PUBLIC CONSULTATION

SUPERFAST NORTHAMPTONSHIRE

New procurement to further extend coverage of Next Generation Access (NGA) Broadband across Northamptonshire.

1. INTRODUCTION AND BACKGROUND

Following the approval of its Local Broadband Plan by BDUK in December 2011, Northamptonshire County Council has completed two procurements to progress its implementation, both using the BDUK Broadband Infrastructure Framework. The first commenced in October 2012 and resulted in the appointment of BT in March 2013 under a BDUK Framework Call Off Contract. This has extended the coverage of Next Generation Access (NGA) infrastructure for superfast broadband to approximately 90%\(^1\) of premises in the county by the end of 2015, when combined with current and planned commercial deployments. An OMR process and State aid Public Consultation was undertaken in summer 2012 to inform this procurement process. The Contract awarded to BT involved £8.16m of public funding and was extended to £9.0m in 2014.

The second procurement commenced in late June 2014 and resulted in a second contract with BT in November 2014. An OMR process was concluded in May 2014 and the State aid Public Consultation on the proposed Intervention Area was completed in June 2014. This set out a procurement value of £8.75m public funding. The value of the Contract at award was £7.4m of public investment with the balance of funds available under contract for future investment. This Contract is expected to take plans for NGA to approximately 94%\(^2\) of premises in the county by December 2017, when combined with existing and planned commercial coverage and the project’s Stage 1 deployment. Information on the outputs from these two Contracts with BT can be viewed on the project website at http://www.superfastnorthamptonshire.net ‘Working with BT’.

An interactive ‘When and Where’ map provides further information on the expected deployment plans for superfast broadband in the county, including a postcode search facility. The Roll Out Schedule also provides further detailed information on structures deployed and planned to be deployed. This is available on the project’s website at http://superfastnorthamptonshire.net and will continue to be updated as plans progress.

Building on these committed deployments, the County Council intends to extend the availability of NGA broadband to unserved areas of the county towards meeting its target to see superfast broadband\(^3\) available county wide by the end of 2017. In addition to securing additional NGA infrastructure build under the current contracts with BT, the

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\(^1\) Based on data available in December 2015 (pre 2016 OMR outcome) and the OFCOM March 2010 definition of superfast broadband being 24Mbps on which the Superfast Northamptonshire project target is based.

\(^2\) Based on a minimum NGA speed of 30Mbps and taking into account new baseline premise data and 2016 OMR outcomes.

\(^3\) See footnote 1..
County Council intends to run a new public procurement to address the remaining white NGA premises. Together these form Stage 3 of the Superfast Northamptonshire project.

Utilising new baseline premises data (AddressBase September 2015 (E35)) and the European Commission’s threshold of 30Mbps as the definition for NGA white areas, the proposed intervention area for Stage 3 is estimated to involve approximately 18,660 premises.

The County Council secured an allocation of £5.5m from BDUK in 2014 for Stage 2 of the Superfast Northamptonshire project of which the County Council ring-fenced £1.523m to undertake a new public procurement in addition to the second BDUK Framework Procurement. The County Council intends to make at least a further £3.244m of County Council funds immediately available for the procurement providing for a minimum of £4.967m in total. It is also the County Council’s intention to seek to secure up to a further £5m through its funding strategy, some of which may be available to extend the value of the procurement. Alternatively, such secured funds may be made available through contract(s) awarded to extend coverage in the event that the project’s coverage targets have not been met in full. The value of the intervention for the procurement for the purpose of State aid notification is therefore up to £9.967m of public funding.

The value of funds which may be invested to extend coverage through the County Council’s existing contracts with BT is detailed in section 4.

BDUK is currently working with the European Commission to finalise the terms of a new National Broadband Scheme for the United Kingdom (referred to hereafter as the 2016 NBS). Northamptonshire County Council intends to conduct this further procurement under the 2016 NBS.

2. **MARKET ENGAGEMENT AND ANALYSIS OF EXISTING COVERAGE**

In preparation for this procurement, Northamptonshire County Council conducted a new OMR between 17 November 2015 and 18 December 2015 to establish existing and planned (within the next 3 years) coverage of broadband infrastructure across Northamptonshire. This included both commercial coverage by existing and prospective NGA broadband infrastructure operators and coverage procured under Northamptonshire County Council’s existing contracts with BT. Further discussions and updates from suppliers who responded were incorporated up to April 2016.

The County Council contacted all known broadband infrastructure operators within the project area and other operators known to have (or potentially having) plans to deploy new network infrastructure across the UK with a formal request for information. This included promoting the OMR through the Independent Networks Cooperative Association (INCA). Operators were requested to provide information on their existing and planned NGA broadband infrastructure (capable of delivering download speeds of at least 30 Mbps), and to provide detail of their coverage at a premise level so as to enable greater granularity of mapping.

This information, together with the Superfast Northamptonshire project team’s own data sources, has been used to define the proposed intervention area for the forthcoming procurement. Please see Annex 1 for detailed maps as currently defined.
This public consultation sets out that proposed intervention area, so as to enable all interested stakeholders (including the public, businesses, internet service providers and broadband infrastructure operators) to comment on the proposals. In particular, this provides an opportunity for broadband infrastructure operators to review the Superfast Northamptonshire project NGA broadband and basic broadband availability maps to ensure that it correctly represents the information provided by them in the course of the OMR.

All responses to the public consultation will be carefully considered and where necessary will be incorporated into the final map of the intervention area. The final intervention area maps and a summary report confirming details of the changes made to the proposed intervention area will be published on the Superfast Northamptonshire website shortly after the close of the consultation period. Where responses to the consultation are received, Northamptonshire County Council will respond to these and provide an explanation of how the information submitted has been treated. The finalised intervention area will then be submitted to BDUK's National Competence Centre (NCC) for approval against the State aid Framework.

3. STATE AID FRAMEWORK AND RULES

This section provides a brief introduction to the State aid Framework for the purpose of informing responses to the public consultation. Respondents may wish to obtain their own professional/legal advice on the application of the State aid Framework and rules that relate to this proposal.

The European Commission has published ‘EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks’ (2013/C 25/01). These guidelines summarise the principles of the Commission’s policy in applying the State aid rules of the Treaty to measures that support the deployment of broadband networks, and seek to ensure that State aid schemes for broadband are well-designed so that they target market failures and minimise negative effects on competition.

The guidelines require public interventions to be targeted so as to limit the risk of crowding out private investments, of altering commercial investment incentives and ultimately of distorting competition.

Planned public interventions can seek State aid approval directly from the Commission, or (as is the case with this proposal) seek clearance under a national scheme which has been pre-approved by the Commission.

Projects under the 2016 NBS will need to demonstrate their State aid compliance (in accordance with the terms of the scheme) in order to receive clearance from BDUK’s National Competence Centre.

The Commission’s guidelines distinguish between two types of broadband networks, namely basic broadband and NGA networks.

Basic broadband networks are generally those based on currently widely-deployed technologies such as fixed wired telephony networks (using ADSL/ADSL2+ technologies), non-enhanced cable TV networks (e.g. DOCSIS 2.0), mobile networks (2G/3G (UMTS)), some fixed wireless access (FWA) networks, and satellite networks.

NGA networks rely wholly or partly on optical elements (optical fibre) and are capable of delivering an enhanced broadband capability compared to existing basic broadband networks. Current qualifying NGA technologies are fibre-based networks (FTTx), advanced upgraded cable networks (DOCSIS 3.0) and certain advanced wireless access networks capable of delivering reliable high speeds.

Guidance on the characteristics of qualifying NGA technologies is available from BDUK.\textsuperscript{5}

The Commission’s guidelines also require that public intervention should be able to ensure a ‘step change’ in broadband availability. This is demonstrated by:

- Significant new investments in the broadband network;
- The new infrastructure brings significant new capabilities to the market in terms of broadband service availability and capacity, speeds and competition\textsuperscript{6};

The ‘step change’ in broadband availability shall be compared to that of existing as well as concretely planned networks.

The Commission’s guidelines also distinguish between geographic areas on the basis of their existing or planned broadband infrastructure:

- ‘White’ areas are those in which there is no qualifying broadband infrastructure and none is likely to be developed within 3 years;
- ‘Grey’ areas are those where only one network is present or is to be deployed within the coming 3 years; and
- ‘Black’ areas are those where at least two networks of different operators exist or will be deployed in the coming 3 years.

This geographic mapping of White/Grey/Black areas is carried out separately in relation to basic broadband and NGA networks. NGA networks are mapped on the basis that, amongst other things, they have substantially higher upload speeds (compared to basic broadband networks)\textsuperscript{7} and are able to deliver broadband services at an access (download) speed of more than 30Mbps.

Public intervention can only take place in white NGA areas under the 2016 NBS. White NGA areas are those in which there are no NGA networks and none are likely to be developed within the next 3 years.

\textsuperscript{6} See Footnote 66 of the Commission’s Guidelines - this sets out that the subsidised network should be pro-competitive (i.e. allow for effective access at different levels of the infrastructure).
\textsuperscript{7} Substantially higher upload speeds means at least a doubling of the maximum upload speed available on current generation access network(s) for given ‘up to’ packages available on basic broadband networks in the relevant intervention area.
4. PROPOSED INTERVENTION

In the absence of consistent premise level data from all broadband infrastructure operators, Northamptonshire County Council has mapped areas as white, grey or black at a postcode level, using the following criteria:

For basic broadband,

- A postcode is turned grey if there is only one broadband infrastructure operator providing basic broadband services (with speeds greater than 2 Mbps) to that postcode.
- A postcode is turned black if there are at least two broadband infrastructure operators providing basic broadband services (with speeds greater than 2Mbps) to that postcode.
- All other postcodes remain white.

For NGA,

- A postcode is turned grey if there is only one broadband infrastructure operator providing NGA services (with speeds greater than 30Mbps) to that postcode.
- A postcode is turned black if there are at least two broadband infrastructure operators providing NGA services (with speeds greater than 30Mbps) to that postcode.
- All other postcodes remain white.

In addition, the proposed intervention area includes a number of “under review” areas (coloured blue on the map). These areas have previously been indicated to have planned commercial coverage for NGA broadband (i.e. mapped as NGA grey), but those plans have been reported through the OMR (or 2014 OMR in the absence of a new operator response) as being ‘at risk’ of not being completed. These areas will be subject to continued monitoring and verification of operator plans within the 3 year period by Northamptonshire County Council and in the event that these commercial plans fall away these premises will be mapped as NGA white and form part of the proposed intervention area and eligible for intervention via this aid measure.\(^8\)

The mapping analysis of existing and concretely planned coverage (within the next 3 years) has identified significant remaining ‘white NGA’ areas. The outcome of the OMR is summarised below in terms of NGA White, Grey, Black and “under review” premises in NGA White, Grey, Black and “under review” postcodes.

\(^8\) See paragraph 65 of the Commission’s guidelines.
<table>
<thead>
<tr>
<th>Postcodes</th>
<th>Number of Postcodes</th>
<th>Number of Black Premises</th>
<th>Number of Grey Premises</th>
<th>Number of White Premises</th>
</tr>
</thead>
<tbody>
<tr>
<td>NGA Black</td>
<td>5,127</td>
<td>116,320</td>
<td>8,785</td>
<td>31</td>
</tr>
<tr>
<td>NGA Grey</td>
<td>8,353</td>
<td>15,974</td>
<td>144,778</td>
<td>1,476</td>
</tr>
<tr>
<td>NGA “under review”(^9)</td>
<td>63</td>
<td>-</td>
<td>1,610</td>
<td>-</td>
</tr>
<tr>
<td>NGA White</td>
<td>2,297</td>
<td>113</td>
<td>12,492</td>
<td>18,068</td>
</tr>
</tbody>
</table>

Through its Stage 3 approach, Northamptonshire County Council intends to procure coverage to target the remaining white premises in ‘NGA white’ postcodes (currently estimated at 18,068) as follows:

- By conducting a new procurement under the 2016 NBS (and in accordance with the Public Contracts Regulations 2015); and
- By utilising efficiencies and subsidy clawback from the existing contracts awarded to BT in 2013 and 2014 and reinvesting these funds in these contracts as appropriate.

As noted above, if commercial plans do not materialize in the “under review” areas then these will be considered as eligible for intervention and considered as ‘white NGA’ areas. This would add an estimated 1,610 premises to the scope.

Northamptonshire County Council intend to make coverage information available at a premise level to the extent possible within the identified white postcode areas to bidders to ensure that bids can target those premises without NGA broadband coverage efficiently. This will include information at a premise level received in response to this consultation.

It should be noted that whilst this consultation includes mapping of basic broadband coverage, the procurement will not deploy basic broadband technologies. The intention is to provide bidders with details of all the areas where there is basic broadband coverage so as to ensure, so far as possible, that these areas are only overbuilt by NGA broadband infrastructure where the premises will receive over 30Mbps or at least a doubling of speeds, in accordance with the requirements of the 2016 NBS. Where doubling is not possible, the supplier will be obliged to demonstrate that the design is optimised to limit the overbuild of existing basic broadband networks with speeds that are below 30Mbps.

### 4.1 New Procurement

Northamptonshire County Council commenced soft market testing with suppliers in June 2015 including a series of meetings and electronic communications to enable feedback from potential bidders to be taken into account in the design of the scheme and to understand the capacity and capability of the market. A further Bidder Information Day

\(^9\) The NGA grey and white premises in these postcodes will be subject to monitoring and review as explained above.
will take place before the commencement of the procurement to set out the requirements in more detail.

Northamptonshire County Council has also considered the ability of the private sector to deliver the project, available resources, and its own capacity and capability to develop its approach to intervention. It has decided that the project will use an investment gap funding approach to procure an infrastructure operator.

The procurement will be carried out in accordance with the Public Contracts Regulations 2015 and EU Public Procurement Directives. The tender is most likely to utilise the Competitive Dialogue or Restricted Procedure and will be conducted in a transparent and non-discriminatory manner, as required by the 2016 NBS.

The procurement will be designed to meet the specific requirements of the 2016 NBS, which recognises the need to optimise the number and quality of bidders, in particular by reducing the hurdles to participation in procurements by smaller suppliers and encouraging collaboration between larger and smaller operators so that a range of appropriate solutions can be brought forward. This was also a key objective of the market engagement exercise. When the procurement is launched, the white areas may be sub-divided into a small number of lots or areas depending on the number and location of NGA white premises. However, in the event where more than one lot is defined, Northamptonshire County Council does not discount the possibility that some or all of these lots may be aggregated if this represents the most economically advantageous approach to meeting the requirements set out in its Invitation to Tender.

In total public funding of up to £9.967m may be committed via the forthcoming procurement. This includes an immediate commitment of at least £4.967m and up to a potential further £5m through an extension to contact(s) awarded in the event that the project’s full coverage targets have not been met.

4.2 Coverage Through Existing Contracts with BT

As set out in Section 1, Northamptonshire County Council awarded a first contract to BT in March 2013 (extended in 2014) with State aid approved public funding of £9m, and a second contract to BT in November 2014 with State aid approved public funding of £8.75m.

The contracts with BT included provisions for the full amount of the public funding to be used (a total value of £17.75m), and that in the event that take-up of superfast broadband services exceeded levels forecast in the contracts, then the amount of public subsidy required would be reduced retrospectively to reflect this (subsidy clawback). Any funds released are then available to be reinvested into further coverage of superfast broadband under the terms of the contracts.

In August 2015, BT announced that take-up across the UK was likely to exceed the forecast level of 20%. To date, BT has identified up to £129m across the UK to meet the contractual obligations outlined above. Northamptonshire County Council has received an indication that this subsidy clawback may amount to £1.9m. Northamptonshire County Council may reinvest this in further coverage as part of the current contracts.

Northamptonshire County Council intends to work with BT to consider areas where the County Council believes it represents value for money to extend NGA coverage under current contracts utilising:
a) Subsidy clawback due to higher performance on take-up of services (up to £1.9m); and

b) Any efficiencies realised within the current values of the existing contracts with BT;

such that up to a total of £19.65m may be invested with BT through the lifetime of these contracts, at the County Council’s discretion including in respect of value for money and coverage geography within the intervention area. Coverage will only be targeted at part of the white NGA areas identified following this consultation, excluding any areas that are selected for the new procurement set out above and any contract(s) subsequently awarded to ensure effective separation of public funding investment within the intervention area.

5. TIMESCALES

This consultation will be open until noon on Friday 17th June 2016.

Once the consultation is closed and Northamptonshire County Council has finalised the intervention areas, an Invitation to Tender (ITT) will be issued in summer 2016 via LGSS (Due North portal) to suppliers to bid for the opportunity to deliver extended NGA broadband coverage. The intention is to award a contract during winter 2016. The related extended deployment plans for broadband infrastructure should begin in early 2017.

6. STATE AID PUBLIC CONSULTATION

The EU Guidelines (at paragraph 78) and the 2016 NBS set out the requirements to hold a public consultation in order to validate the intervention area mapping by allowing all interested stakeholders an opportunity to comment on the planned aid measure.

The purpose of this document is to fulfil those requirements by publishing a description of the proposed aid measure, and seeking feedback from all interested stakeholders. The mapping for basic and NGA broadband are shown in the attached maps.

The attached map of the NGA broadband Intervention Areas relies on the definitions of white, grey and black areas, as set out in the EU Guidelines (and as summarised above). Northamptonshire County Council will only target the areas identified as White on the map. However, if the areas of commercial coverage currently identified as “under review” do not materialise then these areas could potentially be added to the contract(s) intervention area.

This State aid public consultation and the proposed NGA broadband Intervention Area maps are available to all stakeholders on the Superfast Northamptonshire website at www.superfastnorthamptonshire.net and will also be available via BDUK’s website at BDUK Table of local broadband projects.
7. RESPONDING TO THIS STATE AID PUBLIC CONSULTATION

Northamptonshire County Council is requesting information and supporting evidence in relation to basic and NGA broadband infrastructure within the project area and wish to hear from all relevant stakeholders, particularly in relation to areas to be targeted as part of the NGA intervention area at Annex 1. Relevant stakeholders include broadband infrastructure operators, local residents and businesses in the county.

For the avoidance of doubt, there is no need to respond to this public consultation if you have no comment (to make).

If the response is from an infrastructure operator and comments on the white, grey and/or black or “under review” classifications within the attached maps or data, or on the wholesale products to be offered via the subsidised network, then the submission should also include the specific information set out in Section 8.

All responses to this consultation should be submitted by email to Northamptonshire County Council at bigidea@northamptonshire.gov.uk and clearly marked in the subject title ‘State Aid Public Consultation’.

Please ensure that you confirm the following in your submission:

- Your organisation’s name (if applicable)
- Your address or your organisation’s address
- Your name
- Position
- Contact telephone number
- Email Address

If you are unable to respond by email, you can respond by post to:

Northamptonshire County Council
Superfast Northamptonshire (State Aid Public Consultation)
Directorate for Place Commissioning
County Hall
Northampton
NN1 1DN

The County Council will arrange for infrastructure operators to sign and return an Ordnance Survey PSMA Contractor licence to grant operators, on request, access to detailed premise level information. This is a requirement of the County Council’s license with Ordnance Survey in order to share the base data with operators. Please ensure that the relevant company details are provided where highlighted in the Contractor license document before returning it.

Once this is done, the County Council will arrange access to the Response Template (or subset thereof if you are reporting on a specific area) and to a spreadsheet with details of all premises in the intervention area. The County Council also requests confirmation from an authorised signatory that the information provided is suitably accurate and up to date.

All detailed template responses by operators should be submitted within the consultation timescales and in accordance with the address instructions above.
Responses received after the consultation closes at noon on Friday 17th June 2016 may not be considered.

Please note that the data you provide in your response will be treated as commercially confidential to your organisation. However, it may be necessary to share/some all of your response data with our professional advisers and/or DCMS/BDUK, Ofcom, the National Competence Centre and the European Commission in the course of seeking State aid approval.

It should also be noted that it is a State aid requirement to use this information to produce State aid maps to define white, grey and black areas for basic and NGA broadband. However, the published maps will show the aggregated White/Grey/Black NGA and Basic Broadband areas, not the data provided on a per-operator basis. The final maps that will be used for procurement purposes will be published shortly after the conclusion of this State aid public consultation and once approved by the National Competence Centre.

If you have any questions about any of the above, please contact the County Council’s Superfast Northamptonshire team by email via bigidea@northamptonshire.gov.uk.

8. INFORMATION REQUESTED

This section specifies the information you are requested to provide in response to this State aid public consultation in relation to the presence of broadband infrastructure.

The County Council is requesting information on, and supporting evidence for, any current or planned (within the next 3 years) investment in broadband infrastructure in the project area, where this may not be already included within the proposed NGA and Basic broadband intervention area maps attached.

For any current or planned coverage not included within the proposed State aid intervention areas shown on the attached map, the County Council is requesting information at premise level, using a template issued by the County Council, to show existing or planned coverage by your broadband infrastructure investment. By ‘covered’ (or ‘passed’) the County Council means that fixed network infrastructure is or will be available to the premises, potentially subject to a final drop connection, or that the premises are able to receive a suitable quality radio signal over the air interface, potentially subject to the installation of a suitable antenna.

Any information provided in response to this State aid public consultation should include, but need not be limited to:

- Detailed maps for NGA broadband showing existing and planned coverage, for at least the next 3 years.
- Details of premises covered or passed that fixed network infrastructure is or will be available to the premises within the next 3 years, potentially subject to a final drop connection, or that the premises are able to receive a suitable quality radio signal over the air interface, potentially subject to the installation of a suitable antenna.
- A detailed description of the technology solution(s) deployed (or to be deployed) in your broadband infrastructure, demonstrating how they meet the minimum standards as set out in the BDUK NGA Technology Guidelines.
● A description of the services/products currently offered, and separately those services/products to be offered within the next 3 years.
● Installation, annual/monthly subscription, and additional volume or per-service tariffs for those services/products (identifying whether such tariffs are inclusive or exclusive of VAT).
● Upload and download speeds typically experienced by end-users, and how these may vary by factors such as distance, increased take-up or demand, contention, etc.
● Appropriate indicators of the quality of services (e.g. contention ratios, bandwidth allocation per user, etc), including any characteristics (e.g. latency, jitter) that are required to support advanced services such as video conferencing or HD video streaming.
● Evidence to substantiate actual or planned coverage claims, including business cases and evidence of available funding to enable plans to be fulfilled.
● Details and planned timing of roll-out of any future investments, including further investments required to cope with future increases in take-up or demand.

Please supplement the required information above with any supporting evidence as you consider appropriate (e.g. links to public websites).

The County Council would also be interested to hear from operators their views as to the types of wholesale access products they would like to see offered on any newly created subsidised NGA network infrastructure. This information may inform the intervention design. Please note that we are not obliged to include these products in the invitation to tender (unless already required under any State aid Decision)\(^\text{10}\).

9. NEXT STEPS

Following any responses received to this State Aid public consultation by the closing date of Friday 17th June 2016, the County Council plans to publish the final Intervention Area maps shortly after the close of the consultation period.

This will be followed by the launch of the ITT to Suppliers to bid for the opportunity to fulfil a new contract to deliver the extended coverage and consideration of any separate additional coverage with BT through contracts Change Control Procedure.

Information about the Superfast Northamptonshire project can be found at: [http://www.superfastnorthamptonshire.net/](http://www.superfastnorthamptonshire.net/).

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\(^{10}\) Operators will still be able to request new forms of access products on the subsidised NGA network infrastructure through the formal general access provisions under the terms of a future State aid Decision.
ANNEX 1: (2 follow on pages):

Superfast Northamptonshire Overall Geographic Area (OGA):

Basic Broadband and NGA Broadband Maps, as analysed in May 2016.