

Harbour Energy Proposed Protective Provisions

Shown as mark-up to the Harbour Energy Without Prejudice Protective Provisions as Submitted by the Applicant at DL5

Explanatory Notes

The Calder Field is owned by Harbour Energy, however until cessation of production (COP) the Calder Field Facilities are operated by Spirit Energy. Accordingly, any protective provisions in respect of the Calder Field need to be for the benefit of Harbour Energy and prior to COP these need to meet the requirements of Spirit Energy as operator.

Harbour Energy has marked-up the protective provision below primarily to address the post-COP decommissioning phase. To the extent that the protective provisions below also relate to the operational phase of Calder Field these:

1. are based on the assumption that Spirit Energy's position will be substantially the same as that presented at DL5;
2. do not include any provisions which would be required should the "WTG and OSP aviation buffer zone" be less than 3.76nm; and
3. have been provided without review and comment by Spirit Energy as the operator, due to the limited time between the publication of the Examining Authority (ExA)'s questions EXQ3 and deadline 5A. As a result review and approval by Spirit Energy post submission will be required.

COP of the Calder Field is at this time an unknown date which will be governed by Harbour Energy's obligation under its license to maximise economic recovery from the Calder Field, which will be principally dependent upon the technical performance of the reservoir, technical performance of the facilities and macro-economic conditions.

Harbour Energy has utilised certain of the principles and form of drafting proposed by the Applicant for the benefit of Spirit Energy in their without prejudice protective provisions submitted at DL5. The Applicant suggested in their DL5 response that no similar provisions were required for the benefit of Harbour Energy. Harbour Energy strongly rejects this assertion. The rationale given by the Applicant was that, unlike Morecambe CPP1, the Calder Platform is a NUI (a normally unmanned platform), however this rationale is unsubstantiated. Firstly, the impact of reduced flying opportunities has a greater impact on helicopter operations to a NUI than to a manned installation as personnel cannot be taken to the platform unless it is anticipated that they can also be collected again later the same day. This impact has been amply explained and demonstrated in submissions from both Harbour Energy (REP1-102) and Spirit Energy (e.g. RR-077 and REP1-116). Secondly, much of the decommissioning work post-COP will involve non-producing installations (NPIs) with their own helidecks. During this phase, it is therefore incorrect to consider the installation at the Calder Field to be a NUI, rather the NPI being flown to will be a manned platform and in this regard similar to CPP1.

In the interests of co-existence, and as a development from earlier submissions, Harbour Energy is willing to accept that, with suitable compensation provisions, post-COP decommissioning work could be undertaken with rotor tips no nearer than 1.9nm. As clearly set out in Harbour Energy's Written Representation (REP1-102), the AW169 aircraft used in the East Irish Sea require an obstacle-free distance of 1.9nm upwind of a helideck in order to execute a take-off or a missed approach should one engine become inoperable. The Applicant has challenged this distance but Harbour Energy re-iterates that this distance has been confirmed by our aviation specialists by reference to the performance graphs in the aircraft operating manual and also by the helicopter operator operating these aircraft on behalf of Spirit Energy, including those to the Calder Platform. In support of this change from Harbour Energy's DL5 submission (in which 3.76nm was required for both pre-COP and post-COP operations), the drafting of these protective provisions places significant emphasis on the compensation provisions and

the associated definition of “additional costs”. It must be emphasised that the Applicant’s drafting would not provide reasonable compensation, particularly as (1) it limits the ability to claim to a very narrow range of costs; (2) it seeks to exclude the ability to claim for consequential loss, which as defined by the Applicant includes elements which Harbour Energy would consider to be direct losses and costs; and (3) it is capped at a level that would fall a long way short of Harbour Energy’s actual economic loss.

Whilst recognising the Applicant’s approach in their drafting, Harbour Energy believes that demonstrating actual occurrences of impaired helicopter access would be unduly onerous for both parties, unrealistic to implement and risks Harbour Energy’s not being compensated for its actual economic loss. Harbour Energy believes that these protective provisions may serve to establish some principles, but that the parties would in practice be better to enter an agreement that takes a more pragmatic approach to compensation.

The inclusion of vessel use as a substitute for helicopter use in the Applicant’s drafting is an example of an alternative arrangement to support decommissioning. Harbour Energy believes that there may be other such alternative arrangements that would avoid or mitigate impaired helicopter access.

The narrow scope of the Applicant’s definition of “additional costs” restricts the ability to claim for costs to those which have arisen as a direct result of impaired helicopter access. This doesn’t take account of the principal consequence of impaired helicopter access, being delays in necessary movements of personnel and/or equipment. This is unacceptable and misunderstands the impact upon Harbour Energy, as such delays would extend the duration of decommissioning works, resulting in substantial costs for rigs with their associated vessels and personnel.

The mechanism for claiming and payment of compensation set out in clause 9 in the Applicant’s drafting would be impractical to implement. In particular:

- The requirement for prior notification and approval before incurring additional costs would, as drafted by the Applicant, require the owner to notify the undertaker prior to undertaking every flight to an installation at the Calder Field. Only after a flight has been undertaken would it be known whether that flight resulted in impaired helicopter access and thus whether any additional costs had been incurred.
- Harbour Energy’s preference would be to remove any cap on the undertaker’s liability. Such a cap would leave the owner exposed in a situation where additional costs were higher than had been anticipated at the time of drafting these protective provisions. More fundamentally, the balance of risk would be entirely in the undertaker’s favour with their risk capped and the owner’s risk unlimited.
- Harbour Energy’s preference would be to remove any such cap. Were a liability cap to be included, the £2,000,000 proposed by the Applicant is grossly inadequate. Harbour Energy currently anticipates that additional costs during decommissioning in the range of £3,000,000 to £8,000,000 (section 2.2.4 of Harbour Energy Written Representation (REP1-102)). Harbour Energy believes that, were a liability cap to be included, the cap should be based upon additional costs on a post tax basis, taking account of the tax relief obtained by Harbour Energy on any additional costs incurred but also taking account of the tax payable by Harbour Energy on any compensation received which is paid by the undertaker. Based upon the current taxation rules Harbour Energy would expect to obtain relief at 40% on most decommissioning expenditure, whilst any compensation payment from the undertaker will be taxed at 78%. This is due to the fact that Decommissioning expenditure does not attract relief under the Energy Profits levy and only obtains 40% relief, yet the compensation payment would be fully taxable under the levy at 78%.

PART 1

For the protection of Harbour Energy

Application

1. For the protection of the owners from time to time of the Calder Field, which at the date stated in article 1 (citation and commencement) of this Order is Harbour Energy, unless otherwise agreed in writing between the undertaker and the owner, the provisions of this Part of this Schedule shall have effect until completion of all activities required under any statutory decommissioning plan required under the Petroleum Act 1998 in relation to the Calder Field.

Interpretation

2. In this Part of this Schedule —

“**additional costs**” means any costs incurred by the owner in carrying out the owner’s works, and relating to any of the following —

- (a) **impaired helicopter access** to the extent such helicopter operations can be reasonably demonstrated to have been necessary for the operation and/or maintenance, and/or decommissioning of the Calder Field or Calder Field Facilities;
- (b) only to the extent not included in the calculation of costs relating to sub-paragraph (a), any use of vessels or alternative arrangements implemented to mitigate the likely extent of impaired helicopter access, subject to such use of vessels or alternative arrangements being approved in advance by the undertaker;
- (c) any drilling unit or rig being utilised for the purposes of the owner’s works and any associated support vessels and service personnel, being required for a longer period of time;

but in each case only to the extent that:

- (i) such costs have been incurred by the owner as a result of the presence of the undertaker’s works;
- (ii) such costs have been reasonably and properly incurred by the owner;
- (iii) the owner provides reasonably documented evidence of such costs;
- (iv) the owner and each relevant contractor, sub-contractor or agent have at all times used reasonable endeavours to minimise and mitigate such costs; and
- (v) **[such costs have been incurred on or after the decommissioning date for Calder]**;

“**cable**” means the power and telecommunications cables connecting the Calder Platform to the Central Processing Platform 1 complex located in the South Morecambe Field (United Kingdom Continental Shelf block 110/3a) shown purple and annotated as Calder to CPP1 on the Spirit and Harbour Protective Provisions Plan;

“**Calder Field**” means the Calder offshore gas field which underlies United Kingdom Continental Shelf block 110/7a;

“**Calder Field Facilities**” means the facilities and infrastructure pertaining to the Calder Field;

“**Calder Platform**” means the normally unattended, minimum facilities wellhead platform located in the United Kingdom Continental Shelf block 110/7a D;

“**cessation of production**” or “**COP**” means the date on which hydrocarbon production permanently ceases;

“**coexistence agreement**” means an agreement entered on reasonable terms between the undertaker and the owner in respect of the authorised development and the owner’s works to reconcile and protect the interests of the parties as are known at the time;

“**CPPI**” means the manned Central Processing Platform hub complex located in the United Kingdom Continental Shelf Block 110/2a, 110/3a and 110/8a;

“**decommissioning date for Calder**” means the date of cessation of production from the Calder Field;

“**Harbour Energy**” means Chrysaor Resources (Irish Sea) Limited, a subsidiary of Harbour Energy PLC;

“**impaired helicopter access**” means delays that occur in the movement of necessary personnel and/or materials by helicopter to or from the Calder Field Facilities (or any drilling unit or rig which is supporting the owner’s works at the Calder Field Facilities);

Commented [HE1]: See new definition of impaired helicopter access

Commented [HE2]: The inclusion of vessel use as a substitute for helicopter use in the Applicant’s drafting is an example of an alternative arrangement to support decommissioning. Harbour Energy believes that there may be other such alternative arrangements that would avoid or mitigate impaired helicopter access.

Commented [HBR3]: The requirement in square brackets at (v) is subject to paragraph 4.1 and the definition of “**WTG and OSP aviation buffer zone**” being included as drafted in this version of the PPs. i.e. the **WTG and OSP aviation buffer zone** being set at 3.76nm.

Commented [HE4]: Whilst recognising the Applicant’s approach in their drafting, Harbour Energy believes that retrospectively demonstrating actual occurrences of impaired helicopter access would be unduly onerous for both parties. Harbour Energy believes that these protective provisions may serve to establish some principles, but that the parties would in practice be better to enter an agreement that takes a more pragmatic approach to compensation.

“**licence**” means United Kingdom Petroleum Production Licence P099;

“**ministerial statement**” means the written statement given by the Secretary of State for Energy and Climate Change to the UK Parliament regarding Crown Estate Leases for Offshore Renewables Projects on 12 July 2011, or any similar supplementary or replacement policy;

“**offshore substation platform**” means Work No. 2(a) from Part 1 of Schedule to the Order but excluding foundations;

“**owner**” means the owners from time to time of the Calder Field, which at the date stated in article 1 (citation and commencement) of this Order is Harbour Energy;

“**owner’s works**” means any exploration, appraisal, development, production, maintenance, interventions or decommissioning activity in accordance with and pursuant to the licence or any statutory decommissioning plan required under the Petroleum Act 1998 in relation to the Calder Field Facilities;

“**pipeline and cable proximity area**” means the area five hundred meters (500m) either side and directly above the pipeline and cable, shown coloured pink and annotated and shown as the pipeline and cable proximity area on the Spirit and Harbour Protective Provisions Plan;

“**pipeline**” means —

- (a) the 3” Rivers onshore terminal to Calder chemical pipeline with pipeline reference number PL1965; and
- (b) the 24” Calder to Rivers onshore terminal gas pipeline with pipeline reference number PL1966

shown green and annotated as the Calder to Rivers Onshore Terminal (PL1966) and Rivers Onshore Terminal to Calder (PL1965) on the Spirit and Harbour Protective Provisions Plan, together with any associated umbilicals, plant and equipment serving those pipelines;

“**relevant activities**” means all development activity relating to the carrying on of the undertaker’s and owner’s businesses within, or adjacent to the pipeline and cable proximity area or the WTG and OSP aviation buffer zone or WTG and OSP post-COP aviation buffer zone or WTG and OSP marine buffer zone or WTG marine corridor, as the case may be, including (but not limited to) the preparation of development proposals, the submission of applications for statutory consents associated with those proposals and consultation in respect thereof, the acquisition of or application for **new oil or gas blocks**;

“**Spirit and Harbour Protective Provisions Plan**” means the plan certified as the Spirit and Harbour Protective Provisions Plan by the Secretary of State under article 12 (certification of documents and plans, etc.) of the Order;

“**temporary surface infrastructure**” means any fixed temporary infrastructure to be used in the construction, operation and maintenance, and decommissioning of the authorised development including, but not limited to, jack-up barges and buoys, but does not include temporary surface infrastructure in transit;

“**wind turbine generator**” means Work No. 1(a) from Part 1 of Schedule to the Order but excluding foundations;

“**WTG and OSP aviation post-COP buffer zone**” means a circular area of **one point nine nautical miles (1.9 nm)** of clear airspace measured from the nearest outer extremity edge of the Calder Platform to any tip from any wind turbine generator located within the **order limits** and extending vertically from mean sea level, shown edged blue and annotated and shown as the WTG and OSP aviation post-COP buffer zone on the Spirit and Harbour Protective Provisions Plan;

“**WTG and OSP aviation buffer zone**” means —

- (i) a circular area of three point seven six nautical miles (3.76 nm) of clear airspace measured from the nearest outer extremity edge of the Calder Platform to any tip from any wind turbine generator located within **the order limits** and extending vertically from mean sea level; and
- (ii) a circular area three point seven six nautical miles (3.76 nm) of clear airspace measured from the nearest outer extremity edge of CPP1 to any tip from any wind turbine generator located within **the order limits**;

each as shown edged light blue and annotated and as the WTG and OSP aviation buffer zone on the Spirit and Harbour Protective Provisions Plan;

“**WTG and OSP marine buffer zone**” means an area of one nautical mile (1 nm) measured from the outer extremity edge of the Calder Platform **and** extending vertically from mean sea level shown edged in light green and annotated and shown as the WTG and OSP marine buffer zone on the Spirit and Harbour Protective Provisions Plan; and

“**WTG marine corridor**” means a one nautical mile (1 nm) wide corridor of clear sea space between the Calder Platform and CPP1 edged in dark green and annotated and shown as the WTG marine corridor on the Spirit and Harbour Protective Provisions Plan.

Commented [HE5]: The word licence is a defined term relating specifically to the current licence for the Calder Field so is not applicable here.

Commented [HE6]: Harbour Energy has utilised certain of the principles and form of drafting proposed by the Applicant for the benefit of Spirit Energy in their without prejudice protective provisions submitted at DL5. The Applicant suggested in their DL5 response that no similar provisions were required for the benefit of Harbour Energy. Harbour Energy strongly rejects this assertion. The rationale given by the Applicant was that, unlike Morecambe CPP1, the Calder Platform is a NUI (a normally unmanned platform), however this rationale is unsubstantiated. Firstly, the impact of reduced flying opportunities has a greater impact on helicopter operations to a NUI than to a manned installation as personnel cannot be taken to the platform unless it is anticipated that they can also be collected again later the same day. This impact has been amply explained and demonstrated in submissions from both Harbour Energy (REP1-102) and Spirit Energy (e.g. RR-077 and REP1-116). Secondly, much of the decommissioning work post-COP will involve non-producing installations (NPIs) with their own helidecks. During this phase, it is therefore incorrect to consider the installation at the Calder Field to be a NUI, rather the NPI being flown to will be a manned platform and in this regard similar to CPP1.

Commented [HE7]: In the interests of co-existence, and as a development from earlier submissions, Harbour Energy is willing to accept that, with suitable compensation provisions, post-COP decommissioning work could be undertaken with rotor tips no nearer than 1.9nm. As clearly set out in Harbour Energy’s Written Representation (REP1-102), the AW169 aircraft used in the East Irish Sea require an obstacle-free distance of 1.9nm upwind of a helideck in order to execute a take-off or a missed approach should one engine become inoperable. The Applicant has challenged this distance but Harbour Energy re-iterates that this distance has been confirmed by our aviation specialists by reference to the performance graphs in the aircraft operating manual and also by the helicopter operator operating these aircraft on behalf of Spirit Energy, including those to the Calder Platform. In support of this change from Harbour Energy’s DL5 submission (in which 3.76nm was required for both pre-COP and post-COP operations), the drafting of these protecti... [1]

Commented [HE8]: Licence refers to the oil and gas licence for Calder. The intent is understood to be wind turbine generators forming part of the Morecambe Generation Assets.

Commented [HE9]: Up until cessation of production (COP) from the Calder Field, the field, whilst owned by Harbour Energy, is operated on its behalf by Spirit Energy. Accordingly, Harbour Energy is unable to propose protective provisions applicable prior to COP other than those proposed by Spirit Energy. Due to the limited time between the publication of the Examining Authority (ExA)’s questions EXQ3 and deadline 5A, it has not been possible to consult further with Spirit Energy so Harbour Energy has assur... [2]

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Commented [HE11]: Licence refers to the oil and gas licence for Calder. The intent is understood to be wind turbine generators forming part of the Morecambe Generation Assets.

Commented [HE12]: It would be inappropriate to limit the WTG and OSP marine buffer zone to the licence (which relates to the Calder Field) as the impact on marine access to the Calder Field Facilities would be the same whether an obstacle (within 1nm of the edge of the Calder Platform) were within or outside of the licence.

Restriction on authorised development

3. (1) No wind turbine generator, offshore substation platform or temporary surface infrastructure shall be erected in the pipeline and cable proximity area, the WTG and OSP marine buffer zone or the WTG marine corridor unless otherwise agreed in writing between the owner and the undertaker.
- (2) In the case of temporary surface infrastructure the owner may not unreasonably withhold consent where the undertaker has been reasonably requested to place temporary infrastructure in the pipeline and cable proximity area, the WTG and OSP marine buffer zone or the WTG marine corridor by a statutory consultee.
- 4.
- (1) Prior to the decommissioning date for Calder, no wind turbine generator or offshore substation platform shall be erected in the WTG and OSP aviation buffer zone unless otherwise agreed in writing between the owner and the undertaker; and
- (2) On and from the decommissioning date for Calder, no wind turbine generator or offshore substation platform shall be erected in the WTG and OSP aviation post-COP buffer zone unless otherwise agreed in writing between the owner and the undertaker.
5. The restrictions in paragraphs 3 and 4 in the WTG and OSP aviation buffer zone, WTG and OSP aviation post-COP buffer zone, WTG and OSP marine buffer zone, and WTG marine corridor shall cease to have effect if the Secretary of State, having consulted with the owner, has confirmed in writing that Calder Field Facilities has been decommissioned.

Coexistence agreement

6. Prior to the commencement of construction of the authorised development, the undertaker and the owner shall use reasonable endeavours to enter into a coexistence agreement (which includes provision for proximity agreements on standard UK oil and gas industry terms and arrangements for coordinating marine access and simultaneous operations).

Provision of information

7. Without prejudice to any other rights or obligations under this Part of this Schedule the owner and the undertaker shall from time to time keep each other informed of relevant activities such that the owner and the undertaker may seek to agree solutions to allow those activities to successfully co-exist as far as reasonably practicable until completion of activities required under any statutory decommissioning plan required under the Petroleum Act 1998 in relation to the Calder Field Facilities.

Cooperation

8. The undertaker and the owner must each act in good faith and use reasonable endeavours to cooperate with, and provide assistance to, each other as may be required to give effect to the provisions of this Schedule.

Compensation

9. (1) The owner shall, as soon as reasonably practicable after incurring any additional costs, serve the undertaker with an itemised invoice which details the amount payable to the owner, taking account of any tax payable or recoverable by the owner, which compensates the owner for incurring such additional costs.
- (2) Within 28 days of receipt of such an itemised invoice, the undertaker shall pay the owner's costs detailed in such itemised invoice by electronic transfer in immediately available funds to the owner, to such account as is designated by the owner, quoting the invoice number against which payment is made.
- (3) Whether or not the amount of any sum contained in any invoice is disputed, the whole amount of such invoice shall be paid by the undertaker on or before the due date except in the case of fraud. Where the amount of any sum is disputed, the undertaker shall notify the owner of the amount in dispute as soon as possible and, in any event, not later than fourteen (14) days from the date of receipt of the invoice. For a period of thirty (30) days from the date of receipt by the owner of the notification of any disputed amount, the undertaker and the owner shall exercise reasonable endeavours to resolve the dispute. If the disputed amount is not resolved within such thirty (30) days of receipt of the notification, the disputed amount may be referred to arbitration

Commented [HE13]: Harbour Energy does not object to the additional constraint upon the Applicant of the proposed WTG aviation corridor, but as set out in Harbour Energy's DL3 Comments on the Applicant's Deadline 2 Submissions (REP3-104), Harbour Energy sees little benefit from it and so in the interests of coexistence would be happy not to include it as a restriction upon the undertaker.

Commented [HE14]: Harbour Energy has consistently raised concerns regarding marine access and mutually exclusive simultaneous operations such as piling, diving and seismic. Harbour energy would be willing to accept that arrangements for ensuring such marine access and coordination of simultaneous operations be included in a coexistence agreement.

Commented [HE15]: The mechanism for claiming and payment of compensation set out in clause 9 in the Applicant's drafting would be impractical to implement. In particular:

- The requirement for prior notification and approval before incurring additional costs would, as drafted by the Applicant, require the owner to notify the undertaker prior to undertaking every flight to an installation at the Calder Field. Only after a flight has been undertaken would it be known whether that flight resulted in impaired helicopter access and thus whether any additional costs had been incurred.
- Harbour Energy's preference would be to remove any cap on the undertaker's liability. Such a cap would leave the owner exposed in a situation where additional costs were higher than had been anticipated at the time of drafting these protective provisions. More fundamentally, the balance of risk would be entirely in the undertaker's favour with their risk capped and the owner's risk unlimited.
- Harbour Energy's preference would be to remove any such cap. Were a liability cap to be included, the £2,000,000 proposed by the Applicant is grossly inadequate. Harbour Energy currently anticipates that additional costs during decommissioning in the range of £3,000,000 to £8,000,000 (section 2.2.4 of Harbour Energy Written Representation (REP1-102)). Harbour Energy believes that, were a liability cap to be included, the cap should be based upon additional costs on a post tax basis, taking account of the tax relief obtained by Harbour Energy on any additional costs incurred but also taking account of the tax payable by Harbour Energy on any compensation received which is paid by the undertaker. Based upon the current taxation rules Harbour Energy would expect to obtain relief at 40% on most decommissioning expenditure, whilst any compensation payment from the undertaker will be taxed at 78%. This is due to the fact that Decommissioning expenditure does not attract relief under the Energy Profits levy and only obtains 40% relief, yet the compensation payment would be fully taxable under the levy 78%.

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for determination pursuant to paragraph 11 below. If the disputed amount is ultimately resolved or determined in favour of the undertaker, the owner shall repay to the undertaker the difference between the original invoice amount and the final agreed or determined amount.

(4) The aggregate cap of the undertaker's gross liability to pay compensation under the terms of this Part of this Schedule in respect of any additional costs which the owner has incurred on or after the decommissioning date for Calder only is limited to £22,000,000 (twenty two million pounds) for all claims of compensation.

10. Nothing in this Part of this Schedule shall affect any rights or obligations or assessment of compensation in accordance with the ministerial statement and any associated guidance.

Arbitration

11. Any difference arising between the undertaker and the owner under this Part shall be referred to and settled by arbitration under article 15 (arbitration).

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Up until cessation of production (COP) from the Calder Field, the field, whilst owned by Harbour Energy, is operated on its behalf by Spirit Energy. Accordingly, Harbour Energy is unable to propose protective provisions applicable prior to COP other than those proposed by Spirit Energy. Due to the limited time between the publication of the Examining Authority (ExA)'s questions EXQ3 and deadline 5A, it has not been possible to consult further with Spirit Energy so Harbour Energy has assumed in this drafting that Spirit's position will be substantially that presented by them at DL5.

Spirit and Harbour Protective Provisions Plan

Note: Indicative draft, showing only elements relevant to Harbour Energy

Key



Approximate Scale

