

**THE INFRASTRUCTURE PLANNING (EXAMINATIONS PROCEDURE) RULES 2010**

**HORNSEA PROJECT FOUR OFFSHORE WIND FARM**

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**WRITTEN REPRESENTATION ON BEHALF OF NEO ENERGY PETROLEUM LIMITED**

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## WRITTEN REPRESENTATION ON BEHALF OF NEO ENERGY PETROLEUM LIMITED

### 1. INTRODUCTION

- 1.1 NEO Energy Petroleum Limited (Company Number 03288689 and having its registered office at 30 St. Mary Axe, London, England, EC3A 8BF) (“**NEO**”) owns and operates oil and gas assets located in the UK Continental Shelf, including the Southern North Sea. NEO owns and operates the producing Babbage Field (the “**Babbage Field**”), which is located 4.3km from the site which is the subject of an application by Orsted (the “**Applicant**” or “**Orsted**”) for a development consent order (“**DCO**”) for the Hornsea Project Four Offshore Wind Farm (the “**Development**”).
- 1.2 An affiliated company, NEO Energy (SNS) Limited (Company Number SC291165 and having its registered office at The Silver Fin Building (9<sup>th</sup> Floor), 455 Union Street, Aberdeen, United Kingdom, AB11 6DB) made relevant representations in this matter on 15 December 2021 and 29 March 2022 in order to protect the Babbage Field.
- 1.3 NEO now holds the seaward production licence (no. P.456) under the Petroleum Act 1988 in respect of the Babbage Field, following an inter-affiliate transfer of the licence from NEO Energy (SNS) Limited. NEO, and its joint venture partner Dana Petroleum (E&P) Limited, in collaboration with Offshore Design Engineering Limited (“**ODE**”), as Duty Holder, Installation and Pipeline Operator, must ensure that its activities and assets continue to operate safely.
- 1.4 This submission is made jointly on behalf of both NEO Energy Petroleum Limited and NEO Energy (SNS) Limited.
- 1.5 NEO does not object in principle to the Development; however, it does object to the Development being carried out in close proximity to the Babbage Field in the absence of suitable protective provisions, and related agreements regulating the position. Discussions have been ongoing with the Applicant; however, the parties have to date been unable to reach agreement on the terms of suitable protective provisions or of an associated Co-operation and Co-Existence Agreement.
- 1.6 The Applicant has proposed draft protective provisions with NEO (the “**Applicant’s Draft Protective Provisions**”) in the draft Development Consent Order (the “**dDCO**”) submitted as part of the examination.
- 1.7 NEO’s position is that the protective provisions included in the dDCO are insufficient to appropriately mitigate the adverse impacts caused by the Development on the operation of the Babbage Field. It is NEO’s position that the protective provisions included at Appendix A (“**NEO’s Draft Protective Provisions**”) should be preferred by the Examining Authority over those included in the dDCO to avoid serious detriment to NEO’s undertaking and for the reasons set out in this submission.

### 2. JUSTIFICATION FOR PROTECTIVE PROVISIONS

- 2.1 As set out in previous submissions (RR-004, REP2-066), NEO maintains that the Development has the potential to adversely impact its ability to operate the Babbage Field in a safe and efficient manner, and in compliance with the terms of its licence, on the following grounds:

- 2.1.1 Aviation (helicopter) impacts; and

- 2.1.2 Shipping and navigation impacts.

#### *Aviation and Helicopter Impacts*

- 2.2 NEO relies on helicopter access to the Babbage platform for both routine operational matters and emergency evacuations, including search and rescue helicopter access.

- 2.3 Helicopter visits are required in order to carry out essential maintenance work to ensure the safety of the asset and efficient operations and production. Alternative methods of accessing the platform such as the use of “walk to work” vessels would require capital modifications to the platform and result in increases in annual operating expenditure associated with chartering such vessels. This would also be a fundamental change to the current operating and maintenance philosophy and change to the Safety Case<sup>1</sup>. The response times in the event of unplanned production shutdowns would be longer than were it possible to fly personnel to the platform and as a result there would be reductions in annual production. The combination of reduced production revenues, higher operating costs (therefore lower margins) and the need for capital investments could render the remaining production uneconomic and lead to an early cessation of production. Such an outcome would be contrary to MER UK.
- 2.4 Helicopter weight at take-off from Norwich can be 7,000 kg, dropping to 6,800 kg for landing at the Babbage platform (in line with the helideck weight limit) once fuel burned is accounted for.
- 2.5 The Applicant’s Draft Protective Provisions propose a Restricted Area of 2.7nm around the Babbage platform within which no wind turbine generator could be installed. As set out in previous submissions, a Restricted Area of 2.7nm would result in a reduced helicopter payload of 6,400kg on take-off from the Babbage platform.
- 2.6 By contrast, NEO’s Draft Protective Provisions propose a Restricted Area of 3.14nm, which would allow the current helicopter payload of 6,800kg to be maintained.
- 2.7 If the Applicant’s Draft Protective Provisions were to be accepted, this would reduce the helicopter payload by 400kg, which is considered to be **significant** as it equates to a reduction in passenger numbers by a third (from approximately 12 to 8).
- 2.8 A 2.7nm Restricted Area would, therefore, have numerous commercial and safety impacts:
- 2.8.1 It would lead to a likely **increase in the number of flights required** each time the platform is manned and de-manned, and additional flights would add to the risks to which personnel are exposed. Although helicopters are a very safe mode of travel, they nevertheless constitute one of the riskier aspects of working offshore and accordingly NEO seeks to reduce rather than increase such risks.
- 2.8.2 Additional flights would also be likely to **extend the duration of offshore trips** due to the time involved in landing and take-off of an increased number of helicopters, which all has to be managed by the core crew trained in this specialist area.
- 2.8.3 Additional flights would also result in **an associated cost increase** from a logistics and manning perspective.
- 2.9 The Babbage platform is limited to 120 helicopter landings per year in accordance with CAP 437 to reduce the exposure to risk as there is not an automatic firefighting system fitted at the asset. The Applicant’s Draft Protective Provisions (and the Helicopter Access Report and the assessment carried out by the Applicant as part of the Environmental Statement) have assumed that a reduction in payload, together with the consequential increase in landings, is an acceptable impact. However, this is not an acceptable assumption, as NEO cannot simply increase the number of landings at the Babbage platform without limit.

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<sup>1</sup> The Safety Case is a substantial document that identifies any Major Accident Hazards (MAH) affecting the facility and operations and for each such MAH identifies mitigation measures in order to reduce the risk to ALARP. The Safety Case also includes the overall Safety Management System including all policies and procedures governing work. As noted in previous representations, the Safety Case is a requirement imposed on licence holders by various legislation, including the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015.

### ***Shipping and Navigation***

- 2.10 Technical reviews carried out by ODE on behalf of NEO and communicated to the Applicant in previous submission demonstrate that there could be significant shipping and navigation impacts on the Babbage platform as a result of the Development (e.g. allision risk). These risks, however, can be mitigated by the provision of:
- 2.10.1 Live monitoring equipment (“AIS”) on the Babbage platform;
  - 2.10.2 Aids to navigation (“AtoN”) as required by Trinity House and other relevant statutory authorities; and
  - 2.10.3 Additional mitigations recommended by the relevant statutory authorities (e.g. emergency response arrangements, appropriate notifications, etc.).
- 2.11 However, the Applicant’s Draft Protective Provisions are silent as to the need for these measures, the obligations to secure them and commercial provisions on responsibility for procuring, obtaining, installing and maintaining these measures in future.
- 2.12 By contrast, NEO’s Draft Protective Provisions set out a mechanism by which NEO will procure any necessary navigation aids and equipment, and be responsible for installing these and carrying out future maintenance, with provisions for Orsted to compensate for associated costs and expenses.

### **3. CONCLUSIONS**

- 3.1 The Applicant’s Draft Protective Provisions, with the proposed Restricted Area of 2.7nm and no provision for AIS or AtoN, will result in serious detriment to NEO’s undertaking and on NEO’s ability to operate the Babbage Field in a safe and efficient manner, as they:
- 3.1.1 Reduce the helicopter payload, leading to an increase in annual flights to the Babbage platform (which increases risks to personnel, extends the duration of offshore trips, and increases NEO’s costs and liabilities); and
  - 3.1.2 Make no provision for procuring, obtaining, installing and maintaining any navigation aids needed at the Babbage platform as a direct result of the Development.
- 3.2 NEO’s Draft Protective Provisions, by contrast:
- 3.2.1 Allow for helicopter payload to be maintained by establishing a 3.14nm Restricted Area (with suitable provision for agreement to be reached between the parties in future, should technology evolve or suitable compensatory mechanisms be agreed);
  - 3.2.2 Make provision for the procurement, installation and maintenance for navigation aids at the Babbage platform required in connection with or as a direct result of the Development; and
  - 3.2.3 Include a mechanism by which NEO can seek compensation for costs, losses and expenses incurred in remedying issues caused by the Development.
- 3.3 On behalf of NEO, therefore, it is submitted that the Examining Authority should include NEO’s Draft Protective Provisions in the dDCO.

**CMS Cameron McKenna Nabarro Olswang LLP**

**10 August 2022**

**Appendix A**  
**Proposed Protective Provisions**

# SCHEDULE 9

## PART 9

### FOR THE PROTECTION OF NEO ENERGY PETROLEUM LIMITED

#### **Application**

1. For the Protection of the Licensee from time to time of United Kingdom Petroleum Production Licence P.456 Block 48/2a, unless otherwise agreed in writing between the undertaker and the Licensee the provisions of this part of this Schedule shall have effect for so long as the Licence shall remain in full force and effect.

2. In the event that the Licence is terminated and no longer has effect, the obligations on the undertaker in this Schedule shall no longer have effect in so far as they relate to the Licensee's Works under the terminated Licence(s).

#### **Interpretation**

3. In this part of the Schedule—

“AIS” means live monitoring equipment which may require to be installed by the Licensee from time to time at the protected property in connection with and as a direct result of the authorised development;

“construction” includes execution, placing and altering; and cognate expressions must be construed accordingly;

“emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons, property or the environment;

“Licence” means United Kingdom Petroleum Production Licence P.456 Block 48/2a;

“Licensee” means the licensee from time to time of the Licence;

“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;

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

“offshore wind activities” means investigation survey or other activity relating to the evaluation of development, construction, operation and maintenance, and/or decommissioning of the authorised development and shall include the use of a jack-up or other vessel but excludes the erection of wind turbine generators;

“pipelines” means the gas pipelines connecting the Licence site to the West Sole System which are used for the conveyance of any hydrocarbon fuel, together with any associated platforms, plant and equipment serving those pipelines;

“plans” includes sections, drawings, calculations, methods of construction, particulars and specifications;

“protected property” means the whole of the pipelines—

(a) any part of which is situated within the Order limits for the offshore works or the Restricted Area; and

(b) in respect of which the Licensee has an interest for the time being;

“Restricted Area” means the spherical area of seabed having a radius of 3.14 nautical miles from 383265 Easting, 5981086 Northing that point being the centre of the existing Babbage platform in Licence P.456 Block 48/2a operated by the Licensee shown delineated and shaded in blue on the NEO Protective Provisions Plan; and

“Relevant Activities” means all development activity relating to the carrying on of the undertaker's and Licensee's businesses within, or adjacent to the Restricted Area, including (but not limited to) the preparation of development proposals, the submission of applications for statutory consents associated with those proposals and consultation in respect thereof, the acquisition of or application for new licence oil or gas blocks.

#### **Restriction on authorised development**

4. No wind turbine generator shall be erected in the Restricted Area, unless otherwise agreed in writing between the Licensee and the undertaker.

5.—(1) The undertaker may perform offshore wind activities in the Restricted Area, provided that:

(a) the undertaker provides advance written notice of its activities in the Restricted Area as soon as reasonably practicable and not less than 90 days before the commencement of any such activities;

(b) the undertaker's notice must describe the nature, extent and duration of the activities;

(c) the undertaker provides regular updates to the licensee throughout the duration of the activities; and

(d) within 24 hours of the completion of the activities, the undertaker provides notice to the licensee that the activities have been completed and the Restricted Area has been vacated.

(2) The requirement for advance notice in sub-paragraph (1)(a) above shall not apply to any offshore wind activities which are emergency works, in which case the undertaker must provide notice as soon as reasonably practicable after commencement of the activities.

#### **Aids for Navigation and Live Monitoring Equipment**

6.—(1) If the MMO, Trinity House, or any other relevant regulatory body considers that aids to navigation are required within the Restricted Area in connection with and as a direct result of the authorised development, the Licensee shall procure, install and maintain these where required to be installed on the protected property and shall serve notice on the undertaker within 90 days of procuring such aids to navigation or incurring costs in connection with the installation, maintenance, replacement or removal of such aids to navigation.

(2) The undertaker shall reimburse to the Licensee all costs and expenses incurred by the Licensee in complying with paragraph 6(1) within 28 days of receipt of any notice served under this paragraph 6.

7.—(1) If the Licensee considers there to be an adverse impact on its protected property caused by maritime traffic in connection with the construction, operation and maintenance, or decommissioning of the authorised development the Licensee may serve notice of that impact on the undertaker. The notice served under this paragraph must be accompanied by an AIS mitigation proposal specifying—

(a) the nature and extent of the impact;

(b) the evidence in support of the impact;

(c) the AIS the Licensee reasonably believes would resolve the impact; and

(d) a programme and cost estimate for implementing and maintaining the mitigation.

8. The parties shall thereafter use reasonable endeavours to agree the terms of the AIS mitigation proposal within six weeks of the undertaker's receipt of the notice and AIS mitigation proposal.

9. The Licensee shall thereafter implement and maintain the agreed AIS mitigation proposal, the cost of which shall be borne by the undertaker in accordance with the terms of the AIS mitigation proposal.

### **Indemnities and Expenses**

10.—(1) Where:

- (a) a wind turbine generator is erected within the Restricted Area pursuant to an agreement reached in accordance with paragraph 4 of this Part of this Schedule; and/or
- (b) offshore wind activities are carried out within the Restricted Area pursuant to paragraph 5 of this Part of this Schedule;

and

- (c) any damage is caused to the protected property;
- (d) access to the protected property, including helicopter and vessel access, is reduced, restricted, delayed or prevented; and/or
- (e) there is any interruption in the supply of the service provided by the Licensee;

the provisions of this paragraph 10 will apply.

(2) If paragraph 10(1) applies, the undertaker must—

- (a) bear and pay on demand accompanied by an invoice or claim from the Licensee the cost reasonably and properly incurred by the Licensee in making good such damage, restoring or otherwise remedying reduced, restricted, delayed or prevented access (including helicopter and vessel access) or restoring the supply; and
- (b) indemnify the Licensee for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the Licensee, by reason or in consequence of any such damage or interruption or the Licensee becoming liable to any third party as aforesaid other than arising from any default of the Licensee.

(3) The fact that any act or thing may have been done by the Licensee on behalf of the undertaker or in accordance with a plan approved by the Licensee or in accordance with any requirement of the Licensee or under its supervision will not (unless sub-paragraph (4) applies), excuse the undertaker from liability under the provisions of sub-paragraph (2) unless the Licensee fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the Licensee, its officers, servants, contractors or agents;
- (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(5) The Licensee must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(6) The Licensee must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(7) The Licensee must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where



it is within the Licensee's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of the Licensee's control and if reasonably requested to do so by the undertaker the Licensee must provide an explanation of how the claim has been minimised, where relevant.

### **Co-operation**

11.—(1) Where in consequence of the proposed construction, operation and maintenance, or decommissioning of any part of the authorised works, the undertaker requires to enter the Restricted Area, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of the Licensee's undertaking and the Licensee must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the undertaker's or the Licensee's consent, agreement or approval is required in relation to plans, documents or other information submitted under this Schedule, or agreement is required to be reached between the parties under this schedule, it must not be unreasonably withheld or delayed.

### **Arbitration**

12.—(1) If the parties cannot agree any other matter prescribed by this Part of this Schedule, then the matters in dispute must be determined in accordance with article 39 (arbitration) of this Order. The undertaker's works must not commence until the determination of the arbitrator has been made and must only be implemented in accordance with the arbitrator's determination which is final and binding on the parties (save for manifest or legal error).

(2) The arbitration shall be decided by a sole arbitrator whose appointment shall be agreed by the parties, but where the parties fail to agree to appoint an arbitrator within 28 days of the delivery of a notice of arbitration, then upon application the Secretary of State will appoint an arbitrator within 28 days. At any time prior to the appointment by the Secretary of State the parties may make an appointment.

(3) The arbitrator shall be a person (including one who has retired) with not less than twenty years of aviation, radar or shipping and marine navigation experience (as applicable) associated with a combination of offshore oil and gas development and offshore wind farm development or as a lawyer or other professional advisor serving those industries and having that experience.

(4) The arbitrator should make a determination within 3 months of appointment.

(5) The seat of arbitration shall be London.

### **Provision of information**

13. Without prejudice to any other rights or obligations under this Part of the Schedule the Licensee and the undertaker shall from time to time keep each other informed of Relevant Activities such that the Licensee and the undertaker may seek to agree solutions to allow those activities to successfully co-exist as far as reasonably practicable 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 areas subject to the Licence.

### **Compensation**

14. 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 Guidance (as applicable).

**Appendix B**  
**NEO Protective Provisions Plan**

# NEO Protective Provisions Plan

