

Report of the Review into the Cononish Goldmine Shareholding

Paper for decision

1. Purpose

- 1.1. This report is presented as the outcome from a review of formal Board decisions and minuted discussions regarding the Cononish Goldmine development and whether Owen McKee's shareholding in Scotgold raises issues of concern regarding such discussions and decisions.
- 1.2. The terms of reference of the review were: -
 - 1.2.1. To assure the NPA Board that NPA Board and Planning and Access Committee decisions affecting Scotgold's Cononish goldmine planning application have not been prejudiced by Owen McKee's shareholding in Scotgold.
 - 1.2.2. In the event that reassurance cannot be given, and there is concern that Owen McKee's actions may have interfered with any decisions or process with relation Scotgold's Cononish goldmine planning application, identify recommendations for the NPA to address this.

2. Recommendation

- 2.1. It is recommended that:
 - 2.1.1. Board members are advised that the review found that the Park Authority had acted appropriately, followed proper process and had properly discharged its responsibilities. The instances where there was an undeclared interest by Owen McKee did not arise when the Board was taking any substantive planning decisions in relation to the Goldmine development. The decisions that were made when there was an undeclared interest was procedural, were by consensus and there is no record of Owen McKee contributing to or influencing such decisions.
 - 2.1.2. Board members receive refresher training on the Members Code of Conduct to ensure a full understanding of registerable and declarable interests.

3. Background

- 3.1. Owen McKee is a locally elected Board member. Owen McKee's initial appointment to the Park Authority Board was on 27th June 2002 and he has been

National Park Authority

Report of the Review into the Cononish Goldmine Shareholding

successful in securing subsequent 4-year terms with his existing appointment running until 3rd July 2018. Owen McKee was elected to the role of Depute Convener on 11th March 2013 and the Chair of the Planning and Access Committee on 3rd February 2011.

- 3.2. The Cononish Goldmine was and is considered to be a major development and as such, under the Scheme of Delegation, must be considered by the full NPA Board, as opposed to the Planning and Access Committee.
- 3.3. The Cononish Goldmine Planning application was approved by the NPA Board on 25th October 2011. The planning decision was issued on 13th February 2012. There have been on-going discussions throughout the planning process between the Cononish Goldmine applicants and NPA officers, and on 29th July 2014 the NPA received a pre-application for a change to the existing approved planning decision. This pre-application prompted the requirement for the NPA Board meeting on 8th December 2014 to agree to a Special Board meeting to be arranged for 26th January 2015.
- 3.4. During the October 2014 period when planning officers were advising Scotgold following their pre-application advice, the Director of Operations made senior Board members informally aware that an application was expected by the end of 2014. During these informal conversations Owen McKee disclosed that he has shareholdings in Scotgold.
- 3.5. On review of the Register of Member's Interest in November 2014 there was no reference made to Shareholdings in Cononish Goldmine. Concern was expressed by the Gordon Watson, Director of Operations, that if the NPA Board were to be revisiting the Cononish Goldmine planning consent that it would be important to be reassured that there was no potential conflict. Following a telephone conversation between the Director of Operations and Owen McKee an updated notice of interest was received on 12th November 2014. This notice advised of a holding of 520,000 shares in Scotgold, the developer of the Cononish Goldmine.
- 3.6. On 3rd December 2014 the Convener and Owen McKee met to seek confirmation of share ownership and to consider next steps. Following a subsequent conversation Owen McKee provided details of share purchase, dates, cost and value.
- 3.7. On 7th December 2014, Owen McKee confirmed the value and timescales of the Scotgold shares purchases: -

National Park Authority

Report of the Review into the Cononish Goldmine Shareholding

16 th May 2012	20,000
22 nd August 2012	30,000
28 th September 2012	50,000
18 th December 2012	45,000
28 th January 2013	55,000
2 nd April 2013	75,000
12 th March 2014	<u>195,000</u>
Total holding	520,000
Cost	£11,902.35
Market value, intimated by Owen McKee on 7 th December 2014	£2,340

- 3.8. During a Park Authority Board Business Session on the morning of 8th December 2014, which was held prior to the Park Authority Board Meeting commencing at 2pm, Owen McKee advised Board members of his intention to declare an interest in respect of the Agenda Item No 6. Special Board Meeting – Cononish Goldmine. Following the Board Business Session Owen McKee informed officials that he had instructed the sale of his shares in advance of the 8th December 2014, 2pm Park Authority Board Meeting in an effort to remove any potential for perceived conflict of interest. At the relevant agenda item regarding the holding of a special meeting to determine the Cononish goldmine planning application Owen McKee did not declare an interest. Subsequent to the meeting it became apparent that the shares were not actually sold until 9th December 2014.
- 3.9. Following the Board meeting of 8th December 2014 and being advised that the shareholding sale was only completed on 9th December 2014, concerns were expressed by the Convener and Accountable Officer over the potential risk to the Park Authority as there was technically still a declarable interest at that time. It was agreed that a review be undertaken.
- 3.10. On 12th December 2014 Owen McKee chose to resign from his Chair of Planning and Access Committee and Vice Convener of the Park Authority Board.
- 3.11. Relevant extracts from the National Parks (Scotland) Act 2000 and the Code(s) of Conduct for (Board) Members that applied during the periods of shareholding are included at Appendix 1.

National Park Authority

Report of the Review into the Cononish Goldmine Shareholding

4. Timetable of Events

24th and 25th October 2011	Cononish NPA Board Meeting (Application Approved 25th October 2011)
13th February 2012	Planning Decision Issued
16th May 2012 – 12th March 2014	Scotgold shares purchased
18th June 2012 – 8th December 2014	Discussions, updates, references and minor decisions made to Cononish Goldmine at various Park Authority Board and Planning and Access Committee meetings
28th April 2014	Updated Register of Interest received (no reference to Scotgold shareholding)
12th November 2014	Updated interest advised intimating 520,000 shareholding in Scotgold.
7th December 2014	Receipt of notification of dates, number and value of shareholding
9th December 2014	Sale of Scotgold shareholding
12th December 2014	Resignation from Owen McKee as Chair of Planning and Access Committee and Vice Convener of the Park Authority Board

5. Findings

5.1. The Code of Conduct for Members (paragraph 4.19) which was in place when Owen McKee's shareholding in Scotgold was obtained did not stipulate a de-minimis value or shareholding to determine whether or not an interest was registerable.

The shareholding was therefore a registerable interest.

5.2. Code of Conduct for Members (paragraph 5.7) further advises that *"You may have to declare interests in shares and securities, over and above those registerable under category five of Section 4 of this Code."*

The shareholding was therefore a declarable interest where Cononish Goldmine was discussed or reports presented.

The Schedule 1 of the National Parks (Scotland) Act (paragraph 18) further supports this;

1) *A member who is in any way directly or indirectly interested in any matter which is brought up for consideration at a meeting of a National Park authority must disclose the nature of the interest to the meeting; and, where such a disclosure is made –*

a) *the disclosure must be recorded in the minutes of the meeting, and*

National Park Authority

Report of the Review into the Cononish Goldmine Shareholding

b) *the member must not take any part in any deliberation or decision of the authority or of any of its committees with respect to that matter.*

- 5.3. The revised Code of Conduct for Board Members, which was first presented to Board members in June 2014, has now been approved by the Cabinet Secretary for Finance, Constitution and Economy.
- 5.4. There is no evidence to suggest that there were further shareholdings purchased at any time before, or after those that are identified in 3.7 above.
- 5.5. The Park Authority took all the normal procedural steps to request and minute declarations of interest at the beginning of Board and Planning and Access Committee meetings.
- 5.6. From a review of the National Park Authority Board and Committee meetings during the period of shareholding, 16th May 2012 to 9th December 2014, there were a number of meetings at which Cononish Goldmine was referred to. There were also two meetings (18th June 2012 and 8th December 2014) at which the minutes signify there were discussions and decisions made in respect of the Cononish Goldmine.

18 th June 2012	Board Business Session – Agenda Item 5 – Update on Cononish provided (no papers or minutes produced)
	Board Meeting – Agenda Item 7 – Reference included in Draft Annual Accounts (v2 - pages 28,30, 32)
	Board Meeting – Minute of Meeting – 10. Rural Development Update. There was a <u>discussion</u> and <u>decision</u> to delegate authority to the Director of Rural Development and Planning to discharge the historical Section 50 associated with Cononish Gold Mine which is superseded by the current Section 75 Agreement.
3 rd September 2012	Planning and Access Committee – Agenda Item 6 – Consultation response to Scottish Government’s “Planning Reform Next Steps”
17 th September 2012	Board Meeting – Agenda Item 7 – Cover paper for Annual Accounts
	Board Meeting – Agenda Item 7 Appendix 2 – Statutory Accounts
	Board Meeting – Agenda Item 10 Rural Development Update.
1 st October 2012	Planning and Access Committee – Agenda Item 7 – Appendix 1 Draft Planning Performance Framework report
3 rd December	Planning and Access Committee – Agenda Item 10

National Park Authority

Report of the Review into the Cononish Goldmine Shareholding

2012	Appendix 2 – Annual Local Plan Monitoring Report
10 th December 2012	Board Meeting - Agenda Item 15 Ranger Service – End of Season Review 2012
11 th March 2013	Board Meeting - Agenda Item 7 Appendix 1 Business plan
	Board Meeting - Agenda Item 11 Conservation Update
	Board Meeting - Agenda Item 13 Rural Development Update
20 th May 2013	Planning and Access Committee – Agenda Item 6 – Planning Service Charter Update
17 th June 2013	Board Meeting - Agenda Item 13 Rural Development Update
9 th September 2013	Board Meeting - Agenda Item 8 Conservation Update
	Board Meeting - Agenda Item 13 Rural Development Update
21 st October 2013	Planning and Access Committee – Agenda Item 7 & Appendix 2 – Proposed Modification to Scheme of Delegation in relation to EIA Developments
	Planning and Access Committee – Agenda Item 8 – Planning Performance Framework
9 th December 2013	Board Meeting - Agenda Item 11 Appendix 1 Visitor Experience Update
17 th February 2014	Board Meeting – Agenda Item 6 Appendix 1 – Cononish site location plan
	Board Meeting – Agenda Item 7 Budget
	Board Meeting – Agenda Item 14 National Park Partnership Plan
16 th June 2014	Board Meeting – Agenda Item 5 part 2 annual accounts
8 th December 2014	Board Meeting - Agenda
	Board Meeting – Agenda Item 6 Cononish – arrangement for Special Board Meeting
	Board Meeting – Agenda Item 6 Appendix 1 – Cononish site location plan
	Board Meeting - Agenda Item 11 Visitor Experience Update
	Board Meeting - Agenda Item 13 Rural Development Update
	Board Meeting – Minute of Meeting (currently draft)

5.7. Owen McKee was in attendance at all the above meetings and no declarations of interest were made.

5.8. At the two meetings where discussion and decisions were made, the decisions were not material to the Authority's planning responsibilities in relation to the Goldmine development. The decisions related to primarily administrative matters, were not debated or voted on, and not influenced by any intervention by

National Park Authority

Report of the Review into the Cononish Goldmine Shareholding

Owen McKee. The risk of challenge to any material planning decision or procedural decision by the Board is therefore considered to be minimal.

6. Conclusions

- 6.1. Owen McKee had a registerable interest when he purchased the Scotgold shares. Owen McKee should have updated his Register of Members' Interest within one month of purchasing Scotgold shares.
- 6.2. Owen McKee had declarable interests at Board Business, Park Authority Board and Planning and Access Committee Meetings where Cononish was referenced in papers or discussed. Owen McKee should have declared his interest as soon as practicable at the meeting where the interest arose.
- 6.3. The Authority followed proper process and fulfilled its Planning Authority obligations in respect of Board and Planning and Access Committee meetings in respect of the Cononish Goldmine.
- 6.4. Decisions taken were not material to the Authority's planning responsibilities in relation to the Goldmine development. There is no evidence to suggest that Owen McKee's shareholding in Scotgold affected any decisions made.
- 6.5. The risk of challenge to any material planning decision or procedural decision made by the Park Authority Board is considered to be minimal.

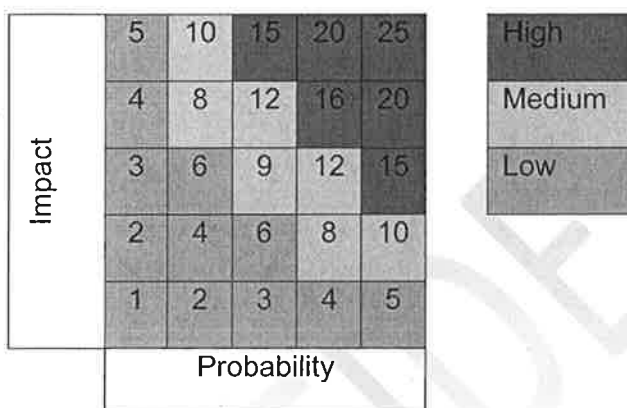
7. Risks

Category/ Risk and Impact	Risk Rating			Comment/Mitigation
	Impact score	Likelihood score	Total Risk Score	
<u>Reputational:</u> <u>Board/Governance:</u> There is the potential for challenge that Board decisions during the period of Owen McKee's shareholding were compromised resulting in the Park Authority being required to defend our reputation.	3	3	9	<ul style="list-style-type: none"> • By undertaking this review the Park Authority are satisfied that decisions have not been compromised and we have appropriate evidence to hand to respond appropriately to a complaint or any official request for information. • Continue to maintain high levels of governance during Board and

National Park Authority

Report of the Review into the Cononish Goldmine Shareholding

<p>There is a possibility that the heightened awareness of the Park Authority during the Your Park consultation and Cononish Goldmine applications will result in more public scrutiny.</p>				<p>Committee meetings.</p> <ul style="list-style-type: none"> • Update the current media statement to be able to respond appropriately and promptly in the event that there is public interest. • Advise Board members that the review evidenced that the Park Authority had properly discharged its responsibilities. • Reinforce awareness and provide refresher training on the Code of Conduct for Members.
---	--	--	--	--



Author: Jaki Carnegie, Director of Corporate Services
Approved: Lindsay Morrison, Chair of Audit Committee
 24th January 2015

Report of the Review into the Cononish Goldmine Shareholding

Schedule 1 of the National Parks (Scotland) Act specifies at paragraph 18 that

Members' Interests

- 1) A member who is in any way directly or indirectly interested in any matter which is brought up for consideration at a meeting of a National Park authority must disclose the nature of the interest to the meeting; and, where such a disclosure is made –
 - a) the disclosure must be recorded in the minutes of the meeting, and
 - b) the member must not take any part in any deliberation or decision of the authority or of any of its committees with respect to that matter.

The Code of Conduct for Members which applied from 2011 highlights....

SECTION 4: REGISTRATION OF INTERESTS

Category Five: Shares and Securities

4.19 You have a registerable interest where you have an interest in shares which constitute a holding in a company or organisation which may be significant to, of relevance to, or bear upon, the work and operation of the Loch Lomond & The Trossachs National Park Authority. You are not required to register the value of such interests.

4.20 The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any interests in shares and securities could potentially affect your responsibilities to the Loch Lomond & The Trossachs National Park Authority and to the public, or could influence your actions, speeches or decision-making. If in doubt, you may consult with the Standards Commission.

SECTION 5: DECLARATION OF INTERESTS

Introduction

5.1 The key principles of the Code, especially those in relation to integrity, honesty and openness, are given further practical effect by the requirement for you to declare certain interests in proceedings of the public body. Together with the rules on registration of interests, this ensures transparency of your interests which might influence, or be thought to influence, your actions.

5.2 Loch Lomond & The Trossachs National Park Authority has dealings with a wide variety of organisations and individuals and this Code indicates the circumstances in which a business or personal interest must be declared. Public confidence in the Loch Lomond & The Trossachs National Park Authority and its members depends on it being clearly understood that decisions are taken in the public interest and not for any other reason.

Report of the Review into the Cononish Goldmine Shareholding

5.3 In considering whether to make a declaration in any proceedings, you must consider not only whether you will be influenced but also whether anybody else would think that you might be influenced by the interest. You must keep in mind that the test is whether a member of the public, acting reasonably, might think that a particular interest could influence you.

5.4 If you feel that, in the context of the matter being considered, your involvement is neither capable of being viewed as more significant than that of an ordinary member of the public, nor likely to be perceived by the public as wrong, you may continue to attend the meeting and participate in both discussion and voting. The relevant interest must however be declared. It is your responsibility to judge whether an interest is sufficiently relevant to particular proceedings to require a declaration and you are advised to err on the side of caution. You may also seek advice from the Standards Commission.

Interests which Require Declaration

5.5 Interests that require to be declared may be financial or non-financial. They may or may not be interests that are registerable under this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration.

Shares and Securities

5.7 You may have to declare interests in shares and securities, over and above those registerable under category five of Section 4 of this Code. You may, for example, in the course of employment or self-employment, be engaged in providing professional advice to a person whose interests are a component of a matter to be dealt with by the Loch Lomond & The Trossachs National Park Authority.

5.8 You have a declarable interest where an interest becomes of direct relevance to a matter before the Loch Lomond & The Trossachs National Park Authority and you have shares comprised in the share capital of a company or other body and the nominal value of the shares is:

(i) greater than 1% of the issued share capital of the company or other body; or

(ii) greater than £25,000.

Making a Declaration

5.19 You must consider at the earliest stage possible whether you have an interest to declare in relation to any matter that is to be considered. You should consider whether agendas for meetings raise any issue of declaration of interest. Your declaration of interest must be made as soon as practicable at a meeting where that interest arises. If you do

Report of the Review into the Cononish Goldmine Shareholding

identify the need for a declaration of interest only when a particular matter is being discussed you must declare the interest as soon as you realise it is necessary.

Effect of Declaration

5.21 Declaring a financial interest has the effect of prohibiting any participation in discussion and voting. A declaration of a non-financial interest involves a further exercise of judgement on your part. You must consider the relationship between the interests that have been declared and the particular matter to be considered and relevant individual circumstances surrounding the particular matter.

5.22 In the final analysis the conclusive test is whether, in the particular circumstances of the item of business, and knowing all the relevant facts, a member of the public acting reasonably would consider that you might be influenced by the interest in your role as a member of a public body and that it would therefore be wrong to take part in any discussion or decision-making. If you, in conscience, believe that your continued presence would not fall foul of this objective test, then declaring an interest will not preclude your involvement in discussion or voting. If you are not confident about the application of this objective yardstick, you must play no part in discussion and must leave the meeting room until discussion of the particular item is concluded.

The Code of Conduct for Board Members, based on the Model Code of Conduct produced by the Standards Commission, was presented to the NPA Board meeting of 16th June 2014. The model code was then contextualised for the NPA and issued to Board members in August 2014. The relevant extracts for the purposes of this review include the following:-

SECTION 4: REGISTRATION OF INTERESTS

4.1 ... You must, at all times, ensure that these (registerable) interests are registered, ...and whenever your circumstances change in such a way as to require change or an addition to your entry in the Authority's Register. It is your duty to ensure any changes in circumstances are reported within one month of them changing.

Category Five: Interest in Shares and Securities

4.19 You have a registrable interest where you have an interest in shares comprised in the share capital of a company or other body which may be significant to, of relevance to, or bear upon, the work and operation of (a) the Authority and (b) the nominal value of the shares is:

- (a) greater than 1% of the issued share capital of the company or other body; or
- (b) greater than £25,000.

Report of the Review into the Cononish Goldmine Shareholding

Where you are required to register the interest, you should provide the registered name of the company in which you hold shares; the amount or value of the shares does not have to be registered.

Category Seven: Non-Financial Interests

4.21 You may also have a registrable interest if you have non-financial interests which may be significant to, of relevance to, or bear upon, the work and operation of the Authority. It is important that relevant interests such as membership or holding office in other public bodies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described.

4.22 In the context of non-financial interests, the test to be applied when considering appropriateness of registration is to ask whether a member of the public might reasonably think that any non-financial interest could potentially affect your responsibilities to the Authority and to the public, or could influence your actions, speeches or decision-making.

Section 5: Declaration of Interests

General

5.1 The key principles of the Code, especially those in relation to integrity, honesty and openness, are given further practical effect by the requirement for you to declare certain interests in proceedings of the Authority. Together with the rules on registration of interests, this ensures transparency of your interests which might influence, or be thought to influence, your actions.

5.2 ... Public confidence in the Authority and its board members depends on it being clearly understood that decisions are taken in the public interest and not for any other reason.

5.3 In considering whether to make a declaration in any proceedings, you must consider not only whether you will be influenced but whether anybody else would think that you might be influenced by the interest. You must, however, always comply with the "objective test" which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a board member of the Authority.

5.4 If you feel that, in the context of the matter being considered, your involvement is neither capable of being viewed as more significant than that of an ordinary member of the public, nor likely to be perceived by the public as wrong, you may continue to attend the meeting and participate in both discussion and voting. The relevant interest must however be declared. It is your responsibility to judge whether an interest is sufficiently relevant to particular proceedings to require a declaration and you are advised to err on the side of caution. If a board member is unsure as to whether a conflict of interest exists, they should seek advice from the Authority's chair.

Making a Declaration

5.13 You must consider at the earliest stage possible whether you have an interest to declare in relation to any matter which is to be considered. You should consider whether

Report of the Review into the Cononish Goldmine Shareholding

agendas for meetings raise any issue of declaration of interest. Your declaration of interest must be made as soon as practicable at a meeting where that interest arises. If you do identify the need for a declaration of interest only when a particular matter is being discussed you must declare the interest as soon as you realise it is necessary.

CONFIDENTIAL