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

Date: 25 January 2024
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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.

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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:

[REDACTED]

[Encls:](#)

[Letter dated 20 December 2023.](#)

[Proposed Protective Provisions to be included on the Aquind DCO for the benefit of REDL](#)

FOR INCLUSION IN SCHEDULE 13 AQUIND DCO

FOR THE PROTECTION OF RAMPION 2 OFFSHORE WIND FARM

The provisions of this Part have effect unless otherwise agreed in writing between the Undertaker and Rampion Extension Development Limited.

1. Definitions:-
2. "the authorised development" has the meaning given in article 2 (*interpretation*) of the Order;

"the Order" means this Order;

"the Order Limits" has the meaning given in article 2 (*interpretation*) of the Order;

"protected property" means any offshore infrastructure including (but not limited to) turbines, platforms, cables and pipelines –
 - (a) any part of which is situated within the Order limits for the offshore works; and
 - (b) in respect of which Rampion Extension Development Limited has an interest for the time being;
"protective works" means any works carried out for the protection of any part of the Rampion 2 authorised development under sub-paragraph 7.5.2 of this Part;

"Rampion 2 authorised development" means such part of the offshore development and associated development described in Part 1 of Schedule 1 (authorised development) of the proposed Rampion 2 Offshore Wind Farm Order, and any other development authorised by that proposed Order which is development within the meaning of section 32 of the 2008 Act as falls within the Order Limits;

"the Rampion 2 Offshore Wind Farm Order" means the proposed Rampion 2 Offshore Wind Farm Order applied for on 10 August 2023, and references to the "Rampion 2 Offshore Wind Farm Order" include references to that Order as made;

"the Rampion 2 Order land" has the meaning ascribed to the definition of "Order Land" in article 2 of the Rampion 2 Offshore Wind Farm Order;

"Rampion Extension Development Limited" means Rampion Extension Development Limited (company number 12091939);

"the respective authorised developments" means the authorised development and the Rampion 2 authorised development respectively; and

"specified works" means the carrying out of any of the authorised development over or within 15 metres of the Rampion 2 authorised development, or in the event that the Rampion 2 authorised development has not been constructed, within the Rampion 2 Order land.
3. Wherever in this Part of this Schedule provision is made with respect to the approval or consent of Rampion Extension Development Limited, that approval or consent must be in writing (and subject to such reasonable terms and conditions as Rampion Extension Development Limited may require), but must not be unreasonably withheld.
4. Despite anything in this Order or shown on the works plans, the undertaker must not pursuant to the powers in this Order appropriate and remove any protected property otherwise than by agreement with Rampion Extension Development Limited.

5. The undertaker must use its best endeavours –
 - 5.1 In exercising any of the powers in this Order to avoid or (failing avoidance) to minimise any damage or disruption to the protected property; and
 - 5.2 Without limiting sub-paragraph 5.1, to ensure that the works do not at any time fall into such a condition as to compromise the integrity or operation of the protected property.
6. Insofar as the construction of the respective authorised developments is or may be undertaken concurrently, the undertaker must –
 - 6.1 co-operate with Rampion Extension Development Limited with a view to ensuring –
 - 6.1.1 the co-ordination of construction programming and the carrying out of works; and
 - 6.1.2 that access for the purposes of constructing, maintaining and repairing the respective authorised developments is maintained for the undertaker and for Rampion 2 and their respective contractors; and
 - 6.2 use reasonable endeavours to avoid any conflict arising between the carrying out of the respective authorised developments.
7. Insofar as the construction of the authorised development gives rise to the need to modify any scheme secured by a requirement contained in Part 3 of Schedule 1 to the Rampion 2 Offshore Wind Farm Order, the undertaker will provide such assistance as is reasonably necessary to support Rampion Extension Development Limited in pursuing any such modification.

Protection of Rampion 2 Offshore Wind Farm

8. –
 - 8.1 Not less than 90 days before the commencement of any specified works the undertaker must submit to Rampion Extension Development Limited a plan in respect of those works.
 - 8.2 The plan to be submitted to Rampion Extension Development Limited under paragraph 8.1 must include a method statement and describe –
 - 8.2.1 the exact position of the works;
 - 8.2.2 the level at which the works are proposed to be constructed or renewed;
 - 8.2.3 the manner of the construction or renewal of the works including (but not limited to) details of excavation, disposals, positioning of plant, location and method of drilling, location of cable layout etc.;
 - 8.2.4 the position of the authorised development in relation to Rampion 2 authorised development;
 - 8.2.5 detailed drawings of every part of the authorised development proposed to be within the Rampion 2 Order Land; and
 - 8.2.6 any intended maintenance regimes.
 - 8.3 The undertaker must not commence any works to which sub-paragraphs 8.1 and 8.2 apply until Rampion Extension Development Limited has given written approval of the plan so submitted.
 - 8.4 Any approval of Rampion Extension Development Limited required under sub-paragraph 8.3 –

- 8.4.1 may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs 8.5 or 8.7; and
- 8.4.2 must not be unreasonably withheld.
- 8.5 In relation to a work to which sub-paragraphs 8.1 and 8.2 apply, Rampion Extension Development Limited may:
- 8.5.1 require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing the Rampion 2 authorised development against any interference or risk of damage or for the purpose of providing of securing proper and convenient means of access to any of the Rampion 2 authorised development; and
- 8.5.2 specify any reasonable temporary or permanent works or measures (“the protective works”) that in its reasonable opinion should be carried out or taken by the undertaker before commencement or during construction of the works in order to ensure the stability of the protected property or to protect them from injury, or otherwise for the purpose of providing of securing proper and convenient means of access to any of the Rampion 2 authorised development.
- 8.6 Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs 8.1 and 8.2 or as relevant sub-paragraph 8.5, as amended from time to time by agreement between the undertaker and Rampion Extension Development Limited and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs 8.5 and/or 8.7 by Rampion Extension Development Limited for the alteration or otherwise for the protection of the Rampion 2 authorised development, or for securing access to it, and Rampion Extension Development Limited will be entitled to watch and inspect the execution of those works.
- 8.7 Where Rampion Extension Development Limited requires any protective works to be carried out by itself or by the undertaker such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Rampion Extension Development Limited’s satisfaction prior to the commencement of any specified works for which protective works are required.
- 8.8 Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 90 days before commencing the execution of any specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

Access

9. If in consequence of any specified works or the powers granted under this Order the access to any protected property is materially obstructed, the undertaker must provide such alternative means of access to such protected property as will enable Rampion Extension Development Limited to maintain or use the protected property no less effectively than was possible before such obstruction.

Expenses

10. –
- 10.1 Save where otherwise agreed in writing between Rampion Extension Development Limited and the undertaker and subject to the following provisions of this paragraph, the undertaker must repay to Rampion Extension Development Limited all charges, costs and expenses reasonably incurred by Rampion Extension Development Limited in, or in connection with this Part including without limitation:
- 10.1.1 the carrying out of protective works plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

- 10.1.2 in or in connection with the removal and relaying or replacing of any part of protected property, including the provision, laying down or placing of any alternative facilities; and
- 10.1.3 in connection with the watching and inspecting of any protective works relating to the Rampion 2 authorised development.

Indemnity

- 11. -
- 11.1 Subject to sub-paragraphs 11.2 and 11.3, if by reason or in consequence of the construction of any works authorised by this Part or in consequence of the construction, use, maintenance or failure of any of the offshore elements of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out the offshore elements of the authorised development (including without limitation works carried out by the undertaker under this Part), any damage is caused to any protected property, or there is any interruption in any service provided, or in the supply of any goods by Rampion Extension Development Limited , or Rampion Extension Development Limited becomes liable to pay any amount to any third party, the undertaker will –
 - 11.1.1 bear and pay on demand accompanied by an invoice or claim from Rampion Extension Development Limited the cost reasonably and properly incurred by Rampion Extension Development Limited in making good such damage or restoring the supply; and
 - 11.1.2 indemnify Rampion Extension Development Limited for any other expenses, loss, demands, proceedings, claims, penalty or costs incurred by or recovered from Rampion Extension Development Limited , by reason or in consequence of any such damage or interruption or Rampion Extension Development Limited becoming liable to any third party as aforesaid other than arising from any default by Rampion Extension Development Limited.
- 11.2 The fact that any act or thing may have been done by Rampion Extension Development Limited on behalf of the undertaker or in accordance with a plan approved by Rampion Extension Development Limited or in accordance with any requirement of Rampion Extension Development Limited as a consequence of the offshore elements of the authorised development or under its supervision will not (unless sub-paragraph 11.3 applies) excuse the undertaker from liability under the provisions of this sub-paragraph 11.2 where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan or as otherwise agreed between the undertaker and Rampion Extension Development Limited .
- 11.3 Nothing in this paragraph imposes any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of Rampion 2, its officer servants, contractors or agents.
- 11.4 Rampion Extension Development Limited must give the undertaker reasonable notice of any such 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 first consulting the undertaker and considering its representations.
- 11.5 Rampion Extension Development Limited must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under sub-paragraph 11.1 applies. If requested to do so by the undertaker, Rampion Extension Development Limited must provide an explanation of how the claim has been minimised.

- 11.6 The undertaker must not commence construction (and must not permit the commencement of such construction) of any specified works until Rampion Extension Development Limited 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 Rampion Extension Development Limited that it must maintain such acceptable insurance for the construction period of the specified works from the proposed date of commencement of construction of the specified works) and Rampion 2 has confirmed the same in writing to the undertaker.

Arbitration

- 11.7 Any difference or dispute arising between the undertaker and Rampion Extension Development Limited under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Rampion 2, be referred to and settled in arbitration in accordance with article 45 (*arbitration*).

Department of Energy Security and Net Zero
1 Victoria Street
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Date: 20 December 2023
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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.

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Yours faithfully

Eversheds Sutherland (International) LLP

Eversheds Sutherland (International) LLP