



Office of Hon Dr Nick Smith

MP for Nelson

Minister of Housing

Minister of Conservation

Minister for Building and Construction

29 May 2014

Mr Bob Robertson
Managing Director
Infinity Investment Group Holdings Ltd
PO Box 390
Wanaka 9343

Dear Mr Robertson

Proposal

1. Riverstone Holdings Ltd (RHL) has sought my consent for the construction and operation of a monorail between the Mararoa River and Te Anau Downs. The proposed activities are located on National Park, stewardship area and marginal strip: all of which are within Te Wāhipounamu South West New Zealand World Heritage Area.
2. The particular consents sought are set out in Appendix 1. In this letter, when I refer to the “concession” sought by RHL, I am referring to all the types of concession (lease, licence and easement) listed in the Appendix. When I refer to the “road consent”, I am referring to the consent sought under section 55 of the National Parks Act 1980.

Decision

3. I regret to advise you that I decline RHL’s concession application, for a number of reasons, as set out in this letter. I realise that this will come as a great disappointment, given your investment of time, money and enthusiasm in this innovative project.
4. In view of my decision to decline your concession application, and because the road consent application is inextricably linked to the concession application being granted, I have not found it necessary to form a concluded view on the road consent application.

Information considered

5. The Conservation Act 1987 requires me to consider a list of matters set out in section 17U(1), namely:

“(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;
- (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;
- (g) any relevant information which may be withheld from any person in accordance with the Official Information Act 1982 or the Privacy Act 1993”.

6. In having regard to the matters in section 17U(1), I have referred to the following documents in particular:

- (a) the application;
- (b) the Officer’s Report;
- (c) the Report to the Decision-Maker;
- (d) the summary of submissions;
- (e) the Biodiversity and Landscape assessments, and RHL’s responses to these documents;
- (f) RHL’s response to the Report to the Decision-Maker, including the revised proposed conditions;
- (g) the reports from Tourism Resource Consultants (Ray Salter) and Ian Dickson;
- (h) RHL’s preliminary response dated 10 April 2014 and the matters you raised at our meeting on 10 April;
- (i) RHL’s more detailed letter, reports and information sent to my office on 2 May 2014; and
- (j) the department’s submission dated 14 May 2014 and RHL’s comments on that submission.

7. I have also considered relevant legislation –the Conservation Act 1987, primarily Part 3B (Concessions), and sections 4, 49 and 55 of the National Parks Act 1980. The World Heritage Convention was also relevant, as the area the subject of the application is part of Te Wāhipounamu South West New Zealand World Heritage Area.

Reasons for decision

8. There are five reasons which, in combination, led me to decline RHL's application. They are:
- (a) I do not consider there to be adequate information to assess the effects of the proposal;
 - (b) I do not consider there to be adequate methods to remedy, avoid or mitigate the potential adverse effects of the proposal;
 - (c) I consider the proposal to be contrary to the purposes for which the land is held;
 - (d) I do not consider the proposal to be consistent with the area's world heritage status; and
 - (e) I have strong reservations about the financial viability of the proposal.

I explain these reasons in the following paragraphs.

Effects: section 17U(2) Conservation Act

9. Section 17U(1)(b) requires me to have regard to the effects of the activity, structure or facility. I am also required to have regard to any measures that can reasonably and practicably be undertaken to avoid, remedy or mitigate any adverse effects of the activity (s 17U(1)(c)). Section 17U(2) enables me to decline the application if I consider the information is insufficient or inadequate to enable me to make an assessment of the effects or that there are no adequate or reasonable methods to remedy, avoid or mitigate the adverse effects.

17U(2)(a)

10. Construction and operation of the monorail would require clearance of at least 26 ha of indigenous vegetation. This vegetation includes red tussock and short tussock grasslands and red, silver and mountain beech forest. The clearance would remove the habitat of native species, including the South Island kaka, mohua and long tailed bat. There would also be effects on landscape. The extent to which these would be adverse would depend in part on the route selected but regardless of the route there would be adverse effects on the natural character of the landscape in the vicinity of the monorail corridor.
11. Because of the application's "envelope approach" – where the application is for a 200 metre corridor, or "envelope", within which the monorail track and the construction track would be located – the nature and extent of these effects cannot be known with any certainty at this stage. For example, the extent to which significant habitats (or even which particular significant habitats) would be affected is not known; the extent to which the forest clearance would involve trees used as bat or bird roosts is not known; and the extent to which the monorail would affect the visual landscape within the envelope is not known. Until the

actual route of the monorail is identified, it is not possible to make a full and proper assessment of the effects of the activity.

12. Your application proposes safeguards to avoid, remedy or mitigate these effects to the point you consider them to be no more than minor. Of particular significance are the route selection process, the conditions requiring the avoidance of significant habitats, the proposed surveys for bats and the requirement for preparation and approval of detailed management plans covering final design specifications, construction, vegetation and habitat and recreational users.
13. The significance of the adverse effects on flora, fauna and landscape would depend to a great extent on the actual route of the monorail. The actual route is not yet known, and RHL does not propose to identify the route until it has obtained a concession. That being the case, the conditions governing “route location selection criteria”, and requiring audit and approval, are very important. The conditions (as revised by RHL and sent to department staff on 27 November 2013) do not satisfy me that adverse effects would be at an acceptable level. For example, the conditions identify “significant habitats” and require RHL to “adopt best practice” to avoid the habitats “to the extent that is practicable”. Plainly, there is uncertainty as to whether the route would avoid any particular significant habitat at any particular location. As a result, I cannot properly assess the effects of the route or judge whether it would produce a sufficiently low level of adverse effects. Further, I cannot be certain how those effects would impact on the purposes for which the land is held, as discussed below.
14. I have similar concerns regarding the requirement in the conditions for the preparation, audit and approval of management plans. I am not opposed in principle to the use of management plans to control aspects of development. But if I am to approve an application where important environmental effects are to be dealt with by way of management plans, I would need to be confident that the environmental “bottom lines” were spelt out in the conditions at the time I granted my consent. I have looked at the revised conditions and, despite the changes that RHL has made, they do not provide me with this confidence. While I am able to impose conditions under section 17X, I do not consider I have sufficient or adequate information to do so in such a way as to be consistent with the Conservation Act.
15. Consequently, in terms of section 17 U (2)(a), I consider that the information available is inadequate to enable me to assess the effects of the monorail and I decline consent on this basis.

17U(2)(b)

16. The issue of financial viability links into the question of the “effects” of the monorail. For the reasons set out later in this letter, I am concerned that the business might fail either during construction or thereafter. The monorail infrastructure might well become a “white elephant” taking up space in the forest to no useful purpose. If this occurred, then the potential adverse effects would be significant. The very presence of this large artificial structure (primarily the track, but also bridges and other infrastructure) would have an adverse effect on the landscape. The track in particular would have continuing adverse

downstream effects, such as enabling colonisation of cleared areas by weeds. The ongoing mitigations proposed in the conditions (for example, monitoring of edge effects and proposed remedial actions to mitigate such effects if they occur, and ongoing management of pests and weeds) would no longer be carried out by RHL.

17. Further, the previous adverse effects of construction on vegetation, fauna and landscape would already have occurred and could not effectively be reversed. And the positive effects of the monorail, namely the ability of many new people to enjoy the area, would not be experienced.
18. I considered whether, in terms of section 17U(2)(b), there are adequate methods to deal with these potential adverse effects. One option would be (in the event the business failed) for the Crown to seek another operator who might be able to run the business successfully. Whether or not this would eventuate is speculative and not, to my mind, an adequate method to remedy, avoid or mitigate the potential adverse effects. Another option would be for me to set a significant bond so that if the project failed, and no purchaser could be found to take over the assets and run the business, the cost of removing the monorail would be covered. I have rejected this option for two reasons. First, the amount of bond required is likely to be very significant and I accept Mr Dickson's view that it is unlikely that any bank would stand surety for it. Secondly, a bond can pay for the removal of infrastructure and replanting, but it cannot wholly replace the vegetation and species that have been removed or displaced.
19. In conclusion, given my serious concerns about the viability of the proposal, I also decline your application under section 17U(2)(b) as I do not consider that there are adequate means to avoid, remedy or mitigate the potential adverse effects of the monorail, were the business to fail.

Purpose for which land is held: section 17U(3) Conservation Act

20. Section 17 U (3) requires me to decline a concession application if it is contrary to the purposes for which the land is held. The application relates to three different "statuses" of public conservation land: stewardship area, marginal strip and National Park. The particular purposes for which these areas must, legally, be administered are set out in different provisions of the Conservation and National Parks Acts.
21. Section 25 of the Conservation Act requires that stewardship areas so be managed that their "natural and historic resources are protected". Both "natural" and "historic" resources are defined, and "natural" resources include plants, animals and landscape. "Protection" of a resource is defined to mean its maintenance, so far as practicable, in its current state, and to include restoration and enhancement. Public use or access is not specifically stated to be a purpose of stewardship areas. Stewardship areas are, however, a type of conservation area, and conservation areas are held for conservation purposes. "Conservation" is defined as the preservation and protection of natural and historic resources for purposes including maintaining their intrinsic values and providing for public recreation and enjoyment. As this definition includes public enjoyment, it follows that this is a purpose of stewardship areas.

22. For marginal strips, section 24C of the Conservation Act sets out their purposes as being “conservation” purposes and in particular (among other things) maintenance of water quality, maintenance of aquatic life, protection of the strips, public access and public recreational use of the strips and the water bodies.
23. The purposes of National Parks are found in section 4 of the National Parks Act and include the preservation in perpetuity of Parks for their intrinsic worth and for the benefit, use, and enjoyment of the public.
24. Broadly speaking, therefore, there are two main purposes which relate to the three areas: protection/preservation and public enjoyment.
25. In terms of “public enjoyment”, I have taken into account the Hearing Commissioner’s conclusion that a number of current users of the area (hunters, trampers and anglers) would find their experience diminished by the presence of the monorail. The Snowdon forest is prized by many existing users for its remote wilderness character and the absence of human modification. For these people, the presence of the monorail would interfere with their enjoyment, whether that be because of the noise, the way it looks and its effect on the landscape, the simple fact of its existence, or a combination of these factors.
26. On the other hand, if the monorail proved successful in attracting even a small proportion of RHL’s projected number of clients, a large number of visitors who would otherwise never experience the spectacular scenery of the Snowdon stewardship area would be able to do so.
27. The likelihood that significant numbers of “new” visitors would enjoy the forest (if the monorail proved successful) satisfies me that the proposal is not “contrary” to the public enjoyment purpose for which the land is held, despite the adverse effect on existing users.
28. I move now to the “protection/preservation” purpose. I have noted above that construction and operation of the monorail would require native vegetation clearance with consequent adverse effects on native fauna and would also have adverse effects on landscape. I concluded that the application (including the revised proposed conditions) does not provide adequate information for me to assess these effects properly, as required under section 17U. I also concluded that if the monorail were to fail (which I consider to be a serious risk), the presence of the structure would cause significant adverse effects that could not be adequately remedied or mitigated.
29. Further, I have noted my view (below) that allowing the monorail would not be consistent with the government’s obligations under the World Heritage Convention.
30. Given these conclusions, I also consider that allowing the monorail would be contrary to the “protection/preservation” purpose for which the land is held and I decline consent on that basis.

World Heritage Convention

31. I have carefully considered the compatibility of the proposal with the area's world heritage status in light of New Zealand's obligations under articles 4 and 5 of the Convention. Under Article 4, the government accepted a duty to do all it can "to the utmost of its own resources" to protect, conserve, present and transmit to future generations the natural heritage of its world heritage sites. Article 5 includes a requirement, as far as possible, to take the necessary measures to protect the natural heritage of the sites.
32. Those obligations are in particular engaged by the values described in the Statement of Outstanding Universal Value (SOUV) for the Te Wāhipounamu area. Among other things, the SOUV notes that "the landscapes are world-class for the sheer excellence of their scenic beauty" and that the habitats "contain an extensive range of New Zealand's unusual endemic fauna".
33. In considering the compatibility of the proposal with New Zealand's obligations to protect those heritage values, I have had the benefit of the submissions made in the hearing process about world heritage status, RHL's "Right of Reply," the conclusion reached by the Hearing Commissioner, the views expressed by the World Heritage Centre, the further reports commissioned by the department and the responses provided by RHL.
34. I do want to emphasise that it is not my view that tourism developments are necessarily incompatible with the area's world heritage status. Tourism infrastructure already exists in the world heritage area and further infrastructure may be a positive contribution, particularly where it enables more people to appreciate the area's outstanding values.
35. However, it will always be necessary to consider the adverse effects on the area's values alongside such positive effects. To do this, I need to be confident that the particular scale and character of those adverse effects is compatible with heritage obligations and that steps to be taken to protect heritage values will be sufficient.
36. For much the same reasons I have set out above when considering section 17U(2)(a), I do not have that confidence and so conclude that granting consent would not be consistent with New Zealand's obligations to preserve the values of Te Wāhipounamu and to take necessary protective measures.

Financial viability

37. A number of submitters expressed a concern that the monorail was not a financially viable proposition. As you have noted, the Hearing Commissioner specifically considered financial viability not to be relevant. I have considered his reasons but do not find them logical or compelling. Considering whether a development on public conservation land – especially one involving significant infrastructure – is likely to succeed, is consistent with the purpose of the Conservation Act, which is "to promote the conservation of New Zealand's natural and historic resources". It is consistent with this purpose to consider whether a venture such as the monorail is likely to succeed, for, if it does not, there is the potential for the infrastructure to remain on the site and for it to have adverse

effects on the natural resources of the area.

38. Financial viability relates to RHL's ability to carry out the activity, and information relevant to that ability is required to be included in the application under section 17S(1)(f), and such information is a matter that I am required to have regard to under section 17U(1)(d). The fact that I am able to impose a bond under section 17X is another matter indicating that the viability of the proposal is relevant. Further, it is common sense to look at financial viability when I, as Minister, decide whether to give the Crown's "landowner" permission to use the public's land.
39. My department does not have sufficient financial expertise to advise me on this issue. Therefore, I asked my department to commission expert advice on the matter. The reports commissioned from Tourism Resource Consultants and Mr Dickson raise significant questions about the viability of the monorail.
40. I have, of course, considered your response to these reports. We met on 10 April and you provided me with a preliminary response, followed by a more detailed response on 2 May. Essentially, you refute the conclusions of both reports in a number of important respects, in particular visitor numbers, market share, pricing and capital costs. You also point out that the Milford Development Agency (MDA) figures need to be scaled up to include adult visitors who do not take a boat trip, and children, and provide updated figures from the MDA showing a 9% increase in numbers for the year ending 31 March 2014.
41. In sum, you stand by the numbers and conclusions as presented in your business case, which contend that the monorail is a viable business.
42. You suggest that if I were concerned about the viability of the monorail, I should deal with this concern by imposing a condition that requires RHL to provide detailed information for approval at a later stage and by requiring a bond. You note that the business case was a high-level document.
43. I understand that Mr Dickson has reviewed your response, including the updated numbers from the MDA. I am advised that the updated numbers result in a change in Mr Dickson's estimate of the "Enterprise Value" of the business (from -441 m to -315 m) but that neither this revision, nor the other views expressed in your response, alters his conclusions in a material way.
44. I appreciate that the question of whether the monorail would, or would not, prove viable is not something that can be conclusively proved one way or the other in advance. Having said that, I must make a decision on the information available. Even after considering the updated MDA figures, I consider it more likely than not that the monorail would not be financially viable. There is significant doubt in my mind about major factors impacting on the viability of the proposal: namely future visitor numbers to Milford, the market share the monorail would capture and the cost of construction (I acknowledge that, as the monorail could be marketed as an attraction in its own right, the ticket price could be higher than the figure used by Mr Dickson). Given that these factors are critical to the viability of the proposal, there is a high risk that the monorail might be partially built and then fail, or be built and operated for a short time and then fail. If this

were to occur, and if it were not possible to sell the business to another operator, then the Crown as landowner would be left with a large structure which it would not want and which served no useful purpose.

45. I do not consider that imposing a bond would be sufficient to mitigate this risk. As noted earlier, a bond can cover the cost of removing the structure, and it can cover the costs of restoring the landscape to some limited extent but it cannot replace the existing forest or the species that will have been disturbed. Further, while I appreciate that your estimate of the likely bond required and Mr Dickson's estimate differ significantly, I anticipate the required amount would be nearer to Mr Dickson's estimate and I accept his conclusion that RHL would struggle to find a surety for the bond.
46. I have also considered your suggestion that financial viability could be tested at a later stage by way of condition. If there is no certainty now, there is no guarantee of certainty later, and I am not prepared to grant conditional consent on this basis.

Section 17T(3)

47. Finally, I am further satisfied that the grant of a concession would be inappropriate in the circumstances of this particular application having regard to the matters set out above.

Road consent application

48. An authorisation under section 55(2) of the National Parks Act is separate from the granting of a concession under Part 3B of the Conservation Act. Accordingly, if an application for road consent is made, as is the case here, I am required to consider that application and make a decision. In this case, however, the road for which consent is sought under section 55 of the National Parks Act is proposed at Te Anau Downs and would have been required to provide the necessary access to one of the terminus buildings for which a concession was sought. Therefore, although a concession and a road consent are required under the two Acts, the access road is sufficiently linked to the concession application that determination of the road consent application is rendered redundant if the requisite concession has not been obtained. Accordingly, as I have declined to grant the concession, I have determined that I do not need to reach a decision on the road consent application.

Reconsideration

49. You should be aware that section 17ZJ of the Conservation Act enables you to seek a reconsideration of my decision.

Yours sincerely,



Nick Smith
Minister of Conservation

Appendix 1 – Consents sought

(a) **Monorail:**

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

(b) **Construction Track/Mountain Bike Track:**

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

(c) **Kiwi Burn Terminus:**

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

(d) **Te Anau Downs Terminus:**

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

(e) **Cycle Link Route:**

Easement for construction and maintenance of a Mountain Bike Track across public conservation land, to connect the proposed cycle route with State Highway 94 after the point where the monorail leaves public conservation land and crosses private land;

(f) **Kiwi Burn Public Hut:**

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

(g) **Mountain Bike Track Public Toilets:**

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

(h) **Other Public Recreational facilities:**

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

(i) **Te Anau Downs Road:**

Consent under section 55(2) of the National Parks Act 1981 for the construction of an access road through the Fiordland National Park.