



DRAFT SECTION 106 AGREEMENT

Drax Bioenergy with Carbon Capture and Storage

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations, 2009 - Regulation 5(2)(q); The Planning Act 2008

Document Reference Number: 8.7

Applicant: Drax Power Limited

PINS Reference: EN010120



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PUBLIC

DATED _____ **[2023]**

(1) NORTH YORKSHIRE COUNCIL

(2) DRAX POWER LIMITED

DEED OF DEVELOPMENT CONSENT OBLIGATIONS

**pursuant to Section 106 of the Town and Country
Planning Act 1990 (as amended)
relating to the
Drax Bioenergy with Carbon Capture and Storage Project
in Selby, North Yorkshire**



Pinsent Masons

BETWEEN:

- (1) **NORTH YORKSHIRE COUNCIL** of County Hall, Northallerton, North Yorkshire DL7 8AD ("**NYC**"); and
- (2) **DRAX POWER LIMITED** whose registered office is at Drax Power Station, Drax, Selby, North Yorkshire, YO8 8PH (company number 04883589) (the "**Developer**").

WHEREAS:

- (A) NYC is the local planning authority for the area in which the Site and the Off-Site Provision Area are situated and is the enforcing authority for the purposes of section 106 of the 1990 Act.
- (B) The Developer is the freehold owner of the Site and the Off-Site Provision Area registered at the Land Registry under title numbers NYK223464 and [TBC] respectively.
- (C) On 24 May 2022 the Developer submitted the Application to the Secretary of State for development consent to construct and operate the Project. The Application was accepted for examination by the Secretary of State on 20 June 2022.
- (D) It is intended that the Developer will be the undertaker for the purposes of the Development Consent Order and the Developer intends to construct and operate the Project as authorised by the Development Consent Order (excluding those parts of the Project that will be constructed and operated by NGESOL and NGCL).
- (E) NYC and the Developer have agreed to enter into this Deed as a development consent obligation under the 1990 Act in order to secure the planning obligations contained in this Deed which are necessary to mitigate the impacts of the Project and to make the Project acceptable in planning terms.

1. DEFINITIONS AND INTERPRETATION

1.1 Where in this Deed the following defined terms and expressions are used they shall have the following respective meanings unless otherwise stated:

- "**1990 Act**" means the Town and Country Planning Act 1990 (as amended);
- "**2008 Act**" means the Planning Act 2008 (as amended);
- "**Application**" means the application for a development consent order under section 37 of the Planning Act 2008 in relation to the Project and submitted to the Secretary of State on 24 May 2022 and given reference number EN010120;
- "**Biodiversity Net Gain Assessment**" means the biodiversity net gain assessment submitted by the Developer as part of the Application;
- " **Commence**" has the same meaning as in Article 2 of the Development Consent Order and the words "**Commencement**" and "**Commenced**" and cognate expressions are to be construed accordingly;
- "**Construction Period**" means the period from Commencement of any part of the Project until the later of the Date of Unit 1 Full Commissioning and the Date of Unit 2 Full Commissioning (and if the Developer notifies NYC in writing that the Project with respect to one of the units will not be

	constructed and commissioned, the period will run until the date of full commissioning of the remaining unit);
"Date of Unit 1 Full Commissioning"	has the same meaning as defined Article 2 of the Development Consent Order;
"Date of Unit 2 Full Commissioning"	has the same meaning as defined Article 2 of the Development Consent Order;
"Deed"	means this deed made under section 106 of the 1990 Act and all other powers enabling;
"Development Consent Order"	means the development consent order to be made pursuant to the Application;
"EPC Contract"	means the the main contract for the design, engineering, procurement, construction, installation, completion, commissioning and testing of the Project;
"Expert"	means the expert appointed by any of the Parties pursuant to Clause 17;
"Local Employment Scheme"	means a scheme setting out the details and mechanisms for securing the use of local labour contractors, goods and services during the Construction Period and Operational Period of the Project including: <ul style="list-style-type: none"> (a) the measures that the Developer will take in order to ensure that opportunities for local organisations to bid for contracts during the Construction Period are advertised locally; (b) the measures that the Developer will take in order to ensure that opportunities for local organisations to bid for contracts during the Operational Period of the Project (for example for maintenance, waste, cleaning or security services) are advertised locally; (c) a requirement for the Developer to notify NYC when the procurement process for any construction contracts required during the Construction Period is due to begin in order to allow NYC to advertise opportunities via any brokerage scheme that they may run; (d) a requirement for the Developer to notify NYC when the procurement process for any operational contracts required during the Operational Period is due to begin in order to allow NYC to advertise opportunities via any brokerage scheme that they may run; (e) the anticipated number of local supplier days that will be hosted by the Developer prior to and during the Construction Period; (f) promotion of the Local Employment Scheme and liaison with contractors engaged in the construction of the Project to ensure that they

also apply the Local Employment Scheme so far as is practicable having due regard to the need and availability for specialist skills and trades and the programme for constructing the Project;

- (g) a procedure for monitoring of the Local Employment Scheme and reporting the results of such monitoring to NYC including details of the origins, qualifications, numbers and other details of candidates; and
- (h) a timetable for the implementation of the Local Employment Scheme;

"LTSA Contract"

means any long term service agreement ("**LTSA**") contract with the technology provider of the carbon capture technology relating to the design, build and ongoing maintenance of the carbon capture equipment, and any other LTSA contracts in respect of the other elements of the Project;

"NGCL"

means National Grid Carbon Limited (Company Registration Number 03932833) whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

"NGESOL"

means National Grid Electricity System Operator Limited (Company Registration Number 11014226) whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

"NGET"

means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WE2N 5EH;

"Notice"

means the written notification given by any Party to the other Parties of their intention to refer to the Expert any dispute arising between the Parties in respect of any matter contained in this Deed, such notice to specify the matters set out in clause 17;

"Off-Site Provision Area"

means the land within Arthur's Wood and Fallow Field shown edged red on Plan 2, on which the off-site habitat required to deliver biodiversity net gain may be provided;

"Off-Site Provision"

means:

- (a) compensatory habitat to be provided for bats by the provision of new and enhanced woodland and scrub which will be implemented by retaining an existing scrub parcel in the centre of Fallow Field which will be managed to remove undesirable species and the introduction of species such as dog or field rose *Rosa* sp. and honeysuckle *Lonicera perclymenum*;
- (b) habitat creation which will include suitable habitat features for a range of terrestrial invertebrate species, including those recorded during the terrestrial invertebrate surveys of the Woodyard (within the Site);

- (c) habitat compensation for terrestrial invertebrates using habitat features from the existing Woodyard to create new habitat;
- (d) replacement habitat for breeding and wintering birds which will include provision of new and enhanced woodland, scrub and species-rich grasslands;
- (e) replacement habitat for local reptile populations which will include provision of new and enhanced woodland, scrub and species-rich grasslands; and
- (f) the translocation of individual orchids from the Site to a receptor site (provisionally located within Fallow Field in the Off-Site Provision Area). The receptor site will be prepared with translocated soils from the Woodyard. Individual orchids will be carefully removed from the existing site and replanted at the receptor site.

"Operational Period"	means the period from the earlier of the end of the Construction Period until the decommissioning of the Project;
"Parties"	means NYC and the Developer and "Party" means any one of them as the context so requires;
"Plan 1"	means the plan attached to this Deed marked "Plan 1" showing the Site;
"Plan 2"	means the plan attached to this Deed marked "Plan 2" showing the Off-Site Provision Area;
"Project"	means the "authorised development" as defined in Article 2 and Schedule 1 of, and to be authorised by, the Development Consent Order part of which is to be located on the Site;
"Secretary of State"	means the Secretary of State for Business, Energy and Industrial Strategy or such other Secretary of State of His Majesty's Government that has the responsibility for determining projects relating to energy development;
"Site"	means the land at Drax Power Station on which part of the Project is situated and shown edged in red on Plan 1;
"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.

1.2 In this Deed, unless stated otherwise:

- 1.2.1 words incorporating the singular include the plural and vice versa and words importing any gender include every gender;
- 1.2.2 words importing persons include firms, companies, corporations, and vice versa;

- 1.2.3 references to NYC include its successors to their statutory function as local planning authorities;
- 1.2.4 references to the Developer include references to its successors in title and persons deriving title from it (except where the contrary is expressly provided) and permitted assigns;
- 1.2.5 references to clauses, paragraphs and Schedules are unless otherwise stated references to the relevant clauses and paragraphs of and Schedules to this Deed;
- 1.2.6 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of the restriction;
- 1.2.7 references in this Deed to statutes, by-laws, regulations, orders and delegated legislation shall include any statute, by-law, regulation, order or delegated legislation amending, re-enacting or made pursuant to the same as current and in force from time to time;
- 1.2.8 if any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected, impaired or called into question;
- 1.2.9 the recitals and headings in this Deed are for ease of reference only and shall not affect its construction or otherwise have any binding legal effect;
- 1.2.10 in the event of any conflict between the provisions of this Deed and of any document annexed hereto or referred to herein, the provisions of this Deed shall prevail;
- 1.2.11 references to "notice" shall mean notice in writing;
- 1.2.12 references to "including" shall mean including without limitation; and
- 1.2.13 the Interpretation Act 1978 shall apply to this Deed.

2. **LEGAL EFFECT**

2.1 This Deed is made pursuant to:

2.1.1 section 106 of the 1990 Act; and

2.1.2 section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other powers so enabling.

2.2 The obligations, covenants and undertakings on the part of the Developer in this Deed are development consent obligations pursuant to and for the purposes of the power referred to in clause 2.1.1 and so as to bind the Site and with respect to the obligations in Schedule 2 so as to bind the Off-Site Provision Area, subject to clause 6, the said obligations, covenants and undertakings on the part of the Developer are entered into with the intent that they shall be enforceable by NYC not only against the Developer but also against any successors in title to or assigns of the Developer as if that person had been an original covenanting party and insofar as any such obligations, covenants and undertakings are not capable of falling within section 106 of the 1990 Act are entered into as obligations, covenants and undertakings in pursuance of the powers referred to in clause 2.1.2 with the intent that they shall be enforceable under contract.

2.3 It is hereby agreed that the Developer enters into this Deed with the effect of binding the Site, and with the effect of binding the Off-Site Provision Area in relation to the obligations, covenants and undertakings in Schedule 2 only.

3. CONDITIONALITY

3.1 Subject to clause 3.2, the Parties agree that:

3.1.1 clauses 1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, , 16 and 17 shall have operative effect upon the date of this Deed; and

3.1.2 clauses 4 and 9 shall not have operative effect unless and until the Development Consent Order has come into force.

3.2 Where the Development Consent Order becomes the subject of any judicial review proceedings clauses 4 and 9 will cease to have operative effect until the earlier of:

3.2.1 the Commencement of the Project; and

3.2.2 the final determination of such proceedings, if, following such final determination, the Project is capable of being Commenced.

3.3 Wherever in this Deed reference is made to the final determination of judicial review proceedings (or cognate expressions are used), the following provisions will apply:

3.3.1 proceedings by way of judicial review are finally determined:

(a) when permission to bring a claim for judicial review has been refused and no further application may be made;

(b) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or

(c) when any appeal is finally determined and no further appeal may be made.

4. DEVELOPMENT CONSENT OBLIGATIONS

4.1 DEVELOPER'S OBLIGATIONS

4.1.1 The Developer covenants with NYC to observe and perform the obligations undertakings covenants and agreements in Schedule 1 and Schedule 2.

4.2 COUNCILS' OBLIGATIONS

4.2.1 NYC covenants with the Developer:

(a) to observe and perform the covenants and obligations on their part contained in Schedule 1 and Schedule 2.

(b) in the event approval is required to effect a variation to the Local Employment Scheme such approval is to be given to the Developer in writing and must not be unreasonably withheld or delayed.

5. REGISTRATION AS LOCAL LAND CHARGE

This Deed shall be registered by NYC as a local land charge in the register of local land charges pursuant to the Local Land Charges Act 1975.

6. RELEASE

No person shall be liable for any breach of the development consent obligations or other provisions of this Deed after it shall have parted with its interest in the Site, the Off-Site Provision Area, or the

relevant part thereof but without prejudice to any rights of NYC in respect of any antecedent breach of those obligations.

7. FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENT ORDERS

Nothing in this Deed shall be construed as prohibiting or limiting the rights of the Developer to use or develop any part of the Site or the Off-Site Provision Area in accordance with and to the extent permitted by a certificate of lawful use, planning permission, development consent order or other statutory authority granted either before or after the date of this Deed, other than the Development Consent Order.

8. EXPIRY

If the Development Consent Order expires or is quashed or revoked prior to Commencement then this Deed shall immediately determine and cease to have effect and NYC shall cancel all entries made in their register of local land charges in respect of this Deed.

9. CERTIFICATES OF COMPLIANCE

NYC shall upon written request certify compliance with the development consent obligations in this Deed.

10. NOTICES

10.1 Any notice, consent or approval required to be given under this Deed shall be in writing and shall be sent to the address and marked for the attention of the persons identified below or instead to such other persons as may be substituted for them from time to time.

10.2 Any such notice must be delivered by hand or by pre-paid special delivery post (unless the receiving party agrees to receive the notice electronically) and shall conclusively be deemed to have been received:

10.2.1 if delivered by hand, on the next Working Day after the day of delivery; and

10.2.2 if sent by special delivery post and posted within the United Kingdom, on the day 2 Working Days after the date of posting.

10.3 A notice or communication shall be served or given:

10.3.1 on NYC at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of Corporate Director of Community Development; and

10.3.2 on the Developer at its address given above or such other address for service as shall have been previously notified in writing to the other Parties and any such notice shall be marked for the attention of Jennifer Blyth, Planning and Consents Project Manager.

11. APPROVALS

Where any approval, agreement, consent, confirmation or an expression of satisfaction is required under the terms of this Deed such approval, agreement, consent, confirmation or expression of satisfaction shall be given in writing and shall not be unreasonably withheld or delayed.

12. COUNCIL'S POWERS

Nothing in this Deed shall fetter the statutory rights, powers or duties of NYC as local planning authority or as highway authority as the case may be.

13. **GOOD FAITH**

The Parties agree with each other to act reasonably and in good faith in the discharge of the obligations contained in this Deed.

14. **RIGHTS OF THIRD PARTIES**

It is not intended that any person who is not a party to this Deed shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

15. **JURISDICTION**

15.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

15.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

16. **COSTS**

16.1 The Developer shall pay on completion of this Deed the reasonable legal and planning costs of NYC incurred in the preparation, negotiation and execution of this Deed.

17. **DISPUTE RESOLUTION**

17.1 In the event of any dispute arising between the Parties in respect of any matter contained in this Deed the same may be referred to the Expert by any Party serving the other Parties with a Notice.

17.2 The Notice must specify:

17.2.1 the nature, basis and brief description of the dispute;

17.2.2 the clause of this Deed or paragraph of a Schedule of this Deed to which the dispute has arisen; and

17.2.3 the proposed Expert.

17.3 The Expert shall be an independent person possessing expertise relevant to the dispute and in the event that the Parties are unable to agree whom should be appointed as the Expert within twenty (20) Working Days after the date of the Notice then any Party may request:

17.3.1 if such dispute shall relate to matters concerning the construction, interpretation and/or the application of this Deed, the Chairman of the Bar Council to nominate the Expert;

17.3.2 if such dispute shall relate to matters necessitating any calculation or otherwise concerning a financial aspect of this Deed, the President of the Institute of Chartered Accountants in England and Wales to nominate the Expert;

17.3.3 if such dispute shall relate to matters requiring a specialist chartered surveyor, the President of the Royal Institute of Chartered Surveyors to nominate the Expert;

17.3.4 in all other cases, the President of the Law Society to nominate the Expert.

17.4 The Expert shall act as an expert and not as an arbitrator and whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the Parties to the dispute in equal shares.

- 17.5 The Expert shall be appointed (through an agreed request statement setting out exactly the questions that he is to determine submitted jointly by the Parties) subject to an express requirement that he reaches his decision and communicates it to the Parties to the dispute within the minimum practical timescale allowing for the nature and complexity of the dispute and in any event not more than twenty (20) Working Days from the date of his appointment to act.
- 17.6 The Expert shall be required to give notice to each of the said Parties to the dispute inviting each of them to submit to him within twenty (20) Working Days from the date of his appointment written submissions and supporting material and shall afford to the said Parties an opportunity to make counter submissions within a further ten (10) Working Days in respect of any such submission and material.
- 17.7 In the absence of manifest error the Expert's decision shall be binding on the Parties.

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SCHEDULE 1

THE LOCAL EMPLOYMENT SCHEME

1. Prior to Commencement of the Project, the Developer must submit the Local Employment Scheme to NYC for approval.
2. The Developer and NYC agree that the following contracts will not be included within the Local Employment Scheme:
 - (a) the EPC Contract;
 - (b) the LTSA Contract;
 - (c) any contract for the manufacture, supply, delivery or removal of the proprietary solvent used in the Project; and
 - (d) contracts for any works conducted by NGCL, NGESOL and/or NGET, or contracts with any successor body or other company responsible for the transport and storage of carbon dioxide from the Project.
3. The Developer and NYC shall work together to establish the initiatives set out within the Local Employment Scheme.
4. The Developer shall not Commence the Project until the Local Employment Scheme has been approved by NYC and the Developer shall thereafter carry out the approved Local Employment Scheme during the Construction Period and the Operational Period.
5. The Developer shall use reasonable endeavours to procure that the contractors engaged in the construction of the Project assist in the implementation of the Local Employment Scheme.
6. For the avoidance of doubt, the Local Employment Scheme shall not require the Developer or any contractors, to award any contract for the construction or operation of the Project to any specific company.
7. The Developer shall implement the Local Employment Scheme in accordance with the timetable contained in the approved Local Employment Scheme **PROVIDED THAT** the Developer may from time to time seek approval for revisions of the Local Employment Scheme from NYC.
8. The Developer shall use reasonable endeavours to procure that the contractors engaged in the construction of the Project interview and if appropriate recruit suitably qualified applicants as part of the Local Employment Scheme including providing such assistance as is reasonably practicable to those contractors.
9. The Developer shall:
 - 9.1.1 advertise invitations to tender for all contracts for the provision of services and materials to the Project in at least one local newspaper with a circulation in all areas within a 25 mile radius of the Site (save in respect of the contracts referred to in paragraph 2 of this Schedule 1); and
 - 9.1.2 invite at least two companies who have responded to an advertisement published in accordance with paragraph 9.1.1 of this Schedule 1 and whose principal offices are located within a 25 mile radius of the Site to tender for each contract in relation to the construction of the Project including in relation to the supply of materials and services

PROVIDED THAT nothing in this paragraph shall require the Developer to award any contract for the construction or operation of the Project to any such company.

10. The Developer shall be under no obligation in respect of paragraph 9 of this Schedule 1 to invite any company or advertise any contract for the provision of services and materials where, to the Developer's knowledge, there is no company within a radius of 25 miles of the Site that is capable of fulfilling any such contract **PROVIDED THAT** it notifies NYC of the contracts to which this paragraph 10 applies (save in respect of the contracts referred to in paragraph 2 of this Schedule 1).

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SCHEDULE 2

ECOLOGICAL OFF-SITE IMPROVEMENT WORKS AND RIVER HABITAT

1. Prior to Commencement of the Project, the Developer must carry out an update to the Biodiversity Net Gain Assessment, for the Project to account for the detailed design of the Project and submit this for approval to NYC at the same time as submitting a detailed landscaping and biodiversity strategy under Requirement 7 of the Development Consent Order.
2. [This updated Biodiversity Net Gain Assessment must set out how the Project will deliver a 10% net gain, including in respect of river habitat, including:
 - (a) identifying upon which land, any habitat creation or modification works that will be necessary to deliver that 10% net gain will take place;
 - (b) if such land is not currently within the Developer's ownership, confirming how the Developer will be taking sufficient property interest to deliver and maintain that land to ensure it remains suitable for the habitat requirements; and
 - (c) for works that are not within the Off-Site Provision Area, setting out the works to be undertaken to deliver the required habitat and identifying how consent for the works necessary to deliver the required habitat is to be secured.]
3. Any off-site habitat required to deliver the 10% net gain which is not contained within the Off-Site Provision Area must be:
 - (a) delivered prior to the end of the Construction Period; and
 - (b) must be maintained and managed for a period of at least 30 years.
4. Any works to the Off-Site Provision Area must not commence until a detailed landscape and biodiversity strategy which deals with the proposals for the delivery of the Off-Site Provision on the Off-Site Provision Area is approved under Requirement 7 of the Development Consent Order.
5. The Project must not commence until the Off-Site Provision has been delivered on the Off-Site Provision Area.
6. Any works within the Off-Site Provision Area must be carried out, maintained and managed for a period of at least 30 years in accordance with any detailed landscape and biodiversity strategy which deals with the proposals for the Off-Site Provision Area that is approved under Requirement 7 of the Development Consent Order.

Plan 1

Site

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Plan 2
Off-Site Provision Area

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IN WITNESS whereof this Deed has been duly executed by the parties to this Deed on the date which appears at the head of this document.

The **COMMON SEAL** of **NORTH YORKSHIRE**)
COUNCIL was hereunto affixed in the presence)
of:)

Authorised signatory

EXECUTED as a **DEED** by **DRAX POWER**)
LIMITED)

acting by two directors or one director and

the company secretary:

Director

Director / Secretary

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