

National Park Authority Board Meeting



Special Board Meeting - Cononish Goldmine

Paper for decision

1. Purpose

1.1 This report requests Member's agreement to hold a Special Board Meeting on Monday the 26th January 2015 to consider a "section 42" planning application for an amendment to condition 15 of permission reference 2011/0166/MIN for a gold and silver mine at Cononish Farm, near Tyndrum. This paper explains the background to the application and the context within which this decision requires to be taken.

2. Recommendation

2.1 Members are asked to approve the arrangement of a Special National Park Board Meeting to be held on Monday the 26th January 2015 to determine "section 42" planning application reference 2014/0285/DET and the associated Section 75A application to modify the planning obligation.

3. Background

- 3.1 Planning application ref 2011/0166/MIN for "Development of an underground mine to extract gold and silver with associated service and production building, plant, storage area, Tailings Management Facility (TMF), recirculation pond and gauging station, diversion of burn, access roads, bridge and car parking being further revision of proposals Ref 90/01102/DET/S and Ref 2010/0017/MIN" was minded to be approved at a special meeting of the National Park Board on 25th October 2011 (following a site visit and hearing), subject to conditions and to the completion of a section 75 planning agreement. The legal agreement was signed and registered in February 2012 and the decision notice was issued on 13th February 2012.
- 3.2 From November 2012 until August 2013 the applicant, Scotgold, submitted a number of reports and information to enable the discharge of pre-commencement conditions. By August 2013 only 9 of 25 pre-commencement conditions remained to be discharged. No further submissions on conditions were received as the applicant was not in a position to commence work on site.
- 3.3 A pre-application enquiry was received in July 2014 to amend condition 13 of application 2011/0166/MIN to extend the working hours of the production building and surface activities. The changes to the condition proposed are as follows:

<p>13.Limitation of Working Hours: The working hours for each element of the development hereby approved shall be limited as follows:</p>
--

National Park Authority Board Meeting

Special Board Meeting - Cononish Goldmine

(a) surface working operations relating to construction, decommissioning and post-production restoration: ~~between 0700hrs and 1900hrs~~ **0600hrs and 2100hrs** Monday to Saturday and not on Sundays or recognised Scottish Public Holidays.

(b) underground working: 24 hours.

(c) processing building to operate, including vehicle movements within the site: ~~between 0700hrs and 2300hrs~~ **24 hours** Monday to Saturday and not on Sundays or recognised Scottish Public Holidays.

(d) surface working operations (including vehicle movements) on the TMF relating to progressive construction of subsequent lifts and restoration: ~~between 0800hrs and 1800hrs~~ **0600hrs and 2100hrs** Monday to Saturday and not on Sundays or recognised Scottish Public Holidays.

(e) haulage of minerals from the site or acceptance of deliveries to the site along the Cononish Access road from Dalrigh and Station Road Lower: between 0800hrs and 1800hrs Monday to Saturday and not on Sundays or recognised Scottish Public Holidays.

No works or vehicle movements shall be undertaken outwith the time periods listed above, excluding emergencies, unless otherwise agreed in writing, in advance, with the Planning Authority.

This means that the consented working hours during the construction, decommissioning and post-production restoration phases are currently between 7am and 7pm, Monday to Saturdays. The consented working hours during the lifts on the TMF are between 8am and 9pm, Monday to Saturdays. The current section 42 application is to extend these hours from 6am to 9pm to “allow flexibility for longer working dates, in particular to reflect daylight hours during summer months”. The consented processing hours are 7am to 11pm Monday to Saturdays. The current application is extend processing to allow for a 24 hours working pattern Monday to Saturday, allowing processing to more closely match production.

- 3.4 Scotgold were advised by the Planning Authority that a further planning application would be required to alter the condition, together with an addendum to the Environmental Impact Assessment. The correct process for this type of application being provided under section 42 of the Town and Country Planning (Scotland) Act 1997, as amended. Also the section 75 planning agreement would require modification.
- 3.5 Scotgold are very anxious to see the planning application determined in good time before the current planning consent expires on 12th February 2015. This is important in order to avoid a lapse of consent for the mining operations. As explained below a “section 42” application provides for a renewed period of permission.

National Park Authority Board Meeting

Special Board Meeting - Cononish Goldmine

4. Section 42

- 4.1 A “Section 42 Application” means an application for a new planning permission for a development but with different conditions from those attached to a previous permission for that development. In determining such an application, the planning authority can only consider changes to the conditions on the previous permission.
- 4.2 A Section 42 application is an application for a fresh permission and is not an application to vary the original permission. If granted, the section 42 application would have the effect of renewing the time period for commencement of development (an additional 3 years) and the decision notice should restate all the original conditions, with condition 13 amended as required.
- 4.3 The applicant had also requested that the Planning Authority review all the original conditions in light of those pre-commencement conditions which have already been discharged (see paragraph 3.2 above). Legal advice sought on this has advised against this approach and recommended that the permission be re-issued in terms of the original consent. An update on the discharge of planning conditions can be issued to the applicant alongside any new consent in the event that permission is granted.
- 4.4 If the Section 42 application was to be granted, the planning obligation (legal agreement) associated with the original consent would require to be updated to refer to the new consent. An application to vary the planning obligation agreement is anticipated to be submitted shortly and requires to be determined in parallel with the planning application.

5. Modification of Planning Obligation (Section 75A)

- 5.1 At present there is a section 75 legal agreement associated with the original consent which provides for:
- A financial guarantee (bond) sufficient to allow the National Park Authority to enter and restore the site to a satisfactory standard at any stage of the development in the event that the operator has failed to meet defined obligations (including Mining Waste obligations) or has abandoned the site.
 - Greater Cononish Glen Management Plan
 - Developer contributions towards projects which enhance conservation and visitor experience in the National Park.
 - Developer contributions towards the National Park Authority’s costs incurred in monitoring the development.

National Park Authority Board Meeting

Special Board Meeting - Cononish Goldmine

- 5.2 This planning agreement requires to be modified by the applicant, to refer to the new application or subsequent section 42 applications. The separate modification application (under Section 75A) requires to be determined by the National Park in parallel with the section 42 application in order to ensure that the planning obligations continue to apply to the proposed development. Such applications can only be approved or refused, there is no remit to amend the proposed wording of the modification once the S75A application has been submitted.

Review of Bond Amounts

- 5.3 The National Park Authority have the right, under clause 5 of the section 75 legal agreement, to request a review of the bond amounts prior to the commencement of development, on the basis of updated information. It is anticipated that such a review will take place before commencement of the development.
- 5.4 Therefore the planning obligation does not require to be modified in terms of the bond amounts at this stage, as there is an opportunity to review these amounts prior to works commencing. No modifications to the section 75 legal agreement, other than ensuring correct cross-referencing to the modified consent, are considered necessary at this time.

6. Timing of Determination of both applications

Understanding the process

- 6.1 A board decision is required in good time in order to allow for a period for checks to be made to ensure the revised planning obligation agreement is in force before issuing a revised planning consent.
- 6.2 Therefore it is proposed that a Special Board Meeting is convened to determine both the application for modification of the planning obligations (section 75A) and the section 42 application and that this should be held on 26th January 2015 at 10.30am. If the Board were minded to approve the applications this would enable the process as described above to be followed and the new consent for the goldmine to be issued prior to 13th February 2015 which is the date when the existing consent (ref: 2011/0166/MIN) is due to expire.

7. Appendices

1. Site Location Plan
2. Section 42 application ([website](#) link)

National Park Authority Board Meeting

Special Board Meeting - Cononish Goldmine

8. Background information

8.1 Cononish NPA Board Meeting 24/10/2011 & 25/10/2011 ([website](#) link)

Author: Catherine Stewart, Development Management Planner

Executive Sponsor: Gordon Watson, Director of Operations