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Boris Johnson
Mayor of London
Greater London Authority
City Hall
The Queen's Walk
More London
London SE1 2AA

25 September 2009

Dear Mayor Johnson

Decision to suspend the Western Extension to the Congestion Charging Zone

I write on behalf of ClientEarth with regard to comments you made recently on the future of the Western Extension to the Congestion Charging Zone (WEZ).

In response to an article in the Evening Standard which reported that the WEZ was unlikely to be removed by the planned deadline of next spring, you posted the following statements on your blog on 23 September 2009:

'...to make it absolutely crystal clear; we will be removing the Western Extension next year'.

'We have to jump through a number of tedious bureaucratic hoops before the axe can fall, but fall it will. The extended zone will be no more.'

We are deeply concerned by these statements and the prejudicial effect they will have on the forthcoming statutory consultations on the WEZ. As you are aware, no changes to the WEZ can be made until Transport for London have held two separate statutory consultations: First, on the revision to the Mayor's Transport Strategy, and second on the variation to the Congestion Charging Scheme Order. I understand that the public consultation on the Transport Strategy is scheduled to take place before the end of this year.

It is a fundamental principle of English law that whether or not consultation is a legal requirement, it must be carried out properly, which means that consultation must be undertaken at a time when proposals are still at a formative stage and that responses must be taken into account when the decision is taken.¹

¹ See *R v North and East Devon Health Authority, ex parte Coughlan* [2001] QB 213, [2000] 3 All ER.

It therefore follows that a consultation cannot be lawful if, as your comments clearly demonstrate to be the case with the consultations on the WEZ, the decision has in reality already been taken prior to the consultation. Any final decision on the WEZ would therefore be vulnerable to judicial review on grounds of procedural unfairness.

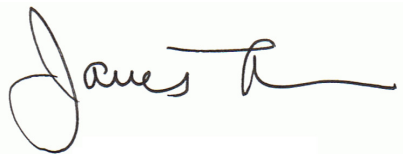
ClientEarth is a group of non-profit activist lawyers working for the benefit of the environment in the European Union. Our 'CleanAir' campaign aims to ensure that London is fully compliant with all relevant air quality laws in time for the 2012 Olympic Games. In addition to raising public awareness and galvanising cross-party political support, ClientEarth will be taking all practical legal action at the national and European level to ensure that this goal is achieved. In July we wrote to the European Commission highlighting London's ongoing breaches of European air quality directives and setting out the legal case for rejecting an application by the UK Government for a time extension for complying with legal limits for levels of dangerous air particles (PM₁₀). You were copied on that letter.

Emissions from road vehicles are a major source of air pollutants such as oxides of nitrogen (NO_x) and PM₁₀. The WEZ is a key measure in tackling air pollution from road traffic; in January this year you made a statement to the London Assembly that emissions of NO_x and PM₁₀ from road traffic inside the WEZ were reduced by 2.5 percent and 4.2 percent respectively.² It is therefore essential that any decision on the WEZ takes into account the views of a wide range of people whose health is directly affected by poor air quality.

We therefore request that you issue an immediate public retraction of these comments and issue a public confirmation of your commitment to base any decision on the future of the WEZ on the outcome of a credible and transparent consultation process.

Please confirm receipt of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'James Thornton', written on a light-colored rectangular background.

James Thornton
CEO, ClientEarth

² See answer given by Boris Johnson to question submitted by Murad Qureshi, London Assembly, 14 January 2009 [Question number 0099/2009].