

Gillian Pearson  
Planning Service  
The Highland Council



By email: [eplanning@highland.gov.uk](mailto:eplanning@highland.gov.uk)

Date: 18<sup>th</sup> April 2023

Dear Gillian,

23/00580/FUL | Construction of an 18-hole golf course, practice area, access, parking, ancillary infrastructure and the change of use of existing buildings to form clubhouse, pro shop, maintenance shed and ancillary facilities | Land 1700M NW Of Embo Community Centre School Street, Embo.

### RSPB Scotland Objection

Due to a delay in the availability of certain information and application documents on the Highland Council website and the deadline falling on a bank holiday weekend, we are now submitting further, additional information to provide detail to our objection.

As set out in our letter dated 06<sup>th</sup> April, RSPB Scotland strongly objects to the Proposed Development for the following reasons:

1. The Application does not demonstrate that the Proposed Development would not adversely affect the integrity of the Dornoch Firth and Loch Fleet SPA and Ramsar sites, the Moray Firth SPA, nor that it is not likely to damage the Loch Fleet SSSI ;
2. The Proposed Development does not accord with the relevant sections of the Development Plan and would run contrary to other material consideration such as Scottish Government commitments to protect at least 30% of land for nature by 2030;
3. The failure to provide adequate and robust assessments of all possible and predicted environmental impacts of the Proposed Development, including underestimation of the likely effects on bird features of the designated sites; and

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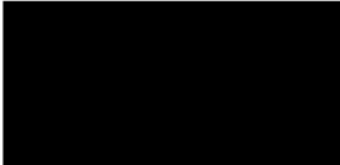


The RSPB is part of BirdLife International, a partnership of conservation organisations working to give nature a home around the world.

**4. The Applicant's misleading arguments that the Proposed Development is needed to secure future management of the designated sites, and that biodiversity enhancement can be effectively delivered on site.**

We hope you find these comments helpful. Should you wish to discuss any of the above please do not hesitate to contact me.

Yours sincerely,



Bea Ayling  
Conservation Officer  
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## Annex 1: RSPB Scotland Objection - Effects on International and National Designations

- 1.1. Coul Links is a part of the Dornoch Firth and Loch Fleet Ramsar Site, the Dornoch Firth and Loch Fleet SPA, and the Loch Fleet SSSI. The following bird species and assemblage are qualifying features of both the Ramsar Site and the SPA; the importance of their populations at this site is explained in the SPA citation:

Greylag Goose, non-breeding  
Wigeon, non-breeding  
Teal, non-breeding  
Scaup, non-breeding  
Oystercatcher, non-breeding  
Curlew, non-breeding  
Bar-tailed Godwit, non-breeding  
Dunlin, non-breeding  
Redshank, non-breeding  
Non-breeding waterfowl assemblage regularly supporting a population in excess of 20,000 individuals

- 1.2. Breeding Osprey is also listed on the Ramsar site and the SPA citations but is unlikely to be significantly affected by the Proposed Development.

- 1.3. The Loch Fleet SSSI includes two listed bird features:

Eider (*Somateria mollissima*), non-breeding  
Breeding bird assemblage

- 1.4. The SSSI is also designated for a number of habitat and plant features. The relevant features of the Ramsar site are also covered by the following SSSI features:

Eelgrass beds  
Sandflats  
Saltmarsh  
Sand dunes  
Native pinewood  
Vascular plant assemblage

- 1.5. Coul Links also lies directly adjacent to the Moray Firth SPA, recently designated in 2020.

- 1.6. The following non-breeding bird species and assemblage are qualifying features of the Moray Firth SPA and the importance of their populations at this site is explained in the SPA citation:

Great Northern Diver, non-breeding  
Red-throated Diver, non-breeding

Slavonian Grebe, non-breeding  
Greater Scaup, non-breeding  
Common Eider, non-breeding  
Long-tailed Duck, non-breeding  
Common Scoter, non-breeding  
Velvet Scoter, non-breeding  
Common Goldeneye, non-breeding  
Red-breasted Merganser, non-breeding  
European Shag, breeding and non-breeding

## Legislation

- 1.7. The Highland Council, as determining authority, has a number of legislative obligations which are relevant when considering an application such as this which would affect European sites, Ramsar sites and SSSIs.

### Habitats Regulations

- 1.8. Due to the location and character of the Proposed Development, it will impact on European Sites, therefore a Habitats Regulation Appraisal must be carried out by the Highland Council under the Conservation (Natural Habitats, &c.) Regulations 1994 ("the Habitat Regulations").
- 1.9. The Habitats Regulations set out the sequence of steps to be taken by the competent authority (here the Highland Council) when considering authorisation for a project that is likely to affect a European site (here the SPA) before deciding to authorise that project.
- 1.10. These are as follows:

Step 1: Consider whether the project is directly connected with or necessary to the management of the SPA. If not –

Step 2: Consider, on a precautionary basis, whether the project is likely to have a significant effect on the SPA, either alone or in combination with other plans or projects.

Step 3: Make an Appropriate Assessment of the implications for the SPA in view of its conservation objectives. The Applicant must provide sufficient information to allow this to be done

Step 4: Consider whether it can be ascertained that the project will not, alone or in combination with other plans or projects, adversely affect the integrity of the SPA, having regard to the manner in which it is proposed to be carried out, and any conditions or restrictions subject to which that authorisation might be given (the Integrity Test).

Step 5: In light of the conclusions of the Appropriate Assessment, the competent authority shall agree to the project only after having ascertained

that it will not adversely affect the integrity of the SPA, alone or in combination with other plans or projects.

Step 6: Only if the competent authority is satisfied that there being no alternative solutions, and the plan or project must be carried out for imperative reasons of overriding public interest, they may agree to the plan or project notwithstanding a negative assessment of the implications for the European site.

Step 7: In the event of the no alternative solutions and imperative reasons of overriding public interest tests being satisfied, the competent authority must secure any necessary compensatory measures are taken to ensure that the overall coherence of the UK Site Network is protected.

#### [Nature Conservation \(Scotland\) Act 2004](#)

- 1.11. Under sections 15 and 16, the Nature Conservation (Scotland) Act 2004, the Highland Council, having sought the advice of SNH (whose operating name is now NatureScot) must have regard to that advice and only grant consent despite damage caused to the SSSI and its features if this is clearly outweighed by social or economic benefits of national importance.

#### [Additional Legal Requirements](#)

- 1.12. In our view, granting consent for the Application would be contrary to the Highland Council's duty to further the conservation and enhancement of SSSIs and more generally further the conservation of biodiversity as set out in sections 12 and 1 (respectively) of the Nature Conservation (Scotland) Act 2004.

Section 12: Exercise of functions by public bodies etc.

(1) This section applies to the exercise by a public body or office-holder of any function on, or so far as affecting, any land which is or forms part of a site of special scientific interest.

(2) The body or office-holder must—

(a) consult SNH in relation to the exercise of the function,

(b) have regard to any advice given by SNH, and

(c) in exercising the function, take reasonable steps, so far as is consistent with the proper exercise of the functions of the body or office-holder, to—

(i) further the conservation and enhancement of the natural feature specified in the SSSI notification, and

(ii) maintain or enhance the representative nature of any series of sites of special scientific interest to which the SSSI notification contributes.

#### Section 1: Duty to further the conservation of biodiversity

(1) It is the duty of every public body and office-holder, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.

(2) In complying with the duty imposed by subsection (1) a body or office-holder must have regard to–

(a) any strategy designated under section 2(1), and

(b) the United Nations Environmental Programme Convention on Biological Diversity of 5 June 1992 as amended from time to time (or any United Nations Convention replacing that Convention).

1.13. Duties are also placed on the local authority in Regulation 3(A) Habitats Regulations, namely:

#### 3A.— Duties in relation to wild bird habitat

...

(2) Except in relation to the Scottish marine area, the Scottish Environment Protection Agency, local authorities and National Park authorities must take such steps in the exercise of their functions as they consider appropriate to contribute to the achievement of the objective in paragraph (3).

(3) The objective is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in Scotland in implementation of Article 3 of the Wild Birds Directive (including by means of the upkeep, management and creation of such habitat, as appropriate), having regard to the requirements of Article 2 of that Directive.

1.14. It is RSPB Scotland's view that granting consent for the Proposed Development would be inconsistent with The Highland Council exercising their duties under these requirements in relation to designated sites.

#### Dornoch Firth and Loch Fleet SPA

1.15. According to our calculations, approximately 140 ha of the Application Site is located within the SPA (based on Appendix ES.2 Red Line Boundary Plan).

1.16. As mentioned above the Proposed Development is likely to have significant effects on the SPA and therefore the Highland Council must complete an Appropriate Assessment of its implications on the SPA, in view of the site's Conservation Objectives. The Highland Council must not grant planning permission unless they can ascertain that the Proposed Development alone or in combination with other projects and plans, will not result in an adverse effect on the integrity of the SPA.

1.17. The Conservation Objectives of the Dornoch Firth and Loch Fleet SPA are to avoid deterioration of the habitats of the qualifying species and significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained; and to ensure for the qualifying species, that the following are maintained in the long term:

- Population of the species as a viable component of the site;
- Distribution of the species within site;
- Distribution and extent of habitats supporting the species;
- Structure, function and supporting processes of habitats supporting the species; and
- No significant disturbance of the species.

#### [Information to Inform an Appropriate Assessment](#)

1.18. The Reporters' Report in relation to the Previous Application (Ref 17/04061/FUL) at Coul Links, which was refused, concluded that:

"Because of the potential loss of bird habitat and likely disturbance to bird species from construction and operation of the golf course, we conclude that the proposal runs contrary to the conservation objectives for qualifying interests of the SPA.." (Paragraph 8.91)

1.19. It is far from clear how the Applicant has sought to address the issues that led to the Scottish Minister's decision to refuse permission for the Previous Application<sup>1</sup>. The unnumbered table on page 30 of the EIAR entitled "Scottish Ministers Findings" discusses only habitat management in response to the Reporters' conclusion that the Previous Application was 'Contrary to the conservation objectives for SPA qualifying Interests'. No indication of changes made to the Proposed Development in relation to SPA bird qualifying species are discussed.

1.20. We have fundamental concerns with the content of section 5.7.3 of the Ornithology Chapter of the EIAR entitled 'Dornoch Firth and Loch Fleet SPA and RAMSAR site'. It does not take account of the full range of potential impacts on the SPA qualifying species and the habitats that they depend on.

1.21. The Applicant is required to provide sufficient information to inform an Appropriate Assessment<sup>2</sup>. Although the Habitats Regulations Assessment and EIA must be co-ordinated<sup>3</sup> it must be made clear what information is to inform the Appropriate Assessment. From the information publicly available, it seems the Applicant has not provided an updated Shadow Habitat Regulations Assessment/Appraisal. We note that the 'RAMP COMBINED' document (Recreational and Access Management Plan, 2022), contains an Appendix 3

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<sup>1</sup> DPEA report, <https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=119883>

<sup>2</sup> Regulation 48 (2) The Conservation (Natural Habitats, &c.) Regulations 1994

<sup>3</sup> Regulation 53, The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017

(Shadow Access & Recreation related HRA) dated January 2018, which has the final page redacted, but this is not a full assessment.

- 1.22. We also note that Appendix A.4 (2016 surveys) contains an Appendix A.4 (Shadow Habitats Regulations Appraisal for SPA Bird Species). However, this has not been made publicly available at the time of writing and it is not clear whether this document is the same as the shadow HRA relating to access and recreation or not. The Highland Council must ensure all information necessary to carry out their Appropriate Assessment is provided and request additional information if necessary.
- 1.23. Based on the information that is available, the following sections outline why, in our opinion, the Applicant has not demonstrated, beyond reasonable scientific doubt, that the Proposed Development would not have adverse effects on the integrity of the SPA, in light of the site's Conservation Objectives.

[Conservation Objective: Population of the species as a viable component of the site](#)

- 1.24. The contextual information about the SPA populations presented in the EIAR is limited with no evaluation of likely current populations. Table A.3 (Geographical Population Estimates for Potentially Important Study Area Bird Species) has a column titled "regional" in which the populations of most species are shown as "N/A" and breeding populations of curlew, greenshank and dunlin are provided for Natural Heritage Zone 21, which is not relevant for wintering SPA populations. This same information was presented in the 2017 Environmental Statement, and it is concerning that this has not been updated. Similarly, we note one row named "Species X & Y" directs the reader to Confidential Appendix A.3, which was associated with the 2017 application, and again, has not been updated.
- 1.25. Greylag Goose, Redshank, Curlew, Bar-tailed Godwit, Dunlin, Lapwing, Oystercatcher, Teal, Wigeon and Eider are all part of the non-breeding SPA wintering assemblage. They are regularly counted during surveys undertaken in the Fleet Estuary during the winter months together with Ringed Plover and Shelduck<sup>4</sup>. The data is held by BTO and could be used to determine likely current populations, as well as being informed by the SPA citation itself.
- 1.26. We do not agree with the Applicant's conclusion that there will be a moderate significant beneficial effect on the ornithological features of the Dornoch Firth and Loch Fleet SPA (and Ramsar) site due to a potential increase in SPA bird population numbers using the site due to proposed cessation of wildfowl shooting. This is discussed further below in the section titled 'Discussion of proposed mitigation measures.'

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<sup>4</sup> [BTO WeBS Reports](#)



- 1.27. In summary, the Applicant has not provided sufficient information on the populations of SPA bird species to allow an assessment to be made in light of this conservation objective.

**Conservation Objective: Distribution of the species within site**

- 1.28. It is RSPB Scotland's opinion that the Applicant has not properly assessed the impacts of the Proposed Development on the distribution of the SPA qualifying species. The greens for Hole 3, the fairways for Holes 4, 9 and 11 and all playing surfaces for Holes 16 and 17 are adjacent to areas used by SPA Wigeon and Teal recorded during surveys in the winter of 2021/22. Therefore, their distribution within the site could be affected, due to disturbance and displacement, as well as from any impacts to wetland habitats. Indeed, this was agreed by the Reporters following the inquiry into the Previous Application (17/04061/FUL). Their report states:

"We find that the diminution of the unique dune slack habitat (including where it occurs in habitats mapped by the applicant as matrices), and the significant disturbance to birds using the wetted dune slacks, would be likely to reduce the use of Coul Links by qualifying bird species such as teal and wigeon, and thereby compromise its function as a refuge for SPA water birds at high tide and during severe weather." (Paragraph 8.90)

- 1.29. The EIAR does not appear to assess impacts on SPA qualifying species that are using parts of the SPA adjacent to the Proposed Development or within the 6m construction corridor mapped on the drawing entitled Establishment Zone (that we assume is Appendix ES3c). Large numbers of waterbirds are known to use areas of the SPA that are within the zone of potential disturbance from activities that would be directly associated with the Proposed Development as well as other impacts, for example, disturbance from dog walkers (see further discussion disturbance below). This disturbance and resulting displacement will negatively affect the distribution of birds within the SPA.
- 1.30. Additionally, pasture adjacent to the SPA provides foraging habitat for SPA qualifying species including Greylag Goose, Curlew and Oystercatcher and is also suitable for foraging Wigeon. Parts of this habitat would be lost to the alternative walking route, borrow pits, wastewater treatment infrastructure and driving range with the remainder subject to increased disturbance and habitat loss cumulatively from the proposed reservoir (which is not yet approved, but included in Appendix ES.3 (Site Masterplan (layout)) and holiday lodges (consented, but not included in the same Figure).
- 1.31. Lastly, distribution of SPA species within the site would be affected by any changes to the wetland habitats and hydrological regime. This is discussed further below.

**Conservation Objective: Distribution and extent of habitats supporting the species**

- 1.32. RSPB Scotland note that habitat maps have not been updated since the 2017 application as the only additional habitat surveys undertaken by the Applicant in 2021 were with regards to "invasive" species and juniper.
- 1.33. For all SPA non-breeding wader and wildfowl species, it is the winter-flooded dune slacks, high tide roost areas and foraging pasture both within and outwith the site boundary that are the most valuable habitats. The assemblage of dune habitats at Coul Links is unique. In particular, the winter flooded dune slack habitat is not present elsewhere within the SPA and provides a bad weather refuge for over-wintering birds such as Wigeon and Teal.
- 1.34. The Applicant's winter bird surveys in 2015/16 and 2021/22 demonstrated that the flooded dune slacks are regularly visited by Teal and Wigeon, with around 100 Wigeon using the wet dune slack at Coul Links on one occasion in March 2016, and 67 Teal in 2021/22 (Appendix A.2 - Winter bird survey Figure 5 - Teal sightings, date unknown).
- 1.35. Table B.17 (Habitat types impacted in 2017 that are no longer lost in 2022 proposals) states that 0.0 ha of dune slacks would be impacted by the 2022 proposal. This is contrary to Table B.16 (Predicted Habitat Loss (land-take) during Operation and Construction) which states that 0.01ha of dune grassland: dune slack and 0.03ha of marshy grassland: dune slack mosaic would be lost.
- 1.36. Although this loss appears to be significantly less than in the 2017 application, where 0.27ha was proposed to be lost, this is misleading. Direct habitat loss appears to be only recognised by the Applicant where areas are to be stripped, re-seeded and reprofiled (i.e., the tees and greens). A figure for the areas to be modified by mowing within the SPA is not given, even though this is a direct adverse impact on SPA supporting habitat. The proposed frequency of mowing and short length required, as well as frequent footfall and vehicle use, would modify the habitat to such an extent that the existing habitat would be lost, and grass species promoted. This is discussed further in the SSSI section of this letter, below. The Proposed Development is therefore likely to reduce availability of important dune slack habitat more than what is indicated in the EIAR. The habitat is not present elsewhere in the SPA and the loss is a valuable proportion of that available.
- 1.37. There are also likely to be indirect impacts around the intensively managed greens and tees from irrigation and fertiliser, fungicide and pesticide use. Again, this is discussed in more detail in the SSSI section below.
- 1.38. Section 5.7.3.2 of the EIAR states that, "No golf course infrastructure is planned for habitat areas regularly used by wintering SPA species, so no direct adverse habitat loss of SPA bird habitat is predicted" and that "The design layout deliberately crosses over, rather than goes through, the main north-south dune slack habitat at Holes 15, 16 and 17. Consequently, no direct or indirect, significant dune slack habitat loss is predicted."

- 1.39. The greens and tees for holes 11, 16, 17, 18 mapped on Appendix B10 (Site Ecology Plan) appear to show overlap with slack habitat. However, the full extent of the course is not mapped, nor is a hole-by-hole analysis presented, so the extent of slack habitats to be mown and consequently modified is unknown. However, due to the very similar layout of the course within the SPA, impacts are likely to be similar to the previous application. Therefore, it has not been demonstrated that there would be no direct adverse habitat loss of SPA bird habitat.
- 1.40. Another key issue to consider are water level impacts on the slacks from abstraction. This is discussed in the Hydrology section in Annex 3.

**Conservation Objective: Structure, function and supporting processes of habitats supporting the species**

- 1.41. The Applicant has not demonstrated that the structure, function and supporting natural processes of dune habitat would not be adversely impacted by the Proposed Development.
- 1.42. The Applicant has made much of the fact that the area of land proposed for intrusive construction work and intensive ongoing management would be reduced compared to the previous application. This would still amount to a significant 1.5 hectares within nationally and internationally sites. It is vital that this Proposed Development is considered on its own merits and not as a 'less bad' version of the previously refused proposal.
- 1.43. At least another 22.7ha of habitat will be impacted via mowing and aeration practices across the whole application site, although the EIAR does not specify the hectareage that would be subject to this within the boundaries of the designated sites. The result of this intensive management is likely to favour the dominance of grasses over other species of plant. This would result in a direct loss of species diverse dune habitat, and this has not been assessed as such by the Applicant.
- 1.44. We understand from the Construction Management Statement that playing areas adjacent to wet areas would need to be raised with sand. The impacts of such works have not been discussed in the EIAR. It is not clear if infilling of the fringes of the dune slacks and some ephemeral waterbodies will be required, although Section 2.7.8 of the EIAR suggests some hollows will be infilled to form the greens. There also appears to be conflicting information within the EIAR and appendices with regards to management of sand movement and it is not clear where this will form part of the proposed habitat management work and where it would be needed to be stabilised in regard to maintaining course playability.
- 1.45. The groundwater extraction required for irrigation could also have a significant impact on dune hydrology, this is discussed in Annex 3. Further adverse effects may arise from changes in drainage, irrigation runoff, pesticide and fertiliser use on the tees and greens (and surrounds). Although we note these have been

reduced from the Previous Application, the Applicant has not fully assessed these impacts nor considered appropriate mitigation measures to reduce potential effects on supporting habitats of the SPA. The fact that it is not as bad as the previous proposal does not mean that it is acceptable and still requires to be properly assessed through the EIA process.

**Conservation Objective: No significant disturbance of the species**

1.46. The proposal would be likely to increase disturbance to non-breeding birds during construction and operation of the development. The importance of the site for wintering birds was established during the inquiry for the Previous Application on the site along with the potential for disturbance. The conclusion reached was informed using RSPB data and the 2015/16 data collected by the Applicant.

1.47. The Reporter's Report concludes that birds on the site are susceptible to disturbance:

"There is clear scientific evidence based on a body of peer-reviewed research that people on foot (between 50-500 metres away) cause non-breeding waders and wildfowl to take flight, and that population numbers and breeding success of relevant bird species are affected by recreational disturbance. The effect of human interference on non-breeding wigeon ranges from a reduction in bird numbers to the abandonment of a site." (Paragraph 6.143)

1.48. The EIAR fails to assess impacts on SPA birds from disturbance, specifically:

The fact that greens for Hole 3, the fairways for Holes 4, 9 and 11 and all playing surfaces for Holes 16 and 17 would be adjacent to areas used by SPA species, Wigeon and Teal, as recorded during surveys in the winter of 2021/22.

The potential for increased disturbance to SPA qualifying species during course construction and maintenance work, including the proposed borrow pits and undergrounding of powerlines.

The Proposed Development's potential impact on SPA qualifying birds which use the site as a bad weather refuge or impacts on pasture used for foraging by SPA qualifying birds, such as Greylag Goose, Lapwing and Curlew.

1.49. The Winter Bird Survey Report (Appendix A.2) reports on the flushing distances recorded by field surveyors in 2021/22, with the majority of birds reported as flushing between 20 and 150m, and Greylag Goose more likely to flush at 300-350m. However, it should be noted that flushing distance will depend on species and a number of different variables. The Winter Bird Survey Report only presents data from a very limited timeframe, so cannot be fully relied on in terms of likely disturbance distances. NatureScot has published guidance on

disturbance distances for many species<sup>5</sup>, which far exceed those recorded by field surveyors on foot, and these distances should be referred to in the assessment.

- 1.50. Potential disturbance impacts are not limited to flushing of birds. Numerous studies have shown that the distribution and numbers of birds using a site are influenced by longer-term disturbance levels<sup>6,7,8</sup>. Disturbance may also impact birds in other ways, for example through impacts on breeding success or survival<sup>9</sup>.
- 1.51. The Winter Bird Survey Report (Appendix A.2) recommends that an assessment of disturbance for SPA species is required, but it appears that the Applicant has not taken this advice nor carried out such an assessment, with limited discussion on SPA bird disturbance presented in the Recreational Access Management Plan (RAMP), and none in the EIA Report itself. This is a major omission given the international importance of the site for birds.
- 1.52. In addition to disturbance to SPA birds within the part of the SPA that is within the Application Site boundary, RSPB Scotland has serious concerns about disturbance to birds within adjacent parts of the SPA (e.g., the foreshore) and to SPA qualifying species foraging in the fields in the southwest of the application site (outside the SPA). The Winter Bird Survey Report shows that Curlew, Lapwing, Greylag Geese and Pink-footed Geese foraged in these fields in 2021/22.
- 1.53. These potential impacts need to be considered in-isolation and in-combination with other relevant projects, including the recently approved holiday lodge development and proposed reservoir, which is under consideration. Such cumulative and in-combination effects have not been discussed in the EIAR. This is despite the Reporters' Report for the Previous Application stating:

"It is also possible that water birds using the adjoining foreshore would be disturbed by the increased recreational use of the dunes (for example around holes 15-17). A similar concern applies to SPA species such as greylag goose, curlew and oystercatcher which forage on the farmland immediately to the west of the proposed golf course, and to the flocks of waterfowl (including teal, wigeon, greylag goose and eider) which congregate on Loch Fleet to the north of the site." (Paragraph 6.148)

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<sup>5</sup> <https://www.nature.scot/doc/disturbance-distances-selected-scottish-bird-species-naturescot-guidance>

<sup>6</sup> Mathers, R.G., Watson, S., Stone, R. & Montgomery, W.I. 2000. A study of the impact of human disturbance on wigeon *Anas penelope* and brent geese *Branta bernicla hrota* on an Irish sea loch. *Wildfowl* 51: 67-81.

<sup>7</sup> Burton, N.H.K., Evans, P.R. & Robinson, A. 1996. Effects on shorebird numbers of disturbance, the loss of a roost site and its replacement by an artificial island at Hartlepool, Cleveland. *Biological Conservation* 77: 193-201.

<sup>8</sup> Burton, N.H.K., Armitage, M.J.S., Musgrove, A.J. & Rehfishch, M.M. 2002. Impacts of man-made landscape features on numbers of estuarine waterbirds at low tide. *Environmental Management* 30: 857-864.

<sup>9</sup> Gill J.A. 2007. Approaches to measuring the effects of human disturbance on birds. *Ibis* 149 (Suppl. 1): 9-14.

## Discussion of proposed mitigation measures - disturbance

- 1.54. RSPB Scotland believes that the construction and operation of the new Proposed Development would greatly increase potential disturbance of SPA overwintering waterfowl, and the proposed mitigation is not enough to reduce impacts to an acceptable level.
- 1.55. The dune slack habitat is restricted to the part of the SPA within the Application Site boundary, so species that use this habitat could not simply move to another part of the site if disturbed in this area. Therefore, it is misleading for the Applicant to suggest that the Proposed Development would only affect a small percentage of the designated sites.
- 1.56. The mitigation proposed in the EIAR and RAMP has not significantly changed since the Previous Application. In their consideration of this, the Reporters' concluded that there would be a significant adverse effect on wintering birds due to disturbance and that the proposal ran contrary to the conservation objectives of the SPA. They also concluded in paragraph 6.158 of their report that,
- "We find that the proposed mitigation measures, including the winter closure of the golf course and the cessation of wildfowl shooting, would not be sufficient to reduce the level of adverse effects on birds to non-significant."
- 1.57. No construction mitigation has been discussed at all in relation to birds and the SPA, despite the potential for the construction to last for two winter seasons (Section 1.3.5 states that the golf course will be constructed over a period of between 18- 24 months). Table A.11 in the EIAR (Summary of Effect), proposes a Breeding Bird Protection Plan as a 'Mitigation Measure' with regard to habitat loss for SPA and Ramsar birds. The only breeding SPA and Ramsar bird is osprey and it has been established that this species would not be affected by the proposal, but non-breeding waders and wildfowl would be, and construction mitigation over winter has not been discussed.

### i. Winter closure of course

- 1.58. The Applicant has stated that the main golf course would be closed over the winter period to avoid disturbance to wintering birds. The EIAR and associated documents state several differing proposed closure periods, for instance: 1<sup>st</sup> December - 31<sup>st</sup> March (EIAR section 5.7.3.3; 2022 RAMP, Non-Technical Summary section 5.11), 1<sup>st</sup> November - 1<sup>st</sup> April (EIAR section 5.8, Non-Technical Summary section 5.9.3), October to March (Planning Statement sections 4.19 and 6.17). The Schedule of Mitigation does not mention this measure at all. Therefore, it is unclear what is being proposed and what is being committed to. The proposed period needs to be clarified by the Applicant to allow the potential impacts to be properly assessed.
- 1.59. Potential additional recreational disturbance to SPA birds outwith the months the course would be closed has not been assessed within the EIAR. In RSPB

Scotland's opinion, even with the longest closure period suggested above, this would fail to prevent disturbance to wintering birds present outside the closure period. Wintering birds which start to arrive in the area from August can be present until April and the slacks have been recorded to flood outside of the closure period (see Annex 3 for further comment).

- 1.60. We note that the 2022 RAMP commits to adhering to a condition to restricting greenkeeping operations to one hour after sunrise and one hour before sunset at holes 10-18, between December and March. Elsewhere, the RAMP states that during winter, greenkeepers would keep access to a minimum around holes 13 and 16-18, fairways would not be mown but tees and greens would be accessed from February to begin spring maintenance. However, neither of these approaches are mentioned in the EIAR, Schedule of Mitigation or Environment Management Plan. In addition, their effectiveness for birds using the dune slacks as a high tide refuge would be limited as high tide would frequently be at other times.

ii. [Signage, removeable boardwalks and new circular path](#)

- 1.61. Although noted in Section 5.6.1 (Impacts Assessed) in the Ornithology section of the EIAR, recreational disturbance has not been discussed in Section 5.7 (Evaluation of Effects). It therefore appears that no assessment has been made of the impacts of new and easier access for dog walkers created by the Proposed Development into previously undisturbed areas adjacent to waterbodies and winter-flooded slacks. The RAMP discusses these issues but is only focussed on disturbance within the application site boundary.
- 1.62. This appears to ignore the recommendations made within the Winter Bird Survey Report (Appendix A.2) that changes in visitor numbers should be included in the assessment of impacts, including the northeast shoreline where Oystercatchers and other species congregate.
- 1.63. The RAMP suggests that no additional recreational visits would occur on the course when it is closed during the winter, with the only additional activity via operational maintenance staff. Despite this, a number of apparent mitigation measures have been suggested in the RAMP and in Section 5.8 (Committed Mitigation):

"A public access plan is proposed that focusses public access away from potentially sensitive areas for important ornithological receptors. (We assume this is referring to the proposed new circular path, though this is not clear).

Closure of golf paths through the removal of bridge structures where practical during the period of course closure to limit public use of golf paths and minimise potential disturbance.

RAMP for winter walkers with dogs."

- 1.64. Under Scottish law, the public have a right to walk across golf courses with their dogs (with the exception of greens). Access across the SPA is currently limited by the extent of winter flooding and rough ground. The Proposed Development is likely to greatly increase the attractiveness of Coul Links as a winter dog walking destination as it would create a network of paths and shorter vegetation around the site, within the designated site boundary. Despite the RAMP confirming the course footprint will create "defined access features", the Applicant has underestimated the disturbance impacts on the SPA from recreational disturbance.
- 1.65. Maps in Appendix 2 of the RAMP supposedly show the proximity of sensitive wintering bird areas to golfing areas and pathways. However, these figures are unclear and difficult to interpret. We know from the wintering bird surveys that they use areas adjacent to Holes 3, 4, 9, 11, 16 and 17. It is likely that other infrastructure would also impact on wintering birds.
- 1.66. In addition to the existing core path, the RAMP indicates that a new public circular path would be created to the southwest of the main golf course, through the agricultural fields, adjacent to the reservoir and crossing the new access road. It is proposed for 'additional' and 'minimal' footfall by people accessing the new golf course access road. Therefore, use of the new circular path in winter will likely be low as it is only accessible from the proposed car park and new access road, which would be closed during winter. Signage directing people to park in Embo is likely to encourage walking on the golf course instead of the alternative circular route. This walk was also proposed in the 2017 application. Indeed, the Reporter's report states, this circular walk is *"likely to be less appealing to recreational walkers than the existing path along the dunes and the walk on the beach itself, due to the natural attraction of the sea and the foreshore."* (Paragraph 6.155)
- 1.67. Even if walkers stick to paths within the SPA and the course footprint, signage is implemented and the five short sections of boardwalk are removed (which appear to be mapped in Appendix ES.3 Site Masterplan (layout) but are not included in the legend), the extent of human intrusion and associated disturbance to SPA qualifying species is likely to increase as a result of the Proposed Development.
- 1.68. It is not clear if winter signage would be in place for the full period between August and May when wintering birds are likely to use the site and the foreshore, and when the Applicant predicts 375 people per week would visit Coul Links to play golf. Winter signage is not proposed within all areas of the course next to waterbodies that are used by SPA birds, such as Holes 3 and 4. As discussed at the inquiry for the Previous Application, it has been RSPB Scotland's experience at Brora Golf Club that dog walkers often ignore signage asking them to keep dogs on a lead and allow their dogs to run free [REDACTED]



1.69. Therefore, RSPB Scotland do not believe that it would be possible to stop the public right of access to the course or that the increased disturbance impacts from the development could be fully mitigated.

### iii. Cessation of shooting

1.70. Although cessation of winter wildfowl shooting is not listed in the Schedule of Mitigation, it is mentioned in the Planning Statement and Ornithological chapter, under Committed Mitigation Measures. RSPB Scotland welcomes the landowner's commitment to cease winter wildfowling on Coul Links. The Applicant concludes 'moderate beneficial effect' on the SPA and Ramsar site as a result of the cessation of shooting. However, cessation of shooting would not be an 'effect' resulting from the Proposed Development (although could be proposed as mitigation). In addition, this measure could be taken at any time, regardless of the development. Notwithstanding this, the intensity of shooting activities on the site appears to be very low, taking place for only 7-8 days per year and apparently involving four people. We understand that any member of the public would still have the legal right to shoot birds from the foreshore.

### Discussion of general mitigation measures

1.71. Section 5.8 'Committed Mitigation Measures' is described as listing a number of ornithology-related measures which are 'part of in-built design'. However, the list also mentions various apparent compensation or enhancement actions, which have not been clearly separated. These include:

Commitment to develop and implement a long-term management plan in conjunction with NatureScot and other relevant bodies in order to enhance opportunities for bird life.

Potential, if requested by NatureScot, to be able to increase / amend water levels in the dune slacks.

Potential to create further areas of standing water, if deemed beneficial by NatureScot.

Potential to develop c.2ha of additional dune slack (subject to NatureScot approval).

1.72. These are far from 'in-built design' measures and have no detail or firm commitments. No long-term management plan, specifically for birds is included in the application. Plans for management and creation of standing water and dune slacks has not been expanded upon further to give detail on how this could be achieved, so it is unknown if this is feasible or what the additional impacts of such works would be. This appears to ignore the recommendations made within the Winter Bird Survey Report (Appendix A.2) that,

"Any adjustments to the levels of water during the winter period on and around the site should [therefore] be assessed."

- 1.73. Lastly, section 3.3 of the RAMP proposes monitoring of the implementation of the plan. However, it is concerning that it states, "Should unforeseen issues be observed or if it becomes apparent that impacts are greater than predicted then a request will be made to the Local Authority to impose statutory access restrictions over the most sensitive parts of Coul Links." This would suggest that significant changes to public access rights might be sought in the future and it is crucial that potential impacts are fully understood before a decision is made. As noted above, the determining authority must ascertain whether they can rule out an adverse impact on site integrity before granting any consent.

### Moray Firth SPA

- 1.74. Section 5.7.1.4 of the EIAR states that:

"Based on targeted bird surveys, the evidence collected demonstrates that none of the Moray Firth SPA species mentioned in the citation, regularly occur within and adjacent to the proposed development" and "...it can be concluded that there will be no likely significant effects on the qualifying features or site integrity."

- 1.75. The Moray Firth SPA was not a focus for the 2021/22 winter surveys, but species recorded offshore during walkovers were recorded during October 2021-March 2022. Only peak counts and months are presented in Table 2 of the Winter Bird Survey Report (Appendix A.2).
- 1.76. Common Scoter, Eider, Goldeneye, Long-tailed Duck, Red-breasted Merganser, Red-throated Diver and Slavonian Grebe are all qualifying features of the SPA and were recorded offshore during walkover surveys and during vantage point surveys. Therefore, an assessment of impacts should have been carried out due to the location of the SPA boundary adjacent to the application site and the potential increased impacts from recreational disturbance along the shoreline.
- 1.77. Eiders, amongst many other species in Dornoch Firth area, were badly affected by Highly Pathogenic Avian Influenza (HPAI) in the winter of 2021/22 when the surveys were being undertaken, and therefore numbers of Eider are highly likely to have been much lower than in normal years. This impact of the species should also have been taken account before scoping the Moray Firth SPA out of the assessment. Looking at Eider numbers in the WeBS counts in the Dornoch Firth and Loch Fleet area in 2021/22 compared to the previous 5-year mean of peak counts (2016/17 - 2020/21) would give an index of how much the local population is depleted by compared to the previous 5-year average (a 5-year average is more robust than a single year which could be affected by various environmental elements).

### Loch Fleet SSSI

- 1.78. The Loch Fleet SSSI citation describes Coul Links as

“an extensive dune system which is unusual in displaying a complete transition from foredune to slacks, reflecting” the national importance of Coul Links for its geomorphology, habitats and associated assemblages of plants and animals.

1.79. The SSSI citation also explains that the tidal flats of Loch Fleet support nationally important populations of wintering birds and the surrounding coastal and woodland habitats support nationally important assemblages of plants and breeding birds. Many of the features at Coul Links are not found elsewhere within the SSSI. In particular, the SSSI citation highlights that “the flooded slacks and winter lochs contribute to the diversity of habitat with a rich diversity of vascular plants” and notes that Coul Links has a richer flora than the Ferry Links on the other side of the Fleet.

1.80. Listed features in the SSSI citation that are relevant to Coul Links are:

- Saltmarsh
- Sand dunes
- Vascular plant assemblage
- Breeding bird assemblage
- Eider (*Somateria mollissima*), non-breeding

1.81. The management objectives for the SSSI relevant to Coul Links are listed below:

- To maintain the condition, distribution and extent of the sandflats and saltmarsh habitats.

- To restore the condition of the sand dune habitat.

- To maintain the distribution and population size of rare and scarce plants.

- To maintain the population of breeding birds and to avoid significant disturbance to these birds during the breeding season.

- To increase the wintering population of eider and to avoid significant disturbance to this species.

- To maintain non-breeding populations of waterfowl and avoid significant disturbance.

1.82. The 2011 Site Management Statement published by SNH (now NatureScot) notes the importance of an appropriate grazing regime in maintaining the sand dune habitat and in managing human activities to minimise disturbance to breeding and non-breeding birds<sup>10</sup>.

#### [Impacts on SSSI Habitats](#)

1.83. RSPB Scotland believes that the Proposed Development is contrary to most of the SSSI management objectives and is likely to damage the SSSI and its features. As noted above, we do not believe that the Applicant has adequately

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<sup>10</sup> SNH (2011) Loch Fleet Site of Special Scientific Interest Site Management Statement Site code: 984

assessed potential damage to or modification of sand dune habitats or damage to rare and scarce plants that are present in the various dune habitats.

- 1.84. Table B.16 showing predicted habitat loss during operation and construction, only presents the direct loss of habitats under tees and greens. The EIAR repeatedly states that there will be 1.5ha of direct habitat loss within the designated sites as the rest of the golf course development (14.7 ha, or 22.7 ha including roughs) i.e., pathways, fairways and roughs etc. will be mowed from the existing vegetation.
- 1.85. Appendix 4 (Environmental Management Plan) also describes "green surrounds/aprons and approaches, a closely mown area some 5-10 m wide encircling the front of each putting surface" and it is not clear if there will be direct habitat loss under these, or whether these would be mowed from natural vegetation. It is also not clear if these are included in the 1.5ha of loss.
- 1.86. The regular mowing of current habitats for fairways and roughs (and green surrounds if applicable) will modify them over time. Regular and mechanised mowing of fairways and semi-rough every week-to-ten-days to maintain lengths of 13-16mm and 30-40mm respectively (as outlined in Appendix ES.17 Golf Course Management Plan), and maintenance via divot repair with grass seed would ultimately change habitats over time with grasses dominating over herbaceous flowering plants. The maintenance of the managed/cut rough via mowing once a year to achieve a vegetation height of 70-100mm (or between 32 and 120mm according to section 2.7.6) would have similar impacts. Appendix 4 Environment Management Plan also suggests grass cuttings would be composted then scattered on the roughs. This will introduce nutrients and modify habitats further.
- 1.87. Such frequent and mechanised mowing would not create the more varied vegetation height which would result from grazing management as recommended in the SSSI Site Management Statement. There would also be trampling from golfers, caddies and their trollies, as well as from recreational access.
- 1.88. The Proposed Development would therefore impact on a much greater area of the intricate mosaic of interdependent dune habitats, as mowing of the larger development footprint nor the ongoing management requirements are not considered as a direct impacts.
- 1.89. There would be further negative impacts arising from pesticide, fungicide and fertiliser run off and increased nutrient levels around the tees and greens, as well as irrigation of these areas. ES.17 Golf Course Management Plan states that the green surrounds would be irrigated (see also paragraph 1.46) but it is not clear whether they would also receive any chemical treatment. The Plan also suggests aeration of greens, tees, surrounds, fairways and paths would be required in spring and autumn. Although we note the amount of chemicals proposed to be used has been reduced from the previous application, the

Applicant has not fully assessed the impacts of these measures nor considered appropriate mitigation to reduce these effects on the SSSI habitats.

- 1.90. Shading of the sensitive slack habitats under proposed boardwalks would also affect this habitat and component vascular plant species.
- 1.91. Section 2.7.7 of the EIAR presents conflicting information about bunker and blow-out formation both suggesting that natural features would be used but also that features would be created. Creating such features would also result in habitat loss as described in section 2.7.7.1 of the EIAR, with removal of top vegetation. This would not have the biodiversity benefits described for lichens in the ES.17 Golf Course Management Plan, if continually raked to be kept free of weed growth, as described in Appendix 4 Environmental Management Plan. The vegetation on the edges would also be strimmed (as described in ES.17 Golf Course Management Plan) and would therefore also be modified over time.
- 1.92. The proposed location of the 15th and 17th holes within close proximity of the vegetation edge of the dunes would have a profound impact due to the likely requirements to protect the area from coastal erosion, particularly via sea level rise and climate change. This is described further in the Coastal Erosion section in Annex 3.
- 1.93. The Applicant has indicated that re-profiling to create the course will be limited, however, drawings showing existing and proposed levels have not been provided, despite the binding Scoping Opinion stating that this is required. The creation of the 15th and 17th holes and the likely coastal defence measures required are likely to lead to a substantial modification of the shifting dune habitat. The Applicant has not assessed the likely impacts of the potential future need for such intervention on habitats at Coul Links or elsewhere within the SSSI.
- 1.94. The fixed dune habitat at Coul Links contributes to it being one of the best sites for wildflowers in East Sutherland. The proposed greens and tees would result in the direct loss of 0.23ha of the dune grassland mosaic habitat within red line boundary (Table B.16). But as discussed above, it is unclear how much of this habitat would be lost through mowing and modification over time, in addition to that lost through formation of tees and greens.
- 1.95. We note that Hole 4 has been relocated to avoid good quality dune heath habitat and rare lichens. However, the proposed golf course layout still shows that holes 2, 3, 4 and 5 will impact on dune heath and mosaics of this habitat. The tees and green for Hole 8 are also on dune heathland. Table B.16 states that 0.82ha of dune heath and 0.26ha of dune heath mosaic would be lost but as described above much more of this habitat will be mown and modified to create the fairways and roughs. The extent of this work is not revealed by the Applicant. We note the Applicant intends to transplant heathland removed when creating the fairways etc. but as discussed at the inquiry for the previously

refused application, this is not an effective mitigation or compensation measure. It should therefore not be considered as such.

- 1.96. The Application includes a proposal to increase dune heath via fencing off an area of the site, yet the area identified for this in the Outline Habitat Management Plan is overlapped by the proposed course holes and borrow pits. In addition, while we do not dispute that scrub management is required to improve the dune heath feature of this site, we note this is already being undertaken through the five-year Management Agreement with NatureScot and will proceed in absence of the development. This is further discussed in Annex 4.
- 1.97. In the Dornoch Firth and Loch Fleet SPA section above, we have noted our concerns about impacts on dune slack habitat. This is of relevance to the SSSI also.
- 1.98. Juniper within coastal dune environments is rare in Scotland. We note that the 16th Hole has been moved to avoid the largest area of mature juniper on Coul Links, and the unnumbered table on page 30 of the EIAR entitled 'Scottish Ministers Findings' states that now all juniper trees will be avoided. However, Appendix ES.14 Hole 16 comparisons shows a number of juniper trees will still need to be removed to create this hole. Table B.21: Summary of Potential Construction and Operational Effects on Juniper suggests up to 30 trees will be removed.
- 1.99. Lastly, it is worth noting here the intricate mosaics of dune habitats that exist on the site. After the inquiry for the previous application, the Reporters' concluded that avoiding sensitive areas via micro-siting during construction as described in the application would be unlikely to be effective, could lead to other adverse effects elsewhere and such key decisions on habitat impacts should not be left until after a decision is made and construction has commenced. Again, the degree to which the golf course design and layout could be modified to accommodate constraints, and hence the impact on birds using those areas, remains unclear.
- 1.100. These concerns are furthered in section 3.6 of the Planning Statement which states that the course will be "designed by Bill Coore and developed by Mike Kaiser". It is therefore, unclear if the design will change again from the current proposal, leading to further uncertainty over the likely impacts.

#### [Impacts on SSSI breeding bird assemblage](#)

- 1.101. RSPB Scotland believes that the Proposed Development is likely to negatively impact the SSSI's breeding birds. The assessment of impacts on breeding birds is inadequate, and the lack of proposed construction and robust operational mitigation in light of Reporters' conclusions following the inquiry into the Previous Application is deeply concerning.

- 1.102. Firstly, although raw sightings maps are provided in Appendix A.3 (Common Bird Census Report 2022), no maps of bird territory locations are presented. Therefore, estimates of the number of breeding birds or territories affected are not available and the scale of potential impact is unknown. In addition, no assessment of construction impacts (and no indication of what construction mitigation is proposed) is presented and the EIAR does not discuss impacts from increased footfall/use of site during operation in the breeding season. Finally, the EIAR states that there will be no habitat loss for breeding birds, and this is wholly inaccurate.
- 1.103. Of those noted in the SSSI citation, we are aware that Ringed Plovers, Oystercatchers, Eiders [REDACTED] breed on the foreshore, dune and saltmarsh habitats [REDACTED] of proposed golf course infrastructure. We do not believe that the Applicant has adequately assessed the impacts of habitat change and increased disturbance to these species.
- 1.104. Section 5.7.2.1 of the EIAR states that "*Of the Loch Fleet SSSI breeding bird assemblage, Ringed Plover were the only species confirmed to be breeding within, or within close proximity to the proposed development site in 2022.*" But according to Appendix A.3 (Common Bird Census Report 2022), Oystercatchers and Eiders were also recorded breeding, but location in relation to footprint is not available. RSPB's Moray Firth tern monitoring in 2022 recorded two breeding pairs of Little Terns [REDACTED] producing one chick, however this was not recorded during the surveys undertaken for the Proposed Development.
- 1.105. Section 5.7.2.1 goes on to argue that Ringed Plover "*is considered to have low sensitivity, i.e., they occupy areas subject to frequent human activity/management and exhibit mild and brief reaction to disturbance events with no long-term adverse effects.*" Scientific evidence shows that the opposite is true. Population densities of both Ringed Plovers and Oystercatchers are lower in locations with high visitor numbers showing they actively choose nesting places not visited by people<sup>11,12,13</sup>.
- 1.106. Other breeding birds noted in the SSSI citation are Wheatear, Sedge Warbler and Reed Bunting. These species all nested within the Application Site boundary of the Proposed Development in 2016 and 2017. Reed Buntings and Sedge Warblers were also recorded breeding on site in 2022 Appendix A.3 (Common Bird Census Report 2022). These species would lose habitat as a result of scrub clearance, modification of the felled plantation and the modification of habitats to create of holes 10, 11 and 13, as well as the Par 3 course. From data

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<sup>11</sup> <https://wadertales.wordpress.com/2021/08/23/on-the-beach-breeding-shorebirds-and-visiting-tourists/>

<sup>12</sup> Jamie A. Tratalos, Andy P. Jones, David A. Showler, Jennifer A. Gill, Ian J. Bateman, Robert Sugden, Andrew R. Watkinson, William J. Sutherland, Regional models of the influence of human disturbance and habitat quality on the distribution of breeding territories of common ringed plover *Charadrius hiaticula* and Eurasian oystercatcher *Haematopus ostralegus*, *Global Ecology and Conservation*, Volume 28, 2021.

<sup>13</sup> Tratalos, J.A., Sugden, R., Bateman, I.J. et al. The Conflict Between Conservation and Recreation When Visitors Dislike Crowding: A Theoretical and Empirical Analysis of the Spatial Distribution of Recreational Beach Users. *Environ Resource Econ* 55, 447–465 (2013).

collected from the last application, we understand that Grasshopper Warblers, Reed Buntings and Sedge Warblers seem to particularly like the intimate mixture of wet and dry ground and cover provided by both the felled plantation and the area around the proposed 13th fairway. This appears to be confirmed in 2022 in Appendix A.3a (Bird species analysis), though this seems to show all raw data from all 6 surveys rather than a summary of territory centres.

- 1.107. The list of breeding birds in the SSSI citation for the breeding bird assemblage is not intended to be exhaustive. Red-listed birds of conservation concern<sup>14</sup> recorded in 2022 at Coul Links during the breeding season include Lapwing, Curlew, Cuckoo, Skylark, Grasshopper Warbler, Starling, Linnet, Twite, Lesser Redpoll and Yellowhammer. Coul Links is also used by a number of amber-listed species including Snipe, Song Thrush, Willow Warbler, Dunnock, and Meadow Pipit. Most of these species are likely to lose habitat to the golf course layout via direct habitat loss under greens and tees and habitat modification of the rest of the course layout through mowing. Maintaining vegetation lengths of 13-16mm and 30-40mm on fairways and semi roughs (as outlined in Appendix ES.17 Golf Course Management Plan) and of 70-100mm on the roughs (or between 32 and 120mm according to section 2.7.6) would not provide cover and protection against predation and disturbance and will make habitats unsuitable for ground vegetation-nesting bird species. The ES.17 Golf Course Management Plan states "Annual cutting of managed/cut rough will help develop a finer, more textured vegetation which will encourage specific ground nesting bird species." RSPB Scotland believe that the intrusion of the course into dune habitats means that golf-related activities would cause extensive disturbance to breeding birds. This would also result in less available breeding habitat. Therefore, the roughs cannot be viewed as a holistic part of SSSI as described in ES.17 Golf Course Management Plan due to the intensive management and loss of functionality.
- 1.108. We note that Appendix ES.3 (Site Masterplan (layout)) and other site drawings appear to show dotted lines of play, which cross some of the "untouched" areas of the site, known as the 'carry'. It is to be expected that some balls played would fall short of the fairway and into the carry. Retrieving lost balls would be another likely disturbance impact to both breeding birds and habitats and this has not been discussed in the EIAR.
- 1.109. With regards to disturbance and construction mitigation for breeding birds, no information or assessment has been provided, in isolation or cumulatively with the powerline undergrounding works within the SSSI. However, Table A.11: Summary of Effect states that there will be a Breeding Bird Protection Plan, but again no further information has been provided. We understand that the course will take up to two years to build and therefore two breeding seasons could be impacted.

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<sup>14</sup> Birds of Conservation Concern 5: <https://britishbirds.co.uk/content/status-our-bird-populations>



- 1.110. The only apparent mitigation against disturbance of breeding birds during operation described in any detail is presented within the RAMP – this is the erection of annual signage, some specifically relating to terns. Maps in Appendix 2 of the RAMP supposedly show the proximity of sensitive breeding bird areas to golfing areas and pathways. However, this is unclear and appears to be the same as the most sensitive wintering areas, which is incorrect. Since no territory analysis has been presented from the breeding bird survey results overlaid on the proposed layout, the locations of the most sensitive areas for breeding birds within the site are not available.
- 1.111. Although we do advocate use of signage in sensitive breeding bird areas accessed by the public, having such signage on this site would not be effective with the expected 375 rounds per week (or 17,000-25,000 rounds per year as outlined in Annex F) and with activity (such as mowing) on site from dawn until dusk (as outlined in the RAMP). Even if recreational walkers stick to paths within the course footprint, with signage in place, the extent of human intrusion and associated disturbance to SSSI breeding bird species is likely to increase. This would also be expected on the adjacent beach where specific [REDACTED] signage is proposed. As explained previously (paragraph 1.68), and accepted by the Reporters at the inquiry, RSPB Scotland's experience at Brora Golf Club is that dog walkers often ignore signage.
- 1.112. We note that Section 5.8 of the EIAR states there will be "*creation of a fenced habitat for terns*" and the drawings entitled "Landscaping and Exclusion Zones" and "Establishment Zones" (which we assume are Appendices ES.3b and c) indicate that this will be located in [REDACTED] the dune system. Since terns do not currently nest in that area, nor have they been known to in the past, according to our records, we would suggest that this is an unsuitable location. We recommend this be amended and moved [REDACTED]. Further information is also required as to the fence type and for what purpose it has been proposed.
- 1.113. The EIAR section 5.7.2.2 concludes that "*Based on the evidence collected on breeding birds within Loch Fleet SSSI, NatureScot considers that the proposed development layout can be accommodated without having adverse impacts upon the breeding bird assemblage and we concur with this assessment. Consequently, having considered the potential impacts of proposed development on the breeding bird assemblage of the Loch Fleet SSSI and based on evidence collected, it can be concluded that there will be no likely significant effects on the qualifying features or site integrity.*"
- 1.114. However, it must be noted that this statement regarding NatureScot's position relates to their comments on the previous application. The Reporters during the inquiry did not agree with this and concluded:
- "...that the construction and operation of the proposed development is likely to have a significant adverse impact on wintering and breeding birds, even after mitigation, arising from disturbance and habitat loss." (Paragraph 6.159)*

And

"We appreciate that our conclusions differ from the final position of SNH on the proposal's potential impact on birds, but we have been able to take account of the extensive evidence to the inquiry, cross-examination of witnesses, and the submissions of the parties on the topic, much of which was not available to SNH when they submitted their consultation response. For example, we have had the opportunity to consider the implications of the additional bird surveys by RSPB, peer reviewed scientific research on disturbance, and experience of the effectiveness of signage, which have helped to inform our conclusions." (Paragraph 6.160)

#### [Impacts on SSSI vascular plants](#)

1.115. We support the points our Conservation Coalition partners make within their responses in regard to impacts on SSSI vascular plants.

#### [Impacts on SSSI wintering eider](#)

1.116. As discussed in relation to the SPA sites above, and Ramsar site below, RSPB Scotland believe that the Proposed Development could also adversely impact on overwintering SSSI eider due to increased recreational disturbance. Also see the Moray Firth SPA section above regarding this species and outlining the requirement for assessment.

#### [Comments on the current condition of the SSSI](#)

1.117. The condition of the SSSI breeding bird assemblage was assessed as "favourable declining" by SNH (now NatureScot) in 2008 with listed pressures of natural event and recreational disturbance<sup>15</sup>. In addition, the sand dune habitat across the Loch Fleet SSSI (including Littleferry as well as Coul Links) was assessed as "unfavourable, unchanged" in 2014 with invasive species (thistles), under and over-grazing and recreational disturbance listed as on the pressures. The 2011 Site Management Statement<sup>10</sup> also notes the requirement to manage birch and willow scrub on Coul Links. The condition of the vascular plant assemblage in 2012 was "favourable maintained".

1.118. The Loch Fleet SSSI covers a wider area than Coul Links and the feature pressures listed by NatureScot are not all relevant to Coul Links. In particular, current recreational disturbance is very much greater at Littleferry. While there are a large number of roe deer present and the northwest of the site is grazed by cattle in winter, there are parts of the SSSI at Coul Links that would benefit from more grazing. Sheep grazing of roughs is described in ES.17 Golf Course Management Plan but does not appear to be committed to anywhere else within the documentation.

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<sup>15</sup> <https://sitelink.nature.scot/site/984> (accessed 29/3/23)

- 1.119. Compared to the previous application, the Applicant has amplified the significance of “invasive” species present on the site (particularly gorse, birch, meadowsweet, bracken, burnet rose and rosebay willow herb), and they suggest that their dominance has increased in the time between the two applications. No evidence for this is presented.
- 1.120. We suggest that the term “invasive” has been used incorrectly in this context as it is defined as species outside their normal range that cause detrimental impacts on other organisms or environments<sup>16</sup>. The species discussed are in their natural range, and burnet rose and meadowsweet can be natural (although not constant) components of dune slack and grassland habitats. Many of the “invasive” species listed are important food plants of invertebrates. It should be noted that there are currently no highly invasive non-natives such as Japanese knotweed, Himalayan Balsam or Rhododendron ponticum.
- 1.121. Sand dune ecosystems are successional, changing from bare sand through to species-rich grasslands and to scrub and woodland. Coul Links shows this range of succession which gives the site its unique importance. Indeed, the SSSI citation statement on the sand dune designated feature states that: “Coul Links is an extensive dune system which is unusual in displaying a complete transition from foredune to slacks.” This indicates the rarity of such a complete system.
- 1.122. Both gorse and birch are part of natural succession to fixed dunes and only a modest area of Coul Links is currently affected. We understand that there are some valid nature conservation arguments for removing and reducing some scrub species from certain special habitats to restore their functionality and natural processes. In December 2021, a 5-year management agreement was signed between the landowner and NatureScot to tackle areas of gorse and birch scrub within the dune system. The Applicant argues that the work undertaken to date is not enough in scale or quality to properly restore the site and suggests only through private funding from the golf course, can the site be restored. We do not agree that this is the case. NatureScot-funded management work will run until 2026 and that there are a number of funds available to the landowner to undertake conservation management of the site.
- 1.123. The benefits of the Applicant’s commitment to control “invasive species” within the application site boundary of the Proposed Development (discussed in Annex 4) are likely to be hugely outweighed by the damage caused to the vascular plant assemblage (not fully assessed by the Applicant), the loss and modification of dune heath habitat and increased disturbance of breeding and overwintering birds as discussed above. It should also be noted that control of

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<sup>16</sup> <https://www.nhm.ac.uk/discover/what-are-invasive-species.html#:~:text=An%20invasive%20species%20is%20an,into%20conflict%20with%20other%20organisms%3F> - accessed 29/3/23

these species should not be counted as mitigation as outlined in section 6.7.6 (Committed Mitigation Measures – Invasive species).

1.124. This was agreed by the Reporter with regards to the previous Coul Links Site Management Plan, associated with the previous application:

“We recognise the benefits that the CLSMP would bring... But given the extent of loss of Annex 1 habitats under the golf course; the strongly adverse effects within the longer-cut rough for dune heath and dune slacks; the effects from disturbance; the effects from fragmentation, edge effects and loss of dynamism (in particular noting that the course would be distributed widely across the system and our concerns about development within the open dunes) and our uncertainty about some of the effects on the water environment, we find there would be a likely significant adverse effect on the overall system of sand dune habitats at Coul Links.” (Paragraph 5.642 of the Reporters’ Report)

### [Dornoch Firth and Loch Fleet Ramsar site](#)

1.125. The Dornoch Firth and Loch Fleet are also of international importance recognised through their listing as a Ramsar Site, under the Ramsar Convention on Wetlands of International Importance 1971. The Ramsar citation was updated in 2022 and describes Coul Links as:

“a large sand dune system which contains a complete transition from foredune to sand dune slacks.” It goes on to explain that “The sand dune slacks, or winter lochs/pools occur in wet areas created by variations in the water table and seasonal flooding. Sand dune slacks of exceptional quality and scale are widespread at Coul Links, displaying a rich diversity of vascular plants.”

1.126. Around 140 ha of the Proposed Development is located within the Dornoch Firth and Loch Fleet Ramsar site, which qualifies under Ramsar criteria 1, 2, 5 and 6, which includes sand dune, saltmarsh and estuary habitats of international importance. In addition, the tidal flats within the Ramsar site support internationally important numbers of waterfowl in winter and are the most northerly and substantial extent of intertidal habitat for wintering waterfowl in Britain, as well as Europe.

1.127. In Scotland, all Ramsar sites are also SPAs, SAC and/or SSSIs and are extended protection under the relevant statutory regimes, as set out in Policy 4 of NPF4.

1.128. RSPB Scotland believes that the Proposed Development would have an adverse effect on qualifying features of the Ramsar site as outlined below.

### [Overwintering birds](#)

1.129. For the reasons outlined in the Dornoch Firth and Loch Fleet SPA section above, we consider that the loss of bird habitat and disturbance of qualifying species

would be likely to result in an adverse impact on overwintering birds, including Wigeon and Teal, which are protected under the Ramsar site designation. Impacts on other species such as Greylag Geese and Curlew using the fields to the southwest and the foreshore have not been assessed and therefore the impact on these species is unclear.

### Habitats

1.130. Ramsar criterion 1 makes specific reference to the sand dune habitats which would be affected by the proposed course, and impacts are described in the SSSI section above.

### Flora and invertebrates

1.131. Ramsar criterion 2 makes reference to nationally scarce aquatic plants and British Red Data Book invertebrates. The EIAR does not adequately assess impacts on flora or invertebrates. We note that no specific survey for Ramsar plants such as Baltic Rush were conducted and only incidental records were recorded, and it is unclear whether this rare plant would not be affected.

1.132. Section 6.12 of the EIAR states that there is only one significant effect predicted and this is redacted in the EIAR, although we assume this is Fonseca's seed fly. It appears that no mitigation is proposed (unless this information has also been redacted).

1.133. We support the points our Conservation Coalition partners<sup>17</sup> make within their responses in regard to impacts on non-bird taxa and qualifying species of the designated sites.

### Cumulative and in-combination impacts

1.134. We are extremely concerned that the Applicant has not considered any cumulative and in-combination impacts of the Proposed Development. Such an assessment is required to inform the Appropriate Assessment with regards to the SPA and is also an EIA requirement.

1.135. We are aware of two additional separate planning applications related to this Application; the reservoir (17/04404/FUL) and holiday lodges (21/02644/FUL), both located within the Application Site boundary. It is unclear why these applications were made separately as they are clearly inextricably linked to the main application and should be considered as such, especially as it is our understanding that they would not have been submitted in the absence of the golf course application. This 'salami-slicing' approach could significantly underestimate the impacts of the Proposed Development as a whole. Although submitted separately, these applications must be considered at the same time

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<sup>17</sup> Buglife Scotland (objection letter dated 6<sup>th</sup> April 2023), Butterfly Conservation Scotland (objection letter dated 9<sup>th</sup> April 2023), Plantlife (objection letter dated 6<sup>th</sup> April 2023).

as the main Application including all possible effects they may have on the designated sites and their habitats and species. To do otherwise would lead to an inadequate consideration of all possible effects and therefore an incomplete EIAR and Habitats Regulations Assessment, especially the cumulative and in-combination requirements.

- 1.136. RSPB Scotland objected to the borehole and reservoir application (17/04404/FUL) in 2017 as the proposed works are part of the proposed golf course project and the EIA and Habitats Regulations require an assessment of the impacts of the project as a whole. We discuss the potential impacts on hydrology and designated sites from abstraction and irrigation above and in Annex 3.
- 1.137. The fields containing the proposed reservoir and supporting pipework are currently grazed pasture which are used in the non-breeding season by foraging Greylag Geese and Curlew and are also suitable for foraging Oystercatcher and Wigeon. All of these species are qualifying interests of the adjacent SPA. No assessment has been made of potential disturbance of overwintering birds by cumulative construction work, or any subsequent activity associated with the reservoir, which appears yet to be determined by the planning authority.
- 1.138. The Coul Links holiday lodges (21/02644/FUL) were approved by the Highland Council in February 2023 and are located within the Application site boundary but not depicted on any maps within the application documents. Nor are they discussed in terms of the EIA. In isolation, RSPB Scotland has little concern about them and their potential impacts on the neighbouring designated sites, however, when considered alongside this Application there may be cumulative effects, and these must be included within the assessment.
- 1.139. There are also a number of other groundworks and infrastructure described in the Application documentation, yet their locations on maps are not presented and their impacts not assessed in the EIAR. This includes works to underground power lines across the site (within the designated sites' boundary), drainage infrastructure, the 'landing zones' for grass cuttings (mentioned in Appendix 4 Environmental Management Plan, also within the designated site), the green surrounds and the widening of the C1026 road.
- 1.140. Lastly, although included in the current application, the in isolation and cumulative impacts of the Par 3 course and practice course (driving range) have not been described or discussed in the EIAR.
- 1.141. In summary, the Application does not demonstrate that the Proposed Development would not adversely affect the integrity of the Dornoch Firth and Loch Fleet SPA and Ramsar sites, the Moray Firth SPA, nor that it is not likely to damage the Loch Fleet SSSI.

## Annex 2: RSPB Objection on Planning Policy and Other Material Considerations

### The Development Plan

- 2.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 states that planning decisions are to be made in accordance with the Development Plan unless material considerations indicate otherwise.
- 2.2 The Development Plan for the area comprises:
- National Planning Framework 4, 2023 (NPF4)
  - The Highland-wide Local Development Plan, 2012 (HWLDP)
  - The Caithness and Sutherland Local Development Plan, 2018 (CSLDP)
- 2.3 The Development Plan must be read and applied as a whole. In the event of any incompatibility between a provision of NPF4 and a provision of an LDP, whichever of them is the later in date is to prevail<sup>18</sup>. Therefore, given the adoption date of both LDPs (2012 and 2018), the relevant NPF4 policy would prevail in such circumstances.
- 2.4 Paragraph 6.1 of the Planning Statement notes that the HWLDP is over 5 years out of date and refers to paragraph 33 of Scottish Planning Policy (SPP). On 13 February 2023, National Planning Framework 4 was adopted, and includes national planning policy, superseding SPP. Therefore SPP is no longer a material consideration.
- 2.5 Paragraph 7.2 of the Planning Statement states, 'While NPF3 will be superseded by NPF4, it remains the relevant document in setting out national planning policy and is therefore material to this proposal'. National planning policy is now set out in NPF4 and NPF3 is no longer a material consideration.

### [The Highland Wide Local Development Plan 2012 \(HWLDP\)](#)

#### Policy 28 Sustainable Design

- 2.6 Policy 28 gives general support to proposals which promote and enhance the social, economic and environmental wellbeing of the people of the Highlands and lists criteria against which proposed developments will be assessed, including impacts on habitats and species. The policy states that where potential impacts are uncertain, but where there are scientific grounds for believing that severe damage could occur either to the environment or the wellbeing of communities, the Council will apply the precautionary principle.

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<sup>18</sup> Section 25(2)(b) of the Town and Country Planning (Scotland) Act

- 2.7 Although there may be some economic benefits from the development of a golf course, there would be significant adverse impacts on designated sites and their habitats and species. The proposal would be significantly detrimental in terms of the policy's criteria, and therefore would not be considered to accord with the LDP, as set out in the policy.

#### Policy 36 Development in the Wider Countryside

- 2.8 Policy 36 applies to development within the countryside, outside settlements and sets out criteria against which proposals will be assessed. This includes whether proposals are acceptable in terms of siting and design. The proposal would be inappropriately sited within a particularly sensitive, protected sand dune habitat subject to national and international designations. Therefore, it would not comply with this policy.

#### Policy 43 Tourism

- 2.9 The LDP recognises the significant contribution that tourism makes to the Highland Economy. Policy 43 lists criteria which proposals for tourism facilities will be assessed against. This includes whether the proposal will "safeguard, promote responsible access, interpretation and effective management or enhancement of natural, built and cultural heritage features". The Proposed Development would not safeguard the natural heritage features of Coul Links which are protected by the SPA, Ramsar and SSSI designations. Therefore, the Proposed Development would not comply with this policy.

#### Policy 49 Coastal Development

- 2.10 Policy 49 states that proposals should not have an unacceptable impact on the natural, built or cultural heritage and amenity value of the area and should be assessed against the requirements of the Highland Coastal Development Strategy: Supplementary Guidance.
- 2.11 The proposal would have an unacceptable impact on natural heritage and would be inconsistent with non-statutory supplementary guidance (Highland Coastal Development Strategy 2010) referred to in Policy 49. In relation to nature conservation designations, the strategy recognises (paragraph 5.10.1) the Council's obligation to help safeguard the interests of these designated sites and to support biodiversity in the area as a whole and declares its commitment to assist the aims of the Scottish Biodiversity Strategy. The documents recognise that much of the Highland coastal zone's economic value comes from its natural heritage resources (paragraph 5.10.2), supports the protection of designated nature conservation sites, and notes that development should only be encouraged where natural systems can sustain it and where socio-economic benefits clearly outweigh the environmental costs. The Proposed Development would have adverse effects on nationally and internationally designated sites for nature and socio-economic benefits would not outweigh these.

#### Policy 57 Natural, Built and Cultural Heritage



- 2.12 The preamble to the policy sets out definitions of levels of importance, with Ramsar and SPA sites of international importance and SSSI of national importance.
- 2.13 The Policy states that where there are significant adverse effects on sites on national importance, these must be clearly outweighed by social or economic benefits of national importance if they are to be supported. The Proposed Development would not have benefits of national importance that would outweigh the significant harm to the Loch Fleet SSSI.
- 2.14 Part 3 of the policy reiterates the requirements of the Habitats Regulations and the requirements for the Council to carry out an Appropriate Assessment before determining a proposal that is likely to have significant effects on an internationally important site. The policy states that where the Council is 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. As set out in detail in Annexes 1 and 3 of this response, the Applicant has not demonstrated that the Proposed Development would not adversely affect the integrity of the Dornoch Firth and Loch Fleet SPA and Ramsar sites and Moray Firth SPA and therefore the Proposed Development would not comply with this policy. Notwithstanding this, the Council must meet its obligations under the relevant legislation, as set out in sections 1.7 – 1.14 in Annex 1.

#### [Policy 58 Protected Species](#)

- 2.15 Policy 58 refers to 'Protected Bird Species' which are defined in the Glossary as all wild birds and those given specific protection under Schedules 1 and 1A of the Wildlife and Countryside Act. The Proposed Development does not avoid adverse impacts on such protected species, including birds listed in the Birds Directive and Birds of Conservation Concern<sup>19</sup>. It has not been demonstrated that there is no other satisfactory solution and the development is required in the interests of public health or public safety, therefore, the proposal would therefore not comply with this policy.

#### [Policy 59 Other Important Species](#)

- 2.16 This policy refers to the regard that will be had to any adverse effects on other important species, including species on the Scottish Biodiversity List and Biodiversity Action Plan Species. A number of Scottish Biodiversity List species are present on site, including Fonseca's Seed Fly, one of the UK's rarest endemic invertebrates. It is not considered possible to use conditions or agreements to ensure detrimental impacts on these species are avoided.

#### [Caithness and Sutherland Local Development Plan 2018 \(CSLLDP\)](#)

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<sup>19</sup> <https://www.bto.org/sites/default/files/publications/bocc-5-a5-4pp-single-pages.pdf>

- 2.17 The current application site lies immediately to the north of the settlement of Embo, which is identified as a 'growing settlement', although the boundaries are not defined in the CSLLDP.
- 2.18 Page 123 lists a number of placemaking priorities for Embo Growing Settlement. Particularly relevant to this proposal are:
- significant developments to be accompanied by a recreational management plan to assess any likely increased pressures from recreational access of the sand dunes or disturbance to wintering or breeding birds; and
- development proposals should have regard to Dornoch Firth and Loch Fleet SPA and Ramsar site, Moray Firth SAC and Loch Fleet SSSI.
- 2.19 In addition, we note that since the adoption of the Plan, the Moray Firth SPA has been designated.
- 2.20 Although the application does include a Recreational Access Management Plan (RAMP), this fails to adequately assess the likely increased pressures on the sand dunes or to wintering and breeding birds.
- 2.21 The Plan does not give support to the Proposed Development which would have such adverse impacts on protected sites and the environmental value of the area.

#### [The Fourth National Planning Framework 2023 \(NPF4\)](#)

- 2.22 NPF4 includes a long-term spatial strategy for Scotland and a set of national planning policies. The Plan aims to support the delivery of the UN Sustainable Development Goals. The Ministerial Forwards states,
- "Putting the twin global climate and nature crises at the heart of our vision for a future Scotland will ensure the decisions we make today will be in the long-term interest of our country."

#### [Policy 1 Tackling the Climate and Nature Crisis](#)

- 2.23 The intent of this policy is to encourage, promote and facilitate development that addresses the global climate and nature emergency, with the policy outcome, zero carbon, nature positive places. It states that when considering all development proposals, significant weight will be given to the global climate and nature crises. This policy highlights the importance that the Scottish Government gives to nature and climate and the need to the Planning System to play its part in addressing these crises. The Proposed Development would not support the aims of a net-zero, nature positive Scotland, and significant weight needs to be given to its likely adverse impacts when weighing the merits of the proposal.

#### [Policy 3 Biodiversity](#)

- 2.24 The intention of Policy 3 Biodiversity is to protect biodiversity, reverse biodiversity loss, deliver positive effects from development and strengthen nature networks.
- 2.25 Policy 3 requires that development proposals contribute to the enhancement of biodiversity. Any potential adverse impacts, including cumulative impacts, on biodiversity, nature networks and the natural environment should be minimised through careful planning and design.
- 2.26 Furthermore, Policy 3(b) states that for national or major development, or for development that where development requires an Environmental Impact Assessment, proposals will only be supported where it can be demonstrated that the proposal will conserve, restore and enhance biodiversity so they are in a better state than without the intervention. Such proposals are to demonstrate how they have met a list of criteria, including:
- the proposal is based on an understanding of the existing characteristics of the site and its local, regional and national ecological context prior to development, including the presence of any irreplaceable habitats.
  - an assessment of potential negative effects which should be fully mitigated in line with the mitigation hierarchy prior to identifying enhancements.
  - significant biodiversity enhancements are provided, in addition to any proposed mitigation... Management arrangements for their long-term retention and monitoring should be included...
- 2.27 The Applicant has failed to show a proper understanding of the existing characteristics of the site or its importance at a local, regional, national or international level. As discussed in detail in Annex 3, the EIA Report and other supporting documents do not establish the current situation with regard to existing habitat and species that could be affected by the Proposed Development, nor does it properly assess its impact on the Dornoch Firth and Loch Fleet SPA and Ramsar site, Moray Firth SPA and Loch Fleet SSSI or their species and habitats. The current proposal clearly does not comply with this policy as the golf course would result in direct and indirect negative impacts on nationally and internationally protected sites for nature.
- 2.28 The Applicant has not fully mitigated negative impacts in line with mitigation hierarchy, before trying to identify enhancements. Primarily, detrimental impacts have not been avoided as there are direct and indirect negative impacts on nationally and internationally protected sites for nature. The mitigation that is proposed is inadequate and the compensation that is suggested for loss of habitat is inadequate and unlikely to be effective.
- 2.29 We note that guidance on the delivery of biodiversity enhancement for major and EIA development is not yet in place. However, the way that the Applicant has approached the issue shows a fundamental lack of understanding of the mitigation hierarchy and the complexity of habitat on the site. It is not

acceptable to destroy and damage parts of designated sites with non-specific proposals relating to some form of habitat management elsewhere on the site.

- 2.30 It is not appropriate to try and deliver biodiversity enhancement, under the requirements of this policy, on a statutorily designated sites for nature. NatureScot is the statutory nature conservation body with obligations in regard to designated sites, including those with features in unfavourable condition. There is an existing management agreement in place between the landowner at Coul Links and NatureScot to ensure the site is managed better for nature and enhancement should be truly additional.
- 2.31 What is proposed cannot be described as biodiversity enhancement and the proposal does not comply with this policy.

#### Policy 4 Natural Places

- 2.32 The intention of Policy 4 is to protect, restore and enhance natural assets, making the best use of nature-based solutions. The policy outcome is that natural places are protected and restored, and natural assets managed in a sustainable way that maintains and grows their essential benefits and services.
- 2.33 Part a) of Policy 4 Natural Places clearly states that "Development proposals which by virtue of type, location or scale will have an unacceptable impact on the natural environment, will not be supported."
- 2.34 Part b) Reiterates the requirements of the Habitats Regulations in terms of requirements for European Sites.
- 2.35 Part c) states that development proposals that will affect SSSIs will only be supported where:

The objectives of the designation and the overall integrity of the areas 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 [emphasis added].

- 2.36 The Applicant has not demonstrated that there would not be an adverse effect on the integrity of the Dornoch Firth and Loch Fleet SPA and overlapping Ramsar features, nor the Moray Firth SPA. The Proposed Development would compromise the objectives of the Loch Fleet SSSI and any economic benefits cannot be said to be of national importance that would outweigh the adverse impacts. Overall, the Proposed Development would have an unacceptable impact on the natural environment and would not comply with Policy 4.

#### Policy 10 Coastal Development

- 2.37 Policy 10 refers to 'developed' and 'undeveloped' coastal areas and states that LDP spatial strategies should identify these areas, therefore, although the

Application Site is not defined as such, it is not currently developed and therefore it is assumed part b) of the policy would apply. This lists criteria which must be met to enable support from the policy. Supported coastal developments:

are necessary to support the blue economy, net zero emissions or to contribute to the economy or wellbeing of communities whose livelihood depend on marine or coastal activities, or is for essential infrastructure, where there is a specific locational need and no other suitable site;

do not result in the need for further coastal protection measures taking into account future sea level change; or increase the risk to people of coastal flooding or coastal erosion, including through the loss of natural coastal defences including dune systems; and

are anticipated to be supportable in the long-term, taking into account projected climate change; or

are designed to have a very short lifespan.

- 2.38 The Proposed Development is not temporary or with a very short lifespan. It is not necessary to support a community whose livelihoods depend on marine activities. It is not clear if the Proposed Development would result in the need for further coastal protection or whether it is sustainable, taking into account projected climate change.
- 2.39 Overall, the Proposed Development would not seem to comply with this policy.

#### Policy 29 Rural Development

- 2.40 Policy 29 is generally supportive of rural development, while ensuring that the distinctiveness of rural areas, in addition to natural assets, are safeguarded and enhanced.
- 2.41 Part b) states that development proposals in rural areas should be suitably scaled, sited and designed to be in keeping with the character of the area. The development of a championship size golf course, in addition to numerous other elements, on and adjacent to a nationally and internationally designated site for nature cannot be said to be designed to be in the character of the area. The Proposed Development does not comply with this policy.

#### Policy 30 Tourism

- 2.42 The intent of Policy 30 on tourism is, "To encourage, promote and facilitate sustainable tourism development which benefits local people, is consistent with our net zero and nature commitments, and inspires people to visit Scotland."
- 2.43 The policy takes into account the contribution made to the local economy from tourism-related development, however, this must be considered along with other impacts and alongside other policies.

## Draft Scottish Biodiversity Strategy to 2045

- 2.44 The Scottish Biodiversity Strategy to 2045 (SBS) recognises the severity of the Nature Emergency and the need to significantly increase efforts to deliver nature recovery. It also recognises that the global Climate and Nature emergencies are twin reinforcing crises with a decline in biodiversity exacerbating the climate crisis – and a changing climate accelerating the rate of biodiversity loss (p12).
- 2.45 The SBS sets out the clear ambition for Scotland to be 'nature positive' by 2030, and to have restored and regenerated biodiversity on Scottish land, freshwater and sea environments by 2045.
- 2.46 Paragraph 1.4 (p15) recognises that delivering a nature positive future for Scotland requires a multi-sectoral approach, and NPF4 is one of the strategic documents that will support this.
- 2.47 One of the Priority Actions identified on page 8 is to 'Ensure we secure positive effects for biodiversity from our National Planning Framework (NPF4)'.
- 2.48 The document does not give guidance on how such matters should be considered in decision making. However, the document does reflect the importance of the need to address the biodiversity crisis in all areas, including the consideration of development proposals, if the Government's aims are to be met. In light of this, appropriate weight needs to be given to the impacts on species and habitats in determining this application.

## The Edinburgh Declaration

- 2.49 The Highland Council underlined its commitment to tackling climate change and biodiversity loss when it signed up to the Edinburgh Declaration<sup>20</sup> in December 2022. This was done when meeting NatureScot to discuss how the organisations can work effectively together to prevent further biodiversity loss in the Highlands. This commitment to protect is only meaningful if it is reflected in all its functions including when making decisions on planning applications.
- 2.50 In summary, the Proposed Development does not accord with the relevant sections of the Development Plan and would run contrary to other material consideration such as Scottish Government commitments to protect at least 30% of land for nature by 2030.

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<sup>20</sup> Edinburgh Declaration:  
[https://www.highland.gov.uk/news/article/14990/council\\_leader\\_and\\_officials\\_meet\\_naturescot\\_ceo\\_to\\_sign\\_edinburgh\\_declaration\\_and\\_discuss\\_biodiversity](https://www.highland.gov.uk/news/article/14990/council_leader_and_officials_meet_naturescot_ceo_to_sign_edinburgh_declaration_and_discuss_biodiversity)

## Annex 3: Environmental Impact Assessment - RSPB Scotland Objection

### Bird Surveys (Annex A of the EIAR, Appendices A1-4)

- 3.1. Please note that Appendix 4 of the EIAR (2015-16 surveys, figures, reports and Shadow HRA) was not made publicly available at the time of writing. Although these documents would have been used for context only due to the age of the data, it would have been useful to have viewed this information alongside that from 2021-22.

#### General comment on surveys

- 3.2. Given the Proposed Development's location largely within a SPA, SSSI and Ramsar site, the discussions and conclusions of the inquiry, and the advice given in our scoping response dated 14th April 2022, RSPB Scotland is extremely disappointed that the Applicant has again only undertaken up-to-date surveys over a single winter and single breeding season. The surveys undertaken for the Previous Application are now too outdated to be included in the assessment and should only be considered for context. Indeed, Appendix A.2 (Coul Links Winter Bird Survey Report) states the limitation that since water levels vary between years, the survey results are indicative only. This suggests that further surveys are required.
- 3.3. For developments predicted to affect Ramsar sites or SPAs, a minimum of two full years of survey is normally expected<sup>21</sup>, and best practice is to include five years of bird data to account for this variability<sup>22</sup>.
- 3.4. The Reporters' Report for the Previous Application states that:
- "Coul Links are regularly used by SPA and Ramsar site wintering birds when the dune slacks are flooded, and that the number of birds using the site depends on seasonal levels of flooding, which will vary from month to month and from year to year. It follows that the survey of a single year, or part of a year, may not be sufficient to establish the typical pattern of the use of the land by wintering birds." (Paragraph 6.116)
- 3.5. In addition, the scoping exercise should help inform survey design. It is therefore disappointing to note that the winter bird surveys were completed before the scoping process was finished and that survey methods were adapted from those used during the surveys for the previous application. RSPB Scotland was not consulted on methods by the Applicant despite the surprise expressed by the Reporters that RSPB Scotland was not consulted on bird survey methods used for the Previous Application. It was found at the inquiry that there were:

"limitations in the data in the ES on the use of Coul Links, particularly by non-breeding birds, which make it more difficult to draw robust conclusions on the

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<sup>21</sup> SNH (2017), Recommended bird survey methods to inform impact assessment of onshore wind farms

<sup>22</sup> EC (2001), Assessment of plans and projects significantly affecting Natura 2000 sites, p58

impact of the proposed development on important bird interests.” (Paragraph 6.125 of the Reporter’s report)

- 3.6. We are also concerned that few details of survey coverage are provided and suspect that there may be substantial gaps as well as issues with timings that may have led to a significant under-estimate of the year-round importance of Coul Links to birds including qualifying interests of the designated sites.

#### [Non-breeding bird surveys](#)

- 3.7. The surveys did not cover the relevant period for non-breeding birds, and this is recognised as a limitation within Appendix A.2 (Coul Links Winter Bird Survey Report). Migratory species return to and pass through the designated sites from mid-August onwards whereas the first survey was not conducted until mid-October 2021. The final survey was undertaken at the end of March 2022, according to Appendix A.2 (Coul Links Winter Bird Survey Report). The end of March is well before birds start to move north, and the dune slacks can flood into April. We have photographs showing that the slacks were still flooded on 5th April 2018, and 5th and 16th April 2023.
- 3.8. Appendix A.1 (Figure A1 Ornithology Study Area) shows the survey area used in 2017 and Appendix A.2 (Coul Links Winter Bird Survey Report) explains that the focus of the winter bird surveys was to locate the distribution of birds within the designated sites’ boundary and immediately outside the boundary. However, since an updated survey area map and the walkover routes have not been provided, it is unclear how much of the Application Site was included, or how big the buffer area was. For example, the area in and around the access road appears not to have been covered, and it is unclear whether all of the fields to the southwest of the site were included. Figures in the report do not show the latest Application Site boundary, possibly as the surveys were done before this was finalised.
- 3.9. Similarly, vantage point surveys were undertaken, but maps of the vantage point locations and viewsheds were not provided, although a description was included in Appendix A.2 (Coul Links Winter Bird Survey Report). In addition, no figures illustrating the vantage point survey results have been provided, although they have been presented in tabular form (Table 3). It would have been useful to have these descriptions and flights in and out of the site visualised as they are relevant to the assessment. For example, SPA Greylag Geese were observed landing in the pond in the clear-felled area. Given that Coul Links would be anticipated to be a bad weather refuge for many of the qualifying interests of the SPA, it would have been useful to see data collected from surveys undertaken during adverse weather conditions.

#### [Breeding season surveys](#)

- 3.10. We welcome the Common Bird Census methodology used to undertake the 2022 breeding season baseline surveys, and that buildings were included in these. However, RSPB Scotland would like clarification of the area included in



the breeding bird surveys. As mentioned above, Appendix A.1 (Figure A1 Ornithology Study Area) shows the survey area used in 2017 and Appendix A.3 (Common Bird Census Report 2022) describes the survey area as within the Application Site boundary plus a 50m buffer. However, the figures in the report do not show the latest Application Site boundary or visualise the buffer, possibly as the surveys were completed before this was finalised. However, it is clear that some areas within the red line boundary have not been covered, such as fields to the southwest of the site and the proposed access road.

- 3.11. In addition, the maps showing the survey results (Appendix A.3a-g) are extremely difficult to decipher. Due to the resolution of the files the legends cannot be read, and some are partly missing base maps. We assume that Appendix A.3a (Bird species analysis) should present the territory analysis as outlined in Appendix A.3 (Common Bird Census Report 2022). However, there is no figure in the report with that title and the first map presented in the report instead appears to show raw data collected from all six surveys. Therefore, no locations of the number of territories affected have been provided and the full impacts on breeding birds resulting from the proposal cannot be assessed. We request that the territory analysis is presented on a base map showing the latest Proposed Development footprint.
- 3.12. As noted in Annex 1, RSPB Moray Firth tern monitoring in 2022 recorded two breeding pairs of little terns [REDACTED] producing one chick. However, this was not recorded during the surveys undertaken for the Proposed Development.

#### General comment on experience of surveyors

- 3.13. The surveyors that carried out the Spring/Summer surveys in 2022 do not appear to be appropriately trained and experienced ornithologists. One person is a director of the STRI group (EIAR section 5.3.4) and the other, a graduate ecologist with 15 years of ornithological experience. However, no evidence of their ornithological expertise has been presented. We request that this is provided. It is vital that surveyors have appropriate experience and expertise to ensure confidence can be had in the survey results and to comply with the EIA Regulations<sup>23</sup>.

#### **Quality of the EIA documents**

- 3.14. Reviewing the available documentation has been made difficult by inconsistencies in naming of files and reports, and the resolution and lack of detail provided in many of the figures. Some of the documents contain numerous proofing errors and presentational issues which have also made it difficult to make an independent assessment of the impacts. In addition, there are inconsistencies in key figures, such as the area of designated sites affected

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<sup>23</sup> Regulation 5 (5), [The Town and Country Planning \(Environmental Impact Assessment\) Scotland Regulations 2017](#)

by the tees and greens construction, the footprint of the course and between the size of the red line boundary shown on layout plans and on survey plans. As discussed in Annex 1, there are also numerous discrepancies with regards to the proposed closure period over winter.

- 3.15. No plan, drawing or figure appears to refer to the SPA boundaries in relation to the Proposed Development.
- 3.16. As discussed in Section 1.93 above, the EIA does not appear to include a plan for the whole site showing the existing and proposed changes to site levels with a clear indication of changes in levels at each contour shown, as clearly required by the Scoping Opinion.
- 3.17. No description of the construction or management of the Par 3 course or the 'practice course' (driving range) is provided.

### Ecological assessment

- 3.18. Our Coalition partner organisations have commented in more detail on this aspect of the EIAR. RSPB Scotland, however, believes that the scope of the ecological assessment was too narrow, and the habitat surveys maps are difficult to interpret. For example, Appendix B10 (NVC Survey Overlay), also named Site Ecology Plan only maps the tees and greens onto the NVC base maps for the site. There is also no legend to describe the habitats mapped.
- 3.19. Table B.14 (Summary of Predicted Operational Habitat Loss (Land-take) and Parameters) contains differing measurement units does not include the fairways, Par 3 course, driving range (practice area), drainage infrastructure, the 'landing zones' for grass cuttings (mentioned in Appendix 4 Environmental Management Plan, also within the designated site), borrow pits, and the widening of the C1026 road. It also mentions creation of a pond, yet this does not appear to be mentioned or mapped in any other part of the application.
- 3.20. Coul Links has an extremely rich floral diversity but, as with the Previous Application, it appears that that no attempt has yet been made to fully assess the site's flora, with only juniper and "invasive" species being the focus of new surveys.
- 3.21. We note Holes 4 and 5 have been moved to avoid rare lichens, but the locations of these have not been provided in the EIAR to give assurance of this. The investigations of fungi and lichen on the site do not appear to have been updated since the Previous Application. Similarly, the Applicant has not investigated the rich diversity of invertebrates and limited their investigations to Fonseca's seed fly (although information about this species has been redacted from the EIAR), despite the inquiry Reporters concluding in their report that:

"...there are real unresolved concerns about the potential impacts of the proposal on certain species of butterflies and moths at Coul Links, including

Red Data list species and other species of conservation concern.” (Paragraph 7.100)

And

“Overall, we conclude that the proposed golf course development has the potential to have a significant adverse impact on the important invertebrate assemblage at Coul Links, including scarce and priority species of butterflies and moths, and the globally endangered Fonseca’s seed fly.” (Paragraph 7.119)

- 3.22. Indeed, many of the “invasive” species noted on the site, such as burnet rose, support populations of rare lepidoptera and other invertebrates. The partial approach that the Applicant has taken to the ecological assessment has led to the biodiversity importance of the application site being substantially underestimated in the EIAR.
- 3.23. We note that the fairways have been designed to be more fragmented, and that graded edges will be mowed to reduce fragmentation and ‘edge effect’ of the natural habitats to in turn reduce impacts on invertebrates. However, this proposed mitigation is unlikely to be sufficient due to the scale of the proposal within the designated site boundary.
- 3.24. Lastly, it appears that only an additional walkover survey for bats was undertaken in 2022, despite the various versions of Appendices related to bats and protected mammals suggesting that further bat surveys will be required in order to develop an appropriate mitigation plan and an ECoW to be on site if consented. These further surveys and appropriate planning should be done before a determination is made.

## Hydrology

- 3.25. RSPB Scotland is concerned about a number of issues in relation to water levels within seasonally flooded areas of the dune complex and water quality more generally within the dune complex, as described in Annex 1 above.
- 3.26. The hydrology-related documents appended to the EIAR do not appear to have been updated since the Previous Application. Maps contained within these documents show proposed pipe work relating to the old infrastructure layout.
- 3.27. In addition, a number of documents mentioned in Annex C of the EIAR (Hydrology and Hydrogeology), are not listed in the EIAR contents and appear not to be available for review. These include a proposed Groundwater Abstraction Management Plan (GAMP) and Irrigation Water Management Plan (IWMP), which should outline mitigation to ensure appropriate irrigation water quality.

### [Water abstraction and water levels](#)

- 3.28. The EIAR argues that "The accumulation of waters within the SSSI Dune Slacks, particularly throughout the winter period are independent of the underlying bedrock aquifer and supplied by shallow groundwater regimes within the superficial soils and recharged by surface water originating from rainfall."
- 3.29. We understand that the Applicant has gained licences for abstraction (2018) and treated effluent discharge (2020) from SEPA. Since these licences are related to the Previous Application, it is unclear whether they apply to this new application. We are unable to locate any maps within the documents to show where the boreholes are located. Annex C of the EIAR (Hydrology and Hydrogeology) does not discuss the outstanding planning application for a reservoir within the red line boundary. Therefore, although the principle of abstraction may be approved, the storage infrastructure is not.
- 3.30. We note that the amount of water to be used has been reduced, compared to the Previous Application, however, the Reporters' Report for the Previous Application states that "...we cannot say whether there would or would not be an effect on the water levels within the dune system as a result of abstraction" (paragraph 5.626) and no further assessment has been made of the likely consequences of the Proposed Development on levels of seasonal flooding within the dune slacks. As no further research has been undertaken to investigate the impacts of abstraction since the Previous Application, the effects of this on the slacks remains unknown.
- 3.31. As with the Previous Application, many elements of the golf course are situated adjacent to waterbodies, including designated and non-designated groundwater dependent terrestrial ecosystems (GWDTE) and we are concerned that the EIAR suggests that micro-siting will be used to reduce risk to these areas. However, the micro-siting rules have not yet been established and as previously discussed above, the Reporters disagreed that this would be an appropriate mitigation method in such a sensitive area.
- 3.32. In addition, little consideration has been given to managing water levels to ensure flooding of the dune slacks remains consistent with that occurring under the current hydrological regime.
- 3.33. This uncertainty regarding the impacts on these wetland habitats is of significant concern given they form part of the protected SPA, Ramsar site and SSSI.

#### [Wastewater](#)

- 3.34. The EIAR explains that foul water will be treated on site, with a wastewater treatment facility to be constructed. However, this does not appear to be mapped in any of the layout plans for the Proposed Development and does not appear to be part of this planning application. The treated wastewater will then enter the existing drainage network and be discharged into Loch Fleet, another multiple designated site. The impacts of this have not been discussed.

- 3.35. Appendix C.3 (Coul Links Wastewater Treatment Review and Revision) is dated 2018 and therefore it is not clear if the proposals outlined in this document are still relevant to the new application. The document shows a map of a treatment plant/pond, reed beds and outflow towards Loch Fleet, located adjacent to where borrow pits and heath expansion areas are proposed. The impacts of this additional infrastructure have not been assessed and it is based on the previous golf course design.

#### Water quality

- 3.36. It appears that no mitigation measures have been proposed to protect water quality. It is explained that use of fungicides, pesticides and fertilisers will be targeted but it is assumed and not evidenced that this will be effective avoiding adverse effects on water quality in the context of Coul Links.

#### Coastal erosion

- 3.37. The Applicant's coastal erosion study has not been updated since the 2017 application (Appendix ES.18 Coul Links Coastal Desktop Study), and describes the coastal changes observed at Coul Links. It explains that the 2017 National Coastal Change Assessment report showed vegetation retreat along the eastern margin of the dune system between 2009 and 2015; and that the Dynamic Coast report shows that erosion rates may increase with sea level rise. However, the EIAR (Annex G: Coastal Erosion) disputes this and describes the Dynamic Coast report as "unnecessarily alarmist".
- 3.38. We note that there was a 2021 site visit by an expert employed by C4C, but no Appendix or report appears to be included, although observations are included in Annex G of the EIAR. Limited 'cliffing' of the dune frontage and recovery since a 2012 storm is described. However, Appendix ES.18 (Coul Links Coastal Desktop Study) suggests that measures such as sand trap fencing, dune reconstruction and vegetation stabilisation would be needed to stabilise dunes from storm damage. This would disrupt natural processes.
- 3.39. Chapter 12 (Conclusion) of the EIAR and Appendix ES.18 Coul Links (Coastal Desktop Study) states that a pro-active and environmentally sustainable strategy should be adopted to monitor and mitigate the threat of erosion from climate change sea level rise. It recommends that "a robust coastal monitoring programme be implemented and a detailed study of the coastal processes in this area be commissioned, in order to quantify the risk of coastal erosion and develop a long-term management plan." However, it appears this has not yet been undertaken and this information should be imperative in assessing the impacts on both the Ramsar site and SSSI and be part of the decision-making process.
- 3.40. In summary, the EIAR fails to provide adequate and robust assessments of possible and predicted environmental impacts of the Proposed Development, including underestimation of the likely effects on bird features of the designated sites.

## Annex 4: Future management of the designated sites – RSPB Scotland Objection

- 4.1 It is acknowledged that the sand dune features of the SSSI are currently in an unfavourable condition. Although we do not disagree that some level of habitat management on the site is required, the issues presented in terms of “invasive” species, many of which are naturally found in dune systems, are exaggerated by the Applicant. The Biodiversity Net Gain Assessment document (Appendix B11) states that refusal of the application will lead to more biodiversity loss due to these “invasive” species. As discussed above in Annex 1, this term is misleading.
- 4.2 RSPB Scotland is extremely concerned that the Applicant is promoting the Proposed Development as the only viable mechanism to fund future habitat management on the designated sites, however, this is not the case. There is currently a management plan in place between NatureScot and the landowner, that will run until 2026<sup>24</sup>.
- 4.3 The Applicant does recognise the ongoing management agreement. Paragraph 5.10 of the Planning Statement states, in relation to habitat management that, “While it is possible for NatureScot to implement a Management Plan that will achieve similar results, the impact of year 1 of the agreed management plan has had minimal success and has barely halted the spread of invasive species”. We understand that only one full year of the agreement has been completed, therefore, this assessment seems premature.
- 4.4 In addition, the Applicant does not recognise the other funding that may be available to the landowner from other sources for nature restoration. For instance, the Scottish Government’s Nature Restoration Fund<sup>25</sup>.
- 4.5 Therefore, the management of the site for nature does not rely on the Proposed Development.

### Dune Heath Management Plan and Outline Habitat Management Plan (OHMP)

- 4.6 These documents are appended to the EIAR and outline proposed habitat management for the site. However, it is not clear whether the proposed habitat management actions are regarded as mitigation, compensation or enhancement as per the mitigation hierarchy. We note that the EIAR concludes that there would be a residual adverse effect on dune heath and an objective of the OHMP is the “reduction of effects associated with the golf course construction and operation”. We do not agree that the proposed action of heathland expansion and translocation could compensate for effects on habitats. Proposing a design which does not avoid dune heath all together has not been justified.

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<sup>24</sup> <https://sitelink.nature.scot/site/984#agreements>

<sup>25</sup> <https://www.nature.scot/funding-and-projects/scottish-government-nature-restoration-fund-nrf>

- 4.7 The OHMP (dated 2020) emphasises that the scale and rate of change to habitats from “invasive” species since the inquiry (held in 2019). We have previously highlighted that no evidence for this has been presented. Indeed, the same issues were discussed during the inquiry for the Previous Application. The significant investment required indicated in the OHMP is the responsibility of the landowner, and there are public funds available for this, in addition to the existing management agreement with NatureScot, which includes scrub removal.
- 4.8 Appendix 4 (Environment Management Plan) mentions scrub planting on western perimeter to improve condition of gorse, for birds such as Linnet and Yellowhammer. However, this appears to contradict the main aims of the Outline Habitat Management Plan and the NatureScot management agreement.
- 4.9 In our opinion, the negative effects of the Proposed Development would outweigh any benefits from management of these “invasive” species.

#### [Dune heath expansion](#)

- 4.10 Appendix B13 (Dune Heath Management Outline), dated 2021, was clearly written before the final layout was decided and appears to be an early advisory document, and therefore no commitments appear to be made. Map 1 shows a restoration area in the far north of the site and old course layout. No assessment is presented of whether dune heath expansion is feasible in the indicated area as it is currently farmland.
- 4.11 In contrast, Appendix B12 (Outline Habitat Management Plan) Map 3 shows a different area (11.5ha) to receive dune heath expansion. This area extends into the SSSI and also contains the proposed borrow pits and two of the course holes, so not all of the 11.5ha area would be available for dune heath expansion. It is also not clear how the proposed sand slopes and blow-outs indicated on Map 3, interact with the golf course itself, and whether the blow-outs would be also used as bunkers as suggested in Chapter 2 of the EIAR.
- 4.12 This action cannot be classed as adequate compensation for SSSI dune heath lost to the development. Nor can it be classed as enhancement (see Biodiversity Net Gain section below).

#### [Dune heath translocation](#)

- 4.13 Appendix ES.17 (Golf Course Management Plan) and Schedule of Mitigation (Appendix 5 - Construction Management Statement) suggest that dune heath would be transplanted. We are unsure how this plan differs from the previously proposed dune heath translocation which was deemed inappropriate at the inquiry. The Reporters’ Report stated:

“Overall, we cannot have confidence that the translocation proposals would be likely to replicate the extent and quality of dune heath habitat which is currently present across the donor sites.” (Paragraph 5.538)

- 4.14 Transplantation or translocation is not mentioned in the Dune Heath Management Plan nor the OHMP. Section 2.7.8.1 of the EIAR states that "Reusing this vegetation will help to increase the size of the dune heath and can also be used in the dune heath expansion plan if agreed to by NatureScot." There is also suggestion of heath translocation into the felled conifer plantation in Section 6.12 (Residual Effects), but this does not appear to be mentioned elsewhere in the Application.
- 4.15 The felled conifer plantation is reverting to a mix of dune heath and dune slack habitats without any active intervention. The proposal to restore it to a heath habitat takes no account of the large areas of winter flooding.

#### [Biodiversity Enhancement / Biodiversity Net Gain](#)

- 4.16 As discussed in Annex 2, NPF4 has introduced a policy requirement that all development must contribute to the enhancement of biodiversity. The EIAR (page 34) states that the proposal "creates opportunities for positive biodiversity, to reverse the decline evident within the SSSI." Although it is not entirely clear what is meant by "positive biodiversity", the suggestion that Proposed Development would leave nature in a better state than before the development took place would not be the case.
- 4.17 We note that there is currently no guidance on the delivery of biodiversity enhancement, as required by Policy 3 of NPF4, for national, major or EIA development. However, it is critical that the mitigation hierarchy is followed. Policy 3b)iiiv) clearly states that proposals must demonstrate that significant biodiversity enhancements are provided, in addition to any proposed mitigation.
- 4.18 The application should clearly set out how adverse impacts have been avoided, proposed mitigation for any impacts and any proposed compensation for remaining impacts. Only after this hierarchy has been followed can enhancement fully considered. The Proposed Development would directly and indirectly affect an area internationally and nationally designated for nature and therefore has clearly not avoided adverse impacts on habitats and species. The In addition, the Applicant has not proposed suitable mitigation and/or compensation.
- 4.19 The Applicant should not be providing enhancement on designated sites as measures should be in place to maintain favourable conservation status, and this should not rely on development. There is a Management Agreement in place with NatureScot and therefore habitat management is being pursued anyway without private financing by the golf course. There are various funding pots available for restoration purposes which would not rely on the application being granted. Policy 3 is not there to justify irreversible damage to protected sites, its role is to ensure that planning plays its part in tackling the nature and climate emergency by having a positive effect.
- 4.20 It is unclear who this is authored the document entitled "Biodiversity Net Gain Assessment" (Appendix B11) or what their competencies were. Section 3



(Mitigation Hierarchy) of the document is fundamentally flawed as it is based on the inaccurate conclusions of the EIAR, as discussed above. Throughout the document, references are made to CIEEM's Biodiversity Net Gain: Good Practice Principles for Development. This document has been seriously misinterpreted. For instance, the Biodiversity Net Gain Assessment overlooks the fact that the first two principles of the guidance are to avoid impacts on biodiversity, especially those that are irreplaceable and cannot be offset to achieve net-gain or no-net loss. A measurable net gain contribution has not been shown.

- 4.21 The Biodiversity Net Gain Assessment document proposes that 17.7ha of dune heath would be restored and expanded. However, this figure is not mentioned in any other application document, as far as we are aware, including the Outline Habitat Management Plan. There is a significant amount of uncertainty over whether this has been actually committed to or whether it would even be feasible.
- 4.22 It is misleading to suggest the entire 317ha site would receive enhancement measures as this includes the golf course footprint. The extent of proposed measures and opportunities appear to not be fully established or committed to. For example, a number of enhancement actions (in addition to the dune heath expansion and restoration) are not mentioned elsewhere in the application documents, such as removing all birch on site and bracken removal (the OHMP states this is not a priority). It is very concerning that ceasing shooting on the site is considered by the Applicant to be 'biodiversity net gain'.
- 4.23 The Biodiversity Net Gain Assessment document includes a Table (page 9) entitled 'Table of proposed BNG at Coul Links'. The first column lists "habitat expansions" but it is not clear what is actually proposed. Although hectarages are indicated, actions are not specific, for example "additional land to be acquired", "plantation restoration" and "additional area of BNG." This does not give sufficient certainty as to what is being proposed. Any enhancement proposals should set out exactly what it is planned to do, timescales, management plans etc. If actions need to be agreed with NatureScot, this should be done before consent and taken into account in decision-making process. This crucial detail cannot be left until after determination.
- 4.24 Lastly, the enhancement listed for birds (page 11 of the Biodiversity Net Gain Assessment document) are confusing and do not make ecological sense. Notwithstanding this, they seem uncertain and described as measures that can be made rather than committed to. Some appear to be mitigation or compensation for loss of habitat elsewhere. Some measures are completely misinformed, inappropriate and unworkable. For instance, 'Increased roosts for geese on fairways' would not work as geese usually roost on waterbodies and 'increased likelihood of introducing ground nesting owls', presumably relates to short-eared owls, which are extremely sensitive to disturbance and prefer to nest in the uplands. This shows a severe lack of understanding of the ornithological issues on the site.

4.25 In summary, the Applicant has put forward misleading arguments that the Proposed Development is needed to secure future management of the designated sites, and that biodiversity enhancement can be effectively delivered on site.