



Our Ref: DP00070/2017

05 September 2018

(Please quote in all related correspondence)

National Broadband Plan – SEA/AA Public Consultation
National Broadband Plan Division
Department of Communications, Climate Action and Environment
29-31 Adelaide Road
Dublin
D02 X285

Via email to NBPenvironmental@dccae.ie

**Re: Strategic Environmental Assessment and Appropriate Assessment –
National Broadband Plan Intervention Strategy**

A Chara,

On behalf of the Department of Culture, Heritage and the Gaeltacht I refer to correspondence received in relation to the above. Outlined below are heritage-related observations/recommendations of the Department under the stated headings.

Nature Conservation

The Department refers to your recent correspondence which invites observations in respect of the 'National Broadband Plan – Intervention Strategy', and associated environmental assessment documentation, including the SEA Statement, revised Natura Impact Statement (NIS), Addendum to the Intervention Strategy and draft Appropriate Assessment Determination.

Context of observations

This submission is made in the context of our Department's role in relation to nature conservation, including as an environmental authority under SEA legislation. The observations are not exhaustive and are offered to assist your Department in meeting the obligations that arise regarding European sites, other nature conservation sites, natural habitats, protected species, and biodiversity in general in the context of this strategy, and the SEA and appropriate assessment of the plan. The Department also refers to our previous observations dated 15 November 2017 and 02 February 2018 (Our Ref: DP00070/2017).

General duties of a public authority

In addition to your obligations as the 'public authority' with respect to the appropriate assessment process, your Department's attention is drawn to Regulation 27 of the

Aonad na nIarratas ar Fhorbairt, Bóthar an Bhaile Nua, Loch Garman, Y35 AP90

Development Applications Unit, Newtown Road, Wexford, Y35 AP90

manager.dau@chg.gov.ie

www.chg.gov.ie



European Communities (Birds and Natural Habitats) Regulations, 2011, as this places particular duties on all public authorities in relation to European sites. Among other things, this includes a duty to exercise all functions, including, but not only consent functions, in compliance with, and so as to secure compliance with the requirements of the Habitats and Birds Directives and the 2011 Regulations. Public authorities are obliged, when exercising their functions, to take appropriate steps to avoid the deterioration of natural habitats and the habitats of species in European sites, as well as disturbance of species for which a site has been designated insofar as this disturbance could be significant in relation to the objectives of the Habitats Directive. These obligations should be incorporated into and reflected in the final strategy or plan, where relevant.

In addition to measures already specified, this could usefully include the development of systems to monitor and ensure the compliance of the 'downstream' projects with these obligations, as well as any internal mechanisms that may be needed to ensure compliance.

Matters relating to the strategy

This Department's observations dated 2 February 2018 appear not to have been taken into account in the documentation provided.

It is noted that changes have been made to the published National Broadband Plan – Intervention Strategy by the inclusion of an Addendum to the Intervention Strategy (dated August 2018) to incorporate and reflect the mitigation measures arising from the SEA process, and as specified in the NIS. These are the measures that are required to mitigate the likely significant effects of the strategy on the environment in general, and on European sites and their conservation objectives in particular. While these measures, and the strategy, will assist in guiding the roll out of high speed broadband, it is noted that the Department of Communications, Climate Action and Environment has acknowledged that additional mitigation measures will be required and will be implemented as part of the contracting process. It is noted that 'project' level environmental assessments, mitigation measures, and applications for consent (e.g. planning permission, road opening licences, foreshore consents, etc.) are likely to be required for aspects of the roll out.

While the Department welcomes the inclusion of the Addendum to the Intervention Strategy, it is recommended that the contents of the Addendum be integrated into the main text of the National Broadband Strategy in an Environment chapter.

In relation to Governance (page 5 of the Addendum) the Department notes that the proposals do not appear to provide a clear and transparent mechanism to monitor the environmental consequences of plan-implementation and to monitor implementation of the environmental mitigation measures included in the National Broadband Strategy to enable effective and timely action to be taken where problems arise. Perhaps this is inadvertent and the inclusion is implicit. The Department recommends that a mechanism is put in place



to address this matter to include a high level implementation group (proposed as part of the consultation process) together with a staff member(s) in Department of Communications, Climate Action and Environment tasked with monitoring the implementation of the environmental mitigation measures in the Strategy in consultation with relevant stakeholders. The Department notes the requirement for SEA monitoring to take place over the lifetime of the Plan in accordance with the requirements of the Directive which should be integrated with these measures. The Department further recommends that the results of all such monitoring are made publically available.

Matters relating to environmental assessment documentation

The Department notes the completion of the SEA Statement, the revised NIS and the draft Appropriate Assessment Determination. The Department recommends that all the environmental documentation associated with the National Broadband Strategy is made publically available in accordance with legislative provisions.

The Department is concerned that the draft Appropriate Assessment Determination does not seem to reflect the requirements of Regulation 42(11) and Regulation 42(16) of the European Communities (Birds and Natural Habitats) Regulations, 2011 (as amended). Regulation 42(11) requires that an appropriate assessment shall include a determination as to whether or not a plan or project would adversely affect the integrity of a European site. Regulation 42(16) underlines this point in stating that a public authority shall give consent for a plan or project, or undertake or adopt a plan or project, only after having determined that “the plan or project shall not adversely affect the integrity of a European site”. The Department recommends that the Appropriate Assessment Determination is made taking these matters fully into account.

You may send further communications to this Department’s Development Applications Unit (DAU) via **eReferral**. Correspondence may alternatively be sent to The Manager, Development Applications Unit (DAU), Department of Culture, Heritage and the Gaeltacht, Newtown Road, Wexford, Y35 AP90

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