



An Roinn
Cultúir, Oidhreachta agus Gaeltachta

Department of
Culture, Heritage and the Gaeltacht

Our Ref: DP00070/2017
(Please quote in all related correspondence)

02 February 2018

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 heading(s).

Nature Conservation

The Department refers to your correspondence of 02/01/18 which invites observations in respect of the 'National Broadband Plan – Intervention Strategy', 2017 High Speed Broadband Map, and associated environmental assessment documentation, including the SEA Environmental Report and Natura Impact Statement (NIS).

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 which have yet to be carried out.

Although not identified by you, this Department is taking your correspondence as formal notification of the Minister under Regulation 42(9) of the European Communities (Birds and Natural Habitats) Regulations, 2011, including in respect of the Natura Impact Statement (NIS) which has been prepared, and the appropriate assessment which has yet to be carried out.

General duties of a public authority

In addition to your obligations as the 'public authority'¹ with respect to the appropriate assessment process, your Department's attention is drawn to Regulation 27 of the 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 in European sites the deterioration of natural habitats and the habitats of species, 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

It is noted that that changes are to be made to the published National Broadband Plan – Intervention Strategy (December 2015) to incorporate and reflect the mitigation measures arising from the SEA process (Section 10), and which are specified in the NIS (Section 6). 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 DCCAIE has acknowledged that additional mitigation measures will be required and will be implemented as part of the contracting process. It should also be 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. See also below in relation to the NIS mitigation measures.

In general, in terms of the types of consents required, consideration should be given to the need for contractors appointed by DCCAIE to apply for ministerial consent from this Department to carry out activities in European sites, NHAs and other nature conservation sites where it is confirmed that planning permission or other consents are not required. Ministerial consent is not normally required for works/activities carried out on behalf of a state authority.

The Intervention Strategy does not specify the technology that will be used or the locations, or 'deployment areas' where infrastructure will be located, meaning that various scenarios and uncertainties arise that need to be captured by mitigation measures and systems that will ensure the effective planning, design, assessment, management, monitoring and compliance of 'downstream' projects, or deployment area plans. It may be advised to specify that 'constraints', 'feasibility' or 'options' type studies need to be carried out to design projects or produce deployment area plans.

In addition to the inclusion of a new 'Environmental' chapter, which is to contain the mitigation measures, it may be necessary to revise or amend other aspects of the content of the Intervention Strategy to reflect these measures, and associated implications for project planning and roll out.

Matters relating to the NIS

The NIS identifies the potential for European sites to be impacted by the Intervention Strategy. In Sections 5.3.2 and 5.3.3 (including Table 5.1), the general types of impacts that could arise from its implementation are summarised, including as a result of projects on their own or in combination with other plans and projects. An assessment of the effects of the intervention strategy objectives follows in Section 5.4.1, including Table 5.2, and there is discussion of key issues in Section 5.4.2, i.e. whether there will be use of existing infrastructure or the need for new infrastructure, and the

¹ 'Public authority' is defined in Part 1, Regulation 2 of the European Communities (Birds and Natural Habitats) Regulations, 2011, and includes a Minister of Government

landuse changes which may result from high speed broadband availability. Mitigation measures are specified in Section 6.

Some recommended changes to text of the mitigation measures are included below, with underlining generally indicating text to be added.

Mitigation measure 1 – Policy objective

... Among other things, obligations to carry out screening for appropriate assessment and appropriate assessment, where required, will be met by the relevant public authority, or by the competent authority where planning permission is required. [Note, as set out below, contractors do not have direct obligations in relation to appropriate assessment, but may be carrying out activities on behalf of a public authority.]

Mitigation measure 2 – Appropriate skills

In line with current best practice, it is recommended that the Contractor(s) appoint / include suitably qualified staff including ecologists as part of the roll out team, to advise and guide the Contractor(s) on issues relating to environmental protection, compliance with mitigation, assessments, surveys and licences required with particular reference to European sites, nature conservation and biodiversity

Mitigation Measure 3 – Best Practice

As a contractor will not have direct obligations in relation to appropriate assessment, it may be more appropriate to rephrase this measure along the lines of ... The Contractor(s) will be required to comply with the relevant statutory obligations in relation to safeguarding and avoiding any damage or disturbance to European sites, other nature conservation sites, and protected species and should have regard to current and best practice guidelines.

Mitigation measures 4 – advice and support of local authorities

It should be stated that many of the activities may be development or exempted development, or there may be restrictions on exemptions in various scenarios.

It is noted that recommendations are made for plans to be prepared at ‘deployment area’ level, e.g. for construction and environmental management, traffic management, waste management, etc. Further consideration should be given to whether plans at ‘deployment area’ level, which would include broadband deployment, are in effect plans for the purposes of the Habitats Directive and the European Communities (Birds and Natural Habitats) Regulations, 2011.

Mitigation Measure 5 – Governance

The approach to governance and implementation, which is yet to be developed, should include monitoring and the taking of effective and timely action where problems arise.

Matters relating to the SEA Environmental Report

It is noted that the SEA mitigation measures are similar to those in the NIS. Accordingly, the recommendations above also apply to the Environmental Report.

In relation to SEA monitoring, it is recommended that this is more closely aligned with the mitigation measures of the SEA and NIS, and expanding the specified SEO indicator: “*Environmental obligations imposed through NBP Contract including reporting and local authority consent processes*”. Further consideration should also be given, prior to plan adoption, to the parameters to be used and the mechanisms required for monitoring to be effective and targeted.

You are requested to send further communications to this Department's Development Applications Unit at manager.dau@chg.gov.ie; if emailing is not possible, correspondence may alternatively be sent to:

The Manager
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