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Attn. Steve Avery

Our ref: FRR1-001/LF

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11 October 2016

Dear Sir/Madam

Latchmore Brook Restoration Project (Higher Level Stewardship ref AG0030016) + planning no/ref 16/00571 PART OF THE CATCHMENT AREA OF THE LATCHMORE BROOK INCLUDING STUDLEY WOOD, ISLANDS THORNS INCLOSURE, AMBERWOOD INCLOSURE, ALDERHILL INCLOSURE, SLODENS INCLOSURE AND LATCHMORE BOTTOM. CENTRAL GRID REFERENCE SU 2121113830

1. We are instructed by Friends of Latchmore Brook (FoL) in relation to the above. Our clients have lodged their objection to the above application for development by the Forestry Commission (FC) and we do not repeat the substance here.
2. Latchmore Brook, a 7.0 km stream, is one of the four New Forest tributaries of the River Avon and is an extremely sensitive site of high biodiversity, amenity, palaeontological and geological importance. Latchmore catchment is a part of the wider new Forest area, and was first designated a SSSI in 1959 with the most recent update in November 1996. The SSSI designated specifically includes streams as a reason for notification (see pg 2 of SSSI Citation (**DOC 1**)). The area designated is part of a Special Protection Area (SPA) under the Birds Directive most recently updated in June 2014.
3. Following the SSSI citation the area was designated as a Special Area of Conservation (SAC) under EU law in 2004-05. The designation specifically refers to two species of fish and otter, see annex II species (pg 4 of the SAC standard data form; **DOC 2**). These species are wholly dependent on the maintenance of the stream habitats referred in the SSSI designation. The streams are also listed on the RAMSAR Convention on Wetlands wetland information sheet as a protected wetland type (**DOC 3**). There are 27 of the total 582 New Forest SSSI units in the Latchmore Catchment. The stream habitat and the geological feature are important SSSI features, specifically mentioned in the SSSI citation.
4. The application proposes to infill and to slightly lengthen the main route of Latchmore Brook, with at least 96,000 tonnes of imported clay and aggregates. These are Environmental Impact Assessment (EIA) Works with an Environmental Statement (ES) being lodged with the application. We note that Natural England has previously stated that *all* works of this nature require an ES. We observe that the NFNPA has disregarded this advice in respect of similar engineering works being carried out elsewhere in the New Forest SSSI/SAC/SPA areas – see e.g. letter from NE to

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NFNPA dated 25 July 2013 (**DOC 4**). Despite that NE opinion and the subsequent Screening Direction of 25 September 2015 for Pondhead that such schemes were EIA development, the revisited NFNPA Screening Opinion for Wootton of 7 June 2016 was "not likely to have significant effects on the environment and that the proposed development is therefore not 'EIA Development' within the meaning of the 2011 Regulations" – to our view an error of judgement in the screening of that application.

5. Your failure to require an ES for works being done elsewhere is typical of lack of robust assessment of the environmental impacts of these projects elsewhere in the New Forest, in circumstances where Desmond Swayne MP, in his recent request for call-in of this application noted your authority's direct vested interest in securing planning consent. The outcomes of projects elsewhere in the NFNPA demonstrate beyond doubt that the works are damaging to the environment. A much more careful and considered assessment of the proposals is warranted. As matters stand a robust assessment which could have prevented environmental harm has come too late for areas in the New Forest, whereas the authority can and indeed should refuse consent for the Latchmore Brook works in light of the failures and environmental harm being caused elsewhere.

Failures of similar wetland restoration schemes through the Higher Level Stewardship (HLS) project

6. The purpose of this letter is to draw your attention to information which is not before the NFNPA, despite an ES being lodged with the application, on the failures of similar wetland restoration schemes which the FC has undertaken in other parts of the New Forest using the same techniques to those proposed in this application.
7. As a matter of planning law, the failure to obtain this information and take it into account when deciding whether to grant planning permission would constitute legal error and make any decision to grant planning permission vulnerable to judicial review. We appreciate that Jonathan Cox Associates conducted a limited study in 2014-2015 (the Cox report) of 8 of the 147 wetland restorations for the FC. The Cox report, by its own admission does not fully objectively review the works being carried out nor the larger projects done in recent years under the HLS restorations which the present application forms part of. The Cox report is heavily caveated in any event as to the success of outcomes from the limited sample studied. Indeed as a consequence of the engineering works most units are now classified as 'unfavourable recovering' with no target date for favourable response. Please see the consultation response from Prof John Shepherd CBE FRS CMath FIMA MA PhD (14 August 2016, copy attached at **DOC 5**) on the Cox report. He said;

'It fails to provide convincing evidence because no adequate observations (not even matched pairs of photographs) were made before and after the works were carried out. Moreover, no clear (e.g. SMART(2)) targets have ever been set for any of the restorations: without such targets it is impossible to know whether or not they have been successful.'

8. The Latchmore application seeks to extend past methods to the Latchmore Brook SAC/SPA/SSSI areas and proposes engineering works which are very similar in nature to many recent deteriorating interventions which have destroyed much pre-works habitat and wildlife. The works includes identical engineering methods: the introduction of heather bales, imported hoggins, clay of unproven compatibility, and other foreign materials including recovered gravel, into the streams ostensibly to raise the stream bed levels and to try to 'restore the floodplain'. This attempts to change the SSSI stream features into little more than shallow gutters. Elsewhere the

works have included the use of clay plugs to re-profile stream edges and in the re-routing of the new streams and deployment of forest debris, large wooden retaining board and wooden posts into the ditch bed to slow water flow rates.

9. The failures in some areas where these works have been carried out do not form part of the Cox report. For this reason the NFNPA must assess these examples of *significant negative effects* as a material consideration to the decision whether there is sufficient information for considering the granting of planning consent for this application and cannot rely on the Cox report. This is especially so since the Latchmore works are materially at a vaster scale, comprising one of the larger streams in the New Forest and the largest project so far undertaken by the New Forest HLS Scheme, around 4 - 5 times larger than any of them hitherto.
10. The outcomes in the areas discussed below are relevant to two questions: firstly is the intervention justified because the desired objectives are met in the works done elsewhere: the evidence is that the works are not delivering the desired objectives even though these are not clearly defined. Secondly, are there adverse environmental consequences including harm to rheophilic fish, important European Protected Species such as Southern Damselfly and the loss of SSSI geological record as documented by FoL amongst the very many other objections to SSSI and RAMSAR damage being proposed, explained, justified, mitigated and compensated.
11. The evidence is that restoration works carried out in a similar manner in similar conditions to that proposed for Latchmore have dramatically failed and rather than improve the ecology are causing irreparable harm, which is going unchecked by your authority, contrary to your duty as competent authority where EU protected areas are involved. Enclosed with this letter as **DOC 6** is a paper presented by Prof Shepherd to the New Forest Consultative Panel in September 2015 regarding 'wetland restorations' on the failures in connection with locations where very similar works (introduction of heather bales, hoggin, clay and stone) have been carried out since 2010 under HLS, some without the appropriate planning consents, some under planning permissions with similar failures, including:
 - (a) Ditchend/Must Thorns Stream – The attached paper, using Ditchend as an example (**DOC 7**), illustrates the failures in the restoration process. A whole catchment approach, detailed baseline information, impact assessment and taking account of public concerns were all ignored. This was done outside the required planning controls with consequential undocumented biodiversity change and loss, resulting in a stony track devoid of biodiversity. This damaged area is mentioned in the Cox report as representative of the HLS scheme Works but was not studied, despite the coincidence of timing when extensive remediation of the 2011 works were carried out in July 2014.
 - (b) Amberslade Bottom/Broomy Inclosure – Works were initially carried out in 2007 and these failed causing heavy erosion. New channels were dug in 2015 which yet again failed within weeks – and this year were re-filled with hoggin and yet more hard engineering. The work is again in 2016 failing to try to stop flash-flooding through what was a beautiful bluebell wood (bluebell areas are now buried or waterlogged/washed out), now turned into a quagmire with the old stream trying to return to its pre-works course and the new one being scoured out with the infill stones all through the wood.
 - (c) Harvestlade Bottom – These works fall within the administration of Burley Parish Council) which has raised serious complaints about the damage being caused by the engineering works (see attached correspondence at **DOC 8**). The "restoration" has ruined a previously beautiful and biodiverse area and left little more than a

disintegrating channel, devoid of wildlife. The rescue of protected fish populations only started six weeks after commencement and lamprey and eel were almost certainly buried in the stream bed. This is the reality of these destructive projects.

(d) North Sluffers – This small, hidden-away diverse stream, known locally as a place to watch for sea trout spawning was destroyed in 2014 under the first planning permission that the NFNPA approved. The original SSSI feature was infilled and a shallow, channel the width of a ditching bucket dug. This homogenised less diverse habitat is not suited to fish spawning and has unnecessarily and without purpose ruined a significant part of the SSSI.

Environmental Statement Omissions and evidence of Harm

12. Although this is EIA development, the section on SAC species, including Southern Damselfly (SDF) is missing key data from in situ surveys undertaken. The missing data includes that from 2005 (Professor Thompson) and July 2013 (Rosie Ray, Cotswold Dragonfly Recorder and FoL recorders) as identified by the British Dragonfly Society in their second qualifying Latchmore Planning Application letter of 31 August 2016 to the NFNPA. The concern about selective data is detailed in Mr Langton's dossier to Natural England on the subject (**DOC 9**), indicating the existence of SDF breeding habitat in several places where engineering work is proposed. The consequence of this data being omitted is an incomplete assessment of the actual environmental risks these works pose to a key indicator species of international importance.
13. These errors and omissions were first brought to the attention of Natural England who has not taken account of these points in their consultation response. We note that there used to be SDF at Howen Bottom (Near Fritham) - but not since it was "restored" in 2010. Latchmore is the only site for SDF in the North of the Forest and is one of the few in "favourable condition".
14. We also note the national charity *Buglife* has raised strong objection due to the lack of invertebrate sensitivity data in the ES – an essential component of any robust environmental assessment. The SSSI citation specifically mentions invertebrates in the New Forest streams. An extract of the 1996 SSSI citation (**DOC 1**) provides at pg 2:

“A network of small streams draining the system form an unusual community which results from the combination of nutrient-poor, acid waters and outcrops of neutral enriched soils. There are many ponds of varying sizes and water chemistry including several ephemeral ponds. This wide range of habitats support an assemblage of nationally rare and scarce plants and a nationally important assemblage of rare and scarce invertebrates.”
15. Similar concerns have been raised by Dr Fiona Macdonald (BVMS MRCVS) in her objection letter to this development dated 9 August 2016. She points to the lack of information on a range of EU and UK protected fish species and how HLS project design is a major problem since the works try to form shallow meanders devoid of tree and shrub cover that will cause problems to the resident fish including:
 - In summer, the lack of shade and the shallow depth of the water will allow water temperatures to rise to levels at which fish cannot survive. (Broadmeadow et al 2010) (**DOC 10**)

- Overhanging vegetation also acts as an important food supply to fish and other aquatic organisms. Overhanging trees and shrubs also provide protection from predators such as herons and egrets.
- There is significant potential that the larvae of Brook Lamprey, which burrow into the silt for between 2 and 7 years, will be killed during the engineering works.
- Material used in the infill will have a significant negative impact on water quality, both in the water chemistry and particle content.

Geological harm

16. The ES reports that the Studley Wood geological SSSI feature will suffer the complete loss of its main attribute as a unique place for active research of these geological strata as a result of the in-fill (covered by up to 3.0 metres of hoggin and clay) moving its present status from favourable to permanently unfavourable status. This characterisation of the works does not fully explain that ongoing study of this internationally important study site for climate change will be lost at a time when such access has never been more essential. Eminent expert palaeontologists, including those from the Natural History Museum, have separately written to the NFNPA in numbers with their serious objections, requesting the application be refused, to prevent this harm. Geologist Dr Ian West states that Latchmore pre-dates the English Channel, the stream could only have ever run at the bottom of the valley where it is located now and with minor variations when it may have diverted round fallen trees or some such obstacle. His letter mentions the herring bone drainage; upwards of 150 Victorian drains that are not being infilled despite the main stream being totally or partially infilled; a scenario with risky and unpredictable outcomes.

Habitats Directive duties where there is collateral damage

17. Our comments on the above is against a context where we have repeatedly raised serious concerns with your authority's failure to carry out an Appropriate Assessment of the risks to the qualifying EU features of the site where these works are proposed (see e.g. our correspondence dated 2 April 2014, copy enclosed at **DOC 11**). The works being carried out are completely at odds with the SSSI SAC and RAMSAR citations for streams and fish (see para 2 and 3 above). In any event it is also questionable as a matter of substance if EU funding can be deployed for the benefit of wetlands restorations when the outcomes are shown to have collateral damage which significantly damages qualifying EU features of the highest nature conservation importance. We have repeatedly pointed out that the qualifying features which comprise the Latchmore SSSI/SAC/SPA are (or were before the reclassification to justify the works) in favourable condition and the only basis for the works at all is the presence of man-made channels. Given the favourable status of the qualifying features it is irrational to justify engineering works on the basis they are directly connected with and necessary for the management of some of the qualifying European features when they give rise to significant collateral damage to other European and SSSI habitat and species features. There is no evidence of any measurement of analysis of balance in these changes being attempted, contrary to law.
18. We are dealing now with current plans for the far larger catchment-scale works following our client's separate successful submission that the catchment must only be viewed as a whole. In their letter of 21 May 2014 (**DOC 12**) Natural England state

"... the test under the Conservation of Habitats and Species Regulations 2010 ('the Regulations') ... is two stage; there is effectively a screening element whereby the competent authority has to establish whether (a) there is likely to be a significant effect; and (b) whether the plan or project is not directly connected with or necessary to the management of the site. Only if these two requirements are met does the competent authority (NFNPA) have to go on to the next stage and carry out an Appropriate Assessment of the implications of the plan or project for the site in view of the sites conservation objectives."

19. This process requires an auditable account of the justification for the decision taken, which you have not provided. We understand that NE has reiterated its opinion on 19 August 2016 in its consultation response on the application but has simultaneously announced it is undertaking an independent 'Forest Wetland Restoration Assessment' that will be Peer Reviewed in October 2016, in response to technical reports and public outrage detailing the environmental harm being caused in the New Forest. This further demonstrates the equivocal nature of and the constraints inherent in the 2015 Cox report.

20. The flaw in the NFNPA reasoning is very simple indeed. If the works to infill the stream, to "reinststate" meanders and to attempt to try to increase one habitat; "grazing lawn" over other European habitats and species, causes more damage and loss than benefit, they cannot logically be 'necessary' for the management of the site, even if there is arguably some justification for the works just because of an administrative assessment of the site's 'unfavourable' condition due to past historic modification. The methodology is incorrect in respect of the proposed physical operations because:
 - The work does not address the upstream 'herring bone' plantation drainage system in the middle and upper sections of Latchmore Brook that will continue to shed large volumes of flood water into the main stream, scouring out even the most heavily compacted clay and aggregate.
 - None of the stated benefits to European Mire habitat can be achieved in this part of the Forest because the physical operation simply cannot achieve this, due to the gradients and levels involved and the limitations of the stated methodology.
 - Many streamside and marginal habitats and species of international importance such as invertebrates, birds and fish are threatened by the proposals to remove microhabitats including small wetland habitats that have developed over centuries along the stream. Lawn creation is proposed irrespective of large scale collateral damage to international protected interests of equal or greater value, without proper reasoning, rationale or explanation.

21. In a recent ecology report on Latchmore carried out by consultant ecologist Tom Langton (BSc. Ecol. (Hons.) C. Biol, FSB) in May 2016 (**DOC 9(a)**), he concluded that *"there is a near total lack of evidence relating to the protection of fauna in relation to the proposed stream modification and scrub clearing. This even extends to some of the rarest and most protected/declining species: scarce blue-tailed damselfly, southern damselfly, sea trout, bullhead, european eel and brook lamprey – known protected and priority species."*

22. Mr Langton's report criticises NE's local staff for failing to understand the hydrology associated with water flow rates which underpins the rationale for these works. This is a point our clients have repeatedly reiterated in their submissions – that the consultant hydrologists have modelled flow rates without any in-situ sampling of flows to check their validity: local observations indicate that they are erroneous.

“NE's local staff understanding of the potential for meanders to contribute is hydrologically naïve. The residence time for flow within the stream is an hour or so: the long residence time required to maintain flows over days & weeks is in the upstream water-replete soils: and is nothing to do with meanders.”

23. The lack of accuracy must be one of the major contributing reasons why the schemes that have been implemented are failing. In addition to Hyde, Bramshaw and Godshill Parish Councils' objections to the Latchmore proposals, in particular Mr Peter Clark, an experienced consulting engineer has lodged an objection to the application. Similar concerns have been raised by Burley Parish Council where recent works were carried at Harvestslade (see above) with serious adverse consequence (copy of correspondence attached at **DOC 8**).
24. It is not rational for a public body to permit such works to be carried out under the guise of the management of the site; as a matter of law as competent authority the NFNPA must consider the full implications of both benefit and harm to all habitats, species and other feature interests. That would normally be laid out in detail for scrutiny in an Appropriate Assessment.
25. We raised this same concern in our correspondence of 11 July 2014 (**DOC 13**):

“.....until the NFNPA, as competent authority, undertakes a comprehensive science-led assessment of the impacts of the proposed engineering works in relation to all of the qualifying features within Latchmore Brook the AA is inadequate as a matter of law. This assessment must consider inter alia, the wider cumulative effects arising from engineering works elsewhere in the New Forest, and downstream beyond its boundaries, and the failures of previous similar engineering works carried out by the FC, e.g. at Buckherd Bottom, Amberslade Bottom & Broomy, and Ditchend/Must Thorns , which we are instructed employed the same methods being proposed.”

Conclusion

26. Our final point of concern arises from research into the background of Natural England's role in the wetland restoration project. The NE tender specification 2012 contains a highly misleading and inaccurate statement: ***The streams of the New Forest are not a notified feature of the SSSI (DOC 14)***. That statement is plainly wrong in light of the text of the SSSI citation referred to above, and may have resulted in the entire misdirection of the objectives of the HLS wetland restoration project. Our conclusion is supported by a review of the historic management plans for the New Forest SSSI/SAC which unequivocally place the high importance of the streams (See New Forest SAC Management plan dated 2001 (extracts provided – **DOC 15** pages 89-94) and the more recent 2006-2016 management plan (**DOC 16** section 3.5).
27. Please confirm your planning committee members will be given a copy of this letter and enclosures in good time and that they will be given a site visit to the other sites

referred to in this letter to see first-hand the damage being done to these areas before deciding whether to approve further works.

28. Sir Desmond Swayne TD MP has written to request that the application is called-in. We have sent a copy of this letter to the National Planning case work unit so they are fully informed the detailed concerns of FoL and many others.
29. We are also considering raising this matter with the Parliamentary Ombudsman as a stark example of NE's dereliction of its statutory duties given it has lodged a consultation response not objecting to the works without consideration of the harm being caused and before the report on the outcomes of the NE study referred to above.

Yours faithfully

Richard Buxton

Richard Buxton Environmental & Public Law

- cc. Forestry Commission (Attn Bruce Rothnie)
Natural England (Attn. Julie Lunt)
Environment Agency (Attn. Tim Sykes)
Verderers of the New Forest (Attn. Dominic May)
Gavin Barwell MP Minister of State for Planning and Housing and London

Schedule of documents appended to this letter:

1. SSSI designation
2. SAC Standard Data form
3. RAMSAR Convention on Wetlands wetland information sheet
4. Natural England letter to NFNPA dated 25 July 2013
5. Consultation response from Prof John Shepherd (14 August 2016).
6. Wetland Restoration in the New Forest. The view from the crowd... (Professor John Shepherd CBE FRS) (September 2015)
7. New Forest HLS Stream Restoration Works at DITCHEND (10 October 2016)
8. Burley Parish Council objection FOI/EIR Harvestslade (26 September 2016)
9. (a) Langton, T.E.S. (2016a) Management of the New Forest, Hampshire. Restoration proposals for Latchmore Brook: Review of potential species and habitat impacts and related matters in relation to Higher Level Stewardship (HLS) wetland interventions. Report to Natural England CEO and non-executive directors. Unpub.

(b) Langton T E S (2016b) Management of the New Forest, Hampshire. Restoration proposals for Latchmore Brook: Review of potential species and habitat impacts and related matters in relation to Higher Level Stewardship (HLS) wetland interventions. Supplementary information: Southern Damselfly *Coenagrion mercuriale* at Latchmore Brook. 15 August 2016

(c) Southern Damselfly survey map

(d) Southern Damselfly survey at Latchmore Brook by M H Hayes (6-22 July 2013)

10. Broadmeadow, S., Jones, J., Langford, T., Shaw, P., & Nisbet, T. (2010). The influence of riparian shade on lowland stream water temperatures in southern England and their viability for brown trout. River Research and Applications DOI: 10.1002/rra.1354
11. Richard Buxton letter to NFNPA dated 2 April 2014
12. Natural England letter to Richard Buxton dated 21 May 2014
13. Richard Buxton letter to NFNPA dated 11 July 2014
14. NE Invitation to Tender for the Supply of a Geomorphological and Eco-hydrological Investigation of the Modified Wetlands of the New Forest SSSI (2012)
15. New Forest SAC Management plan 2001 (extracts)
16. New Forest Wetlands Management Plan 2006-2016 LIFE 02 NAT/UK/8544 (extracts - section 3.5)