

PART 12

For the protection of Harbour Energy

Application

1. For the protection of the ~~owner's licensee~~ 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 between the undertaker and the owner~~, the provisions of this Part of this Schedule, ~~unless otherwise agreed between the undertaker and the licensee~~, shall have effect until completion of all activities required under any statutory decommissioning plan required under the ~~Petroleum Act 1998 Act~~ in relation to the Calder Field.

Commented [CMS1]: Applicant Note: Changed to licensee to reflect ExA's comments on 'ownership' of seabed made at ISH4, EV6-003.

Interpretation

2. In this Part of this Schedule—

~~"1998 Act"~~ means the Petroleum Act 1998(a);

"additional costs" means any costs incurred by the ~~owner's licensee~~ in carrying out the ~~owner's licensee'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 ~~the~~ Calder Field Facilities;

(b) ~~only~~ to the extent not included in the calculation of costs relating to sub-paragraph (a);

~~(b)(i)~~ 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; ~~or~~

~~(c)(ii)~~ any drilling unit or rig being utilised for the purposes of the ~~owner's licensee's~~ works and any associated support vessels and service personnel; ~~being (including the provision of any such unit, rig, support vessel or service personnel required for a longer period of time) necessary to mitigate the likely extent of impaired helicopter access, subject to such unit, rig, support vessel or service personnel being approved in advance by the undertaker;~~

but in each case only to the extent that:

~~(i)(iii)~~ such costs have been incurred by the ~~owner's licensee~~ as a result of ~~the presence of the undertaker's works~~ authorised development;

~~(ii)(iv)~~ such costs have been reasonably and properly incurred by the ~~owner's licensee~~;

~~(iii)(v)~~ the ~~owner's licensee~~ provides reasonably documented evidence of such costs;

(vi) the ~~owner's licensee~~ and each relevant contractor, sub-contractor or agent have at all times used reasonable endeavours to minimise and mitigate such costs;

~~(iv)(vii)~~ ~~such costs are not consequential loss; and~~

~~(v)(viii)~~ ~~[such costs have been incurred on or after cessation of production the decommissioning date for the Calder Platform].~~

~~"AP-1 helideck" means the helideck located on the accommodation platform at the CPC the coordinates of which are 53° 50' 44.348" N and 003° 35' 00.579" W;~~

~~"authorised development" has the same meaning as in Schedule 1 of this Order and shall include any part of the said works;~~

(a) 1998, c. 17.

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Commented [RH2]: Applicant Note: this additional limb was proposed by Harbour with the following explanation: "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." (Comment HE2 of REP5a-081).

The Applicant notes that this position by Harbour supports the Applicant's position (rejected by Spirit) that there are alternative solutions to mitigate reduced helicopter access, if required.

The Applicant can accept this additional limb proposed by Harbour (the amendments are to align with the previous limb on alternative arrangements).

Commented [RH3]: Applicant Note: see comment on the definition of "consequential loss" below.

Commented [RH4]: Applicant Note: this additional limb was proposed by Harbour in square brackets with the following explanation: "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."

See comments on definition of WTG aviation pre-COP buffer zone - the square brackets can be removed if the position set out in the comment (and reflected in the drafting of these Protective Provisions) is accepted.

Commented [RH5]: Note for MOWL: Chris has commented "Is this the correct Heli-deck - is the Calder helideck defined elsewhere?"

“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) CPC shown purple and annotated as Calder to CPP1 CPC 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 from the Calder Field;

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

“consequential loss” means any consequential or indirect loss under English law howsoever caused or arising whether under contract, by virtue of any fiduciary duty, in tort or delict (including negligence), as a consequence of breach of any duty (statutory or otherwise) or under any other legal doctrine or principle whatsoever whether or not recoverable at common law or in equity and whether or not foreseeable at the date stated in article 1 (citation and commencement) of this Order;

“CPC” means the hydrocarbon production and processing facilities complex known generally as such or the “CPP1” means the manned Central Processing Platform hub e-Complex located in the United Kingdom Continental Shelf Block 110/2a, 110/3a and 110/8a;

“decommissioning date for Calder” means the earlier of the date of cessation of production from the Calder Field or 1 January 2029;

“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 (or both) by helicopter to or from the Calder Field Facilities (or any drilling unit or rig which is supporting the owner-licensee’s works at the Calder Field Facilities);

“licence” means United Kingdom Petroleum Production Licence P099;

“licensee” means the licensees 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;

“licensee’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 1998 Act in relation to the Calder Field Facilities;

“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-licensee” means the owner-licensees 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-licensee’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 1998/1998 Act in relation to the Calder Field Facilities;

Commented [RH6]: Applicant Note: Harbour has proposed deletion of a ‘consequential loss’ exclusion, and explained that the Applicant “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;”. The definition in the previous PPs was also included in the draft co-existence agreement provided to both Spirit and Harbour on 16 April 2024, and these comments have been received at D5a nearly a year later, with only three business days before the final Examination deadline, so detailed discussion of the precise drafting is no longer possible.

The Applicant notes Harbour does not take issue with the exclusion of consequential loss in principle (so does not challenge the inclusion of limb (a) from the previous definition) but suggests the drafting goes beyond this to include some direct losses (which the Applicant accepts is the case for limb (b) in the previous definition in relation to loss of production).

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.

“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~~licensee’s businesses within, or adjacent to—

- ~~(a) the pipeline and cable proximity area; or~~
- ~~(b) the WTG and OSP aviation pre-COP buffer zone; or~~
- ~~(c) the WTG and OSP post-COP aviation post-COP buffer zone; or~~
- ~~(d) the WTG and OSP marine buffer zone; or~~
- ~~(e) the 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, or 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 five nautical miles (1.5 nm)] [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 or to any OSP 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 pre-COP buffer zone” means —~~
~~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~~
~~(c) a circular area of three point seven six nautical miles (3.76 nm) of clear airspace measured from the nearest outer extremity edge of CPPI CPC to any tip from any wind turbine generator located within the order limits;~~

~~each as~~ shown edged light blue and annotated and shown as the WTG ~~and OSP~~ aviation ~~pre-COP~~ 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

Commented [RH7]: Applicant Note: See section 2.2.4 of REP5a-061 for the Applicant’s explanation of what is appropriate to be excluded from a pre-COP buffer zone.

It is unlikely that the Applicant will install the OSP in this location, but given the design is not yet finalised all restrictions should be clearly justified as they have the potential to reduce efficiency.

Commented [CMS8]: Applicant Note: the Applicant considers it has demonstrated with evidence that a 1.5nm buffer is sufficient to maintain day VMC access (see e.g. section 5.3.1 of REP5-062). Harbour has made clear it has relied on and adopted Spirit’s analysis in relation to the extent of a day VMC buffer required (see e.g. REP3-104), so the Applicant’s position in response to Harbour is the same as to Spirit - 1.5nm is sufficient and had been evidenced by experts.

The Applicant considers that a 1.9nm buffer around both Calder and CPC may not tip the Project into unviability, but equally could risk its ability to deliver efficiently and achieve the project objectives. Given there is not yet a detailed design, it may not be possible to deliver up to 35 locations with this additional space pressure. All for no obvious benefit.

Commented [RH9]: Applicant Note: this was in the Applicant’s original drafting, but on reflection may be confusing as Para 4 below provides for what may or may not be in each buffer zone.

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Commented [CMS10]: Applicant note: See substantive comment on Para 4 below.

The Applicant’s position on the extent of a pre-COP buffer zone is as set out in 2.2.3 of REP5a-061. If the ExA and SoS were to agree with the Applicant on its essential points for deliverability - a clear backstop date for the pre-COP buffer to fall away (proposed 1 Jan 2029), the pre-COP buffer can exclude all WTGs but not foundations, and a clear (and reasonable) limitation on liability - then the Applicant could accept 3.76nm as a pre-COP buffer zone if this were necessary to give Harbour (and Spirit) additional comfort during the final period of operation before decommissioning operations.

Commented [RH11]: Applicant Note: the pre-COP buffer zone around CPC is secured by the proposed PPs in favour of Spirit so is not required here (and to include in both causes complexity over when it falls away and who is authorised to agree changes to these PPs should that be necessary, or superseded by a co-existence agreement).

“WTG aviation corridor” means a two nautical mile (2 nm) wide corridor of clear airspace angled at 220 degrees from ~~CPP1-CPC~~ shown edged in orange and annotated and shown as the WTG aviation corridor 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-the AP-1 helideck~~ edged in dark green and annotated and shown as the WTG marine corridor on the Spirit and Harbour Protective Provisions Plan.

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~~ licensee and the undertaker.

(2) In the case of temporary surface infrastructure the ~~owner~~ licensee 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 ~~pre-COP~~ buffer zone unless otherwise agreed ~~in writing~~ between the ~~owner~~ licensee and the undertaker; and

(2) ~~On and from after~~ 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~~ licensee and the undertaker.

5. The restrictions in paragraph 3 and 4 (~~in respect of in the~~ WTG ~~and OSP~~ aviation ~~pre-COP~~ buffer zone, ~~the~~ WTG and OSP aviation post-COP buffer zone, ~~the~~ WTG and OSP marine buffer zone, and ~~the~~ WTG marine corridor) shall cease to have effect if the Secretary of State, having consulted with the ~~owner~~ licensee, has confirmed in writing that ~~the~~ Calder Field Facilities ~~have~~ been decommissioned.

6. [No wind turbine generator shall be erected in the WTG aviation corridor unless otherwise agreed between the licensee and the undertaker.]

Coexistence agreement

~~6.7.~~ Prior to the commencement of construction of the authorised development, the undertaker and the ~~owner~~ licensee shall use reasonable endeavours to enter into a coexistence agreement (which ~~shall include~~ provision for proximity agreements on standard UK oil and gas industry terms and arrangements for coordinating marine access and simultaneous operations).

Provision of information

~~7.8.~~ Without prejudice to any other rights or obligations under this Part of this Schedule the ~~owner~~ licensee and the undertaker shall from time to time keep each other informed of relevant activities such that the ~~owner~~ licensee 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(a)~~ 1998 Act in relation to the Calder Field Facilities.

Commented [CMS12]: Applicant Note: Harbour are content not to have this additional restriction on the Project (see comment HE13 of REP5a-081), as are Spirit (see Appendix 2 of REP5a-076).

The Applicant is minded still to implement this mitigation as its expert advice is that it would be effective and that an AltMoC can be achieved. It would also limit the Applicant's exposure to additional costs. However, given the position of Harbour and Spirit, the Applicant considers it may not be necessary to secure this in the Protective Provisions and has included this definition and paragraph [6] in square brackets so the ExA and SoS can consider. The Applicant would reiterate that given there is not yet a detailed design for the Project, fewer restrictions means greater scope to maximise efficiency.

Commented [RH13]: Applicant Note: the Applicant welcomes Harbour's recognition of the need for co-existence in its D5a response. The Applicant considers there is substantial alignment between Harbour's proposed approach and the Applicant's 'without prejudice' protective provisions (see REP5-071, response to ExQ2 2DCO2 in REP5-070, and REP5a-061).

In the interests of reaching an agreed position via submissions to the Examination, the Applicant can adopt its without prejudice approach to protective provisions, as set out in Harbour's drafting as amended. Both parties have identified COP as the appropriate date to switch from an interim buffer to a permanent buffer.

The Applicant reiterates it is critical that there is a defined backstop date for COP to give sufficient certainty for the Project to reach financial close and deliver to a viable timeline. The date of 1 January 2029 is proposed (see REP5a-061). It is appreciated that a date for actual COP has not been identified today and that there are wider economic and other factors, including MER. But equally importantly, the Applicant's proposed approach does not force COP to happen by this date, it would simply be the case that at that point the operation of the platforms would need to accommodate the windfarm on the basis of the enduring, rather than interim buffer.

The Applicant notes the other key point for deliverability if this (originally) without prejudice position is to be acceptable is a clear and reasonable limitation on liability.

(a) 1998 c 17.

Cooperation

8.9. The undertaker and the ~~owner-licensee~~ 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

9.10.—(1) The ~~owner-licensee~~ 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-licensee~~, ~~taking account of any tax payable or recoverable by the owner,~~ which compensates the ~~owner-licensee~~ for incurring such additional costs.

(2) ~~Subject to sub-paragraph (3),~~ within 28 days of receipt of such an itemised invoice, the undertaker shall pay the ~~owner's licensee's~~ costs detailed in such itemised invoice by electronic transfer in immediately available funds to the ~~owner-licensee~~, to such account as is designated by the ~~owner-licensee~~, 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 undisputed~~ 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-licensee 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-licensee of the notification of any disputed amount, the undertaker and the owner-licensee 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 for determination pursuant to paragraph 14.2 below. If the disputed amount is ultimately resolved or determined in favour of the undertaker-licensee, the owner-licensee/undertaker shall repay to the licensee/undertaker the difference between the amount of original invoice amount already paid 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-licensee~~ has incurred ~~on or after the decommissioning date for Calder only~~ is limited to ~~£22,000,000 (twenty two million pounds)]~~ ~~£2,000,000 (two million pounds)]~~ / ~~£1,000,000 (1 million pounds)]~~ for all claims of compensation.

10.11. 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

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

Commented [RH14]: Applicant Note: Harbour's tax planning is a matter for them and not something the Applicant can or should be liable for.

Commented [RH15]: Applicant Note: proposed compromise. Harbour has sought to reverse the Applicant's position so that the full amount of any claim is paid up front even if disputed. Spirit have not sought to alter the Applicant's position on this. A middle ground is proposed where the undisputed amount is paid up front, and any disputed amounts are paid once the correct sum due is determined in arbitration. The same approach will be offered in the Spirit PPs.

It is not reasonable to expect the undertaker to pay on demand any sum (up to the liability cap) even if such sum is manifestly unreasonable. There is clear arbitration process which ensures that any dispute will be resolved in a timely way.

Commented [RH16]: Applicant Note: the Applicant acknowledges and welcomes Harbour's acceptance of the principle of a liability cap, and engagement on the appropriate level of liability.

As explained in REP5a-061, it is essential that there is a clear limitation on liability to reach financial close and deliver the Project (i.e. the scope of the exposure must be quantifiable). This is not simply about limiting the Applicant's exposure, it is about a fair balance of risk between future and current energy sources and ensuring the conditions where in practice future energy sources can be delivered.

Importantly, a cap on liability does not prevent Harbour for claiming more if it has a legal claim (e.g. in tort) against the Applicant. The Protective Provisions give a substantial additional benefit in allowing a clear route of claim up to the limitation of liability, but they do not exclude or limit Harbour's legal rights and ability to bring other claims. They are also entirely a unilateral benefit, as Harbour is not being asked to offer any reciprocal indemnities. So the ExA and the SoS should consider if the proposed limitation of liability is reasonable for these Protective Provisions based on the evidence. The ExA and SoS do not need to make a finding that this limitation of liability could cover every conceivable legal claim Harbour or Spirit could have, as the ability to make such claims is entirely unaffected.

The Applicant has provided evidence on the potential quantum of exposure, even if loss of production were included (see REP5-064, Section 7 onwards on in respect of loss of production, and REP5a-054, Section 7 onwards in respect of decommissioning costs). The proposed liability cap is clearly well in excess of this. In contrast Harbour has not presented any evidence in support of its figures.

It is noted that Harbour state in REP5a-061 that "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."

... [1]

Commented [RH17]: Applicant Note: already part of the definition of "additional costs"

Applicant Note: the Applicant acknowledges and welcomes Harbour's acceptance of the principle of a liability cap, and engagement on the appropriate level of liability.

As explained in REP5a-061, it is essential that there is a clear limitation on liability to reach financial close and deliver the Project (i.e. the scope of the exposure must be quantifiable). This is not simply about limiting the Applicant's exposure, it is about a fair balance of risk between future and current energy sources and ensuring the conditions where in practice future energy sources can be delivered.

Importantly, a cap on liability does not prevent Harbour for claiming more if it has a legal claim (e.g. in tort) against the Applicant. The Protective Provisions give a substantial additional benefit in allowing a clear route of claim up to the limitation of liability, but they do not exclude or limit Harbour's legal rights and ability to bring other claims. They are also entirely a unilateral benefit, as Harbour is not being asked to offer any reciprocal indemnities. So the ExA and the SoS should consider if the proposed limitation of liability is reasonable for these Protective Provisions based on the evidence. The ExA and SoS do not need to make a finding that this limitation of liability could cover every conceivable legal claim Harbour or Spirit could have, as the ability to make such claims is entirely unaffected.

The Applicant has provided evidence on the potential quantum of exposure, even if loss of production were included (see REP5-064, Section 7 onwards on in respect of loss of production, and REP5a-054, Section 7 onwards in respect of decommissioning costs). The proposed liability cap is clearly well in excess of this. In contrast Harbour has not presented any evidence in support of its figures.

It is noted that Harbour state in REP5a-061 that *"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 Applicant firmly agrees, and as set out in the Application (e.g. APP-033) and reiterated early in the Examination (see draft SoCG with Harbour Energy REP1-074), the Applicant expected that Harbour and Spirit would engage on discussion of a co-existence agreement (a draft was provided on 16 April 2024). However, as it gradually became clear that Spirit was not going to engage, the limitation on liability was added to the Protective Provisions to allow the Project to be delivered in the event there was no co-existence agreement. Clearly in the time available since receipt of Harbour's proposals before the final Examination deadline (3 business days), it is not possible to settle an approach to commercial arrangements and a limitation of liability in a signed co-existence agreement, but it is hoped that Harbour's new approach to recognising the need for co-existence will allow for an agreement to be concluded following the close of Examination.