

# The Eggborough CCGT Project

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## The Eggborough CCGT (Generating Station) Order

Land at and in the vicinity of the Eggborough Power Station site,  
near Selby, North Yorkshire, DN14 0BS

## Draft Section 106 Planning Agreement with Selby District Council and the Yorkshire Wildlife Trust

The Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure)  
Regulations 2009

APFP Reg. 5(2)(b)

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**Applicant: Eggborough Power Limited**  
**Date: November 2017**

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## DOCUMENT HISTORY

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<b>Author</b>	Pinsent Masons (PM)		
<b>Signed</b>	Emma Cottam-Clough	<b>Date</b>	30.11.17
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<b>Signed</b>	NM	<b>Date</b>	30.11.17
<b>Document Owner</b>	PM		



**DATED 2017**

**Draft : 29 November 2017**

- (1) SELBY DISTRICT COUNCIL**
- (2) EGGBOROUGH POWER LIMITED**
- (3) YORKSHIRE WILDLIFE TRUST**

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**DEED OF DEVELOPMENT CONSENT OBLIGATIONS**  
pursuant to Section 106 of the Town and Country  
Planning Act 1990  
relating to the  
Eggborough CCGT Project, Selby, North Yorkshire

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**Pinsent Masons**

**BETWEEN:**

- (1) **SELBY DISTRICT COUNCIL** of Civic Centre, Doncaster Road, Selby, North Yorkshire, YO8 9FT (the **District Council**);
- (2) **EGGBOROUGH POWER LIMITED** whose registered office is at Eggborough Power Station, Eggborough, Goole, East Yorkshire, DN14 0BS (company number 03782700) (**EPL**);
- (3) **YORKSHIRE WILDLIFE TRUST** of 1 St George's Place, York YO24 1GN (company number 409650 and registered charity number 210807) (**YWT**).

**WHEREAS:**

- (A) The District Council is the local planning authority for the area in which the Site is situated and is the enforcing authority for the purposes of section 106 of the 1990 Act.
- (B) EPL is the freehold owner of those parts of the Site registered at the Land Registry under title number NYK 248586.
- (E) On 30 May 2017 EPL 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 27 June 2017.
- (F) It is intended that EPL will be the undertaker for the purposes of the Development Consent Order and EPL intends to construct and operate the Project as authorised by the Development Consent Order.
- (G) YWT is the intended recipient of the Lower Aire Valley Contribution.
- (H) The parties to this Deed have agreed to enter into this Deed in order to secure the development consent obligations contained in this Deed, necessary to mitigate for the Project's biodiversity impacts and to deliver biodiversity enhancement in accordance with paragraph 5.3.4 of National Policy Statement EN-1.

**NOW THIS DEED WITNESSES** as follows:

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:

<b>"1990 Act"</b>	means the Town and Country Planning Act 1990
<b>"2008 Act"</b>	means the Planning Act 2008
<b>"Application"</b>	means the application for a development consent order under section 37 of the Planning Act 2008 in relation to the Project at the Site and submitted to the Secretary of State on 30 May 2017 and given reference number EN010081
<b>"Commencement"</b>	means the carrying out of a material operation (as defined in section 155 of the 2008 Act), and "Commence" and "Commenced" shall be construed accordingly
<b>"Development Consent Order"</b>	means the development consent order to be made

pursuant to the Application

<b>"EA"</b>	means the Environment Agency (Yorkshire Area Sustainable Places Team) of Lateral, 8 City Walk, Leeds LS11 9AT
<b>"Implementation Date"</b>	means the date on which works comprised in the Project, other than demolition work, archaeological investigations, environmental surveys, geotechnical surveys and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors, the provision of temporary means of enclosure and site security for construction, the temporary display of site notices or advertisements and any other works agreed in writing by the District Council, are Commenced pursuant to the Development Consent Order
<b>"Interest Rate"</b>	means 2% above the Bank of England base rate applicable at the date the relevant payment is due
<b>"NYCC"</b>	means North Yorkshire County Council of County Hall, Northallerton, North Yorkshire DL7 8AD
<b>"Plan 1"</b>	means the plan attached to this Deed marked "Plan 1" showing the Site
<b>"Plan 2"</b>	means the plan attached to this Deed marked "Plan 2" showing the Lower Aire Valley Site
<b>"Project"</b>	means the "authorised development" as defined in and to be authorised by the Development Consent Order
<b>"Site"</b>	means the land at Eggborough Power Station, near Selby, North Yorkshire shown edged in red on Plan 1
<b>"Lower Aire Valley Contribution"</b>	means the sum of £151,000 (one hundred and fifty one thousand pounds)
<b>"Lower Aire Valley Contribution Purposes"</b>	means the use of the Lower Aire Valley Contribution for the following purposes at the Lower Aire Valley Site to mitigate the impact of the Project:- <ul style="list-style-type: none"><li>• walkovers, surveys and mapping of opportunities for natural flood management and wetland creation</li><li>• landowner engagement</li><li>• wetland habitat creation and improvement (which may amongst other measures include pond and scrape creation, wet woodland planting, bankside measures to reduce erosion and works to benefit protected species such as otter, water vole and bats)</li><li>• management of newly created or improved wetland habitat</li><li>• funding employment of an officer by YWT to undertake the same;</li></ul>

- "Lower Aire Valley Site"** means the land known as [ ], North Yorkshire indicatively shown outlined in red and outlined in green on Plan 2
- "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 the District Council include the successors to its statutory function as local planning authority;
- 1.2.4 references to EPL include references to the successors in title to their respective interests in the Site and persons deriving title from them (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 "the parties" shall mean the parties to this Deed and reference to a "party" shall mean any one of the parties;
- 1.2.12 references to "notice" shall mean notice in writing;
- 1.2.13 references to "including" shall mean including without limitation; and
- 1.2.14 the Interpretation Act 1978 shall apply to this Deed.

2. **LEGAL EFFECT**

- 2.1 This Deed is made pursuant to section 106 of the 1990 Act, section 111 of the Local Government Act 1972, section 1 of the Localism Act 2011 and all other powers so enabling.



2.2 The covenants in clause 4 are development consent obligations for the purposes of section 106 of the 1990 Act and are enforceable by the District Council as the local planning authority in respect of the Site.

### 3. **CONDITIONALITY**

3.1 Subject to clause 3.2, the parties agree that:

3.1.1 every clause apart from clause 4 shall have operative effect upon the date of this Deed; and

3.1.2 clause 4 shall not have operative effect unless and until the Development Consent Order has been made.

3.2 Where the Development Consent Order becomes the subject of any judicial review proceedings:

3.2.1 until such time as such proceedings including any appeal have been finally determined, the terms and provisions of this Deed will remain without operative effect unless the Project has been Commenced; and

3.2.2 if following the final determination of such proceedings the Development Consent Order is capable of being Commenced, then this Deed will take effect in accordance with its terms.

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 EPL covenants with the District Council and the YWT prior to the Implementation Date to:

4.1.1 pay the Lower Aire Valley Contribution to YWT; and

4.1.2 notify the District Council in writing that it has made payment of the Lower Aire Valley Contribution to YWT within seven days of making the payment.

### 5. **YWT'S OBLIGATIONS**

5.1 YWT covenants with EPL and the District Council:

5.1.1 to consult with EPL, NYCC, the District Council and the EA in relation to the expenditure of the Lower Aire Valley Contribution prior to committing any expenditure or commencing works;

5.1.2 following the commencement of expenditure at the Lower Aire Valley Site to continue to consult with EPL, NYCC, the District Council and the EA, no less frequently than once per year, in relation to the expenditure of the Lower Aire Valley Contribution, the progress and effectiveness of the works, management, maintenance and surveys (including survey results) carried out and proposals for alterations to the works or the management regime;

- 5.1.3 to take account of responses received to consultation pursuant to paragraphs 5.1.1 and 5.1.2 and to provide reasonable information in writing in respect of how responses received by YWT have been taken into account in the expenditure of the Lower Aire Valley Contribution;
- 5.1.4 to allow EPL, NYCC, the District Council and the EA reasonable opportunity to inspect the Lower Aire Valley Site and any works or management being carried out pursuant to this Deed, subject to each complying with YWT's reasonable operational and health and safety requirements;
- 5.1.5 not to spend the Lower Aire Valley Contribution other than on the Lower Aire Valley Contribution Purposes; and
- 5.1.6 if any part of the Lower Aire Valley Contribution remain unspent within ten years of the date that the respective contribution is paid YWT shall repay any unspent monies to EPL or its nominee and notify the District Council in writing.

**6. DISTRICT COUNCIL'S OBLIGATIONS**

- 6.1 This Deed shall be registered by the District Council as a local land charge in the register of local land charges.

**7. ENFORCEMENT**

- 7.1 The parties agree that the development consent obligations contained in clause 4 are not enforceable against EPL or against any successors in title to or permitted assigns or any person claiming through or under its interest in the Site unless that person itself undertakes any part of the Project.

**8. RELEASE**

EPL and its successors in title and those deriving title from it shall, upon disposing of their respective interests in the Site, be released from all obligations in this Deed in relation to that interest but without prejudice to the rights of the parties in relation to any antecedent breach of those obligations.

**9. FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENT ORDERS**

Nothing in this Deed shall be construed as prohibiting or limiting the rights of EPL to use or develop any part of the Site 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.

**10. EXPIRY**

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

**11. CERTIFICATES OF COMPLIANCE**

The District Council shall upon written request certify compliance with the development consent obligations in this Deed.

**12. NOTICES**

- 12.1 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.

- 12.2 Any such notice must be delivered by hand or by pre-paid Special Delivery post and shall conclusively be deemed to have been received:
- 12.2.1 if delivered by hand, on the next Working Day after the day of delivery; and
  - 12.2.2 if sent by Special Delivery post and posted within the United Kingdom, on the day 2 Working Days after the date of posting.
- 12.3 The address for service of any such notice, consent or approval as aforesaid shall:
- 12.3.1 in the case of service upon the District Council to 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 the [Lead Officer – Planning];
  - 12.3.2 in the case of service upon EPL to 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 [ ]; and
  - 12.3.3 in the case of service upon YWT to 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 the Director of Finance and Central Services.

13. **INTEREST**

Where any obligation in this Deed is expressed to require EPL to pay any sum of money, interest at the Interest Rate shall be payable in addition to the sum of money itself calculated from the due date to the date on which the sum of money is actually paid.

14. **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.

15. **COUNCILS' POWERS**

Nothing in this Deed shall fetter the statutory rights, powers or duties of the District Council.

16. **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.

17. **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.

18. **JURISDICTION**

- 18.1 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.
- 18.2 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).

19. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, each of which is an original and all of which may together evidence the same agreement.

20. **DATE OF DELIVERY**

This Deed is delivered on the date of this Deed.

21. **COSTS**

EPL shall pay on completion of this Deed the reasonable legal and planning costs of the District Council incurred in the preparation, negotiation and execution of this Deed in the sum of £1,000 (one thousand pounds).

**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 **SELBY DISTRICT COUNCIL** was hereunto affixed in the presence of:

)  
)  
)

Authorised signatory

**EXECUTED** as a **DEED** by **EGGBOROUGH POWER LIMITED**

)  
)

acting by two directors or one director and the company secretary:

Director

Director / Secretary

**EXECUTED** as a **DEED** by **YORKSHIRE WILDLIFE TRUST**

)  
)

acting by two directors or one director and the company secretary:

Director

Director / Secretary