

17TH OF MARCH 2021

**SCREENING FOR APPROPRIATE ASSESSMENT OF SPECIFIC WORKS (GEOTECHNICAL INVESTIGATIONS AND ASSOCIATED WORKS) AT PORT ROAD BRIDGE ASSOCIATED WITH ‘NORTH WEST 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 ‘NorthWest 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 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 (the former Chief Executive of TII) 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. Mr. Peter Walsh (the current Chief Executive) subsequently confirmed this arrangement after taking office.

In performing this screening for Appropriate Assessment, I had regard, *inter alia*, to information contained in the following document:

- *NorthWest Bridges – Term Maintenance Contract No. 3 – Port Road Geotechnical Investigations – Appropriate Assessment Screening* (Revision 1.4, Atkins Limited, 4th March 2021).

In performing this screening for Appropriate Assessment, I also communicated with various members of staff 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).

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 ‘North West 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 ‘North West 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.

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.

The specific works that I screened for Appropriate Assessment were the works detailed in *NorthWest Bridges – Term Maintenance Contract No. 3 – Port Road Geotechnical Investigations – Appropriate Assessment Screening* (Revision 1.4, Atkins Limited, 4th March 2021).

The specific works are geotechnical investigations and associated works, which are necessary for the design of a further proposed installation of a concrete invert at Port Road Bridge (DL-N14-002.00). The potential indirect impacts from the construction phase of the Project (including the installation of 4 no. boreholes on land, and 2 no. over water of the Lough Swilly Special Area of Conservation (SAC) and Special Protection Area (SPA)) that need to be considered include the hydrological effects on downstream or down-gradient receptors of pollution from surface or groundwater within or connected to the SAC/SPA. Uncontrolled pollutants generated during the works have the potential to affect the Qualifying Interests (QI)/ Special Conservation Interests (SCI) of the Lough Swilly SAC/SPA. Although the required works are within the SAC estuarine habitat, which supports Annex II Otter (*Lutra lutra*) and wintering bird species assemblage (listed as Special Conservation Interest (SCI) for the SPA), any sediment or resuspension of substrate arising from the construction of boreholes (via drilling) will be very localised and short term, and ameliorated by pre-existing baseline estuarine conditions (including sediment and substrate levels), and diurnal tidal cycle. When taking into account the existing dilution available within the receiving water of the Lough Swilly, and the sensitivity of the QI/SCI receptors, the duration and scale of the proposed works will not give rise to impacts that are likely to affect the supporting habitat or foraging behaviour. The dynamic nature of the estuarine system and the scale of the works provides that there will be no reduction in the extent of the habitat or condition of habitat within the immediate vicinity of each borehole (both on land and over water).

Having performed screening for Appropriate Assessment in respect of the specific works detailed in *NorthWest Bridges – Term Maintenance Contract No. 3 – Port Road Geotechnical Investigations – Appropriate Assessment Screening* (Revision 1.4, Atkins Limited, 4th of March 2021), I accept the recommendations of Atkins Limited that the specified geotechnical investigations and associated works, individually or in combination with other plans or projects, would not be likely to have a significant effect on any European site in view of the best scientific knowledge and the site's conservation objectives. I determine that an Appropriate Assessment of these proposed works is not required, as *it can be excluded* on the basis of objective scientific information following the screening done that the proposed works, individually or in combination with other plans or projects, will have a significant effect on any European site.



Dr. Vincent O'Malley
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