

The Eggborough CCGT Project

Document Ref: 9.13
PINS Ref: EN010081

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 -
Demolition of the existing coal-fired power station - Deadline 5**

The Planning Act 2008



Applicant: Eggborough Power Limited
Date: January 2018

DOCUMENT HISTORY

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GLOSSARY

Abbreviation	Description
DCO	Development Consent Order
EPL	Eggborough Power Limited
ExA	Examining Authority
ISH	Issue Specific Hearing
MW	megawatts
NSIP	Nationally Significant Infrastructure Project
PA 2008	Planning Act 2008
Proposed Development	Eggborough CCGT Project
SDC	Selby District Council
SoS	Secretary of State
the Applicant	Eggborough Power Limited
the Order	Eggborough CCGT (Generating Station) Order

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1.0 INTRODUCTION

- 1.1 This document (Document Ref. 9.13) has been prepared on behalf of Eggborough Power Limited ('EPL' or the 'Applicant') in respect of its application (the 'Application') for a Development Consent Order (a 'DCO') for the Eggborough CCGT Project (the 'Proposed Development'). The Application was submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy on 30 May 2017 and was accepted for examination on 27 June 2017.
- 1.2 The Proposed Development comprises the construction, operation and maintenance of a new gas-fired electricity generating station with a gross output capacity of up to 2,500 megawatts ('MW'), including electrical and water connections, a new gas supply pipeline and other associated development, on land at and in the vicinity of the existing Eggborough coal-fired power station, near Selby, North Yorkshire.
- 1.3 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under Sections 14 and 15(2) of The Planning Act 2008 (the 'PA 2008'). The DCO, if made by the SoS, would be known as the 'Eggborough CCGT (Generating Station) Order' (the 'Order').
- 1.4 This document includes a draft Section 106 planning agreement with Selby District Council ('SDC') relating to the future demolition of the existing coal-fired power station. The document has been submitted for Deadline 5 of the Examination.

2.0 DRAFT SECTION 106 PLANNING AGREEMENT

- 2.1 At the Issue Specific Hearing ('ISH') on 22 November 2017, the Examining Authority ('ExA') requested that the Applicant review the position in relation to the future demolition of the existing coal-fired power station and consider inserting a new schedule within the draft DCO that requires a demolition scheme to be agreed with the relevant planning authority - SDC – prior to the commencement of the Proposed Development.
- 2.2 At Deadline 3 of the Examination, the Applicant submitted a document (Document Ref. 9.7) to the ExA outlining its proposed approach to the future demolition of the existing coal-fired power station. Document 9.7 (paragraph 2.7) proposed that certain obligation relating to the demolition of the existing coal-fired power station be contained within a planning agreement, which would bind the site of the existing coal-fired power station.
- 2.3 A draft of the planning agreement is provided at **Appendix 1** of this document and a plan identifying the land to which the agreement would apply can be found at **Appendix 2**. The ExA is also referred to the Applicant's responses to Further Written Questions COD 2.1, 2.2 and 2.3 relating to the demolition of the existing coal-fired power station and the planning agreement.

APPENDIX 1: DRAFT PLANNING AGREEMENT

DATED _____ **2018**

Draft: 8 January 2018

- (1) SELBY DISTRICT COUNCIL**
(2) EGGBOROUGH POWER LIMITED

DEED OF DEVELOPMENT CONSENT OBLIGATIONS
pursuant to Section 106 of the Town and Country
Planning Act 1990
relating to the
Demolition of Eggborough Coal-fired Power Station,
Selby, North Yorkshire



Pinsent Masons

BETWEEN:

- (1) **SELBY DISTRICT COUNCIL** of Civic Centre, Doncaster Road, Selby, North Yorkshire, YO8 9FT (the **District Council**); and
- (2) **EGGBOROUGH POWER LIMITED** whose registered office is at Eggborough Power Station, Eggborough, Goole, East Yorkshire, DN14 0BS (company number 03782700) (**EPL**).

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 NYK248586.
- (C) On 30 May 2017 EPL submitted the Application to the Secretary of State for development consent to construct and operate the Project on land adjacent to the Site. The Application was accepted for examination by the Secretary of State on 27 June 2017.
- (D) 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.
- (E) EPL has obtained an Environmental Impact Assessment Screening Opinion (Ref 2017/0003/SCN) from the District Council, which confirms that the Demolition Project is not considered to be EIA development. Permitted development rights are therefore available pursuant to the 2015 Order for EPL to carry out the Demolition Project.
- (F) The District Council acknowledges that the Demolition Project can take place using permitted development rights provided by Part 11 of the 2015 Order.
- (G) EPL is to apply to the District Council for a determination as to whether the District Council's Prior Approval will be required as to the method of demolition and any proposed restoration of the Site.
- (H) EPL and the District Council have agreed to enter into this Deed in order to secure the development consent obligations contained in this Deed, necessary to secure the demolition of the Coal Station.

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:

"1961 Consent"	means the consent granted for the construction of the Coal Station pursuant to the Electricity Supply Acts and the Town and Country Planning Act 1947 and dated 18 October 1961
"1990 Act"	means the Town and Country Planning Act 1990
"2001 Consent"	the consent for the FGD granted pursuant to section 36 of the Electricity Act 1989 on 10 December 2001
"2008 Act"	means the Planning Act 2008

"2015 Order"	means the Town and Country Planning (General Permitted Development) (England) Order 2015
"Application"	means the application for a development consent order under section 37 of the Planning Act 2008 in relation to the Project at the DCO Site and submitted to the Secretary of State on 30 May 2017 and given reference number EN010081
"Coal Station"	the buildings and structures within the Site which form the coal-fired power station originally permitted pursuant to the 1961 Consent
"Commencement"	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
"Commercial Use"	has the same meaning as is given in the Development Consent Order
"DCO Site"	means the land on which the Project is to be constructed shown on plan 4.1 submitted as part of the Application
"Demolition Project"	means the demolition of the Coal Station
"Development Consent Order"	means the development consent order to be made pursuant to the Application
"FGD"	means the flue gas desulphurisation plant built pursuant to the 2001 Consent
"Implementation Date"	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
"Interest Rate"	means 2% above the Bank of England base rate applicable at the date the relevant payment is due
"Plan 1"	means the plan attached to this Deed marked "Plan 1" showing the Site
"Prior Approval"	any prior approval of the District Council required as to the method of demolition and any proposed restoration of the Site under Part 11 of the 2015 Order
"Project"	means the "authorised development" as defined in and to be authorised by the Development Consent Order
"Proposed Power Plant"	means the proposed generating station that is part of Work No. 1 as described in Schedule 1 to the Development Consent Order
"Qualifying Part"	means any part of the Coal Station excluding the cooling towers, chimney, boiler house or precipitator buildings (each as labelled on the Plan)

"Relevant Consent"	means any of the following: (a) planning permission granted under the 1990 Act after the date of this Deed; (b) development consent under the 2008 Act granted after the date of this Deed; or (c) a local development order or mayoral development order made after the date of this Deed
"Site"	means the land at Eggborough Power Station, near Selby, North Yorkshire shown edged in orange on Plan 1
"Secretary of State"	means the Secretary of State for Business, Energy and Industrial Strategy
"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 its interest in the Site 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 "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:
 - (a) the Development Consent Order has been made; and
 - (b) the Implementation Date has occurred.
- 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 as follows:
 - 4.1.1 EPL will apply to the District Council for a determination as to whether Prior Approval is required for the Demolition Project within twelve months of Commencement of the Project;

4.1.2 Prior to the first Commercial Use EPL will (if required) submit an application for Prior Approval of the demolition of the Existing Power Station including a scheme of demolition.

4.2 If the District Council refuses to grant Prior Approval:

4.2.1 EPL and the District Council shall meet within one month of EPL receiving that refusal;

4.2.2 At that meeting the District Council shall explain the reasons for refusal and the parties shall agree a timetable for re-submission of the application for Prior Approval proportionate to the work required to address those reasons;

4.2.3 EPL shall re-submit the Application in accordance with the agreed timetable.

4.3 Subject to clause 4.4, EPL covenants to complete the Demolition Project within five years:

4.3.1 of receiving Prior Approval;

4.3.2 (if Prior Approval is not required) of the first Commercial Use of the Proposed Power Plant; or

4.3.3 such other timescale as may be agreed between the District Council and EPL pursuant to clause 4.2.

4.4 Nothing in clause 4.3 obliges EPL to demolish:

4.4.1 any development carried out pursuant to the 2001 Consent;

4.4.2 any part of the Coal Station for which a Relevant Consent is obtained after the date of this Deed which allows for the retention, alteration, re-development or change of use of that part;

4.4.3 any Qualifying Part of the Coal Station in respect of which either:

(a) a change of use has been made pursuant to the 2015 Order prior to the submission of the application for Prior Approval (if required) or otherwise prior to demolition of the remainder of the Coal Station in accordance with the obligation in clause 4.3;

(b) a proposal for a change of use pursuant to the 2015 Order has been made in writing to the District Council:

(i) prior to submission of the application for Prior Approval (if required);

(ii) as part of the application for Prior Approval; or

(iii) otherwise prior to demolition of the remainder of the Coal Station in accordance with the obligation in clause 4.3.

4.4.4 any part of the Coal Station which is not owned or operated by EPL or which is required by National Grid Electricity Transmission plc or any other statutory undertakers for the purposes of their undertaking; or

4.4.5 the rail line and any associated infrastructure.

5. **LOCAL LAND CHARGE**

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

6. **ENFORCEMENT**

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.

7. **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.

8. **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.

9. **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.

10. **CERTIFICATES OF COMPLIANCE**

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

11. **NOTICES**

11.1 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.

11.2 Any such notice must be delivered by hand or by pre-paid Special Delivery post and shall conclusively be deemed to have been received:

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

11.2.2 if sent by Special Delivery post and posted within the United Kingdom, on the day 2 Working Days after the date of posting.

11.3 The address for service of any such notice, consent or approval as aforesaid shall:

11.3.1 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 Gillian Marshall, Solicitor to the Council; and

11.3.2 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 James Crankshaw, Head of Asset Management.

12. **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.

13. **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.

14. **COUNCILS' POWERS**

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

15. **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.

16. **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.

17. **JURISDICTION**

17.1 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.

17.2 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).

18. **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.

19. **DATE OF DELIVERY**

This Deed is delivered on the date of this Deed.

20. **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 start 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**

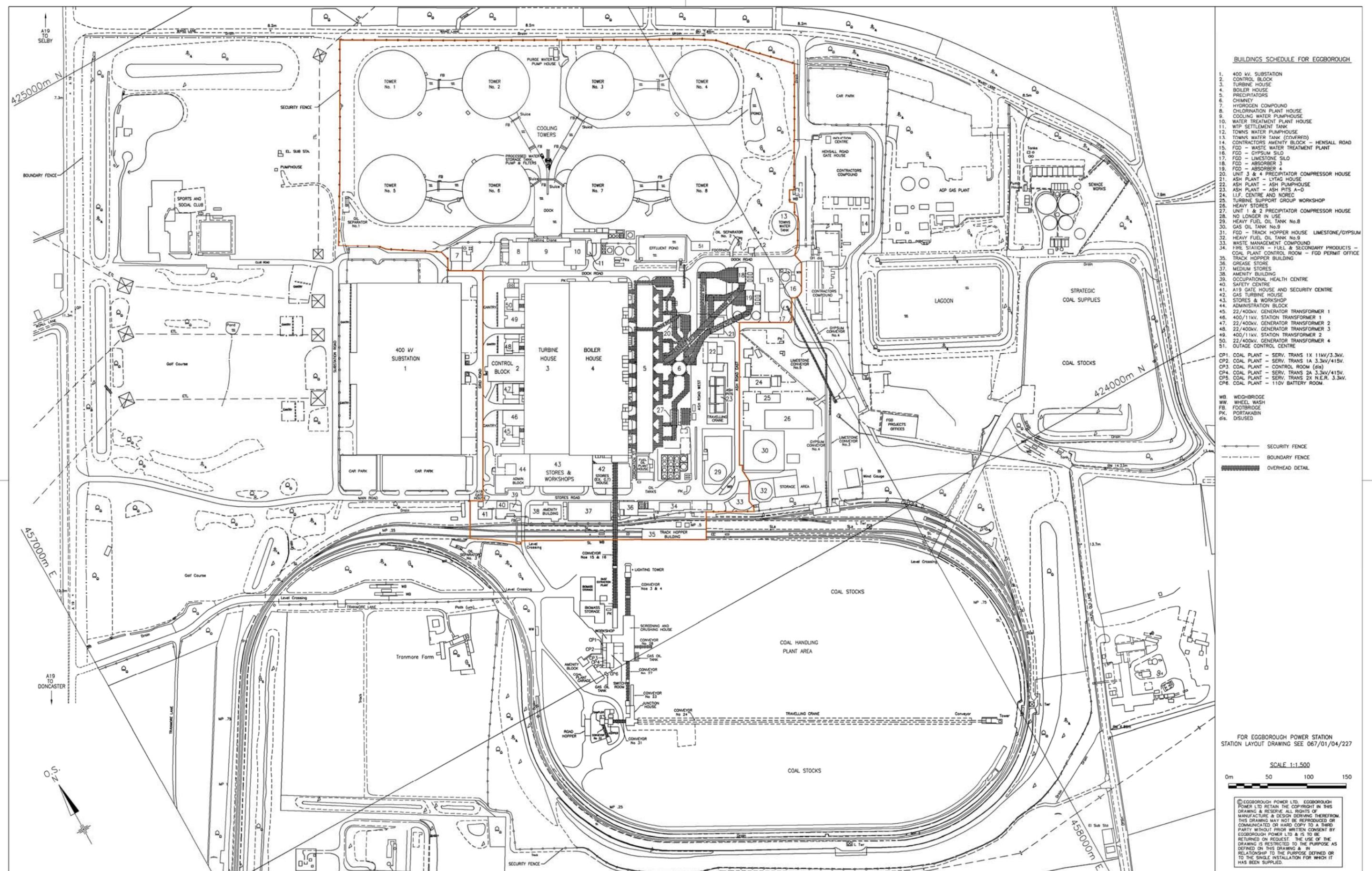
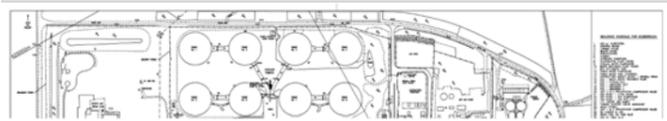
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acting by two directors or one director and the company secretary:

Director

Director / Secretary

APPENDIX 2: PLANNING AGREEMENT PLAN



BUILDINGS SCHEDULE FOR EGGBOROUGH

1. 400 kV. SUBSTATION
2. CONTROL BLOCK
3. TURBINE HOUSE
4. BOILER HOUSE
5. PRECIPITATORS
6. CHIMNEY
7. HYDROGEN COMPOUND
8. CHLORINATION PLANT HOUSE
9. COOLING WATER PUMPHOUSE
10. WATER TREATMENT PLANT HOUSE
11. WTP SETTLEMENT TANK
12. TOWNS WATER PUMPHOUSE
13. TOWNS WATER TANK (COVERED)
14. CONTRACTORS AMENITY BLOCK - HENSALL ROAD
15. FGD - WASTE WATER TREATMENT PLANT
16. FGD - DYSPLASIA SILO
17. FGD - LIMESTONE SILO
18. FGD - ABSORBER 3
19. FGD - ABSORBER 4
20. UNIT 3 & 4 PRECIPITATOR COMPRESSOR HOUSE
21. ASH PLANT - LYTAG HOUSE
22. ASH PLANT - ASH PUMPHOUSE
23. ASH PLANT - ASH PIT'S A-D
24. I.L.F. CENTRE AND NOREC
25. TURBINE SUPPORT GROUP WORKSHOP
26. HEAVY STORES
27. UNIT 1 & 2 PRECIPITATOR COMPRESSOR HOUSE
28. NO LONGER IN USE
29. HEAVY FUEL OIL TANK No.8
30. GAS OIL TANK No.9
31. FGD - TRACK HOPPER HOUSE LIMESTONE/GYPSUM
32. HEAVY FUEL OIL TANK No.9
33. WASTE MANAGEMENT COMPOUND
34. FIRE STATION - FUEL & SECONDARY PRODUCTS - COAL PLANT CONTROL ROOM - FGD PERMIT OFFICE
35. TRACK HOPPER BUILDING
36. GREASE STORE
37. MEDIUM STORES
38. AMENITY BUILDING
39. OCCUPATIONAL HEALTH CENTRE
40. SAFETY CENTRE
41. A19 GATE HOUSE AND SECURITY CENTRE
42. GAS TURBINE HOUSE
43. STORES & WORKSHOP
44. ADMINISTRATION BLOCK
45. 22/400kV. GENERATOR TRANSFORMER 1
46. 400/11kV. STATION TRANSFORMER 1
47. 22/400kV. GENERATOR TRANSFORMER 2
48. 22/400kV. GENERATOR TRANSFORMER 3
49. 400/11kV. STATION TRANSFORMER 2
50. 22/400kV. GENERATOR TRANSFORMER 4
51. OUTAGE CONTROL CENTRE
- CP1. COAL PLANT - SERV. TRANS 1X 11kV/3.3kV.
- CP2. COAL PLANT - SERV. TRANS 1A 3.3kV/415V.
- CP3. COAL PLANT - CONTROL ROOM (dis)
- CP4. COAL PLANT - SERV. TRANS 2A 3.3kV/415V.
- CP5. COAL PLANT - SERV. TRANS 2X N.E.R. 3.3kV.
- CP6. COAL PLANT - 110V BATTERY ROOM.

- WB. WHEEL WASH
 - NW. NUT WASH
 - FB. FOOTBRIDGE
 - PK. PORTAKABIN
 - dis. DISUSED
- SECURITY FENCE
 - - - BOUNDARY FENCE
 [Symbol] OVERHEAD DETAIL

FOR EGGBOROUGH POWER STATION
 STATION LAYOUT DRAWING SEE 067/01/04/227

SCALE 1:1,500
 0m 50 100 150

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LP 1/2A	M.V. 2/2A
A	B
DESIGNED BY VISION	DESIGNED BY VISION
CHECKED BY TY CENTRE BUILDING	CHECKED BY 24 NOV 11 (OUTAGE CENTRE)



REDRAWN / DATE	DR 14.11.05
TRACED / DATE	
CHECKED	

EGGBOROUGH POWER STATION
 SITE PLAN