

Agenda Item	6.7
Report No	PLS 010/18

## HIGHLAND COUNCIL

**Committee:** South Planning Applications Committee  
**Date:** 30 January 2018  
**Report Title:** 17/05495/S42: Lochaline Quartz Sand Ltd  
Lochaline Mine, Lochaline, Morvern  
**Report By:** Area Planning Manager – South/Major Developments

### **Purpose/Executive Summary**

**Description:** Application for Non-Compliance with Condition 1 of Planning Permission LO/1993/590 - Time extension for continued underground mining, processing and dispatch of silica sand for a further period of 20 years  
**Ward:** 21 - Fort William and Ardnamurchan

**Development category:** Major

**Reason referred to Committee:** Major Development

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

### **Recommendation**

Members are asked to agree the recommendation to **GRANT** planning permission as set out in section 11 of the report.

## **1. PROPOSED DEVELOPMENT**

- 1.1 This application has been submitted under Section 42 of the Planning Etc (Scotland) Act 2006 and relates to Condition 1 attached to planning permission LO/1993/590 granted on 01 April 1998 in respect of the Lochaline Silica Sand Mine. The applicant seeks to extend the timescale for working of the mine for a further 20 years.
- 1.2 The mine at Lochaline was opened in 1940 and was worked until 2008. In 2011 new owners took on the mine and commenced extraction. The operations on site involve extraction, processing and distribution of the material. At the end of the life of the mine, the site will be restored with any on-site infrastructure removed and the entrances and vents being sealed.
- 1.3 The most recent planning permission was granted in 1998 following the conclusion of a Section 75 agreement, securing a financial guarantee for the restoration of the site. A copy of the original planning permission for the mine is included as Appendix 2.
- 1.4 This application has been supported by the following information:
- Supporting statement;
  - Previously approved plans for the development; and
  - Noise Assessment.
- 1.5 Variations: None.

## **2. SITE DESCRIPTION**

- 2.1 The site comprises an existing mine under Creag an Fhithich to the north of Lochaline. The mine is accessed via the A884 and material is exported via the jetty at Lochaline. There are a number of accesses and egresses from the mine but they are all accessed from the servicing yard adjacent. The ground cover above the mine is predominantly woodland.

## **3. PLANNING HISTORY**

- |     |            |                                 |                                   |
|-----|------------|---------------------------------|-----------------------------------|
| 3.1 | 01.04.1998 | Silica Sand Mine and Processing | Planning<br>Permission<br>Granted |
|-----|------------|---------------------------------|-----------------------------------|

## **4. PUBLIC PARTICIPATION**

- 4.1 Advertised: Unknown Neighbour  
Date Advertised: 07 December 2017  
Representation deadline: 21 December 2017
- Timeous representations: 0  
Late representations: 0

## **5. CONSULTATIONS**

- 5.1 **THC - Environmental Health:** do not object to the application.
- 5.2 **Scottish Environment Protection Agency:** do not object to the application.

## **6. DEVELOPMENT PLAN POLICY**

The following policies are relevant to the assessment of the application

### **6.1 Highland Wide Local Development Plan 2012**

- 28 - Sustainable Design
- 30 - Physical Constraints
- 53 - Minerals
- 54 - Mineral Wastes
- 56 - Travel
- 58 - Protected Species
- 59 - Other important Species
- 60 - Other Importance Habitats
- 61 - Landscape
- 62 - Geodiversity
- 63 - Water Environment
- 66 - Surface Water Drainage
- 72 - Pollution
- 73 - Air Quality
- 77 - Public Access

### **6.2 West Highland and Islands Local Plan 2010 (as continued in force 2012)**

Lochaline Settlement Development Area

### **6.3 West Highland and Island Proposed Local Development Plan 2017**

Lochaline - Growing Settlement

## **7. OTHER MATERIAL POLICY CONSIDERATIONS**

### **7.1 Highland Council Supplementary Planning Policy Guidance**

- Construction Environmental Management Process for Large Scale Projects (August 2010)
- Highland's Statutorily Protected Species (March 2013)
- Physical Constraints (March 2013)

### **7.2 Scottish Government Planning Policy and Guidance**

- National Planning Framework 3 (2014)
- Scottish Planning Policy (2014)
- PAN 51 - Planning, Environmental Protection and Regulation (2006)

PAN 79 - Water and Drainage (2006)

PAN 1/2011 - Planning and Nosie (2011)

## **8. PLANNING APPRAISAL**

- 8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

### Determining Issues

- 8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

### Planning Considerations

- 8.3 The principle of the development has been established through the previous permissions. This is an application to modify Condition 1. In order to address the determining issues therefore, Committee must consider the extent to which the proposal continues to comply with development plan policy and take into consideration any other material considerations.

### Development Plan

- 8.4 Development Plan Policy has changed since the time of the determination of the original application. The prevailing development plan policies at the time have been superseded by the Highland-wide Local Development Plan (2012).
- 8.5 The key issue therefore is whether the amendment of the condition applied for would result in the development being incompatible with the Development Plan. The remainder of this report will consider the modification proposed and assess its compatibility with the Development Plan.
- 8.6 There is no land allocation for the mine in either the West Highland and Islands Local Plan (As Continued in Force) or the West Highland and Islands Proposed Local Development Plan. The former did suggest that development on land above mine workings should be avoided. The Highland-wide Local Development Plan and Scottish Planning Policy are both supportive of the continued extraction of existing mineral resources.
- 8.7 There are no anticipated amenity impacts beyond those already experienced. A Noise Assessment has been submitted and this demonstrates that the working of the mine would lead to adverse amenity impacts. THC Environmental Health has not objected.
- 8.8 Given that the silica sand extracted is not subject to treatment, other than washing, it is not anticipated that there will be any adverse risks to the environment from the continued working of the mine. SEPA has advised the applicant that due to the product not needing treatment, and as the washing of the material being in a

contained area, a license for pollution control is not required.

Other material considerations

- 8.9 The applicant has sought to modify the wording of the condition to allow for the working of the mine for a further 20 years. In principle, the extension of time for working of the quarry is supported by the relevant policies in the Highland-wide Local Development Plan. However, this extension to the timescale for working of the mine can only be supported if appropriate conditions exist to ensure appropriate environmental mitigation is in place and the site is satisfactorily restored.
- 8.10 An application submitted under S42 of the Planning Act provides the Planning Authority with an opportunity, as part of the process in considering the proposed variation, to amend any, or each of the original conditions previously applied which it considers necessary to regulate the development proposed. Following consideration of the conditions attached to the extant planning permission, it is considered appropriate to revisit all the conditions attached to the original consent to ensure the wording is in line with current good practice and to ensure the conditions are suitable to regulate the proposed development. In doing so, this has provided an opportunity to strengthen the terms of the conditions and provide greater clarity as to the requirements of these, including the information required to satisfy the conditions.
- 8.11 There are no other material considerations

Matters to be secured by Section 75 Agreement

- 8.12 Restoration of the mine will be undertaken at the end of its working life. When accesses and shafts are no longer require up to that point in time they are secured and covered in reinforced mesh to allow for better ventilation within the mine workings. A restoration plan is already in place; however, in order to ensure that the restoration is completed to the satisfaction of the Planning Authority and in a timeous manner, a financial guarantee will continue to be required. This will be secured via legal agreement and will comprise:

Full details of a bond or other financial provision to be put in place to cover all of the decommissioning and site restoration measures outlined in the Decommissioning and Restoration Plan approved under conditions of this permission.

Thereafter, the Quarry Operator will be required to:

- i. Ensure that the bond or other financial provision is maintained throughout the duration of this permission; and
  - ii. Pay for the bond or other financial provision to be subject to a review five years after the commencement of development and every five years thereafter until such time as the mine is decommissioned and the site is fully restored.
- 8.13 The applicant has four months from the date that the Council's solicitor writes to the Applicant/Applicant's solicitor indicating the terms of the legal agreement, to deliver to the Council a signed legal agreement. Should an agreement not be

delivered within four months, the application shall be refused under delegated powers.

## 9. CONCLUSION

- 9.1 The extension of time for working the mine is acceptable and will provide a resource for glass making industry in particular and provide continued employment in a fragile area of Highland. Subject to the application of appropriate conditions, the development is unlikely to have a significant adverse impact on the environment.
- 9.2 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

## 10. IMPLICATIONS

- 10.1 Resource: Not applicable
- 10.2 Legal: Not applicable
- 10.3 Community (Equality, Poverty and Rural): Not applicable
- 10.4 Climate Change/Carbon Clever: Not applicable
- 10.5 Risk: Not applicable
- 10.6 Gaelic: Not applicable

## 11. RECOMMENDATION

<b>Action required before decision issued</b>	Y
Notification to Scottish Ministers	N
Conclusion of Section 75 Obligation	Y
Revocation of previous permission	N

**Subject to the above**, it is recommended that planning permission be **Granted**, subject to the prior conclusion of a legal agreement as set out in paragraph 8.12 of this report and the following conditions and reasons:

### Conditions and Reasons

1. The permission hereby granted shall endure until 31 December 2038 by which time all workings shall have ceased, all plant and equipment removed and the site restored in accordance with the plan to be agreed under condition 2 of this permission.

In the event that working ceases for a period of more than 24 months prior to the expiry of this permission then the site shall be restored to the satisfaction

of the Council within 36 months from the cessation of working, or in any case before the expiry of this permission.

**Reason:** to clarify the terms of the permission and ensure the site is fully restored to an appropriate use.

2. Within 6 months of the grant of this planning permission, a detailed scheme to ensure the decommissioning and restoration of the site showing details of how all accesses/egresses and ventilation shafts are to be sealed, has been submitted to and subsequently approved in writing by the Planning Authority. The scheme be known as the Decommissioning and Restoration Plan and shall ensure:
  - a. The grading of all ground to stable slope angles and the shaping and contouring of the ground such as to be sympathetic to adjacent geological features;
  - b. The any interim restorations works to ensure early restoration of any excavated phase;
  - c. The treatment of seals to ventilation shafts and accesses/egresses from the mine including details of any proposals to establish suitable vegetative cover (including tree and scrub planting);
  - d. Removal of all buildings, structures, plant, stockpiles and residual materials; and
  - e. A programme of aftercare and maintenance for a minimum of 36 months following the last working of the site.

**Reason:** To ensure an appropriate scheme is in place for the interim and final restoration of the site.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (As Amended), no structures or plant shall be erected in the yard area outwith the mine workings, other than those specifically approved through this consent, without the express written permission of the Planning Authority..

**Reason:** To clarify the terms of the permission and to ensure the amenity impacts of any additional structures or plant is appropriately assessed. .

4. From the date of any commencement of this development until completion of the final restoration, a copy of this planning permission, all approved plans and associated documentation together with any approved amendments shall be made available for inspection at the site offices during approved working hours.

**Reason:** In order to ensure the site operator and visiting officials are aware of the details of the planning permission and any approved amendments.

5. The operator of Lochaline Silica Mine shall submit an annual statement and illustrative drawings to the Planning Authority by 28 February each year following the commencement of this permission. The annual statement will present an audit of the workings undertaken in the preceding calendar year,

illustrating: -

1. The rates of extraction against the projected operations,
2. The results of monitoring from the mitigation actions as presented in the application, in compliance with the conditions attached to this planning permission.
3. The results of ongoing groundwater monitoring.

**Reason:** In order to ensure the planning authority can monitor the workings undertaken and retain effective control over the mining operations.

## **REASON FOR DECISION**

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

## **FOOTNOTE TO APPLICANT**

### **Flood Risk**

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. As per Scottish Planning Policy (paragraph 259), planning permission does not remove the liability position of developers or owners in relation to flood risk.

### **Scottish Water**

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

### **Septic Tanks & Soakaways**

Where a private foul drainage solution is proposed, you will require separate consent from the Scottish Environment Protection Agency (SEPA). Planning permission does not guarantee that approval will be given by SEPA and as such you are advised to contact them direct to discuss the matter (01349 862021).

### **Local Roads Authority Consent**

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements



may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: <http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from:

[http://www.highland.gov.uk/info/20005/roads\\_and\\_pavements/101/permits\\_for\\_working\\_on\\_public\\_roads/2](http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2)

### **Mud & Debris on Road**

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

### **Protected Species – Halting of Work**

You are advised that work on site must stop immediately, and Scottish Natural Heritage must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from SNH: [www.snh.gov.uk/protecting-scotlands-nature/protected-species](http://www.snh.gov.uk/protecting-scotlands-nature/protected-species)

Signature: Nicola Drummond  
Designation: Area Planning Manager – South/Major Developments  
Author: Simon Hindson  
Background Papers: Documents referred to in report and in case file.  
Relevant Plans: Plan 1 - Location Plan (OG219/PA/F/01)  
Plan 2 - Site Layout - Extent of Workings at June 2017 (OG219/PA/F/03)

## **Appendix 1 – Letters of Representation**

None.

## Appendix 2 - Existing Planning Permission

PLANNING PERMISSION  
SUBJECT TO CONDITIONS

Grid Reference	N	M	6	7	3
			4	6	5
Reference No.	LO		1993	590	

THE HIGHLAND COUNCIL  
TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1972

To: TILCON LOCH ALINE LTD  
250 ALEXANDRA PARADE  
GLASGOW G31 3AX

With reference to your application dated 16 November 1993 for planning permission under the above-mentioned Act for the following development, viz: -

**SILICA SAND MINING AND PROCESSING AT LOCHALINE, MORVERN**

The Highland Council in exercise of its powers under the above-mentioned Act hereby grant planning permission for the said development in accordance with the plan(s) docquetted as relative hereto and the particulars given in the application, subject to the following standard condition:-

In terms of Section 38 (1) of the Town and Country Planning (Scotland) Act 1972, this permission is granted subject to the condition that the development to which it relates must be begun not later than the expiration of five years beginning with the date of this permission

and also to the following condition(s), viz:-

1. Consent for the mining and processing of silica sand shall endure for a period of 20 years from the date of this permission, by the expiry of which, unless with the express approval of the Planning Authority, all working shall have ceased and the mine fully reinstated to the satisfaction of the Planning Authority. In the event that working ceases for a period of more than 12 months prior to the expiry of this permission then such reinstatement measures as shall be agreed shall be undertaken to the satisfaction of the Planning Authority within 6 months thereafter or within such longer period as might be agreed with the Planning Authority.
2. The development and operation of the mine shall be undertaken in accordance with the plans and supporting information submitted with the application except as otherwise qualified by the conditions herein.
3. No trees around the plant site and stocking area as defined on approved drawing No. LAPA5 and/or around the haul road within the site shall be lopped, topped, felled or otherwise damaged without the written approval of the Planning Authority.

To be continued/

Dated this .....First..... day of .....April ..... 1998

.....  
Head of Development and Building Control, Planning & Development Service

(see over)  
PL/1

Planning permission subject to conditions.

**NOTIFICATION TO BE SENT TO APPLICANT ON REFUSAL OF PLANNING PERMISSION OR ON THE GRANT OF PERMISSION SUBJECT TO CONDITIONS.**

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval of reserved matters in respect of the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State under section 33 of the Town and Country Planning (Scotland) Act 1972 within six months from the date of this notice. The appeal should be addressed to the Chief Reporter, Scottish Office Inquiry Reporter's Unit, 2 Greenside Lane, Edinburgh EH1 3AG.

2. If permission to develop land is refused or granted subject to conditions, whether by the planning authority or by the Secretary of State, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by carrying out of any development which has been or would be permitted, he may serve on the planning authority a purchase notice requiring the purchase of his interest in the land in accordance with Part IX of the Town and Country Planning (Scotland) Act 1972.

3. In certain circumstances, a claim may be against the planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 158 of the Town and Country Planning (Scotland) Act 1972.

**NOTES**

It should be understood that this permission does not carry with it any necessary consent from the Buildings Authority, River Purification Board, or approval to the proposed development under other statutory enactments.

It should be understood that this permission does **not** imply

- that there are no physical restrictions upon development, such as overhead or underground services, diversion or protection of which will be the developer's responsibility, with the prior consent of the appropriate supply authority,
- that mains water, drainage or other public services are, or will be available, or,
- that financial assistance from public funds is available towards the cost of provision of services or any aspect of the development.

Enquiries should be directed to the appropriate supply authorities.

4. The operators shall ensure that the site is drained at all times to the satisfaction of the Planning Authority and other relevant authorities. All reasonable precautions shall be taken to ensure that no pollution to watercourses arises from the working.
5. Notwithstanding the provisions of Part 16 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, and successor regulations, the written approval of the Planning Authority shall be required for any development therein.
6. Two years from the date of this permission, and every 2 years thereafter, the operators shall submit a plan to the Planning Authority to illustrate the full extent of working at the mine.
7. At the cessation of working, and in undertaking reinstatement, the operators shall ensure that:-
  - i) all buildings, plant, machinery, stockpiles and residual materials shall be fully removed from the site; and
  - ii) all mine adits and shafts shall be securely sealed;

and the above shall be included in a detailed scheme of reinstatement of the site to be submitted to and approved by the Planning Authority no later than one year before the date of expiry of this permission. All works thereby approved shall be carried out to the satisfaction of the Planning Authority.

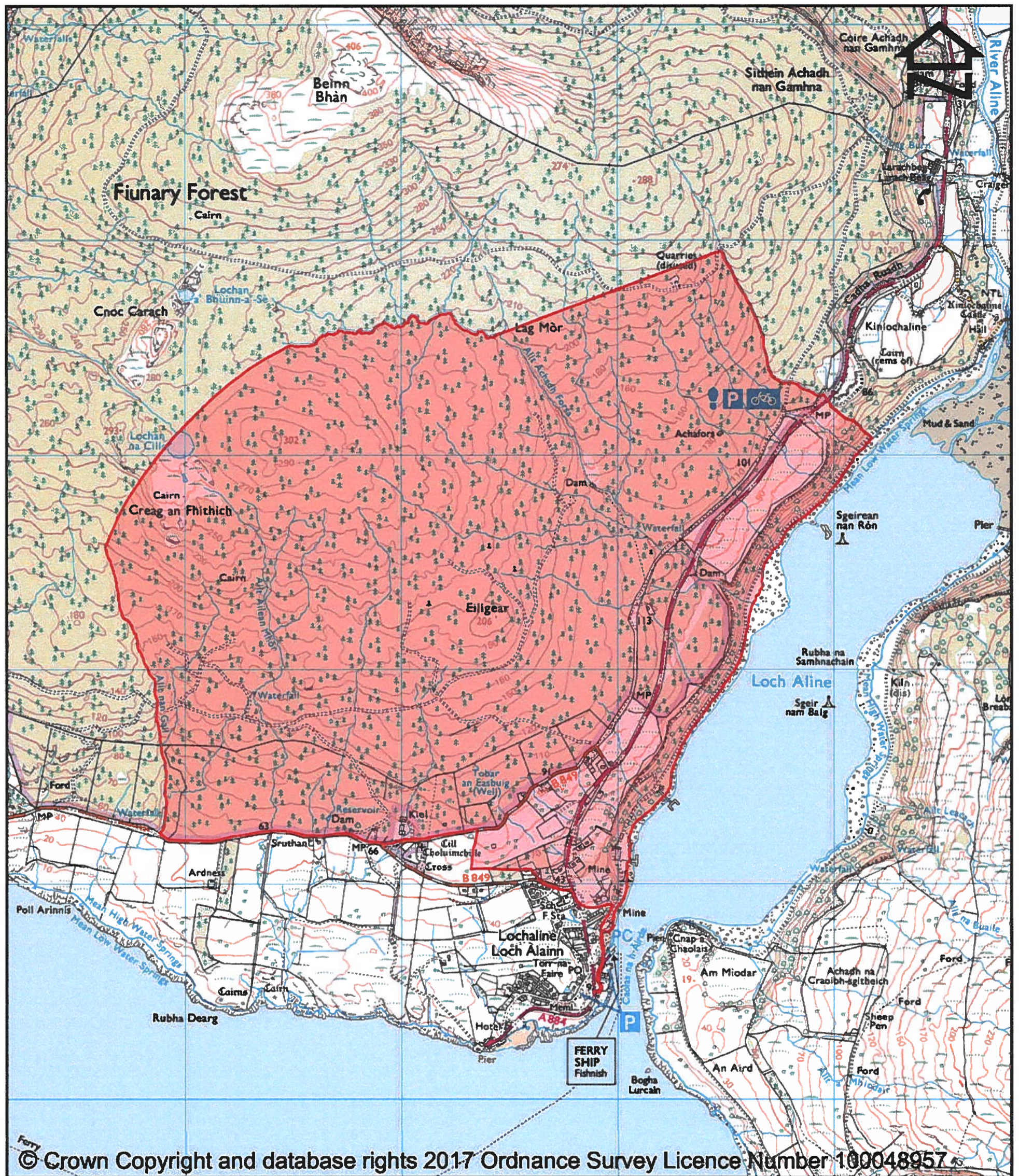
- REASONS
- 1, 2, 5 and 6 - In order to allow the Planning Authority to retain effective control over the development.
  - 3 and 7 - In the interests of amenity.
  - 4 - In order to avoid pollution of adjacent watercourses.

NOTE

Recipients of this Notice should be aware that statutory references have been altered as a result of the introduction on 27 May, 1997 of the consolidated Town and Country Planning (Scotland) Act 1997. Please note there has been no change in the substance of the provisions in the legislation but simply a consolidation. If you wish any further information or clarification please contact the Area Planning and Building Control Office.

Dated this .....First..... day of .....April ..... 1998

.....  
Head of Development and Building Control, Planning & Development Service



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CLIENT  
**LOCHALINE QUARTZ SAND LIMITED**

JOB TITLE  
**LOCHALINE SILICA SAND MINE, MORVERN**

DRAWING TITLE  
**SITE LOCATION PLAN**

**JOHNSON  
 POOLE &  
 BLOOMER**  
 CONSULTANTS

SCALES  
**1:25,000**

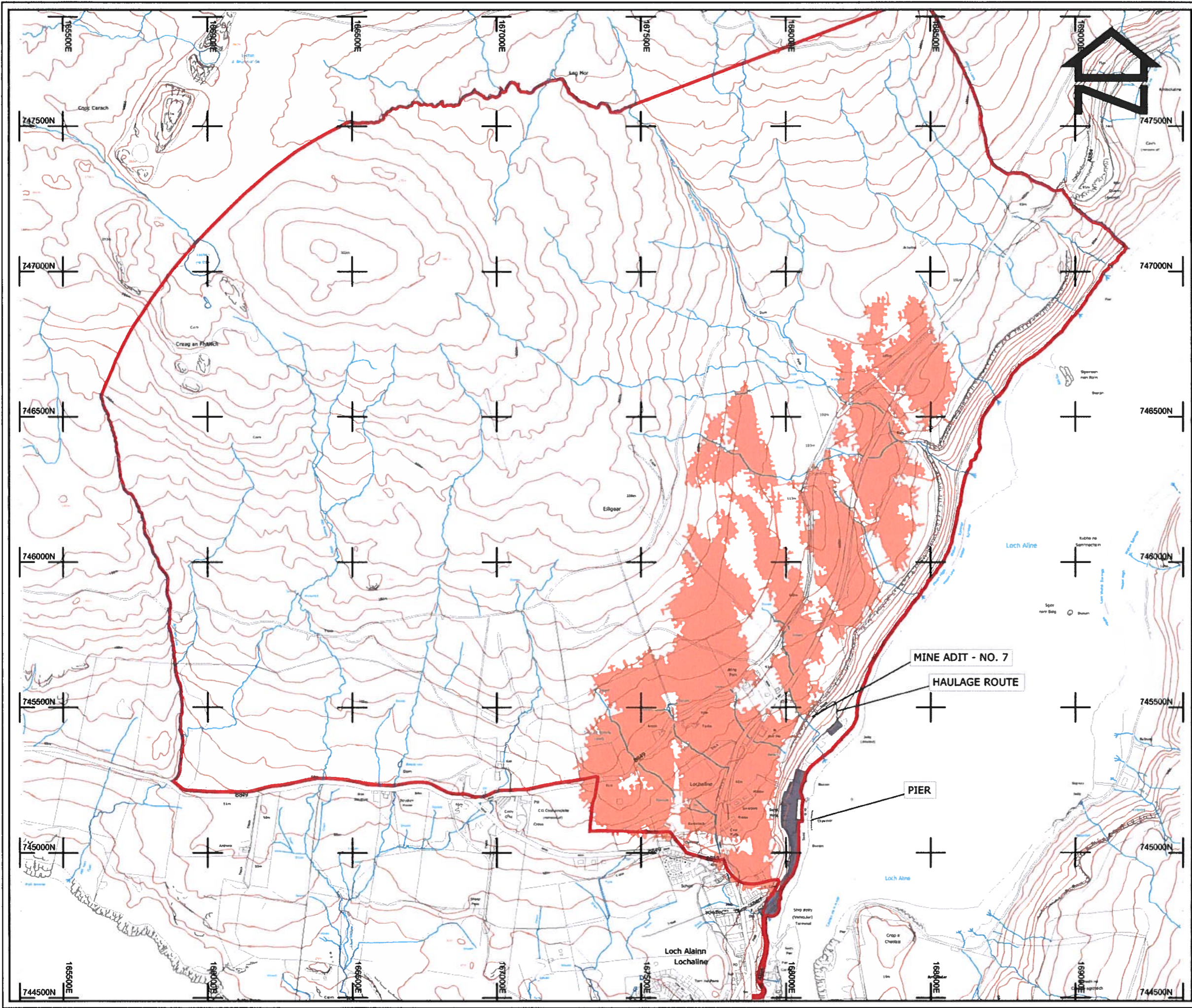
ORIG DRG SIZE  
**A4**

DATE  
**NOV 2017**

DRAWN BY  
**RK**

APPROVED BY

DRAWING No.  
**OG219/PA/F/01**



**NOTES**

- APPLICATION SITE AREA
- UNDERGROUND MINE WORKINGS
- SURFACE PLANT AND PROCESSING AREA INCLUDING PIER

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DATE	REVISION	No.

**JOHNSON POOLE & BLOOMER**  
CONSULTANTS

**CLIENT**

LOCHALINE QUARTZ SAND

**PROJECT TITLE**

**LOCHALINE SILICA SAND MINE, MORVERN**

**DRAWING TITLE**

**APPLICATION SITE BOUNDARY AND EXTENT OF MINE WORKINGS AS AT JUNE 2017**

<b>DRAWN BY</b>	<b>APPROVED BY</b>
<b>SCALES</b>	<b>ORIGINAL DRAWING SIZE</b>
1:12500	A3
<b>DATE</b>	<b>DRAWING No.</b>
NOV 2017	OG219/PA/F/03