

North York Moors National Park Authority

1 October 2018

Core Policy D Contributions

1. Purpose of the Report

- 1.1 To propose a framework for the disbursement of contributions made under the Core Policy D element of the Woodsmith Mine S106 agreement.

2. Background

- 2.1 Planning application NYM/2014/0676/MEIA, was granted permission on 15 October 2015 (updated NYM/2017/0505/MEIA - 6 February 2018). This included a S106 agreement to provide considerable resource to compensate and mitigate in specific ways against the assessed harmful residual impacts on the National Park arising from the development.
- 2.2 One element of the S106 agreement provides for the planting of mixed deciduous woodland under Core Policy D. The contribution under consideration in this paper is made to offset carbon emissions from the operational electricity usage of the mine development.
- 2.3 Core Policy D delivery refers to Core Policy D of the adopted Core Strategy and Development Policies document which was adopted by the Authority's Planning Committee on 13 November 2008. This policy is a longstanding requirement for 10% of predicted CO₂ emissions to be displaced by renewable energy for new developments of over 5 houses or other uses over 200sqm. During the Woodsmith Mine pre-application process it was realised that the number and scale of wind turbines or solar panels needed to meet the on-site renewable energy requirement for the proposed mine and tunnel would not be possible or appropriate. Off-site tree planting as a means of offsetting CO₂ emissions through tree planting was therefore agreed as an alternative way to address Core Policy D.
- 2.4 The agreement provides compensation over 100 years to plant 7,155ha of new mixed deciduous woodland. This equates to 220ha over the first five years from Commencement of development (4 May 2017) and 219ha every three years after that. The payment increases incrementally over the first five years to a maximum of £675,000 per year (index linked) for the following 95 years.

3. Contribution Framework

- 3.1 The purpose of the contribution is carbon sequestration to offset carbon emissions generated during the operational life of the mine.
- 3.2 The S106 agreement specifies that any woodland creation schemes must take place within the North York Moors National Park area. It also specifies that any new woodland created must be done in accordance with the National Park Management Plan and so be environmentally positive. To achieve this it should meet at least one of the following criteria:
- enhance the landscape
 - contribute to connectivity and wildlife corridors

- adjacent to ancient woodland sites or veteran trees
 - contribute to flood mitigation or improve water quality
- 3.3 All schemes will be subject to a Woodland Creation Agreement to document the scheme and the management, monitoring and funding arrangements. A template agreement can be seen in **Appendix 1**.
- 3.4 Following discussions internally and with our woodland partners, it is suggested that, to achieve the long term carbon sequestration objectives, any scheme should also meet the following criteria related to effective management of the scheme:
- minimum area of woodland creation in one agreement is 1ha
 - minimum length of an agreement is 25 years
 - at least 20% canopy cover on maturity
 - contributions will only be offered for works which are not required by environmental legislation or planning conditions/requirements
 - all agreements will be land charged.
- 3.5 Costs of woodland creation are detailed in the Section 106 Proposed Programme, Rationale and Costings to Compensate for Residual Impacts relating to Conservation Matters and these include a modest incentive payment. The scheme will fund up to 100% of capital costs and will make an annual maintenance payment for at least 5 years to ensure good establishment of the trees. An incentive payment will only be used where necessary and with the approval of the Director of Polyhalite Projects, to ensure best value for money. Members will be consulted where the overall payments proposed for a scheme significantly (by over 10%, index linked) exceed those stated in the above document.
- 3.6 Consultation with all regulatory bodies and the local community is carried out for all schemes over 2ha through the Forestry Commission's screening for the need for an Environmental Impact Assessment.
4. **Value for Money**
- 4.1 To achieve the carbon sequestration targets set out in the S106 agreement, it is necessary to actively encourage landowners to work in partnership with the Authority to deliver woodland creation projects. From our previous experience and that of our woodland creation partners, we know that this can be achieved by making the application process simple and the establishment of woodlands cost neutral to the landowner. Therefore up to 100% of costs will be paid up to an agreed maximum. This includes the first 5 years of establishment costs. If the agreement holder will lose their Basic Payment (or its successor) through woodland creation, then this can be compensated for in the first 5 years of the agreement.
- 4.2 To ensure that the right trees are planted in the right place, we will work with our partner woodland organisations to ensure that landowners are presented with a range of woodland creation options and that the most appropriate woodland creation scheme for the situation is promoted.
- 4.3 Any proposed sites identified for woodland creation will be subjected to internal and external constraints checks to ensure that the schemes are appropriate for the location.
- 4.4 Capital schemes will be devised and cost estimated by the Authority's Woodland Creation Officer based on a range of sources, including Countryside Stewardship and National Forest payment rates for woodland creation. The scheme of works will be agreed with the landowner.

- 4.5 The Landowner shall obtain and submit to the Authority a minimum of three written itemised quotations for the cost of works where the estimated value of a contract is between £5,000 and £50,000. Where the estimated value of a contract is £5,000 or less one itemised quotation may be accepted with the written approval of the Authority. For Work Programmes costing over £50,000 the Authority's financial procedures must be followed. N.B. These financial thresholds will increase when the Authority's Financial Regulations are reviewed on 1 October 2018.
- 4.6 Any payment will be based on the lower quotation and must be agreed in writing by the Authority before the works are commenced.
- 4.7 All agreements will contain a clause that enables the Authority to re-claim grant from an agreement holder that is found to be in breach of the terms and conditions of the agreement.

5. Financial and Staffing Implications

- 5.1 The scheme including direct staffing is fully funded through the s106 Core Policy D contribution. As well as capital costs, long term maintenance agreements are provided for within the contribution and budgeted accordingly.
- 5.2 The security arrangements that are in place through the s106 agreement ensure that there is sufficient money lodged in an ESCROW arrangement with Barclays Bank to cover any commitments for a rolling 10 year period from year one until year ten of the development and early operational phases. This arrangement is annually reviewed to ensure it is sufficient to cover all obligations for the main contributions and increased for inflation. This potentially covers agreements for the first twenty years of the developments lifespan. By the end of this period, the mine should be fully operational and generating sufficient income to meet its s106 obligations.

6. Contribution to National Park Management Plan

- 6.1 The activities delivered through the disbursement of the Core Policy D contributions deliver against the objectives of the management plan specified in Schedule 4 of the s106 agreement: E1, E11, E12 and E36.

7. Legal Implications

- 7.1 Appropriate management of the collection and payment of the Section 106 monies is necessary to ensure delivery of the identified compensation and mitigation elements in accordance with the express terms of the S106 Agreement and general Section 106 principles. As the monies are from a private source and are regulated and repayable in accordance with the S106 provisions, the Authority does not have discretion to allocate payments for materially different purposes other than, in this case compensating for carbon emissions through woodland creation. State Aid issues are not expected to arise for any of the contributions if those parameters are adhered to. The post EU position is clearly evolving quickly. Should issues around subsidy and competition arise, the Authority should be able to process/manage/record them, for example through de minimis arrangements. To monitor and manage risk the Authority will continue to determine and monitor the appropriate value of payments to be made.

8. Recommendation

8.1 That:

That the approach to delivery of the Core Policy D contributions of the Woodsmith Mine S106 agreement outlined above is approved.

Contact Officer:

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Background papers to this Report

File ref

1. S106 Agreement
2. Compensation & Mitigation Action Plan
3. Section 106 Proposed Programme, Rationale and Costings to Compensate for Residual Impacts relating to Conservation Matters

NORTH YORK MOORS NATIONAL PARK AUTHORITY

Woodland Creation Agreement

Woodsmith Mine Section 106 - Core Policy D

This Agreement is made pursuant to the Potash Section 106 Agreement dated 19 October 2015 between the Authority, York Potash Limited and other parties (and any variations to or supplements of that Agreement)

DATE:

PARTIES:

'Authority' North York Moors National Park Authority
of the National Park Office, The Old Vicarage, Bondgate,
Helmsley, York, YO62 5BP

and

'Landowner' [insert name and full address]

SITE: [insert name]
See Appendix 1 for Site Map

AGREEMENT REFERENCE: [eg. 2018/01]

TERM OF AGREEMENT: 25 years

Start Date [insert]

End Date [insert]

OBJECTIVE OF THE AGREEMENT:

To enable the creation of new mixed deciduous woodland to sequester carbon in line with the Authority's Core Policy D in compensation for the energy requirement of the development of Woodsmith Mine.

To ensure the establishment of new mixed deciduous woodland by the Landowner (and their successors in title) by ensuring they maintain all works and do all such things necessary to maintain and enhance the new woodland on the Site for 25 years.

1. Landowner's obligations

The Landowner:

- 1.1 confirms that they have title to the Site as the freeholder;
- 1.2 will manage the Site in accordance with this Agreement for 25 years from the Start Date;
- 1.3 will carry out all work specified in the Work Programme (Appendix 2) within the times specified and with due care and diligence in line with current best practice, which includes the Authority's specifications for work (Appendix 3)
- 1.4 will manage the Site in accordance with the UK Forestry Standard's legal and good forestry practise requirements;
- 1.5 will maintain all the work specified in the Work Programme for 25 years;
- 1.6 will ensure the successful establishment of the new woodland on the Site, including deer and pest management where appropriate;
- 1.7 will not sell any carbon rights in relation to the Site;
- 1.8 confirms that they have obtained all requisite consents to carry out the Work Programme and will disclose to the Authority if there are any legal or other restrictions affecting the Site which could prevent the Landowner completing or maintaining the work;
- 1.9 will disclose to the Authority the full details of any other agreements or funding relating to the Site;
- 1.10 if the Landowner does not hold the sporting rights on the Site then the Landowner must inform all holders of sporting rights of the existence of the Agreement and use their best endeavours to ensure that their activities do not conflict with the delivery of the Agreement. The Landowner must inform the Authority if there is any risk of the sporting rights conflicting with the Agreement;
- 1.11 indemnifies the Authority against all claims, demands, charges and actions resulting from the Agreement save where such claims, demands, charges and actions are the direct result of any negligent act or omission of the Authority.

2. Authority's obligations

- 2.1 Subject to the Landowner having complied with this Agreement the Authority agrees to make the payments referred to in the Agreement.
- 2.2 The Authority has checked the Site for its appropriateness for woodland creation and has agreed a specification with the Landowner prior to entering into this Agreement.

3. Payments

- 3.1 The Authority shall make payments by BACS for the works detailed in the Work Programme (Appendix 2) upon being satisfied that all works have been completed to its satisfaction and in line with current best practice guidelines, which includes the Authority's specifications for work (Appendix 3) and the UK Forestry Standard.
- 3.2 The grant amounts included in the Work Programme (Appendix 2) are estimated costs. If the actual costs are lower than the estimated costs the amount of grant will be reduced proportionately.
- 3.3 Where payments towards the actual costs of works are made:
- a) the Landowner shall submit a receipted invoice to the Authority and such other details relating to the works as may be reasonably required;
 - b) the Landowner shall obtain and submit to the Authority a minimum of three written itemised quotations for the cost of works where the estimated value of a contract is between £5,000 and £50,000. Where the estimated value of a contract is £5,000 or less one itemised quotation may be accepted with the written approval of the Authority;
 - c) payment will be based on the lower quotation and must be agreed in writing by the Authority before the works are commenced;
 - d) for Work Programmes costing over £50,000 the Authority's financial procedures must be followed.
- 3.4 Any offer of grant will be regarded as withdrawn if the work is not completed by the deadlines set in the Work Programme, unless agreed in writing with the Authority.
- 3.5 The Landowner will repay to the Authority any grant paid to it where the Authority considers that the Landowner has (i) acted fraudulently or negligently in relation to this Agreement, or (ii) failed to establish the woodland successfully (as specified in Appendix 2) within 10 years of the Start Date.
- 3.6 The Landowner will not claim for, and the Authority will not be obliged to make payments for, any works that the Landowner is required to undertake under any legislation, regulation or other legal agreement.
- 3.7 If the Landowner fails to carry out his obligations under the Agreement this shall be deemed a breach of the Agreement and part or all of the payments may be withheld and recovered, at the Authority's discretion, until such a time as the breach is rectified to the Authority's satisfaction.

4. Access

- 4.1 The Landowner agrees to provide access to the Authority, and those authorised by it, to the Site with or without vehicles for the purpose of monitoring the Agreement and the Authority agrees to give prior notification to the Landowner except in the case of emergency.

5. Variation

- 5.1 The Authority or the Landowner may propose a variation to the terms of this Agreement at any time. If the proposal to vary is accepted, the variation must be recorded in writing and attached to the Agreement.

6. Termination

- 6.1 The Authority may terminate this Agreement immediately in the following circumstances:-
- a) where any act or occurrence including force majeure or Act of God causes the Site or any part of it to be so damaged or injured or otherwise changed so as to frustrate the purpose of this Agreement;
 - b) if the Landowner is in persistent or material breach of his obligation under the Agreement;
 - c) if the Landowner becomes bankrupt or has a receiving order made against him or presents a petition in bankruptcy;

7. Sale of the Site

- 7.1 If the Landowner intends to cease to own the Site within the Term of the Agreement, the Landowner will notify the Authority in writing at least 3 months prior to the date of cessation and shall confirm the name and address of their successor to the title and the date of transfer of ownership.
- 7.2 In the event that the Landowner's obligations are not fulfilled the Authority will reclaim grant with interest from the Landowner successor in title to the Site. In view of this liability it is the responsibility of the Landowner successor in title to the Site to carry out all relevant searches, enquiries and inspections in relation to the Landowner, the Site and this Agreement.

8. Publicity

- 8.1 The Authority may under this Agreement use for its own promotional purposes information on the Site, including number of trees planted, the geographical location and photographs of the Site.
- 8.2 Any promotional information the Landowner produces must have the prior written consent of the Authority.

9. Dispute resolution

- 9.1 Any dispute arising out of or in connection with this Agreement shall be determined, in the absence of agreement between Parties, by a single arbitrator to be appointed by agreement between them, or in the absence of such agreement by the President of the Institute of Chartered Foresters on the application of either the Authority or the Landowner. Such arbitration to be conducted in accordance with the provisions of the Arbitration Act 1996.

10. General

- 10.1 This Agreement is a Local Land Charge as defined by Section 1 of the Local Land Charges Act 1975 and shall be registered as such.
- 10.2 This Agreement shall bind the Site, the Landowner and the Landowner successor in title to the Site, and reference to "Landowner" in the Agreement shall include their successor in title.
- 10.3 This Agreement is governed by English Law. References to any Act or Regulation include references to any amendment or re-enactment.
- 10.4 The Landowner and Authority agree that unless the right of enforcement is expressly granted it is not intended that a third party should have the right to enforce a provision of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 10.5 Payment details will be published by the Authority in accordance with the Openness of Local Government Bodies Regulations 2014.
- 10.6 Any notice to be given under this Agreement shall not be binding unless in writing and given personally or sent by pre-paid post to the addresses referred to above.

11. Data Protection, Disclosure of Information & Freedom of Information

- 11.1 The Authority is subject to the provisions of prevailing Data Protection and Freedom of Information legislation and regulations and the information contained in and relating to this Agreement will be used by the Authority for administration, evaluation and monitoring purposes. The Authority reserves the right to disclose all information (including financial information) contained in and relating to this Agreement to other public authorities and statutory bodies. The Authority reserves the right to publish information about the Work Programme and Payment covered by the Agreement. Such information may be in the form of a map.

SIGNED BY the Parties in this Agreement:

..... (the Landowner)

On(date)

WITNESSED BY..... (Name)

..... (Address)

..... (Occupation)

..... (for the Authority)

On(date)

WITNESSED BY (Name)

..... (Address)

..... (Occupation)

Appendices

Appendix 1 – Site map

Appendix 2 – Work Programme

Appendix 3 – Specifications for works