Harbour Energy Post-Deadline 5A Comments.

Introduction

During the afternoon of Monday 14th April, the Applicant shared with Harbour Energy a proposed mark-up of the protective provisions which Harbour Energy had submitted at DL5A ("Applicant proposed PP mark-up") which it is understood that the Applicant intends to submit at DL6 today. To avoid any confusion, should the Applicant not submit these, or submit a different version, the Applicant's mark-up is attached for reference. Rather than providing a mark-up to the Applicant proposed PP mark-up, the following narrative highlights Harbour Energy's main concerns with the Applicant's position, but given the time constraints is not a comprehensive commentary and feedback on all changes, and therefore failure to comment should not be considered acceptance. A short meeting between the Applicant and Harbour Energy also took place during the afternoon of Monday 14th April which will also be summarised in this document.

Comments on the Applicant's Proposed Revised Protective Provisions for the Benefit of Harbour Energy

Licensee

The Applicant has modified the use of the term "owner" to "licensee" based on a discussion with the ExA at ISH4. From Harbour Energy's review of the transcript and recording of ISH4, the discussion at ISH4 referred to deemed marine licences and does not appear to warrant the proposed change. Furthermore, and more fundamentally, oil & gas activities are carried out under a petroleum production licence. It is not a requirement to maintain the licence once the facilities are hydrocarbon-free. It is therefore quite possible and normal practice that some of the decommissioning work would be carried out under an approved decommissioning programme after the licence has been relinquished. In order to ensure that the protective provisions continue to provide protection to the owner of the Calder Field through to the end of decommissioning, Harbour Energy's reference to "owner" should be retained.

Additional Costs and Consequential Loss

The Applicant has amended Harbour Energy's proposed definition of "additional costs" in several material areas. It may be helpful to step back from the detailed drafting and set out the intent of Harbour Energy's protective provisions in this regard. It is acknowledged by the Applicant that the proximity of wind turbine generators to the Calder Facilities is likely to cause some impaired helicopter access. (Note: the definition of impaired helicopter access drafted by Harbour Energy has been substantially accepted by the Applicant). "Additional costs" could arise from" impaired helicopter access"; mitigation measures such as the use of vessels or other alternative arrangements (as drafted by Harbour Energy and welcomed by the Applicant in their comments); and/or the costs of rigs, associated vessels and personnel being required for longer due to the authorised development.

Harbour Energy's definition of "additional costs" places several conditions upon the costs that may be claimed including that: the costs arise as a result of the authorised development; the costs are reasonably and properly incurred; the costs are supported by reasonable documented evidence; the owner has used reasonable endeavours to minimise and mitigate such costs.

In respect of the Applicant's proposed PP mark-up Harbour Energy wishes to highlight the following concerns:

(i) **Misrepresentation of Rig Costs:**
The Applicant appears to have mis-understood Harbour Energy's intent. The Applicant has taken Harbour Energy's limb (c) to be an extension of limb (b), whereas limb (b) covers both use of vessels and "alternative arrangements" which is sufficiently comprehensive to cover costs of any mitigation measures. In addition to limb (b), limb (c), is intended to cover costs arising from any rig and associated support vessels and personnel being required for longer as a result of the authorised development. As such Harbour Energy's limb (c) was deliberately not subject "only to the extent not included in the calculation of costs relating to sub-paragraph (a)". The Applicant's mark-up to this part of the definition misrepresents Harbour Energy's intent and so is deficient in terms of addressing incremental costs which may be incurred and therefore unacceptable to Harbour Energy.

(ii) **The exclusion of consequential loss**:
The Applicant has sought to introduce an extra requirement that the costs are not consequential loss. This is unacceptable for the following reasons:

a. By virtue of introducing a backstop date to the definition of "decommissioning date for Calder" (discussed further in the next section), the Applicant introduces the possibility that production could continue after the backstop date until actual cessation of production.

   Contrary to the Applicant's comments relating to their insertion of the definition of "consequential loss":

   "*Given that Harbour is not exposed to additional costs until COP, it is proposed that limb (b) (in relation to loss of production) is not required in the Harbour PPs (it is required for the Spirit PPs, and further explanation is provided in a comment on those PPs). So it is considered that this definition and approach should be acceptable to Harbour.*"

   during this pre-cessation of production period, Harbour Energy would be exposed to additional costs, including loss of production . In seeking to exclude consequential loss from the costs which are recoverable by Harbour Energy, the Applicant has created a real risk that such losses would not be recoverable.

   The statement by the Applicant that this is covered by the Spirit Energy PPs is incorrect as these are drafted for the benefit of Spirit Energy as Calder duty holder only. An alternative approach during this period would be that adopted by Spirit Energy in their protective provisions submitted at DL5A in which they have sought an indemnity. Accordingly , Harbour Energy would require the inclusion

of a similar indemnity in respect of the pre-cessation of production period, as it the protective provisions for the benefit of Spirit Energy as the Calder duty holder are not expressed to be for the benefit of Harbour Energy as Calder field owner.

b. By their nature, the costs anticipated by Harbour Energy arise from a chain of events which could lead to some being considered to be consequential loss. Accordingly, this restriction is unreasonable, unacceptable to Harbour Energy and unnecessary in the context of the other conditions outlined above. The exclusion of consequential loss cuts across the intent of the provisions in that, as explained above, many costs would arise from a chain of events which risk being captured by the definition of consequential loss.

(iii) **Limitation to post cessation of production costs:**
As noted above, by virtue of introducing a backstop date to the definition of "decommissioning date for Calder" (discussed further in the next section), the Applicant introduces the possibility that production could continue after the backstop date until actual cessation of production. Accordingly, it would be unreasonable for no compensation to be available to Harbour Energy for this period. As made clear in Harbour Energy's explanatory notes supporting its proposed protective provisions, the inclusion of a limitation on costs to those occurring after cessation of production (which was included in square brackets) was subject to an aviation buffer zone of 3.76nm applying up until cessation of production. Since the Applicant proposed PP mark-up would not ensure an aviation buffer zone of 3.76nm through to cessation of production from the Calder Field, the limitation (limb viii in the Applicant's proposed PP mark-up) should not be included.

Decommissioning Date

The expected date of cessation of production from the Calder Field was a key area of discussion between Harbour Energy and the Applicant in their meeting on 14th April 2025. This is discussed further in the Notes on Discussion with Applicant on 14 April 2025 below. Harbour Energy notes that the Applicant's proposed PP mark-up does not use the defined term "decommissioning date for Calder" in the Applicant's limb (viii) of the definition of "additional costs" but rather uses "cessation of production" from the Calder Platform. Based on the Applicant's amendment to the definition of the "decommissioning date for Calder" the combination of these changes would have the effect of precluding any compensation being claimable were the Calder Field still producing post 1st January 2029, which is clearly an unacceptable position.

More fundamentally, as set out in considerable detail in submissions by Spirit Energy, placement of any wind turbine generator within 3.76nm prior to actual cessation of production from the Calder Field would have a significant adverse effect on safety. Although Harbour Energy is keen to promote coexistence and understands the difficulties that an uncertain date presents to the Applicant, due to the nature of its licence obligations and its safety obligations, Harbour Energy is unable to accept a back-stop within the definition of the "decommissioning date for Calder" as this would effectively force the premature cessation of production from the Calder Field by triggering a reduction in the aviation buffer zone from 3.76nm to 1.9nm.

Compensation

The Applicant's proposed PP mark-up in respect of compensation is unacceptable to Harbour Energy in two significant respects:

(i) The Applicant has rejected the grossing up of costs to account for any tax payable by Harbour Energy on any compensation, or tax relief obtained by Harbour Energy on additional costs incurred. The Applicant's comment that "*Harbour's tax planning is a matter for them and not something the Applicant can or should be liable for*" misses the point of compensating Harbour Energy for the costs incurred as a result of the authorised development. If Harbour Energy incurs an additional £1million of decommissioning costs as a result of the authorised development, under current tax rules, tax relief at 40% would be claimable resulting in a net cost of £600,000. Were the Applicant to pay compensation to Harbour Energy, based on the Applicant's proposed PP mark-up, Harbour Energy would be taxed at 78% on £1million compensation paid by the Applicant, resulting in a net receipt of £220,000 and thus a significant shortfall against the net costs incurred of £480,000. This is not a matter of "tax planning", but a reality of the current asymmetry in taxation. If the intent of compensation is to keep the party incurring extra costs whole, as would normally be expected, then the Applicant's position would fall far short of this. Harbour Energy's drafting provides for future changes in taxation that may alleviate this asymmetry and is a fair and reasonable approach.

(ii) The Applicant has maintained the need for an unrealistically low cap on its liability, set at a level of £2million. In its comments, the Applicant states that there is a need for "a fair balance of risk between future and current energy sources". Harbour Energy agrees, and thus has accepted a reasonable cap upon the Applicant's liability which is based upon the likely range of Harbour Energy's additional costs, estimated at £3-£8million. Harbour Energy notes that in its Deadline 5A submission (REP5a-054) the Applicant has questioned this estimate. This has been addressed in a separate response by Harbour Energy at this Deadline 6 which shows that the estimate is reasonable and conservative. Were the Applicant's liability limited to £2million as proposed by the Applicant, under current tax rules, Harbour Energy's net receipt from compensation would be capped at £440,000 which would equate to only £733,333 of additional gross costs. In view of the likely range of additional costs, being £3million to £8million, this cannot be described as "a fair balance of risk". Harbour Energy maintains that a liability cap of £22million is both reasonable and fair. The Applicant selected this site for its application and has had plenty of opportunity to assess its viability. Harbour Energy cannot be held responsible for any failure by the Applicant to undertake its due diligence.

The Applicant also argues that a cap on liability does not prevent Harbour from claiming more if it has a legal claim (e.g. in tort) against the Applicant. A key function of the protective provisions is to provide clarity for each party concerning the anticipated effect of the authorised development on, in this case Harbour Energy. Since it can clearly be anticipated that the liability cap proposed by the Applicant would provide grossly inadequate protection to Harbour Energy, the Applicant proposed PP mark-up would fail in this function.

Harbour Energy notes the Applicant's comments regarding whether or not disputed amounts should be paid up-front. Harbour Energy has adopted the approach that is standard in nearly all oil & gas contracts.

WTG and OSP aviation post-COP buffer zone

The definition of the "WTG and OSP aviation post-COP buffer zone" in the Applicant proposed PP mark-up has been changed from 1.9nm to 1.5nm. Harbour Energy understand that Spirit Energy have consulted with NHV, their aviation service provider (who, unlike the Applicant or its advisors, has ultimate responsibility for the safety of passengers and crew carried) and they have confirmed that under VFR a distance of 1.9nm is required for approach and landing. Harbour Energy further understand that Spirit Energy will be providing a detailed comparison table of the Applicant's and Spirit Energy's aviation advisor's respective calculations of these distances. The Applicant's proposed change to 1.5nm would preclude VFR take-off and/or landing except when the wind direction allowed 1.9nm unrestricted airspace . Such a change would result in very significant additional "impaired helicopter access" increasing the disruption and economic loss experienced by Harbour Energy.

Coexistence Agreement

In Harbour Energy's DL5A submission (REP5A-061), Harbour Energy stated: "*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*." Harbour Energy is pleased to note that the Applicant "*firmly agrees*". The Applicant goes on to note that they provided a draft coexistence agreement to Harbour Energy on 16 April 2024. Harbour Energy's separately provided high-level feed-back to the Applicant, that this draft agreement was heavily weighted in the Applicant's favour providing Harbour Energy with no material comfort and expecting several significant concessions from Harbour Energy. On receipt of this feedback, the Applicant did not offer a revised draft and until this week has not sought further discussions in the intervening period.

Once the principles in these protective provisions have largely been agreed (or have been imposed), Harbour Energy looks forward to resuming discussions and drafting of a coexistence agreement.

Notes on Discussion with Applicant on 14 April 2025

Harbour Energy held a constructive meeting with the Applicant on 14/4/25. The bulk of the meeting entailed discussion of cessation of production from the Calder Field. It became apparent that the natural uncertainty in the date of cessation of production from Calder is an obstacle to reaching agreement on PPs or a separate coexistence agreement.

Harbour Energy explained that it is under a licence obligation to continue production to maximise economic recovery from the Calder Field. Given the dependence upon future technical performance of the wells and facilities and future economic conditions, the actual date of cessation of production cannot be fixed with certainty, cannot be constrained and may be subject to subsequent change.

The Applicant explained that an aviation buffer zone of 3.76nm would prevent an economic development. Without certainty regarding the latest date at which this buffer zone would be reduced, they would be unable to commit funding for the project.

Whilst Harbour Energy understands that the absence of a firm date is problematic for the Applicant, it is a reality of oil & gas production licences and the 3.76nm pre-COP aviation buffer zone is required to permit safe operations until actual cessation of production. This is an issue of site selection and does not indicate any lack of willingness on the part of Harbour Energy to coexist.

Statement of Common Ground

The Applicant shared a draft updated Statement of Common Ground with Harbour Energy on 14 April 2025. In view of the extensive comments Harbour Energy needed to make on the Applicant's DL5A submissions, it was agreed with the Applicant that it would not be possible to submit an agreed updated statement of common ground by DL6 but that the Applicant and Harbour Energy would work together and seek to submit an agreed updated statement of common ground before the close of the examination.

Applicant proposed PP mark-up

Submitted as a separate pdf file.