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Secretary of State for Energy Security and Net Zero
Department of Energy Security and Net Zero
1 Victoria Street
London
SW1H 0ET

Date: 12 December 2024
Our Ref: 344663.000004
Direct: [REDACTED]
Email: [REDACTED]@eversheds-sutherland.com

By E-mail care of Planning Inspectorate:

aquind@planninginspectorate.gov.uk
Rampion2@planninginspectorate.gov.uk

Dear Sir

**Interface between Rampion 2 and Aquind Interconnector Proposals
Planning Inspectorate references EN010117 and EN020022**

We refer to the submissions made by Herbert Smith Freehills LLP to the Planning Inspectorate on 20 November 2024 on behalf of Aquind, in respect of the Rampion 2 Application.

The Applicant has continued to engage with Aquind since the close of the Examination to agree the terms of a Co-operation Agreement for the regulation of the interface of the respective projects and to ensure optimal delivery of each project. Whilst the agreement was substantially settled, the Applicant is not able to accept Aquind's proposed inclusion of prescribed distances for the separation of assets, because those distances put forward by Aquind are based on worst case scenario and do not take into account the appropriate methodology to minimise impact on both parties. Aquind's approach is to interpret the data set out in 'Subsea Cables UK Guideline No 6: Proximity of Offshore Renewable Energy Installations & Submarine Cable Infrastructure in UK Waters' ("the Guidelines") such that it is applied to the outer edge of the Aquind Order Limits, and taking into account the maximum space that a repair vessel might require in the operational and maintenance phase of the Aquind Interconnector Project. This approach effectively future proofs the options that Aquind may have to use maximum space for maintenance and repair vessels at the expense of sterilising significant parts of the Rampion 2 Order Limits.

Contrary to the argument put forward by Aquind, the Applicant has provided technical justification for its resistance to adopting this worst case scenario approach. This is set out in The Applicant's Comments on Deadline 4 Submissions [REP5-122], particularly the Supplementary Technical Note at Appendix F to that document. Neither the Aquind Interconnector Project nor the Rampion 2 Wind Farm have progressed to detailed design, and therefore arbitrary maximum separation distances imposed on the layout of the Wind Farm at this point of development of the respective projects is not justified, because there is no data point for the location of the Aquind Interconnector cable. To impose the maximum separation distances has the impact of frustrating the Applicant's ability to deliver the windfarm to operational capacity. As there is no certainty as to where the Aquind cable will sit within the Aquind Order Limits, this is not justified protection and, should those separation distances be applied, would be detrimental to the delivery of the Rampion 2 Wind Farm.

The Applicant notes that Aquind has submitted a further draft of Protective Provisions (20 November 2024). Annex 1 to Appendix F [REP5-122] comprises the draft Co-operation Agreement as at July 2024, and Annex 2 to Appendix F comprises the Applicant's comments on the submitted Provisions for the Protection of Aquind as at July 2024. The Provisions for the Protection of Aquind as submitted by them on 20 November 2024 reflects the bilateral Co-operation Agreement that has been under discussion between the Parties, on the terms put forward by Aquind that are unacceptable to the Applicant for the reasons set out above.

The Applicant accepts that the Rampion 2 DCO might reasonably include Protective Provisions for the benefit of Aquind. However, the Applicant considers it unreasonable, disproportionate and unjustified to base those provisions on an interpretation of data that future proofs the Aquind Interconnector operational and maintenance options, to the detriment of Rampion 2 and the sterilisation of the Rampion 2 Order Limits.

Further, the Applicant considers it inappropriate that the Rampion 2 DCO should include Protective Provisions that comprise a bilateral agreement relating to the Rampion 2 DCO, as well as the Aquind Interconnector DCO. The Applicant remains of the view expressed in letter sent to the Secretary of State in connection with the Aquind Interconnector DCO re-determination on its behalf by Eversheds Sutherland International LLP on 25 January 2024 (attached) that Protective Provisions by their nature should be relevant only to the statutory instrument to which they relate. As set out in that letter, where proximate infrastructure projects require protection as regards interface, it is correct that each separate DCO include reciprocal and proportionate protective provisions for the other.

The Applicant has compromised significantly to the requests of Aquind as regards separation distances. Attached to this letter are the protective provisions that the Applicant submits are reasonable and proportionate to include in the Rampion 2 DCO and the Aquind DCO for the protection of the respective projects.

In the attached provisions for the protection of Aquind, there is a prohibition on any element of the wind farm being constructed within Aquind Order limits, and 250m either side of those limits, as well as imposing restrictions from 250m to 750m from those limits. Conversely, in the attached provisions for the protection of Aquind, no restrictions are imposed on the Aquind Interconnector outside of the Aquind Limits. This compromise by the Applicant is in recognition of the different physical factors of the respective projects, but to impose further restrictions on the construction of the Wind Farm within the Rampion 2 Order Limits is wholly unreasonable and disproportionate to the levels of protection that are actually required by Aquind.

Eversheds Sutherland (International) LLP has written to the Secretary of State for Energy Security and Net Zero to request that the attached updated Protective Provisions for the benefit of Rampion 2 are included in the Aquind Interconnector DCO in replacement of those attached to its letter of January 2024, in order to secure a position where the protective provisions are consistent with those included in the Rampion 2 DCO. A copy of that letter is attached.

The Applicant invites the Secretary of State, for the reasons set out in this letter and in the Applicant's Comments on Deadline 4 Submissions [REP5-122], should he be minded to grant the Rampion 2 Order, to include the attached provisions for the protection of Aquind which include reasonable separation distances and further protections for Aquind in terms that do not disproportionately compromise the construction and operation of the Rampion 2 Wind Farm.

Yours faithfully

Eversheds Sutherland (International) LLP

Eversheds Sutherland (International) LLP

Copied (by email only) to:

██████████@hsf.com

Encls:

Letter dated 20 December 2023.

Letter dated 25 January 2024

Proposed Protective Provisions to be included on the Rampion 2 DCO for the benefit of Aquind

Letter dated 12 December 2024 and encls.

Part 8

FOR THE PROTECTION OF AQUIND INTERCONNECTOR

Application

1. Subject to paragraph 10, the provisions of this Part of this Schedule apply for the protection of AQUIND Limited and have effect unless otherwise agreed in writing between RED and AQUIND Limited.

2. In this Part of this Schedule—

“AQUIND” means AQUIND Limited (company number 06681477) or the person who has the benefit of the AQUIND Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order) of the AQUIND Order;

“AQUIND order” means The AQUIND Interconnector Order applied for on 14 November 2019 as it is made by the Secretary of State;

“AQUIND Order Limits” has the same meaning as is given to the term ‘Order limits’ in the AQUIND Order;

“AQUIND Works” means Work No. 7 as described at paragraph 3 and any associated development as described at paragraph 4 of Part 1 of Schedule 15 to the AQUIND Order in so far as such works are within the Overlap Area;

“Array Cables” means the network of offshore subsea Transmission Cables connecting Wind Turbine Generators to each other and to the Offshore Substations comprised in the RED Works;

“Commencement” means the first carrying out of any licensed marine activities comprised within the RED Works, excluding any non-intrusive pre-construction surveys;

“Crossing Agreement” means any agreement entered into by the Parties pursuant to paragraph 5 hereof for—

- (a) the crossing of the AQUIND Works by Array Cables to ensure the Array Cables do not give rise to interference with the operation or Maintenance of the AQUIND Works; or
- (b) the crossing of the Array Cables by the AQUIND Works to ensure that the cables or other elements comprising the AQUIND Works or any part of them do not give rise to interference with the operation or Maintenance of the RED Works; or
- (c) to manage the safe interface of the installation of subsea cable crossings as part of the RED Works and the AQUIND Works for their mutual protection;

“MMO” means the Marine Management Organisation;

“Necessary Crossing” means any point at which an Array Cable comprised in the RED Works cross the AQUIND Order Limits;

“Offshore Substation” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks containing—

- (a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage ; and
- (b) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or Wind Turbine Generators, comprised in the RED Works;

“Offshore Substation Interconnector Cable” means Transmission Cables connecting Offshore Substations comprised in the RED Works;

“Order Limits” has the same meaning as is given to the term ‘Order limits’ in this Order;

“Overlap Area” means the extent to which the Order Limits overlap the AQUIND Order Limits;

“Pre-Construction Information” means the documentation and information required in accordance with paragraph 11 of Part 2 of Schedule 11 and/or Schedule 12 to the RED Order, as amended or agreed with the MMO;

“Proximity Agreement” means any agreement entered into by AQUIND and the undertaker pursuant to paragraph 4 hereof setting out the technical and commercial terms on which the RED Works and the AQUIND Works will be located and operated in proximity to one another including (but not limited to)—

- (a) clauses to define the liabilities and rights of both AQUIND and the undertaker;
- (b) exclusion/inclusion of consequential losses;
- (c) details of financial compensation arrangements for each of AQUIND and the undertaker where applicable relating to specific arrangements;
- (d) indemnity provisions as appropriate to regulate respective liability in construction interface;
- (e) clearly defined limits of the area to which the Proximity Agreement applies;
- (f) details of how proximate work would be carried out, to include method statements provided by the entity carrying out the work and accepted by the other entity as suitable prior to work proceeding;
- (g) future maintenance requirements of both AQUIND and the undertaker which may include the method by which notification of operations by each is given to the other;
- (h) definition of the expiry of the Proximity Agreement (for example, at the decommissioning of one or other of the relevant assets);
- (i) provision of representatives from one entity to the other entity’s operations and their rights, obligations and limitation of their authority;

“Proximity Zone” has the meaning given in paragraph 4.2;

“RED Works” means—

- (a) Work Nos. 1 and 2 and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 11 to the RED Order; and
 - (b) Work Nos. 3 and 4 of and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 12 to the RED Order;
- in each case in so far as such works are within the Overlap Area and within 750m from the boundary of the Overlap Area (or such varied distance as may be agreed by the Parties acting reasonably);

“Safety Zone” means a safety zone for the purposes of the Energy Act 2004;

“Secretary of State” means the Secretary of State for Energy Security and Net Zero (or any such successor Secretary of State performing that function);

“Transmission Cable” means any offshore cable circuits for the transmission of electricity and communications and includes direct lay cables and/or cables pulled through cable ducts or under protective covers in connection with those comprised in the RED Works;

“Wind Turbine Generators” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle, transition piece and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion

protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation to be constructed pursuant to Work No. 1 comprised in the RED Works; and

“Working Day” means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the transaction of ordinary business.

For the Protection of AQUIND Interconnector

3. The undertaker shall—

(1) not less than 6 months prior to the Commencement of any part of the RED Works submit to AQUIND and use all reasonable endeavours to agree with AQUIND the Pre-Construction Information in respect of such part of the RED Works in the interest of not adversely impacting the construction of AQUIND Works or the operation and maintenance of the AQUIND Works once constructed within not more than 2 months from the date on which the RED Pre-Construction Information is submitted to AQUIND (or such longer period as may otherwise be agreed by the Parties acting reasonably), and where the Pre-Construction has not been agreed with AQUIND within 2 months from the date on which the Pre-Construction Information is submitted by the undertaker (or such longer period as may otherwise be agreed by the Parties) either party may refer the matter to be determined by an Expert in accordance with paragraph 7 hereof;

(2) not commence the RED Works or such part of the RED Works (as is relevant in the circumstances) until the Pre-Construction Information is agreed with AQUIND or has been determined by the Expert;

(3) thereafter RED shall carry out the construction of the RED Works in accordance with the agreed Pre-Construction Information as is agreed or as determined by the Expert (and as may be varied by agreement between the parties from time to time);

(4) where received from AQUIND pursuant to Schedule 13 Part 7 to the AQUIND Order, to use all reasonable endeavours to agree with AQUIND the AQUIND pre-construction information for the AQUIND Works in the interest of not adversely impacting the construction of the RED Works or the operation and maintenance of the RED Works once constructed;

(5) not to place any Wind Turbine Generators, Substations or Transmission Cables comprised in the RED Works within the boundary of the Overlap Area, save for Array Cables in respect of which a Crossing Agreement has been entered into which provides for those Array Cables to cross the Overlap Area;

(6) not place any Wind Turbine Generators, Offshore Substations or Transmission Cables (save for Array Cables) comprised in the RED Works within—

- (a) 250 metres of the boundary of the Overlap Area (“the Exclusion Zone”); and
- (b) 750 metres of either side of the boundary of the Overlap Area (“the Proximity Zones”) except where the conditions in (i) and (ii) of this paragraph 5(b) are met—
 - (i) within a Proximity Zone of the same side of the Overlap Area boundary, the minimum separation distance between Wind Turbine Generators is 2000 metres;
 - (ii) within Proximity Zones either side of the Overlap Area the minimum separation distance between Wind Turbine Generators is 1250 metres;

unless both parties (both acting reasonably) agree to waive those conditions; and

(7) not make any disposal of any inert material of natural origin and/or dredged material produced during construction drilling or seabed preparation for foundation works and cable installation works undertaken pursuant to the Order within 250 metres of the Overlap Area excluding such disposal as is associated with any Necessary Crossing and/or where otherwise provided for in the relevant Crossing Agreement or Proximity Agreement;

(8) provide AQUIND with—

- (a) not less than 10 Working Days prior written notification of the Commencement of the RED Works;

- (b) notification of the completion of construction of the RED Works as soon as is reasonably practicable and not later than 48 hours of completion of construction; and
- (c) not less than 5 Working Days notice of any planned maintenance works to the RED Works.

(9) provide to AQUIND the Post-Construction Information as soon as is reasonably practicable following and in all cases within not more than four months of the completion of construction of the RED Works;

(10) maintain the RED works in good order such that they do not give rise to any damage to AQUIND Works by reason of non-repair;

(11) prior to applying for or promoting any Safety Zone where compliance with it would prevent access to any part of the AQUIND Order Limits in connection with the construction, maintenance and decommissioning of the AQUIND Works or would restrict to any extent the construction, maintenance and decommissioning of the AQUIND Works—

- (a) inform AQUIND of the Safety Zones proposed to be applied for;
- (b) agree with AQUIND (both AQUIND and RED acting reasonably) the terms of dispensation from the enforcement of that Safety Zone so that it does not prevent access to any part of the AQUIND Order Limits in connection with the construction, maintenance and decommissioning of the AQUIND Works or restrict to any extent the construction, maintenance and decommissioning of the AQUIND Works prior to any such Safety Zone being applied for or promoted; and
- (c) otherwise inform AQUIND of any and all Safety Zones applied for which may impact upon the Overlap Area and of the publication of any notice of a proposed Safety Zone which may impact upon the Overlap Area as soon as is reasonably practicable following their submissions or publication (as is relevant in the circumstances);

(12) not less than 90 days prior to the decommissioning of any part of the RED Works to submit to AQUIND and to use all reasonable endeavours to agree with AQUIND information relevant to how the decommissioning works will be undertaken and confirming how those works will not adversely impact the AQUIND Works and not to commence the decommissioning of any part of the RED Works until the information relevant to how the decommissioning works will be undertaken is agreed with AQUIND and thereafter to carry out the decommissioning works in accordance with the agreed Information;

(13) where received from AQUIND use all reasonable endeavours to agree with AQUIND the decommissioning information for the AQUIND Works in the interest of confirming how those works will not adversely impact RED Works;

(14) to allow AQUIND and representatives of AQUIND and those employed on their behalf to watch and inspect the construction, maintenance and decommissioning of the RED Works.

Crossing Agreements and Proximity Agreements

4. The undertaker will co-operate with AQUIND and—

(1) will use all reasonable endeavours to enter into Crossing Agreements in respect of each Necessary Crossing to ensure that appropriate arrangements are in place for each of the following scenarios—

- (a) in the event that the RED Works progress in advance of the AQUIND Works, agreement regarding the interface of the Array Cables and the AQUIND Works prior to the construction of the Array Cables in order that such crossings do not prejudice the operation or maintenance of the Array Cables and shall not prevent the construction of the AQUIND Works or give rise to interference with the operation or maintenance of the AQUIND Works once constructed;
- (b) in the event that the AQUIND works progress in advance of the RED Works, agreement regarding the crossing points of the AQUIND Works by the Array Cables and the interface of the AQUIND Works and the Array Cables in order that the construction of such crossings by the Array Cables shall not be prevented and shall not give rise to interference with the operation or maintenance of the AQUIND Works;

- (c) in the event that the AQUIND Works and the RED Works progress simultaneously, agreement for the provision of the crossing points of the AQUIND Works and the Array Cables to ensure that each of the AQUIND Works and the Array Cables can be constructed without preventing the construction of the other and shall not prejudice the operation or maintenance of the AQUIND Works or the Array Cables;

(2) acknowledges that Crossing Agreements may be required for up to four crossings of the Overlap Area by Array Cables (unless otherwise agreed by the Parties acting reasonably);

(3) agrees, subject to any decision made by the Expert pursuant to paragraph 7, that no construction will take place in the Overlap Area in connection with the RED Works until such time as both parties are satisfied that any relevant necessary Crossing Agreement in respect of such part of those works is in place;

(4) will co-operate and use all reasonable endeavours to enter into Proximity Agreements to regulate the interface of the AQUIND Works and any Wind Turbine Generators, Offshore Substations or Transmissions Cables (where not subject to a Crossing Agreement) comprised in the RED Works;

(5) 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 and in the event of dispute (including a dispute under sub-paragraph (3)) either party may refer the matter for resolution in accordance with paragraph 7, and any decision made further to that process is binding on both parties.

Costs and Expenses

5.—(1) Save where otherwise agreed in writing between AQUIND and the undertaker (including where agreed in any Crossing Agreement) and subject always to paragraph 10 hereof—

- (a) The undertaker shall be responsible for AQUIND’s reasonable costs in respect of—
 - (i) approving the Pre-Construction Information;
 - (ii) approving information relevant to how the decommissioning of the RED works will be undertaken;
 - (iii) any works which are required to the AQUIND Works to carry out the construction of the RED Works in accordance with the agreed Pre-Construction Information, including any costs of AQUIND incurred in undertaking works to AQUIND Works to facilitate the RED Works being undertaken in accordance with the agreed Pre-Construction Information;
 - (iv) any works which are required to the AQUIND Works to carry out the decommissioning of the RED Works in accordance with the agreed decommissioning information, including any costs of AQUIND incurred in undertaking works to AQUIND Works to facilitate the RED Works being decommissioned in accordance with the agreed decommissioning information; and
 - (v) the reasonable costs for AQUIND watching and inspecting the construction and decommissioning of the RED Works.
- (b) When incurring costs, expenses or losses which are payable by the other AQUIND and RED must at all times act reasonably and in the same manner as they would if they were funding the cost, expenses or losses themselves.

Consultation and Co-operation

6.—(1) AQUIND and RED shall act in good faith to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part 8 and otherwise do nothing to hinder or prevent the other party from the proper execution of or the carrying out of the AQUIND Works or the RED Works.

(2) Where any approval, agreement, consent or confirmation of AQUIND or RED is required pursuant to the terms of this Part 8, or Part 7 of Schedule 13 to the AQUIND Order (including for the avoidance of doubt in connection with any method statement), it shall not be unreasonably withheld or delayed.

Dispute Resolution

7.—(1) Save for matters of interpretation (which shall be matters for the Court) in the event of any dispute arising between AQUIND and RED in respect of any matter contained in this Part 8 of Schedule 10 to the Order including questions as to the propriety and/or necessity of any cost or and any question of reasonableness of the same AQUIND and RED will use reasonable endeavours to attempt to resolve that dispute amicably (including holding a meeting attended by at least one representative from each party if considered appropriate) for a period of 20 Working Days from the date on which any party notifies the other party in writing that a dispute has arisen.

(2) In the event that the dispute has not been resolved amicably following the expiry of the period of 20 Working Days referred to in sub-paragraph 1 above despite the parties using reasonable endeavours to resolve the dispute amicably, any party may refer the dispute to an expert (“**Expert**”) to be agreed upon between the parties hereto or at the request and option of either of them to be nominated at their joint expense by or on behalf of the President of the Institution of Civil Engineers and the Expert’s decision shall (in the absence of manifest error) be final and binding on the parties hereto and whose costs shall be borne by the parties at his discretion.

(3) The Expert shall—

- (a) have at least ten years post qualification experience in the subject matter of the dispute;
- (b) be appointed subject to an express requirement that he reaches a decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event in not more than 40 Working Days from the date of his appointment to act;
- (c) be required to give notice to each of the parties within 5 Working Days of appointment inviting each of them to submit within 10 Working Days of that notice written submissions and supporting material which shall also be issued by the parties to each other within the same 10 Working Day period and shall afford to each of the parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material and disregard any representations made out of time;
- (d) give its decision in writing within 15 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 15 Working Days of receipt of the written submissions and supporting material with reasons for the decision;
- (e) make a determination as to payment of the Expert’s costs and the parties’ legal and professional costs of engaging in the dispute resolution process under this paragraph 8 of this Part 8 of Schedule 10 to the RED Order.

Confidential Information

8. AQUIND and RED must not disclose any Confidential Information to any other person (save where such person is bound by a legally enforceable requirement and indemnity which benefits the party who provided the relevant Confidential information to keep such information confidential) except with the other party’s prior consent, which may not be unreasonably withheld or delayed but which may be provided subject to reasonable conditions.

Liability and Insurance

9.—

(1) The undertaker shall compensate AQUIND in respect of all costs and expenses incurred (including legal, surveying and engineering costs and disbursements) and damages or losses suffered to the extent that the same are reasonably incurred in connection with any act or omission by the undertaker that is in breach of this Part.

(2) Nothing in this Part imposes any liability on either party with respect to any damage, cost, expense or loss which is attributable to the negligence of the other party or of any person in the other party’s employment or of the other party’s contractors or agents and any liability of the relevant party under this Agreement must be reduced proportionately to the extent to which any damage, cost, expense or loss is

attributable to the negligence of the other party or of any person in the other party's employment or of the other party's contractors or agents.

(3) Nothing in this Part is intended and nor shall it be construed as an attempt by any party to this Agreement to exclude or restrict liability for—

- (a) death or personal injury from its negligence or by the negligence of a person for whom it is vicariously liable (negligence being defined in section 1(1) of the Unfair Contract Terms Act 1977); and/or
- (b) any losses caused by the fraud of either party, its contractors or any other person for whom that party is responsible.

(4) AQUIND must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand must be made, unless payment is required in connection with a statutory compensation scheme, without the Parties first consulting one and other and considering its representations.

(5) AQUIND shall use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, losses, demands or penalties, to which this paragraph 9 applies and if requested to by the undertaker, shall provide an explanation of how any such claims have been minimised and the undertaker shall only be liable for claims reasonably incurred by AQUIND, and any action taken by either party pursuant to this paragraph 9 will be at the reasonable cost of the other party.

(6) The undertaker must not commence construction (and must not permit the commencement of such construction) of any part of the RED Works until AQUIND is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker or its contractor has procured acceptable insurance (and provided evidence to AQUIND that it must maintain such acceptable insurance for the construction period of the RED Works from the proposed date of commencement of construction of the RED Works) and AQUIND has confirmed the same in writing to the undertaker.

(7) The undertaker must not commence operation and maintenance (and must not permit the commencement of operation and Maintenance) of any part of the RED Works until AQUIND is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker or its contractor has procured acceptable insurance (and provided evidence to AQUIND that it must maintain such acceptable insurance for the period of maintenance in respect of the RED Works from the proposed date of commencement of operation of the RED Works and to provide evidence of renewal of such insurance as appropriate) and AQUIND has confirmed the same in writing to the undertaker.

(8) The undertaker must not commence decommissioning (and must not permit the commencement of decommissioning) of any part of the RED Works until AQUIND RED is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to AQUIND that it must maintain such acceptable insurance for the decommissioning period of the AQUIND Works from the proposed date of commencement of decommissioning of the RED Works) and AQUIND as confirmed the same in writing to the undertaker.

Effect of Protective Provisions

10.—(1) This Part will cease to have effect if any of the following events occur—

- (a) the application for the AQUIND Order is withdrawn, in which case AQUIND shall provide the undertaker with written notification of such withdrawal within 10 Working Days of AQUIND notifying the Secretary of State of the withdrawal;
- (b) the Secretary of State having decided the application for the AQUIND Order decides to refuse development consent and AQUIND not choosing to bring a judicial review in relation to such refusal, in which case AQUIND will provide the undertaker with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by AQUIND and this Part will cease to have effect immediately on the date of delivery of the notice in accordance with paragraph 11(2) or within 10 Working Days the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);

- (c) if following the final determination of any challenge proceedings in respect of the decision in relation to the AQUIND Order a decision by the Secretary of State to refuse development consent is upheld;
- (d) if following the final determination of any challenge proceedings in respect of the decision in relation to the AQUIND Order the decision is quashed and the Court orders the application for the AQUIND Order to be remitted to the Secretary of State and the application for the AQUIND Order is subsequently refused and AQUIND chooses not to bring a judicial review in relation to such refusal, in which case AQUIND will provide the undertaker with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by AQUIND and this Part will cease to have effect immediately on the date of delivery of the notice in accordance with paragraph 11(2) or within 10 Working Days of the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);
- (e) if following the AQUIND Order being made the works authorised by the AQUIND Order are not commenced before the period within which they must commence expires.

Variations

11.—(1) Any notice given under or in relation to this Part shall be in writing and shall refer to the Order and shall be deemed to be sufficiently served if addressed to the AQUIND, or the undertaker, as the case may be, and sent by recorded delivery or registered post to the address of the parties given in this paragraph or to such other address as they may from time to time designate by written notice to the other.

(2) Any notice sent in accordance with paragraph 11.1 shall be deemed, in the absence of evidence of earlier receipt, to have been delivered two days after posting or dispatch, exclusive of the day of posting.

(3) Any notice sent by the undertaker to AQUIND in accordance with clause 11.1 shall be addressed to Kirill Glukhovskoy – Managing Director, and shall also be sent to AQUIND by e-mail to kirill.glukhovskoy@aquind.co.uk.

(4) Any notice sent by the AQUIND to the undertaker in accordance with clause 11.1 shall be addressed to The Company Secretary and Project Lead Umair Patel, Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire SN5 6PB and shall also be sent to RED by e-mail to umail.patel@rwe.com.

COPY

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eversheds-sutherland.com

Date: 12/12/2024

Our Ref: 344663.000004

Secretary of State for Energy Security and Net Zero
Department of Energy Security and Net Zero
1 Victoria Street
London
SW1H 0ET

Direct:

Email:

██████████@eversheds-sutherland.com

By E-mail care of Planning Inspectorate:
aquind@planninginspectorate.gov.uk
Rampion2@planninginspectorate.gov.uk

Dear Sir

**Interface between Rampion 2 and Aquind Interconnector Proposals
Planning Inspectorate references EN010117 and EN020022**

We act for Rampion Extension Development Limited ("REDL") in the application for a development consent order ("DCO") for the Rampion 2 Offshore Wind Farm ("Rampion 2"). We write further to our letters of 20 December 2023 and 25 January 2024 (copies attached), in which we set out the concern to ensure the inclusion of appropriate provision for the protection of Rampion 2 in the context of the re-determination of the application made by Aquind Limited ("Aquind") for a DCO to authorise the Aquind Interconnector.

Our letter of 25 January 2024 requested that should the Secretary of State be minded to grant the Aquind Interconnector Order, that the form in which it is made include provisions for the protection of the Rampion 2 Offshore Wind Farm. That letter set out the importance of including provisions for the protection of interfacing projects, and that such provisions include proportionate and reciprocal protection for each respective project.

The Rampion 2 Examination closed on 6 August 2024. In the course of the Examination and since it closed, REDL has engaged with Aquind to agree the terms of a bilateral Co-operation Agreement for the regulation of the interface of the respective projects and to ensure optimal delivery of each project ("the Co-operation Agreement"). Whilst the Co-operation Agreement has not yet been concluded, the provisions relating to the implementation of Rampion 2 are agreed between the Parties. The nature of discussions, and agreed approach to project interface, has given rise to Protective Provisions that take a different form to those sent under cover of our letter dated 25 January 2024.

The Secretary of State for Energy Security and Net Zero has requested that REDL submit an update as regards to the ongoing negotiations with affected parties, as committed by REDL's closing statements in the Rampion 2 Examination [REP6-233]. As part of that update, REDL will submit to the Secretary of State, Protective Provisions for the protection of the Aquind Interconnector in a form based discussions between the Parties and proportionate to the protection required.

Accordingly, we now write to request that the form of Protective Provision for the benefit of Rampion 2 for inclusion in the Aquind Order, is reciprocal to those protections that are

proposed to be included in the Rampion 2 Order, as is considered the appropriate approach to managing impacts on interfacing projects. The preferred form of Protective Provisions are attached to this letter. It is requested that the form of Protective Provisions attached replace those in the form attached to our letter of 25 January 2024.

Also attached to this letter for context and information is REDL's update to the Secretary of State of the discussions with Aquind, together with the proposed Provisions for the Protection of Aquind to be included in the Rampion 2 DCO.

We therefore respectfully invite the Secretary of State, in the event that he is minded to grant development consent for the Aquind project, to include the enclosed protective provisions on the face of the DCO for the protection of Rampion 2.

Yours faithfully

Eversheds Sutherland (International) LLP

Eversheds Sutherland (International) LLP

Copied (by email only) to:

@hsf.com

Encls:

Letter dated 20 December 2023.

Letter dated 25 January 2024.

Proposed Protective Provisions to be included on the Aquind DCO for the benefit of REDL

Letter dated 12 December 2024 and encls.



Part 7

FOR THE PROTECTION OF RAMPION 2

Application

1. Subject to paragraph 10, the provisions of this Part of this Schedule apply for the protection of Rampion 2 and have effect unless otherwise agreed in writing between RED and the undertaker.

2. In this Part of this Schedule—

“AQUIND Order Limits” has the same meaning as is given to the term ‘Order limits’ in the article 2 of the Order;

“AQUIND Works” means Work No. 7 as described at paragraph 3 and any associated development as described at paragraph 4 of Part 1 of Schedule 15 to the Order in so far as such works are within the Overlap Area;

“Array Cables” means the network of offshore subsea Transmission Cables connecting Wind Turbine Generators to each other and to the Offshore Substations comprised in the RED Works;

“Commencement” means the first carrying out of any licensed marine activities comprised within the AQUIND works, excluding any non-intrusive pre-construction surveys;

“Crossing Agreement” means any agreement entered into by the parties pursuant to paragraph 4 hereof for—

- (a) the crossing of the AQUIND Works by Array Cables to ensure the Array Cables do not give rise to interference with the operation or maintenance of the AQUIND Works; or
- (b) the crossing of the Array Cables by the AQUIND Works to ensure that the cables or other elements comprising the AQUIND Works or any part of them do not give rise to interference with the operation or maintenance of the RED Works; or
- (c) to manage the safe interface of the installation of subsea cable crossings as part of the RED Works and the AQUIND Works for their mutual protection;

“MMO” means the Marine Management Organisation;

“Necessary Crossing” means any point at which an Array Cable comprised in the RED Works cross the AQUIND Order Limits;

“Pre-Construction Information” means the documentation and information required in accordance with paragraph 4 (1) of Part 2 of Schedule 15 to the Order, as amended or agreed with the MMO;

“Post-Construction Information” means the cable burial management plan required in accordance with paragraph 11 of Part 2 of Schedule 15 to the Order;

“Proximity Agreement” means any agreement entered into by the undertaker and RED pursuant to paragraph 4 hereof setting out the technical and commercial terms on which the RED Works and the AQUIND Works will be located and operated in proximity to one another including (but not limited to)—

- (a) clauses to define the liabilities and rights of both the undertaker and RED;
- (b) exclusion/inclusion of consequential losses;
- (c) details of financial compensation arrangements for each of the undertaker and RED where applicable relating to specific arrangements;
- (d) indemnity provisions as appropriate to regulate respective liability in construction interface;

- (e) clearly defined limits of the area to which the Proximity Agreement applies;
- (f) details of how proximate work would be carried out, to include method statements provided by the entity carrying out the work and accepted by the other entity as suitable prior to work proceeding;
- (g) future maintenance requirements of both the undertaker and RED which may include the method by which notification of operations by each is given to the other;
- (h) definition of the expiry of the Proximity Agreement (for example, at the decommissioning of one or other of the relevant assets);
- (i) provision of representatives from one entity to the other entity's operations and their rights, obligations and limitation of their authority;

“Offshore Substation” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks containing—

- (a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage ; and
- (b) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or Wind Turbine Generators, comprised in the RED Works;

“Overlap Area” means the extent to which the RED Order Limits overlap the AQUIND Order Limits;

“Rampion 2 Order” means this Rampion 2 Offshore Wind Farm Order as applied for on 10 August 2023 as it is made by the Secretary of State and Rampion 2 means the Offshore Wind Farm;

“RED” means Rampion Extension Development Limited (company number 12091939) or the person who has the benefit of the RED Order in accordance with article 5 (Benefit of Order) of the RED Order;

“RED Order Limits” has the same meaning as is given to the term ‘Order limits’ in the Rampion 2 Order;

“RED Works” means—

- (a) Work Nos.1 and 2 and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 11 to the RED Order; and
 - (b) Work Nos. 3 and 4 and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 12 to the RED Order;
- in each case in so far as such works are within the Overlap Area and within 750m from the boundary of the Overlap Area;

“Secretary of State” means the Secretary of State for Energy Security and Net Zero (or any such successor Secretary of State performing that function);

“Transmission Cable” means any offshore cable circuits for the transmission of electricity and communications and includes direct lay cables and/or cables pulled through cable ducts or under protective covers in connection with those comprised in the RED Works;

“Wind Turbine Generators” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle, transition piece and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation to be constructed pursuant to Work No. 1 comprised in the RED Works; and

“Working Day” means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the transaction of ordinary business.

For the Protection of Rampion 2 Wind Farm

3. The undertaker shall—

(1) not less than 6 months prior to the Commencement of any part of the AQUIND Works, submit to RED and use all reasonable endeavours to agree with RED the Pre-Construction Information in respect of such part of the AQUIND Works, in the interest of not adversely impacting the construction of the RED Works or the operation and maintenance of the RED Works once constructed, within not more than 2 months from the date on which the Pre-Construction Information is submitted to RED (or such longer period as may otherwise be agreed by the Parties acting reasonably); and where the Pre-Construction has not been agreed with RED within 2 months from the date on which the Pre-Construction Information is submitted by the undertaker (or such longer period as may otherwise be agreed by the Parties) either party may refer the matter to be determined by an Expert in accordance with paragraph 7 hereof;

(2) not commence the AQUIND Works or such part of the AQUIND Works (as is relevant in the circumstances) until the Pre-Construction Information for the AQUIND Works or the relevant part thereof is agreed with RED or has been determined by the Expert;

(3) thereafter carry out the construction of the AQUIND Works in accordance with the Pre-Construction Information as is agreed or as determined by the Expert (and as may be varied by agreement between the parties from time to time);

(4) where received from RED pursuant to Part 8 of Schedule 10 to the Rampion 2 Order, use all reasonable endeavours to agree with RED the RED pre-construction information for the RED Works in the interest of not adversely impacting the construction of the AQUIND Works or the operation and maintenance of the AQUIND Works once constructed;

(5) not install the AQUIND Works outside of the boundary of the Order Limits nor undertake any repair to the AQUIND Works which involves any part of the AQUIND Works or repair bight being installed outside of the boundary of the AQUIND Order Limits without the prior approval of RED (not to be unreasonably withheld or delayed and as may be given subject to reasonable conditions);

(6) not to apply for a disposal site in connection with the AQUIND Works outside the AQUIND Order Limits without first securing the consent of RED where the proposed disposal site falls within the RED Order Limits;

(7) provide RED with—

- (a) not less than 10 Working Days prior written notification of the Commencement of the AQUIND Works;
- (b) notification of the completion of construction of the AQUIND Works as soon as is reasonably practicable and not later than 48 hours of completion of construction; and
- (c) not less than 5 Working Days' notice of any planned maintenance works to the AQUIND Works;

(8) provide to RED the Post-Construction Information as soon as is reasonably practicable following and in all cases within not more than four months of the completion of construction of the AQUIND Works;

(9) to maintain the AQUIND works in good order such that they do not give rise to any damage to the RED Works by reason of non-repair;

(10) not less than 90 days prior to the decommissioning of any part of the AQUIND Works to submit to RED and to use all reasonable endeavours to agree with RED information relevant to how the decommissioning works will be undertaken and confirming how those works will not adversely impact the RED Works and not to commence the decommissioning of any part of the AQUIND Works until the information relevant to how the decommissioning works will be undertaken is agreed with RED and thereafter to carry out the decommissioning works in accordance with the agreed information;

(11) where received from RED under Part 8 of Schedule 10 to the Rampion 2 Order use all reasonable endeavours to agree with RED as soon as reasonably practicable the decommissioning information for the RED Works in the interest of confirming how those works will not adversely impact the AQUIND Works; and

(12) allow RED and representatives of RED and those employed on their behalf to watch and inspect the construction, Maintenance and decommissioning of the AQUIND Works.

Crossing Agreements and Proximity Agreements

4. The undertaker will co-operate with RED and —

(1) will use all reasonable endeavours to enter into Crossing Agreements in respect of each Necessary Crossing to ensure that appropriate arrangements are in place for each of the following scenarios—

- (a) in the event that the RED Works progress in advance of the AQUIND Works, agreement regarding the interface of the Array Cables and the AQUIND Works prior to the construction of the Array Cables in order that such crossings do not prejudice the operation or maintenance of the Array Cables and shall not prevent the construction of the AQUIND Works or give rise to interference with the operation or maintenance of the AQUIND Works once constructed;
- (b) in the event that the AQUIND Works progress in advance of the RED Works, agreement regarding the crossing points of the AQUIND Works by the Array Cables and the interface of the AQUIND Works and the Array Cables in order that the construction of such crossings by the Array Cables shall not be prevented and shall not give rise to interference with the operation or maintenance of the AQUIND Works;

in the event that the AQUIND Works and the RED Works progress simultaneously, agreement for the provision of the crossing points of the AQUIND Works and the Array Cables to ensure that each of the AQUIND Works and the Array Cables can be constructed without preventing the construction of the other and shall not prejudice the operation or maintenance of the AQUIND Works or the Array Cables;

(2) acknowledges that Crossing Agreements may be required for up to four crossings of the Overlap Area by Array Cables (unless otherwise agreed by the Parties acting reasonably);

(3) agrees, subject to any decisions made by the Expert pursuant to paragraph 7, that no construction will take place in the Overlap Area in connection with the AQUIND Works until such time as both parties are satisfied that any relevant necessary Crossing Agreement in respect of such part of those works is in place;

(4) will co-operate and use all reasonable endeavours to enter into Proximity Agreements to regulate the interface of the AQUIND Works and any Wind Turbine Generators, Offshore Substations or Transmissions Cables (where not subject to a Crossing Agreement) comprised in the RED Works;

(5) 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 and in the event of dispute (including a dispute under sub-paragraph (3)) either party may refer the matter for resolution in accordance with paragraph 7, and any decision made further to that process is binding on both parties.

Costs and Expenses

5.—(1) Save where otherwise agreed in writing between the Parties (including where agreed in any Crossing Agreement) and subject always to paragraph 10 hereof—

- (a) The undertaker shall be responsible for RED's reasonable costs in respect of—
 - (i) approving the Pre- Construction Information;
 - (ii) approving information relevant to how the decommissioning of the AQUIND works will be undertaken;
 - (iii) any works which are required to the RED Works to carry out the construction of the AQUIND Works in accordance with the agreed Pre-construction Information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND Works being undertaken in accordance with agreed Pre-Constructions Information;
 - (iv) any works which are required to the RED Works to carry our the decommissioning of the AQUIND Works in accordance with the agreed decommissioning information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND

Works being decommissioned in accordance with the agreed decommissioning information;
and

- (v) The reasonable costs for RED watching and inspecting the construction and decommissioning of the AQUIND Works.
- (b) When incurring costs, expenses or losses which are payable by the other AQUIND and RED must at all times act reasonably and in the same manner as they would if they were funding the cost, expenses or losses themselves.

Consultation and Co-operation

6.—(1) AQUIND and RED shall act in good faith to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part 7 and otherwise do nothing to hinder or prevent the other party from the proper execution of and carrying out of the AQUIND Works or the RED Works.

(2) Where any approval, agreement, consent or confirmation of AQUIND or RED is required pursuant to the terms of this Part 7, or of Part 8 of Schedule 10 to the Rampion 2 Order (including for the avoidance of doubt in connection with any method statement), it shall not be unreasonably withheld or delayed.

Dispute Resolution

7.—(1) Save for matters of interpretation (which shall be matters for the Court) in the event of any dispute arising between AQUIND and RED in respect of any matter contained in this Part 7 of Schedule 13 to the Order including questions as to the propriety and/or necessity of any cost or and any question of reasonableness of the same AQUIND and RED will use reasonable endeavours to attempt to resolve that dispute amicably (including holding a meeting attended by at least one representative from each party if considered appropriate) for a period of 20 Working Days from the date on which any party notifies the other party in writing that a dispute has arisen.

(2) In the event that the dispute has not been resolved amicably following the expiry of the period of 20 Working Days referred to in sub-paragraph 1 above despite the parties using reasonable endeavours to resolve the dispute amicably, any party may refer the dispute to an expert (“**Expert**”) to be agreed upon between the parties hereto or at the request and option of either of them to be nominated at their joint expense by or on behalf of the President of the Institution of Civil Engineers and the Expert’s decision shall (in the absence of manifest error) be final and binding on the parties hereto and whose costs shall be borne by the parties at his discretion.

(3) The Expert shall—

- (a) have at least ten years post qualification experience in the subject matter of the dispute;
- (b) be appointed subject to an express requirement that he reaches a decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event in not more than 40 Working Days from the date of his appointment to act;
- (c) be required to give notice to each of the parties within 5 Working Days of appointment inviting each of them to submit within 10 Working Days of that notice written submissions and supporting material which shall also be issued by the parties to each other within the same 10 Working Day period and shall afford to each of the parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material and disregard any representations made out of time;
- (d) give its decision in writing within 15 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 15 Working Days of receipt of the written submissions and supporting material with reasons for the decision;
- (e) make a determination as to payment of the Expert’s costs and the parties’ legal and professional costs of engaging in the dispute resolution process under this paragraph 8 of this Part 8 of Schedule 10 to the RED Order.

Confidential Information

8. AQUIND and RED must not disclose any Confidential Information to any other person (save where such person is bound by a legally enforceable requirement and indemnity which benefits the party who provided the relevant Confidential information to keep such information confidential) except with the other party's prior consent, which may not be unreasonably withheld or delayed but which may be provided subject to reasonable conditions.

Liability and Insurance

9.—(1) The undertaker shall compensate RED in respect of all costs and expenses incurred (including legal, surveying and engineering costs and disbursements) and damages or losses suffered to the extent that the same are reasonably incurred in connection with any act or omission by the undertaker that is in breach of this Part.

(2) Nothing in this Part imposes any liability on either party with respect to any damage, cost, expense or loss which is attributable to the negligence of the other party or of any person in the other party's employment or of the other party's contractors or agents and any liability of the relevant party under this Agreement must be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence of the other party or of any person in the other party's employment or of the other party's contractors or agents.

(3) Nothing in this Part is intended and nor shall it be construed as an attempt by any party to this Agreement to exclude or restrict liability for—

- (a) death or personal injury from its negligence or by the negligence of a person for whom it is vicariously liable (negligence being defined in section 1(1) of the Unfair Contract Terms Act 1977); and/or
- (b) any losses caused by the fraud of either party, its contractors or any other person for whom that party is responsible.

(4) RED must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand must be made, unless payment is required in connection with a statutory compensation scheme, without the Parties first consulting one and other and considering its representations.

(5) RED shall use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, losses, demands or penalties, to which this paragraph 9 applies and if requested to by the undertaker, shall provide an explanation of how any such claims have been minimised and the undertaker shall only be liable for claims reasonably incurred by RED, and any action taken by either party pursuant to this paragraph 9 will be at the reasonable cost of the other party.

(6) The undertaker must not commence construction (and must not permit the commencement of such construction) of any part of the AQUIND Works until RED is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker or its contractor has procured acceptable insurance (and provided evidence to RED that it must maintain such acceptable insurance for the construction period of the AQUIND Works from the proposed date of commencement of construction of the AQUIND Works) and RED has confirmed the same in writing to the undertaker.

(7) The undertaker must not commence operation or maintenance (and must not permit the commencement of operation or maintenance) of any part of the AQUIND Works until RED is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker its contractor has procured acceptable insurance (and provided evidence to RED that it must maintain such acceptable insurance for the period of maintenance in respect of the AQUIND Works from the proposed date of commencement of operation of the AQUIND Works and to provide evidence of renewal of such insurance as appropriate) and RED has confirmed the same in writing to the undertaker.

(8) The undertaker must not commence decommissioning (and must not permit the commencement of decommissioning) of any part of the AQUIND Works until RED is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to RED that it must maintain such acceptable insurance for the decommissioning period of the AQUIND Works from the proposed date of commencement of decommissioning of the AQUIND Works) and RED has confirmed the same in writing to the undertaker.

Effect of Protective Provisions

- 10.**—(1) This Part will cease to have effect if any of the following events occur—
- (a) the application for the Rampion 2 Order is withdrawn, in which case RED shall provide the undertaker with written notification of such withdrawal within 10 Working Days of RED notifying the Secretary of State of the withdrawal;
 - (b) the Secretary of State having decided the application for the Rampion 2 Order decides to refuse development consent and RED not choosing to bring a judicial review in relation to such refusal, in which case RED will provide the undertaker with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by RED and this Part will cease to have effect immediately on the date of delivery of the notice in accordance with paragraph 11(2) or within 10 Working Days the period to bring a judicial review expiring without any judicial review being lodged by RED (whichever is sooner);
 - (c) if following the final determination of any challenge proceedings in respect of the decision in relation to the Rampion 2 Order a decision by the Secretary of State to refuse development consent is upheld;
 - (d) if following the final determination of any challenge proceedings in respect of the decision in relation to the Rampion 2 Order the decision is quashed and the Court orders the application for the Rampion 2 Order to be remitted to the Secretary of State and the application for the Rampion 2 Order is subsequently refused and RED chooses not to bring a judicial review in relation to such refusal, in which case RED will provide the undertaker with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by RED and this Agreement will terminate immediately on the date of delivery of the notice in accordance with paragraph 11(2) or within 10 Working Days of the period to bring a judicial review expiring without any judicial review being lodged by RED (whichever is sooner);
 - (e) if following the Rampion 2 Order being made the works authorised by the RED Order are not commenced before the period within which they must commence expires.

Notices

11.—(1) Any notice given under or in relation to this Part shall be in writing and shall refer to the Order and shall be deemed to be sufficiently served if addressed to the AQUIND, or RED, as the case may be, and sent by recorded delivery or registered post to the address of the parties given in this Agreement or to such other address as they may from time to time designate by written notice to the other.

(2) Any notice sent in accordance with paragraph 11.1 shall be deemed, in the absence of evidence of earlier receipt, to have been delivered two days after posting or dispatch, exclusive of the day of posting.

(3) Any notice sent by the undertaker to RED in accordance with paragraph 11.1 shall be addressed to The Company Secretary and Project Lead Umair Patel, Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB and shall also be sent to RED by e-mail to umair.patel@rwe.com.

(4) Any notice sent by the RED to the undertaker in accordance with paragraph 11.1 shall be addressed to Kirill Glukhovskoy – Managing Director, and shall also be sent to the undertaker by e-mail to kirill.glukhovskoy@aquind.co.uk.

Secretary of State for Energy Security and Net Zero
Department of Energy Security and Net Zero
1 Victoria Street
London
SW1H 0ET

Date: 25 January 2024
Our Ref: 344663.000004
Direct: [REDACTED]
Email: [REDACTED]@eversheds-sutherland.com

By E-mail care of Planning Inspectorate:

aquind@planninginspectorate.gov.uk
Rampion2@planninginspectorate.gov.uk

Dear Madam

**Interface between Rampion 2 and Aquind Interconnector Proposals
Planning Inspectorate references EN010117 and EN020022**

We act for Rampion Extension Development Limited ("REDL") in the application for a development consent order ("DCO") for the Rampion 2 Offshore Wind Farm ("Rampion 2"). We write further to our letter of 20 December 2023 and previous correspondence in which explained our concern to ensure the inclusion of appropriate provision for the protection of Rampion 2 in the context of the re-determination of the application made by Aquind Limited ("Aquind") for a DCO to authorise the Aquind Interconnector.

As explained in our letter of 20 December 2023 (attached), the requirement for protective provisions is driven by the fact that the proposed order limits for the Aquind Interconnector overlap with those proposed for Rampion 2. Currently, both projects are under consideration by the Planning Inspectorate, and it is unclear which development will proceed first. RWE Renewables UK Limited (as corporate entity driving Rampion 2 proposals in 2020), was an Interested Party in the Examination of the Aquind Interconnector application. The Relevant Representation submitted at that time, identified the need to understand potential impacts and conflicts that might challenge the development, construction and operation of the Offshore wind farm as a result of the presence of the Aquind Interconnector.

REDL (as corporate entity promoting Rampion 2) was not invited for comment by the Secretary of State for Energy Security and Net Zero in the re-determination of the decision made by the Secretary of State for the Department of Business, Energy and Industrial Strategy to refuse the development consent. The circumstances have significantly changed since the Examining Authority included in its recommendation to the Secretary of State in the context of Rampion 2 (Examiner's Report dated 8 June 2021; paragraph 7.6.22):

.. "The Applicant believed it to be likely that, if consented, the Proposed Development would have begun or completed construction by the time the Rampion extension was determined."

Both projects are now under consideration. We consider that it is right and appropriate that the DCO for each development include reciprocal protective provisions for the respective development, in order to manage the interface between the two projects.

Herbert Smith Freehills LLP, acting for Aquind, have in recent correspondence suggested that protective provisions need only be included on the face of the Rampion 2 DCO. We continue to engage with Aquind on the matter and are working with them to reach an agreement as to the interface between the two projects outside of the formal determination process. However, until terms of any such agreement are settled, REDL maintains its position that protective provisions for the benefit of REDL should be included on the face of the Aquind DCO to manage the interface between the two projects. The purpose of including protective provisions in a DCO is to ensure that the powers conferred by that DCO are exercised in such manner to protect a specified third party. As explained in our previous letter, protective provisions in one DCO cannot impact on the powers conferred by another. Therefore to ensure the equitable and effective interface between the 2 projects, protective provisions for the benefit of REDL must be included in the Aquind DCO.

Proposed protective provisions for inclusion in the Aquind DCO are attached. The provisions, which are based on precedent in the form of the Dogger Bank Creyke Beck Offshore Wind Farm, Hornsea Four and Norfolk Vanguard DCOs (which also concerned overlapping offshore projects), set out a process to allow for plan approvals (and imposition of reasonable conditions), access requirements, and protection of project infrastructure.

We therefore respectfully invite the Secretary of State, in the event that she is minded to grant development consent for the Aquind project, to include the enclosed protective provisions on the face of the DCO for the protection of REDL.

Yours sincerely

Evershed Sutherland (International) LLP

Juliet Clark

Principal Associate

Eversheds Sutherland (International) LLP

Copied (by email only) to:

██████████@hsf.com

Encls:

Letter dated 20 December 2023.

Proposed Protective Provisions to be included on the Aquind DCO for the benefit of REDL

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Department of Energy Security and Net Zero
1 Victoria Street
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SW1H 0ET

Date: 20 December 2023
Our Ref: MUTTONKZ\344663-000003
Direct: 441159317557
Email: [REDACTED]@eversheds-sutherland.com

For the attention of The Rt Hon Claire Coutinho MP,
Secretary of State for Energy Security and Net Zero

By E-Mail care of Planning Inspectorate:

aquind@planninginspectorate.gov.uk

Rampion2@planninginspectorate.gov.uk

Dear Madam

**Interface between Rampion 2 and Aquind Interconnector Proposals
Planning Inspectorate references EN010117 and EN020022**

We have been provided with a copy of a letter from Herbert Smith Freehills LLP sent to the Department of Energy Security and Net Zero dated 8 December in connection with the application made by our client Rampion Extension Development Limited ("REDL") for a development consent order ("DCO") for the Rampion 2 Offshore Wind Farm ("Rampion 2"). Herbert Smith Freehills LLP act for Aquind Limited ("Aquind") who have applied for a DCO for the Aquind Interconnector.

Our client had written to the Department to request that provision be made in the programme for determination of Aquind's application for protective provisions to be included in the DCO if granted, for the protection of the Rampion 2 project. This is considered necessary on the basis that the proposed order limits for the Aquind Interconnector overlap with those proposed for Rampion 2. No Order has yet been made for either project and, if both are granted, it is not clear which project will proceed to construction first, nor whether the construction phases for each project will overlap. Consequently, we consider that mutually reciprocal provisions must be included in each Order (if made) so that the interface between the two projects is controlled through the instrument authorising each project.

The most recent letter from Herbert Smith Freehills LLP suggests that it is unnecessary for protective provisions to be included in the Aquind DCO and instead that provisions requiring joint working arrangements can be included in the Rampion 2 DCO only. Whilst we do not disagree that the terms of a DCO must be complied with by all relevant persons, protective provisions in one DCO cannot operate as if to vary the terms of another, previously made order. The most appropriate approach where two projects are yet to be constructed is for protections to be provided for the other on a reciprocal basis. In this context we would draw your attention to the DCOs granted for both Norfolk Vanguard and the Hornsea Three Offshore Wind Farms; each order included protective provisions for the benefit of the other requiring (inter alia) approval of the other for the carrying out of specified works, and notice of the intended commencement and completion of specified works.

Our client is engaging with Aquind, with the intention of reaching agreement as to the interface between the two projects outside the formal determination process. However, unless and until an agreed position is reached REDL maintains its request for provision to be made in the programme for determination of the Aquind DCO for protective provisions to be submitted for inclusion on the face of that Order to manage the interface between the two projects.

Yours faithfully

Eversheds Sutherland (International) LLP

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