



PUBLIC CONSULTATION

Cornwall Council - 'Superfast 3 - Inclusive Growth' Project

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

31st March 2020

1. Introduction and Background

The 'Superfast 3 - Inclusive Growth' project is striving to extend the availability of NGA broadband infrastructure.

To achieve this, Cornwall Council intends to procure further coverage of NGA broadband infrastructure (capable of delivering download speeds of at least 30 Mbps) delivering wholesale products in areas within its Programme Area where such broadband is currently unavailable. Geographically, 'Superfast 3 - Inclusive Growth' covers the local authority area of Cornwall Council. Cornwall Council is now looking to provide NGA access to further premises across its area.

Cornwall Council conducted its most recent Open Market Review (OMR) in August 2019. The OMR indicated that existing and planned commercial coverage for NGA broadband would reach approximately 245,623 (Grey + Black) of premises within the next 3 years, and that there would be 23,434 premises which may be included in plans and will be placed Under Review. This would therefore leave approximately 43,863 (White¹) premises without access to NGA broadband.

Cornwall Council has applied for, and if successful will act as accountable body for, up to £4.200m of European Regional Development Funding to deliver the Superfast 3 Project (decision pending). Subject to the ERDF funding being awarded Cornwall has

¹ See Section 3 for a description of State aid classification of White, Grey and Black premises

agreed to provide up to £1.585²m of match funding, which is required to deliver the Superfast 3 project.

Cornwall Council now intends to conduct a further open procurement in respect of the remaining area without NGA broadband infrastructure (known as “white NGA”), which comprises around 43,863 premises.

BDUK received approval on 26 May 2016 from the European Commission on its National Broadband Scheme for the United Kingdom (referred to hereafter as the 2016 NBS). Cornwall Council intends to conduct this further procurement under the 2016 NBS.

2. Market Engagement and Analysis of Existing Coverage

In preparation for this procurement, Cornwall Council conducted its new OMR between 20/08/2019 and 15/09/2019 to establish existing and planned (within the next 3 years) coverage of broadband infrastructure across the ‘Superfast 3 - Inclusive Growth’ Area. This included both commercial coverage by existing and prospective NGA broadband infrastructure providers and coverage procured under Cornwall Council’s existing contracts with Openreach.

Cornwall Council contacted all known broadband infrastructure operators within the Programme Area and other providers known to have (or potentially having) plans to deploy new networks across the UK with a formal request for information. The OMR was also publicised through a notification on the Cornwall Council, Cornwall Development Company and Superfast Cornwall websites. 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 premises level so as to enable greater granularity of mapping.

This information, together with Cornwall Council's own data sources, has been used to define the proposed intervention area for the forthcoming procurement.

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 Cornwall Council’s mapping 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 Cornwall Council website shortly after the close of the consultation period. Where responses to the

² This is the total funding and revenue costs will be set aside by Cornwall Council for delivery management – see Sec. 4.1 for details

consultation are received, Cornwall 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 2016 NBS 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)³. 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.

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026.EN.PDF>

Guidance on the characteristics of qualifying NGA technologies is available from BDUK.⁴

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 competition⁵;

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)⁶ 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 is likely to be developed within the next 3 years.

4. Proposed Intervention

Cornwall Council has mapped postcodes as white, grey or black, using the following criteria:

⁴ <https://www.gov.uk/government/publications/2016-nbs-tech-guidelines>

⁵ 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).

⁶ 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.

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.

All postcodes within Cornwall are classified as 'Basic Grey' or 'Basic Black' for this third procurement because of the availability of a basic broadband provision via the Better Broadband Scheme. For ease, all premises have been mapped as grey, although some will in reality have a black classification.

For NGA:

- A postcode is turned grey if there is one broadband infrastructure operator providing NGA services (with speeds greater than 30Mbps) to all premises in 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 all premises in that postcode.
- A postcode where there is at least one premise without NGA services (with speeds greater than 30Mbps) is classified as white.

In addition, the proposed intervention area includes a number of "under review" premises (coloured orange on the map). These premises have previously been indicated to have planned commercial coverage for NGA broadband (i.e. mapped as grey or black NGA), but those plans have been reported or interpreted through the OMR as being 'at risk' of not being completed. In addition, where suppliers have claimed existing coverage and there remains doubt on the ability to cover these premises from existing infrastructure then these premises have also been classified as "under review" These areas will be subject to continued monitoring and verification of supplier plans within the 3 year period by Cornwall Council and in the event that these commercial plans fall away these premises will be mapped as white NGA and form part of the proposed intervention area and eligible for intervention via this aid measure.⁷

The mapping analysis of existing and concretely planned coverage (within the next 3 years) has identified significant remaining 'white NGA' premises. The outcome of the OMR is summarised in terms of NGA White, Grey, Black and 'Under Review' premises and postcodes below.

⁷ See paragraph 65 of the Commission's guidelines.

	Number of Postcodes	Number of Black Premises	Number of Grey Premises	Number of White Premises	Number of Under Review premises
White	7,992		78,389	43,863	10,675
Grey	10,731	786	149,824		
Black	276	5,174			
'Under Review' ⁸	1,969		11,450		12,759
Total	20,968	5,960	239,663	43,863	23,434
Total premises	312,920				

Cornwall Council intends to procure coverage to target the remaining 'white NGA' areas by conducting a new procurement under the 2016 NBS (and in accordance with the Public Contracts Regulations 2015).

As noted above, if commercial plans fall away in the 'Under Review' areas then these will be considered as eligible for intervention and considered as 'white NGA' areas.

Cornwall Council intends to make coverage information available at a premises level to bidders to ensure that bids can target those premises without NGA broadband coverage efficiently⁹. This will include information at a premises level received in response to this consultation. During the later stages of the procurement, the coverage information will be updated to reflect the responses to this consultation and released to bidders.

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

⁸ The white premises in these postcodes will be subject to monitoring and review as explained above.

⁹ The current coverage information being made available is the NGA broadband map in Annex A and a Microsoft Excel file containing the list of all UPRNs in Cornwall with their associated ID number, address, postcode and State aid classification available on request to broadband@cornwall.gov.uk.

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

Cornwall Council commissioned Analysys Mason to undertake research and analysis to assist with the development of a digital infrastructure strategy. The work included a consultation with superfast broadband fixed line operators. This found that the investment landscape in Cornwall was defined by the high level of FTTP penetration delivered by Openreach and the commercial challenges of the remaining slow speed areas. Consultation feedback indicated that there was an appetite for further investment by operators alongside State aid funding. The final report 'Development of a digital infrastructure strategy' was completed in October 2018.

Cornwall Council undertook a further market engagement consultation between 4/12/2019 and 3/1/2020.

Following the market engagement, Cornwall Council has 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. Its preferred approach, which is consistent with the market engagement responses, is that the project will use an investment gap funding approach to procure an infrastructure provider.

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 Open 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.

Cornwall Council's priority will be to ensure that the available public funding is used most effectively by ensuring coverage of premises currently getting relatively slow broadband speeds of <15 Mbps, which is estimated to include approximately 19,000 premises. However, areas currently getting higher speeds (at or above 15Mbps and below 30Mbps) may be targeted, subject to the need to provide a 'step change' in broadband capability (as outlined above). Cornwall Council will be prioritising solutions that provide coverage of gigabit capability in line with recent national strategy outlined in the Future Telecoms Infrastructure Review¹⁰.

¹⁰ <https://www.gov.uk/government/publications/future-telecoms-infrastructure-review>

Cornwall Council (CC) has been invited to submit a full application for up to £4.2m of ERDF funding and CC has agreed match of £1.585m funding subject to the ERDF funding being awarded.

In total public funding of up to £5.350¹¹m is expected to be committed via the forthcoming procurement. In addition, further funds potentially might become available via the following sources, some or all of which may be included in the procurement:

- up to £1,000,000 of European Grant funding¹²
- Up to £1,000,000 clawback to CC from previous contracts
- Up to £1,000,000 further CC funding

Following an analysis of the market engagement responses, The Council will pursue a single lot model. The majority of the responses, including from two smaller operators, prefer a single lot to be used for the procurement. As well as the feedback to the market engagement, the Council has considered (i) the value of the contract, which is smaller than all previous superfast broadband contracts (three contracts covering £72m) all of which have pursued a single lot, (ii) the additional management overhead of managing a number of contracts, (iii) the efficiency of a supplier working across a single lot, (iv) managing the complexity of boundary effects caused by division into lots, and (v) the risk to the Council in terms of meeting the terms of an ERDF grant agreement, which will require the Council to achieve a number of output deliverables, as well as achieving full expenditure of the ERDF grant.

5. Timescales

This consultation will be open until 30th April 2020.

Once the consultation is closed and Cornwall Council has finalised the intervention area, an Invitation to Tender (ITT) will be issued via <http://www.supplyingthesouthwest.org.uk/> to suppliers to bid for the opportunity to deliver extended NGA broadband coverage. The intention is to award a contract during 2020. The deployment plans for broadband infrastructure should begin before the end of 2020.

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.

¹¹ Once delivery management revenue costs have been deducted from the total funding

¹² Subject to securing additional funding from the Cornwall & Isles of Scilly Growth Programme or underspends from existing contract.

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 NGA broadband is shown in the attached map in Annex A.

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). Cornwall Council will only target the premises identified as White on the map. However, if the premises of commercial coverage currently identified as 'Under review)' fall away then these areas could potentially be added to the contract intervention area.

This State aid public consultation and the proposed NGA broadband Intervention Area map are available to all stakeholders on the Cornwall Council website: <https://www.cornwall.gov.uk/business/commercial-services-and-selling-to-the-council/current-and-future-contract-opportunities/> and will also be available via BDUK's website at [BDUK Table of local broadband projects](#).

7. Responding to this State Aid Public Consultation

Cornwall Council is requesting information and supporting evidence in relation to NGA broadband infrastructure within the project area and wish to hear from all relevant stakeholders (including residents, businesses as well as broadband infrastructure operators), particularly in relation to areas to be targeted as part of the NGA intervention area at Annex [A].

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

For residents and businesses, where this relates to the ability to receive an NGA service, any information provided in response to this State Aid public consultation should as a minimum include (but need not be limited to) the address of the property or area that the submission relates to and the nature of the concern.

If the response is from an infrastructure provider 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.

For all submissions, Cornwall Council would be grateful if you would contact Cornwall Council to register your intention to submit a response and could confirm in your submission the following:

- Your organisation's name (if applicable)
- Your organisation's address (if applicable)
- Your name

- Position
- Contact telephone number
- Email Address

Cornwall Council will then arrange access to the Response Template (or subset thereof if you are reporting on a specific area).

Cornwall Council also requests confirmation from an authorised signatory that the information provided is suitably accurate and up to date.

Please send your responses no later than 30th April 2020 to:

Cornwall Broadband
C/O: broadband@cornwall.gov.uk

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 NGA¹³ broadband. However, the published maps will show the aggregated White/Grey/Black NGA 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 Cornwall Council by email as above.

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.

Cornwall Council is requesting information on, and supporting evidence for, any current or planned (within the next 3 years) investment in broadband infrastructure in the 'Superfast 3 - Inclusive Growth' Area, where this may not be already included within the proposed NGA intervention area map attached.

For any current or planned coverage not included within the proposed State aid intervention areas shown on the attached map, Cornwall Council is requesting information at premises level, using the template issued by Cornwall Council to show

¹³ Note that no areas are considered to be without Basic broadband (<2Mbps) due to the availability of grants and assistance to connect to a basic service

existing or planned coverage by your broadband infrastructure investment. By 'covered' (or 'passed') Cornwall 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.
- Any feedback on an approach to single or separate lots for the procurement
- Any feedback on the proposed 'gap-funded' business model under which the supplier is expected to build, own and operate the network.

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

Cornwall 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)¹⁴.

8. Next Steps

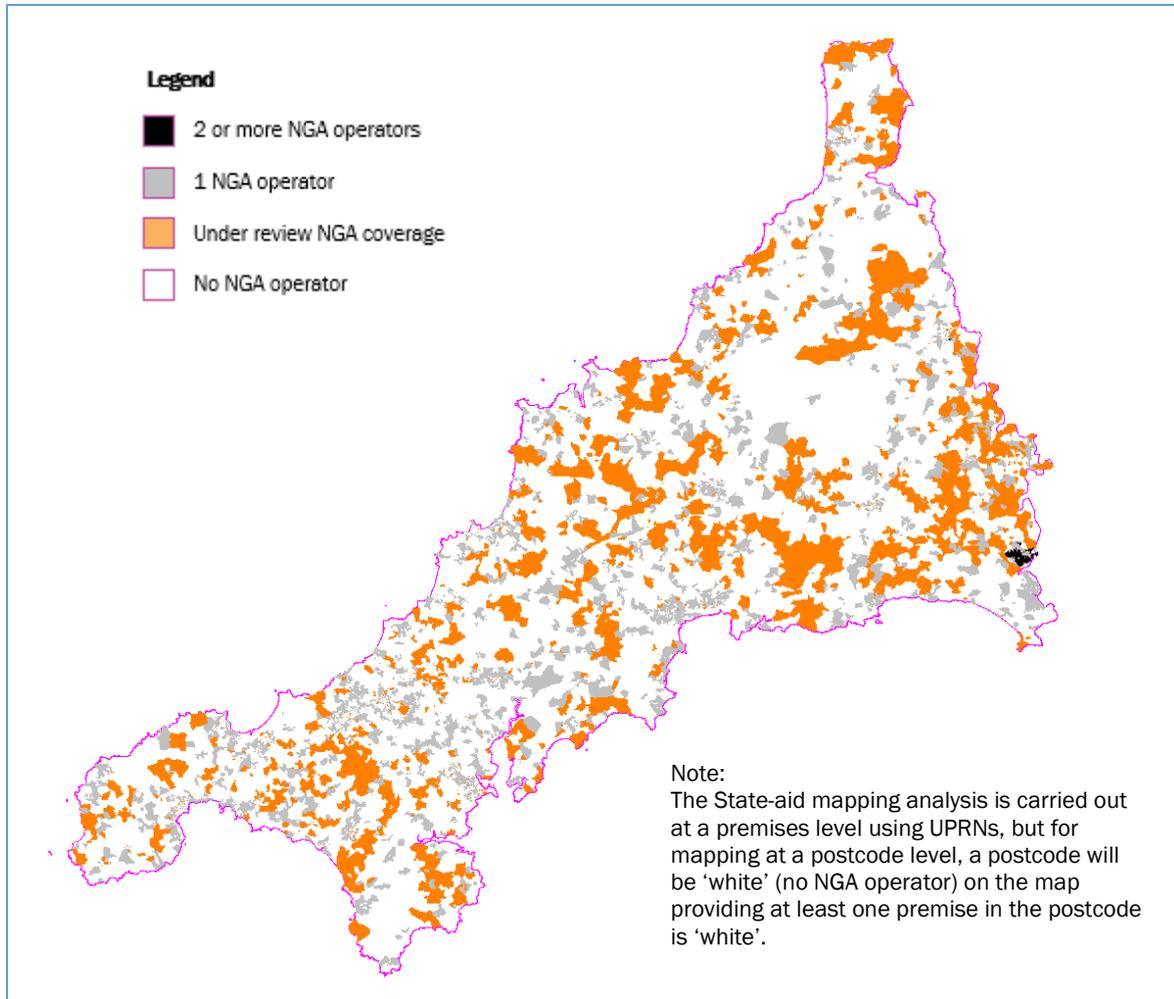
Following any responses received to this State Aid public consultation by the closing date of 30th April 2020, Cornwall Council plans to publish the final Intervention Area map shortly after the close of the consultation period.

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.

¹⁴ 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 A

NGA Broadband Map – State aid mapping at postcode level



A high resolution version of the map can be emailed upon request via: broadband@cornwall.gov.uk