

An aerial photograph of a mountain valley. In the foreground, a river flows through a dense forest. The middle ground shows a valley floor with some cleared areas and a road. In the background, large, rugged mountains are covered in snow, with a cloudy sky above.

# Furore in Fiordland

The prospect of a monorail above or an 11.3km tunnel below World Heritage parkland has protesters reaching for their placards. But just as concerning, they say, is the way the democratic process is being trampled in the pursuit of those elusive extra tourism dollars. Peta Carey reports.

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In the space of two months late last year, two of New Zealand's most ambitious tourism infrastructure projects were presented to the public: the Dart Passage, an 11.3km tunnel under the Main Divide from the start of the Routeburn Track in Mt Aspiring National Park to the Hollyford Valley in Fiordland National Park, and Fiordland Link, which includes a monorail passing through 29.5km of the Snowdon Forest public conservation estate near Te Anau. Both proposals take passengers to Milford Sound, both traverse the World Heritage area of Te Wahipounamu (South West New Zealand), and both need to jump through the not-insignificant hurdle of a Department of Conservation concession.

For the past year, the debates have raged, the communities of Glenorchy and Te Anau stirred into angry and fervent reaction, groups Stop the Tunnel and Save Fiordland set up in protest. A 27,000-strong petition was presented to the government, and every form of media – national and international dailies, weeklies, television current affairs and not least talkback radio – have argued the case for and against each proposal, the proponents either lauded or vilified.

But nestled quietly between both sides of the debate is the department, the gatekeeper (on behalf of the Minister of Conservation), the arbiter with a clear mandate to not only care and protect these areas but also to ensure that whoever runs a business in the conservation estate does so within the law and without damaging (or not damaging to any great extent) intrinsic values. However audacious or ambitious a business proposal might be, however positive or negative the potential impact might be assessed, it's up to DoC to make the crucial decisions over concessions.

When both proposals *did* get past first base and were given the interim green light in the form of an “intention to grant a concession”, opponents were outraged. Both the tunnel and monorail applications made it through to the public submission stage and are now awaiting a final decision. (Note that the applicants then have to apply for resource consent.) Irrespective of that final concession outcome, however, critics are already lining up, furious that either proposal made it this far. Did DoC get it right, and if not, why not?

**“NO.”** is the clear answer from Robin McNeill, a member of the Southland Conservation Board and chairman of the Federated Mountain Clubs of New Zealand. “It should not have progressed to this stage simply because both proposals were inconsistent with statutory management plans. Forget the effects on the environment, it shouldn’t come down to that. Put simply, it’s an attack on democracy.”

“No” is also the answer from Abby Smith, chairwoman of the Otago Conservation Board, which oversaw the recent revision of

the Mt Aspiring National Park management plan. “No part of the plan addresses whether you can tunnel or not. But a significant part of the plan addresses whether there can be any new roads, large or small. And the answer is no. The proposal is inconsistent with the plan.”

“Yes” is DoC spokesman Rory Newsam’s answer. “What we did was determine whether either proposal *could* be done.”

That it *could* be done was determined by DoC’s concession department – a so-called “team of thousands”. They oversee and assess a vast number of commissioned reports – including engineering, biodiversity, landscape, water, safety etc. It’s up to them to determine how significant or adverse effects may be. And whether those effects can be mitigated.

Colin Pemberton worked for DoC’s Invercargill-based concession team for 14 years. He describes this first concession process as the “knockout” phase. To get past this lengthy and rigorous assessment, in his opinion, and then to be knocked out in the public submission process is rare. “It’s pretty much the rubber stamp. They’re

a team of professionals. You don’t have something of this scale, give it the interim tick, and then have something so significant come out of left field in the public submission process that you’re going to turn your decision around.”

Newsam admits that the submission hearings are not about weighing up public opinion, otherwise DoC would simply put it to a vote. It’s about being open to new information coming to light, about the public presenting something the department has failed to unearth.

The assessment of environmental effects may well be open to interpretation – minor or significant, able to be mitigated or not, permanent or temporary. But what should be black and white is whether the concession application is consistent with legislation. As laypeople, we need to draw breath here. The unequivocal answer may yet be decided in a court of law. The issue is fraught with legalese, requiring a sharp mind to wend its way through the labyrinth of statutes, policies and plans.

We’re talking about the Conservation Act, the National Parks Act and then – what

many of us do not realise we can have a voice in – the national park management plans, in the case of national parks, or the conservation management strategies in the case of other conservation estates such as the Snowdon Forest. These plans are reviewed and go out for public submission approximately every 10 years.

The entire review process is overseen by the conservation board of the region involved, a varied group of individuals with interest in conservation but independent of DoC, appointed by the government, providing guidance and advice to the department on issues related to each conservancy or area.

“The management plan is a handshake between the public of New Zealand and the department, but right now that handshake is really losing its grip,” says Abby Smith, who is also a professor of marine science at the University of Otago.

“The reason I say undemocratic,” says Robin McNeill, “is because democracy is much deeper-rooted than simply who you vote for as prime minister. Rather than spending our time making submissions on each and every concession application, we

simply need to make submissions during the review of the park management plan. That plan should then be sufficiently robust as to what can and can’t be done in the way of a concession.”

Until now, many of the people involved believed the Conservation Act when it says: “Where a conservation management strategy or conservation management plan has been established for a conservation area and the strategy or plan provides for the issue of a concession, a concession shall not be granted in that case unless the concession and its granting is consistent with the strategy or plan.”

So if the Fiordland National Park management plan says “no new roads”, for example, then that must be binding?

“According to the advice handed to us from DoC, evidently not,” says Smith. “We have been told that the management plans cannot fetter the minister, that the minister has ultimate discretion.”

She disagrees with this advice. She insists that the overall wording and intention of the plan are clear with regard to new roads, particularly in the “back country” (the area in which the tunnel’s access road is proposed). From the Mt Aspiring National Park management plan: “A new road should not be authorised anywhere in the park...”

The loophole, however, resides in the word “should”. In this, Smith suggests the board was kneecapped. “We were told, again by the department, to not use the word “shall”, as we wanted to, but rather to tone it down to “should”, meaning only a strong expectation of outcome, not written into law.”

Should “should” be binding, or does this one word – “should” rather than “shall” – allow the minister to have ultimate discretion over all?

According to Smith, the changes to DoC’s approach have been sudden and disturbing, and not just with regard to the management plans. Even the conservation boards themselves are suddenly under threat. “It’s the people of New Zealand who own this conservation estate and if there isn’t a conservation board, they don’t have a voice. As the board becomes increasingly ignored and its advice not taken and management plans undermined, then the whole community loses trust and faith in the process.”

McNeill goes further: “I suspect DoC was bullied, whether by the applicant or senior members in Cabinet. There’s no other rational explanation.”

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## QUICK FACTS

# THE “WHO, WHERE AND HOW MUCH” OF THE TWO PROJECTS

### The Dart Passage

#### WHAT IS PROPOSED?

- A private 11.3km-long, 5m-diameter, single-lane road tunnel under the Main Divide from the Routeburn road-end (in Mt Aspiring National Park) to the Hollyford Rd (in Fiordland National Park).

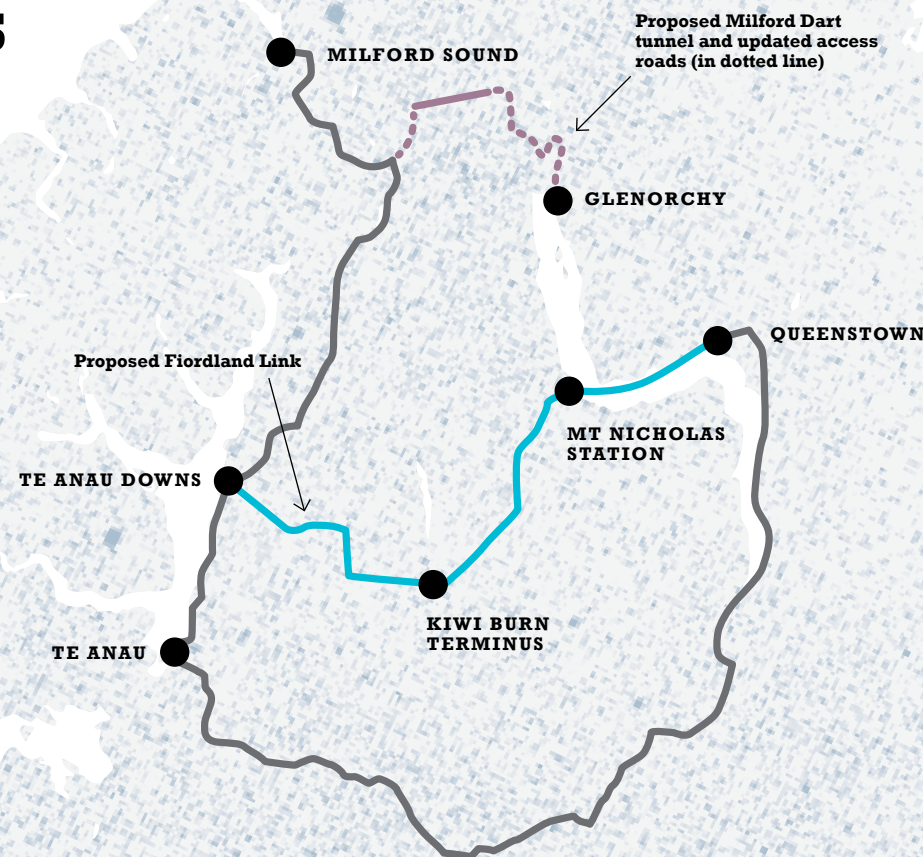
\*Privately operated by Milford Dart for approved bus/coach use only (one way, alternating direction). No private vehicles.

#### WHO’S BEHIND IT?

Milford Dart Ltd. MDL is a wholly owned subsidiary of Southern Hemisphere Proving Grounds Ltd, which currently owns the winter car-testing facility at Waiorau Snow Farm on the Pisa Range. The directors of the company include Tom Elworthy, Sir Tipene O’Regan and Michael Sleigh.

#### ESTIMATED COST?

\$160 million.



### Fiordland Link Experience

#### WHAT IS PROPOSED?

- A three-stage transport system taking passengers from Queenstown to Te Anau Downs (28km along the Milford Rd from Te Anau).

This includes:

- A 20km catamaran trip across Lake Wakatipu from Queenstown to Mt Nicholas Station (not on public conservation land)...
- Then a 45km journey in an all-terrain vehicle from Mt Nicholas to the Kiwi Burn Terminus on existing back-country roads. (Proposed Kiwi Burn terminus on public conservation land.)
- Then a 43.5km electric-powered monorail, traversing 29.5km of the Snowdon Forest stewardship area (public conservation land) to a terminus at Te Anau Downs (in Fiordland National Park).
- Option of another bus to Milford Sound.

- Includes a construction road parallel to the monorail which would remain in use after construction for monorail maintenance, mountain biking and cycling.

#### WHO’S BEHIND IT?

Riverstone Holdings, the majority shareholder being Infinity Investment Group Holdings, led by CEO Bob Robertson. John Beattie is also a director of the company, having resigned from Infinity Group following Infinity’s Pegasus Town Ltd going into receivership. Founder and also minority shareholder is Philip Phillips.

#### ESTIMATED COST?

Projected cost of monorail and associated facilities, \$170 million.

**B**ullied, or resigned to financial constraints? Mike White's story in *North & South's* March 2012 issue, "Does the Department of Conservation Need Saving?", examined the sea-change within the department, the new mantra being "Conservation for Prosperity". He quoted Director-General Al Morrison identifying the need to foster partnerships with business. The Treasury has indeed brought the axe down on DoC, with an initial budget chop of \$13.5 million a year. At the time of writing, one conservator is overseeing both Otago and Southland conservancies, the strong indication being that the two will be rolled into one. A significant number of redundancies have already taken effect.

Karyn Owen worked in the concession department of DoC's Southland conservancy until a few years ago. She saw the change coming. "It's been a gradual creep. Once upon a time, if we had an inquiry about a commercial activity on conservation land and it was inconsistent with the plan or strategy, it was simple: the applicant would be unlikely to get it, and they'd be told straight off. That's changed now. People don't get told that. Suddenly, it became contestable."

So how does DoC stand to benefit if these proposals are granted concessions? Certainly there's a concession fee, usually a small percentage of each fare paid, which goes directly into the government's Consolidated Fund (for public revenue, so sorry, no direct top-up fund for takahe or

kakapo). In the case of the tunnel, there would obviously be a speedier route to Fiordland National Park from Queenstown, and more particularly to Milford Sound – "improved access" getting the tick as one of the minister's considerations under the Conservation Act. Beyond these concerns is the perceived advantage to not only the concession applicant, in terms of profits, but also (arguably) the wider tourism community (not something that can legally be considered under the Conservation Act).

Tom Elworthy, the managing director of Milford Dart, the company applying for the Dart Tunnel concession, says the advantages are simple. "We're cutting the travel time from Queenstown to Milford from over eight hours sitting on the bus to at most four. That's four hours tourists are currently not putting their hands in their pockets. More time off the bus means more available 'spending' time doing other activities – whether in Queenstown, Glenorchy or Te Anau – and that benefits all tourism operators."

Riverstone Holdings' monorail, on the other hand, is not being touted as a faster way to get to Milford Sound but rather (in the words of director John Beattie) as an *alternative* experience: boat, bus, monorail, then bus again (and boat once you get to Milford Sound). Riverstone's publicity says "the Fiordland Link Experience will be a tourism asset of the highest quality – improving New Zealand's competitiveness as a tourism destination".

Beattie and Riverstone co-director Bob

## The cycleway is simply the end use of a construction road – another swathe of several century-old beech forest axed.

Robertson softened (or exacerbated, depending on your point of view) the effects of the monorail proposal by including a cycleway alongside, a good move considering the Prime Minister's wish for a nationwide cycle network. Except that the cycleway is simply the end use of a construction road – another swathe of several century-old beech forest axed.

Unlike the tunnel proposal, only a very small part of this concession application resides in the national park. But a significant chunk of the monorail – and cycleway – traverses the Snowdon Forest Conservation Area, also part of the World Heritage site. McNeill describes the area as an "entry-level back-country experience for families, with original Forest Service huts, a stunning area for back-country fishing, hunting and tramping".

Snowdon Forest is managed under the Southland/West Otago conservation management strategy, the rules clear and firm. One of its objectives states: "To provide and maintain the central Snowdon Forest area as a remote area with opportunities for low-impact recreation remote from high-use areas and extensive facilities."

Ron Peacock, a former national park ranger, has a long history with the area and has had a concession for guiding trampers, fishermen and hunters for some years. To minimise the impact on the public, Peacock's concession is stringent, limiting him to taking a maximum of two people at any one time into the area (for fishing or hunting), but not on weekends or public holidays. "If this concession is granted," he laughs dryly, "I'll be taking my two clients, but not on weekends or public holidays, and we'll be having to duck under the monorail taking up to 160 people four times a day, 365 days of the year."

Again, the DoC concession team deemed the monorail proposal consistent with the conservation strategy, saying "the potential effects of the proposed developments can

Guide Ron Peacock: "If this concession is granted, I'll be taking my two clients ... and we'll be having to duck under the monorail taking up to 160 people four times a day, 365 days of the year."

be reasonably and practicably avoided, remedied or mitigated to the point where they would be minor."

Interestingly, however, there was a caveat. With inconsistencies between environmental impact studies (between those of the applicant and those of independent consultants DoC commissioned), the department clearly stated it was challenged: "There is no doubt that this proposal would significantly compromise the outstanding natural values of the landscape and the 'landscape integrity' of Snowdon Forest Conservation Area and the Te Wahipounamu South Westland NZ World Heritage Area."

DoC conceded, however, that even if there were "significant adverse effects" and the applicant has no way of mitigating these, the resulting ill effects will be considered in the overall mix – that is, if the minister (as advised by the department) considers the positive effects of access and recreation to override the perceived erosion of preservation and protection.

As an interesting footnote here, what the

applicant or DoC failed to unearth during the consideration of the monorail proposal was the Ngai Tahu deed of settlement. More legislation, except this one was kept very quiet.

In an attachment to the deed, it states that if the minister approves "any development of any form of road and railway" through the Snowdon Conservation Area then he or she would not withhold consent for "any proposed development of the same kind of a similar kind by the Landholder", in this case a consent for a road or gondola up the Caples or Greenstone Valleys by Ngai Tahu.

Although Ngai Tahu has not signalled its intention to invoke this clause, Smith points out the obvious. "What this means is that granting the Riverstone Holdings Ltd concession may have the effect of granting two concessions, about one of which no detail is available."

John Beattie suggests the Ngai Tahu deed is not a relevant issue for DoC to consider. He has vociferously defended the department's approach, refusing to concede "that management plans have supremacy over all

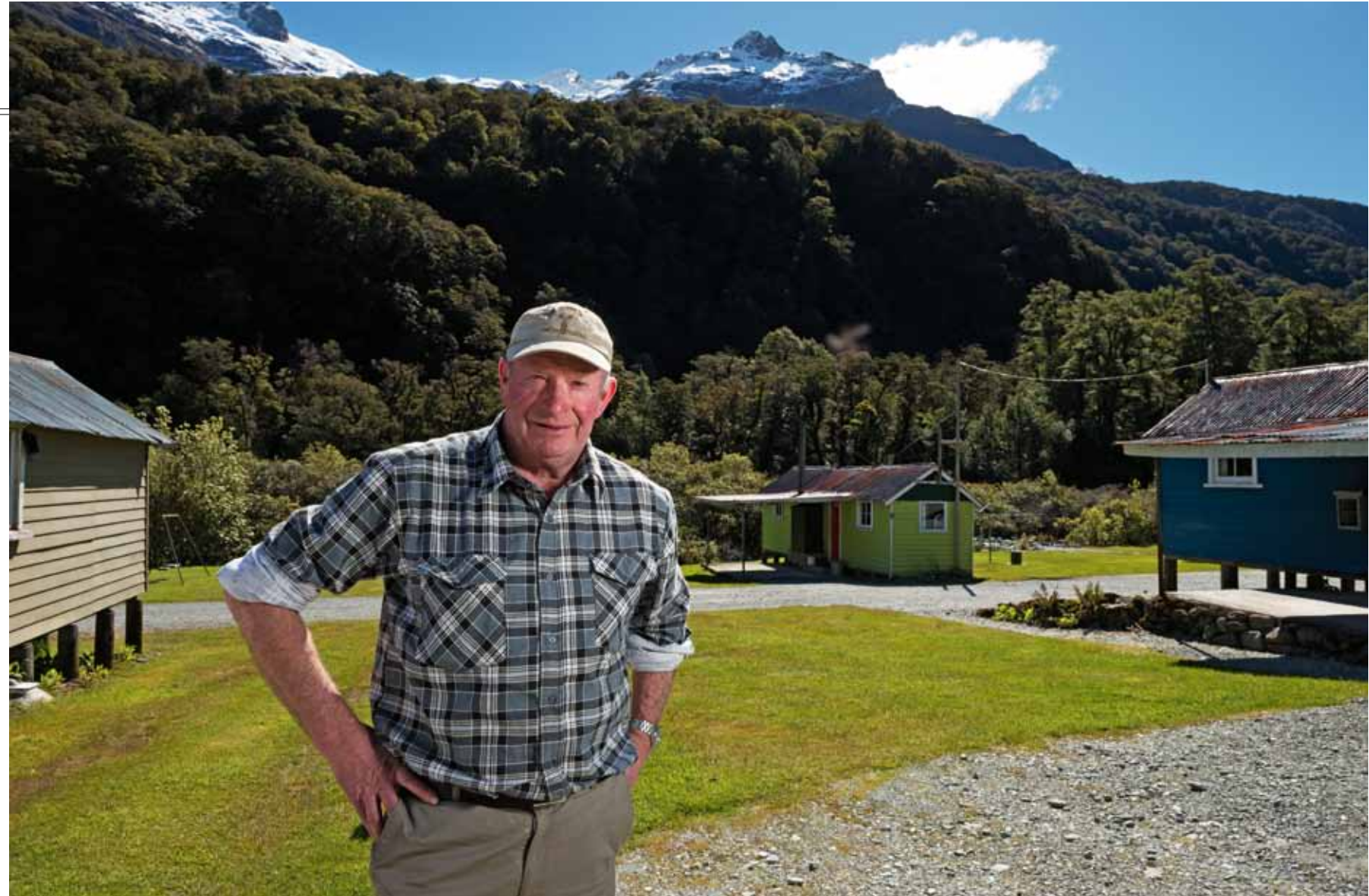
else". He says: "The bottom line should continue to be that management plans are an important guide to concession decision-making but no more than that."

So is the management plan or conservation strategy binding? The answer appears to be key to whether DoC got it right. The overarching legislation (the Conservation Act and the National Parks Act) seems unequivocal: "The minister must not do, or authorise a person to do, anything that is inconsistent with the management plan."

McNeill's understanding is that such was the doubt among DoC's concession team over this that they went to the Crown Law Office for advice on more than one occasion. Each time, however, they were advised that "plans are guides only", that a plan or strategy "cannot fetter the minister". DoC will not disclose the origin of this advice but as McNeill points out, "it's crucial to the ultimate concession decision for either proposal". The integrity of that advice may well be vital should the ultimate deciding platform be the courtroom.



AERIAL PHOTOGRAPHS: THANKS TO HELIWORKS QUEENSTOWN HELICOPTERS.



**T**he shiny white marble of the High Court is a long way from Gunn's Camp in the Hollyford Valley. The 1930s cabins – originally used during the building of the Milford road – seem to hold the decades back to when holidays were simpler: a coal range, a spot of fishing or taking the kids on day-walks to alpine tarns and waterfalls. Here, in the picnic area alongside the river is a sign, “Beware of crocodiles”.

DoC has deemed the overall effects from the building of the tunnel “minor and temporary”. Most of these so-called “minor effects” can be strongly disputed, and have been throughout the submission process – the effects of taking out beech or podocarp forest, native bat or yellowhead (mohua) habitat, the widening of a road, or the building of a new one. But when it comes to the effects on Gunn's Camp and nearby airstrip, the department's assessment of effects, according to Ron Peacock – also a trustee for Gunn's Camp – is laughable.

Here, on the airstrip, all the tunnel spoil will be dumped. First it will be crushed and filtrated (the sound effects of the huge rock-crushing unit have been deemed “minor and temporary” to walkers on the nearby Routeburn or Hollyford Tracks). Then the spoil will be deposited on the airstrip – currently hidden away behind bush alongside the river – raising the level of the strip to at least seven metres above river level.

On several points of environmental impact there have been submissions by experts –

Simpler times: the Milford Rd in 1966.



geologists and engineers – contradicting Milford Dart's reports. One in particular is by retired geologist Ian Turnbull, who produced the definitive geological map of the area in 1998. He wasn't consulted by Milford Dart or DoC. Dry and laconic, he perceives the effects on the valley on a geological time scale. “In several hundred years, no one will notice,” he observes with a wry grin. In the meantime, however, he points out a number of irregularities in reports. Milford Dart has allowed for a 21 per cent “bulking factor”, resulting in 268,000 cubic metres of spoil from the rock bored out of the five-metre-diameter tunnel. Turnbull alternatively suggests: “One square metre of solid rock becomes three to five metres of loose rock,” meaning you can multiply the height of the airstrip by at least three times.

And given that the airstrip – although it will be “armoured”, according to the proposal – is sited right alongside the major, flood-prone Hollyford River, what of the flood risk? “Aggradation,” suggests Turnbull, referring to the build-up of sediment. “It'll choke the riverbed downstream of the airstrip.”

Peacock shakes his head, incredulous. “I've seen the river right up against the right bank of the valley. They reckon they can hold back the river? Ha. Once that river takes out the spoil you'll get the effect of a bloody great hydro dam. It'll not only flood the road across the portal of the tunnel, but will change the course of the Hollyford River forever.”

Interestingly, the landscape architect Milford Dart contracted to assess the effects on the airstrip concluded they would be positive. It's unbelievable that DoC swallowed that, says Peacock. “It doesn't look good on the department when they read this report and agree a bloody great hill of spoil in one of Fiordland's most spectacular U-shaped glacial valleys wouldn't just be minor or temporary but *positive*? It might well be temporary, but then the river will be buggered.”

DoC is, of course, staying quiet on all matters concerning both the outcome of each application and the process leading up to this point. Conservation Minister Kate Wilkinson has fended off questions in Parliament, saying, “it would not be in the public interest for me to comment further at this stage as it could compromise or jeopardise the statutory process.” She noted that any party unhappy with the eventual decision could seek a judicial review (a process under which legislative and executive actions are subject to review, and potential



## ACTION STATIONS

### Glenorchy and Te Anau communities have mobilised against the tunnel and monorail proposals.

“Never underestimate the strength of the community,” says Amanda Hasselman of Glenorchy. When Milford Dart's proposed tunnel was given “approval in principle”, Glenorchy mobilised. “It's unheard of to get a consensus on any issue around here,” Ms Hasselman says, “but when over 100 people crowded into the Glenorchy Hall last January, it was close to unanimous.”

“Stop the tunnel” was the cry and Stop the Tunnel it became – blazoned on T-shirts, flags, hay bales and bumper stickers. From a community of largely farmers and tourism workers came extensive campaigning skills. A 27,000-signature petition was presented to Parliament and presentations and meetings held in Wellington and Queenstown; MPs Ruth Dyson and Trevor Mallard (Labour) and Eugenie Sage (Greens) were hosted in Glenorchy; there was a relentless push for submissions during the DoC hearings and a welter of publicity was garnered in tourism publications and on television current affairs.

Similarly, further south in Te Anau, memories of the Save Lake Manapouri campaign of 1969-70 were rekindled, protesters going as far as to set up an incorporated society (in case they need to apply for funding to cover legal costs associated with a judicial review; the status also means they're a separate legal entity with standing to take legal action). They've called it the more generalised Save Fiordland, such were concerns over not just these two proposals but others waiting in the wings. Like Glenorchy, Te Anau has set up petitions, instigated a mountain of publicity, raised funds and issued a long list of requests under the Official Information Act. Both groups have cited New Zealand's obligations to the area under Unesco's World Heritage system (which are not binding under New Zealand law, however). If either concession is granted, Unesco will consider the impact of the project on the area's World Heritage status at the next World Heritage Committee sessions in June 2013.

GETTY IMAGES

invalidation, by the judiciary).

DoC has issued a simple statement rebutting the suggestion there was any interference from higher up the chain, or the Beehive.

Both Wilkinson and Economic Development Minister Steven Joyce told *North & South*: “No directive was given to the Department of Conservation as to how to proceed with either of the concession applications.”

Both ministers have met with John Beattie, however. Joyce said he spoke with the Riverstone Holdings director at a business roundtable in Queenstown in March and “he provided me with a short briefing about the Fiordland monorail project”. Just why a party with a commercial interest in the outcome of a legally sensitive application concerning DoC land gave a briefing directly to the Minister of Economic Development was not explained.

Wilkinson says she's met with Beattie “in his capacity as executive director of Infinity Group, developers of Pegasus Town”, a subdivision in her Waimakariri electorate. (Infinity's Pegasus Town Ltd was put into receivership in August.)

Southland Mayor Frana Cardno, whose district includes Te Anau, scoffs at DoC's denial of top-level interference. She tells of

being asked “by certain persons in positions of authority”: “Which one, Frana? Gotta be one or the other – tunnel or monorail?”

“This makes a mockery of the whole process, suggesting ministerial interference,” the mayor says. Not one to tip-toe around politicians, Cardno is blunt. “Both projects have been around for a long time. All of sudden DoC has a business-oriented head, meaning we should be very concerned indeed since there's a bevy of other projects still waiting in wings.”

Abby Smith, the Otago Conservation Board leader, is a little more generous. “In my opinion none of this is being driven by the department; it's simply doing what it's told.”

So we wait. The submission process was lengthy. There were 1260 submissions for the tunnel alone – 400 for, 860 against. Daphne Taylor, spokeswoman for Save Fiordland, says “submissions against the monorail were made by people from all walks of life, left-wing, right-wing, farmers, fishermen and accountants”. Public hearings took months.

“Some members of the public and various organisations paid lawyers in excess of \$8000 to prepare their submissions,” McNeill points out. “Not every layperson has the time, resources or wherewithal to even

begin to consider proposals like these; they're long and complicated. I know a retired woman in Invercargill who travelled from Invercargill to Queenstown to be heard for 10 minutes at the submissions hearing. It cost her \$100 worth of petrol. We have to trust the department to make the right decision before it gets to this point.”

DoC has said the final decisions – to grant or decline concessions for either the tunnel or the monorail – will be made before Christmas.

**I**n the meantime, the lawyers are lining up. Such are McNeill's concerns over due process – whether DoC got it right – that the Federated Mountain Clubs have already pledged \$15,000 towards a judicial review (estimated total cost: \$150,000). “This is a landmark case,” he says. “It's a watershed for us. It attacks everything we believe in – the value of democracy, the principles, all the statutory documents and legislation – and it deals a huge blow to the environment. There's nothing they don't have a crack at. Bring it on.”

And if DoC declines either application, what then? Is there recourse for the applicant – either Milford Dart or Riverstone Holdings – to try again?

Smith points, yet again, to the legislation. The Conservation Act makes it very clear that the applicant may initiate a review of the management plan. Simple. And yet neither applicant has been advised to do so by DoC.

Smith has been on the Otago Conservation Board for more than seven years. Her frustration is obvious, her commitment suffering from fatigue. “Our responsibility is to the wilderness of New Zealand,” she says. “It's a long-term commitment and our current financial needs and our current view of ‘the flow of traffic’ is only a blip in history. We cannot make decisions that will ruin it for future generations.”

At the time of writing, spring storms had brought down an avalanche of rock and debris over the Milford Rd, a timely reminder of the power within this unstable, glacial landscape.

The proposed tunnel traverses the Livingstone Fault, one of the more active seismic areas and a branch of the main alpine fault, long overdue a quake of seven or more on the Richter scale. One cannot help but wonder which will come first: a final decision (following any appeals, resource consents and the Environment Court) or nature, arguably doing what nature does best. +