

Ms Hennessy  
Mr Nugent  
Rúnaí Aire Stáit

## Decision Sought

### *The Minister approves:*

*An Appropriate Assessment for the 'Kinsale Head Decommissioning Plan – Kinsale Head Petroleum Lease (OPL1) – Consent Application No. 2' (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, S.I. 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 has 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 is located in the Celtic Sea approximately 50km off the south coast of Ireland. An indenture of agreement hereinafter referred to as the Parent Agreement was entered into on 13<sup>th</sup> 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 PSE Kinsale Energy Ltd. being the successors thereto) wherein, the Minister, *inter alia*, undertook to grant Ambassador Oil an Exploration Licence.
2. The Kinsale Gas Area was initially developed as the Kinsale Head gasfield and was developed by Marathon Petroleum Company (Ireland) Ltd ("**Marathon**") under a Petroleum Lease dated 7<sup>th</sup> May, 1970 between the Minister for Industry and Commerce, the Minister for Finance and Marathon Petroleum Company (Ireland) Ltd hereinafter referred to as the Petroleum Lease. Commercial production commenced in 1978.
3. The gasfield was enlarged in subsequent years to include the satellite "**Ballycotton Gasfield**" and the "**Southwest Kinsale Gasfield**", which are both included by way of amendment to the Kinsale Petroleum Lease. An addendum to the Lease dated 29<sup>th</sup> November, 2006 provided for the use of Southwest Kinsale Gasfield as a gas storage facility. This operation ceased in April 2017 as it was no longer commercially viable.

4. 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 PSE Kinsale Energy Ltd. (**KEL**), a wholly-owned subsidiary of PETRONAS.
5. The Kinsale gasfield is currently producing approximately 10 million standard cubic feet per of gas (approximately 4% of Ireland's current annual gas requirement). At its peak production in the 1990s, the gasfield produced over 300 MMscfd of gas. The cessation of production in the Kinsale Gas Area is expected to occur in April/May 2020 when continued production would no longer be economic.
6. A Cessation of Production application was submitted by the Operator on 26<sup>th</sup> June, 2019. The application was subsequently approved by the Minister of State on 28<sup>th</sup> November, 2019. This allows production operations to cease on or after 31<sup>st</sup> March 2020. Upon cessation of gas production, decommissioning of the facilities will commence subject to the receipt of all necessary regulatory and environmental approvals.

#### **Previous Application ("PHASE 1")**

7. On 26<sup>th</sup> April, 2019, the Minister of State consented to the "**PHASE 1**" application works, namely the plugging and abandoning of wells in both the Kinsale Gas Area and Seven Heads gasfields and the removal of the two platform topside structures located in the Kinsale gasfield.

#### **Current Application ("PHASE 2")**

8. On 8<sup>th</sup> August, 2019, KEL (the "**Applicant**") applied to the Minister of State to decommission certain facilities within the Kinsale Gas Area (**TAB 1**). The details of this "**PHASE 2**" application are set out in the Decommissioning Plan (**TAB 2**) accompanying the application. The scope of work ("**Relevant Works**") involved in the Decommissioning Plan relates to:
  - a. the complete removal of the offshore platform jackets (legs) in accordance with OSPAR Decision 98/3.
9. The application was accompanied by a 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.

### **Future Applications (“PHASE 3”)**

11. A third and final application (“**PHASE 3**”) is expected to be submitted in 2020 covering the decommissioning of the remaining facilities in both the Kinsale Gas Area and Seven Heads gasfields (i.e. the offshore pipelines and umbilicals (which transfer hydraulic and electric power) and the onshore terminal at Inch, Co Cork).
12. The entire decommissioning scope of work for both the Kinsale Gas Area and the Seven Heads Gasfields is referred to in this submission as the Kinsale Area Decommissioning Plan (“**KADP**”). The KADP includes the Relevant Works, as defined above, and the following (the “**Remaining Works**”):
  - a. Offshore pipelines and umbilicals: rock cover of freespans and/or remaining exposed sections and remaining in situ protection materials;
  - b. Export pipeline (offshore and onshore section): fill onshore section with grout (if a viable re-use option is not identified) and rock cover of freespans and/or remaining exposed sections in offshore section;
  - c. The decommissioning of the onshore Inch Terminal and the return of the site to the original contours and agricultural use, in accordance with the planning consent.

### **Ministerial Considerations in carrying out a screening for Appropriate Assessment**

13. 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.
14. 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 presents complete, precise and definitive findings such that it can be concluded 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.
15. The Minister is required to carry out a screening for Appropriate Assessment before consent for the Decommissioning 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**

16. 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.”*

17. Regulation 29 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 Process**

18. In assessing the application against the criteria outlined above, the Department engaged RPS Consultants for independent technical advice.
19. The AA Screening Report together with the Decommissioning Plan and Environmental Impact Assessment Report were posted on the Department's website on 12<sup>th</sup> August, 2019 inviting comments to be made on the submission by 13<sup>th</sup> September, 2019. The Applicant also posted a notice in the Irish Examiner on 12<sup>th</sup> August, 2019 with details of the submissions, together with information on where they could be viewed.
20. Two submissions were received on the screening for Appropriate Assessment, namely the Commission for the Regulation of Utilities and the Department of Culture, Heritage and the Gaeltacht (on behalf of the National Parks and Wildlife Service and the Underwater Archaeology Unit) (**TAB 4**).
21. Having reviewed the application and submissions received from the public consultation, RPS submitted a Kinsale Area Decommissioning Project Screening for Appropriate Assessment and Article 12 Screening Assessment Technical Review (**TAB 5**).

22. A summary of the consultation 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 RPS AA Screening and Article 12 Screening Assessment Technical Review.

23.

Observation / Submission	Response
<b>Department of Culture, Heritage and the Gaeltacht (DCHG) Development Applications Unit (DAU) On behalf of National Parks and Wildlife Service (NPWS)</b>	
<i>The NPWS are satisfied that the Kinsale Area Decommissioning Project (KADP) is unlikely to introduce or incur a significant negative impact on Natura 2000 site designated for Annex II marine mammal species, Roaringwater Bay and Islands SAC (&gt;70km distant). It is also their 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>	RPS noted this submission.
<b>Commission for the Regulation of Utilities (CRU)</b>	
The CRU stated that the activities covered in Consent Application No. 2 are not subject to its regulation.	N/A

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 has 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, RPS has concluded as follows:

*“In carrying out the technical review of the Screening for AA, Screening for AA Addendum and supporting documentation and arrive at a definitive determination under Article 6(3) of the Habitats Directive as to whether the project, on its own or in combination with other plans and projects, is likely to have a significant effect on a European site, RPS took into account the following:*

- *the AA Screening Report;*
- *the AA Screening Report Addendum;*
- *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, it is the opinion of RPS that sufficient evidence has been provided in the decommissioning application documentation and it can be determined that an Appropriate Assessment of the project is not required. The requirement for AA can be **excluded** on the basis of objective scientific information, following screening under the European Communities (Birds and Natural Habitats) Regulations, S.I. No. 477 of 2011 (as amended), that the KADP, individually or in-combination with other plans or projects, will have a significant effect on a European site.”*

27. In reaching its conclusion, RPS confirms 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 – Conset Application No. 2 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 Minister to accept and adopt the screening assessment carried out by RPS and the conclusion in the RPS report 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 report 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 has 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.***

Maria O'Brien  
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February 2020

**Documents forming part of submission**

<b>TAB 1</b>	Application to Minister
<b>TAB 2</b>	Decommissioning Plan
<b>TAB 3</b>	Applicant AA Screening Report
<b>TAB 4</b>	Consultation Submissions received
<b>TAB 5</b>	RPS Technical Review