# Vattenfall Wind Power Ltd

# Thanet Extension Offshore Wind Farm

## Statement of Engagement with Section 79(1) of the Environmental Protection Act 1990

June 2018, Revision A

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Pursuant to: APFP Reg. 5(2)(f)

Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

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| Approved By: | Helen Jameson |
| Date of Approval | June 2018 |

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# 1 Summary

1.1.1 Vattenfall Wind Power Limited (the **Applicant**) is planning to develop the Thanet Extension Offshore Wind Farm (the **Project**) with up to 34 turbines and an installed capacity of up to 340 MW. The Project would be located approximately 8 km from the coast of Kent at its closest point to land, covering an area of approximately 70 km2.

1.1.2 As the total installed electricity generating capacity will exceed 100 MW, the Project is deemed to be a Nationally Significant Infrastructure Project (**NSIP**), and therefore the Applicant is submitting an application to the Secretary of State (the **Application**) under Section 37 of the Planning Act 2008 for a Development Consent Order (**DCO**) for the construction and operation of the Project.

1.1.3 This Statement of Engagement has been prepared in accordance with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (the **APFP Regulations**) which requires the applicant for a DCO to provide a statement as to whether the application engages Section 79(1) (Statutory nuisances and inspections therefor) of the Environmental Protection Act 1990.

1.1.4 This Statement explains that, whilst it is not expected that the construction or operation of the Project would engage Section 79(1) by causing statutory nuisances (whichever phasing approach adopted), the draft DCO (Document 3.1) that accompanies the Application contains a provision at Article 7 (Defence to proceedings in respect of statutory nuisance) to provide a defence to proceedings for statutory nuisance in relation to noise, should they be initiated against the Applicant (or its successors) as undertakers of the Project under the terms of the draft DCO.

1.1.5 The Environmental Statement (**ES**) (Application document category 6) which has been prepared by the Applicant as part of the process of environmental impact assessment for the Application has analysed the potential significant effects of a number of elements specified in Section 79(1).

1.1.6 The main potential for the Project to cause statutory nuisance would be construction noise from works associated with cofferdam installation and trenchless cable installation techniques; Application Document Ref: 6.3.10 provides further details. It is not expected that the operation or maintenance of the Thanet Extension project would engage any of those matters provided for in section 79(1). However, the conclusion that the Applicant has drawn from the ES is that, with the implementation of mitigation measures where appropriate (which will be secured by Requirements attached to the DCO), claims for statutory nuisance are unlikely to arise from the Project.

# 2 Statement of Engagement

2.1.1 Regulation 5(2)(f) requires the applicant for a DCO to state whether the proposal engages one or more of the matters set out in Section 79(1) (Statutory nuisances and inspections therefor) of the Environmental Protection Act 1990. If so, the applicant is required to indicate how it proposes to mitigate or limit such nuisances.

2.1.2 Section 79(1) deals with the following matters:

(a) any premises in such a state as to be prejudicial to health or a nuisance;

(b) smoke emitted from premises so as to be prejudicial to health or a nuisance;

(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;

(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;

(e) any accumulation or deposit which is prejudicial to health or a nuisance;

(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;

(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;

(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;

(g) noise emitted from premises so as to be prejudicial to health or a nuisance; and

(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street.

2.1.3 It is considered that the Project has the potential to give rise to complaints from receptors under sub-paragraphs (g) and (ga) under Section 79(1) in relation to noise. This Statement also considers air quality (sub-paragraph (d)), [the risk of contamination (e)] and lighting (sub-paragraph (fb)).

2.1.4 Whilst the conclusions of the ES suggest that no such nuisance will occur, the Applicant has included within the draft DCO at Article 7 (Defence to proceedings in respect of statutory nuisance) a provision which would protect the Applicant or its successors as undertakers operating the Project from any proceedings for statutory nuisance in relation to noise.

# 3 Noise

## 3.1 Onshore

3.1.1 The Environmental Statement explains that the significance of effects from the construction, operation, and decommissioning of the Thanet Extension project relating to noise is not significant (negligible or minor) for onshore elements.

3.1.2 The likely noise effects from construction, operation and decommissioning of the onshore elements of the Project have been predicted and assessed in accordance with the appropriate legislation and guidance. Survey data has been utilised to determine the baseline noise levels at locations representative of the potentially most affected noise sensitive receptors.

### Construction

3.1.3 During the construction phase, construction noise from works associated with cofferdam installation, offshore foundation installation, substation piling works, and trenchless cable installation techniques will create the greatest potential for engagement of section 79(1). The findings of the ES have confirmed that with appropriate working practices all noise associated effects are of minor significance or less. As such, Vattenfall Wind Power Limited does not consider that any of the matters in section 79(1) are engaged by the proposed Thanet Extension project. This is supported by the conclusions of the Environmental Statement (Application Document 6.3.1 et seq).

3.1.4 Through the application of best practicable means, and provision of a noise and vibration management plan as provided for within the DCO and Code of Construction Practice (Document Refs: 3.1 and 8.1 respectively) the assessment has predicted maximum construction noise level is predicted as resulting in effects that are less than the 'ABC' threshold and below the SOAEL, therefore meaning that significant effects are unlikely to occur. Therefore, on-site construction works associated with the construction of the substation(s) are predicted to result in an effect of negligible magnitude and therefore a minor impact.

## Operation

3.1.5 During the operation of the Project, effects due to noise are expected to be limited to the operation of the onshore substation. Eight properties are subject to a minor (low) magnitude impact which, with attenuation afforded by partially open window is below the sound criterion of the World Health Organisation (2009) guidelines. Noise levels would be of negligible magnitude on receptors of medium sensitivity and therefore of minor significance. As such, Vattenfall Wind Power Limited does not consider that any of the matters in section 79(1) are engaged by the proposed Thanet Extension project. This is supported by the conclusions of the Environmental Statement (Application Document 6.3.1 *et seq*).

## Decommissioning

3.1.6 The decommissioning methodology cannot be finalised until immediately prior to decommissioning, but would be in line with relevant policy at that time (this is explained in paragraph 1.8.1 of the Onshore Project Description Chapter in the Environmental Statement (Document Ref: 6.3.1). However, it is likely that onshore cables would be removed from the ducts and recycled, with the transition joint bays capped, sealed and left in situ. Where it is preferable to do so, cables could be cut and left in situ. In this case there would be no impact for any receptor upon decommissioning. It may be possible to remove and recycle the cables that have been installed in ducts, in which case impacts to receptors would be similar to, but likely be of lower magnitude than those described for construction.

3.1.7 The noise levels from decommissioning of the substation(s) are difficult to predict as they would contain high but very transient noise levels from demolition works. More continuous noise levels from plant onsite would not be considered to be higher than those predicted for construction works.

3.1.8 The mitigation measures outlined for the construction of the cable route and onshore substation(s) for the control of noise would therefore also be expected to be adopted for the decommissioning phase. Requirement 29 (Onshore decommissioning) states that within six months of the cessation of commercial operation of the connection works, an onshore decommissioning plan must be submitted to and approved by the relevant planning authority.

## Offshore

3.1.9 The Applicant considers that none of the matters specified in Section 79(1) are engaged by the offshore elements of the Project, principally because the Project is located in the North Sea approximately 8 km at its closest point from the Kent coast.

## 3.2 Air Quality

3.2.1 Onshore construction activities such as soil stripping, plant movement, materials storage and stockpiling, transport of materials and topsoil reinstatement may lead to dust emissions. However, due to the temporary nature of the works and the proposed control measures secured by the Requirements in the draft DCO, the dust emissions produced would be minimal. These impacts are considered to be not significant; therefore they are not expected to engage Section 79(1).

## 3.3 Contamination

3.3.1 Onshore construction activities would require the excavation of material, including ageing putrescible, hazardous and household waste from the historic Cliffsend Landfill in order to construct a transition joint bay possibly down to the base of the landfill and an open-cut trench in the landfill towards Stonelees. Subject to the incorporation of good working practices and confirmation of the detailed design, mitigation measures are considered to be sufficient to manage the potential impact to Negligible magnitude and the potential effect to no more than minor significance. Mitigation measures are presented in detail within the Code of Construction Practice (Document Ref: 8.1) and in the relevant chapter of the ES (Document Ref: 6.3.6) but in summary the necessary mitigation measures of relevance to the Cliffsend landfill include:

- The sea wall cofferdam would be sealed around piling sheets,
- the transition joint bay excavation itself would take place within its own cofferdam or suitable alternative;
- the trenches and HDD would be sealed in order to prevent the cable routes acting as a preferential leachate and/or contaminated groundwater pathway; and
- any landfill leachate and contaminated water encountered would be pumped, tankered and disposed of off-site in a controlled manner to reduce potential for groundwater leachates.

3.3.2 Therefore, the ES identified that there is not a requirement for any additional mitigation measures, and the effect will be of minor significance, which is not significant in EIA terms.

3.3.3 These impacts are considered to be not significant; therefore, they are not expected to engage Section 79(1).

## 3.4 Lighting

### Onshore

3.4.1 During the construction phase, perimeter and site lighting will be required during working hours in the winter months and a lower level of lighting will remain overnight for security purposes (as set out in paragraph 1.5.92 of the Onshore Project Description Chapter in the ES).

3.4.2 The onshore substation will not be manned, and lighting will only be required during operation and maintenance activities. Lighting will be required at the National Grid Electricity Transmission connection at Richborough Energy Park, although this is assumed to be existing lighting (as set out in paragraph 1.7.4 of the Onshore Project Description Chapter in the ES).

3.4.3 Requirement 17 (Construction Environmental Management Plan) will secure the provision of details of external lighting during construction and operation. The impacts of onshore lighting are considered to be not significant; therefore they are not expected to engage Section 79(1).

### Offshore

3.4.4 The windfarm is approximately 8 km offshore at its closet point to land and at this distance the turbines and any navigation lighting will be seen, albeit are considered to be sufficiently far offshore to ensure that no significant effects are predicted from offshore lighting of the operational project.

## 3.5 Conclusions

3.5.1 The Applicant has designed the Project in such a way as to minimise the environmental effects of the Project and has also included a variety of measures to mitigate any remaining impacts further still.

3.5.2 These measures are secured by the requirements contained in Part 3 of Schedule 1 to the draft DCO, which cover a number of relevant matters including:

(a) A Code of Construction Practice in relation to onshore works, covering a wide range of matters (Requirement 17);

(b) Limits on onshore construction hours (Requirement 25);

(c) Limits on construction noise (Requirement 21);

(d) Limits on operational noise arising from the onshore substation (Requirement 26);

(e) Control of potential release of contaminated material through appropriate mitigation measures and as provided for within the Code of Construction Practice, and associated Contaminated Land and Groundwater Plan (Requirement 20); and

(d) Control on lighting during construction of the onshore connection works and the operation of the onshore substation, as covered by the Construction Environment Management Plan (Requirement 16).

3.5.3 In relation to the offshore works, the noise and vibration effects on anthropic receptors during the construction, operation and decommissioning phases of the Project are considered sufficiently small to be well within accepted standards and as a result no further mitigation is deemed necessary.

3.5.4 Notwithstanding the above conclusion, the draft DCO that accompanies the Application contains a provision at Article 7 (Defence to proceedings in respect of statutory nuisance) that would provide a defence to proceedings for statutory nuisance in relation to noise should they be initiated against the Applicant or its successors as undertakers under the terms of the DCO. Given the Project's status as nationally significant infrastructure it is appropriate that the Project is protected from proceedings under Section 79 of the Environmental Protection Act 1990 and is capable of continued operation.