



DRAFT SECTION 106 AGREEMENT (CLEAN)

Drax Bioenergy with Carbon Capture and Storage

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

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Applicant: Drax Power Limited

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PUBLIC

DATED _____ **2023**

(1) THE 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

OFFICIAL

BETWEEN:

- (1) **THE 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.
- (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, a Northern Endurance Partnership company, Northern Powergrid Limited or BT Openreach).
- (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;
"BNG Metric"	means Biodiversity Metric 3.1 published by Natural England for measuring the biodiversity value or relative biodiversity value of habitat or habitat enhancement, or such other metric as may from time to time be produced and published by the Secretary of State pursuant to the Environment Act 2021 and any Regulations relating to biodiversity net gain made thereunder;
"Biodiversity Net Gain Assessment"	means the biodiversity net gain assessment submitted by the Developer as part of the Application;
"Biodiversity Value"	means the unit quantification of the size of an area and the distinctiveness, quality and condition of its habitat to

provide a measure of ecological value as assessed using the BNG Metric;

"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;
"Expert"	means the expert appointed by any of the Parties pursuant to Clause 17;
"Legal Agreements"	means: (a) an agreement between the Developer and the landowner of the land upon which the Off-Site River Restoration BNG is to be located; and / or (b) an agreement between NYC and the landowner of the land upon which the Off-Site River Restoration BNG is to be located; and (c) obligations in a deed (which may be a separate deed or part of the agreement in (b) above) given by the landowner of the land upon which the Off-Site River Restoration BNG is to be located to the relevant local planning authority for the area in which the Off-Site River Restoration BNG is located, or such other documents providing evidence of the matters in sub-paragraphs 5(b) and (c) in Schedule 1 as the Developer agrees in writing with NYC are satisfactory for the purposes of those sub-paragraphs;
"NGESOL"	means National Grid Electricity System Operator Limited (Company Registration Number 11014226) whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

“Northern Endurance Partnership”	means a partnership of companies set up to develop the onshore and offshore carbon dioxide transportation and storage infrastructure into which the Project will connect;
“Northern Endurance Partnership company”	means any one of the companies making up the Northern Endurance Partnership;
“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 blue on Plan 1, on which the off-site habitat required to deliver biodiversity net gain may be provided;
“Off-Site Provision”	<p>means:</p> <ul style="list-style-type: none"> (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 <i>Rosa</i> sp. and honeysuckle <i>Lonicera percllymenum</i>; (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.
“Off-Site River Restoration BNG”	means the Black Brook river and floodplain restoration scheme, such scheme to include some or all of the following:

- (a) removing the left bank retaining wall and re-profiling of the bank to restore floodplain connectivity;
- (b) expanding the footprint and improving the quality of existing floodplain wetland habitat;
- (c) diverting and improving the field boundary ditch to feed floodplain wetlands; and
- (d) removing a weir to restore sediment flow and habitat connectivity within the river.

"Operational Period"	means the period from 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 and 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;
"Register of Environmental Actions and Commitments"	means the "register of environmental actions and commitments" as defined in Article 2 of the Development Consent Order;
"Secretary of State"	means the Secretary of State for the Department for Energy Security and Net Zero 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 its statutory function as local planning authority;
- 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 1 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 1 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**

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

4.2 **COUNCIL'S OBLIGATIONS**

NYC covenants with the Developer to observe and perform the covenants and obligations on its part contained in Schedule 1.

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 Party 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 Party 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 Party 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 their discretion or in the event that they make 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 they are to determine submitted jointly by the Parties) subject to an express requirement that they reach their decision and communicate 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 their 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 them within twenty (20) Working Days from the date of their 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.

SCHEDULE 1

ECOLOGICAL OFF-SITE IMPROVEMENT WORKS AND RIVER HABITAT

1. The Developer must update the Biodiversity Net Gain Assessment for the Project to account for the detailed design of the Project and submit this for approval to NYC.
2. Prior to Commencement of the Project, and following NYC's approval of the phasing plan for the Project pursuant to Requirement 2(1) of the Development Consent Order, the Developer and NYC must agree when the update to the Biodiversity Net Gain Assessment required pursuant to paragraph 1 must be submitted for approval to NYC, having regard to the timing of when the detailed landscaping and biodiversity strategies for phases and numbered works is proposed to be submitted under Requirement 7 of the Development Consent Order.
3. The updated Biodiversity Net Gain Assessment must set out a plan for delivering a 10% net gain in Biodiversity Value in respect of the Project ("**the BNG Plan**").
4. The Developer covenants that the BNG Plan shall be implemented as approved pursuant to paragraph 1.
5. The Project must not Commence until the Developer has provided the following information to NYC and received written confirmation from NYC that such information has been approved:
 - (a) information identifying upon which land the Off-Site River Restoration BNG will be delivered on; setting out the arrangements for management, maintenance, monitoring and reporting of the Off-Site River Restoration BNG; setting out the works to be undertaken to deliver the Off-Site River Restoration BNG; and identifying how consent for the works necessary to deliver the Off-Site River Restoration BNG is to be secured;
 - (b) evidence either (i) of the Legal Agreements which are in place to secure the delivery of the Off-Site River Restoration BNG or (ii) that the Off-Site River Restoration BNG has been delivered; and
 - (c) evidence of the Legal Agreements which are in place to secure the management, maintenance, monitoring and reporting of the Off-Site River Restoration BNG for a minimum of 30 years.
6. 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.
7. The Project must not Commence until the Off-Site Provision has been delivered on the Off-Site Provision Area.
8. 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.
9. No part of the works for the delivery of the Off-Site Provision on the Off-Site Provision Area is to Commence (including permitted preliminary works comprising geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, demolition of buildings and removal of plant and machinery, above ground site preparation for temporary facilities for the use of contractors, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, and site clearance (including vegetation removal, demolition of existing buildings and structures) only), until a construction environmental management plan for that part has been submitted to and approved by NYC, after consultation with the Environment Agency.

10. The plan submitted and approved pursuant to paragraph 9 must be substantially in accordance with the Register of Environmental Actions and Commitments.
11. All construction works associated with the delivery of the Off-Site Provision on the Off-Site Provision Area must be carried out in accordance with the approved construction environmental management plan.

Plan 1

Site & Off-Site Provision Area

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.

EXECUTED as a DEED by affixing the common)
seal of **THE NORTH YORKSHIRE COUNCIL** 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