

<b>A417 Missing Link Planning Examination 2021-2022</b>	<b>Deadline 8 (D8), May 6<sup>th</sup>, 2022</b>
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## **DEADLINE D8 SUBMISSION**

I am an independent scientist and environmental consultant, working at the intersection of science, policy, and law, particularly relating to ecology and climate change. I work as a consultancy called Climate Emergency Policy and Planning (CEPP).

**In so far as the facts in this statement are within my knowledge, they are true. In so far as the facts in this statement are not within my direct knowledge, they are true to the best of my knowledge and belief.**

## **SUMMARY**

Both the applicant on the A417 examination, and the SoS decision on the M54-M6 scheme, make the assumption that the Net Zero Strategy will **inevitably** deliver its objectives. However, the Net Zero Strategy is currently under legal challenge in a case which has permission for full Judicial Review on the basis that Net Zero Strategy does not demonstrate that it is designed to secure its objectives (which are to meet the budgets and targets in the Climate Change Act). Therefore it is premature to rely on the proposition that the NZS will inevitably meet its objectives within the planning examination of the A417 scheme.

The proposition expands to six propositions relating to the NZS, TDP and NDC, each of which it is premature to rely upon. These propositions all fall on the basis that the Government has not demonstrated that the NZS will meet its objectives. The consequence for the A417 scheme is that issues such as the significance of the carbon emissions associated with the scheme cannot be determined as it is not inevitable that the NZS will deliver UK carbon budgets.

The issues are on top of the existing legitimacy issues with the Environment Statement which I have identified. These are that no cumulative carbon assessment has been made, and that the solus carbon assessment is based upon the wrong quantification which is an underestimate of the emissions. The applicant can gain no comfort from the M54-M6 scheme decision, with respect to the cumulative impact of carbon emissions associated with the scheme, until a cumulative carbon assessment has been demonstrated for the A417.

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## **1 INTRODUCTION**

### **1.1 *Deadline 8 (D8) – response to Rule 17 letter [PD-022]***

- 1 On 21 April 2022, the Secretary of State for Transport (SoST) issued a decision on the M54 to M6 Link Road (decision letter referred to here as [M54-M6-DL]). The ExA has requested written submissions from myself and other named parties on the findings of the SoST on that project:
  - particularly paragraphs 43 to 54 of the SoST’s decision letter), and
  - the implications for the current Examination into the A417 Missing Link.
- 2 As background before commenting on M54-M6-DL, it is also necessary provide background on the current legal challenge to the Government, now with permission to proceed to a full Judicial Review hearing, against the Net Zero Strategy, and to lay out number of other issues.

## **2 LEGAL CHALLENGE TO THE NET ZERO STRATEGY**

### **2.1 *Propositions of successful climate policy delivery***

- 3 Before providing some background on the legal challenge to the Net Zero Strategy, I need to outline a number of propositions which are implicit in the Applicant’s submissions to the examination, and within the M54-M6-DL. These are propositions or assertions which are unevicenced but made as if they are true. In other words, each of these propositions, is no more than a statement of blind faith.

### **2.2 *Proposition 1: the “overarching assertion of NZS success”***

- 4 Proposition 1 (the “overarching assertion of NZS success”) is that the existence of the Net Zero Strategy document will ensure that national carbon budgets and targets are met, irrespective of what carbon increases are made in the transport sector by road schemes. This assertion amounts to saying *“because a policy document has been published and exists, future carbon budgets and targets will inevitably be achieved”*.
- 5 For example at REP2-012/2.3.5, the applicant states:
 

*“It is considered that this magnitude of emissions from the scheme in isolation would not have a material impact on the ability of the UK Government to meet its carbon budgets, and therefore is not anticipated to give rise to a significant effect on climate, in line with the position set out within paragraph 5.18 of the NPSNN.*  
(emphasis added)
- 6 The point here is that “it is considered” by the applicant that, including the increases in carbon emissions from the scheme, the UK Government will still meet its carbon budgets: however, no evidence has been provided to justify this claim. The claim implicitly,

although not stated, relies heavily on the “overarching assertion of NZS success” (ie proposition 1) that elsewhere the UK economy will make up for the increases in emissions from transport in Tewkesbury Borough.

### **2.3 Proposition 2: scheme specific “subsidiary assertion of NZS success”**

- 7 A further proposition (a scheme specific “subsidiary assertion of NZS success”) follows from the overarching assertion. It follows because if, inevitably, the NZS “will be achieved”, the scheme itself will not affect the UK’s ability to meet the NZS delivery pathway (or the other associated targets like 68% reduction in emission by 2030 from 1990 levels in the NDC). Again the quote above from REP2-012/2.3.5 is an example of this.
- 8 The overarching assertion that because the NZS exists, the delivery trajectories within it, will somehow, inevitably, one way or another, be met, **and** the subsidiary assertion that this means the scheme will not affect the UK’s ability to meet the Net Zero Strategy delivery pathway **are both** unevidenced and unsubstantiated. Both are false.

### **2.4 Related propositions for the Transport Decarbonisation Plan (TDP) and (Nationally Determined Contribution) NDC**

- 9 There are related propositions for the TDP. **Proposition 3**, the “overarching assertion of TDP success”, is the claim that because the TDP document exists, all the policies within it will be delivered, irrespective of what carbon increases are made in the transport sector by road schemes. **Proposition 4**, the “subsidiary assertion of TDP success”: if, inevitably, the TDP will be achieved, the scheme itself will not affect the UK’s ability to meet the TDP.
- 10 **Proposition 5**, the “overarching assertion of NDC success”, is the claim that because the NZS and TDP will be delivered, irrespective of what carbon increases are made in the transport sector by road schemes, the UK’s international commitment under the Paris agreement for 2030 will also be inevitably met. **Proposition 6**, the “subsidiary assertion of NDC success”: if, inevitably, the NDC will be achieved, the scheme itself will not affect the UK’s ability to meet the NDC and deliver to the international community.
- 11 Propositions 2-6 all rely upon proposition 1 to be true in the first instance as the NZS is the primary delivery mechanism for the climate change act and the targets within it.

### **2.5 Proposition 1 and the NZS legal challenge**

- 12 Proposition 1, the “overarching assertion of NZS success”, is now subject to a Judicial Review where the idea that because a policy document has been published and exists, future carbon budgets and target will inevitably be achieved, is central to the legal challenge. I now provide further details.

## 2.6 NZS legal challenge: permission granted

- 13 Three separate legal claims were made to the High Court by Friends of the Earth, ClientEarth and the Good Law Project, each seeking to challenge the publication on 19 October 2021 of the “Net Zero Strategy: Build Back Greener” by the Secretary of State for Business, Energy and Industrial Strategy, in purported compliance with his duties under sections 13 and 14 of the Climate Change Act 2008.
- 14 At the application for permission to apply for judicial review (CPR 54.11, 54.12), the Honourable Mr Justice Cotter granted permission (on March 1<sup>st</sup> 2022) to apply for judicial review and observed “*the grounds advanced in this claim are arguable, with a realistic prospect of success, and merit investigation at a full hearing*”. The three cases are to be rolled into one hearing expected to take place in Autumn/Winter 2022. The permission judgment is given in Appendix A.

## 2.7 NZS legal challenge: relevant grounds claimed

- 15 The Friends of the Earth press release on 2<sup>nd</sup> March (provided at Appendix B) gives their Ground 1 as:

*“Ground 1 – BEIS failed to include in the NZS the basic information required to give effect to section 14 of the CCA, including: the basis for concluding that the proposals and policies would meet the carbon budgets; a quantified estimate for emissions reductions from each proposal and policy; and, the relevant timescales for their implementation and effect.” (underline emphasis added)*

- 16 Good Law Project (GLP) have provided their Pre-action protocol (“PAP”) letter of 22<sup>nd</sup> December 2021 on-line, and read-only (meaning that it is not easily reproducible). It is best that the full letter is read at

[REDACTED]

However, some highlighted screen clip sections have been provided in Appendix C, for additional reference. Key paragraphs are PAP/7 and PAP/16 which I transcribe sections of here:

*“However, as explained further below, the Strategy is unlawful because it does not discharge the Secretary of State’s duties under ss 13 and 14. That is because it does not set out policies and proposals for meeting the CB6. Rather it identifies the pathway that UK emissions will need to be on to meet the CB6 and then sets out a series of actions that will need to happen for that to occur, **but does not present a set of policies or proposals that have been designed so as to bring about the change which will be necessary to meet the CB6**. Merely listing ambitions and discussing possible pathways does not meet the duties under ss. 13 and 14.”*

*“Nonetheless, for the Secretary of State to be able lawfully to conclude that the proposals and policies will enable the carbon budgets to be met, **he must assess***

*their collective effect on GHG emissions, and assure himself that they will (on his best estimates) bring about the necessary reductions. There is no indication in the Strategy that such an assessment has been made of the proposals and the policies it contains.” (bold emphasis added)*

- 17 The relevance to the applicant and the A417 scheme is that it is the “collective effect on GHG emissions” of the proposals and policies in the NZS which the applicant relies upon (eg: at REP2-012/2.3.5) to make their overarching assertion (proposition 1) that because the NZS exists, the delivery trajectories within it, and UK carbon budgets and targets, will somehow, one way or another, be met. The proposition 2 subsidiary assertion which is that the scheme will not affect the UK’s ability to meet its carbon budgets (and by implication to meet the Net Zero Strategy delivery pathway) relies upon the first overarching assertion. If the overarching assertion is unproven, or false as effectively contended by the claimants in the NZS case, then there is no way of knowing if the subsidiary assertion is true.
- 18 Therefore, the basis of the overarching assertion, and therefore also the subsidiary, scheme specific, assertion, is now under legal challenge. And the Court has said that the case merits investigation at a full JR hearing. If the scheme’s timetable proceeds as currently planned, with the ExA’s recommendation report due around August 16<sup>th</sup> 2022, then the outcome of the NZS legal case will be unknown. **I respectfully suggest that, in this situation, that it would be premature for the ExA to give weight to both the Applicant’s overarching assertion and subsidiary assertion with respect to the UK’s ability to meet its carbon budgets (and by implication the NZS delivery trajectory (propositions 1 and 2)), and by implication, the same assertions for the TDP and NDC (propositions 3, 4, 5 and 6).**
- 19 This is relevant to the M54-M6-DL, and many of the clauses in it which might give the applicant comfort are also based upon Proposition 1 (and the implied propositions 2-6) which are no longer claimable given the NZS legal action. This is explained later with specific examples later.

### 3 TRANSPORT DECARBONISATION PLAN

- 20 The same shortcomings apply to the Transport Decarbonisation Plan. Despite the NZS’ lack of quantification of policies, and any evidence that it is designed to secure the carbon budgets, the NZS does, at least, provides a refinement of the TDP trajectory. The TDP is a vaguer document than even the NZS in terms of carbon quantification and validation of the policies within it. As I have previously pointed out, NZS Figure 21 is a refinement of TDP Figure 2 [REP7-007/25], and there is also linkage between the TDP policies and the NZS in this sense.
- 21 The applicant refers to the TDP at REP1-009/1.1.14 as “a plan to decarbonise the entire transport system in the UK”. Once again, the mere existence of the plan is assumed to imply guaranteed success, despite no validation of the policies within it in terms of carbon quantification. This in turn implies that carbon increases are made in the transport sector

by road schemes (proposition 3), or the A417 scheme in particular (proposition 4), will not impact the success of the TDP which already somehow guaranteed. This assumption is false.

#### **4 NATIONAL DETERMINED CONTRIBUTION (NDC)**

22 Rather surprisingly as it is a significant international obligation, the applicant appears not to have mentioned the UK's Nationally Determined Contribution (NDC) under the Paris Agreement in the application and subsequent documents.

23 The NDC depends upon the NZS being successfully delivered, and the Government have not demonstrated that the NZS is designed to secure its objectives, as being challenged in the NZS legal case.

24 In summary, the government has not provided the quantified evidence that either the TDP or the NZS are designed to secure delivery of their carbon reduction objectives, nor that the UK international obligations under its NDC and the Paris Agreement can be delivered.

#### **5 DECISION LETTER ON M54-M6 SCHEME**

25 I now make some preliminary comments, without prejudice, as requested by the ExA.

26 I start by highlighting areas where the M54-M6-DL makes reliance of the propositions 1-6 which are unevidenced, and under legal challenge, as I have explained above. This will lay out some markers for the implications for the current Examination into the A417 Missing Link.

##### **5.1 *Illegitimate reliance on the inevitable success of the TDP and the NZS (Propositions 1, 2, 3, and 4)***

27 At M54-M6-DL/31, the Secretary of State declares the “background” against which the Secretary of State has considered the Proposed Development:

*“The Secretary of State considers that the majority of operational emissions related to the scheme result from vehicle usage and that the Transport Decarbonisation Plan includes a range of non-planning policies which will help to reduce carbon emissions over the transport network as a whole over time (including policies to decarbonise vehicles and radically reduce vehicle emissions) and help to ensure that carbon reduction commitments are met. Beyond transport, Government’s wider policies around net zero such as ‘The Net Zero Strategy: Build Back Greener’ (“Net Zero Strategy”), published by Government in October 2021 sets out policies and proposals for decarbonising all sectors of the UK economy to meet the net zero target by 2050. It is against this background that the Secretary of State has considered the Proposed Development.” (underline emphasis added)*

28 It is clear from this statement, the SoS is predicated his decision on the basis of both overarching assertion and subsidiary assertion of success for both the TDP and NZS. However, it remains to be tested in Court whether the overarching assertion for NZS success is legitimate. It is, therefore, premature, and not legitimate, to predicate the decision on these assertions.

29 If the overarching assertion for NZS success is not legitimate, then the overarching assertion for the TDP success cannot be legitimate either. And the subsidiary scheme-specific assertions for the NZS and TDP are also not legitimate as a consequence.

30 It would also be premature for the ExA in its recommendations to the SoS to make any reliance on overarching or subsidiary assertions of success for the NZS and TDP on the A417 scheme.

## **5.2 *Illegitimate reliance on the inevitable success of meeting the UK NDC (Propositions 5 and 6)***

31 At M54-M6-DL/37, the Secretary of State extends the overarching assertion of NZS success to an assertion of inevitable success in the UK meeting its NDC target of 68% carbon emissions reduction by 2030 compared to 1990:

*“With regard to the Paris Agreement, the UK announced its Nationally Determined Contribution (“NDC”) in December 2020. NDCs are commitments made by the Parties (including the UK) under the Paris Agreement. Each Party’s NDC shows how it intends to reduce its greenhouse gas emissions to meet the temperature goal of the Paris Agreement. The UK’s NDC commits it to reduce net GHG emissions by at least 68% by 2030 compared to 1990. This represents an increase of ambition on the fifth carbon budget, which covers the period 2028-2032. The Net Zero Strategy: Build Back Greener, published by Government in October 2021, sets out how the UK will therefore need to overachieve on the fifth carbon budget to meet its international climate targets and stay on track for the sixth carbon budget. This strategy sets out the action Government will take to keep the UK on track for meeting the UK’s carbon budgets and 2030 NDC and establishes the UK’s longer-term pathway towards net zero by 2050. The Secretary of State is content that consenting the Proposed Development will not impact on the delivery of this strategy and will not lead to a breach of the UK’s international obligations in relation to the Paris Agreement or any domestic enactments or duties.” (emphasis added)*

As the assertion of the inevitable success in the UK meeting its NDC target of 68% carbon emissions reduction by 2030 compared to 1990 is based upon the overarching assertion of NZS success, which is illegitimate, the conclusions in paragraph 37 are also premature, and are illegitimate. **From the evidence that the Government has made available, it is clear that the delivery of the NZS is not secured, and therefore, neither is the delivery of the NDC secured.**



32 Further, the bolded statements “stay on track” and “keep the UK on track” are perplexing as they do not agree with the assessment of the Government’s advisors the Climate Change Committee who have advised that the UK is “off track” for meeting the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> carbon budgets (see Appendix D).

33 If the applicant wishes to refer to the NDC at some stage, it would be premature, and illegitimate to assume (Propositions 5 and 6) that it can, inevitably, be delivered. There is no evidence that the NZS has been designed to secure its objectives, and the security of delivering the NDC is therefore compromised.

### **5.3 Negative weight for increasing carbon emissions in the planning balance**

34 M54-M6-DL/54 states:

*“Given that the scheme will increase carbon emissions, it is given negative weight in the planning balance. However, the Secretary of State considers that weight also needs to be given to the Transport Decarbonisation Plan that will mean operational emissions reduce over time and that in relation to climate change adaption the Proposed Development attracts positive weight in the planning balance.*

35 However, there are a number of issues with this, and the applicant should not rely upon it for the A417 scheme. First, as above the SoS has already declared at M54-M6-DL/31, the background for the decision, and as in the previous section, the SoS is assuming the overarching and subsidiary assertions of success for the NZS, TDP and NDC (ie: Propositions 1-6). These assertions are not legitimate.

Second, the SoS then claims that weight needs to be given to the TDP. However, in terms of meeting national carbon budgets and targets, the Government have not demonstrated the overarching assertion of success for the TDP or NZS. Therefore, no weight can be given to the TDP against the negative impact of increasing emissions.

Third, the SoS claims positive weight should be given to climate adaptation. However, greenhouse gas emissions and the vulnerability of the project to climate change are specified as two distinct environmental factors, or receptors in the EIA Regulations (eg: see EIA Regulation Schedule 4 (4) and Schedule 4 (5)(f)). Therefore they are not transmutable environmental factors.

**The seriousness of the negative weight of increasing carbon emissions can only be balanced against full security in delivering the carbon budgets and targets. To understand the full impacts of the scheme’s carbon emissions is not a luxury, it is an absolute necessity. This full knowledge and appraisal are required not only by the law, but also by the global scientific evidence as endorsed by the UK Government as below, by the precautionary principle, and by the principle of sustainability.**

However, neither the NZS or TDP has been quantitatively demonstrated to be designed to secure the carbon budgets and targets. Failure to meet carbon budgets and targets cannot be

balanced by the notion, even if true, that the particular scheme may be slightly more robust against the physical impacts of climate change.

36 For the A417 scheme, the result of this is that the scheme will increase emissions, and this has negative weight in the planning balance. There is currently no legitimate way to demonstrate positive planning weight for carbon emissions.

#### 5.4 *The necessity of being led by the science*

37 The sub-section is included for context on the previous section on the negative for increasing carbon emissions in the planning balance on the M54-M6-DL/54, which is also reproduced on the A417 scheme, and, as above, cannot be “offset” in the way M54-M6-DL/54 claims.

38 It is important to understand that the full knowledge and appraisal of carbon emissions for the A417 scheme must be “led by the Science” *as the global scientific evidence on Climate Change is endorsed by the UK Government*. As background, the Intergovernmental Panel on Climate Change (IPCC) has published three recent reports (all part of its 6th Assessment Report, AR6): the UK Government is a drafter and signatory to the policy statements associated with each of these reports<sup>1</sup>. These form the latest scientific knowledge on Climate Change, represent a massive scientific endeavour, and are underwritten for their policy implications by our own government.

39 The implications of this scientific consensus extend to all levels of government and administration in the UK having been authorised by our national Government. As has been widely reported, the IPCC reports make a clear and unanimous case for very urgent action on Climate Change actioned the immediate and rapid reduction in carbon emissions – not over decades, but over years in the very near future (45% cuts by 2030<sup>2</sup>).

40 On April 4th 2022, Professor Jim Skea, OBE, CBE from Imperial College, London and Co-Chair of IPCC Working Group III said on the release of the latest report “***It’s now or never, if we want to limit global warming to 1.5°C (2.7°F); without immediate and deep emissions reductions across all sectors, it will be impossible***”. This means starting serious, evidence-based decarbonisation now in 2022 – not next year, nor the next, nor 2025, ***but now***. The Application is not consistent with what the scientific consensus requires, as underwritten by our own Government. This would be especially true if it was considered that increases in carbon emissions this decade from the A417 scheme can somehow be offset in the planning

<sup>1</sup> The three latest Summaries for Policymakers are: August 2021 “Climate Change 2021: The Physical Science Basis”, [https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_SPM\\_final.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM_final.pdf); February 2022 “Climate Change 2022: Impacts, Adaptation and Vulnerability”, [https://report.ipcc.ch/ar6wg2/pdf/IPCC\\_AR6\\_WGII\\_SummaryForPolicymakers.pdf](https://report.ipcc.ch/ar6wg2/pdf/IPCC_AR6_WGII_SummaryForPolicymakers.pdf); April 2022 “Climate Change 2022: Mitigation of Climate Change”, [https://report.ipcc.ch/ar6wg3/pdf/IPCC\\_AR6\\_WGIII\\_SummaryForPolicymakers.pdf](https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf). Professor Skea is quoted from UN Press Release, “UN climate report: It’s ‘now or never’ to limit global warming to 1.5 degrees”, 4th April 2022, <https://news.un.org/en/story/2022/04/1115452>

<sup>2</sup> “Global net human-caused emissions of carbon dioxide (CO<sub>2</sub>) would need to fall by about 45 percent from 2010 levels by 2030, reaching ‘net zero’ around 2050”, Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C, [REDACTED]

balance against policy documents which have not been designed to secure their objectives (ie: the NZS and TDP).

## 5.5 IEMA guidance

41 M54-M6-DL/32-35 discuss the latest IEMA guidance. There are a number of issues.

42 The SoS selectively quotes IEMA. The IEMA guidance at section 6.4 on “Contextualising a project’s carbon footprint” has been ignored. As I describe at REP7-007/3.1, IEMA say 1) assessment of a project’s carbon emissions against the carbon budget for the entire UK economy **is only a starting point of limited value** in the EIA process 2) local policies and budgets and targets should be used. This latter point is also in line with the EIA guidance (which itself is material guidance to the NN NPS as the NN NPS invokes the EIA Regulations) [REP2-020/3.1 and REP2-022/section 3].

The SoS decision at M54-M6-DL does not identify that local and regional assessment of carbon emissions has not been done, and therefore that the Application for that scheme is not consistent with the IEMA guidance, nor the EIA guidance.

43 M54-M6-DL/33 correctly quotes the IEMA guidance with respect to “significance” that “*that GHG emissions have a combined environmental effect that is approaching a scientifically defined environmental limit and as such any GHG emission or reductions in these might be considered significant.*” However, the SoS then does not take the logical step that this statement from IEMA implies that securing the delivery of the NZS, TDP and NDC are vital. Simply we are near to the limit of carbon emissions which may be generated (the “remaining global carbon budget” in the scientific jargon). Instead the SoS assumes propositions 1-6, and therefore concludes that GHG emissions from the project are not significant. However, as propositions 1 -6 are false, the conclusion cannot depend upon them and is also false.

44 For the A417 scheme, it would be premature and incorrect for the applicant to use M54-M6-DL/32-35 to support claims such as:

- that comparisons of carbon emissions made solely against UK carbon budgets in line with the NSPNN, and consistent with the IEMA guidance;
- that any assessment made on such a singular comparison is legitimate to conclude that the carbon emissions from the A417 scheme will not have a material impact on the ability of Government to meet its legally binding carbon reduction targets.

## 5.6 Overview - the (non) Assessment of Cumulative of GHG emissions from the A417 scheme

45 First, it is important to note that I have shown in detail in REP7-007/section 5 that no cumulative carbon assessment has been made, and that the solus carbon assessment is based upon the wrong quantification which is an underestimate of the emissions. I have shown that the notion that the assessment made by the applicant is cumulative because the traffic model is “inherently cumulative” is false.

46 The applicant must provide a meaningful response to bullets 33-79, which cover the substance of my response in REP7-007 on there being no cumulative carbon assessment by the applicant. Crucially, the applicant must respond to sections 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9 and 5.10 which relate to whether the environmental statement includes a quantification and assessment of the cumulative carbon emissions of the scheme which is compliant with the EIA Regulations.

47 The applicant may be tempted to draw a comparison between the A417 and the M54-M6 applications and claim that M54-M6-DL/39-51 would provide support. I lay out below why this would be an incorrect comparison.

### 5.7 *The applicant does not follow the DMRB*

48 At M54-M6-DL/40, the SoS says “the Secretary of State notes the Applicant’s responses set out that the assessment of cumulative impacts of the scheme on climate was undertaken in line with DMRB guidance”.

49 DMRB LA 104 is clear how cumulative assessment should be done. First it provides a definition of “cumulative effects” on page 7:

*“Impacts that result from incremental changes caused by other present or reasonably foreseeable actions together with the project.*

*NOTE: For the purposes of this guidance, a cumulative impact can arise as the result of:*

- a) the combined impact of a number of different environmental factors specific impacts from a single project on a single receptor/resource; and/or*
- b) **the combined impact of a number of different projects** within the vicinity (in combination with the environmental impact assessment project) on a single receptor/resource.” (emphasis added)*

50 The receptor in question here is greenhouse gas emissions under EIA Regulations Schedule 4.

51 Then under the “Cumulative effects” section of DMRB LA 104:

*3.19 EIAs must include cumulative effects in accordance with the requirements of the EIA Directive 2014/52/EU [Ref 1.N].*

*3.20 Non-statutory environmental assessments shall include cumulative effects.*

*3.21 Environmental assessments shall assess cumulative effects which include those from:*

1) a single project (e.g. numerous different effects impacting a single receptor); and

2) different projects (together with the project being assessed).

3.21.1 Cumulative effects should be assessed when the conclusions of individual environmental factor assessments have been reached and reported.

3.21.2 The assessment of cumulative effects should report on:

1) roads projects which have been confirmed for delivery over a similar timeframe;

2) other development projects with valid planning permissions or consent orders, and for which EIA is a requirement; and

3) proposals in adopted development plans with a clear identified programme for delivery.

3.22 The assessment of cumulative effects shall:

1) establish the zone of influence of the project together with other projects;

2) establish a list of projects which have the potential to result in cumulative impacts; and

3) obtain further information and detail on the list of identified projects to support further assessment.”

**52 It is quite clear from both the definition, and the summary definition at 3.21 that the meaning of the “different projects”, or cumulative quantification and assessment, is that the carbon emissions of all the relevant developments in the study area under 3.21.2 and 3.22 should be summed together.**

53 The applicant is **correct** that the architecture of its DS traffic model potentially provides for this calculation. The applicant is **incorrect** that its selected architecture for its DS-DM quantification, based on the outputs of this model, provides a cumulative quantification or assessment. This is an example of where the notion at REP7-007/36-39 does not hold true. This has all been explained in REP7-007, section 5.

54 In summary, the applicant has not followed DMRB LA 104, nor complied with it with respect to making an EIA Regulations compliant cumulative assessment of carbon emissions. The applicant has not only not followed its own industry guidance, it has also not met the legal requirements of the EIA Regulations.

55 The applicant, therefore, cannot rely upon M54-M6-DL/40.

## 5.8 *The false “inherently cumulative” notion*

56 M54-M6-DL/42 says: “*The Secretary of State notes that the Applicant’s response of 26 January 2022 set out that the traffic model used to support the scheme assessment is inherently cumulative with regard to operational carbon emissions. This is because traffic models include data on the emissions resulting from the Proposed Development and the adjoining Strategic Road Network and the local road network as well as other schemes promoted by the Applicant in the vicinity of the scheme that have a high certainty of being progressed.*”

57 M54-M6-DL/43 says: “*With regard to operational carbon, the Applicant’s approach to assessing the impact on carbon emissions is to consider the changes in carbon emissions resulting from the Proposed Development by comparing changes in the road traffic on the Strategic Road Network and local road network between the ‘without scheme scenario’ and the ‘with scheme scenario’, with the former providing the baseline for assessment. The Applicant considers that this takes into account the Proposed Development and all other developments likely to have an influence on the Proposed Development and on the area the Proposed Development is likely to influence. The Applicant considers that as both the with and without scheme scenario includes all likely developments and traffic growth factors it is inherently cumulative.*”

58 On the A417 scheme, I have shown in REP7-007, section 5 that the applicant has only made a solus quantification and assessment of carbon emissions from the scheme. The solus quantification is the wrong solus quantification and is an underestimate of emissions from the scheme in isolation. No cumulative assessment has been done. This is because the notion at REP7-007/36-39 does not hold true in the traffic model architecture used by the applicant.

59 At REP7-007/47, I explain that the “influence” of all other developments **is not the same as quantifying** their environmental impact, in this case on the EIA receptor of global GHG emissions, which is what the EIA Regulations require.

60 The applicant has not established for the A417 scheme what is claimed for the M54-M6, and therefore, cannot rely upon M54-M6-DL/42 and M54-M6-DL/43.

## 5.9 *Cumulative assessment of the impact of carbon emissions*

61 M54-M6-DL/45 starts: “*The Secretary of State considers that as there is no single prescribed approach to assessing the cumulative impacts of carbon emissions, there are a number of ways such an assessment can acceptably be undertaken and that this does not necessarily need to be done at RIS level.*” (underline emphasis added)

62 The applicant may seek comfort from the underlined sentence. However, the point is that no cumulative carbon assessment has been done at all for the A417 scheme, so whether a prescribed approach has been followed is academic.

63 M54-M6-DL/47 includes “As well as being a requirement of the NPSNN, the Secretary of State considers that assessing a scheme against the carbon budgets is an acceptable cumulative benchmark for the assessment for EIA purposes with regard to both construction and operation.”

64 M54-M6-DL/48 includes “Overall, the Secretary of State considers that the information provided by the Applicant with regard to the impact of the scheme on carbon emissions (including the cumulative effects of carbon emissions from the scheme with other existing and/or approved projects in relation to construction and operation) is sufficient to assess the effect of the development on climate matters and represents the information that the Applicant can reasonably be required to compile having regard to current knowledge.”

65 The applicant may seek comfort from the above quotes. However, the point is that no cumulative carbon assessment has been done at all for the A417 scheme, so these quotes are not relevant.

### **5.10 Local and regional carbon assessment**

66 M54-M6-DL/46 says “The Applicant considered that it was unable to produce a baseline at a local or regional scale and that there was therefore no reasonable basis upon which it can assess the effects of carbon emissions for anything other than at the national level. The Secretary of State accepts that the only statutory carbon targets are those at a national level and notes that neither the Applicant nor any other party has suggested that there are non-statutory carbon targets at any other level that may need to be considered.”

67 I have made it clear above that the IEMA guidance, and EIA guidance, strongly advocates local and regional assessment of carbon emissions.

68 The applicant may claim that an assessment against local/regional targets cannot be undertaken for the A417 scheme. Such a claim reveals that the applicant’s intention is “can’t do” rather than “can do”, and it would also suggest that the applicant has not looked very far to find the relevant targets and to develop methods to assess against them, even despite the urgency implied by the rapidly changing landscape of climate legislation and targets.

Such an intentionally negative approach goes against the IEMA and EIA guidance outlined above, and any technical innovation to meet it as outlined below.

69 A quantitative approach can be undertaken, based upon two readily available sets of data, beyond local authority set targets themselves. The first is the BEIS UK local authority and regional carbon dioxide emissions national statistics<sup>3</sup> which are published annually. These provide the actual recorded carbon footprint, currently for each year from 2005 to 2019, and

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<sup>3</sup> <https://data.gov.uk/dataset/723c243d-2f1a-4d27-8b61-cdb93e5b10ff/uk-local-authority-and-regional-carbon-dioxide-emissions-national-statistics-2005-to-2019>

are broken down into sector and sub-sector, so that for transport the road transport total may be easily calculated. The second is the SCATTER local authority budgets from the Tyndall Centre at the University of Manchester. Whilst these do not directly provide a transport sector budget, it may easily be derived for a starting year (eg: 2019) based on the BEIS transport proportion for the same area. In each case, budgets for a benchmark area may be derived by summing the relevant, constituent local authority areas. Both these data sets have been available for several years now, but the applicant has not bothered to investigate their potential. I provided indicative work pointing how these budgets could be used at REP2-022/section 4.

70 A third quantitative approach may also be undertaken based on the existing data in the Environmental Statement, and making the assumption that the traffic model study area represents a proxy for a notional local and regional area. This would not be the same as the full transport carbon budget for the relevant local authority as the traffic model is configured to include only those network links of most interest. And the study area may also extend beyond the relevant local authorities out into the Strategic Road Network. However, working with this assumption it provides an image of the transport network in the local and regional area which provides a self-scaling model<sup>4</sup> for further carbon budget and target assessment. I provided indicative work pointing how this approach could be used at REP2-022/4.7, and REP7-007/90-95.

71 Local and regional assessment may be pursued more qualitatively too. The overall objective is to ensure that the SoS is satisfied that the material provided by the Applicant is sufficient for him to reach a reasoned conclusion on the significant effects of the proposed development on the environment. Well-reasoned, qualitative assessment could provide useful information to the SoS. Failing to even attempt it goes against the IEMA and EIA guidance. A qualitative assessment could easily be generated against the climate policies, and budgets where they exist, at the local councils, including looking at individual policies within the transport planning documents, and assessing compliance, but the applicant has not attempted it.

72 The applicant cannot rely upon M54-M6-DL/46. It is against the guidance for EIA assessment, and I have suggested carbon targets at the local and regional levels that the applicant could use.

### **5.11 Cumulative impact on climate adaptation**

73 M54-M6-DL/49-51 covers this issue. I have no comments.

### **5.12 M54-M6-DL Conclusions**

74 M54-M6-DL/52 states “*The Secretary of State is content that the Applicant has adequately assessed the likely significant effects of the Proposed Development on climate and its cumulative impacts on climate taking account of both construction and operation as required*”

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<sup>4</sup> For example, it can be considered as local/regional area to test against the NZS transport sector trajectory



*by the 2017 Regulations and this information has been taken into consideration when assessing whether development consent should be granted.”*

75 I have shown in detail in REP7-007/section 5 that no cumulative carbon assessment has been made, and that the solus carbon assessment is based upon the wrong quantification which is an underestimate of the emissions. M54-M6-DL/52 is therefore not helpful to the applicant on the A417 scheme.

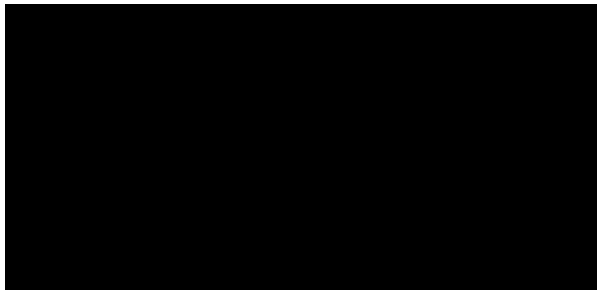
76 M54-M6-DL/53 includes “*the Secretary of State considers that the Proposed Development is consistent with existing and emerging policy requirements to achieve the UK’s trajectory towards net zero*”.

77 As with M54-M6-DL/31, it is clear from this statement, the SoS is predicating his decision on the basis of both overarching assertion and subsidiary assertion of success for both the TDP and NZS. However, it remains to be tested in Court whether the overarching assertion for NZS success is legitimate. It is, therefore, premature, and not legitimate, to predicate the decision on these assertions. It would also be premature to make any reliance on overarching or subsidiary assertions of success for the NZS, TDP and NDC on the A417 scheme.

78 M54-M6-DL/54 on the negative weight of the carbon emissions from the scheme has already been dealt with in an earlier section.

## **6 CONCLUSIONS**

- 79 I have responded on the M54-M6-DL and concluded that it provides no help for the A417 application. I have previously identified further work needed at REP7-007/96, and this is still required. An accurate solus quantification, and cumulative quantification, of the GHG emissions from the scheme must be produced in order to make assessment of the impacts of carbon emissions which is compliant with the EIA regulations.
- 80 The scale of the work identified is probably both too much for the applicant to deliver in the remaining weeks of the examination, and too much for interested parties to respond to with comments before the end of the examination. I respectfully suggest to the ExA that EIA Regulation 20 might serve as a preferable mechanism to the standard Rule 17 procedure for ensuring the Environmental Statement is adequate, and which would also be fairer to all parties.



Dr Andrew Boswell,  
Climate Emergency Policy and Planning, May 6<sup>th</sup>, 2022

<b>A417 Missing Link Planning Examination 2021-2022</b>	<b>Deadline 8 (D8), May 6<sup>th</sup>, 2022</b>
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**7 APPENDIX A: NET ZERO STRATEGY LEGAL CHALLENGE, PERMISSION ORDER, MARCH 1<sup>st</sup> 2022**

Supplied as separate document

**8 APPENDIX B: NET ZERO STRATEGY LEGAL CHALLENGE, FRIENDS OF THE EARTH BRIEFING, MARCH 2<sup>ND</sup> 2022**

Supplied as separate document

**9 APPENDIX C: NET ZERO STRATEGY LEGAL CHALLENGE, KEY EXTRACTS, GOOD LAW PROJECT PAP LETTER, DECEMBER 22<sup>nd</sup> 2021**

Supplied as separate document

**10 APPENDIX D: Climate Change Committee, Advice on reducing the UK's emissions**

Downloaded from [REDACTED]  
[REDACTED] May 5<sup>th</sup>, 2022

Supplied as separate document