

**FAO: [REDACTED] (for the Treasury Solicitor)**

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Date: 28 July 2020

By email only:

## **2<sup>nd</sup> PRE-ACTION PROTOCOL LETTER FOR JUDICIAL REVIEW**

Dear [REDACTED],

### **Re: National Networks National Policy Statement (the “NNNPS”)**

1. Thank you for your response dated 16 July 2020, to our letter before claim of 2 July 2020 in relation to the NNNPS.
2. You have confirmed that a submission will ‘in any event’ be made to the Secretary of State for Transport by the end of September 2020 for a decision on whether to review the NNNPS. We understand from this formulation that the end of September is the latest date you anticipate placing such a submission before the Minister. You give no indication, however, of how soon after the Secretary of State is expected to make his decision.
3. Despite your letter of 16 July 2020, our client remains deeply concerned at the time it is taking the Secretary of State to reach a decision on this issue. Section 1 of the Climate Change Act 2008 was amended in June 2019 to inscribe the Net Zero Target in law. That was an obviously material change

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of circumstances, that should have triggered the consideration of when to review the NNNPS, in accordance with s.6(3) of the Planning Act 2008. It is unclear why it should take a further 15 months before a submission can even be made to the Minister about the need for a review. The 'broad and complex' issues to which you refer in para. 6 of your letter of 16 July 2020 are surely matters for the review itself, not for the decision whether to review. The latter must be rooted in the question of whether there has been a significant enough change in relevant circumstances – which is a far more focussed question than the broader policy issues in play as part of the review itself.

4. Moreover, our client first wrote to the Secretary of State on 5 March 2020, setting out the need for a review. It is disappointing that, over four months later, it is still in effect receiving a holding response from the Secretary of State, to the effect that a decision will be reached in due course.
5. During the intervening period, the need for a review of the NNNPS has only become more obvious and more pressing. The Committee on Climate Change has underlined the need for a green recovery as the UK emerges from the covid-19 crisis. In its letter to the Prime Minister of 6 May 2020, the CCC urged the Government to

*Lead a shift towards positive long-term behaviours. There is an opportunity to embed new social norms, especially for travel, that benefit well-being, improve productivity, and reduce emissions. Government can lead the way [...] through infrastructure provision (e.g. prioritising broadband investments over the road network [...])*

6. Moreover, on 25 June 2020, the CCC published its first annual progress report since the Net Zero target was adopted. It underlined the need for a policy shift that would deliver faster progress in reducing surface transport

emissions by promoting modal shift and avoiding travel in ways that have become normal during the covid-19 pandemic:

*Surface transport (which accounted for 24% of 2019 emissions): ambitions must be delivered and extended. (p21)*

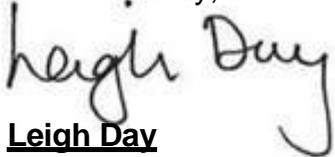
*Invest in walking and cycling infrastructure and strengthen other schemes to support active travel modes. Invest in public transport and other measures to reduce car travel demand (e.g. car sharing and mobility as a service). Improve infrastructure connectivity to lock-in positive behaviours that reduce travel demand (e.g. home-working). (p37)*

*The Government response to the COVID-19 pandemic is an opportunity to reduce the influence of rising demand (e.g. by facilitating and encouraging a move towards home working (p76)*

7. Of course, our client's chief concern arising from the delay in reviewing the NNNPS is that road schemes supported by the NNNPS will receive development consent during the period when a review is under consideration. This concern would be exacerbated if the Secretary of State were to announce a review of the NNNPS but decline to suspend it pursuant to s.11 Planning Act 2008; or if he were to announce a review but defer a decision on suspension, creating a further period of delay and uncertainty during which the NNNPS would continue in force.
8. Bearing all of the above in mind, we ask you to confirm the following:
  - a. That the end of September is the latest date you anticipate placing a submission before the Secretary of State;
  - b. The timeframe in which it is expected that the Secretary of State will make a decision;

- c. That the Secretary of State will make and announce a decision on whether to suspend the NNNPS at the same time as his decision on whether to review it; and
  - d. That no decisions will be made to progress any schemes by reference to the existing NNNPS (including that no road schemes supported by the NNNPS will be granted development consent) before the decision on review and suspension is announced.
  - e. If you are unable to give the assurance in (d) above, please confirm which schemes supported by the NNNPS will or might be progressed or receive development consent before a decision is reached on review and suspension of the NNNPS.
9. The information and assurances our client is seeking by this letter are plainly relevant to its consideration of whether to bring proceedings challenging the Secretary of State's on-going delay in deciding whether to conduct a review.
10. We kindly request a substantive response within 7 days i.e. by 10am on 4 August 2020. Please ensure that any response is sent to both Rowan Smith and Lewis Hadler (see above contact details) who are dealing with this matter.

Yours faithfully,



**Leigh Day**