

PUBLIC CONSULTATION
12th September to 12th October 2016

Superfast Essex – Phase 3

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

1. INTRODUCTION AND BACKGROUND

Essex County Council's Superfast Essex programme is striving to extend the availability of NGA broadband infrastructure in the county to improve the quality of life and work for Essex residents and businesses, as well as meet the Government's target for 95% of the UK to have access to superfast broadband speeds by the end of 2017. In our county we already have plans in place to reach 94% superfast broadband connectivity by 2019.

To reach as many of the remaining areas as possible, Essex County Council intends to procure further coverage of NGA broadband infrastructure (capable of delivering download speeds of at least 30 Mbps) in areas within its programme area where such broadband is currently unavailable by the end of 2019. Geographically, the proposed new Superfast Essex Phase 3 covers the administrative area of Essex County Council, although some further prioritisation will be made within that area as part of the proposed procurement.

Superfast Essex conducted its first Open Market Review (OMR) in October 2012. The OMR indicated that planned commercial coverage for NGA broadband would reach approximately 74% of premises within the next 3 years, and would therefore leave the remaining premises without access to NGA broadband. In August 2013 Essex County Council selected BT to deliver NGA broadband to 65,000 of these unserved premises under Superfast Essex Phase 1.

In the 2013 Spending Review, the Government announced a further allocation of funding under the Broadband Delivery UK (BDUK) Superfast Programme, with the aim of increasing NGA coverage across the UK to at least 95% by the end of 2017. Essex County Council was allocated £10.6 million of potential grant funding from the BDUK Superfast Programme, and ECC working together with a number of Essex district councils raised £6.5m of match funding for this allocation. Following an open procurement and a framework procurement to deliver Phase 2 of the Superfast Essex programme, a contract for Phase 2a at a value of £18.9 million was awarded to BT, and a contract for Phase 2b at a value of £7.5 million was awarded to Gigaclear.

Essex County 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 54,377 premises.

BDUK received approval on 26 May 2016 from the European Commission on its new National Broadband Scheme for the United Kingdom (referred to hereafter as the 2016 NBS). Essex 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, Essex County Council conducted a new OMR between 4th July 2016 and 8th August 2016 to establish existing and planned (within the next 3 years) coverage of broadband infrastructure across the Essex area. This included both commercial coverage by existing and prospective NGA broadband infrastructure providers and coverage procured under Essex County Council's existing contracts with BT and Gigaclear.

Essex County 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 Essex County Council's Ariba procurement portal and through the Superfast Essex website. 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 Superfast Essex's own data sources, has been used to define the proposed intervention area for the forthcoming procurement.

This public consultation sets out the 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 Superfast Essex'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 Superfast Essex website shortly after the close of the consultation period. Where responses to the consultation are received, Superfast Essex will respond to these as necessary 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').¹ 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 (eg 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.²

¹ [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013XC0126\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013XC0126(01)&from=EN)

² <https://www.gov.uk/government/publications/2016-nbs-tech-guidelines>

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 competition³;

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)⁴ 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.

4. PROPOSED INTERVENTION

Using a mixture of premises-level and postcode-level data as received from broadband infrastructure operators, Superfast Essex has mapped areas as white, grey or black at a postcode level, using the following criteria:

For basic broadband,

³ 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).

⁴ 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.

- 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 yellow on the map). These areas 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 through the OMR as being ‘at risk’ of not being completed. These areas will be subject to continued monitoring and verification of supplier plans within the 3 year period by Superfast Essex 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.⁵

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 in terms of NGA White, Grey, Black and ‘Under Review’ premises below.

	Number of Postcodes	Number of Premises
Black	12,523	309,854
Grey	22,722	478,012
Under Review	1,421	15,695
White	7,417	54,377
Total number of postcodes:	44,083	
	Total number of premises:	857,938

⁵ See paragraph 65 of the Commission’s guidelines.

Essex County 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.

Where it is possible, Essex County Council intends to make coverage information available at a premises level 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 premises 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

Essex County Council commenced extensive market engagement and warming in June 2016 and has issued its outline requirements 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.

Essex 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 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. This was also a key objective of the market engagement exercise. When the procurement is launched, the white areas are likely to be sub-divided into a number of lots or areas to promote this. However, Essex 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.

Essex County 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 (<15 Mbps). However, areas with higher speeds may be targeted, subject to the need to provide a 'step change' in broadband capability (as outlined above).

The planned Phase 3 programme will re-invest around £5m in project savings and 'gainshare' funds from Superfast Essex Phases 1 and 2.

Additionally, Essex County Council will draw down a further £2.25m of the DCMS grant allocation (up to) as part of the Phase 3 programme, and local match for this is being provided by Tendring District Council.

In total, public funding of up to £10 million may be committed via the forthcoming procurement.

5. TIMESCALES

This consultation will be open until 12th October 2016

Once the consultation is closed and Essex County Council has finalised the intervention areas, an Invitation to Tender (ITT) will be issued to suppliers via the Ariba procurement portal during October 2016, inviting them to bid for the opportunity to deliver extended NGA broadband coverage. The intention is to award a contract during spring 2017. The related extended deployment plans for broadband infrastructure should begin later in 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 is shown in the Appendix to this document.

The 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). Essex 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' 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 maps are available to all stakeholders on the Superfast Essex website at <http://www.superfastessex.org/postcode> and will also be available via BDUK's website at [BDUK New Procurement Pipeline](#).

7. RESPONDING TO THIS STATE AID CONSULTATION

Essex County Council is requesting information and supporting evidence in relation to basic and NGA broadband infrastructure within the project area and wishes 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, that is the areas shown as 'white' on the NGA broadband map in the Appendix.

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. For this type of response, could residents and businesses please use the response form provided on the ECC website [here](#).

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.

For all submissions from operators, Essex County Council would be grateful if you would [contact Essex County Council](#) to register your intention to submit a response and could include in your submission the following:

- Subject line: Public Consultation
- In the message:
- Your organisation's name (if applicable)
 - Your organisation's address (if applicable)

- Your name
- Position
- Contact telephone number
- Email Address

Please also state if you require the Response Template, and if so Essex County Council will then arrange access to the Response Template (or subset thereof if you are reporting on a specific area).

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

Please note ECC needs to receive your full response no later than 12th October 2016. Please submit this to:

Vicky Leech, Programme Management Officer, Superfast Essex
C/O: make.theconnection@essex.gov.uk (subject: Public Consultation)

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 Superfast Essex team 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.

Essex 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 Superfast Essex intervention area, where this may not be already included within the proposed NGA and Basic broadband intervention area maps shown in the Appendix.

For any current or planned coverage not included within the proposed State aid intervention areas shown on the attached map, Essex County Council is requesting information at premises level (using the template available on request from Essex County Council as published as part of the [Open Market Review](#) on 4th July 2016) to show existing or planned coverage by your broadband infrastructure investment. By 'covered' (or 'passed') Essex 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).

Essex 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)⁶.

9. NEXT STEPS

Following any responses received to this State Aid public consultation by the closing date of 12th October 2016, Essex 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 Invitation to Tender to Suppliers to bid for the opportunity to fulfil a new contract to deliver the extended coverage.

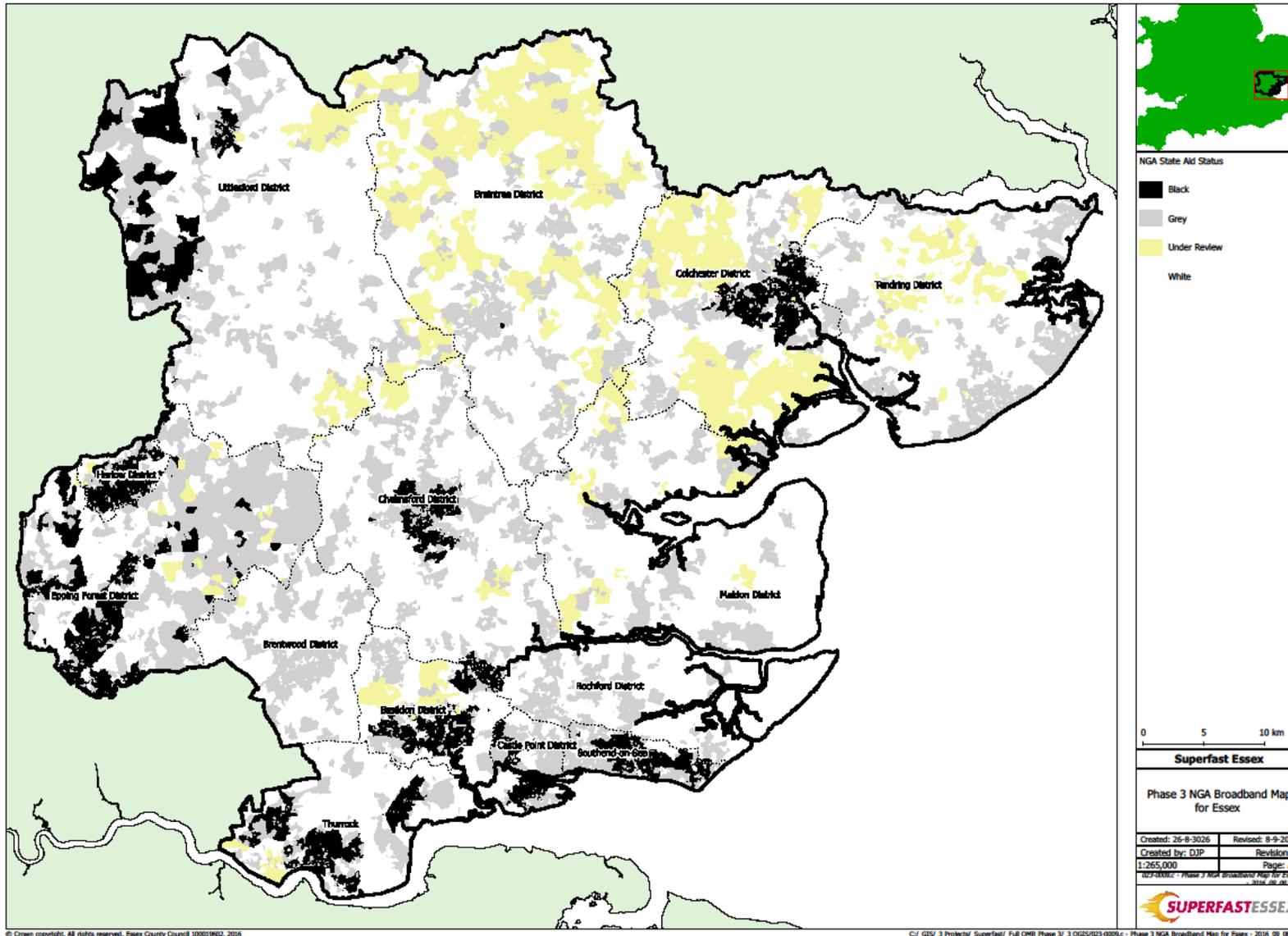
Information about the Superfast Essex programme can be found at:

www.superfastessex.org

⁶ Operators will still be able to request new forms of access to products on the subsidised NGA network infrastructure through the formal general access provisions under the terms of the 2016 NBS.

Annex A – Draft State aid Maps

NGA Broadband (*capable of receiving download speeds of 30Mb/s or more*)



Basic Broadband (capable of receiving download speeds of 2Mb/s or more)

