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For the attention of David Wagstaff OBE - Deputy Director, Energy
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For the attention of [REDACTED] – Senior Legal Adviser

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Our ref
18857/31049436

Date
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Dear Sir / Madam

AQUIND Interconnector: process for Ministry of Defence representations

1. INTRODUCTION

- 1.1 We write on behalf of our client, AQUIND Limited ("**AQUIND**"), further to the letter sent on behalf of the Secretary of State for Energy Security & Net Zero ("**SoS**") dated 12 July 2024 regarding the process for handling representations from the Ministry of Defence ("**MoD**").
- 1.2 AQUIND notes the process set out by the SoS and welcomes the SoS' confirmation in paragraph 4 of his letter that he wishes to reach a final decision on the redetermination of AQUIND's application as soon as possible. This letter seeks confirmation on some procedural matters arising from the SoS' letter to ensure that all parties have clarity on the process moving forwards.

2. APPOINTED REPRESENTATIVE

- 2.1 By reference to paragraph 2(c) of the SoS' letter, in the event that officials in the Department for Energy Security & Net Zero ("**DESNZ**") conclude that any of the submissions of the MoD (i) raise material planning considerations and (ii) satisfy the tests in section 95A(1) of the Planning Act 2008 (the "**2008 Act**"), and therefore request the Attorney General to appoint a representative for AQUIND, confirmation is sought that:
 - 2.1.1 the process will provide for the appointed representative to take instructions from AQUIND prior to viewing confidential material, in the same manner as is provided for in paragraph 5(2)(a) of the Schedule to the Infrastructure Planning (Examination Procedure) Rules 2010 ("**IPR**"); and
 - 2.1.2 the appointed representative will be able to make representations on behalf of AQUIND (and, if necessary, bring a legal challenge) on the question of whether

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the confidential submissions of the MoD (i) raise material planning considerations and (ii) satisfy the tests in section 95A(1) of the Planning Act 2008, if the appointed representative disagrees with the conclusions reached by DESNZ officials on either or both of those questions, which the SoS will then take into account. It is considered that this would accord with the functions of an appointed representative set out in paragraphs 5(2)(b) and 5(5) of the Schedule to the IPR.

- 2.2 Further, in the interests of ensuring a fair and swift running of the process going forward, AQUIND considers that it would be prudent for the SoS to ask the Attorney General to make enquiries now as to the appointment of a representative for AQUIND, without waiting for the deadline for the MoD to submit its representations and for DESNZ to determine whether any representations submitted need to be considered by a representative for AQUIND. This would help ensure that a suitable person can be instructed in good time after 23 August 2024, noting that:
- 2.2.1 the MoD has repeatedly asserted that it definitely will be submitting purportedly confidential material;
 - 2.2.2 it is anticipated that there will be a limited number of persons with the suitable planning law expertise and level of security clearance required to be an appointed representative in this case;
 - 2.2.3 the likely availability of any appointed representative will be constrained and it will therefore be prudent to identify in advance the potential for their appointment in the autumn of this year; and
 - 2.2.4 the SoS has expressed his clear desire to reach a final decision on the redetermination as soon as reasonably practicable.

3. **OTHER PROCEDURAL MATTERS**

- 3.1 The six-week period for the MoD to make its representations is noted and AQUIND assumes that this longer period has been provided to accommodate any potential delays or personnel unavailability over the summer period. Confirmation is sought from the MoD that it acknowledges the deadline set by the SoS, and that given the considerable time it has been engaging with DESNZ on this matter already has afforded the MoD the opportunity to formulate its position it will meet this deadline without seeking an extension as it has done previously in this process.
- 3.2 Confirmation is also sought from the MoD that where it submits information which is to be published on the PINS website setting out the nature of its concerns and how they relate to the application for development consent it will provide a copy of this to AQUIND at the same time as it submits that information to the SoS.
- 3.3 AQUIND wishes to reiterate the point made previously in, *inter alia*, our letter of 1 February 2024 that the MoD had ample opportunity to raise concerns with AQUIND's application during the examination and original decision period and did not do so. Instead, parts of the MoD engaged constructively with AQUIND and provided consents under section 135 of the 2008 Act to the extent required for the Project to proceed. It is expected that the SoS and DESNZ will ensure suitable weight is given to any consideration of representations which could have been raised earlier in the defined statutory process, but which at the election of the MoD were not.
- 3.4 And whilst we note the SoS' stated intention in paragraph 4 of his letter to ensure this matter is brought to a conclusion as soon as reasonably practicable when setting deadlines



for subsequent steps of the process, AQUIND again would like to emphasise the importance of progressing the redetermination promptly given the SoS' duty to decide the application to a specified timetable set out in section 107 of the 2008 Act and the expressed priority of the Government for decisions to be taken on infrastructure projects of national significance.

4. **CONCLUSION**

- 4.1 For the reasons set out above, AQUIND would be grateful for confirmation from DESNZ on the matters raised in paragraphs 2.1.1, 2.1.2 and 2.3; and from the MoD on the matters raised in paragraph 3.1 and 3.2, to provide necessary clarity and assurance that the process will advance in a procedurally fair manner.

Yours faithfully

Herbert Smith Freehills LLP