

8TH OF JUNE 2020

**APPROPRIATE ASSESSMENT OF SPECIFIC WORKS ASSOCIATED WITH
'LOT 2 – MUNSTER BRIDGES TERM MAINTENANCE CONTRACT NO. 3'
REASONED DETERMINATION**

Regulation 42(1) of the European Communities (Birds and Natural Habitats) Regulations, 2011 (the 'Habitats Regulations') states, *inter alia*, 'A screening for Appropriate Assessment of a [...] project [...] which a public authority wishes to undertake [...] shall be carried out by the public authority to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that [...] project, individually or in combination with other plans or projects is likely to have significant effects on the European site.'¹ Regulation 42(2) of the Habitats Regulations states 'A public authority shall carry out a screening for Appropriate Assessment under paragraph (1) before [...] a decision to undertake [...] a project is taken.'²

Having taken the view that the works required under 'Lot 2 – Munster Bridges Term Maintenance Contract No. 3' might constitute 'projects'³ within the meaning of the Habitats Regulations, Transport Infrastructure Ireland⁴ (TII) decided that the works required under the contract should be subject to

¹ Regulation 42(1) of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. No. 477 of 2011).

² Regulation 42(2) of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. No. 477 of 2011).

³ Regulation 2(1) of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. No. 477 of 2011) defines 'project' to include 'land use or infrastructural developments, including any development of land or on land.' Given the breadth of the term 'project' under the Habitats Regulations, Transport Infrastructure Ireland is uncertain as to whether or not works required under 'Lot 2 – Munster Bridges Term Maintenance Contract No. 3' constitute 'projects'. It notes, however, that Section 3(1) of the Planning and Development Act, 2000, defines 'development' to include '[...] the carrying out of any works on, in, over, or under land [...]' and that Section 2(1) of the Planning and Development Act, 2000 defines 'works' to include '[...] any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal [...]'. As such, Transport Infrastructure Ireland acknowledges that works required under 'Lot 2 – Munster Bridges Term Maintenance Contract No. 3' might constitute 'projects' within the meaning of the Habitats Regulations.

⁴ Article 2 of the Roads Act 2015 (Operational Name of National Roads Authority) Order, 2015 (S.I. No. 297 of 2015) provides that the National Roads Authority may describe itself as Transport Infrastructure Ireland for operational purposes.

screening for Appropriate Assessment pursuant to, *inter alia*, Regulation 42 of the Habitats Regulations and Article 6(3) of the Habitats Directive.⁵

Mr. Michael Nolan (Chief Executive of Transport Infrastructure Ireland) delegated the function of screening for Appropriate Assessment to me, Dr. Vincent O'Malley, Head of Environmental Policy and Compliance Section, Transport Infrastructure Ireland, on the 21st of June 2018.

I determined that it was *not possible* to exclude, on the basis of objective scientific information, following screening for Appropriate Assessment, that proposed routine maintenance works to 107 bridges within the Munster region, individually or in combination with other plans or projects, will have a significant effect on any European site.

Accordingly, under and in accordance with Regulation 42(6) of the Habitats Regulations I determined that an Appropriate Assessment is required for the said works.

Mr. Michael Nolan (Chief Executive of Transport Infrastructure Ireland) delegated the function of Appropriate Assessment to me, Dr. Vincent O'Malley, Head of Environmental Policy and Compliance Section, Transport Infrastructure Ireland, on the 14th of August 2019.

Regulation 42(9) of the Habitats Regulations states '*Where a public authority is required to conduct an Appropriate Assessment [...] it shall- (a) prepare a Natura Impact Statement, (b) compile any other evidence including, but not limited to, scientific evidence that is required for the purposes of the Appropriate Assessment, and (c) submit a Natura Impact Statement together with evidence compiled under subparagraph (b) to the [Minister for Culture, Heritage and the Gaeltacht] not later than six weeks before it proposes to adopt or undertake the plan or project to which the Natura Impact Statement and evidence relates.*'

Atkins Limited were instructed to prepare a Natura Impact Statement (to include all evidence including, but not limited to, scientific evidence that is required for the purposes of the Appropriate Assessment) in respect of the proposed remedial works. That Natura Impact Statement has the title *Munster Term Maintenance Contract No. 3 – Year 2 Structures – Natura Impact Statement* (Rev. 1.1, Atkins Limited, 14th April 2020). On 16th April 2020, I submitted that Natura Impact Statement to the Minister for Culture, Heritage and the Gaeltacht.

Regulation 42(10) of the Habitats Regulations states, *inter alia*, '*A public authority [...] shall not, without the agreement of the Minister, conclude an Appropriate Assessment [...] earlier than six weeks after the date on which it submitted the Natura Impact Statement to the Minister*'.

I confirm that the period of six weeks mentioned in Regulation 42(10) *has passed*.

⁵ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L 206.

Regulation 42(10) of the Habitats Regulation states, *inter alia*, 'A public authority [...] shall take account of any submissions made to it by the Minister.'

I confirm that no submission was made by the Minister.

Regulation 42(13) of the Habitats Regulations states 'A public authority may, for the purposes of conducting an Appropriate Assessment, if it considers it appropriate, invite the opinion of the general public and, if it does so, it shall take such steps for that purpose as it considers necessary.'

I have considered whether to invite the opinion of the general public and decided that is not necessary or appropriate.

Regulation 42(11) of the Habitats Regulations states 'An Appropriate Assessment [...] shall include a determination by the public authority [...] pursuant to Article 6(3) of the Habitats Directive as to whether or not a plan or project would adversely affect the integrity of a European site and the assessment shall be carried out by the public authority before a decision is taken to approve, undertake or adopt a plan or project, as the case may be.'

Under and in accordance with Regulation 42(12) of the Habitats Regulations, in carrying out this Appropriate Assessment, I have taken into account:

- (a) the Natura Impact Statement, including the recommendation contained therein that the proposed works will not adversely affect the integrity of any European site,
- (b) the other plans or projects that may, in combination with the proposed works, adversely affect the integrity of a European Site, which are included within the Natura Impact Statement,
- (c) the supplemental information furnished in relation to the Nature Impact Statement,
- (d) the information or advice obtained, namely, from various members of staff both from TII (e.g., from the legal, structures and environmental sections) and the consultant engaged by TII to prepare and administer the contract (including the consultant's ecological expert).

Regulation 42(17)(b) of the Habitats Regulations states, *inter alia*, 'A public authority shall not [...] undertake [...] a [...] project containing any conditions, restrictions or requirements purporting to- (i) permit the deferral of the collection of information required for a screening for Appropriate Assessment or for an Appropriate Assessment or the completion of a screening for Appropriate Assessment or an Appropriate Assessment until after the consent has been given, (ii) accept an incomplete Natura Impact Statement, or (iii) permit or facilitate the avoidance of compliance with the conditions set out in Article 6(4) of the Habitats Directive.'

I confirm that the proposed works and this determination do not contain any such conditions, restrictions or requirements.

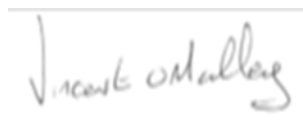
I accept the recommendations of Atkins Limited that the proposed routine maintenance works will not adversely affect the integrity of any European site. This acceptance is subject to the following conditions:

- In relation to Owveg River Bridge [KY-N21-016.40], 'Power hosing of parapets to remove algae staining' should be removed from the Works Order. For the avoidance of any doubt, this determination does not permit the power hosing of parapets to be carried out on Owveg River Bridge [KY-N21-016.40].
- In relation to the proposed works at Newfoundland Bay Tunnel [KY-N71-005.00], it has not been demonstrated beyond reasonable scientific doubt (currently) that there will not be an adverse effect on the integrity of any European site. Appropriate and sufficient surveys relating to Killarney fern must be carried out in advance of an Appropriate Assessment. For the avoidance of any doubt, this determination does not permit the proposed routine maintenance works, namely 'Minor vegetation within 1m of structure to be removed (100m²)', to be carried out at Newfoundland Bay Tunnel [KY-N71-005.00].

Pursuant to Regulation 42(11) of the Habitats Regulations and Article 6(3) of the Habitats Directive, I determine, in view of the best scientific knowledge and the site's conservation objectives, that the proposed works (subject to the conditions directly above), individually or in combination with other plans or projects, would not adversely affect the integrity of any European site.

I confirm that this determination has been made before any decision has been taken to approve, undertake or adopt the proposed works.

I am satisfied that TII is not prohibited, by Regulation 42(16) of the Habitats Regulations, from undertaking the proposed works.



Dr. Vincent O'Malley

Head of the Environmental Policy and Compliance Section

Transport Infrastructure Ireland