

25TH APRIL 2023

APPROPRIATE ASSESSMENT OF TRANSPORT INFRASTRUCTURE IRELAND'S NATIONAL ROADS 2040

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 plan [...] which a public authority wishes to [...] adopt [...] 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 plan [...], 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 [...] adopt a plan [...] is taken.'²

Having taken the view that National Roads 2040 (NR2040) constitutes a 'plan'³ within the meaning of the Habitats Regulations, Transport Infrastructure Ireland⁴ (TII) decided that NR2040 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. Peter Walsh (the Chief Executive of Transport Infrastructure Ireland) delegated the following function to me by memorandum dated the 21st of March 2023: "*Preparation and signing of written decision on completion of screening process for appropriate assessment in the context of environmental impact.*"

¹ Regulation 42(1) of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. No. 477 of 2011), as amended by Regulation 6(a) of the European Communities (Birds and Natural Habitats) (Amendment) Regulations, 2021 (S.I. No. 293 of 2021).

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 'plan' in the following manner:

"plan", subject to the exclusion, except where the contrary intention appears, of any plan that is a land use plan within the meaning of the Planning Acts 2000 to 2011, includes— [...] any plan, programme or scheme, statutory or non-statutory, that establishes public policy in relation to land use and infrastructural development in one or more specified locations or regions, including any development of land or on land [...], that is to be considered for adoption or authorisation or approval or for the grant of a licence, consent, permission, permit, derogation or other authorisation by a public authority [...]."

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.

Having regard, *inter alia*, to *National Roads 2040 Appropriate Assessment Screening Report* (Roughan & O'Donovan Consulting Engineers, June 2018), I have completed screening for Appropriate Assessment in respect of NR2040.

It was *not possible* to exclude, on the basis of objective scientific information following the screening done, that NR2040, 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 in respect of NR2040.

Mr. Peter Walsh (the Chief Executive of Transport Infrastructure Ireland) delegated the following function to me by memorandum dated the 21st of March 2023: "*Where applicable, sign-off on the subsequent appropriate assessment stage.*"

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 Housing, Local Government and Heritage] 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.*'

Transport Infrastructure Ireland instructed AECOM 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 NR2040. That Natura Impact Statement, prepared by AECOM's subconsultant, Roughan & O'Donovan Consulting Engineers, has the title *Natura Impact Statement of the National Roads 2040* (Roughan & O'Donovan Consulting Engineers, February 2023).

On the 16th of February 2023, I submitted that Natura Impact Statement to the Minister for Housing, Local Government and Heritage.

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 12th of April 2023, the Minister made a submission in relation to the Natura Impact Statement. Whilst it is noted that this submission was received outside of the six-week period, I confirm that I have taken account of that submission. In particular, I note and agree with the response to these comments as contained within Section 4.0 of *National Roads 2040 – Appropriate Assessment Conclusion Statement* (Roughan & O’Donovan Consulting Engineers, April 2023).

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 by, and submissions or observations sought from, the general public between the dates of the 16th of February 2023 and 18th of March 2023.

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) *National Roads 2040 Appropriate Assessment Screening Report* (Roughan & O’Donovan Consulting Engineers, June 2018);
- (b) the Natura Impact Statement (*Natura Impact Statement of the National Roads 2040* (Roughan & O’Donovan Consulting Engineers, February 2023)), including the recommendation contained therein that the proposed works will not adversely affect the integrity of any European site;
- (c) 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;
- (d) the information or advice obtained, namely, from various members of staff both from TII (e.g., from the Environmental Policy and Compliance, Strategic and Transport Planning and

Governance and Legal Sections) and the consultants engaged by TII to assist in the preparation of NR2040;

(e) the written submission made by the Minister;

(f) *National Roads 2040 – Final Strategy* (Transport Infrastructure Ireland, April 2023); and,

(g) *National Roads 2040 – Appropriate Assessment Conclusion Statement* (Roughan & O'Donovan Consulting Engineers, April 2023).

Regulation 42(17)(b) of the Habitats Regulations states, *inter alia*, 'A public authority shall not adopt [...] a plan [...] 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.'

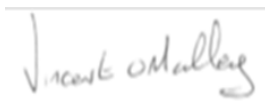
I confirm that NR2040 and this determination do not contain any such conditions, restrictions or requirements.

I accept the recommendation of Roughan & O'Donovan Consulting Engineers that NR2040 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 NR2040, 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 adopt NR2040.

I am satisfied that TII is not prohibited, by Regulation 42(16) of the Habitats Regulations, from adopting NR2040.



Dr. Vincent O'Malley

Head of Environmental Policy and Compliance Section

Transport Infrastructure Ireland