

FS006915

**FORESHORE LICENCE APPLICATION FOR A SUBSEA FIBRE OPTIC CABLE
TO THE UK WITH LANDFALL AT LOUGHSHINNY CO. DUBLIN**

APPLICANT: CELTIX CONNECT LTD

APPENDIX 1: CLARIFICATIONS REQUESTED AND RECEIVED

Clarifications requested and received as part of the MLVC process

TECHNICAL CLARIFICATIONS

Ownership and Project Importance

A query arose as to the ownership of the Havhingsten cable in March 2021 by the Committee. The Department's understanding of the ownership status of the cable was put to the Applicant for clarification. The Applicant responded in March 2021 with an amendment to the information put to the Applicant for clarification. This amendment was not accepted by the Committee as it did not address the query. Further clarification was sought from the Applicant in April 2021, the below is the ownership and project status as understood and agreed by the Applicant:

The applicant is Celtix Connect Limited who is the operator of the cable. The make-up of the ownership of the cable (i.e. those companies that will be using the connectivity/data transfer services that the cable will offer) are commercially sensitive and the Applicant has requested that it is not included in documentation pertaining to the consenting process. The information was provided in support of the valuation only and, was not included in the application; the Applicant did not expect the information would be used to form part of the decision process. The Applicant stated that the public interest in granting this consent lies in the increased connectivity that this will offer between Ireland, the Isle of Man, the UK, and further connection to Northern Europe, and is independent of which company will be availing of the service.

The Havhingsten project aligns with the Europe 2020 Strategy and the Digital Agenda for Europe (lower prices for electronic communication, better internet connectivity for all, and better protection of consumers in telecommunications). The project is to form part of a resilient dual path network between Dublin and the UK, Denmark, and the USA complementing the existing Aqua Comms infrastructure AEC-1, AEC-2, and CC-1 cables, along with additional new branch of AEC-2 (currently processing through the foreshore application process) between the USA, Denmark and western Ireland. The project will provide a 'carrier neutral' access to north-western Europe and associated networks, which allow interconnection between multiple telecommunication carriers and providers bringing competitive service into regions from the telecoms industry.

The Havhingsten project will support the needs of the web-scale providers that underpin today's international cloud industry. The route will enable connectivity for global carriers, cloud-based networks, data centres, information technology companies, Internet Service Providers (ISPs) and the global media. The provision of fast and reliable internet connection will support Information and Communication Technologies to foster innovation, economic growth and progress.

There is increasing demand for high capacity connectivity linking USA, Ireland, and northern Europe. The Havhingsten project will facilitate this in combination with existing fibre optic routes. Havhingsten

will deliver a reliable and resilient connection to support the rise of the European digital economy. It therefore, will benefit the socio-economy of Ireland and the north European states.

The Havhingsten cable will consist of 48 fibre pairs and each fibre pair will have the capability to increase national bandwidth by up to 30Tb.

UAU Conditions

In May of 2021, the Underwater Archaeological Unit requested to amend the proposed site specific conditions previously forwarded by them. The conditions were forwarded to the applicant for agreement. The Applicant requested an amendment to Condition No. 3, which was put to the Underwater Archaeological Unit. The below is the finalised updated UAU Conditions, which will be included in the overall list of Site Specific Conditions.

1. An exclusion zone of at least 100 m should be established around the furthest known extent of known wrecks located along the proposed cable route and any potential wreck sites discovered during the proposed marine surveys and development works. A chart showing the location of all exclusion zones in relation to the proposed cable route should be forwarded to the National Monuments Service prior to the cable laying works proceeding.
2. In order to ensure the preservation of potential archaeological sites, wrecks and features the applicant is required to engage the services of a suitably qualified underwater archaeologist to monitor all disturbance works associated (both on the foreshore and on board the cable laying vessels) with the development including beach preparation works and Foreshore works at the landfall, pre-lay grapnel run operations, cable burial operations and post lay inspection and burial works. The archaeological monitoring shall be licensed under the national Monuments Acts 1930-2004.
3. A detailed method statement shall accompany the licence application for archaeological monitoring and shall include details on the proposed works, duration of works, archaeological monitoring team proposed and a find's retrieval strategy.
4. Should archaeological material be found during the course of monitoring, the archaeologist shall have the work in that area suspended, pending a decision as to how best to resolve the archaeology. The applicant shall be prepared to be advised by the Underwater Archaeology Unit (UAU) within the Department of Housing Local Government and Heritage with regard to any necessary action (e.g. avoidance, preservation in situ or excavation). The Applicants shall facilitate the archaeologist in recording any material found.
5. The Underwater Archaeology Unit within The Department of Housing Local Government and Heritage shall be furnished with a report describing the results of the monitoring.
6. An archaeological dive team should be put on standby during the cable laying operations in the event that archaeological material is discovered during these works. A dive/survey licence as issued by the Minister for Housing Local Government and Heritage should be obtained by the archaeological dive team leader 3 weeks in advance of the works proceeding.

***Letter of Support from Department of Environment, Communication and Climate Action (DECC)
29/03/2021***

The Telecommunications Policy and Regulation Division (TPRD) and the Chief Technical Office (CTO) at the Department of the Environment, Climate and Communications (DECC), have reviewed the application and note the following:

DECC understands that the proposed Havhingsten Telecommunication Cable will link Ireland, the Isle of Man, the UK and Denmark, connecting to data centres within each jurisdiction and allowing for access to telecommunication companies and internet service providers. When fully operational, the cable will improve data speeds, and will aim to provide high quality access to international telecommunications networks - a key driver in social, economic and industrial growth and in the development of regions and of the Irish State as a whole.

Currently, there are ten operational subsea telecommunications cables that connect Ireland to the UK. Whilst DECC understands that there is likely sufficient capacity and diversity of telecommunications cables routes between Ireland and the UK to meet demand for at least the next 10 years, we are aware, based on key findings that emerged from a recent Public Consultation on International Connectivity¹ carried out by the Department, that half of such cables are close to the end of their design lives (typically 20-25 years), and thus will likely be decommissioned in the near future. Therefore, it is essential that new Ireland/ UK cables continue to be installed, and existing cables replaced, in order to meet current and future capacity demand.

As stated in the Telecommunications Chapter of the forthcoming National Marine Planning Framework, guaranteeing existing and future international telecommunications connectivity is critically important to support the future needs of society and enterprise in Ireland. The value of the digital economy in Ireland is estimated at €12.3bn or 6% of GDP and is expected to grow significantly over the coming years. In an increasingly interconnected world, continued investment in sustainable telecommunications connectivity will be critical to ensuring that Ireland can address digital related challenges, enabling citizens to participate and benefit fully from a more integrated digital single market, improving skills, reducing the digital divide, fostering and strengthening innovation and providing better job opportunities.

In addition, arising from developments at European level, including an initiative led by the Portuguese presidency - the “European Data-Gateway Platforms Strategy” as part of “Shaping Europe’s Digital Future” - there is an increased ambition to further strengthen the international connectivity of the EU including in respect of telecommunications subsea telecommunications connectivity. This ambition stems from a desire to improve the conditions for the EU to develop into a world-class data hub by strengthening the EU’s internal and external communication capacity and thereby to protecting its interests, whilst promoting its values. Ireland supports the principle of boosting the

¹ Public Consultation on International Connectivity: <https://www.gov.ie/en/consultation/79568-public-consultation-on-international-connectivity-for-telecommunications/>.

telecommunications subsea connectivity of the EU as a whole and also Ireland's telecommunications subsea connectivity, and will be advocating at European and national level for a pro-investment approach to be taken to encourage the development of high capacity telecommunications networks, including subsea telecommunications cabling interconnectivity within the EU, including Ireland, and between the EU and third countries.

This has gained further momentum with the recent publication in March 2021 by the European Commission of a Communication entitled '2030 Digital Compass: The European way for the Digital Decade' which sets a vision, targets and avenues for a successful digital transformation of Europe by 2030 and setting the tone and ambitions for the next decade. Under one of four headings to be used as a focus to deliver on the initiative, that of ensuring secure, performant and sustainable digital infrastructures, the Communication views Europe's digital leadership and global competitiveness as dependent on strong internal and external connectivity and to inform outreach and international engagement, particularly in light of the emergence of data gateways around the EU's periphery. In that regard, the Commission highlights the importance of improving connectivity not only within the EU but also with external partners including via terrestrial and subsea cables, with a stated intention to increase the number of digital alliances and partnerships with a connectivity component.

Furthermore, at Digital Day 2021 on the 19th March, Minister Ryan signed the Declaration on "European Data Gateways as a key element of the EU's Digital Decade." In doing so, Ireland joined 24 EU Member States, as well as Iceland and Norway, in committing to reinforcing digital connectivity between Europe and its global partners including in Africa, Asia, the European neighbourhood, the Western Balkans and Latin America.

It is in the context of the above that DECC supports increased capacity between Ireland and the UK and internationally to meet the demand for digital and data services into the future, as well as increased diversity in telecommunications cables routes to ensure network resilience and to safeguard international connectivity in the event of a route failure. DECC notes the proposed Havhingsten cable development, which will span 940km of cable and enable high-capacity connectivity for global carriers, cloud-based networks, data centres, information technology (IT) and the global media. Accordingly, DECC would strongly welcome this planned investment in new infrastructure that will enhance Ireland's international connectivity, and considers it to be in line with this Department's policy position in relation to encouraging high capacity telecommunications connectivity between Ireland and the UK, between Ireland and mainland Europe, and in respect of other global connectivity for Ireland.

Furthermore, DECC would be supportive of any projects/ proposals which are broadly in line with the policies laid out in the Telecommunications chapter of the National Marine Planning Framework (NMPF). In conclusion, it is this Department's view that the proposed project aligns with Government Policy in this instance.

Principal Officer at the Telecommunications Policy and Regulation Division
Department of the Environment, Climate and Communications

***Letter from Fingal County Council – In response to consultation period
09/04/2021***

The two consultation periods, 21/08/2019 and 29/01/2020, have been reviewed. The comments of FCC in this regard are restricted to those planning matters which relate to the functional area of the Local Authority.

Relevant Planning History

F19A/0169 / ABP – 306677-20: Permission granted on appeal for the development of a single storey cable landing station, together with associated cabling, plant and ancillary works, enclosed within a palisade fenced compound.

It is noted that the planning inspectors report for An Bord Pleanála was dated 20th June 2020. The Direction of An Bord Pleanála was dated 27th July 2020.

Submissions

The submissions contained in the review document relate to-

1. Water Marine Advisor
2. Marine Institute
3. Marine Survey Office
4. Department of Agriculture, Food and the Marine
5. Department of Culture, Heritage and the Gaeltacht
6. Inland Fisheries Ireland
7. Sea Fisheries Protection Authority

Having reviewed the submissions, recommendations and conditions contained in the above for both periods of consultation, FCC have no further comments.

Public Submissions outside of 1-7 referenced above raise issues regarding impact on the beach, water quality, disturbance of roads, impact on harbour development, consultations, planning for the cable landing station, impact on tourism, assessment of the project in entirety, and impact on fishing.

It is noted that the Department of Housing, Planning and Local Government is the competent authority for the purpose of screening the project requiring a foreshore license of AA and EIA.

Within the submissions, reference is made to a number of planning applications. Specific reference is made to submissions/observations made under Article 29 of the Planning and Development Regulations 2001 (as amended) relating to reg. ref. F19A/0169. This development was applied for and refused planning permission by Fingal County Council under F19A/0169.

The development was refused for the following reasons:

1. Based on the information contained in the Appropriate Assessment Screening report (as revised), specifically the absence of information relating to the in-combination effects of the entire project, and the potential connectivity between the drainage ditch on the subject site and watercourses in the wider area and the absence of an assessment of any potential links between this drainage ditch and European sites, the Planning Authority is not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of nearby European sites. In such circumstances the Planning Authority are precluded from granting planning permission.
2. Objective NH15 of the Fingal Development Plan 2017-2023 states 'strictly protect areas designated or proposed to be designated as Natura 2000 sites (i.e. Special Areas of Conservation (SACs) and Special Protection Areas (SPAs); also known as European sites) including any areas that may be proposed for designation or designated during the period of this Plan'. Having regard to the deficiencies in the Appropriate Assessment Screening Statement submitted as additional information, it has not been satisfactorily demonstrated that the proposed development would not result in significant adverse impacts on Natura 2000 sites. The proposed development would contravene materially Objective NH15 of the Fingal Development Plan 2017-2023 and would be contrary to the proper planning and sustainable development of the area.

This decision was subject to a first party appeal to An Bord Pleanála under Reg. Ref. PL06F.306677. The Board granted planning permission for the development. As set out under Section 37(b) of the Planning and Development Act 2000, appealing the planning authority's decision results in An Bord Pleanála determining the application as if it had been made to it in the first instance and the decision of the Board shall operate to annul the decision of the planning authority as from the time when it was given.

In determining the planning application under ABP 306677-20, An Bord Pleanála undertook an Appropriate Assessment Screening of that planning application, having regard to the reasons for refusal of Reg. Ref. F19A/0169 and the observations made regarding the application.

Sections 7.5.2 – 7.6.2 of the Planning Inspector's report clearly assess issues regarding in-combination effect, and states 'permitting this development would not increase any impact arising from the installation of the subsea cable'. These conclusions were accepted and referenced in the completion of the screening for appropriate assessment undertaken by the Board. Therefore in granting permission for the development under ABP 306677-20, An Bord Pleanála have considered the issues raised within submissions regarding the planning process for the development at the cable landing station.

ENVIRONMENTAL CLARIFICATIONS

The 'Habitats Directive Assessment Review' document prepared by MERC Consultants and the Applicant's responses to MERC's comments requesting further clarities as part of the screening for stage 1 appropriate assessment of this application is below. The Departments Marine Advisor Yvonne Leahy has reviewed MERC's queries and the applicant's responses and has updated the table review grade accordingly.

Habitats Directive Assessment Review			
Document Title	Stage 1 Screening for Appropriate Assessment: Havhingsten fibre-optic telecommunication cable landing at Loughshinny, Co. Dublin Document Number: P228_R4694_Rev5. December 2019 <i>Hereafter referred to as Screening report-P228_R4694_Rev5</i> and following clarification from the Applicant on a number of points.		
Foreshore application reference	FS006915 Celtix Connect – Havhingsten Telecommunication Cable, Dublin		
Review criteria	Review	Comments	Intertek Response
1. Features of the project or plan			
Provides details of the physical changes that will take place during the	A	The likely physical changes that will take place during construction and the operational phase (including potential repair and maintenance activities) are sufficiently detailed in the screening report- P228_R4694_Rev5 and associated Appendix H of the Irish Planning Report P228_R4731_Rev022 May 2019).	Noted
Describes the timescales for the various activities that will take place	A	The timing of the various activities is documented in the screening report- P228_R4694_Rev5. However, the original timeframe on which this report was based has now lapsed. While the year in which the proposed activities are proposed is considered irrelevant, section 3 of this document states that the likely time of works is quarter 4 (October to December) of 2019. Section 5 further states that the prevailing weather	The installation programme of the cable is dependent on the granting of a Foreshore Licence which has been delayed, therefore indicative programme dates in the initial application have now passed. The current indicative installation programme is dependent on the timing of the issue of a Foreshore Licence, and possible effects of Covid-19, however current estimates for installation are from Quarter 1 (Q1) 2021. For the reason specified in the Prescribed Bodies Observation Responses for Celtix Connect (Havhingsten)

		<p>conditions may dictate when surveys take place and this could be during the spring.</p> <p>Clarification on the timing of the project is required so that all temporal effects can be adequately assessed.</p>	<p>FS006915 (dated 03/06/2020), the cable will not be installed between 1st May and 30th September, within territorial waters.</p>
<p>Describes any wastes arising, or other residues (including quantities), and their means of disposal</p>	A	<p>Table 5-2 of the screening report-P228_R4694_Rev5 states:</p> <p><i>“Unplanned events (accidental oil or chemical spills) have been scoped out of the screening assessment for the following reasons:</i></p> <p><i>The likelihood of a large oil spill occurring from a project vessel is extremely low and the risk is no greater than that for any other vessel in the region.</i></p> <p><i>All project vessels will have control measures and shipboard oil pollution emergency plans (SOPEP) in place and will adhere to MARPOL Annex I requirements.</i></p> <p><i>A Construction Environmental Management Plan (CEMP) and an Emergency Spill Response Plan will be developed and implemented. Execution of these plans will ensure that the risks associated with an unplanned event will be effectively managed in line with relevant international and national statute”</i></p> <p><i>The European Court of Justice (ECJ) has determined that mitigation cannot be taken into account when screening a project under the Habitats Regulations. The ECJ ruled that if a project is likely to have a significant adverse effect on a European site, it should be subject to an appropriate assessment, regardless of any proposed mitigation measures intended to avoid or reduce the identified harmful</i></p>	<p><u>Case C- 323/17, People over Wind v Coillte</u>, concerned measures proposed by Coillte which were expressly intended to avoid or reduce the wind farm project’s harmful effects on the qualifying interests of a European site. The CJEU held</p> <p><i>“Taking account of such measures at the screening stage would be liable to compromise the practical effect of the Habitats Directive in general, and the assessment stage in particular, as the latter stage would be deprived of its purpose and there would be a risk of circumvention of that stage, which constitutes, however, an essential safeguard provided for by the directive.”</i> (emphasis added).</p> <p><u>The prohibition on taking account of measures at screening stage refers to measures intended to avoid or reduce the effects of the project on the site concerned.</u></p> <p>The fact that certain measures are proposed does not “imply the need for mitigation”, for the following reasons:</p> <p>As per Simons J in <i>Heather Hill</i> case² <i>“There is an obvious temptation in cases where a detailed construction methodology has been offered by a developer and/or imposed</i></p>

² Heather Hill Management Company CLG & Anor v An Bord Pleanála & Anor

		<p><i>effects of the development. The ECJ reasoned this decision by stating that the very fact that mitigation measures are required in the first place means that there must be a likely significant effect on the site and Article 6(3) requires appropriate assessment where a project is likely to have a significant effect.</i></p> <p><i>If a measure is being introduced to avoid or reduce an effect on a European site, then it can be viewed as mitigation.</i></p> <p><i>The statement that there is a need for a CEMP is considered to imply the need for mitigation. Furthermore, no information is provided on who will develop a CEMP or now it will be managed and implemented. If oil spills are considered a risk, they should be mitigated for in a Natura Impact Statement.</i></p> <p><i>Therefore, further information is required from the applicant to address whether the CEMP outlined is integral to the project or whether it is a measure introduced to avoid harm?</i></p>	<p><i>by way of planning condition to pre-suppose that these measures were required precisely because the proposed development would be likely to have a significant effect in their absence. This temptation should be resisted. It is not legitimate to work backwards from the existence of measures and to assume therefrom that “but for” these measures the proposed development would have been likely to have had a significant effect. The emphasis must always be on the intended purpose of the measures.”</i></p> <p><u>As per McDonald J in Sweetman³ v An Bord Pleanála and IGP Solar:</u></p> <p><i>“89. Taking the decision of the CJEU in People over Wind together with the judgments in Kelly, Heather Hill and Uí Mhuirín, it is possible to summarise the relevant principles as follows:-</i></p> <p><i>(a) In carrying out a screening exercise, the precautionary principle must be applied;</i></p> <p><i>(b) A stage 2 appropriate assessment must be carried out if, on a screening exercise, it is not possible to exclude the risk that a proposed development will have a significant effect on a Natura site;</i></p> <p><i>(c) The appropriate time to consider measures capable of avoiding or reducing any significant effects on the site concerned is at the stage 2 appropriate assessment when a comprehensive analysis of those measures can be carried out and a determination reached as to whether they will or will not be effective;</i></p>
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³ Sweetman v An Bord Pleanála and IGP Solar [2020] IEHC 39

			<p><i>(d) Taking account of such measures at the screening stage is liable to undermine the protections afforded by the Habitats Directive. To take account of the measures at the screening stage runs the risk of circumventing the stage 2 assessment which constitutes an essential safeguard under the Habitats Directive;</i></p> <p><i>(e) It is accordingly impermissible, at the screening stage, to take account of measures intended to avoid or reduce the harmful effects of a proposed development;</i></p> <p><i>(f) The question of the intention underlying the measures in question is to be assessed objectively. Thus, the language used in any document generated in the course of the screening exercise is not determinative;</i></p> <p><i>(g) On the other hand, there may be cases where, having regard to the language used by the competent authority (or in some document relied upon by the competent authority) it is obvious that the measures in issue were designed to avoid and reduce any impact on the relevant site. As Simons J. observed in Heather Hill, this is what happened in People over Wind where the measures concerned were expressly described as “protective” with reference to the relevant site;</i></p> <p><i>(h) On the other side of the coin, there may be cases where it is clear that the measures in question were adopted not for the purpose of avoiding or reducing the potential impact on the relevant site but were adopted solely and exclusively for some other purpose. This is exemplified in the decision of Barniville J.</i></p>
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			<p><i>in Kelly where the relevant measures were found, as a matter of fact, to be a standard component in virtually all projects; they were not in any way directed to the protection of any Natura site.</i></p> <p><i>(i) On the other hand, the fact that one of the purposes of the measures in question may have no connection with a Natura site does not exclude the possibility that there may be more than one purpose for the measures. In cases where such an unconnected purpose is identified, it is therefore necessary to consider whether, as a matter of fact, the measures were also intended to avoid or reduce the impact of the development on the Natura site.</i></p> <p><i>(j) That said, it is not legitimate to work backwards from the existence of measures and to assume from their existence that the proposed development must be likely, in the absence of such measures, to have a significant effect on the relevant site. As Simons J. observed in Heather Hill, any such temptation to take that course must be resisted;</i></p> <p><i>(k) In considering whether measures fall foul of the People over Wind principle, it is not usually helpful to consider whether the measure is “integral” to the project or is something “additional”. This is because it may be difficult in practice to draw a meaningful distinction between the two. A developer may well anticipate the need for particular mitigation measures and arrange for those to be “built in” to the project.</i></p>
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			<p><i>(I) In each case, it is essential to analyse the measures in question in the context of the screening exercise carried out by the competent authority (and any documents relevant to that exercise) and to determine, on an entirely objective basis, whether the measures can be said to have been intended to avoid or reduce harmful effects on a Natura site or whether the measures were designed solely for some other purpose.”⁴</i></p> <p><u>SOPEP</u></p> <p>It is a legal requirement under MARPOL (regulation 26) that “... every ship other than an oil tanker of 400 tons gross tonnage and above shall carry on board a shipboard oil pollution emergency plan approved by the Administration”. The sole purpose of referring to SOPEP is to demonstrate compliance with this binding legal requirement applicable to all vessels of the scale proposed for this project.</p> <p><u>Emergency Spill Response Plan</u></p> <p>It is a legal requirement under the Sea Pollution (Amendment) Act 1999, as amended, (section 2(3B)) that “The owner or master of a relevant Irish ship shall, as soon as possible after the commencement of this subsection, prepare and submit to the Minister a plan for the prevention and minimisation of damage arising out of an oil pollution incident and a plan for the prevention and minimisation of damage arising out of a pollution incident by hazardous and noxious substances occurring on such ship.” The sole purpose of referring to the Emergency Spill Response Plan is to demonstrate compliance</p>
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⁴ The above principles were further endorsed by the Court in *Highlands v An Bord Pleanála and others* [2020] IEHC 622, delivered 2 December 2020

			<p><i>with this binding legal requirement applicable to all vessels of the scale proposed for this project.</i></p> <p><i>All vessels must be MARPOL/Sea Pollution Act compliant in order to be certified by the Maritime Safety Directorate/Marine Survey Office to operate in Irish Waters. MARPOL is an international convention applicable to all waters, not just those within the European jurisdiction.⁵ The sole purpose of referring to MARPOL is to demonstrate compliance with this binding legal requirement applicable to all vessels of the scale proposed for this project.</i></p> <p><u>CEMP</u></p> <p>It is the legal duty of every employer to ensure, so far as is reasonably practicable, the safety, health and welfare of employees at their place of work, where the place of work includes a 'vessel' the definition of which mirrors the definition of a 'ship' under MARPOL. In Ireland, these requirements apply under the framework of the Safety Health and Welfare at Work Act 2005, and under equivalent legislation in the UK.</p> <p>The principal Act and their numerous implementing Regulations, which apply to specific classes of activity, set out mandatory obligations to ensure a safe place of work, training and information to employees on safe systems and measures to avoid risks to human health and the environment in which they operate. The 'General Principles of Prevention' are set out in the Schedule to the Act.</p>
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⁵ Definition of 'ship' in article 2(4) of MARPOL "*a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms*".

			<p>Like all employers involved in construction and installation projects, ASN (the contracted cable installation company) is required to prepare and document plans and procedures to ensure that cable installation and vessel operations are conducted in compliance with law and with best practice in relation to matters regulated by the HSA (in Ireland) and HSE (UK).</p> <p>A CEMP is prepared for all ASN vessels, operations and projects, and for this project it has been prepared solely for the safety and welfare of personnel and for the purpose of demonstrating and documenting compliance with law.</p> <p><u>Conclusions</u></p> <p>For the avoidance of doubt, the SOPEP, Emergency Spill Response Plan, and the CEMP, are not proposed and are not necessary for the purpose of avoiding or reducing any harm to or significant effect on a European site. No harm or significant effect on a European site is predicted.</p> <p>The statement that there is a need for a CEMP does not imply the need for mitigation related to any European site. The CEMP is one of the means by which ASN ensures the safety and welfare of ASN employees and others, and demonstrates compliance with law. The sole purpose of the CEMP is to comply with law.</p>
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			ASN, the cable installation contractor, will develop and implement a CEMP for the cable installation, in accordance with ASN's internal HSE/HSA compliance procedures. As noted above, the likelihood of oil or chemical spills is considered extremely low to negligible
Identifies any wastes and other residues (including quantities) that may be of particular concern in the context of the Natura 2000 site	A	No information is provided in the screening report-P2228_R4694_Rev5 to indicate that any waste will be generated by the proposed project which would be of particular concern in the context of the Natura 2000 site. However, given the scope of the project and nature of the works required, it is not considered possible for waste generation to be a significant factor.	Noted, waste will not be generated.
Additional criteria as required	-	N/A	N/A
Overall grade, Section 1	A	Following clarification the information provided is now complete; there are no omissions, and the conclusions drawn can be reasonably and objectively accepted.	See above
2. Cumulative effects			
Defines the timescales over which cumulative effects have been considered	A	<p>A temporal overlap assessment was carried out to aid in the identification of cumulative effects. However, as documented under "1. Features of the project or plan" above, the original timeframe on which this report was based has now lapsed and there is uncertainty as to the time of year in which the project will take place.</p> <p>Section 3 of the screening report-P2228_R4694_Rev5 states that the likely time of works is quarter 4 (October to December), section 5 further states "The cable installation operations are planned to commence from November</p>	<p>The current indicative installation programme is dependent on the timing of the issue of a Foreshore Licence, and possible effects of Covid-19, however current estimates for installation are from Quarter 1 (Q1) 2021. For the reason specified in the Prescribed Bodies Observation Responses for Celtix Connect (Havhingsten) FS006915 (dated 03/06/2020), the cable will not be installed between 1st May and 30th September, within territorial waters.</p> <p>Ultimately it will be for the Minister to determine, as at the date of the decision and based on the information in the possession of the Minister in relation to other applications,</p>

		<p>2019, however if significant weather occurs it is possible that the works could be postponed until spring 2020.”</p> <p>For this reason, clarity as to the proposed time of year, to include how this now relates to other projects and plans is required.</p> <p>It is recognised that it is not possible for the applicant to ascertain when other projects may commence. However, this element should be assessed, at a minimum, relative to the time of year in which the project is likely to take place.</p>	<p>the extent to which there may be overlap with other plans or projects.</p> <p>In addition to the plans and projects identified in the foreshore licence application, a further project has been submitted to the Marine Planning Policy and Development Section that has the potential to occur within/in vicinity of the application corridor; the Statkraft North Irish Sea Array (NISA) Site Investigations (FS007031). This application was submitted to the Marine Planning Policy and Development Section for public consultation on Tuesday 14th February 2020 and consists of a series of surveys (geophysical, geotechnical, deployment of metocean devices, floating Lidars survey, ecological and archaeological surveys). The NISA survey area overlaps spatially with the Celtix Connect installation route for approximately 10km.</p> <p>However, with the NISA surveys proposed to be carried out possibly in Summer 2021, there will not be a temporal overlap between the two projects as the Celtix Connect project will not be carried out in Irish territorial waters between 1st May and 30th September, for the reasons stated in the response to public bodies.</p> <p>Further, it is considered more likely that installation activities for the Celtix Connect cable will occur prior to the proposed NISA survey. Once approved, the Celtix Connect installation will be completed within a short timescale within Irish territorial waters.</p>
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			<p>In addition, of the Plans/Projects identified in the original report, reviewing the available data sources online indicates that SSE Renewables Braymore Point surveys works have not yet been granted a Foreshore Licence and therefore not yet taken place.</p> <p>The current plan for installation works for the Celtix Connect cable has the works being completed prior to 01 May 2021 (subject to license grant). The SSE surveys are projected to take place between April – October up to five years after being granted a licence. In the event that there is a delay in the Celtix Connect installation project, there still exists the potential for a spatial and temporal overlap between the survey works and the installation activities for this project.</p> <p>However, as detailed in P2228_R4694_Rev4 - Stage 1 Screening for Appropriate Assessment (AA), any potential cumulative visual disturbance effects were assessed to be Not Significant. Visual disturbance effects were the only cumulative effects considered likely.</p> <p>The remaining identified Plans/Projects have completed their works since the writing of the Planning Report (notably Deep-Sea Fibre Networks cable installation and the East-West Interconnector surveys) or in the case of the Greenlink project, have not progressed any further. Therefore, there are no additional cumulative effects that have not been considered due to the delays in the Celtix Connect project.</p>
Additional criteria as required	-	N/A	N/A

Overall grade, Section 2	A	Following clarification the information provided is now complete; there are no omissions, and the conclusions drawn can be reasonably and objectively accepted.	See above
3. Description of the Natura 2000 site/s			
Explains any planned or contemplated nature conservation initiatives likely to affect the site in the future	-	N/A	N/A
Explains the existing baseline conditions – including species and habitat dynamics and ecology (including seasonal fluctuations), the physical and chemical composition and the key structural and functional relationships that maintain the site's integrity	A	<p>The proposed project is not within any European site but a number of European sites, and mobile species connected to European sites, are documented as being within the zone of influence of the proposed project. It is noted that section 4.5.3. of the screening report- P2228_R4694_Rev5 states "There are no SACs with bottlenose dolphin as their designated feature within Irish Waters". This is not correct. Bottlenose dolphin are a qualifying interest for the Lower River Shannon SAC and West Connacht Coast SAC. However, the closest site to the proposed project which is designated for Bottlenose dolphin is the Cardigan Bay/Bae Ceredigion SAC is identified. It is therefore considered that relative to the scale and scope of the project the fact the west coast SACs were not identified is not a material fact.</p> <p>The screening report-P2228_R4694_Rev5 describes the baseline conditions of those sites "screened in". European sites and their associated species, where a pathway was identified, and "screened in" were described in terms of their potential for adverse effects relative to the site's conservation objectives. While further data is available on</p>	<p>For clarity, the project passes through two Natura 2000 sites as highlighted in the Screening for Appropriate Assessment: Rockabill SPA and Rockabill to Dalkey Island SAC. The current indicative installation programme is dependent on the timing of the issue of a Foreshore Licence and possible effects of Covid-19. However current estimates for installation are from Quarter 1 (Q1) 2021. For the reason specified in the Prescribed Bodies Observation Responses for Celtix Connect (Havhingsten) FS006915 (dated 03/06/2020), the cable will not be installed between 1st May and 30th September, within territorial waters.</p> <p>Specifically, during consultation on the foreshore licence application and supporting planning report, Fingal County Council raised concerns about any potential disturbance to amenity at Loughshinny beach and harbour if installation were to occur at the landfall during the peak Summer holiday period, due to it being a lifeguarded, high value, amenity beach with lifeboat services. This same concern was also raised in the response to the initial consultation period by the Water and Marine Adviser for the Department of Housing,</p>

		<p>the baseline conditions of these sites (e.g. site synopsis and conservation objectives supporting documents), the scope of the assessment of the baseline conditions is considered appropriate relative to the scale and scope of the proposed project.</p> <p>The screening report-P2228_R4694_Rev5 states “The cable installation operations are planned to commence from November 2019, however if significant weather occurs it is possible that the works could be postponed until spring 2020 in the worst case; therefore, it is possible that breeding and nesting birds, as well as loafing birds offshore, may be present and disturbed by the presence of the installation or maintenance vessels close to the coast”.</p> <p>This statement recognises the likelihood of disturbance to breeding and nesting birds. Roseate tern is present in internationally important and the focus of intense conservation measures on Rockabill island and occurs within the Zone of Influence of the proposed project.</p> <p>While we concur with the screening assessment determination that there will be “no likely significant effect” to this species, further c to this species, further certainty relative to impacts on a species of international importance is required. It is our opinion that the period of May to mid- August should be avoided to ensure no impacts on breeding birds which may be using the site.</p>	<p>Planning and Local Government (now referred to as the Department of Housing, Local Government and Heritage). As stated in their closing comments and recommendations in Section 2.5 of the Prescribed Bodies Observation Responses for Celtix Connect (Havhingsten) FS006915 (P2228E1_R5064_Rev0):</p> <p><i>‘Appropriate health and safety procedures should be adopted to protect the public users of this beach (Loughshinny) especially in view of its popularity during the summer months as a bathing area by the provision of appropriate signage/notices. <u>it is recommended that any nearshore/landfall operations on the beach between HW and Low Water should not be undertaken during the bathing season so should be undertaken between the months of October and May.</u>’</i> (emphasis added)</p> <p>For this reason, the cable will not be installed between 1st May – 30th September, to address the requirements of Fingal Co Council and the Department of Housing, Local Government and Heritage that there shall be no disturbance to local amenity use of the beach. It is anticipated that a special condition would be attached to any licence, restricting installation between 1st May – 30th September to ensure no impact on local amenity use of the beach as recommended by the Water and Marine Advisor. In this regard, it is submitted that there is no need to attach an additional superfluous condition requiring the period of May to mid-August to be avoided, as suggested by MERC.</p>
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	<p>The screening report-P2228_R4694_Rev5 states “The cable landing site at Loughshinny provides a sheltered intertidal feeding resource for overwintering seabirds and foraging tern species during the breeding season (which takes place during the summer months) in addition to habitat provided within the SPAs designated in the region”.</p> <p>Dalkey Island SPA is designated for Roseate, Common and Artic Tern species. The site, along with other parts of south Dublin Bay, is used by the three tern species as a major post-breeding/pre-migration autumn roost area. The site is linked to another important post-breeding/pre-migration autumn tern roost area in Dublin Bay. Birds are present from about late-July to September, with c. 2,000 terns, comprising individuals of all three species, recorded in 1998. The origin of the birds is likely to be the Dublin breeding sites (Rockabill and Dublin Docks) though the numbers recorded suggests that birds from other sites, perhaps outside the State, are also present (NPWS, 2015)¹. A number of SPAs within a 30km range of the proposed project site have not been listed. It is noted in the screening for appropriate assessment that no species (other than turnstone and sanderling) present at the site are at or above nationally important numbers. However, the assessment fails to consider these additional sites adequately. As stated in the screening for appropriate assessment “Overwintering migratory waterfowl are <i>unlikely to be foraging with the offshore marine cable corridor (preferring intertidal areas for foraging)</i>. <i>Low tide bird count data for Loughshinny landing site indicate the</i></p>	<p>With respect to the comment that “<i>no clear assessment of the potential for adverse effects on bird species connected to adjacent SPAs which may be using the intertidal area is provided</i>”, further information regarding the screening of sites within 30km and reasoning for species from other SPAs not being assessed for LSE are detailed in Section 2.9 of the Public Observation Response document (P2228E1_R5068_Rev0, dated 16/06/2020).</p> <p>For clarity, there are 14 SPAs within 30km of the marine cable corridor:</p> <ul style="list-style-type: none"> • Rockabill SPA • Skerries Islands SPA • Rogerstown Estuary SPA • Lambay Island SPA • Broadmeadow/Swords Estuary SPA • Baldoyle Bay SPA • Ireland's Eye SPA • River Nanny Estuary and Shore SPA • Howth Head Coast SPA • North Bull Island SPA • South Dublin Bay and River Tolka Estuary SPA • Boyne Estuary SPA • River Boyne and River Blackwater SPA <p>The following Special Conservation Interests were screened:</p> <ul style="list-style-type: none"> • Purple sandpiper • Common tern • Arctic tern • Roseate tern • Light-bellied Brent goose
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			<ul style="list-style-type: none"> • Little tern • Kingfisher <p>A Likely Significant Effect on all of the SPAs and their conservation interests can be excluded due to the temporary nature and limited scope of the proposed activities, and the localised nature of the pressures.</p> <p>The statement that “<i>the intertidal area provides a sheltered intertidal feeding resource for overwintering seabirds and foraging tern species during the breeding season</i>”, is factually correct, however the I-Webs data shows the landfall site is not of high importance with low numbers of overwintering seabirds feeding in the intertidal area concerned. The I-Webs data demonstrates that the landfall site is not important for species from adjacent SPAs even if it is within their foraging range.</p> <p>The I-Webs data used in the Screening Report is based on the I-Webs subsite Loughshinny Bay - Rush North Beach (0U995). This subsite is part of the larger site of Skerries Coast (0U904). It was referenced in the Screening Report as either I-Webs 2019 or Birdwatch Ireland 2019. The I-Webs data was purchased from Birdwatch Ireland under licence, which has specific publication restrictions. It can therefore not be provided in raw format as part of the Foreshore License application.</p>
Provides details of the value of the site to the Natura 2000 network (e.g. 15 % of population in the Member State)	A	N/A. The project is not located within a Natura 2000 site. Stating the value of the Natura 2000 sites considered to be within the zone of influence of the proposed project is not considered relevant in the context of the proposed project.	The project crosses two Natura 2000 sites; Rockabill SPA and Rockabill to Dalkey Island SAC. The quality and importance of the sites as stated in the Natura 2000 – Standard Data Form for each site is as follows:

			<p>Rockabill SPA – <i>“Rockabill is an internationally important tern colony and the most important in Ireland. It supports the largest colony of <i>Sterna dougallii</i> in Ireland (c.88% of national total) and in north-west Europe, plus the largest colony of <i>Sterna hirundo</i> in the country (c.35% of national total) and a significant colony of <i>Sterna paradisaea</i>. Since 1989, the site has been wardened each breeding season. With management for the benefit of the terns, numbers of all three species have steadily increased. Detailed research is carried out, including studies on breeding behaviour, productivity and feeding. A ringing programme has been in operation since the 1980s and this has produced important information on the movement of the birds in an international context. Rockabill also supports a nationally important population of <i>Cephus grylle</i> and a small colony of <i>Rissa tridactyla</i>. The site is a known location for the observation of bird migration. Owing to its importance, Rockabill is a designated Refuge for Fauna.”</i></p> <p>https://www.npws.ie/sites/default/files/protected-sites/natura2000/NF004014.pdf</p> <p>Rockabill to Dalkey Island SAC – <i>“The area selected for designation represents a key habitat for the Annex II species - harbour porpoise, within the Irish Sea. Population survey data show that porpoise occurrence within the site boundary meets suitable reference values for other designated sites in Ireland. The species occurs year-round within the site and comparatively high group sizes have been recorded. Porpoises with young (i.e. calves) are observed at favourable, typical reference values for the species. Casual and effort-related sighting rates from coastal observation stations are significant</i></p>
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			<p><i>for the east coast of Ireland and the latter appear to be relatively stable across all seasons. The selected site contains a wide array of habitats believed to be important for harbour porpoise including inshore shallow sand and mud-banks and rocky reefs scoured by strong current flow. The site also contains two Annex II seal species – Harbour seal (<i>Phoca vitulina vitulina</i>), Grey seal (<i>Halichoerus grypus</i>) for which terrestrial haul-out sites occur in immediate proximity to the site. Bottlenose dolphin (<i>Tursiops truncatus</i>) has also occasionally been recorded in the area. Along the eastern seaboard the habitat type Reef is uncommon due to prevailing geology and hydrographical conditions. Expansive surveys of the Irish coast have indicated that the greatest resource of this habitat within the Irish Sea is found fringing offshore islands which are concentrated along the Dublin coast. A detailed survey of selected suitable islands has shown areas with typical biodiversity for this habitat both intertidally and subtidally. These Reefs are subject to strong tidal currents with an abundant supply of suspended matter resulting in good representation of filter feeding fauna such as sponges, anemones and echinoderms.”</i></p> <p><i>(https://www.npws.ie/sites/default/files/protected-sites/natura2000/NF003000.pdf)</i></p> <p><i>Breeding roseate tern arrive on Rockabill Island in early May and leave in August. Significant effects on breeding Roseate terns can be excluded with a high degree of scientific certainty as, for reasons described above, no installation activity will take place within the wider period of 1st May to 30th September.</i></p>
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Provides an indication of how the baseline conditions of the site will change in the future in the absence of the project or plan	-	N/A. The project is not located within a Natura 2000 site. Potential changes as to how the baseline conditions of the sites within the zone of influence of the proposed project may change in the future, in the absence of the project, is not considered relevant.	The project passes through two Natura 2000 sites; Rockabill SPA and Rockabill to Dalkey Island SAC. However, we agree that potential changes as to how the baseline conditions of the sites within the zone of influence of the proposed project may change in the future, in the absence of the project, is not relevant to the assessment.
Additional criteria as required	-	N/A	N/A
Overall grade, Section 3	A	The information provided is not complete, but, in the circumstances of the particular case, the conclusions drawn can be reasonably and objectively accepted.	See above
4. Screening			
Where no significant impacts are predicted on the Natura 2000 site/s, a finding of no significant impacts statement is provided which clearly sets out why this conclusion has been drawn and provides evidence that the relevant nature conservation agencies and authorities are in agreement with this finding	A	The screening report-P2228_R4694_Rev5 has indicated that no significant effects are likely. However, no comment or agreement with this finding have been indicated by the National Parks and Wildlife Service. Their views on the use of the site by tern species in particular should be sought.	The Marine Planning Policy and Development Section consulted the Department of Culture, Heritage and the Gaeltacht as part of the Prescribed Bodies Consultation. The Consolidated Prescribed Bodies Observations 29/01/20 – 29/02/20 demonstrate that “ <i>NPWS have no comment to make on this application</i> ” (page 37).
Where likely significant impacts are identified, these are clearly explained and where possible quantified	A	There is uncertainty as to whether the stated need for a CEMP represents mitigation. Therefore, it is not possible to ascertain if the project has the potential to lead to negative effects on a European site.	See response to the Review Criteria, ‘ <i>Describes any wastes arising, or other residues (including quantities), and their means of disposal</i> ’ above.

			<p>ASN, the cable installation contractor, will prepare a CEMP in compliance with MARPOL and HSE/HSA mandatory legal requirements, as set out above.</p> <p>The fact of a CEMP does not objectively establish that the CEMP is intended to avoid or reduce a harm or significant effect on a European site. The CEMP has not been proposed for this purpose.</p> <p>No significant effects on any European site are predicted, having regard to the temporary nature and limited scope of the proposed activities, and the localized nature of any pressures.</p>
Additional criteria as required	-	N/A	N/A
Overall grade, Section 4	A	The information provided is complete, with no significant omissions, and the conclusions drawn can be reasonably and objectively accepted.	See above
<i>Overall review grade for the Article 6 assessment of the case</i>			
1. Features of the project or plan	A		
2. Cumulative effects	A		
3. Description of the Natura 2000 site	A		
4. Screening	A		
Overall grade for the assessments	A	The information provided is complete, with no significant omissions, and the conclusions drawn can be reasonably and objectively accepted.	

General overall comments on the adequacy of the assessments

The proposed project relates to the installation of a fibre optic submarine cable system linking Ireland, Isle of Man (IOM), UK and Denmark. This cable system will span more than 940km and deliver a boost to bandwidth between the respective countries.

The information provided in the Screening for Appropriate Assessment: Havhingsten fibre-optic telecommunication cable landing at Loughshinny, Co. Dublin (P2228_R4694_Rev5. December 2019) and the referenced Irish Planning Report (P2228_R4731_Rev0 22 May 2019) has been reviewed along with the Applicant's response to the request for further information.

Appropriate Assessment Conclusion: The information provided is complete, with no significant omissions, and the conclusions drawn can be reasonably and objectively accepted.

*Review grade

A = The information provided is complete, with no significant omissions, and the conclusions drawn can be reasonably and objectively accepted.

B = The information provided is not complete.

C = The information provided is not complete; there are significant omissions, and it will be necessary to seek clarification on certain issues before the conclusions drawn can be reasonably and objectively accepted.