

Protecting Scotland's wildlife for the future

Head of Planning and Building Standards
The Highland Council
Glenurquhart Road
Inverness
IV3 5NX

27 October 2017



Dear Sir/Madam,

PROPOSAL: 17/04601/FUL, Development of 18 hole golf course, erection of clubhouse, renovation of existing buildings for maintenance facility, pro-shop, caddy hut, workshop, administration building, information booth, formation of new private access from C1026 | Land 1700M NW Of Embo Community Centre School Street Embo

I write with reference to the planning application referred to above. The Scottish Wildlife Trust (the Trust) wishes to lodge an **OBJECTION** to the above planning application from Coul Links Limited for consent to develop a golf course and associated infrastructure.

We believe the proposals will have a significant adverse effect on:

- **Dornoch and Loch Fleet Special Protection Area (SPA)**
- **Dornoch and Loch Fleet Ramsar Site, including on the features at Coul links which give this site a unique value within the UK Ramsar site series**
- **The unique sand dune habitats and breeding bird assemblage of Loch Fleet Site of Special Scientific Interest (SSSI) and our assessment of the significant adverse effects of the development on the SPA, Ramsar site and SSSI is upheld by the inquiry reporters conclusions in relation to the Trump International Golf Links application at Menie Links¹**
- **An endemic invertebrate, Fonseca's fly of international importance**
- **Waxcap fungi (*Hygrocybe spp*) of European importance**
- **The second most important population of juniper on sand dunes in Britain**
- **A nationally rare bryophyte, a nationally rare lichen, and several nationally rare species of invertebrate**

The Scottish Wildlife Trust believes granting consent would be contrary to the Highland Council's policies for protecting the natural heritage set out in its Local Development Plan.

We urge Highland Council to reject the application.

¹ Paragraph 13, Inquiry Report: <http://www.gov.scot/resource/doc/212607/0067709.pdf> quoted in full under Dornoch and Loch Fleet SPA below.

Introduction

The Scottish Wildlife Trust managed Coul links under agreement with the landowner for 25 years from 1st August 1985 to 31st July 2010. The Trust sought to renew this agreement before it expired but that was not possible. The Trust continues to be involved in the management of the Loch Fleet National Nature Reserve immediately to the North of the site, as a party to a management agreement with Sutherland Estates and Scottish Natural Heritage.

The Scottish Wildlife Trust believes that a primary function of the planning system should be to 'further the conservation of biodiversity' as stated in section 1 of the Nature Conservation (Scotland) Act 2004. In delivering the biodiversity duty, planning bodies and office holders should take particular account of internationally and nationally designated sites². The Trust believes that there should be a presumption against development in any area of identified biodiversity interest.³ It follows then that the Trust must object to the proposals included in this application, given:

1. The international designations of Coul Links as a Ramsar site and Special Protection Area and the fact that, as we explain below, the proposals would adversely affect the features for which these sites have been designated
2. Its designation as a Site of Special Scientific Interest, the designated features of which would also be adversely affected by the proposed development
3. The relative scarcity of the habitats at Coul links that would be damaged by the development in a national context – dune grasslands, heath and slack cover relatively small areas within the suite of protected areas compared to other habitat types (e.g. peatland, wet heath) and are rare habitats in the wider countryside
4. The fact that these habitats are under pressure, including on other protected areas, from the cumulative impact of development at other sites, and also from climate change
5. The presence at Coul links of species of international and national importance which would be adversely affected by the proposed development

Structure of our response

In this response we first outline the key pieces of legislation and Scottish Government policy relevant to the consideration of applications which affect sites designated for their nature conservation interest. We then explain why we consider the proposed development would cause adverse effects and/or why the Environmental Statement does not provide sufficient information to support conclusions it makes about the severity of effects the development would have. We consider first the effects on the designated features of the Dornoch Firth and Loch Fleet SPA; then the effects on the designated features of the Dornoch and Loch Fleet Ramsar Site; the Loch Fleet SSSI; and then the effects on other aspects of the biodiversity of Coul Links, particularly on internationally and nationally important populations. We also consider the proposed mitigation, and highlight some issues we have identified with the process that has been followed and the economic analysis that has been provided. Our response concludes with an examination of the decision making procedure established in the Highland Council's Local Development Plan for evaluating the impacts of proposals on the natural heritage.

Relevant legislation and Scottish Government policy

In Scotland, European Sites are defined as Special Areas of Conservation (SACs) designated under the EU Habitats Directive, and Special Protection Areas (SPAs) listed under the EU Birds Directive. The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) apply to European Sites. The regulations require that competent authorities carry out an appropriate assessment of proposals likely to have a significant effect on European sites, and establish strict tests which must be applied where an assessment determines that proposals would have an adverse effect.⁴

Planning authorities, and all public bodies, have a duty under the Nature Conservation (Scotland) Act 2004 to further the conservation of biodiversity. This duty must be reflected in development plans and development management decisions.

The Scottish Government's (2015) economic strategy makes clear that protecting biodiversity is "fundamental to a healthy and resilient economy".⁵ The importance of internationally and nationally protected areas is further recognised in the National Planning Framework 3⁶ and Scottish Planning Policy which states that the planning

² In this case the Dornoch and Loch Fleet SPA and Ramsar Site and the Loch Fleet SSSI

³ Scottish Wildlife Trust Policy: The Planning System: https://scottishwildlifetrust.org.uk/wp-content/uploads/2016/09/002_057_publications_policies_Policy_on_the_planning_system_June_2012_1339581875.pdf

⁴ The process is set out in this SNH document: <https://www.snh.scot/sites/default/files/2017-06/A423286%20-%20Legislative%20requirements%20for%20European%20Sites.pdf>

⁵ <http://www.gov.scot/Publications/2015/03/5984/5>

⁶ <http://www.gov.scot/Publications/2014/06/3539/5>

system should “conserve and enhance protected sites and species”.⁷ The Policy states that proposals which would be likely to significantly affect a Natura Site (Special Area of Conservation or Special Protection Area) must be subject to an appropriate assessment and can only be approved if the assessment shows they would not have an adverse effect on the integrity of the site. This condition can only be derogated from if there are no alternative solutions; there are over-riding reasons of public interest; and compensatory measures are provided to ensure the overall coherence of the Natura network. Developments which would affect a nationally designated site (including a Site of Special Scientific Interest) should only be permitted where:

- the objectives of designation and the overall integrity of the area will not be compromised; or
- any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

The Scottish Government’s Land Use Strategy sets the strategic direction for land use in Scotland. It forms part of a set of policies which is taken into account in formulating national planning policy. It sets an objective of “responsible stewardship of Scotland’s natural resources delivering more benefits to Scotland’s people”. The strategy has established ten principles for sustainable land use. Two of these principles are:

- Where land is highly suitable for a primary use (for example food production, flood management, water catchment management and carbon storage) this value should be recognised in decision making.
- Land use decisions should be informed by an understanding of the functioning of the ecosystems which they affect in order to maintain the benefits of the ecosystem services which they provide.

In line with the second principle above, the Scottish Government is committed to promoting an ecosystems approach to managing our natural capital. As the Strategy explains Scotland’s natural capital is the stock of natural assets, such as soil, water, trees, woodland, biodiversity or peatland. As humans we benefit from the services which are provided by these natural assets, for example we derive food, clean water, fibre and pollination. These benefits, also known as ecosystem services, are the things which make human life possible. They also contribute to our economic prosperity and overall health and wellbeing. It is important that we recognise their importance and the need to keep these assets in a healthy state. The ecosystems approach can help ensure that any decision which has the potential to have multiple impacts on the natural environment is taken with the knowledge of the indirect as well as the direct effects. The Scottish Government explains that applying this approach means that: “At a local scale, a decision should consider ecosystem function on a small area and any impacts on factors such as hydrological flows and habitat networks. In coastal settings, the impacts on natural processes of erosion and build-up of sediment may need to be considered. These impacts should include cumulative effects if there are a number of similar projects close together.”⁸

Detailed policies for meeting the Scottish Government’s commitments to conserve biodiversity including their commitments for protected areas are set out in the Government’s Biodiversity Strategy. The strategy highlights the importance of ensuring that the best examples of habitats are safeguarded and managed as protected places, with SSSIs as the main protection mechanism. The strategy highlights the important role protected areas play: “Protected places are especially valuable providers of ecosystem services because the ecosystems within them are in the best condition. They integrate conservation with people’s enjoyment of nature, provide jobs, particularly in rural Scotland, and offer many other public benefits to health, education, employment, environmental justice and tourism. They contribute towards many of the Scottish Government’s 15 National Outcomes and its over-riding purpose of sustainable economic development.”

The Strategy sets out the Government’s ongoing commitment to improve the condition of protected areas, and to ensure that at least 18% of land is within protected areas by 2020.⁹ It specifically identifies coastal dunes as a priority habitat for restoration.¹⁰

Dornoch and Loch Fleet SPA

The mudflat, saltmarsh, beach, intertidal sand and dune habitats which comprise Coul links and which are designated under the EU Birds Directive as part of the Dornoch and Loch Fleet SPA are a system. They are intimately linked by ecological processes such as erosion and sedimentation. A key sensitive process linking the elements of the system is groundwater flow. As the site masterplan (Appendix 1 of the Environmental Statement)

⁷ <http://www.gov.scot/Publications/2014/06/3539/5>

⁸ <http://www.gov.scot/Resource/0050/00505253.pdf> and: <http://www.gov.scot/Resource/Doc/345453/0114927.pdf>

⁹ One of the Aichi targets set under the Convention on Biological Diversity. The Scottish Government has committed to meet all of the targets by 2020.

¹⁰ <http://www.gov.scot/Publications/2013/06/5538/7>

illustrates the proposed layout of greens, fairways, rough, tees, tracks and other infrastructure are spread throughout Coul links. Therefore, assessing the impact of the development is not simply a case of totalling up the areas of the various habitats which the footprint of the development will cover. The creation of a golf course, and aspects of its management such as drainage, irrigation, seeding, cutting, fertilising, application of pesticides, water abstraction and resultant impacts such as changes to grazing, and disturbance, will fundamentally affect the operation of these natural processes which give the site its high biodiversity value, and for which it is designated. It is particularly important to protect fragile, coastal sites from the additional pressure of development, as they come under increasing pressure from the changed weather and sea conditions as a result of climate change. The concomitant effects the development will have on the integrity of the site as a whole are either not assessed at all in the environmental statement, e.g. there is no assessment of the effects on movement of sand through the site, or they are inadequately assessed, as we expand on below. For these reasons we do not think the conclusions in the Environmental Statement that the development will have a moderately significant beneficial effect on the features of the Dornoch and Loch Fleet SPA can be sustained. Our view is upheld by the conclusion of the inquiry reporter in the Menie decision who found that:

“The development would have a significant adverse impact on the southern third of the Foveran Links SSSI. Here the dynamism that underpins the designation of the SSSI would, for the majority of the holes in the back nine of the championship course, be halted. Much, though not all, of the geomorphological interest in that affected part of the SSSI would be compromised alongside a major adverse effect on the coherence of the ecological structure and function of the impacted areas compromising the objectives of both designation and overall integrity.”¹¹

It is important to note that the reporter was considering proposals where nine holes would be located within a SSSI, whilst in these proposals, 12 holes would be entirely located within the SPA, four partially, and just two of the 19 holes outwith it. It is clear from this finding that the proposed development would have a major adverse effect on the coherence of the ecological structure and function of the impacted areas compromising the objectives of both designation and overall integrity Dornoch and Loch Fleet SPA.

Seven of the eight features for which the site is designated are non-breeding waterfowl. All of these features, particularly curlew, oystercatcher, greylag goose and wigeon, will use areas of improved grassland / arable land at high tide (and at other times in the tidal cycle) for roosting / feeding. The wintering bird survey at Coul links focussed on the dunes, dune slacks and foreshore and specifically excluded these habitats from survey, even though they were within the ornithological survey area (Annex A, 4.2.2.1 Winter Birds Survey Method). The Environmental Statement does not consider where these SPA features do go when the foreshore is covered at high tide.

As a general point we question why, particularly given the site is an SPA, only one year of bird surveys for SPA designated features have been carried out? We also question why, given that the site is designated for non-breeding waterfowl, that surveys were carried out in winter only, and did not fully cover the whole of the autumn and spring migration periods?

The aim was to conduct winter bird surveys to include two hours either side of high tide. Annex A, Appendix A.1 Winter Bird Survey Report lists 13 walkover surveys. Of these five largely or entirely missed the window 2 hours either side of high tide, two only partially covered the window, and for one of the surveys it is not clear when the walkover was done in relation to the high tide window. More than half of the site walkovers therefore missed the optimal window when birds would be most likely to be using the areas surveyed.

The method described is the method used for WeBS counts. This is not a walkover methodology, but is a method for counting a site from vantage points chosen to allow site coverage and to allow the observer to move between counting points without causing bird movements due to disturbance. Annex A, Appendix A.1 states that surveyors walked parallel to one another through the site, and does not mention any effort undertaken to avoid disturbing birds ahead of the surveyors which would result in undercounting.

Vantage point surveys (VPs) were carried out when there was water in the dune slacks. Some of the species for which the SPA is designated e.g. curlew, oystercatcher, Bar-tailed godwit, dunlin, redshank would be likely to use the dune slacks for roosting/feeding at high tide if the dune slack was dry. Whether the dune slack was flooded or not, birds would be most likely to use these parts of the site at high tide. Appendix A.1 shows that 18 two-hour vantage points were carried out, a total of 36 hours. Eleven of these were outwith the high tide window (one hour either side of high-tide), while a further five were partially outwith this window. Only two of the VP watches had the high tide as the mid-point, and one of these was for two hours after sunset when it would have been very dark in the second hour and difficult to detect birds, especially at range, and given the topography. This means that somewhere between 60 to 90% of this survey effort has been at sub-optimal times for recording target species. The

¹¹ Paragraph 13, Inquiry Report: <http://www.gov.scot/resource/doc/212607/0067709.pdf>

vantage point surveys did not begin until December and finished in mid-March. They therefore entirely missed the main autumn migration period, and missed the peak of the spring migration period.

Our understanding from the ES and Appendix A.1 is that only one vantage point survey was conducted at a time. No information is presented in the ES as to where the VPs were, nor what the view was from the VP. Due to topography it would not be possible to see all of the dune slacks targeted by the VPs from one position. As noted above, the total survey effort for VPs was 36 hours. Assuming that at least two VP locations were required to cover all the target habitat, that the survey period fully covered the autumn and spring migration periods, and that two years of survey data were required, we calculate that this would require at least 432 hours of observations (2 times 3 seasons times 36 hours times 2 years). That is six times the level of survey effort reported in the ES.

Taken together, we consider that the lack of adequate survey coverage, lack of sufficient survey effort and the absence of additional information about how SPA designated features use the surrounding area means it is not possible to conclude that the development will have no effect on these features of the SPA. The statement “No golf course infrastructure is planned for habitat areas used by wintering SPA species, so no direct adverse loss of SPA bird habitat is predicted” cannot be sustained by the evidence presented.

We do not offer comment on the potential impact of the proposals on one of the SPA features – osprey – and presume that data on the use of the site by osprey is presented in the confidential annex.

In summary, we can see no basis for concluding that the proposals would not have a substantial adverse impact on the SPA, and we consider that the proposals would have a significantly adverse effect on the SPA habitat.

Dornoch and Loch Fleet Ramsar Site

We do not agree with the approach taken in the ES to assessing the impacts of the proposals on the Dornoch and Loch Fleet Ramsar site. For example section 5.5.3.4 of the ES argues that because a. the features for which the Ramsar Site is notified are also designated features of the Loch Fleet SSSI, and b. SNH state that Ramsar Sites in Scotland are protected and managed through the SSSI system and c. that the ES assesses the impact of the proposals on these features of the SSSI, that therefore no further consideration of the effects on the Ramsar site is required. The Ramsar designation of Dornoch and Loch Fleet is a further recognition of its international significance. The Site of Special Scientific Interest designation in and of itself indicates the national significance of a site. Natura and Ramsar sites have also been designated as SSSIs to bring them within the scope of the protections given to these sites by national statute, e.g. to make it an offence to damage any feature specified in an SSSI notification (s19 Nature Conservation (Scotland) Act 2004). However, the additional status conferred on a site by its designation under the Ramsar Convention means that additional care must be taken to consider the potential adverse effects of any development on the site, in the same way as it would for a Natura Site. Indeed, this is recognised by the approach taken by Highland Council in its Local Development Plan which states that the Council will apply a more stringent test for assessing effects on features of international importance than features of national importance (Chapter 21, discussed more fully later in this letter). In short, we take the firm view that there is a higher bar for assessing impacts on a SSSI that is also a Ramsar Site than on a site which is a SSSI alone. We understand that the Ramsar Secretariat is taking an interest in the proposal and has written to Defra (the UK agency responsible for UK Ramsar sites) requesting information on the extent of habitat damage that will occur and the levels of compensation required, and that a potential Article 3.2 case under the Ramsar Convention has already been opened by Ramsar.

Features for which the Ramsar site is notified include Bar-tailed godwit, Greylag goose, wigeon and non-breeding waterfowl, which are also features of the SPA, therefore the comments we make above in relation to the effect of the proposed development on the SPA apply equally to the effect on these features of the Ramsar site.

As well as the effects on these ornithological features, our particular additional concern in relation to the Ramsar site relates to the effect the proposed development would have on sand-dune habitats. The same comments we make above in relation to the effects the proposals would have on the habitats of the SPA also apply equally here. It is equally clear that the finding the inquiry reporter made in the Menie decision described above means that the proposed development would have a major adverse effect on the coherence of the ecological structure and function of the impacted areas compromising the objectives of both designation and overall integrity of the Dornoch and Loch Fleet Ramsar site. The sand dune complex and associated dune slacks and dune heaths are part of a natural system. The system is dynamic and changes over time in response to natural processes e.g. erosion, deposition, and grazing. Dynamic changes occur over a range of spatial and temporal scales, from the localised impacts of grazing and the seasonal changes in the water table, to the gradual migration and stabilisation of dunes with a succession of plant communities. Over time, a dune system changes from highly dynamic areas of bare moving sand to Coul in its present state with a continuum from bare dune, through dune grassland and heath to dune slack. The geomorphology of the site shows that Coul had dunes moving sand west to east in the north, with

collapses of the outer foredune ridge allowing sand to blow inland to form climbing dunes over the raised beach. These now contain a very fine staircase of slacks descending to Coul's very fine winter loch which forms on the main dune slack.¹²

As the site masterplan (Appendix 1 of the Environmental Statement) illustrates the proposed layout of greens, fairways, rough, tees, tracks and other infrastructure are spread throughout Coul links. Therefore, assessing the impact of the development is not simply a case of totalling up the areas of the various habitats which the footprint of the development will cover. The creation of a golf course, and aspects of its management such as drainage, irrigation, seeding, cutting, fertilising, application of pesticides, water abstraction from boreholes and resultant impacts such as changes to grazing, and disturbance, will fundamentally affect the operation of these natural processes which have created the sand dune features which are a notified feature of the Ramsar site. The development will freeze this dynamism over time and steadily impoverish the biodiversity to make it a very ordinary place, like most of Scotland's links golf courses (lawns and scrub). Construction and management will fundamentally affect these processes of seasonal and longer term changes. The concomitant effects the development will have on the sand dunes as a result of interference with these processes are either not assessed at all in the environmental statement, e.g. there is no assessment of the effects of changing seasonal rainfall patterns on the water table throughout the site, or they are inadequately assessed. It is also particularly important to protect fragile, coastal sites from additional pressures arising from development, as they come under increasing pressure from the changed weather and sea conditions as a result of climate change.

Only 17 Ramsar sites in Scotland include sand dunes¹³. The unique value of the sand dunes at Coul is due to the range of sand dune habitats represented. For a moderately sized dune site it has tremendous habitat diversity with habitat assemblages not found elsewhere in the Dornoch and Loch Fleet SPA and Ramsar site. For example, although it is not an SAC, the range of habitats present is demonstrated by the fact that the site has seven out of nine Annex 1 sand dune habitats. The value of the site is further highlighted in the reports of the Sand Dune Vegetation Survey of Scotland (SDVSS)¹⁴ – a survey of all sand dunes around Scottish coast conducted by Dr. Tom Dargie in the 1990s. According to Dargie sand inputs at Coul are higher than at Ferry links and this has allowed better dune development. The dune slack vegetation at Coul is an important feature, again in contrast to Ferry links. His overall assessment of the site was “an outstanding site with distinct characteristics complementing other key dune locations in the Moray Firth”. In the survey dune grassland complexes were identified at Coul with provisional new vegetation types which are likely to be restricted to the Moray Firth. The site has a full range of dune slack communities which also contain flush, fen, wet heath and slack woodland vegetation; a full set of dune heath (H11) communities, including rare lichen rich dune heath, and stands of juniper scrub – the second largest area of juniper on dunes in Scotland.¹⁵

Additional information provided by Dr. Dargie illustrates why the dune slack variation at Coul is distinct: there are deflation slacks formed by blowouts in the north, contrasting with a staircase of slacks within climbing dunes in the south. These occur at different levels and mark groundwater travelling downhill to create and maintain the outstanding winter loch over 1 km in length which is the best example of such a feature in Scottish dunes, Coul also is the best place to observe an intact, high-quality slack staircase sequence. The climbing dunes in the south are formed by sands blown inland after collapse of the foredune ridge in the past, showing that in the long-term the system changes from stable to highly dynamic. The deflation and staircase slacks contain extents of Shoreweed *Littorella uniflora* which were only discovered in 2016 and 2017 by Dr Tom Dargie¹⁶. These represent a priority habitat under the Habitats Directive¹⁷ and this is the first location known for mainland Scotland. The northern dune slacks at Coul are wetter, more diverse and larger than those remaining outside plantation forest on the Morrich More. Overall, Coul slacks are really distinctive and contrast with larger areas on Morrich More which have formed in a different way. This diversity between Coul and the Morrich More means the Dornoch and Loch Fleet Ramsar site has the best range of dune slack diversity in the UK. The area of dune slacks on the site is the largest by far in the UK, exceeding the total area of all dune slacks in England and being equivalent to about 70% of slack habitat area in Wales. Slack destruction and damage at Coul will represent a very obvious case of attack on the integrity of dune slack features on the Ramsar site.¹⁸

No information is given in the ES about sand dune habitats in the Ramsar site as a whole, or the extent of sand dune habitats on other Ramsar sites. It therefore does not contextualise the importance of Coul links within the

¹² Dargie, T (pers comm)

¹³ This figure is based on overlaying the Ramsar Site boundaries onto the Sand Dune Survey of Scotland dataset to identify Ramsar Sites which contain sand dunes.

¹⁴ Dargie, T (2001) Sand dune vegetation survey of Scotland: Moray Firth, Volume 1: Main report, Volume 2: Site Reports & Volume 3: NVC maps.

¹⁵ Dargie, T pers comm.

¹⁶ Dargie, T (pers comm)

¹⁷ H3110 Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*)

¹⁸ Ibid

wider Dornoch and Loch Fleet Ramsar site and fails to point out its importance within the Ramsar site series in Scotland.

We have compared the sand dune communities identified at Coul links in the SDVSS and the National Vegetation Classification (NVC) survey reported in the ES and in Annex B – Appendix B.3 Phase 1 Habitat, NVC and GWDTE survey report. Variance between NVC surveys separated in time carried out by different surveyors is to be expected because of 1. change at the site in response to natural processes 2. variance between NVC surveyors. However, the SDVSS found a number of NVC communities which the ES NVC survey did not find at the site **at all** and vice-versa. While the extent of communities would change over time in response to natural processes we would find it surprising for a number of NVC communities to disappear altogether from a site like this, or for a number of new ones to appear within the space of 20 years. We found ten NVC sand dune sub-communities described in the SDVSS which were not found in the NVC survey reported in the ES, nine NVC sand dune sub-communities not found in the SDVSS but found by the ES NVC survey, and ten NVC sand dune sub-communities which were found in both surveys. This leads us to question whether the NVC survey commissioned by the developer adequately represents the sand dune communities found at the site. We note that SNH in their scoping advice pointed out the need for the NVC surveyors to have specific experience surveying sand dunes. There is no evidence in the ES provided to demonstrate the particular experience the surveyors had surveying sand dune communities. Dr. Dargie has done work at Coul links looking at the ES NVC and comparing it to his own assessment of the communities that are there now. He checked the NVC with 12 transects and his analysis shows that for NVC habitats of most importance for the proposed development, 45% have been misidentified, and further that >40% of wet habitats on the site have been mapped as dry habitats. As well as the importance for the assessment of the habitat impact of the development, the information is also important for the development itself, as e.g. the fairways would need to be located on dry habitats because of the grass species which would be sown. Locating the course infrastructure on the basis of this survey would mean that it then had to be moved, resulting in more land take and damage.¹⁹ This is crucial because the assessment of the effect of the ES on the sand dunes at the site is reliant on an accurate assessment of the type and extent of sand dune habitats present on the site. On the basis of these comparisons and checks we cannot be confident that the accuracy of the surveys is sufficient to sustain the conclusions made in the ES about the effects of the proposed development on sand dune habitats. We note that Dr Dargie, perhaps the foremost expert in sand dune vegetation in the UK, has described the NVC as probably not fit for purpose.²⁰

The ES is lacking in information to assess the impact of the development on the sand dune habitats in other ways. The ES assumes that the only impact on the habitats at the site will be confined to the exact footprint of the greens, tees, fairways, rough etc. i.e. that there will be no buffer effects on the adjacent habitats. This cannot be the case because the management will involve seeding, irrigation, fertiliser spreading, and use of pesticides all of which will have very wide effects on much of the site. The ES has little or no information on irrigation, fertilisers and pesticides based on peer-reviewed journals. They use instead industry advice literature. The material covering sandy soils acknowledges that chemicals are leached and drain deeply in the free drainage of a sand soil profile. Dr Tom Dargie has experience of seeing the effects of nutrient enrichment on dune grasslands at the Open course at Royal St Georges in Kent and his reports to English Nature suggest that nutrient increase is also being driven by a rising dune watertable. This has implications at Coul because the slack area has increased from 22% of site in 1994 to 27% in 2017, probably as a result of increasing summer rainfall.²¹ The ES does not discuss increasing wetness on the site, nor does it consider increasing summer rainfall as a climate change issue. Coul is already changing and adapting. This is a further example of how the insertion of a golf course could have all sorts of complex non-natural feedbacks on that natural change.

We are concerned that the abstraction proposed has the potential to impact upon the quality and quantity of the groundwater underlying the dune slack wetlands at Coul Links, which as we point out above, are a unique feature of the site. The application refers to two existing boreholes with a combined yield of 290 m³ per day. SEPA require a simple CAR license for any groundwater abstraction over 50 m³ per day, however there is no indication that a CAR license has been obtained for this abstraction.

Section 6.8 of the ES looks at the groundwater investigations undertaken on the site. It states that “the Ground water Investigation Report in its entirety is attached as Appendix C.3”, however Appendix C.3 is incomplete and appears to be unfinished with questions in red left in the document questioning whether figures are correct. There is no description of the testing undertaken in this report, nor are there detailed results and graphs showing water levels during testing and replenishment rates for the aquifer. This is a serious omission and without this information the statement that “water required for the development will not affect the makeup of the SSSI site [and by extension the sand dune habitats for which the Ramsar site is notified] nor any of the surrounding area” cannot be verified.

¹⁹ Ibid

²⁰ Not Coul. Press Release 19 October 2016 'Ecology support for Championship Golf Course at Coul Links is probably not fit for purpose'

²¹ Ibid

The dune slack vegetation on the site has been assessed as highly ground water dependent and it therefore seems incongruous that continued abstraction from the aquifer would not have an impact on the hydrology of the wetlands.

Loch Fleet Site of Special Scientific Interest

Sand dunes are a designated feature of the Loch Fleet SSSI. Our comments about sand dunes made in relation to the SPA and the Ramsar site apply equally to this feature of the SSSI. It is equally clear that the finding the inquiry reporter made in the Menie decision described above means that the proposed development would have a major adverse effect on the coherence of the ecological structure and function of the impacted areas compromising the objectives of both designation and overall integrity of the Loch Fleet SSSI. We also note that a specific objective for the management of the SSSI is to recover sand dune features to favourable condition.²² A range of sources of funding including the Agri-Environment and Climate Scheme, part of the Scotland Rural Development Programme, and/or a specific management agreement with SNH are available to support this work. Therefore the environmental management plan of the developer (Annex A – SD2) is far from being the only means to secure the positive management of the site in the future.

In the evaluation of the importance of habitats the ES (Section 5.5.1.1) suggests that in assessing whether the sand dunes at Coul are of national importance the existence of sand dunes at Ferry Links within the same SSSI is noteworthy. We refute the implication that damage to the dune system at Coul does not matter because dunes are represented elsewhere in the same SSSI. As we describe in relation to the sand dune features of the Ramsar site above the dune slack variation at Coul is distinct. By contrast, the dunes at Ferry Links have no dune slack habitat of any note. As the proposal would materially affect the dune habitats at Coul links it would thus affect the favourable condition and compromise the integrity and nature conservation interest of the SSSI as a whole.

We are unable to provide detailed comment on the assessment of the effect of the proposed development on the breeding bird feature at the site. Annex A - Appendix A.2 which details the breeding bird survey at the site has not been published on the website along with the planning application (although three figures with breeding bird survey results are presented in Annex A.1 which is the winter bird survey report). From the ES Table A.1 on p.145 we note that SNH provided scoping advice on the breeding bird survey methods on the 30 June 2016, when the 2016 breeding bird season was drawing to a close. We note that the breeding bird survey began in April 2016 and was completed in July 2016 (ES Annex A 4.2.2.2 p.146) and so we question how the scoping advice can have been followed when the survey began three months before the scoping advice was given?

Analysis by Not Coul has identified that there are substantial number of juniper bushes growing on areas within the development footprint.²³ This is important habitat for the passerines (grasshopper warbler, stonechat, linnet, reed bunting) which are part of the breeding bird assemblage for which the SSSI is notified.

The ES reports SNH as stating that “the proposed development layout can be accommodated without having adverse impacts upon the breeding bird assemblage” (Annex A 4.6.1.1 p.166). We question how that can be the case given that it is estimated that a minimum of 15,000 rounds of golf are expected to be played at Coul links each season – the first half of which overlaps with the bird breeding season – and this will inevitably lead to a dramatic increase in disturbance of breeding birds.

The construction management statement (Annex A SD10) explains that holes 10-18 would be constructed between May and October, which partially overlaps with the breeding bird season, and holes 1-9 between April to July of the following year, which entirely overlaps with the breeding bird season. We therefore consider that the development could not be constructed without serious disturbance to breeding birds.

The SSSI is also notified for its vascular plant assemblage. We note that the SSSI citation states that the vascular plant assemblage “includes” i.e. it is not an exhaustive list. It has been treated as an exhaustive list by the developer in the ES, as it only considers the plants mentioned in the citation and highlighted by SNH in its scoping advice. Scoping advice specifically mentioned Sea centaury (*Centaureum littorale*). This was not found in the surveys but there was no specific searching carried out for this species.

C. littorale has a small population located in high saltmarsh in the northeast of Coul, the long, narrow inlet. It occurs in SM16 and SM27 vegetation which make up the higher levels of the marsh, including over old shingle marking an old outer shoreline. The ES NVC (Annex B, Appendix B.2) does not record either NVC type – SM16 was present at Coul in 1994 but the SM27 has developed since then. Two other saltmarsh habitats were missed in the Alba NVC work: SM28 saltmarsh strand and the uncommon MG12 tidal inundation grassland (rare in Scotland). Both are in the sheltered inlet of the Cluin stream, towards Embo. Both contain a concentrated area of Asteraceae species

²² SNH (2011) Loch Fleet SSSI Site Management Statement, available at: https://gateway.snh.gov.uk/sitelink/documentview.jsp?p_pa_code=984&p_Doc_Type_ID=3

²³ Not Coul Press Release, Ibid

which might help host Fonseca seed-fly. Both these saltmarsh habitats are endangered by adjacent holes and tees which are likely to need riprap seawall protection. The tidal inlet stream here is the weakest point in the eastern foredune ridge and changes greatly at high springtides and during storm surges. This is the same type of weakness as the Trump development at Menie (Aberdeenshire) where seawall protection has had to be installed, despite public inquiry assurances that this would not be necessary. Scoping for higher plants should also have included the nationally scarce Baltic rush (*Juncus balticus*) which is much more likely to be affected by the golf development. This species has been recorded in 2017 in two locations on the very edge of the fairway for Hole 13. At site level they should be considered Endangered.²⁴

Other impacts of the development on the biodiversity of the site

We note that coastal sand dunes are a priority habitat in the UK BAP and the Sutherland LBAP.²⁵ The comments we have made above in relation to the effects the development would have on these features of the Ramsar site and SSSI apply equally. We also note that juniper is a species listed in the Highland LBAP.²⁶ We have set out above our concerns in relation to the impacts the proposed development would have on the juniper which is a significant feature of the site.

Lower plant impacts

Fungi – As of 2003 only six SSSIs (out of over 1,400) were notified for fungi. It is recognised that there are a number of other SSSIs where fungi comprise an important feature. Work was commissioned by SNH from 2001 to identify important fungi areas, and this was supplemented by the results of an SNH funded survey of waxcap grasslands in 2002. This work was followed by Holden (2003)²⁷, who reviewed 107 sites for inclusion on a database of important fungal sites on the basis of four criteria:

- A- That the site holds significant populations of fungi which are of European or UK concern
- B- The site has an exceptionally rich flora of fungi in a UK context
- C- The site has an outstanding example of a habitat type known to be of importance for fungi
- D- The site is considered to be important but further information is required.

The review used a scoring system where sites were classified according to the number of a set of six groups of indicator species. The scoring for the site called Embo links in the review corresponds to part of Coul links proposed for development in this application. This site was scored as being of European importance for the range of species of waxcap (*Hygrocybe*) fungi found at the site. In an article reporting the results of this review the authors showed that up to 16 visits to a site are required to fully document its importance for fungi (because they are only recorded in field surveys when visible above ground when they fruit)²⁸. It is therefore highly likely that this assessment under-represents the importance of Coul links for fungi. The classification of Coul links as a site of European importance was based on just two visits. Of the 104 sites assessed, Coul links had the 14th highest single visit score for *Hygrocybe* species (25th in total). The surveys on which the review was based were only a partial survey of Coul links. It is therefore also likely that there are other parts of the site which are of importance for fungi and which should be identified and considered as part of an assessment of the impacts of the proposed development. No such assessment has been made.

SNH Scoping advice highlighted the importance of waxcap grassland. No specific survey for fungi was carried out at the site. The ES considers that the fungal interest of Coul links is diminished because the area identified as being waxcap grassland has become rank and this is not conducive to the fungi (ES 5.3.5.3 p.185). However the fungi will remain below ground as mycelia and there is no evidence to suggest that the site does not remain of European importance for its fungi, because any current absence of fruiting at the site is temporary as long as the grasslands supporting them remain undisturbed. It is also important to note that the authors of the 2003 review point out that changes of management were more important for the conservation of fungi than SSSI listing particularly for unimproved grasslands. The proposals will involve destruction of dune grasslands, the mycological value of which has not been surveyed and so has not been reported in the ES but existing evidence suggests is likely to be high. The proposal will also involve changes in management – the application of fertiliser (some of which will leach into the dune groundwater, spreading throughout the site and raising soil nutrient levels which might be inimical to fungal mycelia), the application of fungicides to fairways, greens and tees (which will stop the spread of mycelia abundant in the dune grassland and which, like fertiliser, will leach into the groundwater and spread out into dune slacks and lower dune grassland). Fertiliser and fungicidal applications will interfere with

²⁴ Dargie, T (pers comm)

²⁵ <http://www.highlandbiodiversity.com/userfiles/file/acion-plans/sutherland.pdf>

²⁶ http://www.highlandbiodiversity.com/userfiles/file/acion-plans/hbap_review/HBAP-2015-Ch-4-Supporting-Information.pdf

²⁷ Holden, E (2003) Compilation of a working database to safeguard fungal sites of national and international interest in Scotland. Report to SNH.

²⁸ Newton et. al (2003) Status, distribution and definition of mycologically important grasslands in Scotland, Biological Conservation 111:1 p11-23

natural processes, and could affect the mycological interest of the whole site. For these reasons we do not agree that the effects of the proposed development on fungi are likely to be minor or negligible (Table B.24 p213). The assessment in the ES should treat the mycological interest of the site as if it were a designated feature of the SSSI. The ES does not provide sufficient information to allow the impact of the proposals on this interest to be assessed. Until the absence of *Hygrocybe* fungi from the dune grasslands that would be lost as a result of the proposed development can be confirmed following a survey by a specialist we must conclude that the effect would be major, because the development could result in adverse effect on populations of European importance.

Lichens – Scoping advice from SNH highlighted the presence of *Cladonia mitis*. No specific survey for lichens was carried out. In the surveys *Cladonia* lichens were only identified to genus, and the continued existence of the *Cladonia mitis* record was not confirmed (ES 5.3.5.1). In the ES *Cladonia mitis* is assessed as “regionally important” (Table B.13 p.202) but it is a nationally rare species, with only four records for 10 km squares in the UK since 2000²⁹, and therefore the site must be considered to be nationally important for this species. The ES notes extensive dune heath at Coul links and the NVC survey recorded lichen rich dune heath in the area of the *Cladonia mitis* record and states “it is likely that this species is still present” (5.3.5.1 p.184). The ES assesses the effects of the proposed development as being minor and negligible. We cannot agree with this assessment, given that the species is of national importance, its distribution at the site is unknown, and the proposed development would destroy some of the habitat in which it is thought to occur. For these reasons we consider that the effects of the proposed development on *Cladonia mitis* are major to moderate. Until the location of *Cladonia mitis* at the site is known, or its absence from the site is confirmed following a lichen survey by a specialist we must conclude that the effect would be major, because the development could result in the loss of a species of national importance.

Bryophytes – Scoping advice from SNH highlighted the record of *Tortella fragilis* a nationally rare species. No specific bryophyte survey was undertaken, and the presence of *Tortella fragilis* at the site is unknown. The ES states (5.3.5.2 p.185) that impacts on potentially important bryophytes have been scoped out, because the development will not affect the dune slack habitat of this plant. We do not agree with this approach, and we are sure that some of the course will be on dune slack. We have highlighted above the problems with the accuracy of the NVC survey, including e.g. the fact that some wet areas of dune slack have been mapped as dry dune grassland and would be located under the development footprint. We have also highlighted problems with the hydrological assessment and the effects it could have on the hydrology of the dune slacks. We have also pointed out how the use of fertilisers and pesticides would affect the groundwater at the site and the potential effect this could have on dune slack vegetation. We therefore do not agree that the effect of the proposed development on important bryophytes can be scoped out of the assessment. We consider that the proposed development on bryophytes are major to moderate. Until the location of *Tortella fragilis* at the site is known, or its absence from the site is confirmed following a bryophyte survey by a specialist we must conclude that the effect would be major, because the development could result in the loss of a species of national importance.

Invertebrates

Buglife’s objection to the planning application focusses on the invertebrate interest of the site and we support their comments and grounds for objection. We would highlight the following points in relation to the invertebrate interest at the site:

The ES states (p216) that Coul links is of national importance for Fonseca’s seed fly, but given that this is an endemic species the sites must by definition be of international importance for this species. Given that the ecology of this species is presently poorly understood, the precautionary approach should be applied. The ES states that the development would have no detectable adverse regional or national population level impacts (5.5.3.3.2 on p.211). We question how this conclusion can be reached when the site represents c.30% of the known global range of the species and there is such uncertainty about the ecology of the species. The developers propose the exact opposite of the precautionary approach, which is to develop the site and then fund scientific study (a PhD) which *could* allow the species range, population and habitat requirements to be better understood. A precautionary approach would mean that no development at the site could be carried out until these requirements were known and so the impacts of development could be adequately assessed.

Buglife’s objection highlights the importance of the site for other invertebrates and we endorse their comments.

We also point out that many invertebrate groups are seriously under-recorded, and so the current assessment of invertebrate interest of Coul links is highly likely to be an understatement of its true interest. This is clearly evidenced by the fact that Fonseca’s seed fly was only discovered there in the surveys for the ES. This illustrates why the primacy of nature conservation interests is upheld at sites such as Coul and that they are fully protected from inappropriate development.

²⁹ Nationally rare lichens are defined as having been recorded in 15 or fewer 10km squares in the UK. See: <http://www.britishtichensociety.org.uk/resources/species-accounts/Cladonia%20mitis>

Mitigation measures proposed

The ES proposes to compensate for the loss of dune heath by relocation and creation of dune heath (5.7.1.2 and 5.7.1.3). Whilst it may be possible to translocate heather, and create new areas of heather from seed and brash, it is not possible to either translocate or recreate dune heath with the full range of associated species. Therefore we do not agree that this proposed mitigation would be an adequate mitigation for the loss of dune heath to the proposed development.

As we have noted above, the ES under-records the extent of juniper at the site. We do not agree that the large juniper bushes present at the site, some up to 5 m in diameter, could be successfully translocated (5.7.2.4).

One of the mitigations proposed to mitigate the effects of the development is cessation of wildfowling(4.6.1.2). There is a general public right of wildfowling on the foreshore, therefore (unless there has been specific grant of wildfowling rights by the Crown to the owners of the site, they cannot stop wildfowling on the immediately adjacent foreshore. Therefore until the position with local wildfowling rights on the foreshore is confirmed, we could not endorse the conclusion that the cessation of wildfowling on the site would have a moderately significant positive impact deriving from the development.

Additional comments

There is no pre-application consultation report accompanying the application. We understand that pre-application consultation with the community is a requirement for a major development such as this, and are concerned that the application provides no information as to how this requirement has been satisfied.³⁰

We have noted a number of other inconsistencies, omissions, and incomplete documentation in the documents accompanying the application. The environmental management plan (Annex A SD2) includes text which has been cut and pasted from other applications – it refers to the site “being home to a number of interesting and protected wildlife species including European nightjar, Woodlark, Dartford warbler”, and also refers to the Environment Agency rather than Scottish Environment Protection Agency (SEPA).

As we have noted above the groundwater investigation report (Annex C Appendix C3) is incomplete with comments left in in red.

Economic impact

The economic information provided (Annex G SD7) reviews the socio-economic impact of other golf-course developments. We were surprised to note that this includes no information on the socio-economic impact of the Trump International development at Menie links, which is the most directly comparable. Whilst information on the course itself may not be available for reasons of commercial sensitivity, information on impacts on the local economy should be readily available from a number of sources. It has been widely reported³¹ that the Trump International Golf Course has failed to create the number of jobs or deliver the levels of investment predicted, so it would be essential for a critical analysis of the economic impact of the proposed development at Coul to review the evidence on the socio-economic impacts of that project.

The inquiry reporter in the Menie decision found that the socio-economic impact of the Trump International Golf Links development would be to create 1,400 net additional jobs locally with £64 million spent each year in Aberdeenshire (para 6 Inquiry Report).³² The reporter’s figures were based on an independent analysis of the economic impact commissioned by Aberdeenshire Council.

The report by Biggar Economics (Annex G SD7) found that the socio-economic impact of the development at Coul could be:

- £4.2 million GVA in the local area and 120 jobs, rising to £8.1 million and 250 jobs by year 10
- £6.2 million GVA and 200 jobs for the Highlands, rising to £13.1 million and 450 jobs by year 10.
- £7.9 million GVA nationally and 250 jobs rising to £20.1 million and 680 jobs by year 10.

The best comparison is probably with the estimated impact for the Highlands. It is clear from this comparison that the socio-economic impact of Coul would be an order of magnitude less in terms of GVA (less than one-tenth), and

³⁰ According to Planning Series Circular 3/2013: Development Management Procedures

³¹ The Guardian, 12 October 2016 ‘Donald Trump has lost tens of millions on Scottish golf courses, accounts show’; The Independent, 7 January 2016 ‘Trump fails to create promised jobs and investment in Scotland, locals say’.

³² <http://www.gov.scot/resource/doc/212607/0067709.pdf>

between one-seventh to one-third the impact on jobs. This comparison is based on the best case scenario in the developers own figures, which have not been independently confirmed.

Local development plan

Highland Council's Local Development Plan has a vision that Caithness and Sutherland will by 2030 "be a place of outstanding heritage: safe in the custody of local people". This will be achieved "by the protection and enhancement of the outstanding natural assets" which include "habitats and species of national and international importance." Chapter 21 of the Plan on the Natural, Built and Cultural Heritage states that the "outstanding natural, built and cultural heritage of the Highlands has to be fully considered when development proposals come forward throughout the area". It highlights the particular attention that must be given to proposals which would affect sites of European and International importance. These proposals fall into that category.

The chapter goes on to define three tests which will be applied depending on whether a site is of local, national or international importance. The test for sites of international importance is as follows (emphasis added):

"For features of international importance developments likely to have a significant effect on a site, either alone or in combination with other plans or projects, and which are not directly connected with or necessary to the management of the site for nature conservation will be subject to an appropriate assessment. Where we are unable to ascertain that a proposal will not adversely affect the integrity of a site, we will only allow development if there is no alternative solution and there are imperative reasons of overriding public interest, including those of a social or economic nature. Where a priority habitat or species (as defined in Annex 1 of the Habitats Directive) would be affected, development in such circumstances will only be allowed if the reasons for overriding public interest relate to human health, public safety, beneficial consequences of primary importance for the environment, or other reasons subject to the opinion of the European Commission (via Scottish Ministers). Where we are unable to ascertain that a proposal will not adversely affect the integrity of a site, the proposal will not be in accordance with the development plan within the meaning of Section 25(1) of the Town and Country Planning (Scotland) Act 1997." [i.e. it should be refused unless there are material considerations indicating that it should be granted.]

The test for sites of national importance is as follows (emphasis added):

"For features of national importance we will allow developments that can be shown not to compromise the natural environment, amenity and heritage resource. Where there may be any significant adverse effects, these must be clearly outweighed by social or economic benefits of national importance. It must also be shown that the development will support communities in fragile areas who are having difficulties in keeping their population and services."³³

Conclusion

In this letter we have demonstrated why the proposed development would have adverse effects on the habitats of the Dornoch and Loch Fleet SPA which support its designated features. We have explained why we consider that there is insufficient information presented in the ES to support the conclusions it draws about the lack of significant adverse effects it would have on those features directly. We have demonstrated why the development would adversely affect the integrity of the Dornoch and Loch Fleet Ramsar Site. We have also highlighted the adverse effects the development would have on waxcap fungi and an endemic invertebrate, for which Coull links is of international importance. There are no imperative reasons of over-riding public interest for the development to go ahead. Nor are there material considerations which would justify planning permission being granted. We therefore consider that the proposal is not development within the meaning of the development plan, and Highland Council should refuse the application.

We have also demonstrated how the proposed development would have adverse effects on the nationally important Loch Fleet SSSI, and in the absence of any information to the contrary, would have major adverse effects on nationally scarce lichens and bryophytes.

The economic information provided (Annex G SD7) does not review the actual evidence from Menie Links, the most relevant comparator. Based on our own comparison of the predicted impacts of both developments, we demonstrate that the impacts of these proposals are an order of magnitude less than the predicted impacts of Menie links in terms of economic impact, and substantially less in terms of employment. We therefore conclude that this development cannot demonstrate social or economic benefits of national importance, and so could not satisfy the test in the LDP which could justify a serious adverse effect on the Loch Fleet SSSI. It is therefore very clear that the development would not be in the over-riding public interest, and so clearly cannot meet the test which would allow the integrity of the Dornoch and Loch Fleet SPA and Ramsar sites to be adversely effected.

³³ https://www.highland.gov.uk/download/downloads/id/1505/highland-wide_local_development_plan.pdf

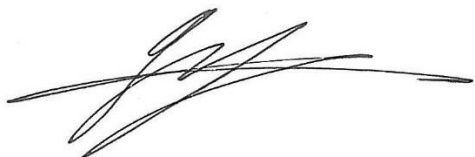
In conclusion, the Scottish Wildlife Trust objects to the planning application from Coul Links Limited for consent to develop a golf course and associated infrastructure at Coul Links. We believe the proposals will have a significant adverse effect on:

- Dornoch and Loch Fleet Special Protection Area (SPA)
- Dornoch and Loch Fleet Ramsar Site, including on the sand dune features at Coul links which give this site a unique value within the UK Ramsar site series
- The unique sand dune habitats and breeding bird assemblage of Loch Fleet Site of Special Scientific Interest (SSSI) and our assessment of the significant adverse effects of the development on the SPA, Ramsar site and SSSI is upheld by the inquiry reporters conclusions in relation to the Trump International Golf Links application at Menie Links³⁴
- An endemic invertebrate, Fonseca's fly of international importance
- Waxcap fungi (*Hygrocybe* spp) of European importance
- The second most important population of juniper on sand dunes in Britain
- A nationally rare bryophyte, a nationally rare lichen, and several nationally rare species of invertebrate

The Scottish Wildlife Trust believes granting consent would be contrary to the Highland Council's policies for protecting the natural heritage set out in its Local Development Plan.

We urge Highland Council to reject the application.

Yours faithfully,



Jonathan Hughes

CEO
Scottish Wildlife Trust

³⁴ Paragraph 13, Inquiry Report: <http://www.gov.scot/resource/doc/212607/0067709.pdf> quoted in full under Dornoch and Loch Fleet SPA above.