

15<sup>TH</sup> JULY, 2021

**APPROPRIATE ASSESSMENT OF SPECIFIC WORKS ASSOCIATED WITH  
'Leinster 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.'<sup>1</sup> 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.'<sup>2</sup>

Having taken the view that the works required under 'Leinster Bridges Term Maintenance Contract No. 3' might constitute 'projects'<sup>3</sup> within the meaning of the Habitats Regulations, Transport Infrastructure Ireland<sup>4</sup> (TII) decided that the works required under the contract should be subject to screening for Appropriate Assessment pursuant to, *inter alia*, Regulation 42 of the Habitats Regulations and Article 6(3) of the Habitats Directive.<sup>5</sup>

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

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

<sup>3</sup> 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 'Leinster 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 'Leinster Bridges Term Maintenance Contract No. 3' might constitute 'projects' within the meaning of the Habitats Regulations.

<sup>4</sup> 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.

<sup>5</sup> 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.

Mr. Michael Nolan (the former 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 21<sup>st</sup> of June 2018. Mr. Peter Walsh (the current Chief Executive) subsequently confirmed this arrangement after taking office.

I completed screenings for Appropriate Assessment in respect of the Year 3 works required under 'Leinster Bridges Term Maintenance Contract No. 3' in 2020.

For certain of those proposed works, namely those proposed on the structures specifically listed in Schedule One below, it was *not possible* to exclude, on the basis of objective scientific information following the screening done, that the said works, 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 determine that an Appropriate Assessment is required for the said works.

Mr. Michael Nolan (the former 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 14<sup>th</sup> of August 2019. Mr. Peter Walsh (the current Chief Executive) subsequently confirmed this arrangement after taking office.

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] 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.*'

- I instructed Roughan & O'Donovan Limited 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 works proposed on the structures specifically listed in Schedule One below. That Natura Impact Statement has the title '*Reactive Maintenance Works at Ballycomey Culvert – Natura Impact Statement (Roughan and O'Donovan, April 2021)*'.

On the 12<sup>th</sup> of April 2021, I submitted that Natura Impact Statement to the Minister.

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*.

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.’

By letter dated 24<sup>th</sup> May 2021, the Minister made a submission in relation to the Natura Impact Statement. I confirm that I have taken account of that submission. In particular, I have noted the submissions and observations contained within the letter and subsequent additional information received from Roughan & O’Donovan Limited (contained in letter dated 15<sup>th</sup> July 2021).

Regulation 42(13) of the Habitats Regulations states ‘Where a public authority has determined [...], that an Appropriate Assessment is required in respect of a proposed plan or project, [...], the public authority shall carry out a public consultation and publish a notice of the proposed plan or project in a manner to be determined by the public authority.’

For this purpose, the Natura Impact Statement was made available for review and submission by the general public between the dates of the 12<sup>th</sup> of April 2021 and the 26<sup>th</sup> of May 2021. No submissions were received from the general public.

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 additional information sought in relation to a Natura Impact Statement,
- (e) 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),
- (f) the written submissions or observations made in relation to the proposed works, and

(g) the written submissions or observations made by the Minister in relation to the proposed works.

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.'

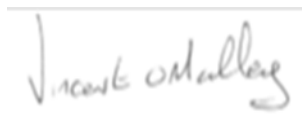
I confirm that the proposed works and this determination do not contain any such conditions, restrictions or requirements.

I accept the recommendations of Roughan & O'Donovan Limited that the proposed works on the structure specifically listed in Schedule Two below, will not adversely affect the integrity of any European site.

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, 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.



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**Dr. Vincent O'Malley**

*Head of the Environmental Policy and Compliance Section*

*Transport Infrastructure Ireland*

### Schedule One

List of structures where proposed works are the subject of Natura Impact Statement

Structure ID	Structure Name	Natura Impact Statement prepared
KK-N78-005.50	Balleycomey Culvert	TRUE

**Schedule Two**

List of structures where proposed works will not adversely affect the integrity of any European site

Structure ID	Structure Name	TII accepts the recommendation that the proposed works will not adversely affect the integrity of any European site.
KK-N78-005.05	Balleycomey Culvert	TRUE