



**Important Update for the
consideration of the Secretary
of State in his decision on the
Development Consent Order
for the M3 Junction 9
Improvement**

1. Introduction

Transport Action Network (TAN) submitted a Relevant Representation (RR) on the DCO application for the M3 Junction 9 Improvement scheme and registered as an Interested Party (IP). We participated in the examination and we support the evidence of Dr Andrew Boswell and Winchester Action on Climate Change (Winnac) and Winchester Friends of the Earth.

2. Important Update since the Examination and Recommendations Report.

2.1 Friends of the Earth Ltd v Secretary of State for Energy Security and Net Zero [2024] EWHC 995 (Admin)

On 3 May 2024, Mr Justice Sheldon handed down a judgement (“**Net Zero II**”) in the case of **Friends of the Earth Ltd v Secretary of State for Energy Security and Net Zero** [2024] EWHC 995 (Admin). The **Net Zero II** judgement followed a previously successful legal challenge in **R (Friends of the Earth) v SSBEIS** [2022] EWHC 1841 (Admin) (“**Net Zero I**”).

In the **Net Zero I** judgement, the Court ordered the publication of a lawful section 14 report, under the Climate Change Act 2008 (“**CCA 2008**”). The Secretary of State for ESNZ purported to comply with that order by publishing the Carbon Budget Delivery Plan (“**CBDP**”) in March 2023.

The **Net Zero II** judgement held that the **CBDP** was unlawful, and the Government has been ordered to produce a revised and legally compliant plan within 12 months (ie May 2025).

2.2 Implications of Net Zero I and Net Zero II judgments for the M3 Junction 9 DCO decision

Taken together the **Net Zero I** and **Net Zero II** judgments mean that:

- The relevant section 13 and section 14 exercises under the Climate Change Act 2008 (“**CCA 2008**”) leading to the CBDP were never lawful, and remain unlawful, until a revised and legally compliant plan has been made by the Government. In short, the CBDP is unlawful, and breaches sections 13 and 14 of the **CCA 2008**.
- The UK Government has never had in place a lawful plan to meet Carbon Budget Six.

- No set of measures exist for the UK to meet in full its relevant international climate obligations (as imposed by Article 4(2) of the Paris Agreement) including the 2030 Nationally Determined Contribution (“**NDC**”). The **CBDP** only contained quantified measures to meet 92% of the 2030 NDC with insufficient unquantified measures to close the gap. So, even if lawful, the **CBDP** would not assist in fully delivering the 2030 **NDC**. As the **CBDP** has been found unlawful, there is no lawful plan to deliver the **NDC**. It is therefore the case that the UK currently has no set of domestic mitigation measures that are lawfully geared to meeting the **NDC** target which is a breach of international law.

3. Significance of the carbon emissions from the M3 Junction 9 scheme

TAN argues that the significance of the carbon emissions from the scheme have therefore been incorrectly assessed and can no longer be relied upon. With the Government unable to rely on the policies in the unlawful **CBDP**, the increase in emissions from the M3 J9 scheme would materially affect the UK’s ability to meet its carbon budgets, contrary to 5.18 of the National Networks National Policy Statement (**NNPS**).

Any increase in carbon emissions takes us in the wrong direction and are therefore “significant” and will make a material difference, when we need to be doing much more to rapidly reduce emissions, especially with the **Net Zero II** judgement.

4. Conclusion

It is TAN’s position that the Secretary of State is unable to proceed in making a decision on whether to grant the DCO for the M3 Junction 9. He must consult with the Applicant, and require that the Applicant provides a full and new set of evidence on how it considers that the DCO may lawfully be decided, with its increases in carbon emissions, both from construction and operation, when the Secretary of State can make no current reliance upon:

- A lawful **CBDP** or plan to deliver the UK climate targets and budgets.
- A lawful plan to deliver Carbon Budget Six.
- A set of domestic GHG mitigation measures that are lawfully geared to meeting the **NDC** target.

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Transport Action Network provides free support to people and groups pressing for more sustainable transport in their area and opposing cuts to bus and rail services, damaging road schemes and large unsustainable developments

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