

Appropriate Assessment (AA) Screening Decision

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 Directive (92/43/EEC) (as amended) (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 European Site, but which are likely to have a significant effect on a European Site and to integrate that assessment into the decision making process. 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.”

Under Irish law the European Communities (Birds and Natural Habitats) Regulations 2011-15 as amended (the Birds and Habitats Regulations) provide as follows:-

Regulation 42(1) of the Birds and 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".

Furthermore the regulations provide under Regulation 42 (6) and 42 (7) that:-

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.'*

Project Proposal

CNOOC Petroleum Europe Ltd. (formally Nexen Petroleum U.K. Ltd) have applied to drill a single exploration well in the Iolar prospect under Frontier Exploration Licence (FEL) 3/18 in the Porcupine Basin offshore of the south west of Ireland.

The drill location is approximately 232 km south west of the Irish mainland in water depths of approximately 2,200m. The well will be drilled using a floating drill ship suitable for the deep water in the proposed location and the total duration of the drilling is expected to be for a duration of 100 to 150 days.

The purpose of the well is to gather data on the reservoir characteristics, hydrocarbon presence, pressure and temperatures. This information will inform any future development at the Iolar. The well be permanently plugged and abandoned, whether or not commercially viable quantities of hydrocarbons are found.

The application was received on the 14th November, 2018.

Public Consultation

While there is no statutory requirement for public consultation, the application was advertised on the Department website following receipt of the application on 21st December 2018 for a 30 day period until the 21st January 2019. The following responses were received prior to the deadline and the points raised have been considered as part of the screening process.

- Submission received from An Taisce dated 13th December 2018.
- Consultation response received from An Taisce – dated (21st January)
- Consultation response from Friends of the Irish Environment (21st January 2019).
- Consultation response from Gluaiseacht dated 21st January 2019.

One of the above responses was received prior to the official publication on the Department's website as the application material was placed on the website due to an administrative error. The Department agreed to accept the response and the respondent (An Taisce) reserved the right to respond once the public consultation commenced.

During the EIA screening process further information was requested from the Applicant to ensure that a screening determination could be made. The bodies who submitted observations following the initial consultation were notified of the decision to request further information. The additional information received from the Applicant was published on the Department's website for a further consultation period of 14 days on the 22nd February. A further letter was received from An Taisce dated 7th March 2019.

The project specific observations are shown in Appendix 1 as part of the external review of the applicant's AA Screening Report undertaken by independent external environmental advisors commissioned by the Department (Ramboll Environment and Health UK Limited; 'Ramboll').

AA Screening Process

The 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 which provide the decision making framework and tests for conducting an appropriate assessment and the principles established in case law interpreting the Directive and Regulations. I have considered the following in carrying out the AA Screening assessment of the application made by CNOOC Petroleum Europe Limited ('the applicant'):-

- Documents provided by the applicant - Appropriate Assessment Screening Report (AA Screening)
- External review of the applicant's AA Screening Report by Ramboll (Appendix 1)
- Submissions received during the public consultation processes and the additional submission from An Taisce in advance of the initial consultation.

An appropriate assessment is required where it cannot be excluded, on the basis of objective scientific information following screening, that the project, either individually or in combination with other plans and projects, will have a significant effect on a European Site.

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, emission 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

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

- Underwater sound and pressure emissions
- Well blowout

The applicant has in their assessment of LSE stated that where potential adverse effects on a qualifying interest are identified, further evaluation is undertaken to determine whether or not a project (alone or in-combination with other projects) will or will not have LSEs on the site taking into account appropriate mitigation. They have qualified that the measures proposed are "inherent to how the Project will (and must) be executed to comply with applicable legislation, guidance and good industry practice. However, in recent case law interpreting Article 6(3) of the Directive (Case C-323/17) the Court of Justice of the European Union determined that it is not appropriate to take account of measures intended to avoid or reduce the harmful effects of a plan or project on the site concerned (mitigation measures) at AA screening stage.

Therefore in view of the above considerations it is not open to me to take account of the measures proposed by the applicant intended to avoid likely significant effects at this stage and therefore it is not possible at this stage, to rule out the risk of a likely significant effect on the site concerned without mitigation.

Conclusion – Screening Determination

Having considered the information available and the legal framework applicable to Appropriate Assessment , it is concluded that the proposal by CNOOC Petroleum Ltd. to drill a single exploration well in the Iolar prospect under Frontier Exploration Licence (FEL) 3/18 in the Porcupine Basin will require Appropriate Assessment. The reason of this decision is that, in the absence of the mitigation measures proposed by the applicant, the possibility of a likely significant effect on the site concerned cannot be excluded on the basis of objective scientific information.

This Decision will be published on the Department's website and will be published in a national newspaper.

