

# **Norfolk Boreas Offshore Wind Farm Statement of Engagement with Section 79(1) of the Environmental Protection Act 1990**

## **DCO Document 5.2**

Applicant: Norfolk Boreas Limited  
Document Reference: 5.2  
Pursuant to APFP Regulation: 5(2)(f)

Date: June 2019  
Revision: Version 1  
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*Photo: Ormonde Offshore Wind Farm*

Norfolk Boreas Limited

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Date	11 June 2019
Revision	1

## CONTENTS

1.	Summary.....	4
2.	Statement of Engagement .....	5
3.	Noise.....	5
4.	Air quality .....	6
5.	Lighting .....	7
6.	Conclusions .....	7

## 1. Summary

- 1.1 Norfolk Boreas Limited (the **Applicant**) is planning to develop the Norfolk Boreas Offshore Wind Farm (the **Project**) with up to 180 turbines and a combined export capacity of up to 1,800 MW. The Project would be located approximately 73 km from the coast of Norfolk at its closest point to land, covering an area of approximately 725 km<sup>2</sup> in the southern North Sea.
- 1.2 As the proposed wind farm is expected to have an export capacity which 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.
- 1.3 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 (**EPA**).
- 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, the draft DCO (Document 3.1) that accompanies the Application contains a provision at Article 8 (*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.
- 1.5 The Environmental Statement (**ES**) (Document 6.1), 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).
- 1.6 The main potential for the Project to cause statutory nuisance would be onshore noise during the construction of the Project and noise emitted from the new onshore project substation during operation. 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 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.
- 2.2 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 and vibration emitted from premises so as to be prejudicial to health or a nuisance; and
  - (ga) noise and vibration that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street.
- 2.3 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 and vibration. This Statement also considers air quality (sub-paragraph (d)) and lighting (sub-paragraph (fb)).
- 2.4 Whilst the conclusions of the ES indicate that no such nuisance will occur, the Applicant has included within the draft DCO at Article 8 (*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 and vibration.

## 3. Noise and Vibration

### Onshore

- 3.1 The likely noise and vibration effects from construction, operation and decommissioning of the onshore elements of the Project have been assessed in accordance with the appropriate legislation and guidance, as outlined in Chapter 25 of the ES. Survey data has been utilised to determine the baseline noise levels at locations representative of noise sensitive receptors which may be affected.
- 3.2 *Construction*
- 3.3 The closest residential receptors for the onshore connection works (in particular at the landfill location, along the cable route including the trenchless (e.g. Horizontal Directional Drilling) zones, mobilisation areas, the onshore project substation, and the extension to the Necton National Grid substation including the overhead line replacement) during construction have been identified as of medium sensitivity.
- 3.4 Mitigation measures have been set out in the ES to minimise potential effects on these receptors during construction. This includes a number of best practice measures for noise and vibration mitigation which will be secured through a Code of Construction Practice (in

accordance with the principles of an Outline Code of Construction Practice) under DCO Requirement 20. In addition, save in certain specified circumstances, construction activities for the onshore transmission works will be limited to the hours of 7am to 7pm Monday to Friday, and 7am to 1pm on Saturday (secured by Requirement 26). The ES concludes that implementation of these measures would reduce the significance of construction impacts to levels which are not significant in environmental impact assessment terms.

#### *Operation*

- 3.5 A new onshore project substation will be constructed near Necton and the existing Necton National Grid substation will be extended to accommodate connection points for the Project to the National Grid.
- 3.6 During the operation of the Project, effects are expected to be limited to the operation of the onshore project substation. The draft DCO contains a requirement which ensures that operational noise and vibration from the onshore project substation does not exceed those noise and vibration levels within which the existing Dudgeon substation is already permitted to operate; and that a monitoring scheme is required to be submitted and approved prior to commencement of operation (Requirement 27). Accordingly, the ES concludes that noise and vibration levels would be of no impact magnitude (in accordance with the B24142:2014 derived impact magnitudes) on receptors of medium sensitivity, and therefore of negligible significance.
- 3.7 In relation to the extension to the Necton National Grid substation, the operational noise and vibration levels are not anticipated to change from existing levels due to the nature of the extension works.

#### *Decommissioning*

- 3.8 No decision has been made regarding the final decommissioning policy for the onshore cables, as it is recognised that industry best practice, rules and legislation change over time. It is likely the cables would be pulled through the ducts and removed, with the ducts themselves left in situ. The decommissioning methodology will not be finalised until nearer to the end of the lifetime of the project, but would be in line with relevant policy at that time.
- 3.9 In relation to the onshore project substation, the programme for decommissioning is expected to be similar in duration to the construction phase. Whilst details regarding the decommissioning of the onshore project substation are currently unknown, considering the worst-case assumption (which would be the removal and reinstatement of the current land use at the site), it is anticipated that the impacts would be no worse than those during construction. The decommissioning methodology would need to be finalised nearer to the end of the lifetime of the project and would be in line with current guidance, policy and legislation at that point.
- 3.10 Any decommissioning programme would be agreed with the relevant authorities in accordance with Requirement 29 (*Onshore decommissioning*) of the DCO. The mitigation measures outlined for the construction of the onshore cable route and onshore project substation for the control of noise and vibration would therefore also be expected to be adopted for the decommissioning phase.

#### Offshore

- 3.11 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 73 km at its closest point from the Norfolk coast.

### **4. Air quality**

#### Onshore

- 4.1 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 in the Code of Construction Practice under DCO Requirement 20, the dust emissions produced would be minimal. The ES (Chapter 26) considers that these impacts are not significant; therefore, they are not expected to engage Section 79(1).

#### Offshore

- 4.2 The Applicant considers that none of the matters specified in Section 79(1) are engaged by the offshore elements of the Project in relation to air quality.

### **5. Lighting**

#### Onshore

- 5.1 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.
- 5.2 During operation under normal operating conditions, it is not anticipated for either the onshore project substation or the extension to the Necton National Grid substation to be illuminated, although low level movement detecting security lighting may be utilised for health and safety purposes and, for the Necton National Grid substation in particular, lighting would be used when conducting inspection and maintenance activities (during working hours only).
- 5.3 As part of Requirement 20 (*Code of Construction Practice*), the Applicant must submit for approval details regarding external lighting. The ES assesses these impacts as not significant; therefore, they are not expected to engage Section 79(1).

#### Offshore

- 5.4 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 windfarm is approximately 73 km offshore at its closest point to land and at this distance the turbines and any navigation lighting are considered to be sufficiently far offshore not to be seen.

### **6. Conclusions**

- 6.1 The Applicant has designed the Project in such a way as to minimise the environmental effects of the Project where possible and has also included a variety of measures to mitigate any remaining impacts further still.
- 6.2 These measures are secured by the requirements contained in Part 3 of Schedule 1 to the draft DCO, including:
- (a) A Code of Construction Practice in relation to onshore works, which contains mitigation for impacts arising from artificial light emissions, construction noise and vibration, and mitigation to minimise impacts on air quality (Requirement 20);
  - (b) Limits on construction hours for the onshore transmission works (Requirement 26); and
  - (c) Limits on operational noise and vibration arising from the onshore project substation (Requirement 27).
- 6.3 With the proposed mitigation in place, as described above, it is not expected that the Applicant would engage Section 79(1) of the EPA during construction, operation and maintenance, or decommissioning activities associated with the Project.
- 6.4 In relation to the offshore works, the Project is approximately 73 km offshore at its closest point and 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, the Applicant considers that none of the

matters specified in Section 79(1) are engaged by the offshore elements of the Project and no further mitigation is deemed necessary.

- 6.5 Notwithstanding the above conclusions, the draft DCO that accompanies the Application contains a provision at Article 8 (*Defence to proceedings in respect of statutory nuisance*) that would provide a defence to proceedings for statutory nuisance in relation to noise and vibration 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.