



254 Upper Shoreham Road
Shoreham-By-Sea
West Sussex
BN43 6BF

Baroness Vere of Norbiton
Parliamentary Under Secretary of State
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

7 February 2022

Dear Baroness Vere

We welcome the Government's announcement on 12 January 2022 to postpone some of the Smart Motorway schemes. As well as using this time to gather safety data, we strongly recommend that the Department for Transport also uses this time to reassess the legal and planning approach to Smart Motorways as we have some serious concerns about how National Highways has been proceeding with little or no scrutiny. In terms of specific schemes, we are calling for the M6 Junction 21a-26 Smart Motorway scheme to be postponed as it was incorrectly identified as being "more than 50% complete". We also believe that development of the Lower Thames Crossing should be paused as it is being designed to Smart Motorway standards, and therefore the same safety concerns apply.

Legal and planning approach to Smart Motorways

On 21 September, we wrote to the DfT to request a screening determination on Smart Motorways pursuant to Regulation 5(6)(b) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. We believe National Highways has incorrectly determined that Smart Motorway schemes are not subject to environmental impact assessment under section 105AB(1)(b) of the Highways Act 1980. Instead National Highways has determined that these schemes should progress as permitted development without full planning consent or scrutiny. We have not received a reply to this letter or our follow-up emails of 8 November 2021 and 17 January 2022 further requesting this screening determination.

National Highways' incorrect determination has meant that these huge schemes have progressed without full planning consent, full statutory environmental impact assessment, assessment of cumulative impacts, or sufficient scrutiny, despite their enormous climate and other impacts. Annex III to the EIA Directive sets out a list of 'criteria to determine whether the projects listed in Annex II should be subject to an environmental impact assessment' which includes cumulative impact with other projects and the impact on climate change.

Due to the large increase in capacity and the resultant induced traffic, Smart Motorways lead to huge increases in carbon emissions. Although carbon was often scoped out of the early analysis to justify not doing a full environmental impact assessment, appraisal for these SM schemes show they are some of the largest emitting schemes in the RIS2 roads programme. For instance, the M6 Junction 21a-26 Smart Motorway Scheme appraisal summary table (AST)¹ shows the scheme will increase carbon emissions by over 4 million tonnes from the extra traffic alone. The seven Smart Motorway schemes in RIS2 combined would increase carbon by over 8 million extra tonnes, from extra traffic, not including the construction emissions which have not been calculated. We outlined all this in our evidence to the Transport Select Committee inquiry into Smart Motorways².

These huge carbon and other impacts have been incorrectly identified as “insignificant” by National Highways, and therefore these schemes have been incorrectly determined not to qualify as Annex III EIA development for the purposes of the EIA Directive.

We therefore request once again a screening determination of the remaining Smart Motorway schemes, and that you use the postponement of new Smart Motorways schemes to reassess the legal and planning status of these schemes.

We also believe that Smart Motorway schemes reach the threshold set by Part 3 of the Planning Act 2008 to qualify as Nationally Significant Infrastructure Projects (NSIPs). They are highway ‘improvements’ within the meaning of the Highways Act 1980 and as above, they have significant carbon or other impacts. By s.22(5) Planning Act 2008, they should therefore proceed as NSIPs through the Development Consent Order (DCO) regime.

M6 Junction 21a-26 Smart Motorway

In its announcement the DfT said that only schemes that were “more than 50% complete” would be allowed to progress, however the DfT mistakenly included the M6 Junction 21a-26 Smart Motorway under this criteria. We understand this scheme is not more than 50% complete, and we believe DfT may have been misled by National Highways about the state of progress of this scheme.

At the time of the postponement announcement in early January, the M6 J21a-26 SM scheme had only started work just ten months prior, at the end of March 2021. As far as we are aware, the only work has been to put out cones and to do some maintenance work on the central reservation which could happen independently of the SM elements of the scheme (drainage and installing new concrete barriers). The main works for the SM elements would occur on the hard shoulder and verges and have yet to commence, including the piledriving for installing the gantries, and the earthworks and piledriving required for the emergency refuges.

Please can you tell us the basis for the decision to progress the M6 J21a-26 SM scheme. Please respond to this question within two weeks, as we may consider challenging the decision to allow the progression of the M6 J21a-26 SM scheme.

We would like to make you aware that this scheme is not being designed to the new standards required in the Secretary of State’s Action Plan of March 2020. During the consultation for this scheme in February 2021, we notified National Highways that the emergency refuge areas, for instance, were up to 2.4km apart.

¹ [Appraisal Summary Table for M6 J21a-26 Smart Motorway](#), 27 November 2020

² [Written evidence](#) submitted by Transport Action Network (RSM0105) to the Transport Select Committee, April 2021

The M6 J21a-26 SM scheme is the highest emitting scheme in the RIS2 roads programme, emitting over 4 million extra tonnes of carbon according to National Highways. Taken together these provide very good reasons to postpone this scheme whilst the safety review takes place, and to reassess its legal status.

Lower Thames Crossing

This £8.2bn scheme is being designed to Smart Motorways standards, and is a motorway in all but name. It will have three lanes with no hard shoulder, and will have all the same restrictions that a motorway has. As it is being designed to Smart Motorway standards, we believe that it is reasonable that the development of this scheme should also be paused whilst the safety review of Smart Motorways takes place, as the same safety concerns are relevant. **Please confirm that the development of the Lower Thames Crossing will be postponed during the Smart Motorway safety review.**

We look forward to hearing from you.

Yours

Rebecca Lush
Director
Transport Action Network