Roinn Cumarsáide, Gníomhaithe ar son na hAeráide & Comhshaoil
Department of Communications, Climate Action & Environment

APPROPRIATE ASSESSMENT (AA) SCREENING DECISION

Project Proposal

On 15 January 2020, Exola DAC, (a wholly owned subsidiary of Providence Resources plc) (hereafter referred to as 'Exola') submitted an application to the Minister for Communications, Climate Action and Environment seeking approval to undertake a seabed and shallow geophysical survey, and an environmental baseline and habitat assessment survey, within the Barryroe licence area (SEL 1/11). The survey area is situated in the North Celtic Sea Basin approximately 49 kilometres (km) south east of the closest coastline at Ballymacshoneen, Butlerstown North, County Cork on the south coast of Ireland (the 'Barryroe K site area').

The site survey will comprise a seabed and shallow geophysical survey and an environmental baseline and habitat assessment survey at the Barryroe K site. Additional environmental sampling will be conducted at a single control point approximately 7km to the eastsoutheast of the survey area.

The survey operations will cover an area of approximately 9 km^2 with a 1 km buffer around the survey area where the survey vessel may manoeuvre during line turns and during equipment deployment and recovery. The greater working area is approximately $22m^2$.

The key aims of the survey are to:

- Accurately determine water depths and provide information on depth of sediments overlying chalk bedrock and to identify and map any chalk exposures;
- Provide information on seabed and sub seabed conditions to ensure the safe emplacement and operation of a semi-submersible drilling rig at the well location;
- Provide information on the cultural potential of the survey area, including the location of any shipwrecks or other underwater cultural heritage features;
- Assess the survey area for the presence of any Annex 1 habitats (as defined in the EC Habitats Directive 92/43/EC);
- Obtain environmental baseline samples across the survey area to establish a benchmark for ongoing environmental monitoring as per OSPAR guidelines.

The survey vessel is anticipated to be working on location for approximately 3 days, excluding transit, port calls and weather downtime. Operations are proposed to take place at some point between the 1st April 2020 and 30th November 2020, subject to regulatory approval and vessel availability. If the survey has not commenced within this timeframe, it is proposed that the operations will be undertaken sometime between 1st February 2021 and 30th November 2021, again subject to regulatory approval and vessel availability.

The proposed Barryroe K site survey follows on from the site survey operations undertaken in the Barryroe (SEL/11) licence area at the proposed A and B well locations during September 2019. Obtaining data at the K location allows for the potential future emplacement of an additional well to the east of the previously surveyed A and B well locations, in order to further appraise the eastern panel of the Barryroe field. Any potential future activities would require separate applications for approval, during which any potential in-combination LSE on European sites would be considered.

The vessel proposed to be used for the survey is the Gardline vessel MV Kommander. It is noted in the application documents that, prior to the commencement of the proposed site survey operations, the applicant may seek approval from the DCCAE to use an alternative equivalent survey vessel.

Exola submitted the following document with the application:-

(i) Application for Approval to Conduct a Seabed Geophysical, Environmental Baseline and Habitat Assessment Site Survey;
(ii) Pre-survey Fisheries Assessment at Barryroe (SEL 1/11), prepared by Sinbad Offshore Support Ltd for EXOLA DAC;
(iii) Barryroe K Site Survey: Appropriate Assessment Screening and Natural Impact Statement;
(iv) Barryroe K Site Survey: Environmental Impact Assessment (EIA) Screening.

Assessment Process

The Environment Advisory Unit (**EAU**), a functionally independent and separate unit of DCCAE, 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**), Directive 92/43/EEC (**Habitats Directive**) and Directive 2009/147/EC (**Birds Directive**) in respect of applications to the Minister for permission to undertake *"activities"* under an exploration licence or petroleum prospecting licence.

EIA – In Ireland, the *European Union (Environmental Impact Assessment) (Petroleum Exploration) Regulations 2013* (S.I. 134 of 2013), as amended by the *European Union (Environmental Impact Assessment) (Petroleum Exploration) (Amendment) Regulations 2019* (S.I. 124 of 2019) give effect to the EIA Directive as a matter of Irish law in the context of applications for permission to undertake activities under an exploration licence or petroleum prospecting licence. Regulation 3(1B) provides that the EAU shall carry out an EIA Screening Assessment and make a Determination 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 will be required.

AA – The European Communities (Birds and Natural Habitats) Regulations 2011 – 15, as amended (**Birds and Natural Habitats Regulations**) give effect to the Habitats Directive and the Birds 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 that an Appropriate Assessment is required, the 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 AA screening assessments (and

any required Stage 2 Appropriate Assessment) in accordance with the Regulations, in respect of applications to the Minister for permission to undertake *"activities"* under an exploration licence or petroleum prospecting licence.

On receipt of an application, the Petroleum Affairs Division in DCCAE places the application on the DCCAE website for consultation and refers the application, and any associated responses to the consultation, to the EAU for the purposes of carrying out its 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 Petroleum Affairs Division in the Department who will make a recommendation to the Minister of State regarding whether consent should be given for the 'activities' applied for.

Independent Expert Advisors

DCCAE has further engaged Ramboll UK Limited (herein referred to as **Ramboll**) as independent expert environmental advisors to provide assistance with regard to the statutory assessment of applications for permission to carry out *"activities"* under an exploration licence or petroleum prospecting licence.

Ramboll has conducted an independent assessment of the information provided by the Applicant, 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 EXOLA Appropriate Assessment Screening Report, ("Appropriate Assessment Screening Determination and NIS Review for Barryroe K Site Survey"; **Ramboll Report**) is shown at Appendix 1.

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 2011-15 (S.I. 477 of 2011, as amended) (**Birds and Natural Habitats Regulations**) provide as follows:-

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 consenting 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.'

<u>Notified Bodies</u>

Notification of the Exola Survey application was issued to the following organisations:

- National Parks and Wildlife Service;
- Irish Maritime Administration, Department of Transport, Tourism and Sport;
- Ship Source Pollution Prevention Unit, Irish Maritime Administration, Department of Transport, Tourism and Sport;

- Irish Coast Guard (& National Maritime Operations Centre), Department of Transport, Tourism and Sport;
- Sea Fisheries Protection Authority;
- Sea Fisheries Policy Division, Department of Transport, Tourism and Sport;
- Department of Defence;
- Mission Support Facility, Irish Air Corps;
- Naval Headquarters;
- Marine Institute;
- Commissioners of Irish Lights

One responded with comments as shown in Section 2.3.1 of the Ramboll Report, referenced above and included at Appendix 1.

Public Consultation

The EXOLA Barryroe K Site Survey application and supporting documentation were published on the Department website on 22 January 2020 and submissions were invited to be made on the application during a 30 day consultation period concluding on 21 February 2020. A total of 12 responses were received as follows:-

- Three response from private individuals dated 20th February, 2020
- Eight responses from private individuals dated 21st February, 2020
- Response from Not Here Not Anywhere dated 21st February, 2020

The consultation responses received (including the project specific observations) are shown at Sections 2.3.2 – 2.3.4 of the Ramboll Report , referenced above and included at Appendix 1 to this determination.

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 EXOLA ('the applicant'):-

- Documents provided by the applicant – in particular, the combined Appropriate Assessment Screening and Natura Impact Statement;
- Appropriate Assessment Screening and NIS Review for Barryroe K Site Survey Report, prepared by Ramboll (Appendix 1);
- Observation received from the Irish Coastguard (& National Maritime Operations Centre), Department of Transport, Tourism and Sport, as a notified body
- Submissions received during the public consultation processes.

The AA screening process 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 of the proposed site survey project in the Barryroe licence area (SEL 1/11) (Barryroe K site area).

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) and the responses to the project specific observations received during the public consultation process (as set out in section 2.3.4 of the Ramboll Report).

As regards the additional observations received during the public consultation process, comprising general comments on legal entities and contractor, general comments on health and safety and environment (including climate change) and general economic comments (set out in section 2.3.3 of the Ramboll Report), I agree these are outside the scope of the AA Screening Assessment process.

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

- Underwater noise generated from the geophysical survey equipment, as well as from the survey vessel itself on three marine mammal species – harbour porpoise, bottlenose dolphin and grey seal.

- All other sources of impact (Table 4.1 within the applicant's report) are concluded as no likely significant effects (LSE) and therefore have been screened out.

The applicant has in their assessment of LSE stated that the possibility of significant effects from the proposed Barryroe K site survey operations on the Roaringwater Bay and Islands SAC, Lower River Shannon SAC, Saltee Islands SAC, Blasket Islands SAC, West Connacht Coast SAC and Rockabill to Dalkey Island SAC cannot be ruled out. It was ascertained by the applicant during their AA screening assessment that is not possible to rule out, as a matter of scientific certainty, that the proposed site survey operations are likely to have a significant effect on these European sites. As a result, the applicant prepared and submitted a Natura Impact Statement (NIS) with their application.

I note that the Applicant's own AA screening assessment has concluded that the proposal to conduct a site survey, comprising a seabed and shallow geophysical survey and an environmental baseline and habitat assessment survey, within the Barryroe licence area (SEL 1/11) (Barryroe K site area) situated in the Celtic Sea basin will require Appropriate Assessment.

I agree with and adopt the AA Screening Assessment carried out by Ramboll in respect of the Exola Barryroe K Site Survey application and the conclusions reached in the Ramboll Appropriate Assessment Screening and NIS Review for Barryroe K Site Survey Report (at Appendix 1 to this Determination).

Accordingly, I am satisfied and have decided that the application by Exola to conduct a site survey, comprising a seabed and shallow geophysical survey and an environmental baseline and habitat assessment survey within the Barryroe licence area (SEL 1/11)) situated in the Celtic Sea basin approximately 49 kilometres (km) south east of the closest coastline at Ballymacshoneen, Butlerstown North, County Cork on the south coast of Ireland (the 'Barryroe K site area') will require Appropriate Assessment as the possibility of significant effect on the European sites concerned cannot be excluded on the basis of objective scientific information. The application will now proceed to Stage 2 Appropriate Assessment.

Jean Clarke, 7th April, 2020

Environment Advisory Unit
Department of Communications, Climate Action and Environment