



## **APPROPRIATE ASSESSMENT (AA) SCREENING DECISION AND ANNEX IV SPECIES ASSESSMENT KINSALE HEAD AND BALLYCOTTON GAS FIELDS**

### ***I. Project Proposal***

On 14<sup>th</sup> February 2022 PSE Kinsale Energy Limited (hereafter referred to as PSE) submitted an application to the Minister for the Environment, Climate and Communications seeking Ministerial approval to undertake a number of site surveys in 2022 or 2023 using geophysical techniques in the Kinsale Head (including South West Kinsale and Ballycotton) and Seven Heads Gasfields. The surveys are required to confirm seabed status on various sites following completion of decommissioning of subsea wells and associated facilities

The objective of proposed survey programme is:-

- To inform debris clearance around each of the former well sites and platforms to identify any materials which could be hazardous to other sea users and in particular fishing activities.

All of the survey equipment is non-intrusive and there will be no seabed interaction associated with the survey works.

Data collection will be using multibeam echo sounder (MBES) and side scan sonar (SSS), though other equipment including standard vessel echo sounder, and ultra-short baseline acoustic positioning (USBL) either will, or may, be used to assist in the positioning of the vessel and equipment such as a remotely operated vehicle (ROV) deployed from it (see applicant report for full details).

The vessel is not known at present and will be identified once a survey contractor has been appointed. A representative vessel has been assumed such as the RV Celtic Explorer in the applicant assessment.

It is estimated that the clearance survey will take approximately 14 days and is planned for Q3 / Q4 2022 following the completion of various subsea intervention works. However, the survey could slip to between Q2 and Q3 2023 due to the potential for delays.

### ***II. DECC Assessment Process***

The Environment Assessment Unit (EAU), a functionally separate and independent unit of DECC is responsible for carrying out environmental screening and any environmental assessments determined as being required following screening, in accordance with the requirements set out in Directive 2011/92/EU, as amended by Directive 2014/52/EU (**EIA Directive**) and Directive 92/43/EEC, as amended, (**Habitats Directive**), in the context of applications within an existing petroleum lease

(such as the present **PSE** application) that seek Ministerial approval to conduct a programme of works in relation to an existing offshore gas pipeline and associated infrastructure.

EIA – In Ireland, environmental assessments of such applications are carried out by the EAU in accordance with the EIA Directive. Where the activities the subject of the application fall outside the projects listed in Annex I of the EIA Directive, an EIA Screening Assessment and Determination is carried out by the EAU in the first instance, as to whether the activities the subject of the application would, or would not, be likely to have significant effects on the environment by virtue, *inter alia*, of their nature size and location. Where it has been determined, following screening, that the activities the subject of the application, are likely to have significant effects on the environment, an environmental impact assessment is required.

AA/Habitats Assessments – The European Communities (Birds and Natural Habitats) Regulations 2011 – 21 (S.I. 477 of 2011, as amended) (**Birds and Natural Habitats Regulations**) give effect to the Habitats Directive as a matter of Irish law and require, inter alia, that a public authority carry out screening for Appropriate Assessment of a plan or project for which an application for consent is received. Where a public authority determines, following screening, that an Appropriate Assessment is required, the Birds and Natural Habitats Regulations require that the assessment carried out by a public authority include a determination pursuant to Article 6(3) of the Habitats Directive as to whether or not the plan or project would adversely affect the integrity of a European site. The EAU is responsible for carrying out Stage 1 AA screening assessments, and any Stage 2 Appropriate Assessment determined as being required following screening, in accordance with the Birds and Natural Habitats Regulations, in respect of applications, such as this one, to carry out a programme of works in relation to an existing offshore gas pipeline and associated infrastructure.

On receipt of an application, the Geoscience Regulation Office (**GSRO**) – previously the Petroleum Affairs Division – in DECC places the application on the DECC website for public consultation and refers the application, and any associated responses to the consultation, to the EAU for the purposes of carrying out its environmental assessments.

On the completion of all environmental assessments by the EAU and after incorporating any suggested conditions which may be recommended by the EAU, the application will then be evaluated by the GSRO in the Department who will make a recommendation to the Minister regarding whether consent should be given for the activities applied for.

### ***III. Independent Expert Advisors***

DECC has further engaged Ramboll UK Limited (herein referred to as **Ramboll**) as independent expert environmental advisors to provide advice to the EAU with regard to the carrying out of statutory environmental assessments of applications for permission to carry out works within an existing petroleum licence, such as the present application by PSE.

Ramboll has conducted an independent assessment of the information provided by the PSE, having regard to the Habitats Directive, the Birds Directive, the Birds and Natural Habitats Regulations and relevant jurisprudence of the EU and Irish courts. The expert report prepared by Ramboll, having carried out an external review of the Appropriate Assessment Screening and Article 12 Assessment Report, carried out by Hartley Anderson/ARUP on behalf of the PSE, is shown at Appendix 1.

#### **IV. AA Screening: Legislative Background**

The Appropriate Assessment process (AA) is an assessment of the potential for adverse or negative effects of a plan or project, in combination with other plans or projects, on the conservation objectives of a European Site. The focus of AA is targeted specifically on Natura 2000 sites and their conservation objectives.

Article 6(3) and 6(4) of the **Habitats Directive** place strict legal obligations on Member States regulating the conditions under which development that has the potential to impact on European Sites can be implemented and requiring that an Appropriate Assessment be carried out of plans or projects, not directly connected with or necessary to the management of a site as a European Site, but which are likely to have a significant effect thereon, either individually or in combination with other plans or projects. An AA Screening assessment is carried out to determine whether a plan or project is likely to have a significant effect on a European Site.

- Article 6.3 states that: *“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”*
- Article 6.4 states: *“if, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.*

*Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.”*

In giving effect to the above as a matter of Irish law, the European Communities (Birds and Natural Habitats) Regulations 2011-21 (S.I. 477 of 2011, as amended) (**Birds and Natural Habitats Regulations**) provide as follows in relation to the requirement to carry out AA Screening:-

Regulation 42(1) of the Birds and Natural Habitats Regulations states that: *“A screening for Appropriate Assessment of a plan or project for which an application for consent is received, or which a public authority wishes to undertake or adopt, and which is not directly connected with or necessary to the management of the site as a European Site, shall be carried out by the public authority to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that plan or project, individually or in combination with other plans or projects is likely to have a significant effect on the European site”.*

Regulation 42(2) provides that: *“A public authority shall carry out screening for Appropriate Assessment under paragraph (1) before consent for a plan or project is given, or a decision to undertake or adopt a plan or project is taken”.*

The Birds and Natural Habitats Regulations further provide as follows at Regulation 42(6) and 42(7):-

6. *The public authority shall determine that an Appropriate Assessment of a plan or project is required where the plan or project is not directly connected with or necessary to the management of the site as a European Site and if it cannot be excluded, on the basis of objective scientific information following screening under this Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site.*

7. *The public authority shall determine that an Appropriate Assessment of a plan or project is not required where the plan or project is not directly connected with or necessary to the management of the site as a European Site and if it can be excluded on the basis of objective scientific information following screening under this Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site.'*

**V. PSE Application: Assessment Process**

PSE submitted the following documents with the application submitted on 14<sup>th</sup> February 2022 (along with a cover letter):-

- (i) Kinsale Area Installations – Site Clearance Surveys, Application to Conduct Site Survey;
- (ii) Kinsale Area Installations – Site Clearance Surveys, Screening for Appropriate Assessment and Article 12 Assessment, February 2022;
- (iii) Kinsale Area Installations – Site Clearance Surveys, Environmental Impact Assessment Screening/Environmental Risk Assessment Report, February 2022;
- (iv) Kinsale Area Installations – Site Clearance Surveys, Pre-survey Fisheries Assessment Report, February 2022.

**Vi. Notified Bodies**

Notification of the PSE application was issued to the following organisations:

Commissioners of Irish Lights;

Department of Defence;

Development Applications Unit, National Parks and Wildlife Service ( part of Department of Housing, Local Government and Heritage);

Irish Coast Guard (& National Maritime Operations Centre), Department of Transport,

Irish Maritime Administration, Department of Transport;

Marine Institute, Marine Environment and Food Safety Services;

Mission Support Facility, Irish Air Corps;

Naval Headquarters;

Sea Fisheries Policy Division, Department of Agriculture, Food and the Marine;

Sea Fisheries Protection Authority; and

Ship Source Pollution Prevention Unit, Irish Maritime Administration, Department of Transport;

Five observations were received from Commissioners of Irish Lights, Ship Source Pollution Prevention Unit, Irish Maritime Administration (Department of Transport), Development

Applications Unit Department of Housing, Local Government and Heritage, Sea Fisheries Protection Agency and a nil observation from Department of Transport, Maritime Safety Policy Division.

The observations received, and Ramboll's responses are shown in Section 2.3.1 of the Ramboll Report, referenced above and included at Appendix 1.

### **Vii. Initial Public Consultation**

The application and accompanying documents were published on the Department website on 4<sup>th</sup> March 2022 for a 30 day consultation period (with some additional time to allow for the Easter period). No responses were received from the public prior to the end of this consultation period on the 20<sup>th</sup> April 2022 in response to this application.

### **Viii Further Information Received and Supplemental Consultation**

Having reviewed the PSE application and accompanying documents, Ramboll recommended that further information be obtained from PSE in relation to their application on the basis that insufficient information had been provided with the application to enable an AA Screening Assessment and Determination be made in respect of the proposed site clearance works. Adopting that recommendation, additional clarification was sought from the applicant on 9<sup>th</sup> May 2022. The Department website was updated to reflect the position and the bodies who submitted observations following the initial consultation were notified of the decision to request further information.

On 26<sup>th</sup> May, 2022, the Applicant responded to the queries, and the adequacy of the applicant responses were assessed in conjunction with Ramboll and on 30<sup>th</sup> May, 2022, the supplemental information received from the applicant was posted on the Department website for public consultation by 15<sup>th</sup> June, 2022. A further clarification was made with the applicant on 11<sup>th</sup> July, 2022 and following consultation with Ramboll the response was posted on the website for public consultation by the 4<sup>th</sup> August, 2022.

One response was received from Irish Lights with nil observations in response to this consultation.

### **IX. AA Screening Assessment and Determination**

The AA screening process has been conducted in accordance with Articles 6.3 and 6.4 of the Habitats Directive (92/43/EEC), the Birds and Habitats Regulations and the principles established in case law interpreting the Directive and Regulations, which provide the decision making framework and tests for carrying out screening for appropriate assessment.

Per Regulation 42(6) of the Bird and Habitats Regulations, an Appropriate Assessment of a plan or project is required where it cannot be excluded, on the basis of objective scientific information following screening, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European Site.

I have carefully considered the following documents in carrying out the AA Screening assessment of the application made by PSE ('the applicant'):-

- Documents provided by the Applicant:
  - Application Letter to conduct Site Clearance Surveys

- Application to Conduct Site Clearance Surveys
  - Kinsale Area Installations – Site Clearance Surveys, Screening for Appropriate Assessment and Article 12 Assessment February 2022;
  - Kinsale Area Installations - Site Clearance Surveys, Environmental Impact Assessment Screening/Environmental Risk Report February, 2022;
  - Kinsale Area Installations – Site Clearance Surveys, Pre-survey Fisheries Assessment Report, February 2022.
- AA Screening Review for PSE Site Clearance Surveys of the Kinsale Head and Seven Heads Gas Fields prepared by Ramboll (the Ramboll Report, included at Appendix 1);
  - Additional clarification responses provided by the applicant
  - Responses received from notified bodies; Commissioners of Irish Lights, Ship Source Pollution Prevention Unit, Irish Maritime Administration, Department of Transport., Development Applications Unit Department of Housing, Local Government, Heritage and Sea Fisheries Protection Agency;

In carrying out the AA screening assessment, I considered the different project elements that are likely to give rise to impacts on the conservation objectives and or qualifying features of a Natura site. In this context the following elements were considered:

- Project Description including the spatial extent, supporting infrastructure, transportation requirements, physical changes that will result from the project, emissions and waste, resource requirements and duration of each phase;
- Effects of the proposed development in combination with other plans or projects;
- Identification of relevant European sites and species;
- Assessment of likely significant effects (LSE).

Based on careful consideration of the documentation highlighted above, I agree with and adopt the conclusions reached in the Ramboll Report (at Appendix 1) regarding the adequacy of the information provided by the applicant and am satisfied that the applicant has provided sufficient information to enable an AA Screening Assessment of the site clearance surveys.

I further agree with, and adopt, the responses to the observations received from notified bodies (as set out in section 2.3.1 of the Ramboll Report).

The applicant's AA screening report identified the following sources of potential impact for further consideration in the determination of likely significant effects (LSE):-

- physical presence of the survey vessel
- underwater noise including from the vessel and survey equipment

Following initial assessment examining connectivity of the project with European Sites, the applicant assessment of LSE concluded that the activities associated with the proposed survey will not result in any significant effects (either alone or in-combination with other plans or projects) on the features or conservation objectives of any relevant Natura 2000 site. The applicant states the conclusion is based on objective scientific evidence and there is no reasonable scientific doubt in relation to this conclusion. Furthermore, the applicant concluded that it is not considered necessary to undertake

any further stage of the Appropriate Assessment process. This conclusion is based on no mitigation measures necessary to avoid or reduce impacts on any European site.

In carrying out an independent AA Screening Assessment of the proposed site clearance activities, Ramboll comprehensively examined the AA screening assessment carried out by the applicant and the conclusions reached in the applicant report. In the Ramboll Report (Appendix 1) they agree with the applicant assessment of no likely significant effects (LSE) based on low to moderate sensitivities to shipping traffic in the relevant species and short/low magnitude effects would represent negligible disturbance over other vessels in the area. Ramboll agree that additional vessel traffic would be negligible over that already present in the region. They further agree that the proportion of marine mammal populations likely to be within the distance of the noise sources to exceed the threshold for threshold shift is well founded.

The Ramboll report ultimately concludes that Appropriate Assessment is not required as no likely significant effects on European Sites have been identified, having had regard to the potential connectivity with sites, relevant conservation objectives and the potential for in combination effects.

I agree with and adopt the AA Screening Assessment carried out by Ramboll in respect of the PSE application and the conclusions reached in the Ramboll Appropriate Assessment Screening Report for PSE (at Appendix 1 to this Determination).

Accordingly, I am satisfied and have decided that the proposal to undertake a number of site surveys in 2022 or 2033 using geophysical techniques in the Kinsale Head (including South West Kinsale and Ballycotton) and Seven Gasfields by PSE will not require Appropriate Assessment as it can be excluded on the basis of objective scientific information (following screening) that the proposed site clearance activities, individually or in combination with other plans or projects, will have a significant effect on European Sites. No likely significant effects on European Sites have been identified, following screening, having had regard to the potential connectivity with sites, relevant conservation objectives and the potential for in combination effects.

Further, as the vessel to be used is not yet known PSE must seek approval from the Department prior to commencement of the proposed activities. In this event, confirmation will be required that the survey equipment and methodology on the vessel(s) are equivalent to that described in the AA Screening Report (appendix 1) and that the description of the development used to inform the Appropriate Assessment Screening is still valid. Accordingly, this decision is further contingent on this requirement also being included as a condition of any consent granted in respect of this application.

#### **X. Annex IV Species Assessment: Legislative Background**

Article 12(1) of the Habitats Directive provides that:

*“Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range, prohibiting:*

- (a) all forms of deliberate capture or killing of specimens of these species in the wild;*
- (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;*
- (c) deliberate destruction or taking of eggs from the wild;*

(d) *deterioration or destruction of breeding sites or resting places.*”

Regulation 29 of the Birds and Natural Habitats Regulations transposes Article 12 into Irish law and provides that:

*“29. (1) Where the Minister has reason to believe that any activity, either individually or in combination with other activities, plans or projects, is of a type that may—*

*(a) have a significant effect on a European Site,*

*(b) have an adverse effect on the integrity of a European Site,*

*(c) cause the deterioration of natural habitats or the habitats of species or the disturbance of the species for which the European Site may be or has been designated pursuant to the Habitats Directive or has been classified pursuant to the Birds Directive, insofar as such disturbance could be significant in relation to the objectives of the Habitats Directive,*

*(d) cause pollution or deterioration of habitats within the meaning of the second sentence of Article 4(4) of the Birds Directive, or*

*(e) have an adverse effect on the conservation status of—*

*(i) animal species listed in Annex IV(a) to the Habitats Directive in their natural range pursuant to Article 12 of the Habitats Directive,*

*(ii) plant species listed in Annex IV(b) to the Habitats Directive pursuant to Article 13 of the Habitats Directive,*

*(iii) species of wild fauna and flora listed in Annex V to the Habitats Directive pursuant to Article 14 of the Habitats Directive,*

*(iv) naturally occurring birds in the wild state,*

*the Minister shall, by notice, subject to paragraph (2), where he or she considers appropriate, direct that the activity shall not be carried out, caused or permitted to be carried out or continue to be carried out by any person in the European Site or part thereof or at any other specified land or may restrict or regulate the activity in the European Site or part thereof or at any other specified land, and each such notice shall be accompanied by a statement of the Minister’s reasons for making the decision.”*

#### **XI. Annex IV Species Assessment Determination**

An assessment of impacts (potential impacts and in combination impacts) on Annex IV species, in accordance with Article 12 of the Habitats Directive, was carried out by PSE. This is contained in Section 6 of the applicant’s Appropriate Assessment Screening and Article 12 Assessment Report. The conclusion reached in that assessment is that the risk of disturbance or injury is very low and significant effects are not likely for relevant species of marine turtle and cetaceans.

Ramboll carried out an assessment of the information submitted by PSE in respect of the proposed site clearance activities for the purposes of Article 12/Annex IV of the Habitats Directive. The outcome of the Ramboll assessment is also detailed in the Ramboll Report (at Appendix 1).

In this regard, the Ramboll Report agrees with the assessment carried out by PSE and concludes that the proposed site clearance activities are not likely to have adverse effects on the favourable conservation status of any of the Annex IV species that may be present in the investigation area and will not cause significant disturbance to the Annex IV species described.

I agree with and adopt the conclusions in the Ramboll report in relation to impacts on Annex IV species. Accordingly, I am satisfied that the assessment for Annex IV Species is of an acceptable standard and am further satisfied that the proposed site clearance activities will not adversely affect the favourable conservation status of any Annex IV species that may be present in the investigation area, should approval be granted for the PSE application.

## **XII. Conclusion**

As set out in the AA Screening Assessment Determination at Section IX above, it can be concluded, and I conclude, for the purposes of Regulation 42(1) and in accordance with Regulation 42(7) of the Birds and Natural Habitats Regulations that an Appropriate Assessment is not required in respect of the proposed site clearance activities, as it can be excluded, on the basis of objective scientific information, following screening that the proposed geophysical surveys, individually or in combination with other plans or projects, will have a significant effect on a European Site.

Further, as the vessel to be used is not yet known PSE must seek approval from the Department prior to commencement of the proposed activities. In this event, confirmation will be required that the survey equipment and methodology on the vessel(s) are equivalent to that described in the AA Screening Report (appendix 1) and that the description of the development used to inform the Appropriate Assessment is still valid. Accordingly, this decision is further contingent on this requirement also being included as a condition of any consent granted in respect of this application.

In addition, as set out in the Annex IV Species Assessment Determination at Section XI above, I further conclude that the assessment for Annex IV species is of an acceptable standard, such that I am satisfied that the proposed site clearance activities will not adversely affect the favourable conservation status of any Annex IV species that may be present in the investigation area, should approval be granted in respect of the PSE application.

The Applicant can be informed of this AA Screening Determination and the public will also be informed with the Determination being published on the Department's website and notice thereof being published in a national newspaper.

Jean Clarke, 24<sup>th</sup> August 2022



Environment Assessment Unit  
Department of the Environment, Climate and Communications

## **Judicial Review**

Please note that the validity of this AA Screening Determination may be questioned by Judicial Review under Order 84 of the Rules of the Superior Courts (S.I. No.15 of 1986), as amended. Any application for leave to apply for judicial review must be made promptly and in any event within three months from the date of the Determination. Practical information on judicial review can be obtained from the Citizens Information Board, Ground Floor, Georges Quay House, 43 Townsend Street, Dublin 2 or online ([www.citizensinformation.ie](http://www.citizensinformation.ie)) or from the Courts Website ([www.courts.ie](http://www.courts.ie)).