

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

**OUTLINE PLANNING PERMISSION FOR GOLF COURSE AND RESORT DEVELOPMENT
AT LAND AT MENIE HOUSE, BALMEDIE, ABERDEN**

REF: CIN/ABS/001

SUBMISSIONS ON BEHALF OF ABERDEENSHIRE COUNCIL

The application was called in for determination by Scottish Ministers in terms of a direction received by Aberdeenshire Council on 4 December 2007. The reason for issuing the direction was “in view of the proposal raising issues of importance requiring scrutiny at a national level” – see Dr Gore’s precognition, paragraph 2.3.

In effect Scottish Ministers have substituted themselves as “the planning authority” in place of my clients, Aberdeenshire Council. This does not change the fundamental basis upon which this application falls to be determined namely in accordance with Section 25 of the Town & Country Planning (Scotland) Act 1997. Guidance in relation to the interpretation and application of that Section is found in SPP1 (CP D1), paragraphs 46 through to 52 in particular.

The position in relation to the proper assessment of the application in terms of that Section will be dealt with below. Before dealing with that however it is appropriate to comment upon (a) the consideration of the application by the Council and (b) the position of the Council following upon the call in, an issue of some controversy.

Consideration of the application by the Council as planning authority

The steps taken by the Council in considering and processing the application were summarised in the precognition of Dr Gore (see in particular section 4). In essence the application was received in November 2006, though at that time the Council had insufficient information to properly assess the proposal. Further significant information was received by 30 March 2007 and following upon detailed consideration of the proposal a full report was submitted to the Formartine Area Committee on 18 September 2007 (CP D9(a)).

On behalf of the Council it is submitted that the application received detailed and thorough consideration the outcome of which is summarised in the Formartine Area Committee Report. Dr Gore confirmed in her evidence that a planning officer in effect had been devoted full time to the consideration of the application. The Formartine Area Committee Report identified and summarised the extensive consultation exercise which was undertaken as part of the processing of the application. While the papers for this Inquiry are voluminous Dr Gore in response to a question from the Reporters indicated that she estimated that some 60% or 70% of those before the Inquiry were available to the Council at the time the application was being

considered. While it is accepted that issues have certainly been amplified in the course of the consideration of matters at the Inquiry it is submitted that no new issue beyond those which were considered by the Council has been identified. On this basis it is submitted that the Report to the Formartine Area Committee is one which merits careful consideration and to which significant weight should be given.

The consequence of the consideration of the application by planning officers was, notwithstanding the policy position (see below), a recommendation which was “firmly one of approval” (CP 9(a), paragraph 6.56), a recommendation which Dr Gore personally “was pleased to support” – see paragraph 7.6 of her precognition.

In addition to detailed consideration by officers, members of the public were able to and commented on the proposal (though perhaps not surprisingly the number of letters and e-mails both for and against the proposal increased markedly after the ISC decision). Information in relation to the application was publicly available (save where confidential) on the Council’s website.

There was also detailed consideration by members. Following upon consideration at the Formartine Area Committee on 18 September 2007 a lengthy hearing in respect of the application took place at a special meeting of the Formartine Area Committee on 27 September 2007 (a meeting which lasted in excess of 6 hours – see Dr Gore’s precognition, paragraph 4.11). That meeting, in addition to hearing from planning officers and the applicants received verbal representations both for and against the application from a cross section of interested parties. A further report went to the Formartine Area Committee for a special meeting on 20 November 2007 (held solely to discuss this application) at which that Committee voted to grant planning permission subject to conditions and a Section 75 Agreement (see CPD9(d) and (e)). In accordance with the Scheme of Delegation then applying within the Council the application required to be considered by Infrastructure Services Committee as a departure from the Development Plan. A further report was prepared for that meeting which copied to members of that Committee the papers which the Formartine Area Committee had received. Following upon a tied vote planning permission was refused on the basis of the casting vote of the then Chairman of Infrastructure Services Committee, Councillor Ford (see CPD9(f) and (g)).

While Councillor Ford thought that the view of ISC should carry more weight he appeared to accept that the views of the Formartine Area had weight. His approach to that issue was apparently based on the relevant hierarchies of those Committees in an Aberdeenshire context. While that hierarchy is correct given that ISC is no longer the “planning authority” it is not entirely obvious why the views of that Committee should carry more weight simply because of an issue of process now superseded when clearly the Formartine Area Committee extensively considered matters.

To the extent that it is relevant more individual Councillors voted for the proposal than against it (that is a simple process of calculation evident from the Minutes of those meetings). Be that as it may in the submission of the Council the following key points about the consideration of the application can be made:-

- (a) The consideration was thorough and detailed and all the relevant issues were apparent to Council officers and considered by them in light of the significant amount of information available to them and the views of many parties, both for and against the application.
- (b) As a consequence of that consideration, the grant of planning permission was clearly supported by the Development Management Section of the Planning Service and that was a recommendation which Dr Gore as the Director of Planning & Environmental Service and with considerable experience in planning matters was happy to endorse.
- (c) There was full opportunity for public involvement in the consideration of the application.
- (d) That members had available to them full and detailed reports regarding the key issues arising out of the application as well as access to all the relevant papers.

The position of Aberdeenshire Council following upon the call in

A legal submission was made on behalf of the Council to the Reporters regarding this issue. It is not intended to repeat that in detail here, particularly when the position adopted by the Council does not appear to be critical to any decision to be made by Scottish Ministers. However as certain parties appear to hold to a different view the Council's position does need to be summarised here.

In essence the position of the Council is that following upon the call in the Council was no longer the planning authority but rather an "enhanced consultee" in relation to the application. The derivation and meaning of that phrase (which it is accepted is not a phrase which is legally defined) is set out in the legal submission made on behalf of the Council. The fact that the Council does however have a particular status in relation the application is borne out (to the extent it needs to be borne out) by the Minute of the pre-Inquiry meeting which notes that "the applicant and the planning authority are always relevant persons" (emphasis added). Critically, however, in the view of the Council (and in its submission) the legal position changed with effect from the call in. Therefore the Council, in coming to a view in respect of the application, was no longer doing so as planning authority (it could not) nor indeed did the Council require to work within the strict parameters of Section 25 referred to above.

It was in that context and against that background that on 12 December 2007 the full Council resolved to advise Scottish Government Ministers it supported the grant of planning permission (see CP D9(h)), that resolution following upon receipt of a requisition from the relevant number of members (see CD 9(h) – Section 2). That view was expressed unanimously without any counter motion. The Council does not accept that that view as it related to a “town and country planning matter” (the phrase used in the Scheme of Delegation) could only be expressed by Infrastructure Services Committee (as it had the relevant planning powers for the Council at that time). The Council is of the view that, as the resolution was not seeking a determination by the Council as planning authority, it was in effect “a question not previously determined” in terms of the relevant delegation, ISC having made a determination as planning authority. However for the avoidance of any doubt the issue was reconsidered by the full Council (in effect the planning authority for applications of this type following on a change to the Scheme of Delegation) at a meeting on 24 April 2008. That decision is set out and referred to in the Council’s Statement of Case (see paragraph 8) and its legal submission. Therefore, to the extent that any expression of view in respect of the application had to be made by the Council acting as planning authority, that has happened.

The Council acknowledges that its view on this matter is not accepted by various parties, including Mr Agnew and his clients and the group of four Councillors who have appeared at the Inquiry to oppose the application. The fundamental difference between the position of the Council and those parties appears to be whether or to what extent in expressing a view on 12 December 2007 the Council was addressing the application in a different status from that it held on 29 November 2007. Councillor Ford in cross examination seemed to accept the Council was acting in a different capacity. The Council’s position is that it was. However the matter can only be determined absolutely by the court, though no challenge in fact has been brought.

It is worth, however, making the point that this issue is essentially an issue which turns upon process and procedure. While the Council does not in any way diminish the importance of these issues, what cannot be denied is (a) that when the Council were acting as planning authority, more Councillors voted for the application than against it and (b) that the virtually universal view democratically enunciated in the votes of 12 December 2007 and 24 April 2008 is that the Council overwhelmingly supports the grant of planning permission for this development for the reasons which found favour with the Formartine Area Committee.

Councillor Ford seems to suggest that in some way that enunciation is devalued by virtue of his perspective that those who voted to support the grant of planning permission did not have all the information that he had. That certainly is not true and cannot be true of the Councillors who voted as part of the consideration of matters in favour of the application as members of the Formartine Area Committee and ISC. In relation to other Councillors, Councillor Robertson gave evidence (in response to a question from Councillor Storr) that the papers available to the

members of those Committees had been made available to other Councillors. In any event, it is clear that significant information was available on the Council's own website and readily accessible to all parties including Councillors. It is equally clear that this application has resulted in more publicity than any other application in the recent past in Scotland. To suggest that those Councillors in some way were ignorant of the facts, it is submitted, is demeaning to them.

The grounds for supporting the application

Professional assessment by planning officers in relation to this application is that it is contrary to the Development Plan. The Formartine Area Committee Report of 18 September 2007 (CP D9(a)) makes this clear (and Councillor Robertson in her evidence unequivocally accepted that position as did Dr Gore). In effect the reasons for supporting the application are material considerations which the Council considers outweigh the policy position. The position is in effect encapsulated in the last paragraph of the Minute of the Formartine Area Committee (CP D9(e)). It is that logic which the Council agreed to support in the meetings on 12 December 2007 and 24 April 2008 already referred to. While the Council's views will be further amplified below, it is worthy of note that these are corroborated by the considerable support from the business community and members of the public. Specifically in the context of this Inquiry both Mr Runcie and Mr Skene spoke to those benefits.

In this context it is appropriate to make the point that planning officers in framing their report were well aware (as indeed is clear from the Environmental Statement CP D3) that the environmental impacts of the development would be severe. Paragraph 6.19 of the Formartine Committee Report specifically states:-

"As stated in the ES the development is likely to have a severe adverse effect on Foveran Links and whilst mitigation measures have been sought, there will still be a significant adverse impact from this development. The views of many environmental consultees are that the objectives of the designation and overall integrity of the site should not be compromised even given a considerable beneficial economic impact. It has also been questioned whether the proposed creation of dune slack habitat by scraping and habitat or plant translocation and seed collection can adequately recreate what currently exists on the area".

In other words it is submitted that planning officers, in recommending the grant of planning permission, did so in effect on a "worse case scenario". They did not assume (nor could they) that the severely adverse effects identified by them would necessarily be improved by mitigation measures let alone to an acceptable level. Dr Gore in her evidence fully accepted that the impacts in an environmental context would be adverse and did not hesitate in confirming that in her view (irrespective of the view of anyone else) the integrity of the SSSI would be

compromised. To the extent that you advise Scottish Ministers that mitigation and/or enhancement (a topic reverted to below) is possible, this is clearly of major benefit. However the view of officers accepted by the Formartine Area Committee and endorsed by full Council (as outlined above) is that planning permission should be granted and that decision is in no way conditional upon significant mitigation or enhancement.

While the Council believes, based upon the evidence available, that you should be able to be clear in reporting to Scottish Ministers about the extent of the environmental impacts, given the approach of the Council, any unresolved impacts or effects should not be an impediment to reaching a decision. In practical terms the Council is of the view based upon the extent of the evidence available, that any unresolved environmental effects are unlikely to be of any greater significance than those which have been discussed.

Policy position

As already indicated and as is clear from the documentation, the assessment of Aberdeenshire Council in respect of the application was that it was contrary to policy. That position in effect is summarised in detail in the Formartine Area Committee Report of 18 September 2007 (CP D9(a)) and confirmed in Dr Gore's precognition – see paragraph 5.1. Drawing upon the Formartine Area Committee Report Dr Gore identifies the policies in relation to which there are particular conflicts. In giving her evidence she did not seek in any way whatsoever to shirk from the consequences of her approach.

Equally, however, she identified policies which the development addressed or could address in a positive manner (as a result of the imposition of conditions) or in relation to which it gathered support or a measure of support. Perhaps not surprisingly those in relation to which a measured support or support is derived are those which deal with economic issues. Even there, however, it is accepted that the degree of support is to an extent impacted upon by the environmental issues (see paragraph 5.6.2 and 5.6.3 of Dr Gore's precognition). The Council's clear perspective is that significant economic benefits (see below) will derive from this application. There is little point in simply repeating what has been set out in great detail both in the relevant report and indeed Dr Gore's precognition so far as policy is concerned.

In the policy context however it is worth making some further observations/comments:-

(a) Environmental Impact

As noted above, planning officers in their consideration of the application assumed that there would be severe adverse effects from the proposal. The possibility of mitigation was however contemplated. Dr Gore was cross examined about this, particularly under reference to the consultation report prepared by her own Planning Policy & Environment Service (ISC17). It was

suggested to her, particularly by Ms Cockburn, that there was no evidence before the Inquiry to suggest mitigation would be possible. There appeared to be a strange fixation on the part of SNH along the lines that the only evidence that was relevant was that which was in some report or in writing. That position is simply not understood. Be that as it may, leaving to one side the evidence given on behalf of the applicants (see below), it is clear that the Planning Policy & Environment Team accepted that mitigation might well be possible and said so in terms in paragraph 4.1.2 of that consultation response.

Both Dr Dargie and Mr Bell gave evidence about mitigation. Mr Bell's evidence was primarily concerned with species and he was quite clear that there would be opportunities to create new habitats for wildlife and to underpin national local biodiversity priorities – see paragraph 6.2. Under cross examination his view was that there were significant opportunities to achieve this albeit these would have to be addressed as part of the detailed design process (a process which the Council intends will be addressed as a result of the conditions imposed).

Likewise Dr Dargie, whose experience in relation to dune habitats appears to be unrivalled, accepted there would be severe impacts, but was clearly of the view that significant mitigation would be feasible particularly under the supervision of MEMAG. Dr Dargie did not seek to hide from the consequences of the development. Document T50 identified the loss of habitat but went on to highlight the possibilities for mitigation. Dr Dargie clearly felt that significant mitigation was feasible though he did not underestimate the challenges. Given his very real experience his views cannot lightly be ignored. Indeed, he went as far as saying that if he could not pursue certain of the mitigation measures that he was advocating he would “walk away” from the project. While, ultimately, it will be for the Reporters to decide based upon the conflicting evidence what enhancement is possible, the Council is quite clear that it accepts the applicants here are committed to significant mitigation and enhancement measures. The Council also believes, based upon the very real expertise of those involved, that there is a very real prospect that significant and material mitigation and enhancement will take place.

In particular, one aspect of mitigation which was discussed at some length was translocation. The Council's understanding of Dr Dargie's position is that he accepted this as a measure of last resort. Accepting that he felt it was a measure worthy of consideration in the circumstances of this development. Be he right or be he wrong is a matter for you to decide based on the evidence. However, it is clear that he had vastly more real and relevant experience than Mr Rooney. Such experience as Mr Rooney had did not appear to relate to similar dunes nor habitats. The Council takes comfort from Mr Dargie's real belief that translocation will bring a significant measure of mitigation.

(b) Any alternative site

There appeared a running issue about whether or not there was an alternative feasible site for the golf course. To some extent the point is academic, given the stated position of the applicants and the benefits that the Council see this development bringing. These benefits are realised not if permission is granted, but if development actually takes place. Whether you agree with the applicants or not their position in relation to the location of the golf course cannot be considered as anything other than unequivocal.

Leaving to one side, however, the question of whether two courses could be built if the proposed championship course is moved off the SSSI, it is clear that before pursuing this particular location the applicants looked at various alternative locations for the sort of course they aspire to, these being summarised in the Environmental Statement (G3). This is the one they identified as the preferred location and for the reasons that both Mr Hawtree and Mr Trump spoke to is essential to their decision making process.

The evidence in relation to what alternatives might be achieved within the parameters of the site is however far from satisfactory. The RSPB came up with an alternative layout which they put before a public exhibition. They were not, however, able to expose their witness to give evidence nor be cross examined nor indeed was the witness prepared to meet with Dr Hawtree regarding matters – a strange approach given the understandable desire on the part of everyone involved in the Inquiry to narrow issues. The consequence is that the Inquiry has been denied evidence about the impacts of such an alternative constructed on land which, according to some views, is of significant environmental sensitivity, if not quite as great sensitivity.

To some extent the Council are a neutral participant in this debate but what we can say and do say is that based upon the evidence available to us – leaving to one side the stated position of the applicants, which we are clear about – the evidence about the possibility of building an alternative course anywhere near the quality of that proposed by the applicants, based upon the layout put forward by RSPB, is questionable and certainly not made out.

Material considerations

Given the policy position, it is quite clear from the Council's perspective that the grant of planning permission depends upon material considerations which are sufficient to outweigh the provisions of the Development Plan. Dr Gore said in terms (see paragraph 6.4.1) that "*the only material consideration in the context of National Structure Plan and Local Plan Policy which would justify planning permission being granted is the economic and social benefit of the proposal being an appropriate level of significance as required by the aforementioned policies*".

That approach is one which is contemplated by Government guidance in relation to heritage matters having regard to paragraph 74 of NPPG14 (CP D11) which states:- *“Where this is not possible [to avoid any adverse effects on the natural heritage] and other material considerations clearly outweigh any potential damage to the natural heritage, they [planning authorities] should endeavour to minimise and mitigate the adverse effects and consider the scope for compensating measures”*.

While in paragraph 6.4.1 Dr Gore makes reference to an appropriate level of significance, that was done to identify an appropriate measure for the economic benefits, not to argue that if these levels were achieved the proposal then necessarily fell within the terms of the appropriate policy. Dr Gore fairly accepted that, even given the level of benefits, there were other issues in policy terms, hence the Council's decision to identify the proposal as one which did not accord with policy (irrespective of the economic benefits).

The initial assessment of the economic benefits was carried out internally within the Council and Dr Gore referred to this (see paragraph 6.4.3 of her precognition). That assessment was subsequently reinforced by the work undertaken by EKOS which Mhairi Donaghy spoke to at the Inquiry. Her report is document AC9 which requires to be read alongside document AC19. In effect it is submitted that her evidence is and was clear and essentially unchallenged. Apart from a significant number of construction jobs (1,900 at local level and 4,050 at the national level) the proposed development, taking into account the holiday homes, would generate somewhere in the region of 1,400 jobs at local level (a 1.7% increase in total employment in Aberdeenshire) and 1,200 at the national level. The economic impact amounts to £56.6 million at the national level or £64.1 million at the local level (a 2.1% increase according to Ms Donaghy's calculations in GVA for Aberdeenshire). These figures are significant. Ms Donaghy's evidence, as she made clear, was not based on information specific to the application but largely derived from “industry” standard information objectively derived. The extent of the detailed analysis is clear not only from her precognition but the appendix to her report which sets out her detailed workings. It is notable that she was not cross examined to any material extent on her approach. The only real issue is whether or not the 500 houses are “additional” or would be build in any event. Even assuming that is the position (which she did not necessarily accept) it is clear from Appendix 1 that these have a negligible impact on her figures in relation to jobs and GVA at either the local or the national level. Her evidence as to the financial benefits simply has to be accepted.

Ms Donaghy, it is submitted, appeared to be genuinely surprised when it was suggested to her that these economic benefits were not of national significance. She made reference to anecdotal evidence such as the fact that saving a lesser number of jobs at a call centre had reached the national media. Perhaps more tangibly she made reference to RSA grant awards where in the past year she was only aware of one project which would result in more jobs but

contrasted that to the position here on the basis that (a) there was no public money going into this project and (b) the RSA information related to gross jobs rather than net jobs. She was in no doubt that the benefits were national in importance.

Dr Gore confirmed that there was no test she was aware of to identify what was to be considered as of national significance. It was, in effect, suggested to her that as the proposal was not in the Draft National Planning Framework (CD B2) it could not be of national significance. She did not accept that view – she did not consider that simply because a development was not a national development in policy terms it was not of national significance.

Given Miss Donaghy's experience it is submitted that her conclusion cannot be challenged and must be accepted by you effectively as a finding of fact. Her evidence was concerned with the economic benefits, in a monetary sense. There are wider policy issues which I will revert to below.

To the extent necessary Ms Donaghy's evidence is corroborated by Mr Dunlop from the Fraser of Allander Institute. He had a slightly different approach in terms of the base information he was able to rely upon, information which was not available to Ms Donaghy. Notwithstanding that the views they came to regarding the levels of job creation were very similar, particularly in relation to those derived from the development, though Ms Donaghy's figures for the GVA impacts were higher.

Some issues were raised about who is going to fill the jobs created. While the relevance of that in an economic sense is not entirely clear, Aberdeenshire expects to grow its population (see AC8). Equally Councillor Robertson made clear all jobs are welcome. In response to questions from Councillor Ross, Mr Dunlop referred to the economically inactive. The position there is summarised in AC4 – the Economic Review for 2007. At page 45 it is clear that the rate of those who want a job is significantly greater than the unemployment rate, a point I understood Councillor Ross reluctantly to accept.

In some ways an argument based solely on economics might be considered unattractive – spend enough or generate enough and you get what you want. That, it is submitted, is where the evidence of Councillor Robertson is critical. I will revert to this below.

Dr Gore in response to questioning from the Reporters indicated that she saw these economic benefits as leading to social benefits as a result of increased prosperity and job creation, particularly when the job creation would be tied to training schemes to assist local residents along the line of those outlined in the Section 75 Agreement Heads of Terms. The creation of jobs is consistent with the aim set out in the Draft Structure Plan (AC8) to grow the population – an increased population needs more jobs.

The significant economic benefits were also spoken to by Mr Skene and more particularly Mr Runcie. Mr Skene welcomed the development, notwithstanding the fact that it might have short term impacts upon his own businesses because of the benefits longer term that he saw flowing out of the development. Mr Runcie's evidence was clear and unequivocal about the views of the business community in support of the development. Indeed, he made the comment that local golf courses, for example, which arguably might be concerned about a "rival" attraction in fact welcomed the development because of the interest which would be derived from it and the benefits which would accordingly flow.

Councillor Ross questioned the validity of reference to the construction jobs. It is clear that construction is an important part of the local economy – see AC2 (Economic Development Priorities to 2011), page 5. It also appears to be the position that construction as a contributor to the economy in the area is falling (see AC4 Economic Review, page 39). To ignore the benefits therefore seems to be perverse.

Councillor Robertson put the economic benefits in the wider context having regard to the economic priorities which the Council have signed up to alongside its partners in ACSEF. Her evidence complements that of Dr Gore in paragraphs 6.2.2 and 6.2.4 in her precognition. Councillor Robertson gave that evidence in the context of concerns about the future of certain industries in the north east, including the oil industry and the desire on the part of the Council to diversify its sources of economic prosperity and in particular develop a national and international reputation. While Mr Walton was somewhat dismissive about the nature of the jobs to be created, the need to diversify the economy is clear in the documents Councillor Robertson spoke to.

She specifically referred to the document entitled "Economic Development Priorities to 2011" (AC2) where one key strategy is to acquire a world class reputational for recreation tourism. That aspiration of course has to be seen in the wider context of the aspirations for the Scottish Government to grow the Scottish economy generally and in part by increased tourism. While reference was made to the National Planning Framework perhaps more specifically document AC10 is relevant, the Scottish Tourism Prospectus, which needs to be read alongside AC17 – Scottish Tourism, The Next Decade. The national targets set out in these are ambitious but clearly important in a national context. It is particularly significant that in that context developments such as this one are recognised by Visit Scotland as being critical to the national aspirations in relation to tourism (see page 11 of AC10). The evidence of Ms Donaghy represents the tangible economic benefits. The prestige and impact that would arise from this development represent the intangible economic development. Both in their own way are nationally significant and critically important for the financial well being of the country in the context of the policy documents put before the Inquiry by the Council.

The “Trump” Effect and Commitment

One issue at the Inquiry which a number of parties commented upon is the extent to which the benefits (and this comment was made irrespective of the view those parties had in relation to the extent of the benefits) would only be realised if the development was in effect carried through by the Trump organisation. The Council as planning authority fully accepts that the permission runs with the land (unless it is felt appropriate to attach a personal condition). The Council does however see that many of the benefits from the proposal result from the involvement of the Trump organisation. To that extent the Council understands the suggestion from various parties that a personal condition may be appropriate. Given the terms of the Circular (4/1998 CD E2), however, that is not something that the Council proposes.

The Council does fully accept that certain benefits are likely only to come if the Trump organisation does carry the development through. The Trump name was categorised by Mr Dunlop as a “brand” known for building high quality resorts of the very sort that would help the Council meet its aspiration to have a world class reputation for recreational tourism. There would be nothing else like it in Europe. Having said that the conditions proposed by the Council are intended to secure a high quality development irrespective of the operator.

Based upon the evidence, however, the Council firmly believes that this development will be carried through by the Trump organisation if and to the extent a planning permission acceptable to them (given the comments made by Mr Boyd on their behalf) is granted by Scottish Ministers. They believe that the commitment that Mr Trump has shown is a genuine one. Mr Skene, who is probably best placed of any witness at the Inquiry to talk on such matters, made very clear that the credibility consequences of not carrying through on the commitments made would be significant. In the Council’s submission, Mr Trump in coming to give evidence and in giving that evidence underlined his commitment to the project. While undoubtedly the project will be carried through with a view to being profitable (and indeed the 500 houses are sought in that context – see below) it was clear from Mr Trump’s evidence that he has a genuine aspiration to construct a golf course of the highest quality that at least has the opportunity of being identified as an Open or similar championship course. While funding is required (as Mr Webster in giving evidence made clear), Mr Trump was equally clear that the golf course would be funded by him and if necessary he would defer building the houses until market conditions were more benign. Based upon the evidence, the Council accordingly believes that if a suitable permission is granted, not only will the development proceed, it will be a Trump development.

It is the Council’s view, however, that the commitment of Mr Trump and his organisation to this development is shown in other ways. Mr Trump made clear in his evidence that he sought to employ the best people to plan and assist and promote this development. Looking at those who gave evidence on behalf of the applicants it is submitted that that is exactly what has happened.

While it may be inappropriate to identify particular witnesses it is clear that Dr Hawtree, Dr Dargie and Professor Ritchie in particular are real acknowledged experts in their fields.

The commitment of the Trump organisation to employing the best was borne out by the fact that Messrs Dargie and Ritchie were employed notwithstanding the very real and significant concerns that they expressed about the development and which they did not seek to hide from. In many ways the easiest thing in the world would have been for the Trump organisation not to have employed experts whose views were so difficult to their position. If I may be permitted a personal observation, as someone who acts for developers as well as public bodies it is almost counter intuitive for a developer to employ an expert who is not wholly supportive of a proposal (even where the role of that expert is to give independent advice to the decision maker). For those two gentleman in particular, giving evidence in support of the development notwithstanding their views could not have been easy knowing they would be questioned about views they had openly expressed. The fact that they were prepared to do that and the fact that the Trump organisation has chosen to continue to utilise their very real talents and skills suggests to the Council that not only is there a real commitment to this development, there is a real commitment to doing this development to as high a standard as possible and to mitigating and minimising the consequences as far as possible.

Before leaving the "Trump" issue two points need to be picked up upon:-

- (a) Ms Haywood raised with Dr Gore the extent to which, by controlling the details of the development by conditions and reserved matters, the Council would be satisfied or could be satisfied that a development of the quality to which they aspire would result. Dr Gore made clear that the conditions had been drafted with a view to securing that very much in mind. It is hoped that you will accept that, while as planning authority the Council gave careful and detailed consideration to this application and that if and when restored to the position of planning authority, the Council under the leadership of Dr Gore will do so again in dealing with reserved matters with a view to seeking to achieve what both they and the applicant aspire to – a world class development.
- (b) Mr McCulloch raised with Dr Gore the position of the Council if only the golf course was built. While an understandable concern, the Council submit it is not a realistic one. Mr Trump in giving evidence made clear that he was a property developer – it was notable he did not say he was a golf developer – who has a strong interest in golf. Based upon the evidence before the Inquiry, constructing the golf course in isolation would not result in any return on the investment made (which in light of Mr Webster's evidence would be a financial commitment of the Trump organisation). Furthermore it is inconceivable, at least to the Council, that no matter how good a golf course was constructed that golf course would be awarded championships if surrounded by controversy (as would be the

case if the development was incomplete) and if that course did not have the facilities necessary to support its position as a championship venue. The Council therefore do not consider that if a satisfactory planning permission is granted which the Trump organisation choose to implement that permission will only result in the championship golf course being constructed.

Other Material Considerations

In passing, reference should be made to the emerging Structure Plan (AC8). The Council accepts as Dr Gore indicated in her evidence that this is not a material consideration at this stage. However, it is clear that there is likely to be significant development in Aberdeen and Aberdeenshire over the next 20 years or so, that a significant number of houses will be built and that there is likely to be significant development in the corridor between Aberdeen and Peterhead up the A90 which will also be developed for economic opportunities. In addition to Dr Gore, Mr Runcie referred to the Energetica concept – a significant joint private/public partnership with the potential for significant investment particularly in the technology sphere. This corridor is identified at page 18 of the version of the Structure Plan before the Inquiry (AC8) as a strategic growth area. It is accepted, however, that this document is at an early stage in its life.

The only factor the Council would draw out of this at this stage is that development at Menie if consented now, is unlikely to be out of step with the future pattern of development within this area given the details of the draft Structure Plan and the aspirations it contains.

The SSSI

Comment has already been made in relation to the consequences for the SSSI which the Council acknowledges and accepts and acknowledged and accepted as part of the decision making process. In assessing the impact on the SSSI the Council considers it relevant to bear in mind firstly, that there is no hierarchy of SSSIs and secondly, that it is only part of the SSSI which is affected (the lower third). Clarification of the “ranking” of the various environmental interests was sought from various witnesses. The Council accepts the views of those with true expertise in this area so far as the “nature” interest is concerned. In policy terms the Council’s view is that the SSSI is at the top of that list in policy terms.

Detailed evidence has been given about the SSSI and the possible effects on it and it is fully accepted that the Reporters will wish to weigh that evidence carefully in reaching their recommendations to Scottish Ministers. Those who gave evidence on behalf of the Council are obviously not experts in this area. The following observations/points however can be made:-

1. Dr Hawtree was very clear that his job was to do as little as possible to the natural habitat consistent with constructing the course that his client aspired to. That is a design philosophy he spoke to in detail, explaining how there would be transition from the fairway to existing habitat.
2. The area of ground under control of the Trump organisation is large and based upon the evidence there will be extensive areas between the holes and fairways which will remain largely as is.
3. The concept of doing as little as possible to the existing terrain relates not only to the design and construction of the course but, as the Council understands it, to the management of the course. Dr Hawtree in giving evidence was very clear that in relation to matters such as the use of fertiliser and the like this should be very much a minimalist approach which Dr Dargie also supported.
4. As noted above, those who have been engaged by the Trump organisation are real experts in their field. Apart from the point of principle (in other words whether or not to construct a golf course on the SSSI) based upon the evidence which the Council heard the Council understands that the Trump organisation accepts and respects the advice of those experts. For example, Dr Hawtree indicated that only once had Mr Trump not taken his advice, despite his close personal interest in the construction of the golf course.
5. Based upon the evidence there is clearly significant scope for mitigation and enhancement, the issue not being whether that will be done, but whether it will be successfully done. MEMAG clearly will have an important role to play in this.

While the effects will be significant, it is the view of the Council that the choice, albeit a hard one, is to accept the potential consequences as the cost of achieving a world class development in Aberdeenshire which produces significant financial benefits and supports the diversification of the economy and policies of the Scottish Government in relation to the growth of tourism.

SNH

Dr Gore was cross examined by Miss Cockburn about impacts upon the SSSI, a line of questioning which at least in part appeared to be based upon a criticism that insufficient regard had been given to the environmental impacts. While the line might be legitimate the tone was perhaps surprising from one public body to another, not least when one, SNH, had not, as it made clear in its written statement, made any attempt to assess other issues relevant to the determination of the application. That position is particularly surprising given (as is clear from

their written statement) that while being charged with securing sustainability, they need to do so taking into account “as appropriate inter alia the need for social and economic development” (paragraph 2.2 of SNH Written Statement). Dr Gore in a robust but fair defence of the handling of the application by her staff made clear exactly how the issues had properly been dealt with.

Perhaps more surprising was the position of Mr Angus who in response to cross examination from Mr Boyd repeatedly indicated that he could not commit his organisation to work with the applicants if Scottish Ministers granted planning permission. Given the fact that Scottish Ministers will have come to a view about matters, the SNH position struck the Council as being a strange approach for a public body to take especially when the SSSI extends to significant areas outwith the proposed development which presumably has environmental value. While it is accepted SNH have to be independent, the strength of the views expressed seemed surprisingly strong for a body charged with public responsibilities and can be contrasted to the approach of the applicants to mitigate the effects of the development to the extent possible.

Houses

One element of the development which does require further comment is the proposal to construct 500 houses. The Council accepts that the development of these houses is not in accordance with policy, that the development is not an enabling development as that term is used in the Local Plan and that while the emerging Structure Plan indicates that development of substantial houses in this area is likely, no more than that can be said. Mr Webster's evidence, however, was clear that without housing, the development did not make or provide a suitable and viable return. In effect the housing is the price of the development and the price of achieving the benefits which the Council see significant merit in. On that basis and that basis alone the Council is prepared to accept the housing. As Dr Gore makes clear in her evidence, while arguments may be made about this setting a precedent she is quite happy (and clearly is quite capable of) having a robust argument that no other development in any way has the attributes of this one with a consequence that this development and the housing that will accompany it (if consented) can and should be seen as a unique situation.

Mr Walton was questioned about his view to the effect that it was questionable whether the need for the housing element to make the development profitable was a material consideration. He fairly accepted that the question of what was material was “grey”. The Council does consider that the question of whether the benefits which may result can only be achieved if part of the development is consented to provide economic support makes the need for that part of the development a material consideration. The cases are summarised in Scottish Planning Law & Practice at pages 302 to 305. The case of Wain v Secretary of State [1989] J.P.L. 190 seemed to be particularly apposite.

The position of other Relevant Parties

These submissions have sought to deal with relevant issues. In so doing it is intended to address the issues identified by all parties to the Inquiry even if their evidence is not addressed specifically by reference to them. In taking this approach the Council does not, nor does it seek, to question the strength of the views held.

The position of the "Ramblers Group" however has not been dealt with to date. The Council takes no real issue with their explanation of the legal position, particularly that given by John Mackay. It was accepted, however, that there is no irreconcilable tension between the development and their interests, though clearly there will be impacts which may affect those who use the dunes. Mr Mackay in his precognition states that access rights "should not be seen as any threat to the development". The Council accepts (as does the Environmental Statement) that their legal rights must be protected and suitable arrangements made. The rights of access however bring with them obligations as was acknowledged. Paragraph 1.3 of the Code referred to by Mr Mackay (the Scottish Outdoor Access Code – Ramblers' production 2) provides at paragraph 1.3 "Take responsibility for your own action. If you are exercising access rights remember that the outdoors cannot be made risk free and act with care at all times for your own safety and that of others".

The legislation is relatively new. The needs of conflicting interests need to be worked through. The conditions largely proposed by the Ramblers are intended to achieve that.

Conditions and Section 75 Agreement

In relation to conditions, Aberdeenshire Council proposed conditions in their Statement of Case in accordance with the procedures set out at the pre-Inquiry meeting. These conditions were based upon those before the Formartine Area Committee on 20 November 2007. Various parties commented upon conditions and as a consequence these were revised with a final set being circulated to all parties on 25 June 2008. These sought to take on board the comments received from all parties to the extent the Council considers it appropriate to do so in light of the evidence. In particular, they incorporate the conditions proposed by Transport Scotland subject to numbering and drafting changes intended to make them accord with the conditions proposed by the Council. At the request of the Reporters, clarification was given in relation to a number of conditions by an email sent to all relevant parties on behalf of the Council dated 1 July 2008.

In relation to the conditions proposed by Transport Scotland, the "phasing" identified by them in their submission of 21 May 2008 has been adjusted to reflect that agreed between the Council as planning authority and the applicants. In their submission of 5 June 2008 Transport Scotland accepted that amendment (see paragraph 4).

The one issue between Transport Scotland and the Council relates to the construction of a grade separated junction to serve the development off the new proposed dual A90(T) road between Balmedie and Tippetry, a proposal supported by Councillor Johnston.

This is a condition which the applicants have accepted (and indeed is reflected in the heads of terms for the Section 75 Agreement). It is consistent with the discussions which took place between the Council and the applicants which in effect are summarised in the report to the Formartine Area Committee for the meeting of 20 November 2007 (CD G9(d)). In particular paragraph 6.19 records the commitment of the applicants. As was explained in evidence the understanding of the Council is that Transport Scotland are supportive of this arrangement but not in a position to confirm acceptability at the moment. This appears to be consistent with paragraph 5 of the written submission of 5 June 2008 where Transport Scotland specifically state that they are "not in a position at this time to agree to the provision of the additional grade separated junction". Paragraph 6 of that submission records their willingness to discuss the principle if planning permission is granted. Such an approach does in fact appear to be consistent with the position that Transport Scotland adopted in respect of the development generally which is set out in their letter of 29 October 2007 to W A Fairhurst & Partners (production T61). That letter records in the final paragraph the following:-

"In view of this I can confirm that Transport Scotland will allow a new access to the trunk road to serve this development".

While it is understood that the trunk road being referred to there is the existing trunk road, the whole tenor of the letter is supportive of the principle of the development.

In these circumstances the Council is firmly of the view that the proposed condition is appropriate and meets the tests of the Circular. Furthermore, there is a realistic prospect that the condition is capable of being implemented.

Apart from certain of the conditions which Councillor Johnston spoke to, the Council believes they have addressed the other conditions identified by the other parties to the Inquiry so far as consistent with the development process. If it becomes clear at the submissions session this is not so comment will be made as appropriate.

Turning now to the conditions proposed by Councillor Johnston the following comments/observations are made:-

- (a) Condition 3 of the conditions proposed by the Council requires details of the cut and fill operations necessary for the construction of the golf course. Dr Gore in giving her evidence made clear that she did not welcome a specific cap being set because she was concerned that that cap then became in effect the amount of cut and fill permitted

and she for one would like to have a much more meaningful discussion regarding that in light of detailed information from the applicants. Councillor Johnston was unable to specify an appropriate level in any event and it appears impossible to impose a condition based upon the vague and unspecific evidence given by him.

- (b) Councillor Johnston also proposed a height restriction in relation to the development of the hotel and associated facilities on the escarpment. Again, Dr Gore did not welcome this. In passing it has to be observed that Councillor Johnston's proposed limits do not appear to be founded in any scientific analysis of the site or consideration of appropriate design and on that basis alone are unjustified. Dr Gore's perspective, however, is that imposing a height condition would be an artificial constraint to achieving what she hopes to achieve, namely an iconic design. The Reporters indicated that the impact of the development on landscape terms was one they would have come to a view about. The Council does not demur from the fact there will be a significant impact. Artificially constraining the height will not necessarily reduce the impact. There is certainly no evidence to that effect and the Council do not consider the proposed condition appropriate.
- (c) Councillor Johnston in response to questions spoke to the need for the Master Planning exercise to have greater public participation. No proposed wording of any condition has been put forward to reflect this. The Master Plan will be dealt with in terms of Condition 3 which concerns reserved matters. The normal processes in relation to a reserved matters application will be pursued. The public are well aware of this application. Clearly if Scottish Ministers grant planning permission, consideration of the application needs to move on from the principle to a detailed implementation. In that context the Council does not consider that any specific requirements are necessary.
- (d) In paragraph 2.4 of his precognition Councillor Johnston talks about the need for a datum point on the escarpment. This appears to relate to his concerns regarding height dealt with above. The Council does not consider that any further condition is required beyond that provided for in Condition 3(c).
- (e) Councillor Johnston made reference in his precognition to a "no species loss" condition. It is understood that this means that in effect the applicants would be under an obligation to show that no species were lost on the site. The concern of the Council relates to an enforceability of such a condition. If the species is lost what action can properly be taken – is such a condition enforceable? The Council do not think so.
- (f) In relation to bonds, Dr Gore explained she did not consider bonding to the extent proposed by Councillor Johnston was appropriate nor indeed reasonable. The Council

consider that the provisions that have been included in relation to bonds are appropriate in the circumstances.

The only other issue dealt with by Councillor Johnston relates to a personal condition. These submissions have already discussed the position in relation to the identity of the developer.

Briefly, the position in relation to Condition 24 should be explained (the reference to plan T2). That arrived fairly late on in the process and a number of parties made comment about the extent to which they had the opportunity to fully consider it. The applicants made clear that, while there might be further changes, these were unlikely to be significant. Much of the evidence related to T2. Given the various view expressed the Council do not consider it appropriate to consent this layout per se, but want it to be the clear basis for the championship course to be developed.

In framing the conditions, the Council have sought to deal with ground-water and related issues. SEPA in their written submission of 19 May 2008 clearly raise concerns about the position. Their approval is somewhat difficult to understand. At the pre-Inquiry meeting they were identified as a relevant person albeit with their position reserved. The Council understood if matters were resolved they would rely on a written statement. Clearly matters have not been resolved yet and despite their apparent concerns they did not appear nor make themselves available to be questioned about matters. That makes it difficult to assess the validity of their concerns.

Equally it appears that the applicants were restricted on the investigations that they were physically able to carry out given the citation of the SSSI. There is clearly an appreciation of the significance of the issues. Dr Dargie in particular spoke to the issues under cross examination, while Dr Hawtree spoke to the need to minimise impacts of water abstraction and fertilisers (consistent with his whole approach to do as little as possible to create the championship course).

Given the extensive work which has been done in relation to assessing the impacts on species, the expertise of the team appointed by the applicants and the role of MEMAG, the Council believes that the issues raised by SEPA in the circumstances of this case can be addressed by conditions. The application is an outline one. That is competent. A number of the issues identified by SEPA would be difficult to address in the absence of the requisite detail.

The concerns in relation to the Development Plan and Guidance referred to by SEPA are essentially policy issues and fall to be considered in that context. The legal duties arise out of the 2003 Water Environmental & Water Services Act and are set out in page 3 of the written submissions. The issue is whether, based on the evidence available and the ability of the applicants to investigate matters to date, there are grounds to believe the duties set out in the

Act cannot be fulfilled. Some are clearly not applicable (e.g. mitigating the effects of flooding). Others need to be addressed but the Council believes, as it did in November of last year, that these can be addressed by way of conditions to ensure compliance.

Turning now to the Section 75 Agreement and the heads of terms in relation this, these were circulated in the course of the Inquiry with a final set (subject to minor changes) being circulated on the last day of the Inquiry. A broad indication of the headings was given in the Statements of Case for both the applicant and the Council. In relation to these the position of the Council is as follows:-

(a) **Affordable Housing**

Clearly there is guidance in relation to the provision of affordable housing in the context of a housing development in terms of the Local Plan (CD A2), the Structure Plan (CD A1) and PAN74 (CD D15). In terms of the Local Plan the relevant policy is HOU8 found on page 47 with further information in Appendix 7. Discussions between the Council's Planning Gain Officer and the applicants therefore provide for affordable housing to be provided both in terms of housing for rent to be constructed in Balmedie (the 98 units) and housing for purchase equally in Balmedie (the 52 units). In effect there will be 150 houses constructed to meet differing requirements of the affordable sector all in accordance with the Local Plan and Government guidance. The land is to be provided or secured by the Council but, in return for inputting that land, affordable houses for people to live in are to be built. The site is one identified in the Local Plan for housing purposes. Permission to develop these houses will be subject to separate procedures. As people live in houses, not simply on land, any right thinking persons (including Councillors) should welcome this. In these circumstances it is extremely difficult to understand what proper objection can be taken to the provision of affordable housing. In the Council's view therefore this is in accordance with Government guidance and an appropriate matter to be dealt with by way of a Section 75 Agreement rather than by way of a condition given the complications of the requirements necessary and details yet to be agreed.

(b) **Education Facilities**

Again this is part of the package discussed between the Council's Planning Gain Officer and the applicants. Again the Local Plan contains provisions in relation to this matter – see Policy GEN/3 on page 92. The requirements of the policy are amplified in Appendix 8 of the Local Plan which sets out areas that may need to be addressed by developers by reference to school catchment areas. On page 396 under the heading “Balmedie “ “Primary School Provision at Balmedie” is identified. Again, therefore, the heads of

terms have a proper basis in terms of the Local Plan. Accordingly, the Council is of the view that it is an appropriate matter to be dealt with by way of a Section 75 Agreement rather than by way of a condition.

(c) **Community Facilities**

Again the relevant policy is found in the Local Plan. Page 396 and Appendix 8 again identifies the need for community facilities. The Council again is of the view that therefore the contribution proposed is properly based in policy terms and again it is appropriate that the provision is dealt with by of a Section 75 Agreement rather than conditions given the involvement of financial obligations.

(d) **Off-site road improvements**

This matter has already been dealt with in terms of the conditions. The Council is of the view it is appropriate to include this in the Section 75 Agreement given the nature of the fact that these improvements are off-site.

(e) **MEMAG**

Evidence was given in relation to MEMAG. Whatever view one takes as to whether or not it is mitigation, clearly the MEMAG proposal has general acceptance (in the Council's view based upon the evidence available to the Inquiry). Given the nature of the commitments the Council is of the view that it is appropriate that this should be the subject of a Section 75 Agreement rather than a condition.

(f) **Local Training and Staff Recruitment Programme**

Dr Gore spoke to the social benefits that would flow out of the development, largely consequent on the economic spend involved in the development. She explained how she saw benefits in relation to jobs and training. The applicants accept that and indeed welcome the opportunity to provide these facilities. While it is possible that a condition could be drafted to deal with these issues, given the nature of the obligation it is probably more appropriately included in a Section 75 Agreement to allow detail of the sort that would simply not be possible in a condition.

Relevant guidance in relation to the use of planning agreements is contained in Circular 12/1996. Generally speaking any agreement must be for a planning purpose, have a relationship to the proposed development, be of a scale and kind related in value to the proposed development and be reasonable. The Council are of the view that, given the policy basis for certain of the heads of terms and the need to ameliorate the impact of the development, these heads of terms do have a planning purpose and are reasonable.

Furthermore, the Council submits that what is proposed clearly has a relationship to the proposed development and is of a scale and kind that is appropriate. In these circumstances the Council respectfully requests that in reporting to Scottish Ministers you recommend, if planning permission is to be granted, that the grant of planning permission should be subject to a Section 75 Agreement being entered into. This of necessity may mean that a “minded to grant” recommendation is issued. If so, the Council would suggest that it ought to be possible to agree the terms of a Section 75 Agreement in no more than three months based on the amount of work which has already been done.

Conclusion

The Council unequivocally supports this development. It does so notwithstanding environmental consequences (but understanding them) because of the very clear and significant economic benefit which will result. Those benefits are significant in economic terms in their own right. They are significant in economic terms both nationally and locally. They are significant because of the social benefits which will accrue from them. They are relevant in policy terms both in the context of the wider aspirations of the Council and indeed the Scottish Government.

There is no definition of what level of benefits meets the “national” test. Miss Donaghy was best placed given her qualifications and experience to comment. She was in no doubt. Ultimately, the balance of the conflicting issues is for the decision maker. That is now the responsibility of Scottish Ministers. Given their responsibilities and policy objectives they must be better placed than anyone not only to confirm that the benefits are indeed of national significance but also where the national interest lies in deciding between the conflicting issues.

The task, it is accepted, is not an easy one. It is clear that the environmental effects are significant. The Council accepts the integrity of the SSSI will be compromised. There are relevant policy statements which emphasis the importance of both the environment and economic issues. Ideally both should be harmonised. That ideal is not possible here. Mr Hughes on behalf of RSPB/SLST in cross examination accepted that projects where that harmonisation was not possible could still proceed.

The Council is not aware of any simple set of measures or tests that can be applied to balance the issues. There is no legal impediment to this development proceeding. The issue is one of balancing of the benefits against the burdens in terms of all relevant policies. As the originator of many of those policies Scottish Ministers are able to make a decision giving due weight to all factors and working out where the national interest lies.

For the reasons outlined in evidence, the Council believes that balance clearly favours the grant of planning permission to secure a truly unique proposal of significance nationally in economic and policy terms.

Accordingly, the Council respectfully ask that you recommend to Scottish Ministers that planning permission ought to be granted subject always to conditions and a Section 75 Agreement.