From:	[redacted]@highburyplanning.com
To:	Morecambe Offshore Wind Project; Daniel Hurley
Cc:	"George Meyrick"; "James Wilson"
Subject:	Addendum to the D6 submission of Bodorgan Marine Limited ("BML"): Section 84 (2) (c) Energy Act 2004
Date:	18 April 2025 10:57:54

‘Good morning Daniel,
I have been asked to write to you by Sir George Meyrick of Bodorgan Marine Limited (BML) prior to the close of the Examination next Wednesday, 23 April 2025. The contents of this short email (if it were to be accepted by the ExA at its discretion) should be considered to comprise a brief, but important Addendum to BML’s D6 submission (**REP6-055**).

Addendum to the D6 submission of Bodorgan Marine Limited (‘BML’): Section 84 (2) (c) Energy Act 2004

The purpose of this Addendum is to confirm in express terms that which was implicit in Part One, Paragraphs 27 – 30 (and part of Annex 5) of BML’s D6 submission (REP6-055).

These paragraphs examined Section 84, Energy Act 2004, a provision which confirms in statutory form the legal basis of the Crown’s rights in the Renewable Energy Zone (‘REZ’), and the extent of those rights. The particular focus of these paragraphs was on Section 84 (2) (c), which confirms the Crown’s rights in the REZ *‘for other purposes connected with such* [the production of energy from water or winds] *exploitation’*.

The short point is that Section 84 (2) (c) clearly confirms that the Crown has rights to deliver mitigation of OWF development in the REZ – as such mitigation would be a purpose connected with OWF development.

Consequently, should the Crown or (and more likely) a Crown grantee elect to deliver mitigation of the impact of OWF development on commercial fisheries in the form of co-located aquaculture in the REZ, the Crown would have the clear statutory right to do so pursuant to Section 84 (2) (c). What this means is that this mode of co-located aquaculture beyond the 12 nautical mile limit would enjoy a certain and uncontestable legal basis – notwithstanding what appear to be TCE submissions to the contrary (REP5a-073, REP5a-074 and REP5a-075).

BML has submitted that a proper understanding of policy requires the Applicant to deliver ‘Enhancement’ and co-located activity and that this should take the form of co-located aquaculture. The Applicant has, to date, been unwilling and/or unable to propose any form of Enhancement or co-location.

If the Applicant was to adopt this approach to co-located aquaculture, a limited amendment of the Agreement for Lease (AfL) would be required to effect either:

a. **An enlargement of the Tenant’s user rights to include authorised forms of mitigation and an alteration of the alienation provisions to permit**

sub-letting;
or (and preferably);

b. **An alteration to the exceptions and reservations provisions to reserve to TCE the right to make a direct grant to an aquaculture operator.**

If the ExA were to accept the substance of this Addendum, it would follow that the three changes recommended by BML to the DCO documentation could be implemented (as set out in BML's D3 submission in Section 8 (REP3-098)). In the absence of a requirement by the ExA for these changes, the future delivery of co-located aquaculture would be reliant upon the support of the Applicant, something which has been notably absent throughout the course of the Examination period'.

BML, therefore, following the approach we took with our submission just prior to the release of ExQ3 (**AS-013**), and which was accepted by the ExA, makes this Addendum submission in the hope it will be accepted at the discretion of the ExA.

We look forward to hearing from you on this matter.

[redacted]

Highbury Planning Consultants Limited
Director
75 Kelvin Road
Islington
London N5 2PL
Tel: [redacted]
Mobile: [redacted]
Website: www.highburyplanning.com