

AQUIND LIMITED

FURTHER REPRESENTATIONS IN RELATION TO THE RAMPION 2 PROPOSALS

- 1.1 AQUIND Limited ("**AQUIND**") has made various representations in relation to the application for the Rampion 2 Offshore Wind Farm Development Consent Order (the "**Application**"), and it has also sought to progress discussions with Rampion Extension Development Limited ("**RED**" or the "**Applicant**") in relation to a Co-Operation Agreement to address the interface between the two projects during construction, operation, and decommissioning.
- 1.2 AQUIND's last representation in relation to the Application was submitted on 3 June 2024 and is assigned the reference REP4-100. Subsequent to submitting this AQUIND also submitted protective provisions for inclusion in the draft development consent order (AS-019).
- 1.3 Within its previous submissions AQUIND has detailed how the parties have sought to engage on a Co-Operation Agreement, which would contractually secure the content of the protective provisions which are required to be included within the Order between the parties. However, key outstanding issues remained unresolved, which related to:
 - 1.3.1 the separation distance for Offshore Wind Turbine Generators and Offshore Substations;
 - 1.3.2 Safety Zones for the Rampion 2 proposals; and
 - 1.3.3 the disposal of materials in the marine area, where AQUIND requested that materials would not be disposed of within 500 metres of the AQUIND Order Limits.
- 1.4 AQUIND understands that the position in relation to Safety Zones and disposals is now agreed, with RED having agreed to the position reasonably requested by AQUIND.
- 1.5 As such, the key matter that remains outstanding in relation to the Co-Operation Agreement is in respect of the separation distances for Offshore Wind Turbine Generators and Offshore Substations (it is understood that Offshore Substations are not proposed by RED to be installed in a proximity of AQUIND Interconnector, but these are included for completeness considering RED's is not committing to fix the layout of the proposals). In addition, there is also wording regarding when AQUIND must enter into an agreement requested by RED which is not acceptable to AQUIND, which will be explained further below.
- 1.6 As was evident from the most recent submission of RED to the ExA on this matter, contained within the Applicant's comments on Deadline 4 submissions (REP5-122), RED have proposed a separation distance of 500m within which no RED apparatus could be located. Between 500m and 1000m a proximity agreement would be required, there would be no ability for AQUIND to influence the location of any apparatus and AQUIND could not refuse to enter into any such agreement.
- 1.7 Having received this request and indicative information from RED detailing Wind Turbine Generators within that distance, AQUIND has undertaken an analysis of how this would impact the ability to undertake a cable repair using an anchored barge. A diagram which supports this analysis is provided at **Appendix 1** to this note.
- 1.8 We understand that RED is desirous of AQUIND committing now to the use of Dynamic Positioning vessels (such as DP2) for cable repairs, which may be able to be accommodated in less space than an anchored barge. However, as AQUIND has explained to RED, and now also to the Crown Estate, AQUIND cannot commit to a particular methodology of and vessel type for repair now, because there is a significantly lesser availability of such vessels in the market. Should AQUIND need to undertake a cable repair, which if needed would be required to bring either a 1 GW cable circuit or both circuits of 2 GW back online, it must be able to do that as quickly as possible, and vessel

availability will be critical to this. This will be necessary to ensure security of supply, and related contractual and regulatory obligations can be met. There would in addition be increased costs for AQUIND, in addition to potential increased losses through non-availability of the required vessel meaning an outage lasts longer. RED has not agreed to be responsible in any way for any such increased costs where its approach mandates the use of DP2 vessels. By way of comparison, in case of a fault to RED's asset requiring repairs in the vicinity of AQUIND it would only cause Rampion 2 to lose a very limited part of the offshore wind farm capacity, taking into the account the overall Rampion 2 scheme.

- 1.9 Having therefore undertaken the analysis using an anchored barge, which requires a larger working area than a DP2 vessel but is more available on the market at a short notice, it is apparent that additional controls would be required in respect of the placement of Offshore Wind Turbine Generators and Offshore Substations, in addition to a greater initial separation distance being required, to ensure the safety and integrity of each project.
- 1.10 The separation requirements which have been identified from the analysis of AQUIND's appointed expert marine installation engineer are as follows:
 - 1.10.1 No RED assets (including foundations), except cable crossings, may be installed closer than "250m + hazard area with the radius equal to the greater of: (i) 250m from the WTG outer edge (including substructure) or (ii) rotor diameter if higher as defined on page 17 of the Proximity Guidelines" from AQUIND's order limit.
 - 1.10.2 No RED assets, except array cable to WTGs, can be installed within 700m radius from the cable crossing (crossings being the most likely fault locations and due to a limited flexibility in repair methodology in those locations – there is a limited ability to move repair barge when undertaking repairs over a cable crossing).
 - 1.10.3 No more than 4 turbines may be provided north of the AQUIND's Order Limit and 3 turbines south of AQUIND's Order Limit within the minimum distances to the AQUIND Order Limit outlined above (essentially the number presented by RWE), or vice versa.
 - 1.10.4 At least 2500m horizontal spacing between the limits of hazard areas of Wind Turbine Generators - To give sufficient flexibility to undertake installation or repairs and plan vessel movements.
 - 1.10.5 Anchor lines can cross turbine safety zones – if this is not permissible, Wind Turbine Generators will need to be located at a greater distance from the AQUIND Order Limit.
 - 1.10.6 If costs of installation or repairs or the time to install or repair increase due to the presence of RED's assets closer than 1km to AQUIND's Order limits then Rampion will bear the additional costs compared with the installation or repairs undertaken without presence of RED's assets and losses (for example if AQUIND need to order an extra 1km of cable because there is a Wind Turbine Generator or forced to use DP2 vessel which costs more and has longer booking time, which leads to a longer time to commissioning or restoring normal operations, then RWE will compensate AQUIND).
- 1.11 AQUIND issued these requirements to RED on 31st July 2024, and acknowledges that RED will require some time to consider them. It is noted that this will likely mean that should it be possible to reach agreement with RED and to enter into a Co-operation Agreement, this will not occur before the close of the examination for the Application on 6 August 2024. AQUIND will ensure to continue to update the ExA on progress following the close of the examination.
- 1.12 AQUIND has also explained that it would be content to take a more flexible approach, whereby the parties would agree in the future the location of Offshore Wind Turbine Generators and Offshore Substations in proximity to the AQUIND Order Limits, informed by the relevant Crown Estate guidance and industry best practices, but RED has to date rejected this offer. This can be seen from the proposed deletion of limb (d) of the definition of "Proximity Agreement" on page 598 of REP5-122.

- 1.13 In addition, it can be seen from this document on page 603 in respect of the Co-Operation Agreement, and on page 622 in respect of the Protective Provisions, that RED are also seeking wording to be included which provides that AQUIND cannot refuse to enter into a Proximity Agreement, in any circumstances. Such a requirement is clearly not going to be able to be accepted by any operator in the marine environment who must ensure suitable processes to guarantee the safety and integrity of their apparatus.
- 1.14 To alleviate RED's concerns that AQUIND would not enter into a Proximity Agreement for any unreasonable reason, AQUIND proposed at clause 5.4 of the Co-Operation Agreement (page 606 of REP5-122) and paragraph 5 (5) of the protective provisions (page 624 of REP5-122) that each party shall *"when using all reasonable endeavours expeditiously and diligently negotiate the relevant Crossing Agreement or Proximity Agreement in good faith and shall enter into such Crossing Agreement or Proximity Agreement as soon as is reasonably practicable SAVE THAT neither AQUIND or RED shall be obliged to enter into any Proximity Agreement where there are safety critical or operational issues that have not been resolved as appropriate at that stage as each shall in its sole discretion determine and where in the opinion of either (acting reasonably) the other is not using all reasonable endeavours in the manner provided for [by this sub-paragraph 5] or has identified a matter as one which is safety critical or would lead to operational issues and this is not agreed by the other, they may refer the matter for dispute resolution in accordance with [paragraph 8] hereof."*
- 1.15 It was identified the above was a suitable form of words to provide RED with the necessary assurances that negotiations would be reasonable, and agreements would not be unreasonably withheld or delayed. AQUIND's strong view remains that this is an entirely suitable form of words to address RED's concerns.
- 1.16 For the avoidance of any doubt, AQUIND does not agree to the amendments which are suggested by RED to the Co-Operation Agreement or the Protective Provisions. They would result in safety critical and operational issues being able to be imposed on AQUIND, which would materially prejudice the AQUIND Interconnector, its ability to secure investment, to satisfy regulatory and contractual requirements and to obtain suitable insurances. This has been explained in clear terms to RED.
- 1.17 Whilst the above has set out the current position in respect of the negotiations for the Co-operation Agreement, for matter of record AQUIND also has the following specific comments in respect of the Supplementary Technical Note contained at page 587 onwards in REP5-122:
- 1.17.1 AQUIND has not at any point stated that the Subsea Cables UK Guideline No 6: Proximity of Offshore Renewable Energy Installations & Submarine Cable Infrastructure in UK Waters ("the **Guidelines**") are prescriptive as to required distances between the apparatus of neighbouring offshore infrastructure projects. Nor has AQUIND cited the Guidelines as a basis upon which to prescribe separation distances in the Co-operation Agreement. It agrees that they are a set of recommendations that developers of those projects should consider in project implementation in order to ensure risk is suitably managed and safe operations are assured. AQUIND notes that the Co-Operation Agreement is not a Proximity Agreement, rather it secures that those will be entered into to provide this necessary certainty. AQUIND had sought for the Guidelines to inform the proximity of RED assets as part of a Proximity Agreement, as the starting point for discussions (as RED is keen to highlight is the purpose of the Guidelines at paragraph 4.2 on page 558 of RE5-122). RED has rejected this approach and has instead sought to require that from a distance of 500m AQUIND can have no influence on where RED apparatus is located, which would be a position that has been shown to not accord with the Guidelines, and to cause real issues for the maintenance and repair of the AQUIND cables. This approach does not respond to the spirit of the Guidelines, and instead seeks to disregard them and AQUIND's operational and safety requirements in the interest of securing a lesser proximity distance.

- 1.17.2 It is not agreed that the Guidelines are in any way inconsistent with or do not support wider planning policy to deliver renewable energy projects efficiently and effectively, as is suggested at paragraph 2.2 on page 587 of REP5-122. AQUIND notes the emphasis that NPS EN-1 (2011) places on the critical need for energy infrastructure and the support it provides for offshore wind and interconnector projects. Clearly in that context policy weighs in favour of securing a position which ensures both projects and their substantial and critical benefits are able to be delivered and that one of those projects does not prejudice the safety and integrity of the other.
- 1.17.3 We note the recognition that the combined recommended hazard zone of 250m and working zone of 500m (Guidelines, section 3) is a total of 750m, which is in excess of RED's 500m position.
- 1.17.4 AQUIND has not sought to introduce any veto into the Co-Operation Agreement and AQUIND's proposed drafting does not in any way introduce such a risk, as is suggested by RED at paragraph 3.3 on page 558 of REP5-122. As is explained above at paragraph 1.14, AQUIND has proposed suitable wording to ensure parties act reasonably and to detail the circumstances in which disagreements should be referred to an expert to independently determine the matter. Suggesting the introduction of any veto is a mischaracterisation of the position.
- 1.17.5 For the reasons which AQUIND has set out above at paragraph 1.9, whilst repairs might be undertaken by a DP vessel, they equally might not be. It is not appropriate for separation distances to be calculated on this basis (as is suggested at paragraph 4.2 on page 558 of REP5-122).
- 1.17.6 It is also not reasonable to 'bake-in' the recommended 250m hazard zone into AQUIND Order Limits, to deliver the recommended 750m separation distance recommended in the Guidelines by requiring the sterilisation of 250m of AQUIND's Order Limits (see paragraph 4.4.3 on page 589 of REP5-122), in circumstances where the AQUIND cables could be located at the outer extremity of the AQUIND Order Limits. RED has been aware since 2019 of the exact location of AQUIND's Order Limits, well before its submission of the Application. The full width of AQUIND's Order Limit is needed to safely install AQUIND's marine cables by the appointed contractor. It cannot be accepted under any circumstances that this limited area by comparison to RED's Order Limit is sterilised to any degree.
- 1.17.7 Again however, we note the acceptance by RED that 750m is necessary as a separation distance. We also for completeness note that the drafting put forward by AQUIND would work such that if the AQUIND Interconnector is delivered first the separation distance would apply from the as-built works.
- 1.17.8 Irrespective of whether any Co-Operation Agreement is entered into, AQUIND requires the protective provisions to be included in any Rampion 2 Offshore Wind Farm Development Consent Order. Should the parties agree a different position between them that would apply contractually, but this is no reason to not include the necessary protective provisions on the face of the Order. The ExA and the Secretary of State will be aware this is an entirely common approach taken to protective provisions and agreements with statutory parties.

Herbert Smith Freehills LLP for and on behalf of AQUIND Limited

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Appendix 1

AQUIND Repair Space Requirement Diagram

