

National Park Authority Board Meeting



Special Board Meeting - Cononish Goldmine

Paper for decision

REPORT No.	NPA/01/2015/02
SUBMITTED BY:	Head of Planning & Rural Development
APPLICATION NUMBERS:	(i) 2014/0285/DET (ii) 2014/0317/DET
APPLICANT:	Scotgold Resources Ltd
LOCATION:	Cononish Glen, near Tyndrum
PROPOSALS:	(i) Variation of Condition No. 13 attached to planning permission 2011/0166/MIN to allow extended hours for construction, decommissioning & restoration and for processing plant operation (ii) Modification of Planning Obligation

NATIONAL PARK WARD:	Ward 2 (northern (central) area)
COMMUNITY COUNCIL AREA:	Strathfillan Community Council
CASE OFFICER:	Name: Catherine Stewart Tel: 01389 727731 E-mail: catherine.stewart@lochlomond-trossachs.org

1. Purpose

- 1.1 Members will recall their consideration and approval of the Cononish Gold Mine and associated infrastructure at a Special Board meeting in October 2011. The decision notice was issued in February 2012, following the completion of the associated planning agreement. This is a significant development in terms of the type of development, its scale and location. The Board's approval included a comprehensive suite of conditions, agreements for this development which includes enabling works through to de-commissioning and restoration over 10 years with restoration works taking place over the subsequent 20 years. It was agreed by the Board at its December 2014 meeting that the applications should be determined at a Special Board Meeting.
- 1.2 The applications are for (i) an amendment to condition 13 of permission reference 2011/0166/MIN for a gold and silver mine at Cononish Farm, near Tyndrum and (ii) modification of the associated Planning Obligation. Whilst the applicant's proposed

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changes are relatively small-scale, in the context of the scope of the original permission, the approval of the applications would also have the effect of renewing the planning permission for a further three years.

- 1.3 Members should be aware that both applications have particular limitations in terms of their assessment and consideration. Application (i) for an amendment to condition 13 of permission reference 2011/0166/MIN has been submitted under "Section 42" of the Town and Country Planning Act and this means it is for a new planning permission for an existing approved development (the gold mine) but with different conditions from those attached to a previous permission for that development. In determining such an application, the legislation states that the principle of the development cannot be assessed and the planning authority can *only* consider changes to the conditions on the previous permission. Application (ii) for the modification of the associated Planning Obligation has been submitted under "Section 75A" of the Town and Country Planning Act and this type of application can only be approved or refused, the proposed modifications cannot be amended.

2. Recommendation

That Members:

1. **APPROVE** application ref. 2014/0285/DET for the variation of existing Condition 13 subject to the conditions contained in **Appendix 1** of this report and the registration of the modification of the planning obligation proposed in application ref. 2014/0317/DET in the Land Register/Register of Sasines; and
2. **APPROVE** application ref. 2014/0317/DET for the modification of the legal agreement as set out in **Appendix 2** of this report

3. Background

Site Description:

- 3.1 The site is located within Cononish Glen approximately 3km south west of Tyndrum (see Appendix 3 Site Location Plan). From the south, entry to the site is achieved from the A85 at Dalrigh by a 5.6km metalled access track that roughly follows the north bank of the Cononish River to the mine. There is also a northern track which meets the southern access approximately 2km east of Cononish Farm providing access from Tyndrum. The site consists of an area both over and underground. The surface operations extent of the application site (excluding the access track) is approximately 39 hectares. The site lies on the south eastern face of Beinn Chuirn. The Allt Eas Anie

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watercourse runs through the application site to converge with the Cononish Burn, designated as part of the River Tay Special Area of Conservation (SAC).

- 3.2 The nearest residential properties are located at Cononish Farm which includes the farmhouse approximately 100 metres from the site boundary and the old Tackman's House and byre ('B' Listed Building) approximately 250 metres from the site.
- 3.3 The main recreation activities in the area are walking and climbing with several routes used on the approach to Ben Lui. In suitable conditions during winter weather the nearby waterfall on Allt Eas Anie is used for ice climbing.
- 3.4 A full description of the site can be found in the National Park Board report from the October 2011 meeting referenced in section 11.3.

Description of Proposal:

- 3.5 In order to operate the mine there would firstly be a construction phase involving the diversion of the Allt Eas Anie burn which runs through the site, construction of the Tailings Management Facility (TMF) and erection of a processing building. During operation of the mine there will be commencement of extraction from the mine, operation of plant within the processing building and deposition in the TMF and subsequent lifts of the TMF. Throughout these stages there will be progressive restoration of the site, however post production there will be a decommissioning and a further restoration phase. A full description of the proposal can also be found in the National Park Board report from the October 2011 meeting referenced in section 11.3.
- 3.6 (i) Application 2014/0285/DET is for the variation of Condition No. 13 attached to planning permission 2011/0166/MIN to allow extended hours for construction, decommissioning & restoration and for processing plant operation. The changes to the condition proposed by the applicant are as follows:

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

- (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~~

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~~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.

- 3.7 This means that the consented working hours for surface working during the construction, de-commissioning and post-production restoration phases are currently between 7am and 7pm, Monday to Saturdays. The consented working hours for surface working during the lifts on the TMF are between 8am and 6pm, Monday to Saturdays. Application ref. 2014/0285/DET is to extend these surface working hours from 6am to 9pm to “*allow flexibility for longer working days, in particular to reflect daylight hours during summer months*”.
- 3.8 The consented processing hours are 7am to 11pm Monday to Saturdays. The current application is also to extend processing to allow for a 24 hours working pattern starting at midnight on Monday through to Saturday midnight, allowing processing (condition 13(c)) to more closely match production (condition 13(b)).
- 3.9 (ii) As a consequence of the proposed planning application described above application ref. 2014/0317/DET is for the modification of the section 75 legal agreement associated with application 2011/0166/MIN, to also refer to the application, ref. 2014/0285/DET, in order to ensure that the planning obligations apply to a new consent, if granted planning permission.

Environmental Impact Assessment (EIA):

- 3.10 For the purposes of the Environmental Impact Assessment (Scotland) Regulations 2011 the National Park is identified as a ‘Sensitive Area’. As a ‘Competent Body’ the National Park Authority (NPA) has a statutory duty to consider whether proposals for development should be subject to the EIA process. Mineral workings fall within Category 19: “Quarries and open-cast mining where the surface of the site exceeds 25 hectares” of Schedule 1 of the Regulations and therefore automatically require an EIA. The NPA provided a scoping response for the planning application to the applicant in October 2014. The applicant submitted an Environmental Statement (ES) addendum with the application – section 6 of this report outlines further details.

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Planning History:

3.11 The site has been the subject of a number of recent planning applications which specifically relate to the proposed gold mining operations. Below is a summary of the most recently decided applications. For a full list please see section 4.2 of the National Park Board report from the October 2011 meeting referenced in section 11.3.

Reference	Description	Outcome
2011/0166/MIN	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.	Minded to be approved at a special meeting of the National Park Board on 25 th 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 13 th February 2012.
2012/0171/DET	Discharge of legal agreement relating to planning application 90/01102/DET/S dated 27th Feb 1996.	Approved 1 st August 2012.

CONSULTATIONS AND REPRESENTATIONS

4. Consultations and Representations

Responses to Consultations:

Stirling Council Roads

4.1 No objections.

West of Scotland Archaeology Service (WOSAS)

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- 4.2 The changes proposed to working hours should not result in any alteration to the physical impact of the construction and operation of the mine, and should not, therefore, have any additional effect on archaeology or cultural heritage beyond that identified in the Environmental Impact Assessment submitted in support of the previous application.

Scottish Environmental Protection Agency (SEPA)

- 4.3 No objections.

Trunk Roads Authority

- 4.4 The current restriction of surface working hours at the mine is 07:00 – 19:00. The proposed variation would take the generated trips even further outside the network peak periods and no new trips would be generated. We can confirm that Transport Scotland is satisfied that this proposed variation to working hours will have a negligible impact on the trunk road network in terms of traffic and associated environmental effects.

Scottish Natural Heritage (SNH)

- 4.5 There will be no impacts on the natural heritage as a result of the proposed variation.

Stirling Council Environmental Health

- 4.6 The extended working hours in combination with the recommendations in Section 7 of Appendix 2 of the Environmental Statement addendum should be acceptable from a Public Health perspective and complaints from residential properties are considered to be unlikely. Note the noise assessments performed, to date, are based on noise predictions, therefore, the results of the noise monitoring are essential to verify the accuracy of the predictions and, if necessary, guide operational management.

Historic Scotland

- 4.7 No objections.

Scottish Water (Glasgow)

- 4.8 No response received.

RSPB (Glasgow)

- 4.9 No response received.

Health And Safety Exec. East Of Scotland Area (Edinburgh)

- 4.10 No response received.

British Geological Survey (Edinburgh)

- 4.11 No response received.

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Strathfillan Community Council

4.12 No response received.

Representations Received:

4.13 At the date of the preparation of this report no representations had been received.

5. Policy Context

National Park Aims:

5.1 The four statutory aims of the National Park are a material planning consideration.

These are set out in Section 1 of the National Parks (Scotland) Act 2000 and are:

- (a) to conserve and enhance the natural and cultural heritage of the area;
- (b) to promote sustainable use of the natural resources of the area;
- (c) to promote understanding and enjoyment (including enjoyment in the form of recreation) of the special qualities of the area by the public; and
- (d) to promote sustainable economic and social development of the area's communities.

5.2 Section 9 of the Act then states that these aims should be achieved collectively. However, if in relation to any matter it appears to the National Park Authority that there is a conflict between the first aim, and the other National Park aims, greater weight must be given to the conservation and enhancement of the natural and cultural heritage of the area.

Development Plan:

5.3 Stirling and Clackmannanshire Structure Plan (2002): Relevant Policies:

- Policy ENV10: Minerals – General Principles

5.4 National Park Local Plan (Adopted 2011): Relevant Policies:

- NP1 – Development in the National Park
- TRAN3 Impact of New Development on the Road Network
- TRAN7 Encouraging Outdoor Access
- MIN1 Proposals for Re-opening Old Mineral Sites and New Mineral extraction
- REC3 Outdoor sport and Recreation Opportunities
- ED3 Economic Development in the Countryside
- L1 Conserving and Enhancing the Diversity and Quality of the Park's Landscapes

Full details of the policies can be viewed on the Authority's [website](#) (weblink).

Other Material Considerations:

5.5 National Park Partnership Plan (2012-2017): All planning decisions within the National Park require to be guided by the policies of the Partnership Plan, where they are

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considered to be material, in order to ensure that they are consistent with the Park's statutory aims. In this respect the following policies are relevant:

- Con Policy 1: Conservation (Sandford) Principle
- Con Policy 3: Landscapes
- VE Policy 3: Recreation and Access
- RD Policy 3: Rural Economy

5.6 The Special Landscape Qualities of the Loch Lomond and The Trossachs National Park (2010) (SNH & the NPA)

5.7 Wildness Study in the Loch Lomond & The Trossachs National Park (2011)

5.8 Scottish Planning Policy (SPP) 2014

5.9 Scottish Planning Advice Notes

- Planning Advice Note PAN 51 (Revised 2006): Planning, Environmental Protection and Regulation
- Planning Advice Note PAN 50 Controlling the Environmental Effects of Surface Mineral Workings - Annex A: The Control of Noise at Surface Mineral Workings
- Planning Advice Note 1/2011: Planning and Noise
- Planning Advice Note 1/2013: Environmental Impact Assessment

6. Summary of Supporting Information

6.1 An Environmental Statement (ES) (October 2014) was submitted by the applicant. This is intended to form an addendum to the original 2011 statement, and for clarity shall be referred to as the "ES addendum" within this report. It covers:

- Noise
- Landscape and visual amenity

6.2 The ES addendum includes a justification for the proposed amendments – namely to allow for the desired flexibility in construction programming, in particular for allowing for longer hours during the summer months reflecting the duration of daylight hours. Also the proposed increase in hours for the operation of the processing plant to operate on a 24 hour basis is required to match that already permitted for mining and to allow for greater flexibility. The ES addendum states that permission to process over longer hours would enable processing to more closely match production and that there would also be benefits in relation to the efficiency of plant.

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7. Planning Assessment

7.1 (i) Firstly this report shall consider application ref. 2014/0285/DET which seeks a variation of Condition No. 13 attached to planning permission ref. 2011/0166/MIN to allow extended hours for construction, decommissioning & restoration and for processing plant operation. (ii) Then the report will consider the associated application ref. 2014/0317/DET for the modification of the section 75 legal agreement associated with the existing consent (2011/0166/MIN).

(i) 2014/0285/DET

7.2 This type of application is termed a “Section 42 Application” which means it is for a new planning permission for an existing approved development but with different conditions from those attached to a previous permission. In determining such an application, the principle of the development cannot be re-considered and the planning authority can only assess changes to the conditions on the previous permission. In this case the changes under consideration are those proposed to condition number 13 “Limitation of Working Hours” – as outlined section 3.6.

7.3 The key planning considerations for the proposed amendments to condition 13 are the impact of the extended working hours in terms of noise and light. Additional noise could impact on local residents, as well as visitors/walkers in the area. The environmental effects (in terms of noise and light) would not be entirely new – but would be over a longer time period, including night time working. The assessment requires to consider the impact of any additional noise and light within the context of the approved development. This report will therefore consider:

- Environmental impacts – noise and light
- Impact on Landscape
- Impact on Recreation and Access
- Other impacts – for example Transport
- Implications of the proposed change upon any other existing conditions
- Duration of consent

Environmental impacts – noise

7.4 The applicant submitted a noise report (ES addendum Appendix 2), which forms an addendum to the 2011 noise assessment. This took on board noise criteria given by Stirling Council’s Environmental Health Officers which set a Maximum Target Noise

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Level for the nearest residential property, Cononish Farm. The Maximum Target Noise Levels consist of a Trigger Criteria and a more stringent Compliance Criteria (if the Trigger Criteria cannot be met).

7.5 The ES addendum also states that the only residential property ordinarily occupied is Cononish Farm and that the property is in the ownership of the landowner. It notes that the occupant has a direct pecuniary interest in the mine and in addition is an employee of the applicant, Scotgold Resources Ltd.

7.6 The report found that normal processing operations and operations associated with the tailings dam would meet the daytime target noise levels, and at night would not exceed the compliance criterion. However temporary construction operations, including the channel formation would exceed the night-time trigger criterion during the proposed working hours period of 0600-0700hrs. However the compliance criterion could be met with these operations at a minimum distance of 350m from Cononish Farm and without the use of the drill rig. The report therefore recommended:

- No construction activities should take place within 350m of Cononish Farm during the period 0600 – 0700 hrs.
- No drilling operations should take place between 0600 -0700 hrs and 1800 – 2100 hrs.

Consequently these recommendations should be included within the changes to condition 13 (see Appendix 1 Conditions).

7.7 The report also listed a number of recommendations to ensure any potential noise impact is kept to a minimum, for example the location of the plant feed hopper within the processing building and the sound attenuation of vents. These recommendations should be included within condition 45 'Noise Limit' (see Appendix 1), which requires the mitigation measures as set out in the original ES to be implemented on site.

7.8 The Environmental Health Consultation response confirms that the extended working hours, in combination with the recommendations in Section 7 of the ES addendum, should be acceptable from a Public Health perspective and complaints from residential properties are considered to be unlikely. It also notes that the noise assessments performed to date are based on noise predictions, therefore the results of noise monitoring are essential to verify the accuracy of the predictions and, if necessary, guide operational management. Noise monitoring is required by condition 46 'Noise Monitoring Scheme' and no changes are considered necessary to this condition.

7.9 In terms of impacts on recreational users, the assumption made in the Noise Report is that the proposed increase in allowable working hours would have a minimal impact on the recreational users of the nearby footpath and Allt Eas Anie Waterfall as these would be unlikely to be used during night-time hours. Also the ES addendum notes

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that the specification of night time maximum target noise levels is primarily to address the concern of sleep disturbance which is not generally relevant to recreational access.

- 7.10 Although recreational users may make use of the footpath during the light summer evenings, it is considered that the impact of increased noise levels and activity on the site would not have any additional detrimental effect – see section 7.18 to 7.22 below.

Environmental impacts – light

- 7.11 The ES addendum states that the justification for the proposed amendments to the working hours is to allow for more flexibility in construction programming, in particular to allow for longer hours during the summer months, reflecting the duration of daylight hours. It states it is not proposed to extend construction hours into the hours of darkness as this is less practical and in this location has the potential for greater impact associated with lighting. It notes that in order to facilitate the control of development it is more practical to specify hours rather than proposing to work during 'daylight hours'. Whilst the application seeks to extend the hours of working no additional light installations are proposed.
- 7.12 At present the 2011 consent allows for 24 hour operations underground and the movement of mine vehicles from the mine portal to the daily ore stockpile outside the southern end of the processing building within the hours of darkness, which would involve having vehicle lights switched on. The ES addendum states that the acceptance of this baseline confers a reduced sensitivity to the anticipated new impacts. Also at present there is no control over the timing of minibus movements taking employees to and from the site at shift changes, although condition 20 'Number of Vehicles and Parking Arrangements' controls the number and type of vehicle movements. The proposed increase in the hours of work for the processing building from 0700hrs to 2300hours to 24 hours (Monday to Saturday) is likely to increase the number of employees travelling up and down to the site within the minibus, but not necessarily any significant increase in the number of minibus runs, given that there will be three 8-hour shifts. The original ES states that there would be 8 journeys to the mine during the operational phase, totalling 16 return journeys and this already covers the 24 hour working permitted underground.
- 7.13 Whilst no additional lighting is proposed the changes to working hours would result in the length of time that lighting is required. For example, the length of time that contractor's compounds need to be lit, as these may have been closed down overnight whilst the processing plant was not in operation. No alterations are proposed to the provision of security lighting at the site which shall be activated by sensor and restricted by timer.

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- 7.14 No lighting associated with extended hours would be visible from residential receptors. However there would be some impact on recreational users – particularly during the construction phase in late summer evenings on those visitors undertaking the long walk in to the upper glen. The closest approach to the mine site is also close to Cononish Farm where, as the ES addendum explains, there may in any event be other lights, vehicles and signs of human activity which would reduce sensitivity over this area of track. Users would also be aware of the presence of the mine and signage on the access track would inform visitors of its operation (see condition 40 in Appendix 1).
- 7.15 The impact of the development on Dark Skies was considered in the determination of the original consent (2011/0166/MIN). As the proposal does not involve any additional light installations, and the increased use of lighting at night is minimal within the scale of that already approved, it is considered that the proposed increase in working hours would have negligible additional impact on Dark Skies than that already consented.

Impact on Landscape

- 7.16 The ES addendum includes a section on Landscape and Visual Impact Assessment (LVIA) section, which supplements Chapter 6 of the original ES, specifically focussing on the potential impacts associated with extended hours of working for construction, decommissioning and restoration, and processing. It finds that there would be a “*low level increase in perception of industrial influence*”, that “*the effects on recreational users of the glen during the evening and/or early morning shall ... be limited*” and “*the effect of plant movement on site for these additional hours is likely to be experienced by relatively few people*”.
- 7.17 The planning authority’s assessment of the original LVIA found that in the short to medium term there would be significant impacts on the special landscape qualities within the glen, however over time these are reversible. It is concluded that the proposed extension of hours of working will not result in any further significant impacts.

Impact on Recreation and Access

- 7.18 The ES addendum acknowledges that the proposed change in working hours does have the potential to influence the perception of the landscape and its recreational value. However, surface operations shall only be undertaken in daylight conditions, and the degree of “*industrial influence*” on the landscape is not significantly altered, with the effects remaining short to medium term and reversible.
- 7.19 It is acknowledged in the ES addendum that visitors walking into the upper glen and surrounding peaks are likely to be affected by the extended construction hours, but it is likely that the expectation of the glen experience will include the presence of the mines. The magnitude of impact as a result of extended construction and

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decommissioning/restoration hours is assessed as low magnitude. It is thought the effect of plant movement during additional hours is likely to be only experienced by limited numbers of people. Impacts are short term, and there are no residual impacts for extended hours.

- 7.20 The Impact Significance in the ES addendum states that *'the likely impact of extended hours is assessed as low, being of limited scale and affecting relatively few receptors. Although the sensitivity of recreational visitors to areas with wild characteristics is generally high, the additional impact associated with the extended hours proposed is not considered to represent a significant impact'*.
- 7.21 Recreational visitors are considered in the addendum to the 2011 noise assessment. The report considers that during the construction phase, the noise criteria in place to safeguard residents at their homes would also ensure recreational users are not unduly disturbed. Those wishing to camp in the glen are also considered. However the report takes the view that the appropriate and responsible choice of a camping location is not in proximity to the farm or mine site. The expectations of night time noise for those camping cannot be assessed on the same basis as residents in their home, for example weather conditions will significantly affect noise levels in a tent.
- 7.22 In conclusion the proposed extended working hours within this application have the potential to increase impacts on recreational users of the glen in terms of lighting and noise. However, there will not be any additional lighting associated with the proposals, and security lighting will be activated by a sensor. In relation to noise, the proposed mitigation measures within the Noise Report, and required by condition (amendment to condition 45 – see section 7.7 above) should minimise additional adverse impacts upon visitors to the glen during these proposed extended hours. In summary in relation to Recreation and Access, the proposed extended working hours should not cause further significant impacts on recreational users.

Other impacts

- 7.23 Consultation responses from WOSAS, SEPA and SNH have confirmed that there would be no further impacts on archaeology, the water environment or the natural heritage from the proposed working hour changes.
- 7.24 Other impacts to be considered include transport arrangements consequential to the proposed increase in night-time working. The original ES clearly sets out the number and type of vehicles to be used in the construction and operational phases, and this is required to be adhered to by condition 20 'Numbers of Vehicles and Parking Arrangements'. It is not considered that the change to 24 hour working (Mondays to Saturdays) within the processing building will have a material impact in the volume of

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traffic up and down the glen, although the minibus may require to do additional journeys or have more passengers. It is not considered necessary to make any changes to condition 20 as this allows for small amendments to the numbers of vehicles, provided they are agreed in writing within the Planning Authority.

- 7.25 The consultation response from Transport Scotland states that the proposed variation would “*take the generated trips even further outside the network peak periods and no new trips would be generated*”. Transport Scotland is satisfied that this proposed variation to working hours will have a negligible impact on the trunk road network in terms of traffic and associated environmental effects.

Implications of the proposed change upon any other existing conditions

- 7.26 Planning legislation provides that 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. However, as noted above, there are some further conditions related to the changes in working hours proposed in condition 13, as well as consequential changes required due to the new consent period, and these should be considered further:
- 7.27 *Condition 20 ‘Numbers of Vehicles and Parking Arrangements’*. As stated above, it is not considered that there should be any change to condition 20 as this allows for small amendments to the numbers of vehicles, provided they are agreed in writing within the Planning Authority.
- 7.28 *Condition 45 ‘Noise Limit’*. This condition should be amended to refer to the additional noise mitigation measures set out in the ES Addendum as well as in the original ES.
- 7.29 *Condition 46 ‘Noise Monitoring Scheme’*. The response from Stirling Council Environmental Health notes that monitoring of the scheme is essential to verify the accuracy of the predictions and, if necessary, guide operational management. Condition 46 already sets out the requirements for a noise monitoring scheme to be submitted to the Planning Authority and no changes are necessary.
- 7.30 *Condition 30 ‘Otter Survey’*. This condition is not related to the proposed changes to condition 13, however the section 42 permission, if granted, would provide a new permission for a further three years and this condition states “*If there is more than one year from the date of this decision notice and the date of commencement of development, then pre-construction surveys to reassess the presence and distribution of otters shall be carried out prior to development commencing on site. ...*” More than

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one year has elapsed since the date of the original decision notice, therefore this condition needs to be re-worded to require the pre-construction offer survey work to be carried out within the 12 month period prior to commencement of works on site in order to comply with environmental legislation.

- 7.31 *Condition 49 'External Lighting'*. This condition requires details of all external lighting to be used within the site to be submitted for the approval of the Planning Authority prior to its installation. This is not directly related to the proposed changes to condition 13, and does not require any changes.

Duration of planning permission

- 7.32 As stated in section 1.2, approval of this application would have the effect of renewing the planning permission for a further three years. Section 58(1) of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006) specifies that planning permission will expire after 3 years from the date on which it is granted unless the development to which it relates has been started. However this part of the legislation also provides planning authorities with the power to set alternative time periods. In this regard Circular 3/2013 states that "*Planning authorities should consider carefully the nature of the development and issues such as the prevailing economic climate and reach a view whether the statutory default time limits are appropriate in the circumstances of the case or whether they should specify a different period.*"
- 7.33 A few local authorities have taken the view that for section 42 applications a 'direction' reflecting the same duration as the original planning permission should apply (as the principle of the development cannot be considered), however planning permission ref. 2011/0166/MIN is due to expire on 13th February 2015. Granting the section 42 application would renew the consent until February 2018. Taking into account the ongoing challenges in the economic climate it would seem unreasonable to place a direction on the section 42 consent restricting the time period to less than three years for commencement of development.
- 7.34 However, if there were any further section 42 applications to be submitted close to the expiry of this consent (2014/0285/DET) it is suggested that a full application for renewal would be the more appropriate course of action as the environmental information in the original Environmental Impact Assessment will be significantly out of date and a new Local Development Plan should be in place.

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(ii) 2014/0317/DET

7.35 Turning now to consideration of the second application ref. 2014/0317/DET. This is termed a “Section 75A” application for the modification of the section 75 legal agreement associated with the existing consent (ref. 2011/0166/MIN) so that it makes reference to the section 42 planning application (ref. 2014/0285/DET). Appendix 2 sets out the terms of the proposed modification – essentially a change to the definition of “Consent” within the section 75 to refer to application ref. 2014/0285/DET as well as the original consent ref. 2011/0166/MIN.

7.36 The application was requested by the Planning Authority during pre-application discussions for the proposed changes to the working hours, as it is essential that the planning obligations still apply to the development if a new permission is to be granted.

7.37 In determining a Section 75A application for modification, the planning authority may only decide (1) that the obligation be modified as per the proposed modification or (2) should continue in its current form. The legislation does not permit the planning authority to determine that the obligation should be subject to any modification other than the modification, or modifications, set out in the application. The proposed wording was considered by the planning authority with legal advice prior to the application being submitted and the proposed wording is considered acceptable. It will enable the planning obligations to continue to apply to the existing permission and the proposed section 42 amendment.

8. Review of Financial Bonds

8.1 As discussed in the introductory paper presented to the Board on the 8th December 2013 (see section 11.4) no further modifications to the section 75 legal agreement, other than ensuring correct cross-referencing to the modified consent, are considered necessary at this time. 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. This is to ensure that the financial amounts agreed are still sufficient to cover all eventualities should the site be abandoned and require to be restored. It seems likely that due to the amount of time elapsed since the original bond calculations were carried out that a review of bond amounts would be requested prior to works commencing.

9. Conclusions

(a) Planning assessment of 2014/0285/DET: Conclusion

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- 9.1 In conclusion, the impact of the proposed additional hours would result in some extended lighting periods and additional surface activity on site, however this would not impact upon the nearby residential property due to mitigation measures already proposed (such as shuttering windows in the processing building during the hours of darkness) and would impact upon relatively few recreational users passing at the specific times of the extended hours of operation.
- 9.2 The changes proposed are reasonable within the scale of the development already approved and will not result in any further significant impacts than that which have already been assessed. It is therefore recommended that the proposed changes to condition 13 are permitted, together with the additional measures proposed in the Noise Report:
- No construction activities should take place within 350m of Cononish Farm during the period 0600 – 0700 hrs.
 - No drilling operations should take place between 0600 -0700 hrs and 1800 – 2100 hrs.
- 9.3 Also condition 45 'Noise Limit' should be amended to include reference to the additional noise mitigation measures proposed and condition 30 'Otter Survey' should be amended to require the survey to be no more than 12 months old at the commencement of development.
- 9.4 The decision notice for application 2014/0285/DET should not be released until it is confirmed that the associated section 75 legal agreement includes the modification referencing this application.

(b) Planning assessment of 2014/0317/DET: Conclusion

- 9.5 The proposed change to the definition of 'Consent' is considered acceptable to enable the planning obligations to continue to apply to the existing permission and the proposed section 42 amendment. No further modifications to the section 75 legal agreement, other than ensuring correct cross-referencing to the modified consent, are considered necessary at this time.

10. Appendices

1. Conditions, draft reasons for decision for application 2014/0285/DET, plans and informatives
2. Terms of modification of section 75 legal agreement and draft reasons for decision for application 2014/0317/DET
3. Site Location Plan

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11. Background information

- 11.1 (i) Application 2014/0285/DET ([website](#) link)
- 11.2 (ii) Application 2014/0317/DET ([website](#) link)
- 11.3 Cononish NPA Board Meeting 24/10/2011 & 25/10/2011 ([website](#) link)
- 11.4 Introductory paper requesting Special Board Meeting 08/12/2014 ([website](#) link)

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