

<b>Agenda item</b>	<b>6</b>
<b>Report no</b>	<b>HLC/040/23</b>

## **THE HIGHLAND COUNCIL**

**Committee:** THE HIGHLAND LICENSING COMMITTEE

**Date:** 20 June 2023

**Report title:** Local authority assent for the establishment of an explosives site under Regulation 14 of the Explosives Regulations 2014 (Ref Health and Safety at Work Act 1974) – Lochaline Quartz Sand Ltd, Lochaline Mine, Morvern, Oban PA80 5LQ (Ward 21)

**Report by:** Trading Standards Manager

### **1. Purpose/Executive summary**

- 1.1** This report relates to a request under Regulation 14 of the Explosives Regulations 2014 for the Council to give its Assent to the establishment of a site for explosives operated by Lochaline Quartz Sand Ltd at Lochaline Mine, Morvern, Oban PA80 5LQ, subject to the terms specified in a draft licence issued by the Health and Safety Executive on 30 March 2023.

### **2. Recommendation**

- 2.1** Members are asked to determine whether to assent to the application made by Lochaline Quartz Sand Ltd for the establishment of a site for storage of explosives at Lochaline Mine, Morvern, Oban PA80 5LQ, in accordance with the Council's hearings procedure.

### 3. Background

- 3.1** The licensing of the storage of explosives, where the total quantity intended to be kept is 2000kg or more, is undertaken by the Health and Safety Executive (HSE). The storage of lesser quantities is dealt with by the Council or the Police, dependant on the type of explosives being kept.
- 3.2** Where the storage comes within the remit of the HSE, as in this case, it is a requirement that before a licence is granted by the HSE the applicant must also gain the assent of the local authority to the establishment of the explosives store. The mine has used and stored explosives for decades. The Applicant wishes to store 30 tonnes of ammonium nitrate blasting intermediate (ANBI) as well as 2000kg of other explosives, and this has required the issuing of a new explosives site licence with the assent of the local authority.
- 3.3** The remit of the local authority in the assent procedure and the procedure itself is set out in Regulation 14 of the Explosives Regulations 2014, a copy is attached at **Appendix 1**, and is further explained in an HSE published guidance document, an extract of which is reproduced as **Appendix 2**.

### Application

- 3.4** The letter of application and the accompanying documents were received by the Council on 11<sup>th</sup> April 2023. A public notice (copy at **Appendix 3**) in accordance with the requirements of the regulations was subsequently placed by the applicant in the Oban Times (incorporating the Lochaber Times) on 27 April 2023, details and the application have duly been made available for public scrutiny at Lochaline Mine Office and at the Highland Council, Fort William Service Point. In addition, and to make the process of viewing the documentation easier, the Trading Standards Manager arranged for the relevant documentation to be made available online at <https://bit.ly/lochaline-assent>
- 3.5** In addition to the press notice process, the Applicant is required to complete additional targeted consultation directed towards householders and other stakeholders located within 1220m of the site of the ANBI store. A map of the 1220m public consultation zone is shown at **Appendix 4**. A leaflet setting out details of the application in similar terms to the press notice was delivered to all properties in the public consultation zone.
- 3.6** The Regulations set out a mandatory 28-day public consultation period and this period formally ended on 25<sup>th</sup> May 2023. No objections or adverse representations have been received.
- 3.7** The Health and Safety Executive (HSE) as the licensing authority have carried out their own consultations with relevant stakeholders prior to the issuing of the draft explosives site licence, therefore the Council was not required to consult further than the public notice process.

## **4. Determining issues**

- 4.1** The application is to be determined according to Regulation 14 of the Explosives Regulations 2014 (the Regulations). The HSE is the licensing authority for the purposes of granting the application, but the HSE must gain the assent of the relevant local authority prior to granting the licence.
- 4.2** The procedure for licensing authorities to follow in relation to such applications is contained within Regulation 14 of the Regulations. The council's scheme of delegation gives authority to grant said assent to the Highland Licensing Committee.
- 4.3** The Principal Solicitor can provide further advice if required.

## **5. Policies**

- 5.1** The following policies are relevant to this application:

HSE guidance on the local authority assent process can be found at <https://www.hse.gov.uk/explosives/licensing/local-authority-assent.htm>, reproduced at

### **Appendix 2**

## **6. Implications**

- 11.1** Not applicable.

Date: 31 May 2023  
Author: David MacKenzie, Trading Standards Manager

Background Papers:  
The Explosives Regulations 2014

Appendix 1 - The Explosives Regulations 2014 – Regulation 14  
Appendix 2 - Local authority Assent Guidance issued by the Health and Safety Executive  
Appendix 3 – Copy of press notice  
Appendix 4 – Map of public consultation zone

## **Appendix 1**

### **The Explosives Regulations 2014 – Regulation 14 Local authority assent procedure in relation to licence applications**

14.—(1) *Where this regulation applies by virtue of regulation 13(3), the relevant licensing authority must, subject to regulation 20, issue the applicant with a draft licence containing the conditions which that licensing authority proposes to attach to the licence.*

(2) *The applicant must as soon as reasonably practicable send a copy of the application and draft licence to the local authority in whose area the manufacture or storage is proposed to take place.*

(3) *Within 28 days of sending to the local authority the information specified in paragraph (2), the applicant must—*

*(a) cause to be published in a newspaper circulating in the locality where the manufacture or storage of explosives is proposed to take place a notice which must—*

*(i) give details of the application;*

*(ii) invite representations on matters affecting the health and safety of persons other than the applicant's employees to be made in writing to the local authority within 28 days of the date that the notice is first published; and*

*(iii) give an address within the area of the local authority at which a copy of the application and draft licence may be inspected and the address of the local authority to which any representations must be sent; and*

*(b) take other reasonable steps to give that information to every person who resides or carries on a business or other undertaking within the public consultation zone.*

(4) *The local authority must send a copy of any representations referred to in paragraph (3)(a)(ii) to the applicant as soon as reasonably practicable after receiving them.*

(5) *In considering whether to assent, the local authority must have regard only to health and safety matters.*

(6) *Subject to paragraph (7), the local authority must, before deciding whether to assent to the application, hold a public hearing within 4 months of the date of its receipt of the copy of the application and draft licence referred to in paragraph (2).*

(7) *If, after the period of 28 days referred to in paragraph (3)(a)(ii) has elapsed, the local authority has received no objection to the application, or has only received objections which in its opinion are frivolous or immaterial, it may assent to the application without holding a hearing.*

(8) *Not less than 28 days before the hearing referred to in paragraph (6), the local authority must publish notice of the date, time and place fixed for the hearing in a newspaper circulating in the locality and send a copy of the notice to—*

*(a) the applicant;*

*(b) any person who made representations referred to in paragraph (3)(a)(ii); and*

*the relevant licensing authority,*

*within 7 days from its publication.*

*(9) The local authority must notify the applicant and the relevant licensing authority of its decision within 7 days of making it.*

*(10) If the local authority fails to—*

*(a) send a copy of the notice referred to in paragraph (8) to the relevant licensing authority within 3 months from the date that a copy of the application and draft licence was sent to it pursuant to paragraph (2); or*

*(b) notify the relevant licensing authority of its decision in accordance with paragraph (9), within 2 months from the date of publication of the notice referred to in paragraph (8),*

*that licensing authority may make a written request to the local authority for it to state in writing whether it assents to the application.*

*(11) If the local authority does not respond to the written request within 28 days from the date of the request, the local authority is deemed to have assented to the application.*

*(12) The applicant must pay a fee to the local authority for the performance by that authority of their functions under this regulation, which fee must not exceed the sum of the costs reasonably incurred by that authority in performing those functions.*

*(13) In this regulation—*

*(a) “applicant” means the applicant for a licence or variation of a licence, as the case may be, and “application” means that person’s application; and*

*(b) “relevant licensing authority” has the meaning given in regulation 13(10)(c).*

## Appendix 2

### Local authority Assent Guidance issued by the Health and Safety Executive

Local authority assent is covered by regulation 14 of the Explosives Regulations 2014 (ER2014)

#### The purpose of the local authority assent process

The purpose of the local authority assent process is for the local authority to satisfy itself that any local factors bearing on the safety of the operation of the site or the health and safety of members of the public have been considered and taken into account by HSE in setting the licence conditions. Only evidence on these issues should be regarded as relevant to the authority's decision. Issues concerning the appropriateness of development at the site should be considered as part of the planning process.

The local authority will be asked to consider whether there are any local factors which could affect the safety of the operations or the safety of those in the area in the event of a fire or explosion. Such factors would include:

- bulk storage of flammable substances at or in the immediate area of the site
- the presence of hazardous substances at or in the immediate area of the site
- the proximity of telecommunications transmitters
- the presence of methane at the site or at an adjoining site
- the presence at, or in the immediate area of the site, of gas pipelines or high voltage electricity supply lines or equipment;
- transport access (although where the application involves a parallel application for planning consent the authority may also wish to address such issues through planning controls).

In addition, the local authority may withhold its assent if it believes that the site is not suitable for the manufacture or storage of explosives due to the presence of vulnerable sections of the population (young children, the sick or elderly) in the immediate area of the site, for example if a building housing a school, hospital or old people's home were immediately adjoining an explosives site. This judgement is one that is more appropriate to the local authority than to HSE

#### When do I need local authority assent?

Most licences granted by HSE and ONR will require local authority assent, as well as a licence from HSE or ONR. The exceptions are listed in Regulation 13(4) of ER 2014. A licence to store less than 2000 kg of explosives at a site does not need local authority assent as long as HSE issues the licence using the distances set out in Schedule 5 of ER2014. If the applicant wishes to vary these distances, or requires a licence to manufacture explosives, then they will need local authority assent.

#### How do I get local authority assent?

Before applying for local authority assent you should apply to HSE for a licence. Find out more about applying for a licence.

After receiving a licence application, HSE will make enquiries to the local authority for the purposes of identifying and resolving any concerns which otherwise would need to be addressed later in the process. They do not in any way reduce the duty on the applicant to identify any hazards arising from the proposed undertaking, and identify those people who might be affected and how they might be affected. The applicant must carry out any necessary 'due diligence' enquiries for this purpose.

Assuming that the information provided by the local authority indicates that the application can be taken to the next stage, HSE will agree a draft licence with the applicant, taking into account any considerations drawn to its attention by the local authority. Once agreement on the draft licence has been reached it will be formally submitted by the applicant to the local authority in order to seek assent. The applicant must send a copy of the draft licence, application and the information that Explosives Inspectorate instructs them to send to their local authority, requesting a day to be appointed for the formal application for assent.

Within 28 days of sending these documents to the local authority, the applicant must publish a notice in a local newspaper in the area where the manufacture or storage of explosives is proposed to take place.

This notice must:

- give details of the application
- invite representations on matters affecting the health and safety of people other than the applicant's employees to be made in writing to the local authority within 28 days of the date that the notice is first published and
- give an address within the area of the local authority at which a copy of the application and draft licence may be inspected and the address of the local authority to which any representations should be sent.

The applicant has to take other reasonable steps to inform everyone who lives or carries on a business or other undertaking within the public consultation zone. Reasonable steps would include writing to or leafleting those affected. Where coverage could be assured, it may also be appropriate to use social media or community websites. The consultation zone covers an area 'extending to twice the proposed separation distance of the proposed site'. In practice, this area can be taken to extend to twice the largest outside buildings and works distance specified in the building schedule of the draft licence.

The local authority must send a copy of any representations to the applicant as soon as reasonably practicable after receiving them

If, following publication, the local authority has received no objections to the application it may, after 28 days, assent to the application without holding a hearing.

If it decides a hearing is required, the local authority must, before deciding whether to assent to the application, hold a public hearing within four months of receiving the draft licence and application from the applicant. In considering whether to assent, the local authority must have regard only to health and safety matters.

The local authority must, not less than 28 days before the assent hearing, publish notice of the date; time and place fixed for the hearing in a local newspaper send a copy of the notice to:

- the applicant
- any person who made representations in response to the notice published by the applicant
- the relevant licensing Authority

**Within 7 days of the notice being published.**

If there are any objections to the application, the HSE inspector who is dealing with the licence may be present at the hearing to deal with any technical questions which might arise or to explain anything in connection with the licence.

If the application is for the variation of an existing explosives licence, the inspector may inform the local authority that assent is not required when judged against the criteria in regulation 16(4) of ER 2014. The inspector will ask that the local authority confirms if it agrees or disagrees that assent is not required in writing.

The local authority must notify the applicant and the licensing authority of its decision within 7 days of making it.

The applicant must pay a fee direct to the local authority for the performance by that authority of their functions; the fee must not exceed the sum of the costs reasonably incurred by that authority in performing those functions.

## Explosives Regulations 2014

Notice is hereby given that in pursuance of regulation 14 of the Explosives Regulations 2014 (ER2014), Lochaline Quartz Sand Limited has made a request to the Highland Council for their assent to the granting of a licence for the manufacture and storage of explosives at Lochaline Mine, Lochaline, Morvern, PA80 5LQ

A copy of the application and the draft licence is available to view at the Mine Office (call Veronique Walraven on [01967 421324](tel:01967421324) to arrange a time) and at Highland Council, Fort William Service Point, Charles Kennedy Building, Achintore Road, Fort William PH33 6RQ between the hours of 9.30am to 12.30pm (Monday to Friday).

Application details may also be viewed online using <https://bit.ly/lochaline-assent>.

Anyone who wishes to make representations on matters affecting the health and safety of persons other than the applicant's employees that may arise out of the granting of the licence should send those representations to:

Mr David MacKenzie, Trading Standards Manager, The Highland Council, 38 Harbour Road, Inverness, IV1 1UF or by email to [trading\\_standards@highland.gov.uk](mailto:trading_standards@highland.gov.uk)

Any representation must be made within 28 days of the date of publication of this notice.

### CROFTING COMMISSION COIMISEAN NA CROITEARACHD DECROFTING APPLICATION

1. I Mitchell, 10 Airds Bay,  
0.163 ha, Existing house  
site (120316)

Comments from any member of the crofting community within the locality of the croft and any expressions of demand for the croft (which may be made public), may be sent to the Crofting Commission by 24/05/23 at [info@crofting.gov.scot](mailto:info@crofting.gov.scot) / Crofting Commission, Great Glen House, Leachkin Road, Inverness IV3 8NW.

### FIRST REGISTRATION OF A CROFT



# Appendix 4

## 1220m Public Consultation Zone

