East Anglia THREE
Offshore Windfarm

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Applicant's Position Statement on Protective Provisions Eni UK Ltd

Document Reference – Deadline 6/Applicant's Position Statement re Eni UK Limited

SCOTTISHPOWER RENEWABLES

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Proposed Protective Provision for Eni UK Limited

Applicant's Position Statement

1. INTRODUCTION

1.1 In the agenda (item 7) for the issue specific hearing on the draft Development Consent Order on Wednesday 26 October the ExA requested that if there were remaining matters that could not be agreed in negotiations between the Applicant (EATL) and Eni UK Limited (Eni) "the Applicant and Eni UK Limited present a statement or statements of reservation, making clear those matters that are in contention."

1.2 At the DCO hearing on 26 October, having heard submissions from both the Applicant and Eni, the ExA requested that a Statement of Common (or Uncommon) Ground be prepared for Deadline VI, with annexed provisions to be included in the draft DCO.

1.3 Since 26 October EATL and Eni have discussed preparation of a Statement of Common Ground and have concluded that, in light of their respective positions, each party should make their own submission at DL VI. Set out below is EATL's submission. A draft of the submission has been submitted to Eni for comment and to allow Eni to respond at Deadline VI. EATL have in turn not seen Eni's draft submission in sufficient time to comment on it before Deadline VI and must therefore reserve the right to respond to it, if necessary, at Deadline VII.

2. DISCUSSIONS BETWEEN EATL AND ENI

2.1 At the DCO hearing on 8 September 2016 Eni put forward their intention to propose including a protective provision (an outline form of which was proposed in their Written Representation) in the draft DCO, in the event that no cooperation/proximity agreement could be concluded between EATL and Eni before the end of the examination. EATL in turn submitted that a protective provision (particularly in the outline form proposed in Eni's written representation) was inappropriate to protect what EATL considered amounted to future conceptual development.

2.2 Following the hearing on 8 September, EATL and Eni spoke by telephone, and a meeting was held on 30 September at which Eni's position with regard to exercise of their rights under the Licences was explained to EATL; Eni indicated that they were still seeking a protective provision (rather than accepting a letter of comfort, a draft of which EATL had previously submitted to them). EATL indicated in turn that they had in principle concerns over a protective provision for what they considered to be future conceptual development by Eni and that in any event the Heads of Terms for a protective provision put forward in Eni's written representation were too restrictive, particularly as Eni had yet to determine the specific locations, if any, within its licence area P1965 in respect of which it will require a physical offshore presence.

2.3 It was agreed at that meeting that it was too early to consider drafting any form of proximity agreement in light of the stage which Eni's plans on exercise of their rights under the Licence, had reached, and also, to some extent, while the precise location of any infrastructure forming part of the EA3 development and the method of construction was yet to be finalised.

2.4 A joint position statement was submitted at Deadline V, which stated that notwithstanding EATL's in principle concern about the use of a protective provision, EATL did agree to consider any detailed protective provision drafted by Eni which as far as possible struck a reasonable balance between Eni and EATL. If agreement could be reached on a protective provision before 19 October this would be made available for discussion at the DCO issue specific hearing on 26 October. If it could not be agreed before 19 October, EATL and Eni would then set out their respective positions at the DCO hearing.

2.5 Following Deadline V, Eni submitted a draft protective provision to EATL. EATL in turn responded to Eni with their proposed amendments on the assumption that any protective provision is required at all, and Eni responded with their further amendments on 19 October. It did not however prove possible to agree these amendments prior to the DCO hearing on 26 October.

2.6 At the hearing on 26 October the ExA sought clarification on a number of points in relation to the respective positions of EATL and Eni. These included

- How the ExA should take account of the thrust of NPS EN-3 paragraphs 2.6.176 and 2.6.183-187
- How the ExA should take account of the thrust of the DECC Guidance (Oil and Gas clause in Crown Estate leases, guidance on procedures for independent valuation where necessary – published by DECC in June 2014)
- Clarity on how much can be agreed commercially between EATL and Eni at this stage, and what efforts have been made to reach agreement
- How clear Eni's plans were in terms of location of exploration wells, and when this would become clearer
- To what extent the protected area would reduce during the "second term" of Eni's production licence
- Possible options for third party determination in the event of a dispute
- What decisions on delivery EATL would have to take, and timescale, relative to those decisions taken by Eni, and timescale, on exploration/appraisal and production

2.7 Since the hearing Eni and EATL have discussed these issues further. From these discussions it is now clear to EATL that

- There will be no further clarity on Eni's plans at the point when EATL will need to make final decisions on delivery and on the form and layout of the wind farm. While Eni may then have concluded their exploration drilling, at that point they will not have concluded their appraisal (assuming exploration drilling proves to be successful)

- While Eni can reduce the "protected area under their protective provision" from the full area of overlap between EATL's array area and the area of P1965, it will still cover a very substantial part of that overlap and approximately 27% of the total array area (85 km^2). It will also result in the “severance”, and hence potential sterilisation, of the whole of the southern part of the array as well (see Appendix B)

- At the point when EATL would need to have a final decision from an arbitrator on co-existence, if an arbitration provision was included, there would therefore be little more information on the location of Eni's apparatus than there is at present, and hence little on which that arbitrator could make a determination on coexistence or approval of plans

- There is no scope to conclude a commercial agreement between EATL and Eni at this stage since it is not yet known what or where, if at all, within the protected area Eni's apparatus would be

- Although it is possible to identify Eni's broad requirements for buffer/safety zones (500m around an installation; 1,000m around a platform; 500m either side of pipelines and 1,000m width of an access corridor) it is not yet possible to locate the features which those buffer/safety zones would be protecting, and no generic layout drawings have been provided showing how they would limit wind farm development

- EATL cannot confine the consented wind farm to the reduced array area left uncovered by the protected area, not least because of the “severance”, and hence potential sterilisation, of the southern part of the array and, because, as well as the protected area, there are other significant constraints which EATL will have to address in designing the layout of the array within the Order limits

- From EATL's perspective, and in light of the above, any protective provision can only reasonably provide for continuing dialogue between Eni and EATL against the background of the oil and gas clause, without any form of prior approval of EATL’s plans by Eni

3. ENI'S PROPOSED PROTECTIVE PROVISION

3.1 In their latest amendments to the draft protective provision received on 4 November, Eni have proposed that the protective provision requires, in essence:

3.1.1 That EATL must not construct any of the authorised project without having first submitted plans of the works to Eni at least [ ] months prior to start of construction and entered into discussions with the Licensees on interface matters and where necessary on a proximity agreement being entered into

3.1.2 Failing entry into a private agreement on proximity, EATL must obtain approval from Eni in respect of such plans, such approval not to be unreasonably withheld or delayed, and which approval can only be withheld or delayed where necessary for the protection of apparatus, but which may be granted subject to reasonable conditions. Any dispute may be referred to arbitration

3.1.3 These obligations only apply to the extent that the area of licence P1965 extends to the protected area (part of the overlap within the EA3 Order limits) or if later until completion of decommissioning

3.1.4 On and from 1 January 2021 references to the protected area will be deemed to be references to a "reduced protected area" – any area within the original protected area within which the Licensees have, or plan to have, apparatus

3.1.5 "Apparatus" means infrastructure which is or may be installed etc by or on behalf of Eni, or exploration appraisal development etc activities which are or may be carried out by or on behalf of Eni.

3.2 In short therefore, if discussions on a proximity agreement cannot be concluded, Eni would have a reserve backstop position of requiring prior approval of EATL's plans without which EATL cannot proceed.

4. EATL'S PROPOSED PROTECTIVE PROVISION

4.1 EATL propose that if, contrary to their primary contention that no protective provision is required at all, the ExA were to recommend the inclusion of some form of protective provision in the draft Order, it should make provision for submission of plans to Eni at least [ ] months prior to start of construction and enter into discussions with the Licensees on interface matters, and where necessary a proximity agreement (as under (3.1.1) above); and there should be similar provision with regard to the protected area (as under (3.1.3) above), the reduced protected area (as under (3.1.4) above) and apparatus (as under (3.1.5) above).

4.2 However EATL consider that there should be no reserve backstop position of prior approval by Eni of EATL's plans (as under (3.1.2) above), and no arbitration provision, for the reasons set out below.

4.3 The proposed form of EATL's protective provision (subject to their primary contention that no protective provision is required) is attached as Appendix A.

5. EATL'S POSITION OVERALL

5.1 EATL does not consider that it is appropriate to include a protective provision for Eni in the draft DCO which contains any form of reserve backstop position of prior approval by Eni of EATL's plans. It would however be willing to accept a protective provision which provided for submission of plans to Eni at least a defined period prior to start of construction to enable discussions with Eni on interface matters and, where necessary, on a proximity agreement. In that event no arbitration provision would be required. This is because

5.1.1 It is strongly arguable that there is no requirement for a protective provision at all

5.1.2 Eni's "asset" to be protected is not yet sufficiently defined

5.1.3 Any more restrictive protective provision (including a right of prior approval by Eni) would not be supported by the National Policy Statement

5.1.4 Any more restrictive protective provision (including a right of prior approval by Eni) would not be supported by the DECC Guidance

5.1.5 Any more restrictive protective provision would be both unworkable, and commercially unacceptable, for EATL

6. REQUIREMENT FOR A PROTECTIVE PROVISION

6.1 The Crown Estate originally awarded the right to develop approximately 7,200MW of wind capacity off the coast of East Anglia, known as Zone 5, under the Round 3 Offshore Wind Licencing arrangements, or more commonly the East Anglia Zone. East Anglia ONE was the first wind farm to be consented in the East Anglia Zone. East Anglia THREE is the second wind farm to be developed in the East Anglia Zone and is being developed by ScottishPower Renewables (SPR).

6.2 Two agreements for lease, for the array area and offshore cable corridor, have now been granted to SPR by The Crown Estate, and significant expenditure has been incurred by SPR/EATL in bringing forward the project to agreement for lease stage.

6.3 The project responds directly to the urgent need to decarbonise the UK energy supply and enhance the UK's energy security and diversity of supply identified in the Government's

Statement of National Policy in NPS EN-1 and EN-5. The proposed development would make a significant contribution towards the achievement of the Government's energy targets.

6.4 Leasing of the seabed to offshore installations (such as offshore wind) has the potential to conflict with oil and gas reserves believed to be present. The oil and gas clause, included as standard in the Crown Estate offshore agreements for lease and leases therefore permits The Crown Estate to terminate or change the agreement for lease at the request of the Secretary of State where the interests of a renewable developer conflict with those of an oil and gas developer.

6.5 In July 2011 a Ministerial Statement from the then Energy Secretary (Written statement regarding Crown Estate leases for offshore renewables projects – 12 July 2011) provided some indication of the Government's intentions: assurance that the Secretary of State would not request The Crown Estate to terminate an offshore wind farm lease unless the oil and gas developer had agreed to pay compensation – either as agreed between the parties or determined by an independent valuation process.

6.6 Three years thereafter DECC published the DECC Guidance on how such compensation should be determined.

6.7 There is therefore already a mechanism in place to address any potential conflict between the agreements for lease for EA3 and any discovery by Eni of oil and gas reserves in the same area. That mechanism does not make reference to any altering of the balance between the parties in discussions on a coexistence/proximity agreement by means of a protective provision, whether in favour of Eni at the point of grant of consent for EA3 or, indeed, in favour of EATL at the point of approval of Eni's field development plan under their Licence nor does it refer to arbitration as a means of dispute resolution.

6.8 It is recognised that this mechanism must be viewed as a last resort, not least because of its potential implications in terms of a reduced agreement for lease area for EATL and the compensation potentially payable by Eni. The DECC Guidance makes this clear by pointing out that the mechanism will only be considered if it is clear that all discussions on a proximity agreement, and on alternatives, other options for coexistence, other possible technical solutions, and minimising the area necessary for the oil and gas development have been exhausted. However in EATL's view the very existence of this mechanism is important in acting as a backdrop, and indeed an incentive to the parties to conclude a proximity agreement between themselves, and ultimately as a form of dispute resolution in the event such an agreement cannot be concluded.

6.9 In such circumstances EATL considers that any additional protective provision which favours either party is both inappropriate and unnecessary. Indeed it could act as a dis-incentive to those discussions on a proximity agreement taking place in a balanced manner.

7. DEFINITION OF AN ASSET

7.1 The oil and gas clause only comes into play in any event when it is clear that the interests of a renewable developer conflict with those of an oil and gas developer. In the case of EA3 and licence P1965 it is not yet known whether or not there is any actual conflict. The prospects of successful exploration are not known. It is possible that any exploration drilling will take place outside the EA3 Order limits. It is also possible that any outcome of exploration drilling will not give rise to the need for appraisal drilling or production platforms within the EA3 Order limits, or at all.

7.2 For EA3 the proposed red line boundary and layout parameters for the offshore array and export cable corridor are known; outline construction details are provided in the ES, and project specific milestones are agreed with the Crown Estate. Construction is also time limited by the validity of the DCO, and the CFD process drives a prompt move towards construction.

7.3 In the case of licence P1965 for Eni's proposals, the present level of detail is that under the terms of their production licence there are three phases – Phase 1: an initial term of four years (exploration); Phase 2: a second term of four years (appraisal) with mandatory relinquishment of 50% of the Licence (of which all could potentially be outside the EA3 Order limits) at the point of entry into the second term; and Phase 3: submission of a plan for field development for approval by the Secretary of State (production). A number of (unspecified) prospects are understood to have been identified in a number of locations in Eni's licensed blocks (including P1965) and any final location for production platforms (assuming successful exploration) will be determined at the end of Phase 2. At this point the protected area (under a protective provision) could be reduced. No single exploration drilling location has yet been identified. To the extent this is successful, a subsequent appraisal well will be drilled, but a decision on whether or not to follow through to production will only follow appraisal.

7.4 EATL's target start for offshore construction is 2021 onshore and 2022 offshore. Assuming the grant of the EA3 DCO in summer 2017 a strict timeline would then have to be followed in the CfD process where the next available option would probably be 2018. To achieve lowest cost in the CfD tender, EATL will need to have a clear understanding of manufacturing costs and where within the array area turbines, offshore platforms and cables will be located. The CFD process itself has strict timelines see fD, with likely FID in 2019, at which point a significant capital commitment (10% of construction costs) must be made. At the point of entry into an option, EATL will need to specify a commissioning window, and failure to commission the majority of turbines within that window would lead to an erosion of support. Further to that another two year window is allowed. Should the vast majority of the project not be commissioned by then the contract will be cancelled. At the point when EATL will need to make these decisions, and enter into these commitments, there will still be no further clarity on Eni's development programme beyond exploration Phase 1.

7.5 As such, EATL consider that there is as yet no defined “apparatus” for which Eni can reasonably seek a protective provision in the commonly understood sense – in effect a right of prior approval by an undertaker to protect its existing or immediately prospective , and defined, apparatus.

7.6 This position contrasts markedly with the other protective provisions in schedule 8 of the draft Order which in effect give the named undertaker a right of prior approval of any works under the Order which would affect defined apparatus such as an electric line or plant; water or gas mains or pipes; drains; electronic communications apparatus or railway property. In these instances the need for protective provisions is clear by virtue of the existence and definition of the apparatus to be protected. It also contrasts markedly with the proposed protective provision for Hornsea 2 (see Section 10 below).

8. NATIONAL POLICY STATEMENT

8.1 NPS EN-3 paragraphs 2.6.176 – 188 specifically address offshore wind farm impacts – oil, gas and other offshore infrastructure and activities.

8.2 Among the key points from these paragraphs are

- The need for Applicants to engage with interested parties early in the development phase with an aim to resolve as many issues as possible prior to submission of the application to the [IPC] (2.6.180)
- Such stakeholder engagement should continue throughout the life of the development to ensure solutions are sought to allow wind farms and other uses of the sea to successfully coexist (2.6.181)
- The need for a pragmatic approach (2.6.183)
- The need for the Applicant to minimise negative impacts and reduce risks to as low as reasonably practicable (2.6.183)
- Substantial weight should be given to any likelihood that the proposed development will affect the viability or safety of an existing or approved/licenced offshore infrastructure or activity (2.6.185)
- Mitigation measures may be possible to negate or reduce effects on other offshore infrastructure or operations to a level sufficient to enable the [IPC] to grant consent (2.6.186)
- Appropriate mitigation should be included in any application to the [IPC] (2.6.187)
- In some circumstances the [IPC] may wish to consider the potential to use requirements involving arbitration as a means of resolving how adverse impacts on other commercial activities will be addressed (2.6.188)

8.3 EATL consider that their draft protective provision fully accords with the spirit of EN-3.

8.4 2.6.180 - EATL have engaged with Eni over [two] years to discuss each parties' proposals, but have concluded that it is not yet possible to conclude a coexistence agreement in the light of the stage which Eni's plans have reached.

8.5 2.6.181 and 2.6.183 - EATL is proposing in its draft protective provision that this engagement with Eni should continue throughout the life of the development to ensure solutions are sought. EATL believe this to be the most pragmatic approach possible.

8.6 2.6.185 - The likelihood that EA3 will affect the viability or safety of any offshore infrastructure or activity is not yet known.

8.7 2.6.183 and 2.6.186 - EATL consider the approach of continuing engagement to be the best approach to minimising negative impacts and reducing risks and ensure successful coexistence between development pursuant to EATL's agreements for lease (granted by the Crown Estate) and Eni's production licence (granted by DECC).

8.8 2.6.188 - EATL does not consider the introduction of any third party arbiter or decision maker (such as MMO) would assist matters. Ultimately a third party decision maker is already in place in the form of the Secretary of State under the oil and gas clause in Crown Estate leases. It is not considered that it would be appropriate to introduce a further layer of decision making, particularly when that decision making inevitably involves policy considerations as well as pragmatic solutions. In any event, at the time when any arbitration decision on coexistence might be needed by EATL there would be no information available from Eni on which to base that decision. The most appropriate decision makers on successful coexistence are considered by EATL to be the parties themselves, particularly where it is acknowledged by both parties that there is potential for both developments to successfully coexist.

9. DECC GUIDANCE

9.1 The DECC Guidance on the oil and gas clause in Crown Estate leases sets out in its introductory section the approach which the Secretary of State expects parties to adopt before making any application to the Secretary of State to request The Crown Estate to determine a lease or agreement for lease. Paragraph 1 of the introduction reads

> "1. There may be situations where development interests of oil or gas developers and offshore renewables developers come into conflict as they seek to develop the same or adjoining areas of the seabed. In the majority of cases the Secretary of State expects that the parties will be able to come to a private commercial agreement which will allow the parties to accommodate their respective development aims".

9.2 As such, EATL considers that the Secretary of State is making clear in the Guidance that if and when there is a potential for conflict the parties should where possible reach a private commercial agreement. However it does not make any reference to altering the balance between the parties in attempting to reach such an agreement by having a reserve right of prior approval over the other parties' development plans in the event that agreement cannot be reached. It does not suggest the oil and gas developer should have a prior right of approval (at the point of granting consent for renewable development) to protect its rights under a licence, any more than the NPS suggests that a renewables developer should have a prior right of approval (at the point of granting consent for a field development plan for oil and gas development) to protect its rights under an Agreement for Lease from The Crown Estate. Indeed EATL considers the very existence of such a reserve right of prior approval could act as a disincentive to that party to reach any form of proximity agreement.

9.3 Paragraphs 4-7 in the Guidance read as follows:

"4. Where it emerges that the plans of an oil or gas developer and those of an offshore renewables developer may be in conflict, the Secretary of State expects the parties to make every reasonable effort to reach a commercial agreement at the earliest stage.

5. The oil or gas developer may make an application to the Secretary of State if:

(a) Determination of an offshore renewable lease or agreement for lease is necessary in order for the oil or gas development to go ahead; and

(b) The parties are unable to reach a commercial agreement on compensation.

6. This Guidance sets out the process and indicates how the Secretary of State would generally expect to approach any application. However, in all such cases, the Secretary of State will take due account of the specific circumstances which may apply.

7. In the application the oil or gas developer should set out the following information:

(a) Details of the lease and/or agreement for lease area for which determination is sought, including maps;

(b) Evidence of why the oil or gas development cannot go ahead without the determination of the lease and/or agreement for lease. This should include information on alternative locations, options for coexistence and technical solutions which have been assessed and the reasons for ruling these out;

(c) Confirmation that the determination sought is for the smallest area reasonably necessary for the oil or gas development to proceed; and

(d) Evidence of discussions (bilateral or mediated) which have taken place between the parties in order to reach a commercial agreement."

9.4 Once again EATL considers that the guidance points to reaching a commercial agreement on coexistence, having first considered possible alternative locations, options for coexistence, other possible technical solutions and the smallest area necessary for the oil or gas development to proceed. Again it does not make any reference to a reserve right of prior approval over the other parties' development plans. Again, EATL considers that the very existence of such right of prior approval for one party could act as a disincentive for that party to conclude any form of agreement having given proper consideration to such matters as alternative locations, other options for coexistence, other technical solutions and minimising the area necessary for the oil or gas development to proceed.

10. THE HORNSEA 2 PROTECTIVE PROVISION

10.1 Eni have suggested in their written representation

"We note that the principle of including a protective provision in a project Development Consent Order was accepted by DONG Energy in respect of the Hornsea 2 Project (EN010053)."

10.2 EATL assume Eni are referring here to the principle of including a protective provision in favour of an oil and gas licensee. EATL do not dispute the wider principle of including a protective provision in a project Development Consent Order. Indeed the draft EA3 DCO contains protective provisions in Schedule 8 for the protection of electricity, gas, water and sewerage undertakers (part 1) Electronic Communications Code Networks (part 2) Network Rail Infrastructure Limited (part 3) Anglia Water Services Limited (part 4) and National Grid Gas plc and National Grid Electricity Transmission plc (part 5). In all cases these protective provisions relate to defined apparatus belonging to or maintained by the affected undertaker, such as electric lines, mains, pipes, conduit systems or railway property. In the present instance however EATL considers that there is no defined apparatus for which Eni can be said to be seeking protection.

10.3 In the case of the draft protective provision plan in favour of E.ON which was put forward by DONG for Hornsea 2 (see attached at Appendix C) the areas of the E.ON prospects (Joly, Newton, Newton Deep, and Dodgson) were shown coloured yellow and the protected area coloured green. The area of Block 48/3 was overlaid with the Hornsea 2 Order limit, but only a small part of that overlap was coloured green. It is clear from E.ON's Deadline V submission on Hornsea 2 paragraphs 1.55-1.66 that

- The area coloured green had been drawn to the minimum area to provide sufficient access to the known prospects Joly, Newton, Newton Deep and Dodgson

- The area was designed to allow for the absolute minimum amount of flexibility needed to drill exploration and appraisal well(s) in either of the prospects
- The area represented a mere 20% of the overlapping area of interests
- Approximately 80% of the overlapping area of Block 48/3 and the proposed wind farm was left free for the Applicant to develop
- The maximum net impact on the Applicant was therefore a restriction on approximately 15% of the overlap area and approximately 5% of the entire area of Hornsea 2

10.4 E.ON had proposed an additional 1 nautical mile (eastward) extension of the area coloured green to provide flexibility for helicopter access to any installation within Block 48/3 (see the ExA recommendation report paragraph 10.5.45). The Applicant noted that this revision would have a substantially adverse impact on the feasibility and commercial viability of Hornsea 2 and could not be justified (10.5.46). The ExA concluded that "**the flexibility that would be offered by increasing the area subject to protective provisions in line with E.ON's suggestion does not justify the potential sterilisation of a large area of the HP2 application site when E.ON's plans are not yet well developed**" (10.5.53) (our emphasis).

10.5 In EATL's view this position with regard to the draft E.ON protective provision on Hornsea 2 contrasts markedly with the draft protective provision being put forward by Eni. In particular

- Eni are seeking that the Protected Area should cover a substantial part of the Order limits. This area represents a potential sterilisation of approximately 27% of the array area of EA3, an effect further magnified when other constraints are taken into account. It also “severs” the southern part of the array area
- The Protected Area is not shown as bearing a relationship to any identified known prospects
- E.ON's detailing of their plans and the effect of those plans on HP2 were sufficient to allow E.ON and the HP2 Applicant to reach a commercial agreement which dispensed with the need for the draft protective provision. Because of the level of Eni's detailing of their plans and the effect of those plans on EA3, it is not yet possible for EATL and Eni to reach a commercial agreement

10.6 Unlike the position with Hornsea 2, EATL do not consider that Eni are yet sufficiently able to define the minimum flexibility which they require to exploit the known prospects in the licenced area with a view to finding agreement and the need for compromise and a pragmatic balancing of interests, as required by policy relating to offshore development. Eni is in effect seeking a level of flexibility which far exceeds the much smaller level of flexibility sought by E.ON, with the 1nm buffer zone, and which the ExA on Hornsea 2 still rejected as being excessive.

10.7 In EATL's submission this is yet a further reason why any protective provision for Eni should be confined to continuing post-consent engagement between Eni and EATL in order to define more clearly how EATL's turbines and cabling might affect any development by Eni of the P1965 licenced area and consider the need for a proximity agreement. The backstop would be the invocation of the oil and clause mechanism. If the protective provision remains as drafted by EATL, the protective provision plan can then remain with 27% of the entire overlap area coloured green.

11. PROTECTING CONCEPTUAL DEVELOPMENT

11.1 EATL considers that the difficulty inherent in trying to have a protective provision for development which has not yet been fully defined is highlighted by the drafting of any protective provision which contains a prior right of approval.

11.2 Under such a provision EATL would be required to obtain approval from Eni before the authorised project could commence if discussions on a proximity agreement could not be concluded. Eni could withhold approval where necessary for protection of apparatus. "Apparatus" is defined as including infrastructure which **may** be installed etc by or on behalf of the licensees in connection with the Licence; or exploration, appraisal etc which **may** be carried out by or on behalf of the licensees in connection with the Licence (our emphasis).

11.3 If for example EATL were to come forward in 2018 with plans of the proposed works for Eni approval, Eni could potentially reject these plans on the basis that their apparatus needed to be protected. They could claim protection on the basis that while Eni still had no further detail on their future exercise of the rights under the Licence, the exercise of rights under the Licence "may" conflict with EATL's plans.

11.4 This would potentially give wide scope for Eni to reject EATL's plans based only on their own possible, but still undefined, future requirements, which might never materialise. A project of the scale and importance of EA3 could not accept a requirement that, having obtained consent, it should still obtain third party approval before it can proceed. Such a requirement would make any financial investment decision or compliance with CFD obligations impossible to achieve. Nowhere else in the draft DCO is there any such requirement. Indeed the only other requirement for prior approval of EATL's plans is in condition 13 of the DMLs where MMO must first approve a design plan (condition 13(a)). However this condition is expressly only for the purpose of ensuring conformity with the description of Work No.1 and compliance with the parameters set out in conditions 1-6 of the DML.

12. CONCLUSION

12.1 EATL therefore considers that if the Secretary of State takes the view that some form of protective provision for Eni must be included in the DCO, it should only take the form proposed by EATL, since that draft protective provision takes due account of the current level of detail of

Eni's plans; the wording of NPS EN-3; the wording of the DECC Guidance, and the commercial risk to the consented project of including a third party right of approval over a large part of the EA3 area before the project can proceed.

APPENDIX A

For the protection of the licensees from time to time of United Kingdom Petroleum Production Licence P.1965, unless otherwise agreed in writing between the undertaker and the Licensees, the provisions of this Part of this Schedule have effect.

In this part of this Schedule –

"apparatus" means any:

(a) infrastructure which is or may be installed, owned, occupied or maintained by, or on behalf of the Licensees; or

(b) exploration, appraisal, development and decommissioning activities (and associated logistics activities), which are or may be carried out by, or on behalf of the Licensees,

in connection with the Licence;

"applicable laws" means applicable laws, rules, orders, guidelines and regulations, including without limitation, those relating to health, safety and the environment and logistics activities such as helicopter and vessel operations;

"Good Oilfield Practice" means the application of those methods and practices customarily used in good and prudent oil and gas field practice in the United Kingdom Continental Shelf with that degree of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in the United Kingdom Continental Shelf in a similar activity under similar circumstances and conditions;

"Guidance" means the 'Oil and gas clause in Crown Estate leases, Guidance on procedures for independent valuation where necessary' published by the then Department of Energy and Climate Change in June 2014, or any similar supplementary or replacement policy;

"Licence" means United Kingdom Petroleum Production Licence P.1965;

"Licensees" means the licensees from time to time of the Licence;

"Ministerial Statement" means the written statement given by the then 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;

"plans of the proposed works" means an indicative construction programme and a plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart which shows

(i) the proposed location and choice of foundation of all offshore electrical stations;

ii) the height length and width of all offshore electrical stations;

(iii) the length and arrangement of all cables comprising Work Nos. 3 and 5A;

(iv) the dimensions of all gravity base foundations;

(v) the dimensions of all jacket foundations;

(vi) the proposed layout of all offshore electrical stations including any archaeological exclusion zones

(vii) any exclusion zones/micrositing requirements;

“the Protected Area” means any area within the area coloured green on the Protective Provisions Plan within which the Licensees have, or plan to have, apparatus, (that area coloured green being delineated by a line drawn between the points in the Table of Co-Ordinates);

“the Reduced Protected Area” means any area within the original Protected Area within which the Licensees have, or plan to have, apparatus – such, subject to sub-paragraph (2), to be notified by the Licensees to the undertaker on or before 31 December 2020 and to represent the Licensees' good faith determination of the smallest area within the original Protected Area required by the Licensees to locate, at reasonable cost, apparatus in accordance with Good Oilfield Practice and applicable laws;

“the Protective Provisions Plan” means the plan entitled Protective Provisions Plan for the Licensees and certified as the Protective Provisions Plan for the Licensees for the purposes of this Part of this Schedule;

“the Table of Co-Ordinates” means the following table:

Label	Latitude	Longitude
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

(1) Subject to sub-paragraph (2), the undertaker must not construct any of the authorised project or the marine licence works (including the laying of any anchor or the laying of any chains or cables in connection with such works) within the Protected Area without having first submitted to the Licensees not less than 24 months prior to the intended start of offshore construction plans of the proposed works within that area, and entered into discussions with the Licensees in respect of

(i) the plans of the proposed works

(ii) the Licensee's apparatus within the Protected Area

(iii) any potential interface between the plans of the proposed works and the Licensees' apparatus, including risks to safety

(iv) seeking solutions to allow the plans of the proposed work and that apparatus to coexist as far as reasonably practicable (and for these purposes the Licensees shall provide reasonable details of apparatus and minimum requirements such as exclusive zones in accordance with Good Oilfield Practice and applicable laws to enable the Licensees to, as relevant, explore, appraise, and/or develop hydrocarbon resources within the Protected Area)

(v) where necessary entering into a private agreement between the undertaker and the Licensees in respect of the proximity of the plans of the proposed works and that apparatus.

(2) Sub-paragraph (1) only applies to the extent that the Licence extends to the Protected Area or if later until completion of activities required under any statutory decommissioning plan required under the Petroleum Act 1998 in relation to the Licence and taking place within the Protected Area.

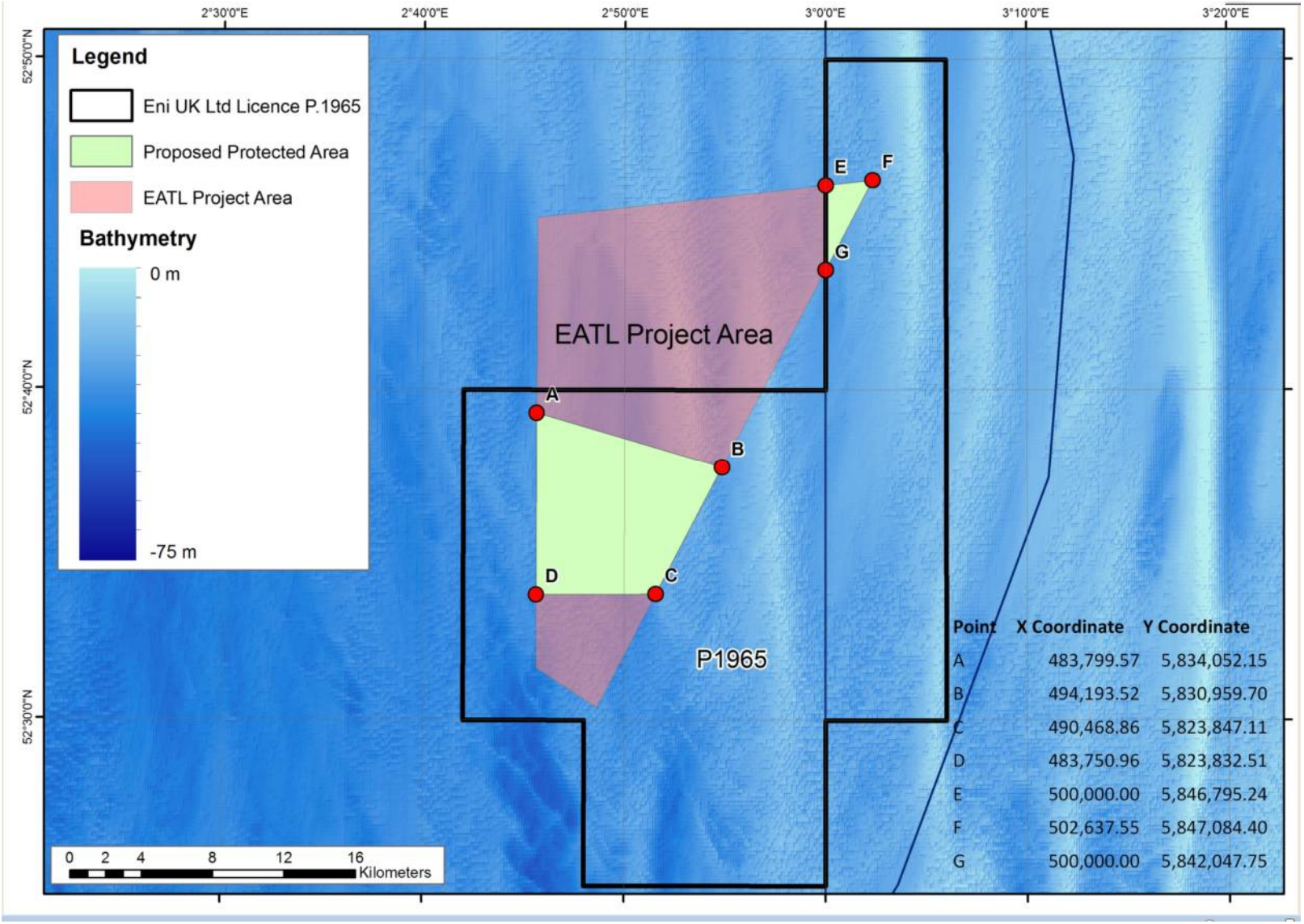
(3) Without prejudice to any other rights or obligations under this Part of the Schedule the Licensees shall from time to time keep the undertaker informed of its activities in relation to the Licence such that Licensees and the undertaker may seek solutions to allow the proposed works and the Licensees apparatus to successfully co-exist as far as is reasonably practicable

(4) On and from 1 January 2021, references in this Part of the Schedule to “the Protected Area” shall be deemed to be references to “the Reduced Protected Area”.

(5) Nothing in this Part of the Schedule shall affect any rights or obligations or assessment of compensation in accordance with the Ministerial Statement and the DECC Guidance (as applicable).

(6) This Part of the Schedule shall automatically terminate in circumstances where the Licensees and the undertaker enter into a private agreement covering, *inter alia*, the subject matter referred to herein.

APPENDIX B



Point	X Coordinate	Y Coordinate
A	483,799.57	5,834,052.15
B	494,193.52	5,830,959.70
C	490,468.86	5,823,847.11
D	483,750.96	5,823,832.51
E	500,000.00	5,846,795.24
F	502,637.55	5,847,084.40
G	500,000.00	5,842,047.75

APPENDIX C


1°10'0"E
1°20'0"E
1°30'0"E
1°40'0"E
1°50'0"E
54°10'0"N
54°0'0"N
53°55'0"N
53°50'0"N
53°45'0"N
N
90
JOLY
NEWTON DEEP
NEWTON
DODGSON
48/3
THE PROTECTED AREA
PROJECT TWO BOUNDARY
SUBZONE 2
BLOCK 48/3
E.ON PROSPECTS
GEODETIC INFORMATION
PROJECTION: UTM31
SPHEROID : WGS 1984
DATUM : WGS 1984
0 1.5 3
KILOMETRES
SCALE 1:185,950
PAPER SIZE 37 X 23 CM
PROTECTIVE PROVISIONS PLAN
FOR E.ON E&P AND BEL
DATE: 10/12/2015
DRAWN: MV
CHECKED: BK
PROJECT REF: EOR0609_HORNSEA_P2
DRAWING: EON_PROTECTIVE_PROVPLAN_NOLINE_MV_151210R3
Source of background information : ESRI BASEMAPS 2015, UKOILANDGASDATA 2015
Please note the locations of the E.ON Prospects are approximate only
Produced by RPSE - Woking