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, whist 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%.