



committee@greenparty.im

Honourable Tim Crookall MHK

Department of Infrastructure

Sea Terminal

Douglas

IM1 2RF

15 April 2024

By Email Only

Dear Minister for Infrastructure

Seaward Production Innovate Licence Between the Department of Infrastructure ("the Department") and Crogga Limited ("Crogga") ("the Licence")

1. Thank you for your letter dated 9 April 2024 responding to our letter dated 6 February 2024.

Rescission of the Licence

2. In your letter you indicate that *"the proposal is that Crogga run phase B and C concurrently."*

3. In the House of Keys on Tuesday 7 November 2023, you stated that: -

3.1. *"Crogga Ltd has put a case forward for consideration that the licence be adjusted, such that the phasing of the commitments be altered so that drilling can take place before Crogga has undertaken the 3D seismic survey."*

4. Please confirm by return the accuracy of our understanding that Crogga has requested (and you are considering) that drilling can take place before Crogga has undertaken a 3D seismic survey.

5. In paragraphs 5 of your letter, you indicate that it is your view that Crogga's request for a variation is not a new licence being issued. In paragraph 6, you claim that this is predicated upon Crogga's request being for a variation and not for an entirely separate contract / licence.

6. In this respect, we refer you to the England & Wales Court of Appeal judgment in *R (on the application of Cobalt Data Centre 2 LLP and another) v Revenue and Customs Commissioners* [2022] STC 2041, particularly the following extracts: -

6.1. *"[108] There are cases in which, despite the intention of the parties to vary a contract, the legal result of what they have agreed is to create a new one."*

6.2. *"[115] In my judgment when applying their preferred test of 'intention', the UT erroneously equated 'intention' with the parties' desire to achieve a particular result."*



7. We note that in the England & Wales House of Lords judgment in *British and Beningtons Ltd v Baintgoorie (Dooars) Tea Co Ltd, British and Beningtons Ltd v Mazdahee Tea Co Ltd* [1923] AC 48, it was stated (at 62), that a claimed variation of a contract will actually be a rescission where it goes to the very root of the contract: -

7.1. *“A written contract may be rescinded by parol either expressly or by the parties entering into a parol contract entirely inconsistent with the written one, or, if not entirely inconsistent with it, inconsistent with it to an extent that goes to the very root of it.”*

8. We refer you to our letter dated 10 November 2023, wherein we set out (amongst other things) that the proposal to drill a well before the seismic survey: -

8.1. Was apparently contrary to the guidance of the North Sea Transition Authority; and,

8.2. Has been described by the Manx Geological Survey as *“counter to industry good practice and presents extra risks because of the very high pressures encountered at depth when drilling a well.”*

9. Please explain to us why the proposal to apparently ignore industry best practice and proceed to drilling without the contracted 3D seismic survey, is not a variation that goes to the very root of the Licence.

KlimaSeniorinnen v Switzerland Application no. 53600/20

10. We refer you to the European Court of Human Rights judgment in *KlimaSeniorinnen*, issued on Tuesday 09 April 2024.

11. Please provide an explanation by return of how and why a decision by you now to vary the Licence would: -

11.1. Comply and accord with our new *“primary duty”* to *“adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change”* (as per paragraph 545 in *KlimaSeniorinnen*), an obligation which the court described as a duty *“that each Contracting State undertake measures for the substantial and progressive reduction of their respective GHG emission levels”* (as per paragraph 548); and,

11.2. In light of the recognition of the fundamental role of carbon budgets in *KlimaSeniorinnen* in order to adequately respond to climate change in compliance with the Paris Agreement (see paragraphs 550, 570, 571, 572), comply and accord with the carbon budget for the Isle of Man to comply with the Paris Agreement taking into account the fugitive emissions from the proposed well?



Transparency

12. On this matter of fundamental public import, going to the heart of the Climate Emergency Declaration, we indicate that we will publish this letter and any response received on our website, www.greenparty.im.

Yours sincerely

Isle of Man Green Party

ISLE OF MAN GREEN PARTY

Please reply to: committee@greenparty.im

cc. (by email only)

- Chief Minister
- Minister for Justice and Home Affairs
- Minister for Treasury
- Minister for Environment, Food and Agriculture
- Chair of Manx Utilities
- Chair of the Climate Change Transformation Board