



18<sup>th</sup> June 2018

Chair, Cllr Maxine Smith, North Planning Applications Committee, The Highland Council  
Members, NPAC

Dear Chair/Members

**17/04601/FUL and 17/04404/FUL – Coul Links**

Not Coul respectfully makes the following further submission.

Your Planning Officer's Supplementary Report issued for this Special Meeting recommends REFUSAL, when the application is seen in the context of the Dornoch Firth & Loch Fleet Ramsar site which contains the Coul sector within the Loch Fleet SSSI.

Please refer to para. 4.3 and Appendix 2 of the PO's Supplementary Report and then consider the following facts.

**1. RAMSAR SITE**

- a. The SSSI sector of Coul lies within the Dornoch & Loch Fleet Ramsar site
- b. Ramsar is the name of an International Treaty, dating from 1971. It provides the highest level of protection. The UK (73 sites) is a signatory. It applies worldwide to areas of outstanding importance to wetland birds and habitats. Adherence isn't optional. The Dornoch Firth and Loch Fleet site is one such area.
- c. Policy 57 of your adopted LDP, which (by s. 25 of the Planning Act) you must follow, states that "*For features of international importance [i.e. the Ramsar site] developments likely to have a significant effect on a site, either alone or in combination with other plans or projects [i.e. the potential effects on the Ramsar site from off-site water abstraction and water quality, part of this application], and which are not directly connected with or necessary to the management of the site for nature conservation [i.e. nature conservation management at Coul is independent of golf course management and can be achieved without a golf course] will be subject to an appropriate assessment (AA).*

In other words, a clear discrete process is required.

- d. The SG's policy is that Ramsar sites in Scotland are accorded the same status as *Natura 2000* (European) sites, and hence AA should follow the procedure set out in Article 6(3) of the Habitats Directive 1992. That's binding on us all.
- e. AA is a step-by-step process which, for a development to be approved, establishes, without reasonable scientific doubt, that the plan/project [here the golf course and the reservoir] will not "affect the integrity" of the site. Mitigation is considered as part of the AA process.
- f. The process is triggered by an initial estimate of significant effect. Throughout the process, objective and verifiable information is required to enable the competent authority [THC] to approve. You must be able to say without reasonable scientific

doubt, that there would be no significant adverse effect on the integrity of the Ramsar site. ONLY then can you grant consent.

## 2. STEPS IN AN APPROPRIATE ASSESSMENT FOR DORNOCH FIRTH & LOCH FLEET RAMSAR SITE

- a. **STEP 1: INITIAL LIKELIHOOD OF SIGNIFICANT EFFECTS** (SNH) has advised that the proposal is likely to have significantly adverse effects on the Dornoch Firth & Loch Fleet Ramsar site, thus starting the AA step-by-step process. That's enough, in law.
- b. **STEP 2: DEFINE THE STUDY AREA** This is the Coul SSSI sector of the Dornoch Firth & Loch Fleet Ramsar Site, with additional reference to the complete Ramsar site.
- c. **STEP 3: IDENTIFY THE CONSERVATION OBJECTIVES OF THE SITE [AND THE SITE'S CONDITION]**
  - i. These are set out in a SNH Site Management Statement (SMS) for each constituent SSSI within the **Ramsar site**:
    1. Mound Alderwoods (no dunes),
    2. **Loch Fleet, Dornoch Firth, Morrich More with dunes, and**
    3. Tarbat Ness (no dunes).
    4. Therefore the relevant conservation objectives for management (SSSI with dune habitat), using SMSs are:
      - a. **Loch Fleet SSSI** Restore the condition of the sand dune habitat – remove encroaching scrub (Coul sector problems: gorse on dune heath; birch and willow on dune slack; management methods - removal of scrub/trees plus appropriate grazing stocking levels) – *Site Condition [LF SSSI] 2014 Unfavourable No Change*;
      - b. **Dornoch Firth SSSI** Maintain the condition and extent of the sand dunes (Cuthill and Skibo Links problems: gorse and broom scrub problem over most of site, requiring a scrub control plan for management) – *Site Condition 2015 [DF SSSI] Unfavourable declining*;
      - c. **Morrich More SSSI** Maintain condition and extent of coastal habitats [includes sand dune] in favourable condition (SMS does not list any problem and statements on management are generic, e.g. 'appropriate') – *Site Condition 2015 [MM SSSI] Unfavourable Declining*.
  - ii. Conclusion: The conservation objectives overall seek to **maintain the extent and condition of sand dune habitat**.
  - iii. Site Condition is **Unfavourable** in all constituent SSSIs. **Loch Fleet is rated the best of the three SSSIs** with sand dune shown as "*Unfavourable: No Change*" versus two sites with "*Unfavourable: Declining Condition*." On SNH Sitelink the sand dune feature of the Ramsar site, as a whole, is classified as "*Unfavourable: Declining*."

**d. STEP 4: IDENTIFY THE HABITATS AND SPECIES TO BE CONSIDERED IN THE ASSESSMENT**

- i. This has to cover Ramsar-specified wetland habitat and species, present at Coul, known with reasonable scientific certainty to be affected by golf development, and mentioned on the **Joint Nature Conservation Committee (JNCC) Information Sheet (RIS) for Ramsar Wetlands** covering the Dornoch Firth & Loch Fleet Ramsar site (**RIS Number UK13011**, see section 21).
- ii. The following habitats and species in UK13011 are identified for use in AA: **Habitats Directive Annex 1 feature H2190 Humid Dune Slacks** and the **Higher Plant Baltic rush *Juncus balticus***. *Juncus balticus* is in dune slack habitat at Coul and was only discovered in 2017, by *Not Coul*, not the applicant – more has been found in 2018. Overall, this plant is present as a small scatter of locations, each with a small number of stems. At the scale of the Coul site *Juncus balticus* appears to be Rare.

**e. STEP 5: CONSIDER INFORMATION ABOUT OTHER PLANS OR PROJECTS (CUMULATIVE EFFECTS) AS PART OF ASSESSING EFFECTS ON IDENTIFIED NATURAL HABITATS, SPECIES, ECOLOGICAL STRUCTURE & FUNCTION**

- i. The following negative effects are assessed as **certain** to happen if the golf project/plan is approved, **without mitigation**:
  1. Direct habitat loss of H2190 Humid Dune Slacks (estimated at 2.20 ha by SNH and 0.27 ha by the applicant, both estimates based on the applicant's habitat data set) – see PO's Supplementary Report Appendix 2.
  2. Destruction of Baltic rush *Juncus balticus* at one location on the fairway of Hole 13 (plants found in 2017) and at one location on the fairway of Hole 16 (plants found in 2018). Together, the loss of these plants makes up 25% of known locations at Coul.
- ii. The following negative effects **could happen, with reasonable scientific certainty**, if the golf project/plan is approved without mitigation:
  1. Following irrigation, fertilisers and fungicides in solution would be washed through the sandy soil to the watertable, moving downslope to affect the plant composition of H2190 Humid Dune Slacks within that pathway. In discussing effects on dune slack and hydrology (PO's Supplementary Report, Appendix 2) SNH notes that the applicant admits "*that leaching of fertiliser may reach 100% in sandy habitats, suggesting that nitrogen is likely to reach the water table, which could cause vegetation changes to dune slack habitats.*"
  2. This change is the result of the hypersensitivity of the species making up H2190 Humid Dune Slacks. Later, in discussing golf course construction and management, SNH notes a *high risk of water table contamination* from fertiliser in the establishment phase (Years 1 and 2), with chemical concentrations greatly exceeding the threshold values for nearby dune slacks. In addition, there might be a negative effect on *Juncus balticus* (the largest concentration found so far is east and downslope of the main fairway of Hole 16).

3. Water abstraction and abstracted water quality (from 17/04404/FUL) could also affect the Ramsar site. SEPA (March 2018) considers there is some risk of watertable lowering due to abstraction. Abstracted water samples are noted to have high nitrogen content, *double that acceptable* to SEPA using UKTAG advice (under the mandatory Water Framework Directive). Without mitigation, these effects would dry out H2190 Humid Dune Slack habitat and elsewhere change species composition to drier slack types. Irrigation water with excessive nitrogen content would change the species composition of slacks which are downslope from irrigated areas, via changes in groundwater level and chemistry.

f. **STEP 6: ASSESS PREVENTIVE AND MITIGATION MEASURES INCLUDING**

**ALTERNATIVE LOCATIONS** The negative effects above are re-assessed here in the context of preventive and mitigation measures. Re-assessment estimates the size of any residual significant effects.

- i. There are no preventive measures offered to eliminate negative effects which are certain to happen. For example, an alternative location for the golf course, outside the Ramsar site, has been dismissed as unsuitable by the applicant, though without reasons.
- ii. No mitigation is offered to prevent the loss of 2.20 ha of dune slack habitat (converted to tees, fairways and greens). **This is therefore a certain residual adverse significant effect if the golf project/plan is approved (permanent loss of 2.20 ha of dune slack).**
- iii. The presence of *Juncus balticus* is unacknowledged by the applicant and therefore there is no mitigation possible for the loss of perhaps 25% of its population at Coul. **This is therefore a certain residual adverse significant effect (permanent loss of part of the *Juncus balticus* population) if the golf project/plan is approved.**
- iv. There are preventive measures proposed for negative effects of reasonable scientific certainty, if the golf project/plan is approved. Each of these would leave no residual adverse significant effect.
  1. SEPA has placed stringent conditions on water abstraction, requiring monitoring of water levels downslope in the SSSI/Ramsar site and a requirement to use alternative water sources for irrigation if there is an abstraction effect.
  2. SEPA has placed stringent limits on irrigation water quality (nitrogen content), requiring testing and the likely installation of a water purification facility to reduce or remove dissolved nitrogen.
- v. There are mitigation measures proposed for negative effects of reasonable scientific certainty, if the golf project/plan is approved. Some are fully effective and have no residual effect, but others have some likely residual adverse effects.
  1. The Applicant's Schedule of Mitigation contains measures to divert all percolating water (containing dissolved chemicals) into treatment boxes. This mitigation will be applied to all tees and greens (but not fairways). This technology may be feasible but *Not Coul* cannot find

an existing example of its use. Yet the method has been accepted by SEPA, via planning conditions on implementation and management. The largest amounts of chemicals (fertiliser and, fungicide) are applied to tees and greens. This mitigation measure, if successful, would eliminate the effects of additional chemicals in groundwater upon dune slacks *downslope*. There would be no residual significant adverse effect *downslope* of tees and greens. These are small features, making up just 1.89 ha within the SSSI/Ramsar site (18% of ground treated with irrigation water and chemicals, principally fertiliser).

2. There is no equivalent mitigation measure for fairways within the Applicant's Schedule of Mitigation. This fairway ground occupies 8.86 ha (82% of ground treated with irrigation water and chemicals). Irrigation water will still have an effect on local groundwater levels. The amount of chemicals used upon fairways is notably lower than greens and tees but chemical effects within groundwater would still occur *downslope*. **There will therefore be changes to the groundwater level and chemistry *downslope* of fairways. These are likely to alter the species composition of dune slacks as non-natural impacts. These effects would be worst in the establishment phase (years 1 and 2). They would represent likely residual adverse significant effects, as SNH says.**

- g. **STEP 7: DETERMINE THE EFFECTS ON THE INTEGRITY OF THE SITE WITH REFERENCE TO "BEYOND REASONABLE SCIENTIFIC DOUBT"** [the words of the Directive]. STEP 6 results show that there are certain and likely notable residual significant adverse impacts on the natural habitats and species of dune slacks. These will affect their extent, ecological structure (plant composition) and ecological function (eco-hydrology and eco-hydrochemistry). *At least 10%* of the Coul dune slack extent will be lost, with perhaps 25% of the *Juncus balticus* population. There will probably be additional indirect impacts upon ecological structure and function arising from groundwater level changes (due to irrigation) and increased nutrient input into a hypersensitive ecosystem. **The initial view of SNH (likely significant adverse effect on site integrity) is therefore confirmed**. There are no Imperative Reasons of Overriding Public Importance [IROPI] and so no permission can be granted on that ground. There are no Public Health issues.

*Not* Coul is advised by Senior Counsel that refusal is the only possible option in these circumstances.

### 3. CONCLUSION – PLANNING PERMISSION MUST BE REFUSED because

- (1) the law requires an AA for the Ramsar site, and
- (2) none has been carried out, and
- (3) if one was carried out, it is inevitable that it would come to the conclusions above.
- (4) The Coul Links proposal contravenes the Ramsar Treaty, is contrary to the Habitats Directive, fails the single test which might allow it, and is contrary to the Local Development Plan. There are NO material considerations indicating any different possible outcome.

(5) This is the law and it must be followed. It is all quite independent of any economic justification for a new golf course, the character or eventual status of the course or the enhancement of tourism. All of those criteria are irrelevant.

(6) The law doesn't allow THC a discretion.

Dr Tom Dargie  
Chairman, *Not CouI*  
18<sup>th</sup> June 2018