

Whitlock, Melissa

From: Andrew Boswell [REDACTED]
Sent: 14 May 2024 17:34
To: M3 Junction 9
Subject: Important Update for the Secretary of State before decision on the M3 J9 DCO

Dear Sir / Madam,

I am registered as an Interested Party for the M3 Junction 9 ("**M3J9**") under registration 20036820.

I request that this letter is **URGENTLY FORWARDED** to the Department for Transport officials, and the Secretary of State, involved in this planning determination ..

I engaged throughout the examination on behalf on my consultancy Climate Emergency Policy and Planning (CEPP).

I frequently highlighted issues around the risks of UK Climate Change policy, and the implications of those risks for the lawful determination of the scheme. I particularly refer you to my September 22nd 2023 submission [REP5-031]. I fully engaged in responding to the related Examiner's questions, and in responding to the applicant at several stages of the examination.

There is now vitally important new information which the Secretary of State must consider before making any determination of the scheme, as laid out below.

Important Update since the Examination and Inspector's Report

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

In **Net Zero I** judgment, the Court ordered the publication of a lawful section 14 report, under the Climate Change Act 2008. The SSESNZ purported to comply with that order by publishing the Carbon Budget Delivery Plan ("**CBDP**") Plan in March 2023.

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

Implications of Net Zero I and Net Zero II judgments for the M3J9 scheme 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.

Clearly the Secretary of State is unable to proceed in making a decision on the M3J9 scheme, and must consult with the Applicant, and require that the Applicant provides a full and new set of evidence on how it considers that the scheme may be permitted for planning, with its increases in carbon emissions, both from construction and operation, when the SoS 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

Further, many of the arguments which I made at the examination must be considered in the light of this situation. For example, one of the central concerns of my examination submissions is that there has been an assumption in recent road DCO decisions that the delivery of NZS, now CBDP, is fully secured. I stated in submissions that I considered that this is quite clearly not the case. The Net Zero II judgement vindicates my position.

I took considerable care to lay out for the SoS, the decision maker for this DCO, the legal and policy implications of this, as they relate to the approval process for this scheme. As the delivery of the NZS/CBDP cannot credibly be considered to be fully secured, and this has now been legally proven, the public has a legitimate expectation that the SoS will not basing the M3J9 DCO decision on this assumption.

The SoS must then make his/her own reasoned assessment of the significance of the emissions from the scheme without reliance on any assumption of CBDP delivery.

Given the failure of the CBDP to prove the necessary lawful plans for the carbon targets, budgets and international obligations, no clear case can be made that the the additional emissions from the scheme will not breach UK climate targets and budgets, and will not breach our international obligations and the NDC 2030.

I request that the Secretary of State now provides a post-examination consultation process for the Applicant to provide their response to the Net Zero II judgment, and for Interested Parties to comment on its response.

Yours faithfully

Dr Andrew Boswell