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Attn Daniel Griffin  
Also by email

Your ref ADA/4763/2  
Our ref MCF1-001/LF

27 June 2012

### URGENT LETTER

Dear Sirs

#### **Latchmore Brook Restoration Project (High Level Stewardship ref AG0030016)**

We are instructed by Fiona Macdonald and John Shepherd in connection with the above licence issued by the Environment Agency (EA) 16 May 2012 to the Forestry Commission (FC). We refer to the letter before action sent on their behalf by Anthony Harris 25 May 2012 and the responses from the FC, Natural England (NE), the New Forest National Park Authority (NFNPA) and the Verderers of the New Forest (Verderers) (collectively "the prospective defendants"). From these papers it appears that despite the position adopted by the prospective defendants the EA has issued the licence without compliance of two critical European law requirements arising under the Environmental Impact Assessment Directive (85/337/EEC)/ 2011/92/EU and the Habitats Directive 92/43/EEC. The failure to comply with the relevant EU law renders the EA's decision to issue the consent unlawful.

#### Habitats Directive compliance

It is common ground, in so far as we have ascertained from the responses to the letter before action, that the proposed restoration works will impact on an EU designated SPA/SAC and Ramsar Wetland site. NE's position (and that adopted by the other defendants) is that an appropriate assessment is not required because the proposed works are directly connected with and necessary for the management of the site. NE, however, now admits it carried out a voluntary or what it describes as "shadow" Habitats Regulation Assessment dated 14 June 2012 (the June 2012 HRA).

From this sequence of assessments it is plain that NE issued a document purporting to be a Habitats Regulation Assessment. Obviously that June 2012 HRA document post-dates the EA licence so could not have informed the EA's decision to issue the licence.

It also appears to be the case that having decided to undertake an appropriate assessment that the so-called "shadow" HRA is defective and would not withstand expert scrutiny by reason of its failure to give full consideration to the issues.

#### Environmental Impact Assessment

We are also concerned that none of the responses to the letter before action have adequately dealt with the claimants' position that the proposed restoration works require an environmental assessment under the EIA directive and domestic regulations (including Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999 as amended, the Environmental Impact Assessment (Water Resources) Regulations 2003 and the Town & Country Planning (Environmental Impact Assessment) Regulations 2011), or at a minimum has any one of the proposed defendants involved in the consent process issued a negative screening decision explaining why an EIA is not required. We have had sight of the 2006 voluntary Environmental Statement submitted under these regulations. Firstly the 2006 ES does not deal specifically with Latchmore Brook. Secondly the document plainly envisages an update to detail with specific areas of restoration consistent with NE's letter in April 2009. As far as we are aware this has not been done.

What you are requested to do:

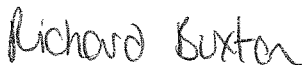
- (1) Confirm that a full Habitats Regulation assessment will be undertaken before any works commence or explain why not.
- (2) Confirm that a full Environmental Assessment will be undertaken before any works commence or explain why not.
- (3) Provide copies of all responses from the NE consultation response on the details arising under the above licence as required by NE in 2009 when it first agreed to the works under what is described as its "generic" assessment.

We are copying this letter to the FC, NE, the NFNPA and the Verderers involved in the authorisation process to obtain the agreement of all parties that works will not commence until the issues between the parties are satisfactorily resolved so as to save all parties the time and expense of the claimants having to seek emergency court interim relief.

We look forward to your response by return. We appreciate that the FC has made the offer of a meeting with Professor Shepherd and others for this Friday 29 June 2012 and our clients welcome the opportunity to have this meeting, provided that such agreement is obtained.

Please contact Lisa Foster of this office in connection with this matter. Her email is [lisa@lisafoster.co.uk](mailto:lisa@lisafoster.co.uk).

Yours faithfully



Richard Buxton

cc Forestry Commission c/o Eversheds (by email)  
(Attn Mark Rhys-Jones Ref 033727/002196)  
Natural England )(by email)( (Attn Julie Hunt)  
New Forest National Park Authority )(by email)( (Attn Julie Mutlow)  
Verderers of the New Forest )(by email) (Attn Dominic May)