U Matters to be considered by Minister

- (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.
- (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.
- (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.
- (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.
- (5) The Minister may grant a lease or a licence (other than a profit à prendre) granting an interest in land only if—
 - (a) The lease or licence relates to one or more fixed structures and facilities (which structures and facilities do not include any track or road except where the track or road is an integral part of a larger facility); and
 - (b) In any case where the application includes an area or areas around the structure or facility,—
 - (i) Either—
 - (A) It is necessary for the purposes of safety or security of the site, structure, or facility to include any area or areas (including any security fence) around the structure or facility; or
 - (B) It is necessary to include any clearly defined area or areas that are an integral part of the activity on the land; and

- (ii) The grant of a lease or licence granting an interest in land is essential to enable the activity to be carried on.
- (6) No lease may be granted unless the applicant satisfies the Minister that exclusive possession is necessary for—
 - (a) The protection of public safety; or
 - (b) The protection of the physical security of the activity concerned; or
 - (c) The competent operation of the activity concerned.
- (7) For the purposes of subsection (6) of this section, the competent operation of an activity includes the necessity for the activity to achieve adequate investment and maintenance.]

49 Public notice and rights of objection

- (1) Where this Act requires any thing to be publicly notified, the Minister shall publish a notice of the thing in some newspaper circulating in the area in which the subject-matter of the notice is situated and at least once in each of 4 daily newspapers published in Auckland, Wellington, Christchurch, and Dunedin, respectively; but if satisfied that the thing is of local or regional interest only, the Minister may limit the publication of the notice to a newspaper or newspapers circulating throughout the locality or region in which the subject-matter is situated.
- (2) Where [] the Minister gives public notice of intention to exercise any power conferred by this Act—
 - (a) Any person or organisation may object in writing to the Director-General against the proposal, or make written submissions on the proposal; and
 - (b) Every objection or submission shall be sent to the Director-General at the place and before the date specified in the notice in that behalf, being a date not less than 40 working days after the date of publication of the notice; and
 - (c) Where a person or organisation making an objection or submission so requests in the objection or submission, the Director-General shall give the person or organisation a reasonable opportunity of appearing before the Director-General in support of the objection or submission; and
 - (d) The Director-General shall send to the Minister with a recommendation a summary of all objections and comments received and a recommendation as to the extent to which they should be allowed or accepted; and
 - (e) The Minister shall consider the recommendation and the contents of the summary before deciding whether or not to proceed with the proposal.
- (3) The Director-General shall determine the procedure at any hearing under this section.

6 Functions of Department

- The functions of the Department are to administer this Act and the enactments specified in the Schedule 1 to this Act, and, subject to this Act and those enactments and to the directions (if any) of the Minister,—
- (a) To manage for conservation purposes, all land, and all other natural and historic resources, for the time being held under this Act, and all other land and natural and historic resources whose owner agrees with the Minister that they should be managed by the Department:
 - [(ab) To preserve so far as is practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats:]
 - (b) To advocate the conservation of natural and historic resources generally:
 - (c) To promote the benefits to present and future generations of—
 - (i) The conservation of natural and historic resources generally and the natural and historic resources of New Zealand in particular; and
 - (ii) The conservation of the natural and historic resources of New Zealand's sub-antarctic islands and, consistently with all relevant international agreements, of the Ross Dependency and Antarctica generally; and

- (iii) International co-operation on matters relating to conservation:
- (d) To prepare, provide, disseminate, promote, and publicise educational and promotional material relating to conservation:
- (e) 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:
- (f) To advise the Minister on matters relating to any of those functions or to conservation generally:
- (g) Every other function conferred on it by any other enactment.

25 Stewardship areas

Every stewardship area shall so be managed that its natural and historic resources are protected.

Reserves Act 1977

Public Act 1977 No 66

An Act to consolidate and amend certain enactments of the General Assembly relating to public reserves, to make further provision for their acquisition, control, management, maintenance, preservation (including the protection of the natural environment), development, and use, and to make provision for public access to the coastline and the countryside

3 General purpose of this Act

- (1) It is hereby declared that, subject to the control of the Minister, this Act shall be administered in the Department of [Conservation] for the purpose of—
 - (a) Providing, for the preservation and management for the benefit and enjoyment of the public, areas of New Zealand possessing—
 - (i) Recreational use or potential, whether active or passive; or
 - (ii) Wildlife; or
 - (iii) Indigenous flora or fauna; or
 - (iv) Environmental and landscape amenity or interest; or
 - (v) Natural, scenic, historic, cultural, archaeological, biological, geological, scientific, educational, community, or other special features or value:
 - (b) Ensuring, as far as possible, the survival of all indigenous species of flora and fauna, both rare and commonplace, in their natural communities and habitats, and the preservation of representative samples of all classes of natural ecosystems and landscape which in the aggregate originally gave New Zealand its own recognisable character:
 - (c) Ensuring, as far as possible, the preservation of access for the public to and along the sea coast, its bays and inlets and offshore islands, lakeshores, and riverbanks, and fostering and promoting the preservation of the natural character of the coastal environment and of the margins of lakes and rivers and the protection of them from unnecessary subdivision and development.
- (2) In the exercise of its administration of this Act, the Department may take any action approved or directed from time to time by the Minister so far as it is consistent with this Act or is provided for in any other Act and is not inconsistent with this Act.

19 Scenic reserves

- (1) It is hereby declared that the appropriate provisions of this Act shall have effect, in relation to reserves classified as scenic reserves—

- (a) For the purpose of protecting and preserving in perpetuity for their intrinsic worth and for the benefit, enjoyment, and use of the public, suitable areas possessing such qualities of scenic interest, beauty, or natural features or landscape that their protection and preservation are desirable in the public interest:
- (b) For the purpose of providing, in appropriate circumstances, suitable areas which by development and the introduction of flora, whether indigenous or exotic, will become of such scenic interest or beauty that their development, protection, and preservation are desirable in the public interest.
- (2) It is hereby further declared that every scenic reserve classified for the purposes specified in subsection (1)(a) of this section shall be so administered and maintained under the appropriate provisions of this Act that—
 - (a) Except where the Minister otherwise determines, the indigenous flora and fauna, ecological associations, and natural environment and beauty shall as far as possible be preserved, and for this purpose, except where the Minister otherwise determines, exotic flora and fauna shall as far as possible be exterminated:
 - (b) The public shall have freedom of entry and access to the reserve, subject to the specific powers conferred on administering bodies by sections 55 and 56 of this Act, to any bylaws under this Act applying to the reserve, and to such conditions and restrictions as the administering body considers to be necessary for the protection and well-being of the reserve and for the protection and control of the public using it:
 - (c) To the extent compatible with the principal or primary purposes of the retention and preservation of the natural or scenic values, open portions of the reserve may be developed for amenities and facilities where these are necessary to enable the public to obtain benefit and enjoyment from the reserve:
 - (d) Where historic, archaeological, geological, biological, or other scientific features are present in the reserve, those features shall be managed and protected to the extent compatible with the principal or primary purpose of the reserve:
Provided that nothing in this paragraph shall authorise the doing of anything with respect to fauna that would contravene any provision of the Wildlife Act 1953 or any regulations or Proclamation or notification under that Act, or the doing of anything with respect to archaeological features in any reserve that would contravene any provision of the [[Historic Places Act 1993]]:
 - (e) To the extent compatible with the principal or primary purpose of the reserve, its value as a soil, water, and forest conservation area shall be maintained.
- (3) It is hereby further declared that every scenic reserve classified for the purposes specified in subsection (1)(b) of this section shall be so administered and maintained under the appropriate provisions of this Act that—
 - (a) Except where the Minister otherwise determines, the flora and fauna, ecological associations, and natural environment and beauty shall as far as possible be preserved:
 - (b) The public shall have freedom of entry and access to the reserve, subject to the specific powers conferred on administering bodies by sections 55 and 56 of this Act, to any bylaws under this Act applying to the reserve, and to such conditions and restrictions as the administering body considers to be necessary for the protection and well-being of the reserve and for the protection and control of the public using it:
 - (c) To the extent compatible with the principal or primary purposes of the retention and preservation of the natural or scenic values, open portions of the reserve may be developed for amenities and facilities where these are necessary to enable the public to obtain benefit and enjoyment from the reserve:
 - (d) Where historic, archaeological, geological, biological, or other scientific features are present in the reserve, those features shall be managed and protected to the extent compatible with the principal or primary purpose of the reserve:

Provided that nothing in this paragraph shall authorise the doing of anything with respect to fauna that would contravene any provision of the Wildlife Act 1953 or any regulations or Proclamation or notification under that Act, or the doing of anything with respect to archaeological features in any reserve that would contravene any provision of the [[Historic Places Act 1993]]:

- (e) To the extent compatible with the principal or primary purpose of the reserve, its value as a soil, water, and forest conservation area shall be maintained.

[[59A Granting of concessions on reserves administered by Crown

- (1) The Minister may, in accordance with Part 3B of the Conservation Act 1987, grant a concession in respect of any reserve vested in the Crown, including any reserve controlled or managed by an administering body under any of sections 28, 29, 30, 35, and 36 of this Act; and the said Part 3B shall apply as if references in that Part to a conservation area were references to such a reserve and with any other necessary modifications.
- (2) The Minister may impose a reasonable charge for the use of any facilities (other than a path or track) provided by the Minister in or in respect of any such reserve.
- (3) In the case of any concession over or in respect of a reserve controlled or managed by an administering body, any reference in the provisions referred to in subsection (1) of this section to any conservation management strategy or conservation management plan shall be read as if it were a reference to a management plan approved under section 41 of this Act.
- (4) A concessionaire of any part of any such reserve may, to the extent that the relevant concession document so provides, impose a reasonable charge for the use of any facility (other than a path or track) provided by the Minister in or in respect of any such reserve.
- (5) Any person who—
 - (a) Has, in accordance with any concession or other consent of the Minister, erected any structure or facility in any reserve; or
 - (b) Uses for camping sites or for parking places for vehicles any part of any reserve; or
 - (c) Carries on any activity in any reserve—
may, subject to the relevant conservation management strategy or conservation management plan (if any) and the terms and conditions (if any) of the concession document concerned, impose a reasonable charge in respect of access to or the use of structures, sites, or places, or the carrying on or products of the activity.
- (6) Nothing in this section authorises any person to do anything on or in respect of any private land.
- (7) This section does not apply to any permit granted under section 57 of this Act that authorises a person to enter a nature reserve or a permit granted under section 59 of this Act that authorises a person to enter a scientific reserve.
- (8) This section does not apply to any reserve vested in an administering body under section 26 of this Act.
- [(9) This section is subject to Part 2 of the Forests (West Coast Accord) Act 2000, in relation to land that is a reserve, or added to an existing reserve, as a result of a declaration under section 8(1) of that Act.]]]

APPENDIX E

List of issues raised by submitters (opposed)

- Issue 1: The Reserves Act 1977
- Issue 2: The Conservation Act 1987
- Issue 3: The Treaty of Waitangi and Section 4 of the Conservation Act
- Issue 4: The Draft West Coast Conservation Management Strategy (“CMS”)
- Issue 5: The Visitor Strategy
- Issue 6: Effects on natural quiet and other intrinsic/aesthetic values
- Issue 7: Increased visitor volumes and resulting impacts
- Issue 8: Social effects – changes in use
- Issue 9: Incompatibility with current use, possible future restrictions
- Issue 10: Inadequacy of proposed measures to avoid, remedy or mitigate the effects
- Issue 11: Effects on vegetation
- Issue 12: Potential effects on wildlife
- Issue 13: Potential for increased slippage
- Issue 14: Water pollution
- Issue 15: Potential loss of access to the swingbridge and reserve
- Issue 16: Safety issues
- Issue 17: Impacts on the character of Kowhitirangi/Kokatahi/Kaniere
- Issue 18: Issues related to traffic
- Issue 19: Concerns regarding financial input via rates
- Issue 20: Concerns regarding the applicant
- Issue 21: Concerns regarding setting a precedent
- Issue 22: Concerns regarding future development at the gorge
- Issue 23: Concerns regarding the economic viability of the operation and effects of failure
- Issue 24: Donation of land – the “Godfrey Gift”
- Issue 25: Concerns regarding exclusive possession
- Issue 26: DOC mission statement
- Issue 27: Concerns regarding the economic impact on Hokitika
- Issue 28: Concerns regarding DOC’s processing of the application
- Issue 29: Concerns regarding commercialism/development/tourism
- Issue 30: DOC’s motivation
- Issue 31: Disabled access

APPENDIX G

Miscellaneous Submitters' Comments

- Environmental education cannot occur on a man-made structure amongst groups of other tourists.
- It would NOT increase accessibility, it would inhibit it (road closure etc).
- Public enjoyment is already immense.
- It is a geologically unique site.
- It is impossible to build a structure without damage to the environment.
- I object to exclusive rights for 30 years.
- DOC should take some responsibility re the manager's house.
- I am shocked to have to try and protect a scenic reserve from the organisation that is appointed to protect it!
- Lack of rare species does not make it ok to destroy habitat.
- The bridge is ok because it fulfils a need, but there is no need for the airwalk and associated facilities.
- The Hokitika Gorge fulfils an important role by providing New Zealanders easy access to a wilderness area which they can enjoy in peace and quiet without be bothered by crowds of tourists.
- The soul of the gorge itself is at stake here and must not be betrayed by the big dollars of the cash register mentality of unbridled tourism.
- If any measures to avoid, remedy or mitigate effects are required, then the application should be declined.
- It will destroy the whole natural environment that DOC is supposed to protect on our behalf.
- It is not consistent with my definition of conservation.
- Don't think it would be of any benefit to the region, just the opposite.
- Love it as it is.
- Goes against what DOC claims it is about.
- Concerns regarding dog faeces.
- People enjoy the gorge in its current state, don't want a Disneyland experience.
- Concern regarding green house gas emissions associated with travel out to the gorge.
- DOC has responsibilities under the Environment 2010 vision.
- Is the extreme industrial and large scale of the proposed structure is really necessary?
- A more practical, more cost effective and an option that might well be more efficient in term of land clearance might be to simply build the visitor information centre and carparks to the east of the Hokitika Gorge Road at its summit, alongside the Airwalk entry structure.
- The applicant earlier said he would not continue with the project in the face of local opposition – he should stand by his word and withdraw the application.
- Concerns regarding the bond amount. This should have been put out for consultation. Should be at least the development cost (around 6 million). Why should a scenic reserve bear the brunt of the risk of a commercial venture?
- DOC should act on the wishes of the local community and stop putting overseas tourists before locals and tangata whenua.

- Concerns regarding sedimentation, run-off and fire risk.
- DOC should advocate and promote kaitiakitanga (guardianship) in the management of natural resources – not destruction of scenic reserves for commercial purposes. While we acknowledge the potential benefits from some types of development in terms of new recreation opportunities and increased public awareness of conservation values, this particular proposal would attract and create the type of recreation that destroys rather than underpins conservation values.
- Inconsistent with ROS.
- Contrary to the Environmental Care Code – DOC should follow its own advice.
- Doesn't think the predator control would be beneficial.
- The application is deceptive in terms of environmental impact.
- The café and shop will provide the income – the airwalk is to justify their existence.
- Pure gimmickry.
- Concerns regarding vandalism. How would the department deal with a request from the Police to withdraw consent for the operation if the vandalism became unmanageable.
- I would've thought the last thing the Department would give permission for is an aerial structure which is so similar to the Cave Creek Platform. Believes it would highly offend friends and relatives.
- DOC should look to what is best for future generations.
- Such developments should be confined to areas with lower conservation areas.
- Concerns regarding the construction phase issues – noise, dust, spillage of oil and dust, sedimentation of streams, scarring of the landscape etc
- Broader issues regarding tourism and what kind of tourists we should be trying to attract. By supporting the application, DOC would be compromising the way people live their lives on the coast...the Dept has a duty to act strategically and intelligently, being very careful not to sell our most precious resources.
- DOC has a very poor history of managing high use sites e.g. Milford.
- Access would be compromised not enhanced including to the Doctors and Minnow Creek catchments on the true left of the river.
- Concerns from overseas people about how it would affect local culture.
- It is inconsistent with community aspirations.
- Would put needs of overseas tourists ahead of the local community- put the needs of New Zealanders and the environment first!
- Anything sold should be locally made not mass-produced.
- A percentage of the fee should be used to enhance the area, pest control etc
- Hopes DOC will only consider objections relating to the relevant parts, as the relevant statutory authorities will consider the other aspects.
- If people want to see more of the gorge then DOC should put in a walking track etc, shouldn't be put in the hands of a private company.
- I visited Trickle Falls in Australia and it was not low impact – no birds, chafing on the trees, noisy, trees falling on the structure causing a safety issue etc.
- The Minister is required to consider public opinion as expressed through submissions.
- In concessions where social effects are a major part of considering an application, public opinion should be given more weight in reaching a decision. This is because social effects are subjective and difficult to evaluate.

- Thinks the proposal would make the gorge LESS accessible for disabled people.
- Affected area should be calculated as a volume.
- Does not accept the claimed positive effects.
- The Department has failed in its duties, ordinary people shouldn't have had to come out and oppose the application to ensure the area is protected.
- The community's desire is for the natural wealth of the area to be protected so that it is available for future generations.
- Don't think it would provide good environmental education – people need to get out there and mix with the forest.
- Support guided ecotourism – keep the place clean, pass on their knowledge.
- New Zealanders' needs should come first.
- Increasingly I see the DOC estate being used as a cash cow for central government thirsting for the tourist dollar
- Welcome Flat has been ruined.
- Think numbers have been deliberately deflated – effects would be much greater if more realistic figures were used.
- Agree with Conservation Board and iwi comments – the Department hasn't taken these seriously.
- DOC has taken unacceptable liberties in interpreting the impacts.
- Desecration is too high a price to allow access for the disabled, elderly and very young.
- Doesn't agree with the applicant's assessment of the site's shortfalls.
- Thinks disabled access has been considered as a huge advantage.
- Even if leased, still has to be administered in accordance with legislation.
- Don't oppose it going ahead somewhere in the district but has strong feelings regarding the sanctity of reserves and national parks.
- If allowed, should be somewhere that is well represented by other reserves. Pick a location where the structure will not dominate such a large part of the area involved, and not in the most spectacular and unique reserve we have.
- Jet boaters want to still be able to use access track immediately south of Granite Creek.
- Concerned that the applicant will complain about jet boat noise and seek prohibition.
- DOC are not doing what they're supposed to do.
- Land swapping should have been sorted out first, DOC need to sort out the road access as it's not a legal road.
- All the legislation the Department works under puts conservation and preservation ahead of public enjoyment.
- There are issues that have failed to be resolved between the applicant and the Department, which is why so much would be left up to the Area Manager to decide at a later date. This restricts the ability of the public to comment on these matters.
- Would like written assurance that the road will stay open.
- This document has a strong emphasis on identifying values that might be impacted on by visitors. In this case, no evidence or surveys have been conducted to measure existing use etc. This should have been requested given the scale of the project and its potential effects on other casual users.

- Believe the gorge is a taonga that should be handed on unspoiled from generation to generation.
- It is rightly difficult for community groups to get concessions for structure – should be even harder for private enterprise.
- An ecotourism lodge would not be allowed on the basis that it would increase awareness etc
- Inconsistent with bach policy, sends message that structures can be built on DOC land. What is DOC's vision? Inconsistency.
- Concern that it would go beyond the term of the concession – hard to remove concessionaire's once in place.
- The geological makeup of the area of forest is granite with an occasional overlay of schist. There is no information in the application as to how the construction in solid granite will be handled. There will likely be a need for blasting.
- It would effectively take over the site, through exclusive possession, its presence and due to the % of the reserve it will take up.
- It would take people away from the SH6 to somewhere that is important to locals as a place of escape.

APPENDIX H

Responses to queries raised at the hearing

A number of queries and issues were raised by submitters during the hearing. Many of these were responded to at the time, but the Director General's delegate undertook to address other matters in the Final Report. These queries are set out and responded to below.

Why have you gone against your own Mission Statement?

The Department's Mission Statement is a guiding statement but has no statutory weight. It is therefore not a relevant matter for the decision maker. No application could be declined on the basis that it was inconsistent with the Department's Mission Statement.

DOC needs to give clear analysis of the decisions made regarding alternative sites. Did the Minister consider alternative sites? What was the process for feedback?

Internal advice on the application was sought from area office and technical support staff, however advice on alternative sites was not specifically requested and none was provided. The applicant was asked to provide further information regarding which sites were investigated and why they were not found to be suitable. Some of this information was included in the FDR. The public notification process has been very valuable in informing the Department about alternative sites and the potential social effects of the proposal.

What type of agreement was entered into with the Godfrey family?

This matter is discussed in Section 3 of the Final Report. The Godfrey brothers surrendered an area from their lease in perpetuity so that it could be added to the Hokitika Gorge Scenic Reserve. The land was not gifted in the sense that it belonged to the Godfrey's and they donated it for the scenic reserve. The Department concurs with the Godfrey's understanding of the transaction that occurred, as summarised in Mr Godfrey's submission.

Which report referred to a jetty?

The applicant proposed a jetty in the first application submitted to the Department (received June 2003), however this was not included in the final version application that was processed. Unfortunately some versions of map C04 provided by the applicant for public circulation were draft versions and showed the jetty that was originally proposed.

Were the words "treetop walkway" or "air walk" used in the FDR?

The terms "airwalk" and "canopy walkway" were both used in the FDR.

Would access to the swingbridge be stopped?

The Department can only consider aspects of the proposal that relate to land under its administration, and the swingbridge is on legal road administered by Westland District Council. The Department is not aware of any intentions the applicant may have to seek to restrict access to the swingbridge.

Why is Chris [Hickford], the Community Relations Manager, not here? What is his responsibility?

It was not considered that there was any need for Chris to attend the hearing. His role in relation to the process was making a decision on the FDR. He has no further decision-making responsibilities relating to the application.

Was the Godfrey “gift” 2 hectares or 15 hectares?

Statutory land management staff have confirmed that an area of 15.7 acres (6.3535 hectares) was surrendered from the Godfrey’s lease.

APPENDIX I

The Applicant's Legal Opinions

IN THE MATTER of legal submissions in support of an application by Airwalks New Zealand Limited for a concession from the Department of Conservation for a airwalk visitor centre and associated facilities at Hokitika Gorge

Introduction

- 1 Air Walks New Zealand Limited ("Airwalks") proposal ("the proposal") has been developed within the framework of the Conservation Act ("the Act"). It meets all the requirements of the Act and is in accord with the purposes and principles of the Act.
- 2 No valid reasons are advanced within the submissions in opposition that support the argument that the application must or should be declined.
- 3 There are two main flaws within the submissions in opposition. First, the way in which the Conservation and Reserves Acts are erroneously interpreted and applied; second, contentions which are based upon either irrelevant facts or an incorrect view of the facts.

Statutory Interpretation

- 4 The proper approach to interpretation of statutes is set out in the Interpretation Act 1999. It provides that the meaning of an enactment must be ascertained from its text and in the light of its purpose.³
- 5 This means we must give the words used in the statute their plain ordinary meaning. Only when an absurd outcome arises by giving words their plain and ordinary meaning must look at more sophisticated rules of interpretation.
- 6 The plain and ordinary meaning of the words of the Conservation and Reserves Acts is appropriate here because no absurdity arises from giving the words their plain ordinary meaning in the light of the Act's purposes.
- 7 We will apply this statutory interpretation approach to the two key statutes, the Conservation Act and Reserves Act. These are the relevant statutes because part of the proposal is located on conservation land and part on a scenic reserve.

The proposal

- 8 The proposed airwalk structure and the majority of the visitor centre are located within the Hokitika Gorge Scenic Reserve (Scenic Reserve).

³ Section 5 Interpretation Act 1999

9 The car parks are located within stewardship land managed under the Act.

The Conservation Act

10 The approach we will take is to discuss the most relevant parts of the Act first and then discuss parts which are less relevant. We consider that the most important sections of the Act are sections 6 and 17u.

11 Section 6(c)(i)-(iii) of the Act 1987 are considered to be the most relevant because they directly link to the issues this proposal gives rise to and expresses the general purpose of the Act. These subsections provide:

"6. Functions of Department—

The functions of the Department are to administer this Act and the enactments specified in Schedule 1 to this Act, and, subject to this Act and those enactments and to the directions (if any) of the Minister,—

(c) To promote the benefits to present and future generations of—

(i) The conservation of natural and historic resources generally and the natural and historic resources of New Zealand in particular; and

(ii) The conservation of the natural and historic resources of New Zealand's sub-Antarctic islands and, consistently with all relevant international agreements, of the Ross Dependency and Antarctica generally; and

(iii) International co-operation on matters relating to conservation:"

12 Subsection (c) provides the background against which other matters in the Act ought to be viewed. The effect of the subsection is that the objectives of the Department is to promote the benefits to the public of the conservation of natural and historic resources.

13 "Conserve" means to keep from harm, decay, or loss, especially with a view to later use.⁴ Given this meaning coupled with the words "promote the benefits to present and future generations" conservation is directed at ensuring that the natural or historic resource remains available for present and future generations. Through so conserving the natural and historic resource, present and future generations gain benefits, such as use and enjoyment of the resource, the fact of retention of the resource and educational and commercial benefits.

14 It is considered that the key function in section 6 is contained within subsection (e).

"6. Functions of Department—

The functions of the Department are to administer this Act and the enactments specified in Schedule 1 to this Act, and, subject to this Act and those enactments and to the directions (if any) of the Minister,—

⁴ The Concise Oxford English Dictionary, 6th Edition

- (e) 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:"
- 15 "Foster" means to promote growth of; encourage or harbour.⁵
- 16 This being the case, the application is not inconsistent with the conservation of the area. Because of the location and positioning of the structure it will not intrude on the visual amenity in the area. Because of its design and colour it will blend into its surrounds. Furthermore, providing access will enable people to come into the area, which together with the education provided will foster tourism and recreation.
- 17 "Inconsistent" means lacking in agreement or compatibility; at variance; containing contradictory elements. See also "incompatible" which means conflicting or antagonistic; opposed in nature or quality; inconsistent.
- 18 This subsection (e) clearly provides a role to the Department in managing conservation resources. Taking the plain and ordinary meaning of the words used, the subsection provides that Department promote the growth of and encourage the use of natural and historic resources for recreation and tourism to the extent that that use is not inconsistent with conservation. Expressed another way natural and historic resources are to be used, provided those natural and historic resources are kept from harm, decay or loss, especially given that they are important for not only the present but future generations use and benefit.
- 19 Immediately it will be seen that arising from these two sections of the Act, conservation is recognised as being important because of the benefits conservation brings to both present and future generations. There is also an important inter-linking between conservation and the use of the resource. The resource is not being conserved for the purpose of being locked away. The Act directs the Department to use it, indeed, more so the Act is directive to the extent that it seeks to have the Department promote the growth of or encourage the use of the natural and historic resource for recreation and for tourism. It is not an "open gate approach". The Act does not promote use of the natural and historic resource with no qualifications. The qualifications is that the promotion of the use for recreation and/or tourism uses must not result in harm, decay or loss to the natural and historic resource. These sections are effectively scene setters for the more particular provisions which follow in relation to the granting of a concession.
- 20 In terms of the proper interpretation of the Act general provisions will give way to specific provisions. As a consequence, while the Department is guided by the above general provisions, the following specific matters take precedence.⁶
- 21 Part IIIB of the Act provides the mechanism by which the general provisions mentioned above will be implemented. Part IIIB sets out the rules relating to concessions. Section 17o states that no activity shall be carried out in a conservation area except under authorisation by a concession.⁷

⁵ The Concise Oxford English Dictionary, 6th Edition

⁶ Marac Life Assurance Ltd v CIR [1986] 1 NZLR 694

⁷ See the appendices for the full section

- 22 It is important to note that section 17o provides that an individual or organised group need not obtain a concession for an activity done for the benefit of the individual or members (individually or collectively) of the group if the activity is undertaken for any specific gain or reward. Thus, every person has a right to enter and walk around in the conservation area.
- 23 Therefore, this application must be considered against the backdrop created by those legal rights, that a person may exercise in the area, rather than as against people being excluded from the use of the resource in all circumstances.
- 24 In this regard that the submitters make a common factual error. They first consider both the reserve and the land managed by the Department under the Act to be pristine area that is locked away. The submitters do not have regard to what happens now on the land and what may occur as of right on the land.
- 25 Section 17u sets out the matters that the Minister must consider when assessing an application for a concession.

"[17U. Matters to be considered by Minister—

- (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.
- (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.

- (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.
- (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.
- (5) The Minister may grant a lease or a licence (other than a profit à prendre) granting an interest in land only if—
 - (a) The lease or licence relates to one or more fixed structures and facilities (which structures and facilities do not include any track or road except where the track or road is an integral part of a larger facility); and
 - (b) In any case where the application includes an area or areas around the structure or facility,—
 - (i) Either—
 - (A) It is necessary for the purposes of safety or security of the site, structure, or facility to include any area or areas (including any security fence) around the structure or facility; or
 - (B) It is necessary to include any clearly defined area or areas that are an integral part of the activity on the land; and
 - (ii) The grant of a lease or licence granting an interest in land is essential to enable the activity to be carried on.
- (6) No lease may be granted unless the applicant satisfies the Minister that exclusive possession is necessary for—
 - (a) The protection of public safety; or
 - (b) The protection of the physical security of the activity concerned; or
 - (c) The competent operation of the activity concerned.

- (7) For the purposes of subsection (6) of this section, the competent operation of an activity includes the necessity for the activity to achieve adequate investment and maintenance."
- 26 Section 17U(1) (a)-(g) identify matters which are relevant in the consideration of any application for a concession. We will return to discuss those matters subsequently.
- 27 Section 17U(2) sets out the basis upon which the Minister may decline an application. Section 17U(2) is here satisfied because the Minister has not signalled that there is a lack of sufficiency of information to enable the assessments therein described be undertaken.
- 28 We highlight the point that in considering the application for a concession the Minister must consider whether there are adequate or reasonable methods for remedying, avoiding, or mitigating the adverse effects of the activity, structure, or facility (section 17u(2)(b)).
- 29 This means that the Act contemplates that there will be activities undertaken in the area that have adverse effects on the environment.
- 30 It is noted that mitigation measures need to be either "adequate" or "reasonable" and need not be both. This means there is an alternative. Whether measures are adequate or reasonable should be viewed in terms of the objective of the Department in section 6(e) that recreation and tourism be fostered while still conserving the resource. The assessment as to adequacy and reasonableness will also need to be undertaken in regard to the matters listed in s17U(1)(a)-(g).
- 31 To assist in assessing the effects of the activity, structure and facility and also any mitigation measures proposed as to their adequacy or reasonableness we must first gain an understanding of the existing environment. The document which contains Airwalks application to the Department for a concession application contains at page 3 under the heading "Areas and Environment" an overview of the existing natural environment and social environment and archaeological and historic sites. Put briefly the natural environment includes a low land podocarp broad leaved vegetation forest. The existing social environment includes a gravelled access road, car parking, short track and foot bridge crossing the gorge. An area for picnicking is available on the true left bank of the river. The gorge is currently used for kayaking with a commercial operator, divers frequent the gorge and there is some activity by four wheeled drive vehicles driven in parts of the riverbed. No recorded archaeological sites of Maori or European origin exist in the vicinity of the Hokitika Gorge according to the New Zealand Archaeological Association's site recording scheme.
- 32 These matters are addressed in detail in the above described document, particularly in the Ecological Assessment dated January 2005.
- 33 Referring to the Assessment of Ecological Effects prepared by MWH, the application presents some minor or temporary adverse effects on the environment (it also acknowledges some potential effects, for example on wildlife). The report suggests mitigation measures to avoid, remedy or mitigate the effects raised by the proposal. These measures are "reasonable" and "adequate"⁸.

⁸ See sections 7-10, 11-12 of the Preliminary Ecological Assessment by MWH NZ Limited

- 34 Placement of the towers and in particular the effect of that placement on trees is assessed in the above described document. The root plate of a live tree is estimated and is deemed an indicator of typical primary root plate diameter for purposes of assessing effects for this proposal. It is noted that there will be some fine root severing for trees closer than 2.58m from the towers. However, there will only be two trees that are within this distance from the tower foundation centre. These are a Miro at Tower 8 which is 20cm in diameter and a 22cm kamahi at Tower 11. These trees are small therefore effects of tower construction are deemed to be negligible.
- 35 The tower guy wires which stabilise the towers can be undertaken in consideration of tree position to avoid guy wire contact with tree parts and to minimise root plate disturbance where dead man anchors need to be used when ground anchors are not suitable.
- 36 Similarly in relation to the entry and exit structures there are no trees near enough to the exit structure to suffer root damage⁹. However, there is a small Rimu tree within 4m of the entry structure¹⁰.
- 37 The tower and walkway span construction itself is not anticipated to require removal of large live trees but monitoring of tree condition throughout the life of the project will be required.
- 38 The construction methodology utilises span segments being lifted into place by crane after positioning of the towers and having undertaken the guide walk to strengthen towers. Wherever possible the span segments will be "threaded" through the canopy or sub-canopy vegetation with as little cutting as possible.
- 39 It may be the case that there is the need to remove dead and senescent trees, but the key consideration will be safety considerations. However, it is planned that all significant trees will be subject to formal arboriculture assessment if the project is approved in principal. It is suggested that there be a condition if a concession is granted with specific prescriptions made for individual trees as necessary to maintain as high a level of safety as practical, yet retain as many natural values of the site as possible.
- 40 During construction there will be the need to excavate some 4-5m² by 1m deep hold to accommodate each tower foundation.
- 41 The vegetation likely to be cleared will include ground ferns, mosses, liverwort seedlings and saplings of various broad leaf species. They are identified in Appendix 5 to the Report. The earth working machinery, the Bob Cat and kibble will be lowered into the site by crane or helicopter to minimise the extent of the disturbance to forest vegetation.
- 42 The effects of the works will be for a very limited duration as once the towers are securely positioned the excavated areas will be back filled with excavated spoil and contoured in sympathy with the surround ground profiles. Stockpiled humus or other organic materials will be disbursed over the area to ensure rapid reinstatement of the forest floor.

⁹ Photograph B, Appendix 3

¹⁰ Photograph A, Appendix 3

- 43 During construction there will be construction disturbance from the operation of machinery such as the helicopter and crane over a period of some several months. This is likely to cause wildlife and in particular bird life to avoid the immediate area. Bird populations will be able to re-establish their territories in a short period of time following the construction period.
- 44 In relation to the visitor centre car parks and manager's residence there will be the need to clear some vegetation from each site. The affected areas include the foot print to each facility plus an adjacent area around the perimeter including access ways for construction machinery and the like. Full site clearance is not necessary.
- 45 The Ecological assessment comments in detail on the effects of operation and maintenance of the air walk as well as operation and maintenance of the visitor centre car park residence. The Ecological assessment at Chapter 11 sets out proposed mitigation and restoration measures which are complete and comprehensive. These measures are directed at ensuring that construction activity is undertaken to cause the least amount of disturbance to the vegetation and wildlife as possible. In addition, the site restoration measures recommended within the Ecological assessment are intended to restore forest covers across the variously described disturbed areas as soon as possible.
- 46 The site control vegetation and site restoration measures are focused on mitigating the effects of the construction related activities while management of unstable/hazardous trees and noxious weed control are ongoing mitigation measures, they are integral to the operation of the air walk and associated facilities.
- 47 In addition the long term mitigation measures proposed as described above will be supported by signage and other educational initiatives proposed by Airwalks including promotion of the New Zealand Environmental Care Code and avoidance of littering. Airwalks also proposed to develop a predator control programme within the Hokitika Gorge Scenic Reserve in consultation with the Department in order to assist in recovery of nature bird populations in the area.
- 48 The mitigation measures proposed are both reasonable and adequate having regard to the receiving environment, the nature of the various parts of the facility, the construction programme and the restoration programme which form part of the proposal.
- 49 Subsection (3) of section 17u states that the Minister shall not grant an application for a concession if the proposed activity is contrary to the provisions of the Act or the purposes for which the land concerned is held.
- 50 "Contrary" means opposed in nature or tendency.¹¹ This meaning should also be read in relation to the function of Department to foster recreation and tourism while ensuring the conservation of the area.
- 51 It is important to note that there is an alternative in subsection (3). A concession will not be granted where the proposed activity is contrary to the Act or is alternatively contrary to the purposes for which the land is held.

¹¹ The Concise Oxford English Dictionary, 6th Edition

- 52 This application is neither contrary to the Act nor is it contrary to the purposes for which the land is held. Support for this submission is covered in the matters referred to above.
- 53 In conclusion to this point it is contended that the proposal is not contrary to the provisions of the Act. It is supportive of them to the extent that it is in accord with the purpose and principles of the Act. Further, it is contended that the proposal is not contrary to the purposes for which the land concerned is held. The proposal in short provides a mechanism by which present and future generations can gain access to recreation and be educated in relation to conservation. It also provides a means by which this locality can be utilised for tourism.

The Reserves Act

- 54 Use and protection of scenic reserves are provided for in section 19 of the Reserves Act.

"19. Scenic reserves—

- (1) It is hereby declared that the appropriate provisions of this Act shall have effect, in relation to reserves classified as scenic reserves—
- (a) For the purpose of protecting and preserving in perpetuity for their intrinsic worth and for the benefit, enjoyment, and use of the public, suitable areas possessing such qualities of scenic interest, beauty, or natural features or landscape that their protection and preservation are desirable in the public interest:
 - (b) For the purpose of providing, in appropriate circumstances, suitable areas which by development and the introduction of flora, whether indigenous or exotic, will become of such scenic interest or beauty that their development, protection, and preservation are desirable in the public interest.
- (2) It is hereby further declared that every scenic reserve classified for the purposes specified in subsection (1)(a) of this section shall be so administered and maintained under the appropriate provisions of this Act that—
- (a) Except where the Minister otherwise determines, the indigenous flora and fauna, ecological associations, and natural environment and beauty shall as far as possible be preserved, and for this purpose, except where the Minister otherwise determines, exotic flora and fauna shall as far as possible be exterminated:
 - (b) The public shall have freedom of entry and access to the reserve, subject to the specific powers conferred on administering bodies by sections 55 and 56 of this Act, to any bylaws under this Act applying to the reserve, and to such conditions and restrictions as the administering body considers to be necessary for the protection and well-being of the reserve and for the protection and control of the public using it:
 - (c) To the extent compatible with the principal or primary purposes of the retention and preservation of the natural or scenic values, open

portions of the reserve may be developed for amenities and facilities where these are necessary to enable the public to obtain benefit and enjoyment from the reserve:

- (d) Where historic, archaeological, geological, biological, or other scientific features are present in the reserve, those features shall be managed and protected to the extent compatible with the principal or primary purpose of the reserve:

Provided that nothing in this paragraph shall authorise the doing of anything with respect to fauna that would contravene any provision of the Wildlife Act 1953 or any regulations or Proclamation or notification under that Act, or the doing of anything with respect to archaeological features in any reserve that would contravene any provision of the [Historic Places Act 1993]:

- (e) To the extent compatible with the principal or primary purpose of the reserve, its value as a soil, water, and forest conservation area shall be maintained.

(3) It is hereby further declared that every scenic reserve classified for the purposes specified in subsection (1)(b) of this section shall be so administered and maintained under the appropriate provisions of this Act that—

- (a) Except where the Minister otherwise determines, the flora and fauna, ecological associations, and natural environment and beauty shall as far as possible be preserved:
- (b) The public shall have freedom of entry and access to the reserve, subject to the specific powers conferred on administering bodies by sections 55 and 56 of this Act, to any bylaws under this Act applying to the reserve, and to such conditions and restrictions as the administering body considers to be necessary for the protection and well-being of the reserve and for the protection and control of the public using it:
- (c) To the extent compatible with the principal or primary purposes of the retention and preservation of the natural or scenic values, open portions of the reserve may be developed for amenities and facilities where these are necessary to enable the public to obtain benefit and enjoyment from the reserve:
- (d) Where historic, archaeological, geological, biological, or other scientific features are present in the reserve, those features shall be managed and protected to the extent compatible with the principal or primary purpose of the reserve:

Provided that nothing in this paragraph shall authorise the doing of anything with respect to fauna that would contravene any provision of the Wildlife Act 1953 or any regulations or Proclamation or notification under that Act, or the doing of anything with respect to archaeological features in any reserve that would contravene any provision of the [Historic Places Act 1993]:

- (e) To the extent compatible with the principal or primary purpose of the reserve, its value as a soil, water, and forest conservation area shall be maintained."

- 55 Applying the same approach of statutory interpretation to s19(1)(a) the Act provides that the device of a scenic reserve may be utilised for a range of purposes, namely the purpose of protecting and preserving in perpetuity for their intransigent worth and for the benefit, enjoyment and use of the public suitable areas possessing such qualities of scenic interest, beauty or natural features of landscape and that their protection and preservation are desirable in the public interest.
- 56 By these words it is clear that the protecting and preserving of scenic areas is recognised by the act. Importantly, however in the context of this application this section provides they are to be so protected and preserved for a reason and that reason is for the use of the public while at the same time protecting and preserving those areas. Again, for and in the public interest.
- 57 Section 19(2)(b) is important in that it establishes a back drop against which the current application can be viewed. Section 19(2)(b) explicitly recognises and provides for the public freedom of access and entry to reserves. Explicitly the Act utilising the critical word "shall" give the public a legal right to have freedom of access and entry to reserves subject to the powers conferred by the Act on administering bodies and subject to any by-laws those administering bodies may make. However, those conditions and restrictions as imposed by the administering body are to be necessary for the protection and well-being of the reserve and for the protection and control of the public using it. They are not for the purpose of preserving only the area in perpetuity.
- 58 Accordingly, the proposal squarely fits s19(2)(b) in that it is a mechanism which enables the public to utilise their statutory right of freedom of entry and access to reserves. The proposal does so in a way which meets with the need for the protection and well-being of the reserve and also for the protection and control of the public utilising both the reserve and the proposal.
- 59 Section 19(2)(c) provides for the development of amenities and facilities where they are necessary to enable the public to obtain benefit and enjoyment from the reserve. Clearly statute here is expressly and specifically recognising for utilisation of open portions of the reserve for amenities and facilities enabling the public to obtain the benefit and enjoyment of the reserve.
- 60 Again, it is contended that this proposal is in-keeping with this purpose.

Response to submissions

- 61 Submission 'A' from member of public
- (a) The submission states that the Department has a duty to protect the special qualities of the land held under the Act, and maintain its intrinsic values, and to safeguard the options for future generations.
- Response: The submitter makes an interpretative error. The interpretation suggested by the submitter may be what he/she wants the Act to say, but it is not what the Act actually says. Therefore, the basis of the point made in the submission is not available. It is more correct to say

that the DEPARTMENT has a duty to manage the areas of conservation land. This management clearly involves balancing protection against reasonable use of the land.

“Reasonable use” includes mining activity, construction of walking tracks and huts, activities in the nature of controlling pests, and providing access to conservation and reserve areas to the public (See section 170).

The Minister in considering the application for concession will take into account, as mentioned above, the adverse effects of the proposal and will determine whether the mitigation measures proposed are sufficient.

Therefore, the submitter’s comments are useful to generally reiterate the consideration that the Minister will make. The submitter does not however, specify what “special qualities” exist in the area, and the particular “intrinsic values” that ought to be safeguarded, which means that these matters cannot properly be taken into account.

Further the submitter does not have regard to nor comment upon the assessment undertaken by the applicant in terms of the receiving environment. Nor does the submitter place appropriate weight, or even have regard to the ways in which the applicant proposes to avoid, remedy or mitigate any minor adverse effects. The submitter does not comment upon the proposed mitigation and restorative measures which the applicant volunteers as conditions of the concession.

- (b) The submission states that DEPARTMENT must protect and preserve in perpetuity the land held under the Reserves Act 1977.

Response: the submitter appears to be referring to the words in s19(1)(a) of the Reserves Act 1977. The submitter makes an interpretative error when referring to the relevant section. This is because the submitter fails to indicate the context in which the words are written and therefore mistakenly considers that the section intends that land be locked away. As discussed above, the Act does not seek to lock land away, rather it seeks a balance between conservation and preservation of resources and reasonable use.¹²

To test the proposition made by the submitter, we consider the result if their view were applied. The result would be a conservation estate which is inaccessible by the public, which is not in keeping with the Act. As discussed above, the Act provides for access by the public. There are situations where restricting access by the public is appropriate, of which this application is not one. Examples are where very rare species of tree or animal are given an exclusive area in which to revive their species, or which is otherwise very sensitive to human activity.

- (c) “Low-key facilities” to be provided by the DEPARTMENT.

Response: It is clear from section 170 that every person is given the right to make an application for a concession to undertake an activity in a Conservation or Reserve area. In considering such an application, the Minister must assess the level of environmental effects from the proposal.

¹² See s19. “Reasonably use” is dependant upon the particular type of reserve, ie scenic, recreational, etc.

In this regard, what the submitter thinks should be done, that is, the building of "low key" facilities is not relevant to this application. This is because public opinion or an individual's opinion is not an "effect on the environment". Furthermore, there is no available basis in section 17u upon which public opinion can be given consideration. To do so would give rise to a poll, which is inappropriate.

- (d) Effect on the wider Kokatahi-Kowhitirangi communities.

Response: It is considered that the effect on the Kokatahi and Kowhitirangi communities are no more than minor. If there was a potential effect then this matter would have been covered in the assessment of environmental effects in the application or in the draft Determination Report.

Further, it is noted that the submitter does not identify what "effect" would be caused to the communities. Therefore, this submission ought to be disregarded because it is a general catchall type submission which does not provide particulars to support the contention that there will be unacceptable effects on the Kokatahi at Kowhitirangi communities.

62 Submission 'B' from member of public

- (a) The submission states that DEPARTMENT must hold conservation land for the "protection" of natural and historic resources for the purpose of "maintaining their intrinsic values", providing for their appreciation and recreation enjoyment by the public and "safeguarding the options of future generations".

Response: Again, the submitter makes an interpretative error. The submitter is selectively quoting words from section 6 to try and give the section a meaning that he/she wants. However, this is not what the Act says, and it is not the proper approach to interpretation. Therefore, the basis of the point made in the submission is not available.

- (b) The submission states that under the Reserves Act 1977 DEPARTMENT must protect and preserve in perpetuity for their [the land's] intrinsic worth.

Response: the submitter appears to be referring to the words in s19(1)(a) of the Reserves Act 1977. Again, the submitter makes an interpretative error when referring to the relevant section. This is because the submitter fails to indicate the context in which the words are written and therefore makes the factual mistake that the section intends that land be locked away.

- (c) The submitter states that the and was donated by a local family for the enhancement of the Scenic Reserve and the free enjoyment of all.

Response: Again the submitter makes an factual error. This is because the reasons for gifting the reserve, if not incorporated into a Conservation Management Plan, are not relevant. The land is now owned by the Crown and the Administering body is charged with managing the land in accordance with the provisions of the Reserves Act.

In any event the applicant here proposes a mechanism by which members of the public will gain even greater enjoyment of the scenic reserve while at the same time ensuring the enhancement of a scenic reserve.

- (d) The submitter states that DEPARTMENT is bound to protect the physical and social environment of [conservation] lands ... from adverse effects.

Response: The submitter makes another factual error. This is because the effect on the Kokatahi and Kowhitirangi communities are no more than minor. If there was a potential effect then this matter would have been covered in the assessment of environmental effects in the application.

Perhaps more importantly if this effect was of concern one would imagine that it would have been identified and isolated in the draft determination report, which it was not.

Further, it is noted that the policy referred to does not appear in the Act in the form set out in the submission. If the submitter is referring to the draft CMS, then his/her submission is of less relevance. If this is the case see below for further discussion of the draft CMS.

- (e) At point 5 of the submission the submitter appears to be making two points, one is that a number of associated activities which make up the entire activity are inappropriate in the area, and two that there is likely to be a precedent effect.

Response: In relation to the first part of the point the submitter makes a further factual error. This is because a number of the matters raised by the submitter are already being undertaken and are commonly carried out in reserve areas. It is common to have car parks near a reserve, and consequently there will be a need for effluent disposal systems. Most reserves have walkways, these utilise a range of materials from steel, to wood and concrete. The submitter makes the factual error of thinking that the resource is pristine by not taking into account the current state of the existing environment.

In relation to the second point made, the submitter makes an interpretative error in suggesting that there is a precedent issue. The reason for this is that under the Act each application to conduct an activity in a conservation area must go through the same process, and each activity must demonstrate that the adverse effects on the environment are mitigated by particular methods. Therefore, each application is judged based on its merits.

- (f) The submitter, at point 6, states that the changes will have "unacceptable effects" on existing users of the area who will "displaced" by the proposed activity.

Response: The submitter makes a further factual error, as the proposal does not impact upon existing users of the area. This is because, as detailed in the application, the very nature of the structure (its height, location, position, colour and design) mean that it will be either screened by the surrounding trees or otherwise not noticeable. Thus, even if a member of the public were walking through the reserve in close proximity to the structure it is highly unlikely they would notice its presence.

Furthermore, it is noted that the Act does not pick winners. By this it is meant that existing groups do not take precedence over another group. The Minister must assess use from the criteria in the Act and if this proposal will not adversely impact upon the environment, then the concession ought to be granted (see section 17u above).

Aspects of safety are dealt with within the MWH Report as earlier identified and will not doubt be the subject of evidence provided by MWH in support of this application.

- (g) In relation to points 7 and 8, the aspects of safety will be dealt with by MWH in their evidence.

63 Bird and Forest submission

- (a) The Forest and Bird submission, while somewhat informative, does not contain substantive reasoning for its opposition to the proposal and merely states that it is “strongly opposed” to various aspects without more.
- (b) “The Social Effects of the Application”—the submitter states that the Minister must consider public opinion expressed through the submissions to the application for concession.

Response: The submitter makes an interpretative error by incorrectly suggesting that matters are contained in the Act. Section 17u of the Act states the matters that the Minister must take into account when deciding whether to grant a concession. There is nothing in section 17u to suggest that “public opinion” is relevant, therefore it is not a matter to be taken into account. If public opinion is relevant then it must be based on statutory grounds (that is, identifying actual adverse effects on the environment).

To take into account public opinion as the submitter suggests would amount to a poll, which is clearly in contrast to the principles and purposes of the Act.

- (c) CMS Provisions—that submitter states that the proposed activity is contrary to various provisions of the draft Conservation Management Strategies (CMS).

Response: The submitter makes a factual error by relying on the draft CMS. The CMS is at the draft stage and is yet to be notified. There is nothing in the Act to suggest that a draft CMS ought to be included in the overall consideration of an application for concession. Therefore, the draft CMS is irrelevant until such time as the Conservation Authority has given approval under section 17G.

Before the draft is approved it must be considered by the public and have submissions made on it, and is subject to amendment by the Director-General, the Conservation Board and the Minister. Therefore, the draft is at a very early stage and will likely undergo significant changes before being approved.

It is noted that there is no statutory ability to put the application on hold

until the draft CMS becomes operative and there is no justifiable reason for doing so.

Importantly, the CMS must be in accordance with the Act. Section 17D(1) of the Act states that these statements are “to implement general policies and establish objectives for the integrated management of natural and historic resources...”. Therefore, if the application is in keeping with the Act, then it will be in keeping with the CMS.

The final part of this section in the submission quotes various paragraphs of the CMS. Even if regard could be had to the CMS, the submitter makes an interpretative error. This is because the words of the CMS should be read in the context of the entire document, not considered in isolation.

Lastly, the criticism that the application lacks information is rejected as invalid. The processing of the application allows DEPARTMENT to request information. The DEPARTMENT has assessed the application and considers that it contains sufficient information for the application to be processed under Part IIIB of the Act.

- (d) Ecological effects—the submitter states that the ecological effects are inconsistent with the purposes for which the land is held.

Response: The submission provides insufficient reasoning for its “strong” opposition.

Notwithstanding that, the effects referred to are adequately dealt with in the assessment of effects in the application.

The assessment of effects which are included in the application. Many of the points already made in response to other submissions or within this submission as related to a description of the proposed mitigation and restoration measures are relevant here. It would seem that the submitter has not had proper regard to the assessment of effects undertaken by the applicant and the means by which the applicant proposes to avoid remedy or mitigate and undertake restoration works.

- (e) Purpose for which the land is held—the submitter states that granting the application would be contrary to the purposes for which the land is held.

Response: The submitter makes an interpretative error by narrowly and incorrectly interpreting the Reserves Act. This is because the submitter fails to indicate the context in which the words are written and therefore makes the factual mistake that the section intends that land be locked away. It is clear from section 19 itself that the Act provides a mechanism for the use of the land, thereby illustrating that “preserve” does not mean absolute preservation.

64 Conservation Board submission

- (a) Conservation Act: The submitter states that inadequate consideration was given to alternative locations.

Response: The submitter makes a factual error. This is because it is clear from the application for concession that the applicant has made significant

attempts to locate alternate sites.

The submitter makes an interpretative error in what it considers to be sufficient consideration of alternatives. Under section 17u the Minister must consider whether the proposed activity could “reasonably” be conducted on another site.¹³ Given the nature of the proposed activity, it could only reasonably occur in the proposed location or those listed as considered alternatives.

- (b) Draft CMS: the submitter states that the proposed activity is inconsistent with the draft CMS.

Response: Again, the submitter makes a factual error by relying on the draft CMS. The CMS is at the draft stage and is yet to be notified. There is nothing in the Act to suggest that a draft CMS ought to be included in the overall consideration of an application for concession. Therefore, the draft CMS is irrelevant until such time as the Conservation Authority has given approval under section 17G.

Even if regard could be had to the CMS, the submitter makes an interpretative error. This is because it quotes words paragraphs of the CMS which should be read in the context of the entire document, not considered in isolation.

- (c) Reserves Act: the submitter states that the proposal is not in keeping with preservation principle in section 19 of the Reserves Act.

Response: The submitter makes an interpretative error by narrowly and incorrectly interpreting the Reserves Act. This is because the submitter fails to indicate the context in which the words are written and therefore makes the factual mistake that the section intends that land be locked away. It is clear from section 19 itself that the Act provides a mechanism for the use of the land, thereby illustrating that “preserve” does not mean absolute preservation.

It is noted that the submission refers to a rule pronounced by “the Courts” but does not include reference to relevant case law. This means that reliance should not be had of the point made.

- (d) Mitigation measures: The submitter states that no level of mitigation could avoid the “presence” of the proposed structure.

Response: The submitter appears to be referring to an amenity effect from the proposed activity. If the effect were considered more than minor it would have been included in the assessment of effects in the application. Nevertheless, the amenity effect of the proposed activity would be no more than minor because the majority of the structure will be screened from view.

The analogy to the Mt Cavendish Gondola is inappropriate. This is because the proposed activity is on a very different scale to the Gondola; the Gondola was a different concept, in a different location, and by its very

¹³ “Reasonable” means having sound judgement, sensible, moderate, not expecting to much (The Concise Oxford English Dictionary, 6th edition)

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Attn: Thomas Frank

By: Email

Dear Sir

Issue

1. You have asked us to provide to you an interpretation of section 17U(4) of the Conservation Act 1987 ("the Act"). Of particular interest to you is the extent and scope of the consideration under s17U(4)(a) where the Minister is enjoined not to grant any application for a concession if the activity related to that concession could reasonably be undertaken in another location either outside the conservation area to which the application relates or in another conservation area where the effects of the activity would be significantly less.

Statutory Interpretation

2. It is the Court's role to interpret and apply statutes. Decided cases on the meaning of statutes are valuable. Unfortunately there are no Court authorities, meaning decisions, which discuss the meaning of s17U of the Act. Therefore, we must undertake statutory interpretation of the section in accordance with established rules.
3. The proper approach to statutory interpretation is set out in section 5 of the Interpretation Act.
4. Section 5 states that when "Ascertaining meaning of legislation—
 - (1) The meaning of an enactment must be ascertained from its text and in the light of its purpose.
 - (2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.
 - (3) Examples of those indications are preambles, the analysis, a table of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment."
5. This means that words or a section of an Act cannot be viewed in isolation, nor can they simply be given their literal meaning. The interpretation of a particular word or section must be informed by the purpose of the Act.

Section 17U(4) Conservation Act 1987

- (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. It is noted that the Conservation Act is concerned only with that part of the proposal that will be located within the Conservation estate. Therefore, those parts of the activity which are not to be located on conservation land ought to be ignored for the purposes of this inquiry.

Purpose of the Conservation Act

7. The purpose of the Conservation Act is conservation of the land held or administered under the Act. The definition of "conservation" assists in determining the purpose of the Act. "Conservation" is defined in section 2 as "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."
8. The definition of conservation has a number of parts. Those parts are not ranked in any order however they are logically integrated. The first part of the definition seeks "the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values". Preservation and protection is then for the purpose of maintaining their intrinsic values. The punctuation used within the definition uses a comma rather than a full stop after the word values. The definition continues immediately on to include the following words "providing for the appreciation and recreational enjoyment by the public". These words provide the reason for the preservation and protection of natural and historic resources or explanation why these actions are taken. Again the definition section utilises a comma at the end of the word public as opposed to a full stop and uses the conjunction "and". The definition continues and includes the words "safeguarding the options for future generations".
9. Therefore we can say that preservation and protection of natural and historic resources is for the purpose of maintaining the intrinsic value of those natural and historic resources. However that is not a standalone goal. It is integrated and logically connected to the balance of the definition. The balance of the definition provides the reason or explanation for so maintaining the intrinsic values of the natural and historic resource. That reason is to enable or provide for the appreciation of those natural and historic resources and recreational enjoyment by the public. In addition the further reason to so maintain the intrinsic values of the natural and historic resource is to safeguard the options of future generations in relation to those natural and historic resources.
10. In our opinion then the purpose of the Act is not about preserving and protection of natural and historic resources for their own sake. Rather there is a purpose in such actions which is firstly to maintain the intrinsic value of the resource, secondly to provide for their appreciation and recreational enjoyment and thirdly to safeguard the options of future generations. There is a clear and obvious interlinking between the reason why natural and historic resources are so maintained and the provision of access by members of the public to gain appreciation and recreational enjoyment from those natural and historic resources.

In other words preservation and protection is not and should not be seen as a standalone goal or the sole purpose of the Act.

11. If a proposed activity does not adversely impact on the preservation and protection of the natural resource, then the purpose of the Act would not be achieved by refusing the application under subsection (4). This is because the purpose of the Act is multi-faceted. The Act requires or seeks the maintenance of the intrinsic values of the natural and historic resource, while at the same time providing for their appreciation and recreational enjoyment by the public while at the same time safeguarding the options of future generations.
12. In our view then the balancing act required by the decision makers under s17U of the Act is to determine whether or not in this case the access to the resource in the manner proposed gives rise to an adverse effect which cannot be remedied, avoided or mitigated. If the proposed activity does not cause adverse effects on the environment of the conservation estate sufficient to raise the issue of alternatives under s17U(4)(a)(ii), the Minister is not permitted to reject the application on the basis of "available alternative sites" as that would not be in accordance with the Act or its purpose. This is because the purpose of the Act includes more than the goal of preservation and protection. It includes preservation and protection, while providing for appreciation and recreational enjoyment by the public, while providing for the safeguarding of options for future generations.
13. If the finding is made that the proposed activity does cause adverse effects on the environment of the conservation estate, and there will as a consequence be impacts on the maintenance of the intrinsic values of the natural and historic resource involved, then the tests set out in subsections 4(a)(i), (ii) and (b) apply.

14. **Key words in section 17U(4)**

"The Minister shall not grant any application for a concession... where he or she is satisfied..."

15. These words must be interpreted in the light of the purpose of the Act. We note that the words "shall not grant" must be interpreted in light of the subsequent words found in the same subsection. We think that interpreted correctly the words immediately identified below impact markedly on the mandatory obligation not to grant an application by identifying and or setting a threshold, which is set at a lower level. We base this view on the words used, namely that the Minister is "satisfied" and secondly the words "could reasonably be undertaken". We now move to discuss those words in more detail.
16. To be "satisfied" means "to fulfil the requirements of, to relieve of doubt."¹⁴
17. This does not mean that the Minister has to be convinced beyond all doubt that the activity could reasonably be undertaken in another location.
18. We think that the deliberate choice to use the word "satisfied" results in the outcome that the Minister must be satisfactorily convinced that the activity could not reasonably be undertaken in another location if consent for the concession is to be forthcoming. Translated into a legal context we take this to mean that there must be sufficient evidence to show on the balance of probabilities a certain circumstance exists.
19. Accordingly to obtain this level of satisfaction does not in our view necessitate an in-depth investigation into the benefits and detriments of each and every possible alternative to so satisfy the Minister. We say that there are limits on the scope of the considerations and we discuss them further below. In our view the opening part of s17U(4) is about providing the Minister with a sufficiency of information and evidence to a level which leads to satisfaction as opposed to proving the proposition beyond any doubt whatsoever.

¹⁴ Collins English Dictionary

"could reasonably be undertaken in another location"

20. The word "reasonably" again is deliberately chosen. The word "reason"¹⁵ has a meaning of "an argument in favour or a justification for something". "Reasonable"¹⁶ has a meaning of "showing reason or sound judgement, having modest or moderate expectations". In context we interpret the word "reasonably" to mean that there must be a rational argument, it must be logical or obvious that the activity or structure for which the consent is sought can or cannot be undertaken in another location as described in subparagraphs (i) or (ii) or s4(b).
21. Therefore the suggestion that the activity or structure could locate in another location cannot be as a result of the choice of the word, "reasonably" a fanciful claim. It must have as its basis a reasoned justification. Expressed another way, it must be sound to say and conclude that the activity could reasonably locate in another location.
22. Thus, the use of the term "reasonably" directs that an inquiry as to whether the activity would be feasible or achievable in another location needs be undertaken. In order to answer that question an analysis must be undertaken of the proposed activity, its fundamental requirements and the characteristics of the proposed site which are inextricably linked with the purpose and point of the activity.
23. Taking this point further, the inquiry requires an assessment of the nature and characteristics of the area of the proposed site and a similar assessment of the alternative sites. In order to show that the alternative is a location that the activity "could reasonably be undertaken" in it must be shown that the characteristics of the alternative site are such that the proposed activity would be equally well suited to it. That the costs or detriment of undertaking the activity on or in the alternate site would not be significantly greater than on the proposed site. That the benefits of undertaking the activity on the alternate site were not significantly less than on the proposed site. This means that like must be compared with like.
24. What the Act does not do is provide a template under which this comparison could be and should be undertaken. However, we say because of the words used in s17(4) the key to the consideration of alternatives is that the intrinsic values of the subject site linked with the purpose and point of the activity and structure proposed forms the essential elements of such a consideration.
25. What this involves is identifying the key or core requirements that the proposed activity needs for it to take place. Once these key elements are understood a set of criteria can be developed around those core elements. With this understanding in mind it is then possible to consider alternative locations to see if the activity with its accompanying structure could reasonably be undertaken in the alternate locations as identified by subparagraph (i) or (ii) or subsection (b). However, for the reasons we set out below we do not consider that all of the alternative locations referred to are relevant to this application.
26. The applicant has completed the exercise of establishing these core key components and established a set of criteria which identify the key elements of the environment of the proposed location and the key elements of the proposed activity itself. The criteria identified have then been applied to the other locations identified
27. The criteria chosen by the applicant are in our view reasonable and appropriate because they are in accordance with the purpose of the Act and allow for the proper assessment of the application. This is because an understanding is given of the receiving environment and the immediate surrounding area (for example, availability of transport and proximity to population bases), as well as the key constituent parts of the proposed activity and its purpose. To this end the list identifies an inter-relationship of the proposal and the proposed location.

¹⁵ Collins English Dictionary

¹⁶ Collins English Dictionary

28. Accordingly then applying s17U(4) requires the answer of a question whether the activity proposed could reasonably be undertaken in another area which has the same characteristics and values and surrounding circumstances as that within the conservation estate. In this way the scope of considerations of alternative sites is narrowed to an assessment of like with like.
29. The consideration required of alternatives is further limited by the wording chosen in section 4(a)(i), (ii) and (b) which we now turn to consider.

"(a)(i) Is outside the conservation area to which the application relates;"

The correct approach to interpret this section is to ask the question can the airwalk be built in the area (on the other side of the fence, so to speak) but outside the conservation estate? The rationale here would be to ensure that the conservation estate is only used where necessary. Support for this view is also found in the subsequent sub-paragraph (ii) which we will discuss later.

Parliament in our view did not mean by the use of these words that a concession is only to be granted when and if an applicant proves that either the structure or the activity can be undertaken or built anywhere else outside the conservation estate in New Zealand. If this were the correct interpretation, no application would gain a concession and none of the structures currently existing within National Parks or Scenic Reserves could lawfully exist. The words in sub-paragraph (a) require a reasoned approach. This means that the alternative outside the conservation area must possess the same characteristics and intrinsic values of the area within the conservation estate to which the application relates. In addition the words "to which the application relate" within sub-section (i) being deliberately chosen must be ascribed a meaning. We think that those words "to which the application relates" recognise the connection between the proposed airwalk and the intrinsic value of the conservation estate within which the airwalk seeks to locate.

Accordingly the words "to which the application relates" must mean an area in the vicinity of the area under consideration for the concession. This is because in our view there must be a match between the core characteristics and intrinsic values of the site within the conservation area and the site outside the conservation area. In this way the scope of the consideration of alternate sites is constrained.

Taking this approach, the application qualifies: The airwalk cannot be built outside the scenic reserve to which the application relates because the tall trees needed for an airwalk are only found within the scenic reserve.

"(a)(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;"

The second test introduced is: Can the activity be undertaken in another conservation area, where the effects will be significantly less. This would follow the rationale to use the conservation estate in the least harmful manner.

(a)(ii) differentiates between another conservation area (anywhere) and "another part of the conservation area to which the application relates". "Conservation area to which the application relates" here clearly means in the vicinity of the area under application. It follows that paragraph 4(a)(i) , which has exactly the same wording, has the same meaning – outside the estate, but in the area under application.

30. The Act does not define what an adverse effect is. However by definition an "adverse effect" is an effect which is "contrary or opposite in direction or position". In determining whether an activity could create adverse effects the nature of the environment is relevant. In addition an adverse effect must be perceptible and not the type of effect that one would normally experience in the day to day activities of a society. It is also clear that a holistic approach is required to consider the effects of an activity as a whole to determine the nature of its effects.

31. The words used in s17U(2) in particular provide for methods of remedying, avoiding or mitigating adverse effects of the activity structure or facility on the environment present within the conservation estate.
32. What is clear from these matters is that the Act does not seek to preclude an activity or use which gives rise to some effect. Expressed another way any activity which is undertaken and located within the conservation estate that gives rise to an effect which can properly be identified as being an adverse effect no more than minor would be permissible.
33. Taking this approach the application qualifies. The airwalk would, built in another location, not have significantly less effects, as the construction already follows least invasive techniques and is supported by infrastructure existing in the location to produce no more than minor effects in the chosen location. It can be demonstrated that these effects would however be significantly higher in other locations, for instance where the tree canopy is denser. There, large scale branch cutting and tree felling would be necessary to allow construction.

"(b) Could reasonably use an existing structure or facility or the existing structure or facility without the addition".
34. The final alternative of s17U(4) is subsection (b). This does not apply as there is no existing structure or facility that could be utilised in the place of the proposed Airwalks structure. This section is not relevant and accordingly should not form part of the consideration under s17U(4).

Conclusion

35. It is our opinion that the mandatory direction in s17U(4) is significantly qualified by the subsequent thresholds referred to in the balance of this section. Those thresholds require the Minister to be "satisfied", which we take to mean a position which does not take equate with absolute certainty.
36. By use of the word reasonably within the section we consider that the decision-maker is enjoined to undertake a comparison of like with like.
37. In relation to the possible alternatives identified in sub-paragraph (a)(i), (ii) and sub-paragraph (b) we consider because of the use of the words used within those sub-paragraphs the scope of those considerations is restrictive.
38. We say that this reasoned assessment based on a like with like approach is best undertaken by identifying and applying a set of criteria. The applicant has followed this approach. The upshot of the application of that criteria demonstrates that this proposal, its activity and structure cannot reasonably locate within the alternative locations proposed by the Act as they apply in this case identified within the section.
39. In our view the application passes all of the tests set by (a)(i), (ii) and sub-section (b) and accordingly a grant of a concession is available.
40. The assessment of alternate locations within the conservation estate requires a comparison of like with like. Given that the activity and proposed airwalk will not give rise to potential adverse effects which are more than minor at its proposed location, it is not possible to reasonably argue that there is available an alternate location within the conservation estate where the potential adverse effects of locating this activity would be significantly less. On the contrary, it can be shown that the adverse effects would be considerably higher in other locations which have been considered. The application passes the tests set by the acts.

Yours faithfully
ANTHONY HARPER

Paul Rogers
Partner

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APPENDIX K

The Applicant's Comments on the Draft Final Report

1. Preface

AWNZ in its reply does not deal with submissions but only with issues raised by the submitters that DoC considers relevant. It is a response to DoC views expressed in the draft document, not to submitter's views.

The document's layout suggests that applicant's views are to be presented towards the end of the document under subheading 7. However, a sentence in the draft under this subheading suggests that the writer intends to summarize our comments under subheading 3 - Submissions in favour of the Application.

We disagree with such a move. It would create the perception that our reply is a mere public relations exercise. In reality it is dealing with the arguments and issues raised and hence needs to be presented after the arguments have been presented.

The structure of the draft results in the main points appearing under more than one subheading. The applicant has read and given thought to all the points raised. To improve the clarity and readability of the comments (and with it the chance of correcting errors in fact and assessments), rather than commenting page by page, we have formatted our comments so as to address each of the main issues one by one, but only once. It follows though that if our views bear on the final form of the document, amendments will have to be made throughout the document.

The main points addressed in our response are as follows:

- * Procedure
- Public Opinion
- Issues arising from the effects of the development on the site
- Legal issues arising from the interpretation of the Reserves and Conservation Act.
- Proposed further special conditions and recommendations

2. Procedure

Applications for concessions are processed by the Department of Conservation (DoC) following a prescribed format. The department will only issue a First Determination Report on a complete application and then invite the public to voice their views before issuing a final report to the decision maker.

The balance of this process has been eroded by the fact that since the proposal first drew criticism from a vocal group of opponents (September 2004), the department has continuously indulged the opponent's every whim and denied hearing the applicant.

New points that submitters raised in their submissions were not referred to us for clarification. On topics where we held verifiable information (noise, choice of location) and sought to submit it, we were

told by the Department not to do so (DoC letter 7. 3. 2005).

Meetings sought with the commissioner to explain aspects of our proposal were declined. Staff positive about the proposal were removed from the process and staff openly opposed were appointed to handle all further work.

AWNZ have had no right to reply to submissions (or even to the names of the people opposing the proposal). During the four day hearing in April 2005 the public and the media were allowed to be present (against the department's own guidelines on hearings). As only submitters had speaking rights, their views were the only ones reflected in the newspapers, which published material every day during the period of the hearing.

This structure has meant that the writer of the draft final report has heard only one side since entering the process. The draft of the final report reflects this imbalance and flawed procedural structure.

We now have been asked to comment, as the department is required by law to do so and to give the appearance of both sides being heard. Whether we can be convinced that it is any more than that will depend on how the department treats our response, whether it is willing to look at the flaws in the draft report and address them by reviewing and where appropriate, amending the reports conclusions and recommendations,

3. Public opinion

The public opinion recorded in DoC papers is mostly negative. That all of Hokitika opposes the proposal is untrue. In April 2004 AWNZ instigated a public meeting to inform the public. This meeting produced mixed results. There was vocal opposition from a few, and open support from a few.

We handed out a questionnaire and did not at all interfere with responses, which were returned to us. This was an early survey. Its value lies in the fact that it was the last public response to the project, which was not poisoned by distortions by opponents common later on.

Of 63 forms returned, 44 (69%) were positive, 3 undecided and 16 opposed. We enclose short descriptions of the main arguments raised and an interesting letter attached to one of the forms.

Page 4 of the draft mentions this survey but goes on to note that "it is not considered that this necessarily provides an accurate representation of views", without qualifying this assumption.

After the meeting, the campaign of people opposed to the development got underway. The group called itself Friends of the Hokitika Gorge and claimed in advertisements that Airwalks NZ would close access to current users of the gorge (copy of advertisement enclosed). This theme was repeated on a poster.

Shopkeepers at Hokitika hesitant to display it were reminded who their day-to-day customers were. Denying current users access (with the exception of jet boats) was never proposed by AWNZ. The opponents suggested it because it was useful to whip public sentiment, knowing that any questions of access are emotionally charged on the Westcoast.

On this basis of such misinformation the opponents collected 1309 signatures against the proposal. They were presented to the Department as the will of a third of the local population. They are not. The signatures were collected from all over New Zealand, with some coming from friends and relatives as far away as Germany.

The motives of people opposing the development are of equally mixed pedigree.

Clearly there are people honestly worried about the future of the reserve among them. It is one thing to note their concern. It is quite another to accept their expectation of what the development will create without a reasonable inquiry into the facts.

The question needs to be asked, not if the concern is real, but if the reason for the concern is valid and likely to become reality. This investigation has not been undertaken with any degree of seriousness.

4. Issues Arising From The Effects Of The Development On The Site

To measure honestly the results of the development on the character, peace and quiet of the area, one has to look at two things. Firstly, the true status quo of the reserve, not an idealised image of it, and secondly the changes which can be reasonably expected after development. The draft final report fails on both accounts.

4.1. Current Use

The view that the gorge is a secret place where locals get away from tourists is fiction. By all accounts, the gorge has become increasingly popular with tourists over the last five years. It is included in the Lonely Planet travel guide and European travel magazines. It is shown on the map distributed by the Hokitika information office to more than 50,000 visitors per annum. The road to the gorge is signposted from Hokitika. Publicity surrounding the current proposal has added interest and locals have observed a further increase in visitation.

The most common use of the reserve is for people to drive to the end of the road, walk down a short track over uneven steps to the swing bridge spanning the Hokitika Gorge, walk onto the bridge, talk, clap, try the echo, and take photos. A lot of these visitors come from Hokitika, have been driving for 40 minutes since leaving there and toilet in the bush before heading back to town as there are no toilet facilities at the reserve.

The reserve is unusual in that it has a public road running into its heart, ending in a small car park. This brings noise from cars, minivans and campervans approaching. Once the vehicles reach the existing car park, there is noise from reversing, idling engines and car stereos are being played. This can be heard in the reserve and down to the bridge over the gorge.

A second public road within the reserve veers off to the left from the main road towards the Whitcombe Valley. This road is used by farmers who graze stock on freehold land up the road, by trampers accessing backcountry and by kayak operators accessing a drop in point to the Hokitika River above the gorge.

The swing bridge is being used by locals living on the true left bank of the Hokitika River as a short cut and is crossed by motorbikes daily. This traffic also tears up the steps of the existing footpath from the car park to the bridge.

Submitters have said they go bush bashing in the reserve and some that they go shooting. The signposts of DoC within the reserve have been used for shotgun practice.

Stock is being grazed nearby and a cattle track runs through stewardship land in the area of the proposed bus car park, interspersed with corrugated iron and weeds. Stock has wandered down this track into the reserve and across the bridge.

When water levels are high enough, people use the river and gorge for jet boating.

Four wheel drives rumble through the riverbed of Granite Creek at the confluence with the Hokitika

River for fun or to pick up swimmers or kayakers who have drifted down the gorge.

There are overflights by scenic flights and helicopters bringing kayakers to remote locations further inland.

All of this is current fact, and is occurring without any development.

The position that the local population values peace and quiet at the gorge above all else is untenable. AWNZ, within their development plan, have proposed two measures, which would have greatly reduced the current noise levels in the reserve.

One was to move the car park further out. It was greeted with rage by submitters against the proposal. The benefit of reducing vehicle noise in the reserve did not outweigh walking 400 meters further.

AWNZ has also sought to ban jet boating in the gorge as inappropriate, noisy and dangerous to kayakers and swimmers. This proposal was opposed as well. Right of way rather than quiet was then the overriding principle.

4.2. Intrinsic Values

It is not an intrinsic value of a conservation site that currently few people go there. This value does not attach to the site but to peoples perception and behaviour and can change any time.

Spiritual values are not defined and claims that they will be compromised can therefore not be evaluated.

Material intrinsic values, such as scenic beauty, can be protected along with the development. This can be ascertained by contacting the managers at existing airwalks at Western Australia and Tahune, Tasmania. Further evidence can be found in independent (ABC television) footage on the Tahune airwalk.

Peace and quiet will be affected. However, the impact on peace and quiet after the completion of the development has been grossly exaggerated. Evidence we have supplied to that effect has been ignored.

4.3. Visitation, traffic, noise

Visitation at airwalk sites in Australia average between 350 and 500 people a day. A similar visitation can be expected at Hokitika. During the summer months, when the bulk of visitations occur, these visitors will be spread over 12 hours of opening time, On average this means 425 a day and 35 people per hour.

The statement in the report that the majority of visitors is expected to arrive in buses is an error in fact. Australian patterns show that the majority of visitors are in fact independent travellers arriving in cars.

Of 425 people on an average day, 125 are expected to arrive in three buses, 300 people would arrive (on an average of 2.5 people per car) in 120 cars. Over the course of a day this equates to ten cars per hour and one bus every three hours.

Traffic outside the reserve will increase with additional visitors. Traffic inside the reserve will be directed to car parks away from the centre of the reserve sited on stewardship land. These car parks will not only capture airwalk visitors but all visitors to the gorge. Thus, the car parks as proposed will reduce vehicle noise within the reserve.

The report expects people to be molested by noises and smells of buses. Apart from the small number

and low frequency of buses, and apart from bus drivers being made to turn off their engines when waiting, such molestation is highly unlikely.

The proposed bus car park lies at fork between the reserve access road and the turnoff of Whitcombe Valley Road, a public road that has been open for general traffic in the past and will remain open in the future.

It lies at a distance of approximately 200 metres further out than the currently existing car park. Buses will not be able to travel further up the road, as there is no turning point for them.

It is simple to check how far away an idling bus can be heard. One simply stands next to a bus and walks away counting steps until the noise becomes inaudible. AWNZ has conducted simple checks at six tourist stops using a modern 50 seater Volvo bus.

The records show that bus engines were not audible further than 80 paces in a straight line, much less if the path leading away from the bus was not straight and there was bush on the margins. As the road from the bus park to the swing bridge at Hokitika Gorge is not straight, and carries bush it is expected that noise will travel even less. It follows that people in the gorge will not hear a bus.

The proposed visitor centre is to be developed on open grassland by the river well away from the gorge. People talking on the bridge crossing the gorge cannot be heard at the location of the visitor centre. People talking at the visitor centre cannot be heard by people standing on the bridge.

Visitors are to walk up a half formed track linking back to the road and enter the airwalk from there. Visitor behaviour has been branded by submitters as people trampling, screaming, throwing things. This is untenable.

Airwalks are a peaceful experience. This can be ascertained by asking DoC staff who have visited existing airwalk sites in Australia or the managers of the sites at Western Australia, which is run by CALM, DoCs Australian counterpart or the airwalk at Tahune, which is operated by Forestry Tasmania.

, manager at the Western Australian Site, states in a letter:

“Management strategies are in place to ensure people flow efficiently through the site without detracting from the experience.”

, manager for Forestry Tasmania at the Tahune Site states in a letter:

“The existing river and forest environment is quiet and serene. The current environment and the Airwalk complex has not had any impacts on any of this.”

The well known travel writer has dedicated two pages of his book “Down Under” on his experience at the airwalk in Western Australia and describes it as a wonderful experience of quiet social interaction which “deserves to be world famous”.

To support these claims, AWNZ has had video footage of client behaviour taken, It shows people walking, observing, pointing points of interest out to each other. In addition decibel noise measurements have been taken and documented via video at the Airwalk at Tahune, Tasmania. These measurements show an ambient natural noise level of 35 dB within the forest underneath the airwalk. Visitors on the way to and from the airwalk have been measured at 45 to 55 dB. The sound of the river flowing past the site has been measured at 60 dB.

In the light of this, expected sound levels for the proposed development at the Hokitika Gorge have been analysed by sound engineers. of the acoustics engineering company Marshall

Day of Christchurch has analysed the project in a three-page letter, His summary on page 3 runs as follows:

There are several potential sources of noise associated with the proposed Air Walk. The potential effects of the proposal are considered to be minimal. The only area we have identified as requiring particular attention is impact noise of footfall on the walking surface. We believe this can be adequately mitigated by installation of suitable isolating materials, and we understand the applicant will address this at the detailed design phase. Noise levels generated by the proposed activity are not considered to be such that they will cause disturbance to existing users of the immediate area.

4.4. Seasonality

Another point, which has not been considered at all, is seasonality. The Territorial Statistics for Westland District show that of 554.111 visitors who stayed overnight in the year to April 05, 7 1.35% visited in the months November 04 through to April. At the Hokitika Visitor Centre, 39.911 of 50.856 inquiries or 78.48% were made during the same months.

The reality is, that for six months of the year, very little will change at the Hokitika Gorge after development. It is worth noting that this quiet time affords some of the nicest weather on the coast.

5. Legal Issues Arising From The Interpretation Of The Reserves Act and the Conservation Act

5.1. Reserve development and access already adequate

The draft report claims on many occasions (pages 49 and 52) that current access to and development of the reserve is adequate. This position contradicts the department's own First Determination Report which stated "There are virtually no tracks or facilities in the areas concerned." Since the publication of this report (August 2004) no tracks have been built or upgraded.

Currently, only people who can manage irregular steps (which are often torn up) can visit the swing bridge, which then affords views of the gorge. Elderly people with issues navigating bad steps or people in wheelchairs or with other mobility impediments, cannot see or experience the gorge

Neither young nor old can walk through the mature stands of lowland podocarp forest adjacent to the gorge as there are no paths at all, the gradient off the shoulder of the access road reaches more than 30 degrees and the undergrowth contains supplejack and bush lawyer.

It is exactly the underdeveloped nature of the reserve that led to the site being short listed as AWNZ see no value in putting a path where there already is good access.

The contention in the draft that the gorge is accessible and elderly can be „helped down” to the bridge is not shared by the elderly in Hokitika.

AWNZ was invited to make presentations to the Probus Club and the Rotary Club at Hokitika, both representing older people living in Hokitika. At both meetings the attending members embraced the development. When people were told about the opposition to the development they asked whether the gorge was only meant for young people. We have to ask the same question.

The proposed development is about offering interested people access to a piece of unmodified New Zealand Bush, offer them a new vantage point to observe the tree canopy and birdlife and educate them about the interdependencies.

After development, views of the gorge and the adjoining unmodified podocarp forest would be available to young and old and people with disabilities.

This may not sound much to submitters against the proposal. It carries weight with people who are affected by the current lack of access and also with court decisions.

In the Mt Cavendish Case the court held that a gondola and buildings could be built in a scenic reserve because without it “a substantial proportion of the public would be deprived because of their physical frailty from the benefit of this view”.

5.2. Preservation of riverbanks

The draft report cites the question of riverbanks as a major issue. However, the cantilevers do not overhang the gorge, the visitor centre, while having views of the river, is not sitting right out on it and will not be visible from the gorge. It is sited on open grassland within the reserve. Major trees are to be retained, as are the clusters of trees along the river as pointed out in the environmental assessment commissioned by AWNZ.

Once the Visitor centre and its associated boardwalk have been built, it can be expected that current users of the gorge will take their kayaks out over this boardwalk and back to the car park on the other side of the access road. This in turn is likely to stop people driving four wheel drives into the bed of Granite Creek to retrieve kayaks and swimmers, as is current practice. Thus the visitor centre will help reduce noise, fumes and danger of oil and petrol spills in the river.

5.3. Will development provide for protection and wellbeing of reserve

The positive effects of the proposal on the site are almost completely missing from the report. This is wrong, because the development provides for the protection and wellbeing of the reserve in a number of ways:

- It does so by shutting much of the vehicle traffic out.
- It does so by providing a path through the trees without bush bashing, as is current practice.
- It does so by providing toilets, which are clearly necessary given the remoteness of the site and even current visitation by cars and campervans.

Another important improvement which has been largely ignored by the draft version of the final report are the educational functions of the airwalk and visitor centre. This function of the development is of great importance to AWNZ, because it is a fact that people appreciate only what they understand. The more visitors learn about the environment they are walking through, the richer their experience becomes and the greater their customer satisfaction and word of mouth recommendation will be. Clearly such education is going to improve visitor behaviour and reduce damage.

AWNZ has made a significant investment into obtaining and developing some of the most advanced interactive display devices available anywhere in the world to be included in the development. The detail of these have not been included in the proposal as AWNZ was aware that the application would become a public document and ideas could be taken and copied by competitors.

Our offers to inform the writer of the report on these issues were declined. And so the positive effect of the visitor centre is summarized in the draft report as a place “where local craft can be sold”.

5.4. No open areas

The draft report claims that the reserve is not open nor does it have substantial open areas. That is an error in fact.

There is a large open area on the true right bank of the river where the Visitor Centre has been sited. There are further open areas in the areas of the proposed car parks. (These will be discussed when dealing with the issue about stewardship land). The manager's residence is to be built on legal road, as will be the entry and exit structures of the airwalk.

The only structure to be put into the bush-clad area of the reserve is the canopy walk itself, which by definition has to be among the trees. It is a walkway, albeit an elaborate one, and walkways are permissible in reserves as they are in National Parks.

5.5. Stewardship land

The draft report recommends declining all car parking because of the insufficient basis to assume that a balance between protection and benefits for public has been struck. This is disputed. Again, there seems to be a lack of fact finding.

The main car park is to the left of the access road when driving towards the reserve. There is a formed access track to this area and there is a sizeable area, which is in grass. Where there is bush, it is "Low statured (5-6m secondary forest dominated by kamahi and other hardwood species" (The department's own technical advice cited on P22 of the document).

Also note that our application confirms that a forest margin along the riverbank would be retained, as well as notable trees within the area of the car park. Thus the car park would not touch quality bush, and be kept from view for all gorge visitors, apart from the people using it.

It would improve the quality of experience at the reserve by stopping most vehicles outside the scenic reserve and directing them towards a lower statured area. This does not only apply to day visitors but also to campervans and users of backcountry huts who currently leave their vehicles at the gorge for days. It goes without saying that the safety of these vehicles would also be improved.

The disabled and bus car park is to be located within the fork between the existing Gorge Road and Whitecombe Valley Road. Again the position has been selected for its low nature values. A cattle track runs through it and there are pieces of rusted corrugated iron and weeds.

In summary: the car parks are sited on stewardship land of low natural value and will draw traffic away from a much higher valued part of the reserve.

5.6. Alternative Locations

The law asks: Could the venture be reasonably undertaken somewhere else? Either, outside the conservation area to which the application relates, or inside conservation land, but where damage would be significantly less?

There is a long discussion on the answers to these questions on pages 55 to 60 of the report, including some, if not especially significant sections, from the legal opinion furnished by AWNZ. The conclusion in the current draft states categorically that the law forbids it.

It fails to mention, though, that the same laws have been applied to and discussed in the first determination report issued by DoC on the same proposal. There, the opposite conclusion was reached. The comment on page 3 of that report reads:

As there are virtually no tracks or facilities in the areas concerned, the airwalk would contribute to making these lands more accessible for the benefit, enjoyment and use of the public. The application is not considered to be inconsistent with the purposes for which these lands are held.

What has happened since then? The proposal has not changed. The laws have not changed. So, clearly, if nothing else, both views can be argued and the issue is therefore contentious.

Rather than repeating legal arguments, the following paragraphs deal with the practicalities of other locations and offer information on what has been done.

The first determination report accepted that AWNZ reviewed a number of sites on suitability but could not find a site that was equally suited as the Hokitika site.

The draft report now takes the simplistic view that there are tall trees somewhere else, presumably outside the conservation estate, and therefore a treetop walk can be built somewhere else, outside the conservation estate. Therefore, it cannot be allowed inside.

If the law really meant to only allow structures inside the conservation estate which cannot be built anywhere else, there would not be a piece of rock, timber or concrete on conservation land, because everything imaginable proposed for conservation land can be built or done somewhere else.

There would be no road to and car park, harbour and airfield at Milford Sound in the Fiordland National Park. There could be no information centre at Totaranui in the Abel Tasman National Park, no cafe at the scenic reserve at Pelorus Bridge, the scenic Reserves at Waiotapu at Waimangu or on Mt. Cavendish at Christchurch.

If silence had to be maintained, there would be no jet boat licences in the Shotover Canyons, much less on the Waiatoto and Dart Rivers accessing Mt Aspiring National Park, no overflight licences in Westland, Mount Cook and Tongariro National Parks.

Yet all these structures and activities exist and hold concessions. So, in all of these and many more cases, the logic applied to the application at Hokitika did not apply.

The law is qualified by the word reasonable. It must be reasonable to ask the applicant to build somewhere else, either outside the conservation estate or somewhere inside the estate where the effects would be less.

This requires the applicant to investigate the possibility. AWNZ has spent much time and money on this search. This was not done only to abide by the law, finding a suitable site outside the DoC estate would have been commercially preferable. Private land would have meant we could have gone straight to resource consent and saved two years time and about 250.000 dollars in costs.

This has not happened because AWNZ have not found private land that did contain unmodified forest, had an established access and offered an overall experience which would justify a \$6 million investment. For the private land owners, the financial gains offered by logging a few valuable trees selectively seems to be too great.

As far as conservation land is concerned, a number of places investigated would have suffered considerably more during construction than the site selected. For instance, wherever there is dense closed canopy, cuts and lacerations to the forest when building the airwalk would be far greater than in the open canopy encountered at Hokitika.

In other places, such as the Nile River Valley, lack of access would have meant that the process of constructing the airwalk would have been much more harmful to the environment than at Hokitika Gorge, where much of the airwalk can be built using cranes on an existing road.

The report accepts the contention raised by submitters that there are other suitable sites for airwalks without inquiry into selection criteria. This is wrong. The site selection, which resulted in Hokitika as the choice, was much more involved than finding tall trees.

A few examples are given below.

The South Island of New Zealand attracts nature-loving tourists. Most of them will visit the West Coast and its two main attractions, the glaciers to the South and Pancake Rocks to the North. An airwalk will attract people interested in nature. Therefore an airwalk in the South Island would be ideally located on the West Coast.

It should be equidistant between existing main attractions. This is because people on long road trips (as international tourists to New Zealand generally are) do not like to visit clustered attractions. Once they have seen one site, they want to make progress before stopping again.

The area of Hokitika fulfils these criteria. It has the added advantage of being a tourist stop for independent travellers and buses alike already but lacking an icon attraction.

The site needs to show unmodified New Zealand bush. As mentioned private landowners by and large have done selective logging on their plots as the value of a mature native trees presents too much of a temptation for them to resist. Case in point: AWNZ was offered private land at Lake Mahinapua. When visiting, it turned out the land on offer was in grass with all trees in an adjoining DoC Reserve.

No Australian Airwalk is directly on a tourist route. Airwalks need to be away from road noise and give visitors a sense of discovery at the end of a road. Hokitika fulfils that criterion; the suggested alternative at Pelorus Bridge is cut in half by the major road to Nelson.

Airwalks are a new attraction to New Zealand and require an optimum location to be commercially viable. The water views of the gorge, while not essential for the airwalk itself are essential for its initial commercial viability. Many decisions to visit or skip an attraction are based on the special photo that can be taken there.

AWNZ looked at many sites and developed a catalogue of criteria against which each site was measured. The comparison between the sites is attached to this document. The first document shows the sites AWNZ investigated on its own accord. The company has also investigated and ranked all the sites suggested by submitters. The results are shown in a second table attached to this document.

The comparison does not pitch the best site versus other usable sites. It suggests one site as being commercially viable, where the high investment cost is expected to be justified and the venture, which is new to New Zealand, would succeed.

The report states that the department does not have to adopt the company's criteria when assessing the suitability of a site. This is not under dispute. The law however requires that the request to shift to an alternative must be reasonable to both the lessor and the lessee. That must mean, among other things, that the grantor cannot require the applicant to move to a site that is not commercially viable.

6. Amendments to recommendations

6.1. Maori Cultural impact Assessment

AWNZ, independently of the mechanism employed by the department, contacted local Kati Waewae at the time of submitting our application in September 2003. We rang their local representative to arrange a meeting to discuss our proposal at that time, but were told that this was not wanted.

AWNZ, as the department, are glad that Kati Waewae have now voiced their opinion. The recommendation that the decision maker engage in further consultation before granting a concession is however opposed for two reasons.

Kati Waewae views now have been made clear. Further consultation is not likely to produce further insight.

The request of Kati Waewae for an, applicant funded, cultural impact assessment (presumably furnished by them) must be viewed in its context. In December 2003, three months after AWNZ applied for a concession, Ngai Tahu have, through their 50% owned company Glacier Guides, launched a concession application for a similar tree top walk at Franz Josef.

If their request was granted it would give Kati waewae the ability to create cost for a competitor and delay their progress almost at will. It is hard to imagine a better example of conflict of interest. Therefore the recommendation should be struck from the draft report or declined by the decision maker.

6.2. Tree mapping

AWNZ is not opposed to the measure but requires clarification of which trees are to require mapping. All or just the ones that might fall on to the airwalk structure? If all are meant, from which tree diameter up? It would seem impractical and an unfair burden to map every sapling.

6.3. Bat roosts

To avoid removing a tree that contains a bat roost it is recommended that a full bat survey be undertaken. The same outcome can be achieved at much less cost and time if only trees identified as requiring trimming or removal are checked for bat roosts. The recommendation should be amended to that effect.

6.4. Slippage

To avoid the risk of slippage special conditions are to be altered so that the Area manager may consult an engineering expert at the applicants cost as to whether this problem might occur before approving a tower site.

This is opposed as it doubles up on work. Slippage and any other geological engineering issue will have been dealt with by the qualified specialists employed by the applicant before the final alignment would be submitted to DoC. The company in question, MWH, are world-renowned experts in their field, are required by law to guarantee their work and often are used by the department for work of similar nature. It is difficult to see what would be gained by asking for a second opinion. If at all it should clearly not be at the applicant's expense.

6.5. Water treatment

As above. The writer of the draft acknowledges that standard concession conditions already require all permits from other authorities to be in place before a water treatment plant may be installed and used. Thus such a plant will comply with all relevant laws. It is not reasonable to burden the applicant with contracting a second wastewater engineer to aid DoC in second guessing other authorities approvals. It is questionable if the Conservation Act describes such a role for the department.

Again work carried out would be designed by MWH. It is difficult to see what would be gained by asking for a second opinion. If at all it should clearly not be at the applicant's expense.

6.6. Structural design

As above. Again the author of the draft acknowledges that the applicant will have been obtained all statutory consents and have audited safety plans in place prior to construction. Again this means that

all stringent - relevant legislation has been complied with and the design has been signed off by qualified specialists.

Then the report continues on to propose that, after all of this has been done, the airwalk structural design should be critiqued by an engineer of DoCs choice, at the applicant's expense. Again work carried out would be designed by MWH. It is difficult to see what would be gained by asking for a second opinion. If at all it should clearly not be at the applicant's expense.

If the second opinion were to suggest a change, this in turn would mean that the applicant would need to return to the start of the process prescribed in the Resource Management Act with regional authorities. The suggested special condition places an unfair and unreasonable burden on the applicant and needs to be amended.

6.7. Signage and structures

Signage will be placed within the legal road and therefore cannot form part of the considerations for the conservation estate. It is also difficult to see how visitors to the airwalk could more easily fall into the river than the people currently visiting the area. If barriers were to be built it would be for safety reasons involving all visitors and hence could not be termed a cumulative effect of the development. The recommendation to accept above as a result of the application should be removed.

6.8. Guy wires

Marking the guy wires collides with the requirement to keep them unobtrusive.

6.9. Area management

Waste disposal and keeping the reserve tidy is a shared responsibility between AWNZ, District Council and DoC. Predator control should be avoided if possible. The airwalk site at Western Australia has implemented a successful no-bin-policy.

6.10. Alignment

An amendment to the special condition dealing with the airwalk alignment now is to require that visibility by other users is minimised. This requires qualification with as far as is practicable and reasonable, and mention of methodology otherwise it could compromise the whole development.

6.11. Bond

AWNZ does not object to a bond being lodged. It objects to the conclusion that even after such a bond has been lodged long term effects could arise that could not be remedied or mitigated? If such a claim were to be made it would require an example.

7. Conclusion

We ask that the writer of the report, after giving due consideration to matters raised, redraft the conclusions and recommendations. In particular, that the writer recommends to the decision maker to note submissions, approve the activity and amend further special conditions.