

Mr Morrissey

Mr Collins

Rúnaí Aire

Decision Sought

The Minister approves:

An Appropriate Assessment for the ‘Kinsale Head Decommissioning Plan – Kinsale Head Petroleum Lease (OPL1) – Consent Application No. 1’ (the “Decommissioning Plan”) is not required as it can be excluded on the basis of objective scientific information, following screening under the European Communities (Birds and Natural Habitats) Regulations, SI No. 477 of 2011 (as amended), that the Decommissioning Plan, individually or in-combination with other plans or projects, will have a significant effect on a European site;

and,

That the assessment for Annex IV Species have been found to be of an acceptable standard to be satisfied that there would be no significant adverse effects on Annex IV species, should approval be granted for the Decommissioning Plan.

Background

1. The Kinsale Gas Area located in the Celtic Sea approximately 50km off the south coast of Ireland was initially developed as the Kinsale gas field. An indenture of agreement hereinafter referred to as the Parent Agreement was entered into on 13th January, 1959 (“**Parent Agreement**”) between the then Minister for Industry and Commerce and Ambassador Oil Corporation/Ambassador Irish Oil Ltd (the Minister for Communications, Climate Action and Environment (the “**Minister**”) and KEL being the successors thereto) wherein, the Minister, inter alia, undertook to grant Ambassador Oil an Exploration Licence.
2. The Kinsale Gas Area was enlarged in subsequent years to include the satellite “**Ballycotton Gas Field**” and the “**Southwest Kinsale Gas Field**”, which are both included by way of amendment to the Petroleum Lease. An addendum to the Lease dated 29th November 2006 provided for the use of Southwest Kinsale Gas Field as a gas storage facility. This operation ceased in April 2017 as it was no longer commercially viable when the Southwest Kinsale Gas Field returned to gas production.
3. In 2009, Marathon transferred its entire legal and 100% beneficial interest in the Lease to PETRONAS, Malaysia’s national oil company. The Kinsale Gas Area is now operated by KEL, a wholly-owned subsidiary of PETRONAS.

4. The cessation of production of the Kinsale Gas Area is expected to occur in the period 2020 - 2021 when continued production would no longer be economic. The Kinsale Gas Area is currently producing approximately 10 million standard cubic feet per day (“**MMscfd**”) of gas (approximately 4% of Ireland’s current annual gas requirement). At its peak production in the 1990’s, the Kinsale Gas Area produced over 300 MMscfd of gas. Upon cessation of gas production, it is intended that decommissioning of the facilities will commence subject to receipt of all necessary approvals.

Application

5. On 28 June 2018, KEL (the “**Applicant**”) applied to the Minister to decommission certain facilities within the Kinsale Gas Area (**TAB 1**). The details of the application are set out in the Decommissioning Plan (**TAB 2**) accompanying the application. The scope of work (“**Relevant Works**”) involved in the Decommissioning Plan is outlined / summarised below:
 - a. the removal of the platform topsides (including any special wastes which require further onshore treatment), and the recycling/disposal of topside modules;
 - b. the plugging and abandonment of platform and subsea wells, and the removal to shore for recycling/disposal of any surface component of these wells, including wellhead structures and platform conductors;
 - c. the removal of subsea manifolds, valves & tees, and well head protection structures to shore for recycling. In addition short pipeline spools/umbilical jumpers will be removed to facilitate the removal of the structures. All associated pipeline protection will also be removed;
 - d. the recovery of any large items of debris and post-decommissioning survey to confirm success of the decommissioning operations; and
 - e. submission of a Decommissioning Close-Out report setting out confirmation of the works being completed with detail and surveys to confirm same.
6. On 28 June 2018, a separate application was made by PSE Seven Heads Limited¹ (“**SHL**”) to the Minister to decommission certain facilities within the adjoining Seven Heads Gas Field (the “**Seven Heads Gas Field**”). That application will be the subject of a separate submission and decision.
7. Further applications for a second phase will be submitted by both KEL and SHL covering the decommissioning of the remaining facilities (i.e. the pipelines, umbilicals (which transfer hydraulic and electric power) and platform substructures (jackets)).
8. The entire decommissioning scope of work for both the Kinsale Gas Area and the Seven Heads Gas Field and both phases is referred to in this submission as the Kinsale Area

¹ A subsidiary of KEL.

Decommissioning Plan (“**KADP**”). The KADP comprises the entire decommissioning of the Seven Heads Gas Field and for the Kinsale Gas Area includes the Relevant Works, as defined above, and the following (the “**Remaining Works**”):

- a. The decommissioning of all pipelines, control cables and their protection materials involving rock placement of freespans and/or remaining exposed sections of pipe and all remaining in situ protection materials;
 - b. The filling of the export pipeline onshore section with grout (if a viable re-use option is not identified before decommissioning);
 - c. The decommissioning of the Inch Terminal and the return of the site to the original contours and agricultural use, in accordance with the planning consent.
9. The applications were accompanied by an Applicant Report for Purposes of Appropriate Assessment Screening and Article 12 Assessment Screening (“**AA Screening Report**”) (**TAB 3**) and an Environmental Impact Assessment Report.
10. A decision is required by the Minister as to whether an Appropriate Assessment is required for the Decommissioning Plan.

Ministerial Considerations in carrying out a screening for Appropriate Assessment

11. In carrying out a screening for Appropriate Assessment the Minister is to assess whether the plan which is not directly connected with or necessary to the management of the site as a European site, in view of best scientific knowledge and in view of the conservation objectives of the site, individually or in combination with other plans or projects is likely to have a significant effect on a European site as required by Regulation 42 of the European Communities (Birds and Natural Habitats) Regulations SI 477/2011 (the “**Regulation**”) and Article 6(3) of the Habitats Directive 92/43/EEC (“**Habitats Directive**”). In addition, the Habitats Directive requires consideration of the potential effects on species listed under Annex IV of the Directive (termed Annex IV species). Under Article 12, Annex IV species are afforded strict protection throughout their range, both inside and outside of designated protected areas.
12. In accordance with the Regulation and the relevant case law, in making such a decision the Minister must be satisfied:
- a. That the information provided catalogues the entirety of habitat types and species for which a site is protected, and, identifies and examines both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.

- b. That the decision does not take account of measures intended to avoid or reduce harmful effects of the plan on a European site;
 - c. That the information provided present complete, precise and definitive findings such that it can be concluded that that no reasonable scientific doubt remains as to the absence of significant effects and it can thus be excluded that the proposed development will have a significant effect on a European site.
13. The Minister is required to carry out a screening for Appropriate Assessment before consent for the plan is given in accordance with the Regulation and the Habitats Directive. The Minister shall only determine that an Appropriate Assessment of the plan is not required where the plan 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 the Regulation, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a European site.

Ministerial Considerations in carrying out an Annex IV Species Assessment

14. Article 12 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.”

15. Regulation 29 of the Regulation transposes Article 12 of the Habitats Directive 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."

Consultation and Process

16. In assessing the application against the criteria outlined above, the Department engaged the support of RPS Consultants for independent technical advice.
17. The AA Screening Report together with the Decommissioning Plan and Environmental Impact Assessment Report were posted on the Department's website on 28 June 2018 and parties were invited to make comments on the submission before 31 July 2018. On 28 June 2018, the Applicant also posted notice in the Irish Examiner of the submissions together with information on where they could be viewed.
18. Submissions were received on the screening for Appropriate Assessment from An Taisce and the Department of Culture, Heritage and the Gaeltacht on behalf of the National Parks and Wildlife Service (**TAB 4**).
19. Having reviewed the application and submissions received from the public consultation, RPS submitted a RPS Kinsale Area Decommissioning Project Screening for Appropriate Assessment and Article 12 Screening Assessment Technical Review (**TAB 5**). Taking the recommendation from RPS' review, further information was sought from the Applicant on 24 September 2018 (**TAB 6**) on the basis that insufficient information had been provided to conclude beyond reasonable scientific doubt that the proposed development, individually or in combination with other plans or projects will not have likely significant effect on European sites.

20. The Applicant provided further information (**TAB 7**) on 14 November 2018. On 15 November 2018, this information was posted on the Department's website for comment by 17 December 2018. No further submissions on the AA Screening Report were received.
21. A further clarification (**TAB 8**) was sought from the Applicant on 30 November 2018. The Applicant's response was received on 12 December 2018 (**TAB 9**) and was posted on the Department's website on 17 December 2018.
22. RPS completed their review by providing an AA Screening Technical Review Addendum (**Tab 10**).
23. A total of ten responses were received in the consultation with the public and prescribed bodies on the application in respect of the Kinsale Area Decommissioning Plan, with two of them relevant to the AA Screening Report. A summary of these responses and how they were dealt with is set out below. A detailed analysis of the responses and how the issues were considered and addressed by RPS is included in the RPS AA Screening Technical Review Addendum.

Observation / Submission	Response
An Taisce	
Concern at the short duration of the consultation process	The time of the consultation was guided by the minimum required for an EIAR consultation under the Petroleum and Other Minerals Development Act, 1960 (Section 13A)
On the basis of the best scientific knowledge and in view of the conservation objectives of the relevant Natura 2000 sites, that the KADP and projects within the KADP, individually and/or in combination with other plans or projects within or outside the KADP, is likely to have a significant effect on several Natura 2000 sites and protected species, due to the likely disturbance of species in the area that are qualifying interests of these European Sites and due to noise, spillages, leaks and other potential impacts from the decommissioning works.	Further information sought and provided in Response to RFI report and Response to Clarification. RPS advise that the rationale and scientific information provided in these documents adequately address the issues raised and that submission adequately addressed.
There is poor level of baseline data on the environmental status of Irish marine area. This includes data on cetaceans as shown in Ireland's 6 yearly Article 17 Habitats Directive reporting to the Europe Commission.	The Applicant was requested to provide further information with respect to protected sites and species to support the assessment of likely significant effects. Following receipt of the further information, RPS were satisfied as to its adequacy.

<p>The information accompanying this application does not address or identify any difficulties that were encountered in discovering the existence of the environmental information required to assess the impact of what is proposed.</p>	<p>Further information as to the difficulties in compiling data/ information to support assessments was requested.</p> <p>Chapter 8 Section 8.2 of the Response to the RFI Report provides additional information and RPS are satisfied as to its adequacy.</p>
<p>Department of Culture, Heritage and the Gaeltacht (DCHG) Development Applications Unit (DAU) On behalf of National Parks and Wildlife Service (NPWS)</p>	
<p><i>The Department is satisfied that the ... KADP ... is unlikely to introduce or incur a significant negative impact on Natura 2000 sites designated for Annex II marine mammal species... It is also our view that the likelihood of a significant effect on populations of Annex IV cetacean species, arising from the proposed works and activities as documented, can be reasonably discounted'.</i></p>	<p>RPS noted this submission.</p>

24. An Article 12 (Annex IV Species) Assessment was contained within the AA Screening Report submitted by KEL. The findings of the Article 12 Assessment prepared by KEL state that:

“Whilst Annex IV species may be present in the vicinity of the proposed KADP, the localised scale and duration of the works will not result in the deliberate disturbance or destruction of any of the species listed in Annex IV of the Habitats Directive which may be present in the study area.

In light of the findings of this report (see Section 7) it can be concluded by the competent authority that it is not considered necessary to undertake any further Annex IV Species (European Protected Species) Impact Assessment.”

25. RPS carried out an assessment of the information submitted for the purposes of the Article 12 (Annex IV Species) Assessment as detailed in the RPS Reports and concluded

“RPS is of the opinion that the likelihood of a significant effect on populations of Annex IV cetacean species arising from the works and activities proposed for the KADP can be discounted, and as a result no further assessment of potential impact to Annex IV cetacean species is required.”

Accordingly, the assessment for Annex IV Species have been found to be of an acceptable standard such that the Minister can be satisfied that there would be no significant adverse effects on Annex IV species, should approval be granted for the Decommissioning Plan.

26. In their AA Screening Technical Review Addendum, RPS has concluded as follows:

“In carrying out the technical review of the Screening for AA and to arrive at a definitive determination under Article 6(3) of the Habitats Directive and Regulation 42 of SI 477/2011 as to whether the project, individually or in combination with other plans and projects, will have a significant effect on a European site, RPS took into account the following:

- *the AA Screening Report;*
- *the Response to RFI Report;*
- *the Response to RFI Clarification Report;*
- *application supporting documents (including the KADP EIAR);*
- *written submissions and observations made to the DCCAE in relation to the application for*
- *consent; and,*
- *recent relevant case law.*

Based on the information available on the project as a whole and in particular the information available on the works which are the subject of Consent Application No.1, it is the opinion of RPS that sufficient evidence has been provided in the decommissioning application documentation, further information and clarification responses, and it can be determined that an Appropriate Assessment of the project is not required. An Appropriate Assessment for the Decommissioning Plan is not required, as it can be excluded on the basis of objective scientific Information, following screening under the European Communities (Birds and Natural Habitats) Regulations, SI No. 477 of 2011 (as amended), that the KADP activities associated with Consent Application No.1, individually or in-combination with other plans or projects, will have a significant effect on a European site.”

27. In reaching their conclusion RPS confirm that no reliance is being placed on mitigation measures.

Other Relevant Information

28. Following the carrying out by the Minister of a screening assessment in relation to the Decommissioning Plan and the determination as to whether an AA is or is not required, the Department will publish the Minister’s decision in relation to the Decommissioning Plan which will include the reasons for the Minister’s decision in relation to AA screening and “access to justice” provisions on the Department’s website.

Reasoned Recommendation

29. A comprehensive due diligence exercise has been carried out by the Department on the application having taken independent external environmental advice and having carried out a public consultation.

30. The matters raised in the public consultation have been carefully considered.
31. It can be confirmed that the consent for the Decommissioning Plan has not been provided at this point.
32. It is recommended that the Minister can accept RPS' conclusions in respect of the Decommissioning Plan not requiring an Appropriate Assessment or any further Annex IV Species (European Protected Species) Impact Assessment (Article 12 Assessment).

Conclusion – Screening Determination

- The Minister to note that the Decommissioning Plan is not directly connected with or necessary to the management of a European Site;
- The Minister to have regard to the nature, scale and location of the Decommissioning Plan, the AA Screening Report, the RPS Kinsale Area Decommissioning Project Screening for Appropriate Screening and Article 12 Screening Assessment Technical Review, the Applicant Response to Request for Further Information, the Applicant Response to Clarification Request, and the RPS AA Screening Technical Review Addendum;
- The Minister to accept and adopt the screening assessment carried out by RPS and the conclusion in the RPS reports in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential significant effects of the Decommissioning Plan, either individually or in combination with other plans or projects, on these European sites in view of the sites' conservation objectives; and
- The Minister to accept the conclusions in relation to Annex IV species set out in the information submitted by KEL and accept and adopt the Annex IV species assessment carried out by RPS and the conclusions in relation to that assessment in the RPS reports and having considered that the Habitats Directive requires consideration of the potential effects on species listed under Annex IV of the Directive (termed Annex IV species). Under Article 12, Annex IV species are afforded strict protection throughout their range, both inside and outside of designated protected areas,

the Minister to determine that he is satisfied:

- a. That in view of best scientific knowledge and in view of the conservation objectives of the site, individually or in combination with other plans or projects, the plan will not have a significant effect on a European site as required by Regulation 42 of the European Communities (Birds and Natural Habitats) Regulations SI 477/2011 (the "Regulation") and Article 6(3) of the Habitats Directive 92/43/EEC ("Habitats Directive");
- b. That the information catalogues the entirety of habitat types and species for which a site is protected, and, identifies and examines both the implications of the Decommissioning Plan for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found

outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site;

- c. That measures intended to avoid or reduce harmful effects of the Decommissioning Plan on a European site have not been taken into account at AA screening stage;
- d. That the information provided presents complete, precise and definitive findings such that it can be concluded that that no reasonable scientific doubt remains as to the absence of significant effects and it can thus be excluded on the basis of objective scientific information that the Decommissioning Plan will have a significant effect on a European site;
- e. That the Minister is taking a decision on the screening for Appropriate Assessment before consent for the Decommissioning Plan is given in accordance with the Regulation and the Habitats Directive.

It is recommended that being satisfied regarding the matters outlined above, the Minister can conclude:

An Appropriate Assessment for the Decommissioning Plan is not required, as it can be excluded on the basis of objective scientific information, following screening under the European Communities (Birds and Natural Habitats) Regulations, SI No. 477 of 2011 (as amended), that the Decommissioning Plan, individually or in-combination with other plans or projects, will have a significant effect on a European site;

and,

That the assessment for Annex IV Species have been found to be of an acceptable standard such that he can be satisfied that there would be no significant adverse effects on Annex IV species, should approval be granted for the Decommissioning Plan.

Noel Regan

Petroleum Affairs Division

10 April 2019

Documents forming part of submission

TAB 1	Application to Minister
TAB 2	Decommissioning Plan
TAB 3	Applicant AA Screening Report
TAB 4	Consultation Submissions received
TAB 5	RPS Technical Review
TAB 6	DCCAE Request for further information
TAB 7	Applicant Response to Request for Further Information
TAB 8	DCCAE Clarification Request on Further Information Request
TAB 9	Applicant Response to Clarification Request
TAB 10	RPS AA Screening Technical Review Addendum