

19B Victoria Street
Cambridge CB1 1JP

Tel: (01223) 328933

Fax: (01223) 301308

www.richardbuxton.co.uk

law@richardbuxton.co.uk

New Forest National Park Authority
Lymington Town Hall
Avenue Road
Hampshire SO41 9ZG

Attn: Steve Avery

Our ref: MCF1-001/LF

12 December 2012

R.M.Buxton

MA (Cantab) MES (Yale) Solicitor - Advocate

Susan Ring

LLM Env (London) Solicitor - Advocate

Paul Stookes

PhD MSc LLB Solicitor - Advocate

Associate: Adrienne Copithorne

BA (Cantab) MA (UC Berkeley) Solicitor - Advocate

Associate: Lisa Foster

JD (Law) (UC SFran) MSc (UEA) MA (York)

Dear Sirs

Latchmore Brook Restoration Project (High Level Stewardship ref AG0030016)

EIA screening

1. We refer to the Forestry Commission's request for EIA screening dated 27 November 2012 seeking a screening opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (the EIA regulations). As Schedule 2 development the Authority must undertake a screening assessment having regard to the Schedule 3 criteria considering whether to treat the development as EIA development.

Characteristics of the Development

2. This development is part of a much wider project covering a large area of the New Forest. Our specific instructions are that this project is just one of approximately 50 related developments being undertaken as part of the same HLS programme. As such the screening opinion must deal with cumulative effects of these related projects which are before you or which may come forward as part of the New Forest project. In particular our clients have been informed that the Forestry Commission plans to undertake related works not described in this application and upstream in the same catchment area.
3. In this regard we refer you to the recent screening directions from the Secretary of State in a matter where we are acting for the local community in Kenninghall, Norfolk (copies enclosed). The Secretary of State in that case when considering EIA screening makes specific reference to the need to take a precautionary approach where multiple developments are planned and directed that four separate schedule 2 applications were EIA development because of the cumulative impacts. We would expect you to take a similar precautionary approach to consider the cumulative impacts in your screening opinion. Our view is that once the cumulative effects are considered this application is EIA development.



4. In addition the project involves the movement of 8000 to 10000 tonnes of gravel, requiring a significant use of natural resources (suitable gravels of local origin), the disturbance associated with approximately 1000 heavy truck movements over inadequate Forest lanes and tracks, and pollution of downstream waters (Hucklesbrook and the Hampshire Avon) by suspended particulate materials remobilised and introduced by the works that may smother fish and invertebrates.

Location of the Development

5. The project affects an EU designated SAC as well as being classified as a SSSI. Under criteria 2(v) to Schedule 3 this is an extremely sensitive and that factor alone should trigger the requirement to carry out a full ES in relation to biodiversity and habitat effects.
6. In addition, in relation to EIA Schedule 3 2(vii), this requires you to consider the impact on the local landscape. Our understanding is that this is an important historical landscape with significant archaeological features dating from the Bronze Age through to World War II, and that it is of considerable historical, recreational, landscape, touristic and cultural significance, being one of the best known subjects in the vicinity for landscape artists and photographers since the 19th century.

Characteristics of the potential impact

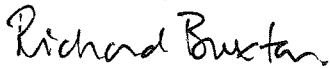
7. The development will directly affect an area estimated to be in excess of 1 hectare plus the area affected by work upstream whose scale is as yet unknown, and it will indirectly affect an area several times larger estimated to be several hectares at least.
8. Specifically in relation to the sensitive SAC habitat the works will cause permanent damage to the ecosystems of those parts of the existing stream that are filled in, and short-term damage to adjacent vegetation and its associated fauna. It will by design cause long-term changes to the hydrological status of both the stream and the adjacent vegetated areas. The effects on fish, birds, and invertebrates as described below and on vegetation will be significant, with benefits for some species and adverse effects on others.
9. The magnitude of the development (when considering the whole of the project within the same catchment) makes it plain that this development is of such a scale as to require a full environmental assessment.
10. There is a real probability of significant adverse impact arising from the direct disturbance on populations of kingfishers (*Alcedo atthis*), sea trout (*Salmo trutta morpha trutta*) and on damselflies including the Beautiful Demoiselle (*Calopteryx virgo*), the Southern Damselfly (*Coenagrion mercurial*) and the Scarce Blue-tailed Damselfly (*Ischnura pumilio*) and of other adverse effects on the biodiversity and sensitive habitats of the area.
11. As a result of the above which plainly demonstrates the project gives rise to the possibility of significant effects the screening opinion in our view must reach a decision to treat the development as EIA development and require the submission by the applicant of a comprehensive environmental statement.

Habitats Directive & Regulations

12. As a consequence of the risk of adverse impacts on the SAC habitat and the scheduled biodiversity interests identified above, we are seeking your separate agreement to undertake an appropriate assessment for the project under s21(1) the Conservation of Habitats and Species Regulations 2010. From the information we have seen the project plainly falls outside the day-to-day operation of the site and as such is not "directly connected with or necessary to the management of the site" (21(1)(b) See Advocate General's decision Case C-258/11 (copy enclosed). We also draw your attention to para 49 where which reaffirms the low threshold for triggering an appropriate assessment.

We look forward to your response.

Yours faithfully



Richard Buxton

- cc. Forestry Commission (Attn: Jane Smith)
Natural England (Attn: Julie Hunt)
Environment Agency (Attn: Christopher Hayball)
Verderers of the New Forest (Attn: Dominic May)