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**DEADLINE D8 SUBMISSION**  
(Late submission for D8: May 18<sup>th</sup> 2023)

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## **1 INTRODUCTION**

### **1.1 Key dates going forward**

1 This examination is held against the rapidly shifting policy and legislative background on the key issue of Climate Change. Key dates going forward are:

- A. Close of examination: May 29<sup>th</sup> 2023
- B. Examiner’s report to SoS: August 29<sup>th</sup> 2023
- C. Secretary of State’s decision: November 29<sup>th</sup> 2023.

### **1.2 New material policy information to date**

2 Since the examination opened on November 29<sup>th</sup>, a major Climate Change policy update has been the publication by the Government of a revised Net Zero Strategy (NZS) – with the overarching title “Powering Up Britain” (PUB), and the Carbon Budget Delivery Plan (CBDP) within it, as notified by me in my holding submissions at Deadline 6 [REP6-037] and Deadline 7 [REP7-198]. These documents comprised nearly 3000 pages and came on March 31<sup>st</sup> just prior to Deadline 6.

3 There were major changes to the transport sector and its emissions trajectories in the revised NZS, and I, here in this document, provide an analysis of the PUB and CBDP and these changes, and how they apply materially to the examination.

4 On May 16<sup>th</sup> 2023, Professor Greg Marsden of the University of Leeds published an analysis<sup>1</sup> called “Reverse Gear” for the Centre for Research into Energy Demand Solutions (CREDS) based at the Oxford University Centre for the Environment. This analysis also investigated the PUB and CBDP, and the latest policy for decarbonisation in transport. The report is provided as Appendix A, and I will provide some initial high-level observations from it which are materially relevant to the examination.

5 The Green Alliance published a March 2023 update<sup>2</sup> to their “Net Zero Policy tracker”. This showed that transport had the largest absolute emissions policy gap in the pre-March 31<sup>st</sup> NZS – such policy gaps to deliver the NZS transport sector emissions reductions is also materially relevant to the examination.

6 I previously stated at [REP2-024] paragraph 133 “*It is far too premature for weight to be given to any claims based on the notion that the NZS, or the TDP, will inevitably succeed in securing the Government’s carbon emissions reduction targets – this applies both to Environmental Statements, and to DCO decisions. Such a proposition is clearly not true or evidenced.*” As fa orward signpost to the substance of this submission, the evidence from my

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<sup>1</sup> Marsden, G. 2023. Reverse gear: The reality and implications of national transport emission reduction policies. Centre for Research into Energy Demand Solutions. Oxford, UK. ISBN: 978-1-913299-17-0

analysis of the PUB and CBDP, and from Professor Marsden’s paper, the Green Alliance policy tracker all substantially reinforce that statement.

### ***1.3 Emerging policy issues between May 29<sup>th</sup> 2023 and November 29<sup>th</sup> 2023***

- 7 The Government published a draft revised National Networks National Policy Statement (DNNNPS) on March 14<sup>th</sup> 2023. This currently under consultation until 6<sup>th</sup> June 2023. The House of Commons Transport (Select) Committee (TSC) opened an inquiry into the DNNNPS on March 24<sup>th</sup> 2023, and this can be expected to run well into the period to November 2023. Further it is unlikely that the revised NNNPS will become extant policy before November 29<sup>th</sup> 2023, so the existing NNNPS is most likely to still be current at the time of the SoS decision. However, the consultation on the DNNNPS and the TSC inquiry may well produce evidence that is relevant to transport decarbonisation policy, and relevant to the determination of the Scheme.
- 8 As previous notified at [REP7-198], the revised Net Zero Strategy (NZS) potentially faces further legal challenge with lawyers acting for Friends of the Earth considering that the revised NZS is potentially a “very high risk” strategy (as reported in the press, see Appendix B<sup>3</sup>). Whilst it is unlikely that a judgment will be available before Nov 29<sup>th</sup> on a further Judicial Review against the Government on the NZS, if such a legal challenge proceeds, then the Secretary of State should not ignore the fact that the NZS has been found unlawful once, is now being challenged a second time.
- 9 This extreme uncertainty around the revised NZS has profound implications for any assumption that the NZS is bound to succeed, or that the carbon budgets and targets up to 2037 are secured. Given the risk of delivery to the NZS was a core material issue in the July 2022 High Court judgement, and is also a key feature of the emerging second legal challenge, are further reasons why the security of delivering the NZS, and meeting the carbon budgets which depend upon it, cannot be assumed.
- 10 The Climate Change Committee will publish its annual 2023 Progress Report at the end of June 2023. Last year’s report found that 61% of the required emissions reductions for the 6<sup>th</sup> carbon budget are not even secured “on paper” yet. This report should be noted by the ExA and the SoS in relation to the A66 scheme.
- 11 I refer again to [REP2-024] paragraph 133, quoted above, the proposition that the NZS or TDP will inevitably succeed is clearly not true, and there is now very substantiated evidence that it simply can not be true, nor a reasonable assumption on which to make a DCO decision.
- 12 I now expand on all of this.

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<sup>3</sup> This appendix was previously submitted at REP7-198 but is resubmitted here for ease of having the information in one document.

## **2 KEY POINTS ON THE PREVIOUS NET ZERO STRATEGY AND THE A66 SCHEME**

- 13 My original Written Representation (WR – errata version, REP2-024) provided considerable analysis of the relationship and interplay between the NZS and how the significance of the climate change impacts of carbon emissions associated with the scheme may be optimally assessed to produce a robust and trustworthy significance assessment.
- 14 For example, REP2-024, para 10 ‘Evaluating significance of GHGs can be understood at an overarching level as *“is the Scheme consistent with the legal framework of the Climate Change Act 2008, the Net Zero target 2050, the Sixth Carbon Budget, the 2030 68% reduction targets, the 2035 78% reduction target, and the policy framework of the Net Zero Strategy to deliver them?”*’.
- 15 I made the point that this wording is also consistent with “the NPSNN 5.17 comparison” (para 15).
- 16 In section 7 of REP2-024, I provided 3 contextualisations of the carbon emissions of the scheme designed to throw light on the NPSNN 5.17 comparison as framed by REP2-024, para 10 above.
- 17 These contextualisations showed that the impacts of the carbon emissions from the A66 scheme were “Major Adverse” and significant on the IEMA significance methodology (against REP2-024, para 10). Two of these contextualisations were based on the national Net Zero Strategy trajectory as (1) scaled to the traffic model area for the scheme (“Contextualisation 1”) and (2) normalised by BEIS local authority area transport emissions across the three planning authority areas (“Contextualisation 2”).
- 18 The overall conclusion was the scheme was quite clearly not contributing to meeting the NZS and the carbon budgets – rather it was creating additional emissions that could not be contained within the available emission space (ie emissions that can be emitted for the UK to still meet the UK carbon budgets). Therefore REP2-024 determined that the scheme fails NPSNN 5.18 test on the basis of the scale of the climate change impacts from its carbon emissions, or in other words the A66 scheme undermines the possibility of delivering the Net Zero Strategy and the carbon budgets.
- 19 With the revised NZS, and the substantial changes to the transport sector trajectories, this has become much more starkly clear as now explained. In other words, since the revised NZS, approving the A66 scheme would not just undermines the possibility of delivering the NZS, but would be totally at odds with delivering the Net Zero Strategy.

### 3 THE REVISED NET ZERO STRATEGY

#### 3.1 *Background: the revised Net Zero Strategy (NZS)*

20 The Government laid the NZS before Parliament on 19 October 2021 as a report under section 14 of the Climate Change Act (CCA) 2008. The strategy was intended to fulfil the duty, at section 13 of CCA 2008, to “prepare such proposals and policies” that will enable the carbon budgets under the CCA 2008 to be met. The NZS was subsequently found to be unlawful in July 2022, and the Government were ordered to lay before Parliament a fresh report under section 14 before the end of March 2023. The Government published an array of reports including “Powering Up Britain” (PUB) and the “Carbon Budget Delivery Plan” (CBDP) as the revised NZS by end of March 2023.

21 In relation to securing the NZS, I highlight here what the Court said in the NZS judgment<sup>4</sup> on delivery risk and policy gap. Holgate J. recorded the NZS’s acknowledgement that the delivery pathways to achieve the 6th Carbon Budget are highly ambitious and face considerable delivery challenges and recorded that achievement was subject to a wide uncertainty range. The judge noted at paragraphs 204 and 211 that in approving the Net Zero Strategy, “one obviously material consideration which the Secretary of State must take into account is risk to the delivery of individual proposals and policies and to the achievement of the carbon budgets and the 2050 net zero target.” In finding the NZS unlawful, the judge described risk to delivery as the critical issue when concluding that the information provided to the Minister when reporting on the NZS was insufficient to enable him to discharge his reporting obligations under section 14 of the Climate Change Act 2008.

22 Below, I will provide evidence on the new PUB and CBDP policy documents, and the relevance of them to how carbon emissions are dealt with for the A66 scheme. As signposting to my more detailed material, I now signpost these headline points (for substantive expansion later in this submission):

- (i) An error of 130 million tonnes of CO<sub>2</sub> for the road transport baseline was reported between the original NZS and the revised documents across the years 2023-2037 (carbon budgets 4CB, 5CB and 6CB).
- (ii) No adequate risk assessment has been done by the Government in the revised NZS of the impact of this error on climate policy delivery. Risk assessment is required in two broad areas:
  - (a) How trustworthy is the revised road transport baseline itself (ie if traffic growth is unconstrained, may further corrections be required to it?); and

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<sup>4</sup> R (Friends of the Earth) v Secretary of State for Business Energy and Industrial Strategy [2022] EWHC 1841 (Admin)

(b) How trustworthy are the policies within the revised NZS for road transport.

**3.2 Where is the error of 130 million tonnes of CO2 for the road transport baseline reported?**

23 The "Powering Up Britain Technical Annex" (PUBTA) describes adjustments made to the baseline for the transport sector<sup>5</sup>. Baselines are the projected emissions BEFORE any of the NZS policies are accounted for: so they can be considered as "business-as-usual" emissions without an NZS. Para 23, reproduced below, states that the baseline error is an average of 4MtCO<sub>2</sub>e/year for each year of 4th carbon budget (2023-2027), 9MtCO<sub>2</sub>e/year for each year of 5th carbon budget (2028-2032), and 13 MtCO<sub>2</sub>e/year for each year of 6th carbon budget (2033-2037).

23. Together, these adjustments lead to an increase in baseline emissions of 4MtCO<sub>2</sub>e/year on average in the 4th Carbon Budget period, 9Mt/year for 5th Carbon Budget, and 13Mt/year in the 6th Carbon Budget period.

24 MtCO<sub>2</sub> is megatonnes of CO<sub>2</sub>, or millions of tonnes of CO<sub>2</sub>. So for the 15 years, 2023-2037, the error in the original NZS for the transport baseline was 130MtCO<sub>2</sub> ( $4*5 + 9*5 + 13*5 = 130$ ). What is described here is a correction made as result of a massive error/miscalculation in the original NZS, 130 MtCO<sub>2</sub> is equivalent to the total annual emissions of a medium sized country like Nigeria or the Netherlands.

**25 What are the causes of the baseline error for road transport?** The very large correction to the baseline is attributed in the almost entirely to two factors in road transport - optimistic projections of emission reductions from EV uptake<sup>6</sup> and underestimates of projected traffic growth<sup>7</sup>.

**26 What is the impact on the TDP objectives?** The result of the baseline correction means that ambition for reducing emissions in the transport sector in the revised NZS is scaled down. As the emissions reduction trajectories in the NZS and the Transport Decarbonisation Plan (TDP) are essentially the same<sup>8</sup>, the ambition for emission reductions in the TDP are similarly scaled down.

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<sup>5</sup> PUBTA, PDF page12, paras 21-23

<sup>6</sup> PUBTA, PDF page12, para 21

<sup>7</sup> PUBTA, PDF page12, para 22

<sup>8</sup> Figure 21 of the NZS, is a refined version of the Figure 2 of the TDP and comparison of the two demonstrates the policy linkage between the TDP and the NZS, and that the policy trajectory including carbon reductions is the same (the main difference is that TDP graph is 'fuzzier'). Essentially the same indicative delivery pathway for domestic transport has been carried forward from the TDP to the NZS.

## **27 What is the wider impact to UK Climate targets?**

- A. The error in the road transport baseline is solely sufficient to account for the shortfall on emission reductions for the NDC<sup>9</sup> (the UK Nationally Determined Contribution (NDC) at 2030<sup>10</sup> and the UK commitment under the Paris agreement) reported in the CBDP where it says, "*We have quantified emissions savings to deliver 88 Mt or 92% of the NDC*". The NDC was set before the COP26 at 68% reduction of carbon emissions (against 1990 levels) by 2030. This missing 8% is around 8MtCO<sub>2</sub>, where the loss of emissions reductions from the transport baseline error is 9MtCO<sub>2</sub> in 2030.
- B. The 13MtCO<sub>2</sub> average loss in baseline emissions reductions in road transport in the 6th carbon budget (2033-2037) has a direct impact on the remaining policy gap in the revised NZS across all sectors. In discussing this, the CBDP<sup>11</sup> says only "*97% of the savings required to meet Carbon Budget 6*" have been identified (ie 3% short). Table 1 on CBDP, page 11 identifies the shortfall as 32 MtCO<sub>2</sub> over the 5 years, or 6MtCO<sub>2</sub> for each year (2033-2037). Again, the error in the transport baseline (13MtCO<sub>2</sub> per year) accounts for all of this shortfall. And indicates that other sectors of the economy are already having to make up for failings in transport sector decarbonisation.

### **3.3 Risk to policy delivery on transport for the revised Net Zero Strategy**

28 Risk to policy delivery in the NZS and TDP come from two sources: risks to the baseline (already hugely corrected, will further corrections to it be required?) and risks to the delivery of the policies themselves. These risks are crucially important to considering how to deal with carbon emissions for the A66 scheme. If achieving the revised NZS is risky, then additional emissions being created by the A66 are just not possible without materially further jeopardising the NZS delivery.

29 On the policies themselves, Table 4 of CBDP<sup>12</sup> gives policies captured in the Energy and Emissions Projections (EEP). This has 7<sup>13</sup> policies relating to Domestic Transport. Table 5 of CBDP<sup>14</sup> gives quantified proposals and policies, with (17) proposals 128<sup>15</sup> to 144<sup>16</sup> for

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<sup>9</sup> CBDP, PDF page 15, para 29 says "*We have quantified emissions savings to deliver 88 Mt or 92% of the NDC. We are confident the delivery of emissions savings by unquantified policies detailed in this package will largely close this gap and the government will bring forward further measures to ensure that the UK will meet its international commitments if required.*"

<sup>10</sup> <https://www.gov.uk/government/publications/the-uks-nationally-determined-contribution-communication-to-the-unfccc>

<sup>11</sup> CBDP, PDF Page 15, paras 30-35

<sup>12</sup> Starting on CBDP, PDF page 23

<sup>13</sup> Policy **1**: Active Travel spending; Policy **8**: Car policies; Policy **28**: Heavy Goods Vehicles (HGV) policies; Policy **31**: Van policies; Policy **35**: Public service vehicles (PSV) policies ; Policy **44**: Renewable Transport Fuel Obligation, (RTFO) - 5% by volume; Policy **45**: Renewable Transport Fuel Obligation, (RTFO) - Increase target to meet RED;

<sup>14</sup> Starting on CBDP, PDF page 45

<sup>15</sup> Starting on CBDP, PDF page 85

<sup>16</sup> Ending on CBDP, PDF page 88

Domestic Transport. Table 6 of CBDP<sup>17</sup> gives quantified proposals and policies, with(14) proposals 20<sup>18</sup> to 33<sup>19</sup> for Domestic Transport. Overall over 35 policies.

30 Policy delivery risk is addressed in CBDP, Appendix D entitled "Appendix D: Sectoral summaries of delivery confidence". Paragraphs 37 to 41<sup>20</sup> address "Transport". Overall, the risk assessment is at a very high-level, and not quantified, and the individual policies have not been risk assessed. I submit that the risk assessment is not fit for purpose, and I believe that this will emerge as a key issue in a renewed legal challenge to the NZS (as in Appendix B).

31 However, three broad, high-level risks for the transport sector were identified in CBDP, Appendix D:

- A. Insufficient regulation and incentives to drive the transition to zero emission vehicles at the speed required to enable carbon budgets to be met<sup>21</sup>;
- B. Unanticipated growth in transport demand, going beyond "our high-end projections"<sup>22</sup>;
- C. Reliance on nascent or immature technologies and associated markets, such as zero emission vehicle or flight technologies or utilisation of lower carbon fuels<sup>23</sup>.

32 I now highlight further concerns on these identified risks, which again have strong implications for how carbon emissions are dealt with for the A66 scheme.

### **3.4 Projections on EV uptake**

33 Percentage figures for the uptake of EVs in the original NZS and in the TDP were obtained under the Environmental Information Regulations (EIR) by Professor Greg Marsden<sup>24</sup>. Whilst CBDP<sup>25</sup> provides more recent data. Table 1 below aggregates the available data<sup>26</sup>:

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<sup>17</sup> Starting on CBDP, PDF page 106

<sup>18</sup> Starting on CBDP, PDF page 115

<sup>19</sup> Ending on CBDP, PDF page 118

<sup>20</sup> CBDP, PDF page 180

<sup>21</sup> CBDP, PDF page 180, para 38

<sup>22</sup> CBDP, PDF page 180, para 39

<sup>23</sup> CBDP, PDF page 181, para 40

<sup>24</sup> [REDACTED]

<sup>25</sup> CBDP, Table 7 under "Appendix C: Deployment assumptions underpinning quantified savings". EV data at PDF Page 171 in Table.

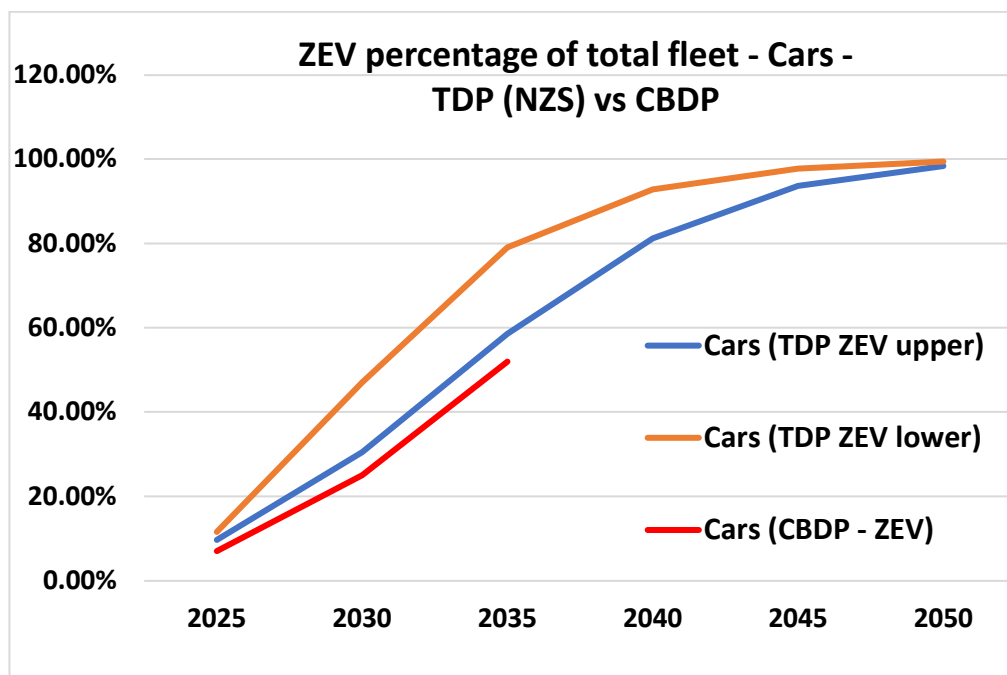
<sup>26</sup> Note that the metric in the original NZS is "Proportion of mileage that is ZEV" (Marsden EIR) and is "percentage of fleet" in the CBDP. The DfT have not made clear how much difference this makes – I assume for this document that the proportion of fleet is reflected in mileage to a first approximation, sufficient for the purpose of my analysis.



	2025	2030	2035	2040	2045	2050
Cars (TDP ZEV upper)	9.71%	30.45%	58.58%	81.23%	93.64%	98.41%
Cars (TDP ZEV lower)	11.57%	47.03%	79.09%	92.82%	97.76%	99.46%
Cars (CBDP - ZEV)	7.00%	25.00%	52.00%	?	?	?
Vans (TDP ZEV upper)	3.98%	17.69%	49.50%	75.25%	88.53%	94.26%
Vans (TDP ZEV lower)	4.73%	42.64%	79.17%	92.29%	97.01%	98.58%
Vans(CBDP - ZEV)	3.00%	16.00%	43.00%	?	?	?
HGV (TDP ZEV upper)	0.31%	6.99%	24.92%	49.05%	76.84%	94.58%
HGV (TDP ZEV lower)	0.34%	10.22%	40.05%	76.00%	93.90%	98.25%
HGV (CBDP - ZEV)	0.40%	9.00%	37.00%	?	?	?
Bus/Coach (CBDP - ZEV)	14.00%	35.00%	61.00%	?	?	?

**Table 1: Electric vehicle uptake assumptions between original NZS and revised NZS (CBDP)**

Figure 1 below plots the data for cars.



**Figure 1: Electric vehicle uptake assumptions between original NZS and revised NZS (CBDP) for cars**

34 The graph shows that new baseline trails around 7% below the previous worst case at 2035 (and 27% below the previous best case). Further, it is difficult to see it on the graph, but the CBDP percentage (red) is going up slower than the TDP worst case (blue), as evidenced by the difference/shortfall between the red and blue lines being for 2025: 2.71%, for 2030:5.45%, and for 2035:6.58%. This shows that the projected EV adoption is slower in the new baseline.

35 The situation is similar for vans with the CBDP projection being outside the bounds of the NZS lower and upper projections, and the CBDP rate of EV van adoption being slower than the NZS worst case, the difference/shortfall being for 2025: 0.98%, for 2030:1.69%, and for 2035:6.50%.

36 A further problem is that CBDP is not projecting beyond 2035 whereas the original NZS data projects to 2050.

37 The problem for policy delivery, and critically the risks to policy delivery, with this issue is further shortfalls in EV delivery are not easy to correct and turn around in a couple of years. The slower uptake with the red line (in the now corrected baseline) is locked in. If it, in turn, is not met, then an additional delivery shortfall will also be locked in for carbon emissions from the lifetime of on the non-EV vehicles involved. I submit that numerical risk assessment of such risks is startlingly missing in the CBDP for this issue. The policies being mooted to keep these new trajectories (cars, vans, HGVs etc) for EVs on track, but which have not been individually risk assessed, include:

- ZEV mandate in 2024 and "bolstering charging infrastructure roll-out across the country";
- end date for the sale of new, non-zero emission buses and "expectation" for when the entire fleet should be zero emission;
- Rapid Charging Fund
- Zero Emission Road Freight

38 These policies need to have quantified risks associated with them, and that needs to be seen at the higher level too. Then it would be possible for policy makers to have a clear idea of the impact if the above policies fail to different degrees. For example, at the moment it is not possible to answer a question such as the following because there is no available data: *“What is the impact in MtCO<sub>2</sub> for the 6<sup>th</sup> Carbon Budget, and also the 7<sup>th</sup> and 8<sup>th</sup> Carbon Budgets<sup>27</sup> the EV uptake percentage for cars being 45% or 48% (instead of 52%) in 2035?”*

39 Please note that Professor Marsden in the Reverse Gear report (Appendix A) also analyses the rate of electrification. His graphs should not be compared to mine as they are comparing different parameters. For example, where he compares the TDP electrification scenarios it is against the Climate Change Committee projections whereas I compare the NZS/TDP with the revised NZS. He also provides other graphs which are based upon the ZEV Mandate, or the annual targets for new ZEV vehicle sales, whereas I am comparing the percentage ZEVs in total vehicle fleet.

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<sup>27</sup> Whilst the 7<sup>th</sup> and 8<sup>th</sup> carbon budgets are not required to be set until 2026 and 2031 respectively (CCA 2008, section 4(2)(b)), it is useful at this point in time to understand what impacts from failure to delivery policy to 2037 may be “carried forward” into these later budgets, especially when appraising a DCO road scheme over 60 years.

### **3.5 Estimates of traffic growth**

40 CDBP Para 39<sup>28</sup> on traffic growth states "*Another risk is that we see considerable, unanticipated growth in transport demand, going beyond our high-end projections*". The CDBP makes no attempt to provide mitigation strategies<sup>29</sup> for the potential additional baseline carbon emissions in the road transport sector implied by this statement in the future, nor any quantified risk assessment of it.

41 For example, at the moment, it is not possible to answer a question such as the following because there is no available data: "*if the revised figure for cars is 550 bvk<sup>30</sup> in 2030 (the TDP range was 352-547 bvk from the response to Professor Marsden's EIR), what is the effect if this is 600 bvk due to traffic growth exceeding 'our high-end projections'?*".

42 To answer this, new traffic growth figures out to 2050 (for each vehicle type, similar to as provided for the original NZS and TDP in Professor Greg Marsden's EIR response) need to be published by the DfT, with a risk analysis of the effects of different figures.

43 Further, it is not clear if the additional bvk from all the RIS2 and RIS3 projects are expressed in the revised transport sector baseline. For example, how many more bvk would schemes like the A66 scheme add to the baseline? How does that fit in the overall risk assessment of not delivering on the new baseline and policies in the revised NZS?

44 The key thing here to note is that DfT have just had to make an absolutely massive correction for road transport emissions (correcting previous extremely optimistic projections) with the consequence of significantly increasing the risk to the delivery of UK climate targets. Now, the CDBP says that further unanticipated traffic growth may make carbon emissions exceed the high-end projections in the corrected baseline. The Government has provided no evidence that it has assessed the delivery of carbon emissions savings in the revised NZS against this risk.

45 So we have a situation where the transport emissions baseline has just been corrected by around the size of the annual emissions from a medium sized country (eg Nigeria), and yet it may need to be adjusted again, in a couple of years, if transport demand outsteps the latest projections. The growth in traffic and emissions from the Government's road building programme, including the A66 scheme, may be a significant driver contributing to this risk and the potential need for further baseline corrections. However, the ExA, and indeed the Secretary of State, do not have a clear position of this potential impact, nor any risk assessment of it.

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<sup>28</sup> CDBP, PDF page 180, para 39

<sup>29</sup> The CDBP does say "recent lower GDP projections" might lower the projections, but as Government policy is to increase GDP and this is a recent short-term impact, this does not amount to a mitigation strategy, but rather observations on the data provenance.

<sup>30</sup> Billion vehicle kilometres per year

### 3.6 Professor Marsden's report: Reverse Gear

46 I cannot do justice to Professor Marsden's Reverse Gear ("RG") report at this stage, writing a day after its publication. However, I wish to draw attention to some headline points.

47 Under Figure 3, on RG page 10: *"The estimated carbon gap in ambition between the most and least ambitious lines in the TDP was 567 MtC over the period 2023–2037. The CBDP pathway for domestic transport is a cumulative total of around 411 MtC above the most ambitious pathway in the TDP. This corresponds to a closing off of around 72% of the ambitions set out in the TDP, a document produced less than two years previously. The proposed CBDP pathway is around 180 MtC above the Balanced Pathway set out by the CCC in the 6th Carbon Budget."*

48 It should be noted that those 411 million tonnes of CO<sub>2</sub> (cumulative lost emissions reductions over a 15-year period) are, again, a very large footprint. For example, they amount to more than Australia's annual emissions in 2020<sup>31</sup>.

49 RG page 11: *"The level of quantified carbon mitigation from surface transport demand management is, therefore, just over 8 MtC for the period 2023 to 2037 compared with the 211 MtC estimated by the CCC. Demand management seems to have disappeared from the decarbonisation agenda."*

50 RG page 11: *"Transport is the largest emitting sector in the economy. It has been the slowest sector to decarbonise. This reduction in ambition places greater demands on other sectors, each of which has its own delivery challenges."*

### 3.7 Climate Change Committee (CCC) 2022 Progress Report

51 Note this section has been submitted previously as an Appendix on a previous submission, but I am re-submitting here for full context, and because it is important material on whether the delivery of NZS is secured. On 29th June 2022, the Climate Change Committee (CCC) submitted its "Progress in reducing Emissions - 2022 Report to Parliament" (referred to as CCC \_2022\_PROG ).

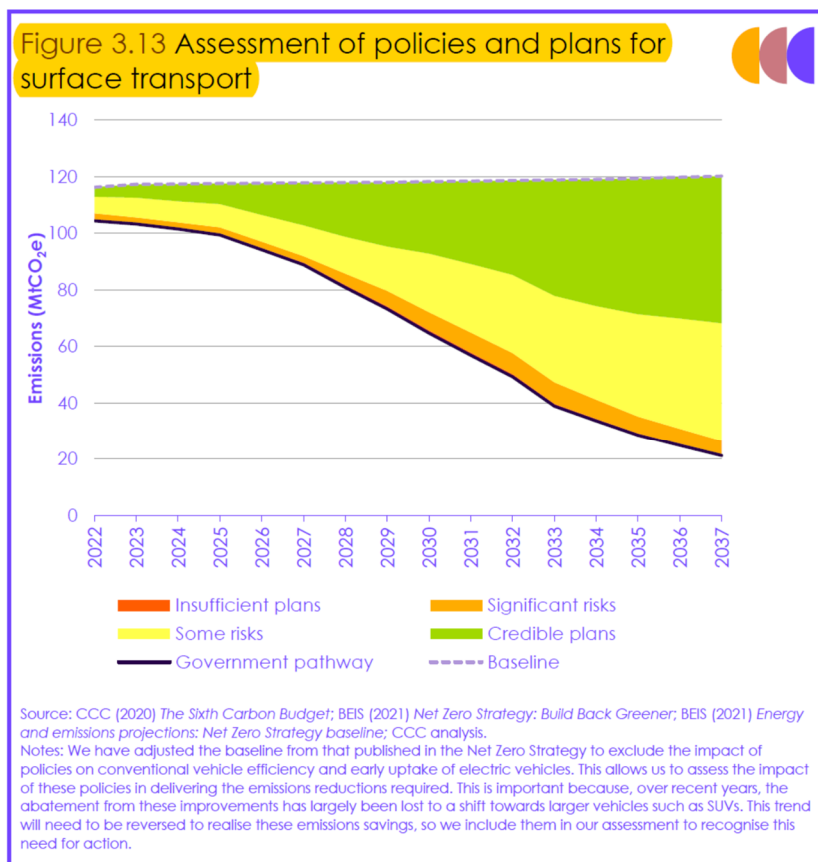
52 The report finds that overall "credible plans" exist for only 39% of the required emissions reduction to meet the Sixth Carbon Budget<sup>32</sup>. This means that **61% of the required emissions reductions for the 6<sup>th</sup> carbon budget are not even secured "on paper" yet.**

53 CCC \_2022\_PROG/figure 3.13 reproduced below shows the relevant data for "credible plans" and other categories for the surface transport sector.

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<sup>31</sup> "Carbon footprint by country" table, at World Population Review website: <https://worldpopulationreview.com/country-rankings/carbon-footprint-by-country>

<sup>32</sup> CCC \_2022\_PROG/page 22



**Figure 2: CCC assessment of UK transport policies (2022 Progress Report, reproduced)**

54 **Half the emission reductions for surface transport to meet the 6<sup>th</sup> carbon budget are not secured.** The spreadsheet “Progress in reducing emissions – 2022 Report to Parliament – Charts and data” (referred to as CCC\_2022\_DATA<sup>33</sup>) provides the breakdown of the data behind Figure 3.13 above from the report. Delivery of the “Government pathway” requires a reduction of 99.03 MtCO<sub>2</sub>e against the “Baseline” of 120.23 MtCO<sub>2</sub>e by 2037. CCC identify credible plans for 51.97 MtCO<sub>2</sub>e of this (ie **only 52.5%** of the total). So in the surface transport sector **about half of the required emissions reductions for the 6<sup>th</sup> carbon budget were not even secured “on paper” at the time of the CCC report**, revealing the true extent of the “delivery gap” in transport decarbonisation policy from the Government’s own advisors on climate change delivery.

55 In identifying barriers to closing the delivery gap, the Progress Report is clear in identifying that there is currently no vision from the Government for traffic reduction, as it states at page 130 “*However, the Government has not yet set out a clear vision of the extent of traffic reduction that is desirable, nor a coherent set of policies to deliver this.*”

<sup>33</sup> Climate Change Committee, “Progress in reducing emissions – 2022 Report to Parliament – Charts and data”, [redacted]

56 On page 139, the report identifies that “*the Scottish Government has committed to reducing overall car mileage by 20% by 2030*” and that “*the Welsh Government has also recently committed to reducing the car miles driven per person by 10% by 2030*”. By contrast in England, £24 billion is still allocated for Roads Investment Scheme 2 (RIS2) and “*this still provides considerable funding for new roads **which will induce increased demand***”.

57 In the section “Recommendations to the DfT” (CCC \_2022\_PROG/page 571), these recommendations are included:

*“Set out, through Active Travel England, guidance for **what actions local authorities should take to realise the Transport Decarbonisation Plan's commitment to half of all journeys in towns and cities being walked or cycled by 2030. This should be accompanied by the required funding.**”*

*“Set out measurable targets for the contribution that reducing car travel will play in delivering transport's Net Zero pathway.”*

*“Reform the Transport Appraisal Guidance to ensure that it enables practitioners to make decisions that are consistent with the Net Zero pathway. **DfT should consider whether a "vision and validate" approach to the future transport system might be more appropriate than a "predict and provide" one in this context.**”*

58 These are just some of the recommendations which require solid and quantified plans to start to address the identified delivery gap in the surface transport policies in the NZS and the TDP. The recommendations from the Government’s advisors also make clear that policies to reduce traffic and set measurable targets for it do not exist, and that a new approach to road scheme appraisal is urgently needed.

### **3.8 Green Alliance Net Zero Policy Tracker**

59 The Green Alliance published a March 2023 update<sup>34</sup> to their “Net Zero Policy tracker”. This is new important material on whether the delivery of NZS is secured. On overall policy in the original NZS, the tracker found that no policy even existed for 13% of the emission reductions required for the whole economy (ie a 13% policy gap) for the 5<sup>th</sup> carbon budget.

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<sup>34</sup>

## Overall progress in this parliament

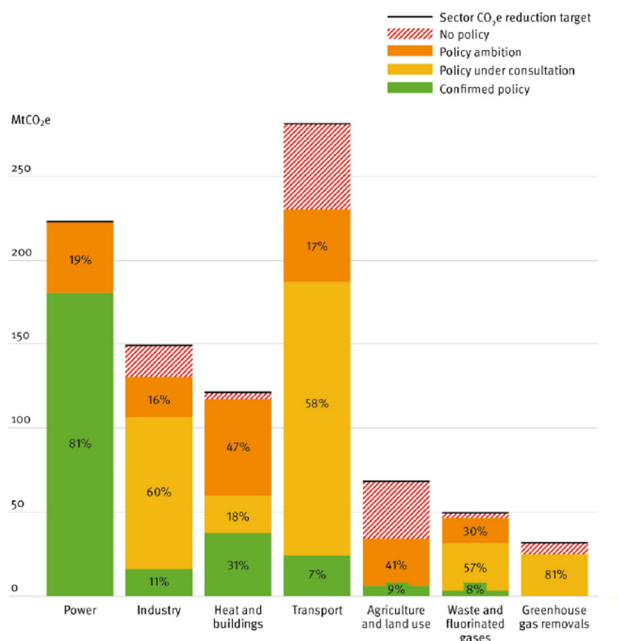
- The data we have used for our analysis is that made publicly available by the government
- ▣ Across the whole economy, the government has announced policies to cover 87 per cent of all the emissions reductions required during the fifth carbon budget period (2028-32) to meet its net zero strategy targets
- But, only 28 per cent of this is confirmed policy
- This leaves a 13 per cent policy gap



**Figure 3: Green Alliance Net Zero policy tracker, whole economy**

60 Across all sectors, transport had the largest absolute emissions policy gap (as indicated by crosshatch “no policy” area below, and a 18% gap of “no policy”).

## Progress: sectoral overview



**Figure 4: Green Alliance Net Zero policy tracker, sectorial comparison**

### **3.9 Conclusions on revised Net Zero Strategy**

61 The previous sections show that any assumption that the delivery of the Net Zero Strategy is secured is a false assumption for many reasons:

- A. A 130 million tonnes of CO2 error was made in the transport baseline in the original NZS. This loss of emission reductions now has to be made up by other sectors of the economy.
- B. The error alone explained why the Government has had to concede with the revised NZS that the UK has a shortfall on meeting its 2030 NDC under the Paris agreement and has a remaining policy gap for the 6<sup>th</sup> carbon budget.
- C. There remain significant risks in policy delivery for transport under the revised NZS and these have not been risk assessed in any meaningful way. The revised NZS is subject to further potential legal challenge as a result.
- D. Specifically, there are significantly different assumptions on electric vehicle uptake between the original NZS and the revised NZS, and the risks have not been assessed.
- E. The Government has increased traffic growth projections but still see (unassessed) risks of it “going beyond our high-end projections”.
- F. 411 million tonnes of CO2 of carbon reductions in the transport sector have been lost between 2023 and 2037 in the CBDP.
- G. The CCC and the Green Alliance both report major lack of security for policy delivery in the NZS.

## **4 DECISION MAKING FOR THE A66**

62 The existing NNNPS provides a premise for decision making that “*any increase in carbon emissions is not a reason to refuse development consent*” whilst providing a “carbon test” that “*unless the increase in carbon emissions resulting from the proposed scheme are so significant that it would have a material impact on the ability of Government to meet its carbon reduction targets*”.

63 The history of DCO decisions under the NNNPS is that the latter exception case (ie that a scheme would have a material impact on the ability of Government to meet its carbon reduction targets) has never been considered to apply. [It is my view that those previous decisions were erroneous to draw that conclusion: however, for the point I am making next, for decisions going forward, it does not matter if I was right or wrong on those previous decisions.]



64 The point is that, for any future decision including on the A66 scheme, there is overwhelming evidence above - from the NZS legal judgement; the revised NZS and the major impacts on NZS delivery from the transport sector within it; from Professor Marsden report; from the CCC and the Green Alliance – that the delivery of the NZS, also meaning delivery of the UK carbon budgets and targets, is not remotely secure.

65 Put bluntly, on the current evidence, it is very likely that the UK will fail to deliver the NZS, and the UK carbon budgets and targets.

66 The impact of this is that any additional emissions from a proposed transport scheme are significant enough to “have a material impact on the ability of Government to meet its carbon reduction targets”. In the situation that it is reasonably likely that the UK will fail to deliver the NZS, any additional emissions make delivery success even less likely, and increase the likelihood of failure.

67 I would like to highlight how the carbon test of the existing NNSPS 5.18 has been used in recent decisions by the Secretary of State in the context of the Net Zero Strategy. I choose for this illustration, the decision letter<sup>35</sup> (DL) of the A47 Wansford to Sutton scheme issued on February 17<sup>th</sup> 2023, as this was well past the date that the NZS had been found to be unlawful and the Government had accepted that (by not appealing the judgement<sup>36</sup>).

#### **4.1 An example decision under existing NNSPS and unlawful NZS**

68 At paragraph 142, the DL states: “*The Secretary of State notes that the Net Zero Strategy has not been quashed and remains government policy. A new report is required to be produced in accordance with the order made by the Court as a result of that successful challenge. As things stand, the Secretary of State has no reason to consider that the Proposed Development will hinder delivery of either the TDP or Net Zero Strategy (whether in its current form or any future updated form).*”

69 At paragraph 143, the DL states: “*Whilst the Proposed Development will result in an increase in carbon emissions, as set out above, Government is legally required to meet the carbon budgets which provide a pathway to net zero and like the ExA, the Secretary of State considers that the Proposed Development is consistent with existing and emerging national policies designed to achieve the UK’s trajectory towards net zero.*”

70 I wish to make these observations:

- A. These extracts show that the Government’s default position is to build any road scheme, irrespective of the carbon emissions associated from the construction and operation of that scheme.

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<sup>35</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010039/TR010039-001210-TR010039-SoS-Decision-Letter-230217.pdf>

<sup>36</sup> October 2022, [REDACTED]

- B. Even at a time when the NZS had been found unlawful on the basis that risk assessment of policy delivery has not been done, the SoS decision still assumed that there was no doubt that the NZS would be successful.
- C. Although the existing NNNPS has a test for significance against the “*material impact on the ability of Government to meet its carbon reduction targets*”, this is masked by an argument which goes along the lines as follows. The Government is legally obliged to meet its net zero targets, and carbon budgets, and therefore somehow, with a large act of faith, the budgets will be met. Therefore any materiality of the significance of emissions can be ignored. **However, my previous sections of evidence show that any assumption that the delivery of the Net Zero Strategy is secured is a false assumption.**
- D. This was true previously, but the recent evidence which I have provided just reinforces the falsehood of attempting to make such a claim.
- E. It also must be clear and evident that having a carbon budget, or an associated Net Zero Strategy, provides no guarantee that that budget or that strategy will be delivered, and this is especially true in the absence of fit of purpose risk assessment of the revised NZS.
- F. Indeed, I have provided evidence above from the NZS legal judgement, the CCC and the Green Alliance, that the policies for delivery of the NZS do not fully exist yet, nor have they been adequately risk assessed. I note the Friends of the Earth assessment of the revised NZS as being a “high risk strategy”.

#### **4.2 Considerations that must be before the Secretary of State**

71 I now, respectfully, write as if directly to the SoS although through the ExA and examination process. I respectfully request that the ExA record these points in the Examination Report and requests that the SoS considers them in his/her decision making.

- A. It is clear from the ES, and is not disputed, that A66 scheme creates additional carbon emissions: over 500,000 tonnes of CO<sub>2</sub> from construction, and of the order of 35,000-40,000 additional tonnes of CO<sub>2</sub> annually from 2029 to 2037, critical years for the 5<sup>th</sup> and 6<sup>th</sup> carbon budgets.
- B. It is also clear from the evidence above on the revised NZS that there is no evidence that delivery of this critical climate policy under the Climate Change Act 2008 is secured. In fact, the evidence strongly supports the opposite case that the NZS is unlikely to be delivered successfully, and, in any case, the risks to delivery have not been adequately assessed.
- C. At the time of his/her decision, the SoS should consider the latest evidence on the revised NZS, the status of any on-going legal challenge to it, any related reports

from the Transport Select committee (eg on the draft NNNPS), the 2023 CCC Progress Report, any updates to the Green Alliance Net Zero Policy Tracker, Professor Marsden's research and my submissions here.

- D. I especially highlight my submission above that in the extreme state of uncertainty about delivery of the NZS, any additional emissions from a proposed transport scheme are significant enough to “have a material impact on the ability of Government to meet its carbon reduction targets”.
- E. As the application has an applicable national policy statement (ie the existing NNNPS), section 104 of the Planning Act 2008 (“the 2008 Act”) applies to the decision making. This states that the Secretary of State must decide an application in accordance with the relevant NPSs except to the extent s/he is satisfied that to do so would:
- lead to the UK being in breach of its international obligations (s104(4));
  - be in breach of any statutory duty (s104(5));
  - be unlawful (s104(6));
  - result in adverse impacts from the development outweighing the benefits (s104(7)); or
  - be contrary to regulations about how its decisions are to be taken (s104(8)).
- F. As far as s104(4) is concerned, the scheme adds over 500,000 tonnes CO<sub>2</sub> from construction before 2029, and this creates a strong risk that the UK will fail to deliver its 2030 NDC. An 8 MtCO<sub>2</sub> shortfall on the NDC has already been noted in the CBDP – the A66 scheme makes the possible shortfall worse by over another 0.5MtCO<sub>2</sub>. Therefore, the scheme risks the UK being in breach of its international obligations, and the SoS cannot have any legal certainty that approving the scheme will not lead to the UK being in breach of its international obligations.
- G. As far as s104(5) is concerned, the statutory duty to deliver the 5<sup>th</sup> and 6<sup>th</sup> carbon budgets depend upon the successful delivery of the NZS. Ample evidence has been provided in this submission that the delivery of the NZS is far from secure, and the risks to delivery have not been adequately assessed. Therefore, the scheme risks, by adding new construction and operation emissions, the UK being in breach of a statutory duty, and the SoS cannot have any legal certainty that approving the scheme will not lead to him/her being in breach of a statutory duty.
- H. As far as s104(6) is concerned, the legal requirement to deliver the 5<sup>th</sup> and 6<sup>th</sup> carbon budgets under the Climate Change Act 2008 depend upon the successful delivery of the NZS. Ample evidence has been provided in this submission that the delivery of the NZS is far from secure, and the risks to delivery have not been adequately assessed. Therefore, the approving of the scheme, which adds new construction and operation emissions, risks breaching the law, and the SoS

cannot have any legal certainty that approving the scheme will not be a breach of the law.

## **5 COMMENTS ON REP5-026 AND REP5-030**

72 I maintain my disagreement with the Applicant on the matters in these documents, as reflected in my PADSS document.

73 In some cases, it is regrettable that the Applicant does not have the courage to admit that they are in error where it is plainly the case that they are. This is especially the case for the Applicant's comments on "[REP3-068] Section 4.3: Inclusion of maintenance emissions within the operational emissions reporting" in REP5-030. It is patently clear that the Applicant has "concocted a truly bizarre explanation" [REP3-068/para 35] which results in the Applicant comparing emissions from the year 2044 with one year of the sixth carbon budget 2033-2037 [REP3-068/para 39]. This is simply not a credible comparison to make, not a credible explanation of the original error. It is gobbledygook which appears to be presented solely to try and avoid admitting the original error.

## **6 FINAL PRINCIPAL AREAS OF DISAGREEMENT SUMMARY STATEMENT [PADSS]**

74 I am submitting my final PADSS statement with this submission. I apologise for missing the Deadline D7 and respectfully request that the ExA will accept the PADSS at this date (May 18<sup>th</sup>).

75 REP5-026 and REP5-030 have no impact on the PADSS statement, previously submitted, as I maintain my disagreements with the Applicant on those matters. Points 1 to 18 of my PADSS are therefore unchanged (apart from minor typographical changes).

76 With this Deadline D8 submission, and the new material provided, I have added new points 19 to 23 to the PADSS. I have made these points in blue coloured text to highlight the new points in the PADSS.

## **7 CUMULATIVE ASSESSMENT OF CARBON EMISSIONS FROM THE SCHEME**

77 I wish to emphasise that my position remains that CATEGORICALLY, there is no assessment of the impact of cumulative carbon emissions in the ES. Points of disagreement relating to this are recorded at PADSS points 1, 2, 5, 8, 9 and the references to my WR therein.

78 The same issue on three other DCO schemes was heard at the High Court by Mrs Justice Thornton in my three Judicial Reviews, R(Boswell) v Sec of State for Transport CO/2837/2022, CO/3506/2022 & CO/4162/2022 on May 10<sup>th</sup> and 11<sup>th</sup> 2023 with judgement reserved. The judgement can be expected to fall within the May 29<sup>th</sup> to November 29<sup>th</sup> period.

79 The outcome of these cases is an additional issue which the ExA and Secretary of State must consider.

## **8 CONCLUSIONS**

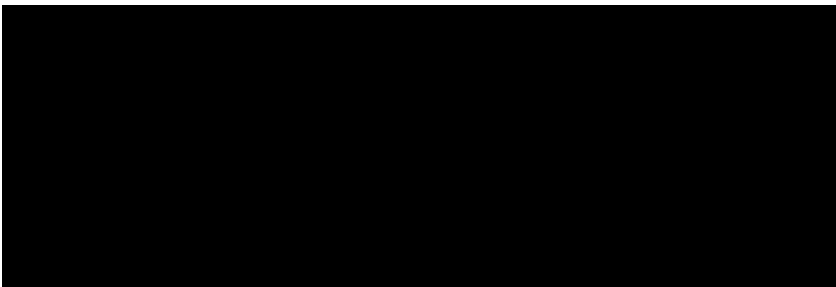
80 The Net Zero Strategy and the UK carbon budgets are not secured. Nor has there been an adequate or lawful risk assessment of the policy delivery of the NZS.

81 In this situation, any additional emissions from new infrastructure, such as the construction and operation emissions of the A66 scheme, have a material impact on the ability of Government to meet its carbon reduction targets which is itself dependent on policy delivery of the NZS.

82 I have provided an analysis of the implications for the decision making on the A66 scheme.

83 I respectfully request that the ExA records the points listed under the section “Considerations that must be before the Secretary of State” in the Examination Report and requests that the SoS considers them in his/her decision making.

84 Specifically, as the NZS is not secured, and the UK carbon budgets and UK NDC are not secured, the Secretary of State must consider if his/her decision would lead to the UK being in breach of its international obligations, to him/her being in breach of a statutory duty, to him/her being in breach of the law under section 104 of the 2008 Act.



Dr Andrew Boswell,  
Climate Emergency Policy and Planning, May 18<sup>th</sup> 2023

**9 APPENDIX A: MARSDEN REPORT, May 16<sup>th</sup> 2023**

Marsden, G. 2023. Reverse gear: The reality and implications of national transport emission reduction policies. Centre for Research into Energy Demand Solutions. Oxford, UK. ISBN: 978-1-913299-17-0

<supplied in a separate file>

**10 APPENDIX B: TIMES REPORT ON POTENTIAL NET ZERO STRATEGY LEGAL CHALLENGE – April 23<sup>rd</sup> 2023**

ENVIRONMENT

## Friends of the Earth threaten legal challenge to new net zero strategy

Shapps's department may be required to revisit climate plan to ward off court battle

NEW

Adam Vaughan,  
Environment Editor

Sunday April 23 2023,  
9.40pm BST, The Times



Grant Shapps, the energy secretary, could have to go back to the drawing board as climate campaigners highlighted insufficient information on the risk of policies failing to deliver emissions cuts

WIKTOR SZYMANOWICZ/ANADOLU AGENCY/GETTY IMAGES

Ministers may have to rethink their plans for meeting net zero for a second time after green campaigners took the first step towards a legal challenge over inadequate action on climate change.

Grant Shapps, the energy secretary, was forced last month to publish a revised version of the government's flagship [net-zero strategy](#), after the High Court ruled the original was unlawful. The new plan included a mandate to ensure that 28 per cent of car sales were electric by 2025, an extension of grants for heat pumps and a Great British Insulation Scheme.

[Shapps](#) could now have to revisit the plan again. Friends of the Earth, which brought last year's court case along with the Good Law Project and ClientEarth, has given him until this Friday to respond to a pre-action letter. It is the first step towards applying for a judicial review.

The group's focus is the lack of detail on the risk of policies failing to deliver the emissions cuts needed for Britain's legally binding "sixth carbon budget" by 2037, the letter seen by The Times shows.

<https://archive.ph/hZRHT>

1/4

07/05/2023, 21:26

Friends of the Earth threaten legal challenge to new net zero strategy

The only assessment of risk the government has made public is in its carbon budget delivery plan, published last month. That document showed the government only has “high confidence” in policies covering 40 per cent of the [emissions](#) savings required by 2037.

Katie de Kauwe, a lawyer at Friends of the Earth, said that left a huge uncertainty over the levels of confidence that officials have in the remaining 60 per cent.

“If a strategy is very high risk, surely the public should be entitled to know about that. At the moment there is very little information in there. Obviously a pre-action letter is not a commitment to litigate, it is a first and important step. But if the government’s response is inadequate, I can certainly see us taking them to court again,” she said.



A leaked document indicates that 21 of 44 of the net-zero policies, including on tree-planting and peatland restoration, would be difficult to accomplish

ADAM VAUGHAN/EPA

The legal basis for the challenge is whether or not Shapps met the Climate Change Act’s obligations to prepare policies that will ensure carbon targets are met. Friends of the Earth won in the High Court last year over that duty, after a judge ruled the net-zero strategy provided insufficient detail.

If the group’s demands for more detail on risk are not met, a court hearing is likely to take place this year. The idea that some of the policies may be at risk of delivery is not just speculation. A [leaked document](#) by the Department for Environment, Food and Rural Affairs has shown that 21 of 44 of its net zero policies, including on tree planting and peatland restoration, would be hard to achieve.

Last month’s carbon plan also revealed that the government faces a small shortfall for the 2037 carbon target, of 3 per cent of the emissions savings needed.



07/05/2023, 21:26

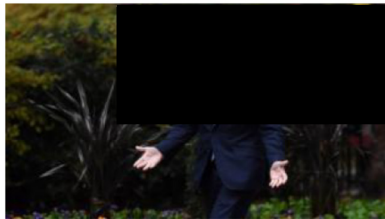
Friends of the Earth threaten legal challenge to new net zero strategy

Ministers argued the gap would be filled by technology developments. Graham Stuart, the climate minister, said: “Technology does tend to advance. We are obliged under the [Climate Change] Act to give a very high degree of certainty. We have given ourselves a very small headroom. We just know there are new technologies coming through, and it will be irrational to overcommit in areas.”

Shapps’s department is the [subject of a complaint](#) being reviewed by the Information Commissioner’s Office, brought by The Times, over its past failures to disclose the estimated emission savings of individual measures in the net zero strategy, such as insulating more homes. A ruling is expected by the data watchdog imminently.

The government was contacted for comment.

### Related articles

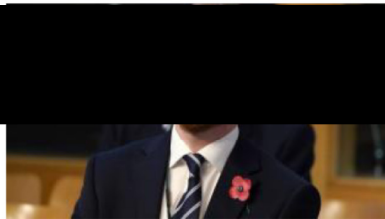


ENVIRONMENT

#### Ministers were warned net zero schemes won’t work

April 04 2023, 12.01am BST

Ben Spencer

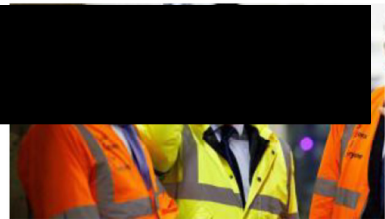


POLITICS

#### Ministers have no clear plan for net zero, says watchdog

April 20 2023, 12.01am BST

Craig Paton



ENVIRONMENT

#### Secrecy on net zero data investigated by watchdog

February 09 2023, 12.01am GMT

Adam Vaughan, Environment Editor