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Forestry Commission
South England Forest District
The Queens House
Lyndhurst
Hants SO43 7NH

Attn: Mike Seddon

Our ref: MCF1-001/LF

20 December 2013

Dear Sirs

Latchmore Brook Restoration Project

1. We appreciate that there is an on-going dialogue between our client, Friends of Latchmore (FoL), and the HLS parties promoting this scheme and we consider that overall procedural matters are moving in the right direction. There is an acknowledgement by the Forestry Commission (FC) that the works will be subject to obtaining consent on a planning application to the New Forest National Park Authority (NFNPA), and advice obtained by Natural England (NE) has confirmed that the application needs to be treated as EIA development pursuant to the Town and Country Planning Environmental Impact Assessment Regulations 2011.

2. However FoL's view is that there continues to be serious deficiencies and errors in the baseline environmental data which, if not corrected, adversely impacts on the accuracy and reliability of the assessment of impacts and predicted outcomes.

3. FoL understand that the FC agrees there are problems in the hydrological modelling relied on in the Latchmore Brook Restoration Options Appraisal Final Report June 2013 mainly because JBA did not follow NE guidelines contained in Appendix A to the tender specification. NE's tender specification requires a whole-river scale or stream catchment approach and the JBA report did not follow this guidance. FoL understand this has been identified and the FC is working with JBA and has instructed them to revise aspects of their work to comply with NE guidelines. Please confirm that this approach will be used for the EIA scoping report.

4. However FoL does not consider this will adequately address the underlying deficiencies because the fundamental problem is the lack of observational and monitoring data as to actual stream flows, which is necessary to form a proper understanding of the present and future flow conditions. FoL consider this should have formed part of the tender specification, but it did not, with the consequence that JBA modelling of stream flows and absorption rates is based on assumptions that are untested and speculative, particularly in flood flow conditions. They are concerned that the present desktop modelling will lead to an environmental assessment process that, on the surface, appears robust but in fact will be deeply flawed and cannot be relied on because the baseline assumptions are untested.

5. We appreciate that the FC has agreed to consult FoL on the EIA Scoping Report but can the FC confirm that it will ensure that the EIA Scoping Report will require observations and pre-operational monitoring data to form the baseline for the predictions required for the comparative assessments?

6. Furthermore, FoL have been pressing for a full assessment of the "do nothing" option and understand this will be included in the assessment. Confirmation of this is sought because past correspondence has suggested that the "do nothing" option may not be adequately assessed, which would be contrary to the precautionary approach "for works such as these where the science is incomplete/inaccurate according to an email from Andrew Wood (NE) to John Shepherd on 15 October 2012.

7. Depending on your response to these concerns, FoL have asked us to advise them on legal mechanisms to seek either a scoping opinion from the Secretary of State (EIA Reg 14) or judicial review of the environmental scoping process to ensure that observations and monitoring will form part of the baseline assessment. We therefore need clarification of the FC's position so we can advise our clients.

Unpublished environmental information

8. FoL have consistently been alerted (through HLS meeting minutes) to background reports and data that are not in the public domain. FC has also suggested in their November 13 meeting with FoL that information to be used in the EIA process will not be released to them until the environmental statement is released for consultation. They cannot understand this approach, which is unnecessarily adversarial and lacking in transparency and therefore in conflict with the public participation requirements in EIA/Aarhus matters. This concern has been recently highlighted in a letter from FoL/Professor John Shepherd to Mike Seddon dated 10 December 2013. There is also a practical concern that the 14-day minimum consultation period provided for in the regulations will be inadequate for them to review and comment on the background data relied on in the ES.

9. Can you therefore please provide us copies of the following reports/data summaries referred to in HLS meeting minutes?

   (1) HLS (FC) Lessons Learnt Report
   (2) Long Term Monitoring Programme
   (3) Julie Stubbs - Baseline Survey Report
   (4) Species Monitoring Programme/Plan
   (5) Open Forest sub-compartment database
   (6) D Westerhoff - Ditchend restoration report
   (7) Latest spreadsheet of 10 year HLS Restoration Programme (updating of 7 February 2012 version still the only one on HLS web-site)
   (8)Eyeworth Weir restoration project plans
   (9) Birds species surveys (e.g. nightjars) known to have been carried out recently
   (10) 2004/5 Latchmore Southern Damselfly (SDF) survey data
   (11) Wildlife Trust SDF survey data funded by NE in 2013

10. Please also confirm that data used in the environmental assessment process will be released to FoL when it becomes available, and not as has been suggested, when the environmental statement is published. This will ensure FoL's early and effective public participation in the EIA process, which when done correctly, is an iterative process. There are also practical reasons to agree this since the FC is obliged under the EIA regulations (eg Reg 22) to provide a 21-day consultation period on further

environmental information so that if FoL identifies gaps or errors in the background data (eg as they did with the JBA modelling) leading to the NFNPA requesting further information or other information from FC, this could delay the process.

Other outstanding points

11. You may be aware that Michael Mayes carried out Southern Damselfly (SDF) surveys in July 2013 in the Latchmore Brook area. His data establishes the existence of new SDF colonies beyond those known about from previous survey data. This information has now been transmitted by the Hampshire Recorder to the British Dragonfly Society for registration but there is inevitably some delay in updating the database. Can you please confirm that the EIA baseline will include Mr Mayes and the Wildlife Trust SDF data referred to above (list item 11)?

12. FoL has the benefit of specialist advice on fish species within the project waters and her recommendation has been to carry out an electro-fishing survey for the purposes of establishing fish populations. The EA has consented to this work and a request for consent is pending with NE.

Outstanding queries

13. In addition, through the on-going dialogue, FoL has raised a number of concerns, which they do not feel are being properly addressed. However they are content to raise these matters through their formal consultation on the EIA Scoping Report.

Habitats Directive Appropriate Assessment

14. In our correspondence with NFNPA and NE in December 2012/January 2013 we raised the concern with the lack of an Appropriate Assessment (AA) under the Habitats Regulations for this site - detailed reasons are set out in our letter, so we will not repeat these now. However, we have not had a response from the HLS parties and your response is requested (see below re: timing). The failure to carry out an AA could render the consent process lawfully flawed and so you are urged to agree that the precautionary approach is to agree to carry out an AA. Please confirm your intentions.

Conclusion and timing for response

15. We note that it often takes several months to get a response to our letters and we consider this on-going delay, which on occasion has been up to 9 months, for a substantive response unacceptable. Given the upcoming holidays, please provide a response to this letter by 10 January 2014.

Yours faithfully

Richard Buxton

RICHARD BUXTON

cc: Natural England (Attn Andy Macdonald - by email only)
New Forest National Park Authority (Attn Steve Avery- by email only)
Verderers of the New Forest (Attn Dominic May – by email only)
New Forest National Park Authority (Attn Alison Barnes – by email only)