

North York Moors National Park Authority

1 October 2018

Local Businesses Tourism Contribution

1. Purpose of the Report

- 1.1 To propose a framework for the disbursement of contributions made under the Local Businesses Tourism Contribution 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 makes provision for a Local Tourism Business Contribution to assist local businesses related to tourism.
- 2.3 The agreement provides an annual compensation payment for the construction and post construction period of the development. The payment is £50,000 a year (index linked). The construction phase is not precisely known at this time but is generally expected to be in the region of five years from Commencement of Development (04 May 2017) with an equal length of time assigned to the 'post construction' period.

3. Contribution Scheme Proposal

- 3.1 The scheme is not intended to directly compensate local businesses that claim an impact on their business as a result of the development. These cases are dealt with directly by Sirius Minerals Ltd. The primary purpose of the contribution is to support local tourism businesses to offset impact on the tourism economy *of the area in general* as a result of the development of the Woodsmith Mine. (The Authority understands that businesses in particularly close proximity to the mine have bespoke arrangements with the company). The contribution is made to stimulate new tourism activity and contribute to all of the following criteria:
- Increase awareness of the North York Moors National Park or the wider North York Moors area, contributing positively to the area's tourism economy for example, by increasing tourism in the shoulder seasons, attracting new visitors to the North York Moors, or encouraging visitors to stay longer.
 - Utilise the area's local distinctiveness for the benefit of visitors.
 - Ensure that any increase in visitors to the area is sustainable, that its activities:
 - Must have no significant adverse impact on the area's tranquillity or the natural and historic environment.
 - Must not disturb vulnerable or protected wildlife.
 - Should consult with the local communities relevant to the project.
 - Demonstrate financial sustainability beyond the grant period.

- 3.2 The contribution can benefit tourism businesses within the North York Moors National Park area or its area of influence (The North York Moors) and have a significant beneficial impact on the area's tourism economy.
- 3.3 Contributions will be awarded at the following maximum rates:
- Voluntary sector, not for profit organisations and registered charities – up to 70%.
 - Collaborative groups (informal or formal e.g. business and trade forums) – up to 70%.
 - Individual businesses/private individual – up to 50%.
- 3.4 In general, awards will not be expected to exceed £25,000. Priority will be given to projects that generate significant benefit to the tourism economy.

Higher contribution awards **may be** considered for exceptional projects and in such circumstances, any contribution request for more than £25,000 may be considered individually by the Authority. Contributions may be split over more than one financial year.

- 3.5 Projects requesting more than £25,000 would require a full business plan to provide more detail on the need for, management and legacy of the proposal.
- 3.6 Contributions can only be claimed once the work has been invoiced and paid for.
- 3.7 Applicants must ensure that they can cash flow their project.

4 **Value for Money**

- 4.1 Unless otherwise agreed with the Authority, the applicant must get at least one quote for every element of the project. If any single element of the project has a value greater than £2,500, the applicant should obtain three written quotes. They should provide contractors with a written specification of the works proposed. If the lowest quote is not accepted, this must be justified in writing and agreed by the Authority. The applicant is required to submit all quotes and other paperwork when sending in their completed application form.
- 4.2 Any payment will be based on the lower quotation and must be agreed in writing by the Authority before the works are commenced.
- 4.3 All schemes will be subject to a Local Businesses Tourism Contribution agreement to document the scheme and the management, monitoring and funding arrangements. A proposed agreement can be seen in **Appendix 1**.
- 4.4 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 Tourism contribution.

6. Contribution to National Park Management Plan

6.1 The activities delivered through the disbursement of the Local Tourism Business Contributions deliver against the objectives of the National Park management plan: U10, U12, U14, B1, B2, B3, B4.

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 supporting local tourism businesses to offset any potential impact on the tourism economy as a result of the development of the Woodsmith Mine. 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 and nature of payments to be made.

8. Recommendation

8.1 That the approach to delivery of the Local Businesses Tourism Contribution of the Woodsmith Mine s106 agreement outlined above is approved.

Contact Officer:
Briony Fox
Director Polyhalite Projects
Tel No 01439 772700

Background papers to this Report

File ref

1. S106 Agreement
2. Compensation & Mitigation Action Plan



NORTH YORK MOORS NATIONAL PARK AUTHORITY

Local Businesses Tourism Contribution

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)

1. Introduction

- 1.1 This agreement, dated relates to the Local Businesses Tourism Contribution towards (the Project) and the application for financial support made by (the applicant).
- 1.2 On **(date)** a contribution of £... was awarded subject to the terms and conditions set out below. In consideration of the contribution the applicant has agreed to enter into this Agreement to carry out and complete the Project to the satisfaction of the North York Moors National Park Authority (the Authority) within the specified period and in accordance with the details set out in the application to the Local Businesses Tourism Contribution and the **Approved Project Outline** (Appendix 1).

2. The Authority's Obligation

- 2.1 Subject to the Applicant having complied with this Agreement, the Authority agrees with the Applicant to make the contribution payment referred to in this Agreement (the Contribution).

3. The Applicant's Obligation

- 3.1 This offer must be accepted within one month of the date in Clause 1.2 by the Applicant signing and returning two copies of this Agreement to the Authority. The Authority will countersign and return one copy to the Applicant.
- 3.2 The Contribution must be used for the purposes and in the manner set out in the Approved Project Outline.
- 3.3 The Project work must be fully completed and the completed claim form received by the Authority by **(date)**.
- 3.4 The Applicant agrees to undertake the Project to the satisfaction of the Authority with the highest level of care, skill and diligence in accordance with best practice in the industry, profession or trade that is relevant to the Project and to use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Applicant's obligations in this Agreement are fulfilled and thereafter to maintain the Project in a sound and reasonable condition for five years after the completion of the Project.

- 3.5 The Applicant must not for a period of five years after completion of the Project sell the whole or any part of any equipment (nor charge, mortgage, or part possession) relating to the Project without prior written approval from the Authority.
- 3.6 The Applicant must repay the Authority such amounts (if any) as may become payable under Clause 3.5 and Clause 7 of the Agreement.
- 3.7 The Applicant indemnities the Authority against all claims, demands, charges and actions resulting from the Project, save where such claims, demands, charges and actions are the direct result of any negligent act or omission of the Authority.
- 3.8 The Applicant shall maintain a comprehensive policy of insurance in respect of all equipment and staff funded by the contribution. Such insurance shall cover loss, damage or theft of all equipment and, in respect of staff funded by the contribution, personal injury or death. Where appropriate, this should include public liability and employer's liability insurance. In any event, the Applicant by signing this agreement will indemnify the Authority against all claims arising from the Project. If the Authority so demands, the Applicant shall produce evidence of such an insurance policy.
- 3.9 If the contribution is paid to facilitate the use of any property for a specified purpose or for the acquisition of equipment, the Applicant shall ensure that for a period of at least five years from the date of the first payment of the contribution the equipment and/or the property shall only be used for the purposes specified in the offer.
- 3.10 Where the Applicant appoints contractors to carry out any aspect of the Project, the Applicant shall obtain in advance from each contractor a quote for the cost of that aspect of the Project. Where any aspect of the Project has a cost exceeding £2,500 the Applicant shall obtain at least three quotes in advance from separate contractors which quotes shall be provided by the contractors in anonymous envelopes and which shall be opened by the Applicant at the same time in the presence of at least two members or officers of the Applicant. A written record should be kept by the Applicant summarising all the results, signed and dated by those present. If the lowest quote is not accepted by the Applicant then the Applicant shall ensure that decision is justified in writing and agreed by the Authority.

4. Payment of Contribution

- 4.1 No Contribution can be paid for any work carried out prior to the date of this Agreement.
- 4.2 Contribution will be paid on completion of the Project, or on completion of milestones in the Approved Project Outline (Appendix 1), to the satisfaction of the Authority.
- 4.3 All claims for Contribution payment must be accompanied by a fully completed claim form supplied by the Authority which will include receipted invoices, bank statements and any other information necessary to verify the claim.
- 4.4 For the contribution claim form, receipts must be provided for all item costs amounting to total project costs as detailed in appendix 1. Without evidence for total project costs we are unable to award the NYMNPA contribution percentage.
- 4.5 The Authority shall not be obliged to pay any Contribution to the Applicant unless the Project has been carried out in accordance with the terms and conditions of this Agreement.

- 4.6 The Applicant should maintain proper accounting records maintained in such a way as to ensure that all monies received and paid through the Contribution shall be identifiable and traceable.

5. Right to Inspect

- 5.1 The Contribution shall allow the Authority to inspect any part of the Project, its work or financial records at any reasonable time within 5 years after the completion of the Project.

6. Variation

- 6.1 The Authority or the Applicant may propose a variation to this Agreement at any time. If the proposal to vary is accepted, the variation shall be recorded in writing and attached to the Agreement.

7. Breach and Termination

- 7.1 The Authority may terminate this Agreement immediately in the following circumstances:
- 7.1.1 If the Applicant is in persistent or material breach of his obligation under the Agreement.
 - 7.1.2 If the Applicant is the subject of a bankruptcy petition or order, or any creditor of the Applicant takes possession of, or a distress, execution, sequestration or other such process is levied or taken against, any assets of the Applicant and such process is not discharged within 28 days of commencing.
- 7.2 The Applicant may terminate this Agreement immediately if the Authority is in persistent or material breach of its obligations under the Agreement.
- 7.3 Either party may terminate this Agreement immediately upon the occurrence of a force majeure event or act of god that fundamentally prevents the project being undertaken in accordance with this Agreement or causes the subject of the Project to be so changed so as to frustrate the purpose of this Agreement.
- 7.4 After termination of this Agreement, in accordance with this clause 7, the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination, shall not be affected, save that where force majeure or act of god has prevented the completion and delivery of the whole of the Project, the Authority shall not be liable to pay Contribution in respect of any part of the Project.

8. Notices, Consents and Rights of Third Parties

- 8.1 The Applicant acknowledges that notice has been given of the existence of this Agreement to any persons affected by this Agreement and that the Applicant has obtained all necessary consents from those persons.
- 8.2 The Applicant agrees to seek and obtain all other necessary consents for any works which are required by this Agreement before the works are carried out.

8.3 The Applicant or any persons carrying out any activity on their behalf must comply with all relevant legislation.

8.4 The Applicant and the 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.

9. Publicity/acknowledgement of Contribution

9.1 The Authority reserves the right to publicise full details of any Contribution offered, including the name of recipient, project details and Contribution offered.

9.2 The Applicant must provide adequate before, after and during digital photographs of the Project to the Authority for use in their promotional work.

9.3 Any mention of this Project in publicity and promotional/marketing material must acknowledge the support of the North York Moors National Park Authority, including using our logo on all materials produced as part of the Project, and must comply with the 'Guidelines for using Supported by Branding Logo' in Appendix 2.

9.4 When approving proofs with your design agencies, you are also required to provide the Authority with a copy of the proof to sign off that the logo has been correctly applied.

9.5 Press releases in respect to the funded Project must have prior approval of the Authority before being issued.

10. Data Protection and Disclosure of Information

10.1 North York Moors National Park Authority is registered under the Data Protection Act 1998. The information contained in this Agreement will be used by the Authority for administration, evaluation and monitoring purposes. The Authority reserves the right to disclose all non-financial information contained within this Agreement to all public authorities and statutory bodies. The Authority reserves the right to disclose to the general public the nature and content of this Agreement. Such information may be in the form of a map.

11. Special Conditions

11.1 One of the key objectives of the contribution is to increase awareness of the North York Moors National Park or the wider North York Moors area and encourage the use of our correct name (NOT North Yorkshire Moors). Therefore your marketing materials should make reference to this in an appropriate place in some way e.g. Hutton le Hole in the North York Moors or Ampleforth on the edge of the North York Moors. If this is not adhered to, the Authority reserves the right to recover all or part of the contribution.

11.2 Any promotional literature/websites being contribution aided must be written and designed by a professional and be approved by the Authority at draft stage.

12. State Aid and De Minimis:

12.1 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 supporting local

tourism businesses to offset any potential impact on the tourism economy as a result of the development of the Woodsmith Mine. 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 and nature of payments to be made.

13. Entire Agreement

13.1 This Agreement constitutes the entire agreement between the Authority and the Applicant and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14. Governing Law

14.1 This Agreement shall be governed by English Law.

Execution:

Signed by the Applicant (1)

Signature Date

Name (please print)

In the presence of:

Witness signature

Name (please print)

Address

Occupation Daytime telephone nos.

Signed by the Applicant (2)

Signature Date

Name (please print)

In the presence of:

Witness signature

Name (please print)

Address

Occupation Daytime telephone nos.

**Signed by Briony Fox, Director (Polyhalite Projects)
On behalf of the Authority**

Signature Date

APPENDIX 1- Approved Project Outline

North York Moors National Park Authority Local Businesses Tourism Contribution

Project Details	
Project Name	
Project Applicant	
Location	
Award Date	
Approved Purposes	
Approved Uses	
Agreed Outputs	

Project Finances	
Please ensure all item costs can be evidenced through receipts, invoices or timesheets amounting to the total project cost. This will ensure we can pay the NYMNPAA percentage up to the total NYMNPAA contribution award.	
Item Cost (Excluding VAT)	£
Total Project Costs	
Project Incomes	
Total Project Income	
NYMNPAA Contribution Award	% Total Project Costs

Project Schedule			
Planned Start Date		Planned Completion Date	
Contribution Instalments / Other Milestones (M)	Conditions/ Work		Expected
<i>REF</i>	<i>Amount</i>		
M1		An interim payment based 50% of project costs	
M2		Submit project update by email with your final claim for outstanding costs	