

19/06/2006

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Mr John Farmer
Kent County Council
Invicta House
County Hall
Maidstone
Kent ME14 1XX

RECEIVED
22 JUN 2006
PLANNING
APPLY

RECEIVED
20 JUN 2006
PLANNING
MIDLANDS

Dear Mr Farmer

Re: Sittingbourne Northern Relief Road (NRR)

Further to our recent discussions and Notice of Objection to the above, M-real wish to confirm the detailed reasons why they object to the proposed amendments to the route of the NRR and we set out below the reasons for our objection.

The construction and design of the recently completed Northern section of the NRR, formerly the MKDR was undertaken by Kemsley Fields Limited in consultation with M-real who adapted their land holdings to enable the route of the MKDR to be built to its existing alignment. This followed the refusal by KCC to promote the MKDR or indeed contribute in any way to its funding. This is despite the fact that the MKDR between Grovehurst Junction of the A249 and Ridham Avenue provides the necessary infrastructure to enable the employment land around Kemsley Mill to be released and to enable the removal of a significant number of vehicles passing through Kemsley Village to Kemsley Paper Mill.

Kemsley Fields Ltd and M-real have made a major contribution towards the improvement of amenity to the bulk of the residents in the original part of Kemsley Village, as well as a very significant contribution to enable the NRR to proceed thus providing the wider benefits of this road to the whole of Sittingbourne.

The original route of the MKDR south of Ridham Avenue, now the NRR, is a long established route and there may have been some justification in moving the road away from the tidal protection bunds surrounding the Church Milton Development, for technical and environmental reasons.

The relocation of the road eastwards from Recreation Way is however, in our view, a purely politically motivated decision and has no justified or technical reason for change, as highlighted in KCC Officers own Report to Members prior to the Highways Advisory Board meeting in November 2005.

The principle reason why route alternative B was adopted by Members appeared to be entirely based on the objections from residents of Recreation Way and one or two local Politicians who only appeared to reflect the views of the very limited number of residents

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objecting to the original road alignment. Members did not balance the enormous benefit of the new road and the deliverability of the road within a reasonable timescale.

The development and purchase of houses in Recreation Way was made in full knowledge of the proposed NRR, as indeed are the houses currently being developed and sold within the new Wimpey and Bryant Homes Development to the north of Kemsley. These houses are just as close to the existing MKDR and we must therefore ask why a limited number of residents in Recreation Way are being given priority over all other residents within close proximity to this road and indeed all other roads of a similar situation.

We would wish to remind Kent County Council Officers and Members that the principle purpose of the NRR is to support employment and industry in Sittingbourne and the decision to disadvantage the very companies that have made a major contribution to employment in the area is completely unjustified.

M-real were prepared to cooperate with the Highway Authority to enable the Ridham Avenue to Milton Creek connection that was in accordance with the previous Planning Applications and Agreements. M-real now see the alternative to this route to be such a significant variation to all previous agreements that they will now maintain an objection to and resist the re-alignment of the proposed route that will have a serious impact on their existing operations, future expansion plans and services.

M-real therefore object to this revised scheme as shown on drawing no. 4568/WD/51E but confirm that it has no objection to the original scheme which was submitted for planning as shown on drawing no. 4568/WD/49C, or indeed the earlier consultation plan no. 4568/WD/46A.

The Basis for our Objection

M-real is a land owner affected by the proposed scheme and believe that this scheme as shown on drawing no. 4568/WD/51E will have a substantial adverse effect on both its land and business interest in the area.

Land North of Ridham Avenue

Land to the North of Ridham Avenue is designated for employment use in the Local Plan and has Outline Planning Permission for business development. This land has been specifically retained by M-real for future expansion of the Paper Mill.

More particularly the shape and dimensions of the site were created to enable the provision of a new paper machine and associated buildings that would provide the opportunity for future expansion of Kemsley Mill. Investment in such a project would be in the order of £200Million. As this area of land is the only area available for expansion, it is imperative that this land is protected against any encroachment.

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If future expansion is in any way compromised by either the taking of land reserved for M-real's future development scheme or restrictions to the site's accessibility from Ridham Avenue, this would seriously and adversely affect the future business of M-real.

We therefore wish to make it absolutely clear, that the relocation of the roundabout and road alignment proposals may actually remove the future potential to M-real's business, rather than just restricting or altering its future opportunities. If this is the case and without wishing to overstate the position, the potential loss to this company would be calculated in multi million pounds and under these circumstances this company is not prepared to allow the current road proposals to be implemented on or through their land. If necessary M-real will take Court Action to prevent KCC promoting this scheme on the basis that it will materially affect the future use of Kemsley Paper Mill.

M-real also object to the proposed re-alignment of the existing MKDR roundabout, as this will place the new roundabout too close to the Security Entrance and weighing platforms to the Mill Site.

The provision of a slip road combined with the shortened queuing section of road will cause severe health and safety issues and to date M-real are not satisfied that Officers have been able to suggest any satisfactory solution to M-real's concerns.

The combination of the re-aligned roundabout and slip road not only removes land from M-real's ownership, it endangers the existing access onto Ridham Avenue and creates a situation whereby queuing vehicles to the Paper Mill will almost certainly back up onto the proposed new road alignment, potentially blocking the Ridham Avenue roundabout and the NRR itself.

M-real must therefore ask the question, can the re-alignment of the road be justified when such a dangerous and potentially unsatisfactory situation is created. These issues surely far outweigh any marginal benefits that are gained by the re-alignment of the road.

Pipeline

We would also wish to advise you that we are extremely concerned that the proposed new alignment would require the private water main that serves Kemsley Mill to be altered once again. This water main is imperative to the continuation of manufacturing for both M-real and St Regis Paper Company.

If there is any interruption to the flow of the pipe the cost of lost production to these companies is calculated at least £600,000 per day. This is not an insurable risk and M-real and St Regis are not prepared to risk such an eventuality by allowing any further alterations to their pipeline for unnecessary road re-alignment works.

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Whilst the water main was altered to accommodate the existing MKDR this was justified as it allowed the old pipe to be replaced.

We must therefore advise you that M-real will not consider the alteration of this private pipe for the repositioning of the existing road as a justifiable reason.

Land South of Ridham Avenue

The re-alignment of the road would also impact on the area of land south of Ridham Avenue, that has until recently benefited from Planning Permission for the extension of the Kemsley Mill Car Park and a recent Planning Application to renew that consent has now been appealed. The proposed re-alignment of the road will substantially reduce the approved car park area which therefore creates a further intrusion to the future Mill operational area.

The re-alignment of the road effectively removes the future expansion of the Mill Car Park and potential development land that would be available to Kemsley Mill. M-real would again wish to question how a new road designed to create and enhance employment, should now be allowed to sterilise and lose potential employment land and the facilities that support employment. Again this is completely unjustified.

Charles Austin Site

Charles Austin carries out work within Kemsley Mill and therefore the removal of their premises is particularly unfortunate. The close proximity of their business is beneficial to Kemsley Mill.

Prior to the announcement of the new road scheme, Charles Austin was about to acquire the premises and reinvest in this location. The removal of this business to elsewhere in Sittingbourne is again completely unjustified.

The Proposed Line of the Road

We understand that the objective of revising the original route was to move the road further away from the existing residential properties in Church Milton and Recreation Way. Whilst M-real have sympathy with residents this route has been known and has been public knowledge for many years.

We do not understand why the residents of Recreation Way are being treated differently to the residents at the eastern end of Kemsley Village or indeed the residents of the new Wimpey/Bryant Homes Development, all of which live adjacent to the existing MKDR route.

If the new NRR route is to be moved to safe-guard the amenity of residents in Recreation Way, should not the whole route of the MKDR be altered in a similar manner.

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There is of course no difference and there is no substantial justification to treat Recreation Way differently to other residents in the area.

When Recreation Way was designed, detailed Noise Assessments and Attenuation Measures were agreed to protect the homes against any impact from the new road.

Circumstances have not changed from that time and the decision by Members to completely upturn the previous planning decisions and thereby disadvantage the employment sector is absolutely disgraceful.

We would further highlight that the houses in Recreation Way have also been constructed close to the overhead power-lines, which we may say present a greater health and safety hazard than the proposed road.

The area of Recreation Way was originally to be developed as a business location, which would have provided a buffer to the road and indeed the power-lines.

The approval of housing was therefore given with the above background and knowledge and to now re-locate the road after approving those houses, does seem extremely short sighted and is quite unacceptable to M-real.

The existence of power-lines would preclude any further easterly development of the residential land. This would result in an un-developable corridor of land along the original road alignment.

Under these circumstances, to waste land to the east of the power-lines that would otherwise provide employment use, does seem to be completely contrary to Government Policy for land use.

We would therefore submit that Members have not been made fully aware of the full background and planning considerations relevant to the proposed route and that they have merely bowed to pressure, from a minority of residents who acquired their properties in full knowledge of the established road alignment, that has already been fully considered through the Planning Process.

The additional distance which the amended scheme achieves, in terms of separating the road from the existing housing, is very small and is therefore unlikely to make any material difference to the residents when compared with the earlier scheme.

With the knowledge of past planning history residents cannot claim that they were unaware of the road proposals in this location as details of the road would have been revealed in Local Authority Searches. M-real will therefore be taking formal Legal Advice concerning the reasons for the change of alignment and its justification by Members and would wish to put

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KCC Officers and Members on notice that M-real feel so strongly that the current proposed re-alignment cannot be justified and if necessary will consider taking Legal Action against the Highway Authority to protect their Business and Land Holdings.

As such M-real regrets that not only does it object to the amended Planning Application but wishes to put the Highway Authority on Notice that it will not make land available for the proposed scheme or indeed allow works to or over its private services.

Summary

It is M-real's opinion that the Highway Authority has effectively made decisions in respect of the re-alignment in this road without seriously considering the impact of existing businesses and land owners for the benefit of a very small number of residents, that have not been or indeed would be materially disadvantaged.

We must emphasise that M-real will use all their power to resist the current proposals both in respect of any potential land acquisition and interference with its private services.

Until such time as Officers and Members fully understand the strength of this resistance, no doubt the proposed Northern Relief Road will be delayed or indeed will not be implemented until such time that a reasonable position is re-adopted and the proposed road is returned to its original alignment.

In that case M-real will not object to that scheme and indeed will assist wherever possible to enable that road to be implemented.

Yours sincerely,



PP
Mr David Scudder
Company Secretary

M-real New Thames Limited and
M-real Sittingbourne Limited

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Appendix 3



Our ref: GE/MK/F330-02

19 April, 2006

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RECEIVED
18 APR 2006

COPY TO D.C.	21/4/03
ACK	21/4/03
LETTER SENT	21/4/03

Dear John,

SITTINGBOURNE NORTHERN RELIEF ROAD

As you will be aware, PFA Consulting are advising Fletcher Challenge Forest Industries (FCFI) in respect of the emerging proposals for the SNRR and in this role I have been instructed to write regarding the above.

Fletcher Challenge Forest Industries regret to note the amendment to the planning application for the Sittingbourne Northern Relief Road. This response is an **objection** and statement of their position in respect of the revised route as now proposed by KCC.

FCFI wish to remind KCC that the proposed road is to be connected to the section of road formerly known as the MKDR, which has been designed, funded, and promoted through to adoption, by them and their partners through their joint company Kemsley Fields Ltd.

This section includes the very expensive connection to the Grovehurst Junction and the road across the railway and the resultant significant costs payable to Network Rail to enable this road to cross the railway. All of this is now to be used for the benefit of the NRR without cost to KCC and has obviated the need for KCC to undertake lengthy and difficult negotiations, and potential CPO proceedings, in respect of the railway crossing.

The construction and the design of the road was undertaken by Kemsley Fields Ltd, the majority shareholder of which is FCFI. This followed the refusal by KCC to promote the MKDR or indeed contribute in any way to the funding. This is despite the fact that the road to Ridham Avenue provides the necessary infrastructure to enable some 150 acres of employment land to become available and to re-direct the impact of papermill traffic from Kemsley Village.

It is therefore FCFI's view that they have made a major contribution (*through Kemsley Fields Ltd*) to the strategic, and long term, provision of employment growth to Swale in accordance with the objectives of the Thames Gateway. The provision of the MKDR also provides a major contribution to the strategic highway network of Sittingbourne for the benefit of the community as a whole and more particularly the established residents of Kemsley Village.



With the above background in mind FCFI find the re-alignment of the southern section of the MKDR, now promoted as the NRR, to be illogical by all technical assessments and indeed is very disappointed that KCC at a political level have chosen to disadvantage the very Company that has, by their own resources, provided the Ridham Avenue to Grovehurst Junction section of the NRR that will now benefit the rest of Swale.

Whereas FCFI were happy to co-operate and enable the Ridham Avenue to Milton Creek connection that was in accordance with the previous planning applications and agreements, FCFI now see the alternative to this route to be such a significant variation to all previous agreements that they will now object to, and resist, the latest proposal.

FCFI therefore **object to the revised scheme** as shown on drawing number 4568/WD/51E but confirm that it has no objection to the original scheme which was submitted for planning as shown on drawing 4568/WD/49C, or indeed the earlier consultation plan 4568/WD/46A.

The basis for the objection

FCFI is a landowner affected by the scheme and believe that the scheme as shown on drawing 4568/WD/51E will have a substantial adverse affect on both its land, and business interests in the area, and the basis of their objections are set out below.

Land South of Ridham Avenue

Land to the south of Ridham Avenue is included within the built up area boundary and a significant balance of the land is "white" land in the emerging Local Plan. It is not covered by any statutory designations and, without doubt therefore, being within the Thames Gateway area and adjoining the existing urban area has considerable "hope" value. It is also the subject of an objection to the emerging Local Plan on the basis that it should be identified for development.

Swale Borough Council's economic development department have identified a shortfall of business land, and promotion of this site, which is within the built up area boundary, is a valid reason for inclusion within the Local Plan designation.

Part of the land has, until recently, benefited from planning permission for the extension of the Kemsley Mill car park and a recent planning application to renew that consent has now been appealed.

The effect of the scheme as now proposed will not only be to "take" land which has development potential, but also to sterilise the remainder of this land, as it does not appear that there would be any realistic prospect of achieving an acceptable access into this land for development purposes without taking land from the existing Mill car park which is used by a number of disparate companies who operate within the Mill complex. As such, it would not be possible to use part of the car park as an access to development land without those other interests providing their agreement, and with providing replacement car parking.



The re-alignment of the road effectively removes around five acres of business development land and sterilises a further eight acres of potentially developable land. The underlying purpose of the road is to promote business employment in the Borough and the sterilisation and loss of potential employment land by a road that is intended to enable employment is extremely difficult to comprehend.

In such circumstances, FCFI would seek compensation from the Highway Authority not only for the land taken, but also for the sterilisation of other land which the scheme would result in.

Charles Austin Site

Prior to the release of the newly proposed route, FCFI and Charles Austin were about to exchange contracts for the sale of the site occupied by Charles Austin's business together with additional adjacent land. This would have enabled Charles Austin to redevelop their buildings and remain in this location in order to continue their service to the papermill, which is a significant part of their business.

The proposed removal of this business which arises from the realignment of the road, has therefore caused considerable uncertainty to Charles Austin, and he will no doubt be writing to you separately. The withdrawal of this sale by Charles Austin result in a significant financial loss to FCFI and will therefore form part of any potential claim against the Highway Authority.

The proposed line of the road

We understand that the objective of revising the original route was to move the road further away from the existing residential properties in Church Milton and Recreation Way.

There are however a number of reasons why we believe the decision of Members to revise the route was flawed. We would submit that the following information, which may not have been before Members, is especially relevant to the decision making process.

Planning Background

a) Current Development Plan

The relevant Development Plan is the Swale Borough Local Plan 2000. On the Proposals Map to that document the alignment of the MKDR (Grovehurst Junction to Mill Way) is shown. The alignment was subject of a Public Inquiry into objections to the Local Plan in 1996/98. The reasoned justification to Policy IN42 of the Plan states in terms that "planning permission has been granted for the road". Consequently, unlike the alignment indicated in the adopted Local Plan, the current proposals by KCC do not benefit from examination at Public Inquiry or carry the weight of the adopted Local Plan.

In the Officer's Reports, the facts that (a) the adopted Local Plan states that the road has planning permission; (b) that the established alignment has the status conferred by the adopted Local Plan, are not highlighted.



d) Greenfield land take

In PPG3 (Housing) and particularly in Thames Gateway, Government policy gives preference to the use of brownfield land. However, where greenfield land is to be used it must be used efficiently. Clearly, the District Council's Environmental Health Department did not consider it necessary to require a buffer between the Recreation Way houses and the MKDR, and the housing development (as approved) and the MKDR (as approved), makes efficient use of greenfield land. To now create an area of sterilised land between the road and housing would not use greenfield land efficiently and thus would be in conflict with Government policy. This issue was not taken into account by KCC Members.

e) Buffer

In the original planning permission for the MKDR (Grovehurst Junction to Kemsley Drain) B1 development was proposed between what is now the Abbey Homes development and the MKDR. The B1 development was intended as a noise shield between Kemsley Mill and any housing in the area.

Sometime during the 1990's an application was made to delete the B1 buffer and following the submission of technical reports etc Swale BC granted planning permission for the housing and the MKDR without a B1 buffer, ie the Planning Authority in consultation with its Environmental Health Department (a) considered that buildings to shield the housing development from road and industrial noise were not necessary and, (b) did not consider it necessary to impose a stand off distance between the housing and the road.

The above material considerations have not been considered by KCC Members.

f) Alternative use of safeguarded highway land

In the report of November 2005 the Officer's report that Rexam have indicated a preference for Alternative B (moving J5) because it would give potential development opportunities for its land. This assumption is questioned.

It appears that Rexam (and perhaps KCC) assume that all the land between the western edge of the Alternative Route B and existing houses in Recreation Way would thus be made available for development. Notwithstanding the fact that housing development is unlikely to be permitted due to the constraint of the power lines (although B1 development may be acceptable) it seems that Rexam and KCC have mistakenly assumed that the built up area boundary would be relocated to the east along with the new road alignment. In practice, technically, the built up area boundary would remain in the position shown on the adopted Local Plan and thus the land development area created would be literally 7.3m wide and would be unlikely to be suitable for development.

Again, the above material consideration has not been considered by KCC Members.



g) Material change in circumstances

Section 36(8) of the Town & Country Planning Act 2004 requires that planning decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise.

The construction of the Recreation Way houses, does not in our view constitute a material change in circumstances in light of the planning history of this area.

The material consideration in question, ie the amenity of residents with regard to noise, has already been taken into account; first, at the Public Inquiry in 1992; second when the Council resolved that the B1 buffer was not required; third, when the route was identified in the adopted Local Plan; fourth, when the road was included (unchanged) in the First Deposit Draft Local Plan Review and; fifth, in the Re Deposit Draft Local Plan.

Significantly, Members should therefore be aware that the amenity of residents has already been taken into account and cannot now form the basis of an argument for moving the alignment.

We would therefore submit that Members are not aware of the full background and planning considerations relevant to the proposed route and that they have merely bowed to pressure from a minority of residents who acquired their property in full knowledge of the established road alignment that has already been fully considered through the planning process.

Highway Matters

The additional distance which the amended scheme achieves, in terms of separating the road from the existing housing, is relatively small and therefore is unlikely to have any material implications in terms of noise, fumes and lighting when compared with the earlier scheme.

The amended scheme is unlikely to affect either the number, or value, of any "part 1" claims which might result as a consequence of the scheme.

It is reasonable to assume that the Officers of the Highway Authority and its advisors were content that the "original" alignment would not have an unacceptable impact upon residential properties on the west side of the road.

A strategic road in this vicinity, is identified in the Adopted Local Plan and has been identified in various statutory planning policy documents since at least the early 1990's. Local residents have therefore had a number of opportunities to object to the line of a road in this immediate vicinity but independent Inspectors have recommended that the road line as proposed be identified in the Development Plan. With the benefit therefore of this planning history, particularly with respect to the most recent houses at Recreation Way, if residents claim that they were not aware of the proposals for a road in this location, that is a matter which they should take up with their solicitors as clearly the existence of such proposals would have been revealed in Local Authority searches. This would be a matter of fact which can easily be verified.



Other Matters

Because of the significant impact upon its interests, FCFI regrets that, not only does it object to the amended planning application but wishes to put the Highway Authority on notice that it will not willingly make available land to enable the scheme as shown on drawing 4568/WD/51E to be constructed. The Highway Authority will therefore be required to serve Compulsory Purchase notices on FCFI and such notices will be resisted with vigour and FCFI will adduce expert evidence at any CPO Inquiry to support its objections to the CPO. Such objections will certainly result in the prolonging of any Inquiry and will result in the Highway Authority having to devote additional resources to deal with that objection. It is possible that the effect of those representations may also prolong both the Inspector's, and the Secretary of State's, consideration of the issues, and thus delay any eventual decision.

Furthermore, the objection introduces a significant element of uncertainty into the scheme in that, in the event that the Secretary of State upholds FCFI's objection, it will be necessary for the Highway Authority to "start again" in terms of both the planning process and the necessary land acquisition process. We respectfully submit that, in such circumstances, there may be a strong risk that funding for the scheme may be lost and whilst FCFI would not wish this to happen, as you will appreciate, it has a duty to its shareholders and it would be failing in that duty if it did not pursue this objection.

There is a further factor which must be taken into account and that is in relation to the reconstruction of the roundabout at Ridham Avenue. This roundabout has already been constructed (at no cost to the Highway Authority) in the anticipation that any extension of the road would be along the line originally envisaged. This work is rendered abortive by the scheme as now proposed, resulting in the Highway Authority having to provide a new roundabout, at a substantial cost, where an existing perfectly acceptable arrangement presently exists.

In the event that the Secretary of State were to accept the Council's new alignment and confirm any Compulsory Purchase Orders that the Council might make in respect of the present scheme, because of the valuation issues identified above, there is a possibility that agreement on valuation would be unable to be reached, thus necessitating determination by the Lands Tribunal. This would result in additional costs to the Council and again introduces an unknown, and potentially significant, financial implication into the scheme.

As identified above, FCFI were required to make substantial payments to Network Rail in respect of the section of the MKDR that crossed the Sittingbourne to Sheppey railway and likewise consider that the crossing of FCFI land may be subject to appropriate recompense to release development value that benefits from the construction of this road. In the event therefore that the scheme proceeds without FCFI's agreement, FCFI would therefore wish to explore whether, any potential S106 obligations to contribute to the scheme by other developments are applicable or indeed whether reimbursement of such payments that have been, or will be, made to Network Rail should be reimbursed, or shared by other beneficial parties to the road and rail crossing already constructed.



Summary

On behalf of FCFI, we wish to **object** to the amended planning application for the Sittingbourne Northern Relief Road.

FCFI also wishes to place on record that it will object to any CPO which is served on it, on the basis that the scheme has a significant adverse impact upon its land holdings as described in detail above, and that an acceptable alternative exists, and that the Highway Authority has chosen to ignore previous agreements with them.

FCFI acknowledges, and regrets, that its stance may result in potential delays and increased scheme costs. Whilst the Highway Authority may consider that, as a percentage of the total scheme costs, such additional costs may not be significant, it is submitted that

- (a) The Council cannot be assured that such costs will be small, particularly if a significant area of development land is sterilised or compromised in terms of its development potential.
- (b) Whilst as a percentage of the scheme costs, any additional costs may be small, they will undoubtedly be significant in their own right and the Highway Authority has, it is submitted, a duty to ensure that unnecessary costs are avoided.

FCFI would **not object** to the scheme as originally submitted for planning (*drawing number 4568/WD/49C*) and would treat voluntarily with the Highway Authority for the land necessary for the construction of the road thus removing any uncertainties in terms of land acquisition costs, as well as the Council's administrative costs of resisting the objection. The absence of such a statutory objection may also potentially speed up the overall decision making process.

FCFI requests therefore that the planning application is further amended so as to replace plan 4568/WD/51E with plan 4568/WD/49C. However, it does recognise the "difficulties" which such a course of action would give rise to. In such circumstances, it therefore suggests that a suitable course of action would be for the determining Committee to be presented with both schemes, so that it is able to properly consider, and compare, both schemes and the respective objections in order to consider the totality of the implications of one scheme as compared with the other.

I would be pleased if you could acknowledge receipt of this letter and provide me with copies of any further Committee Reports (as soon as they are available) in relation to this scheme and the issues raised in this objection and I reiterate that FCFI would prefer to work with, rather than "against", the Highway Authority to enable the SNRR to be provided as expeditiously as possible.



Yours sincerely,

A handwritten signature in black ink, appearing to be 'G. Eves', written in a cursive style.

Graham Eves
Director
Email: geves@pfapl.com

cc J Ollard Fletcher Challenge Forest Industries

