



RSB WS/6

Town and Country Planning (Scotland) Act 1997
The Town and Country Planning (Notification of Applications) (Scotland) Direction 2007

**Outline Planning Permission for Golf Course and Resort Development on land at
Menie House, Balmedie, Aberdeen**

PUBLIC LOCAL INQUIRY: Ref CIN/ABS/001

WRITTEN SUBMISSION

of the

**RSPB Scotland
Scottish Wildlife Trust
Botanical Society of the British Isles**

CONDITIONS AND S.75 AGREEMENT

Purpose of this Submission

1. The purpose of this submission is to inform the Inquiry of the current position of the RSPB / SWT / BSBI in respect of conditions that should be imposed on any outline planning permission that the Scottish Ministers may grant. It also covers the organisations' views in respect of a S.75 Planning Agreement. These submissions are without prejudice to our objection, and the expressed views of the three organisations that the application as proposed should be refused.

Conditions proposed by the Council

2. We set out below our submissions in respect of the conditions attached to the Council's Statement of Case at Schedule 3, which we understand is the most up-to-date list of conditions. We also note that the applicants wish to carry out a 'legal audit' of the conditions, even though they have been in the public domain for several months. Given that it is unlikely that a revised set of conditions will be issued before the written submissions need to be submitted to the Reporters, we have no alternative but to address the above mentioned set of conditions.
3. Relevant to our fields of interest, the objectives of Conditions 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 32, 33, 52, 53, 54, 55, 59 and 60 are supported, in respect of their potential to reduce, to a degree, the adverse effects of the proposal, although it will be seen that we have some comments on some of these conditions.
4. Condition 9: it is the view of RSPB / SWT / BSBI that this condition is flawed because it fails the tests of precision and enforceability. Parts of the site that are to be protected from all forms of development and management activity should be accurately prescribed before the permission is granted and a more specific condition imposed; such as: "Notwithstanding the plans accompanying the planning application no development and no golf course management activities or operations shall be carried out on any part of the site marked on the attached plan". The plan should show precisely which areas of the dune ridge and its associated body are to be protected. If the plan attached to condition 9 also included the areas we refer to in our Proposed Conditions A and B at paragraph 14 below, then those proposed conditions A and B would not be necessary, because the SSSI and southern sand dome would be protected by the revised and extended condition 9.
5. Condition 10: it is the view of RSPB / SWT / BSBI that this condition may be a matter of law because, in respect of the second golf course, which comprises 'EIA development' within the meaning of the EIA Regulations 1999, the current environmental information does not provide sufficient information for Ministers to make a sound decision. Furthermore, it is likely that a subsequent detailed application for approval of the Championship course would show variations to that course, from plans considered at outline application stage, and it could therefore have significantly different environmental effects to those considered. We refer to the advice published by the Scottish Government at <http://www.scotland.gov.uk/Resource/Doc/205337/0054660.pdf> . In the event that the Scottish Ministers are minded to grant outline planning permission for the proposed development including golf course development, an EIA for any course permitted or both courses will be required to remedy this deficiency.
6. The requirements of conditions 11 and 12 are, in the opinion of RSPB / SWT / BSBI, fundamental to the determination of the application, because they go to the heart of the extent of damage to the nationally important interest features of the site. These

details ought to be available for examination by the Reporters at the Inquiry, not left for subsequent approval.

7. Condition 14 is a conventional landscaping condition for the whole site. As such we have no comment except to say that it does not, and should not, include the extensive works required to deliver the translocation of habitats, communities and species put forward in the applicant's proposals, although the landscaping scheme will need to take account of these and the substantial (and so far unidentified) areas they will require. At present it is difficult to identify where and how these translocation proposals would be guaranteed. Condition 24 deals only with the mitigation works and for reasons explained in the RSPB / SWT / BSBI Written Submission on Ecology, Habitats and Species (RSB WS/2), we do not believe translocation can or should be treated in the same way as mitigation, largely because of the inherent uncertainties. Given our very sceptical view as to the feasibility and efficacy of translocation, and the fact that some translocation areas are likely to be outwith the application boundary, we believe it is for the applicants to put forward their proposed means of guaranteeing that the translocation that they offer will be delivered. This should be via detailed submissions, approvals and method statements dealing with such matters as implementation, monitoring, adaptation, remedy of and compensation for failures etc.
8. Condition 17: it is the view of RSPB / SWT / BSBI that this condition is flawed because it fails the tests of precision and enforceability. The object of the condition is supported, but the buffer zone around the ancient woodland ought to be specified in the condition and not left to later agreement, which of course may never be secured, rendering the condition unenforceable and ineffective.
9. Condition 18 it is the view of RSPB / SWT / BSBI that this condition should be reworded to ensure that no works can be commenced before approval of the details of the grass types, vegetation and seed mixes, and that these should comprise only appropriate locally native species unless a written justification for the use of another species is submitted with the details. This is because the new vegetation will need to be established quickly after engineering works in order to achieve their objectives.
10. Conditions 22 and 23: it is the view of RSPB / SWT / BSBI that these conditions should include reference to compensatory habitats as well as habitat enhancement to emphasise that there is a need to at least try to offset the harm to bird and bat habitats. Conditions 22 and 59 could be amalgamated to refer to "a habitat management and enhancement plan incorporating mitigation and compensatory measures for birds"
11. Condition 32: it is the view of RSPB / SWT / BSBI that this condition is flawed because it fails the tests of precision and enforceability and it does not fully achieve the purpose of controlling the effects of external lighting on the environment. There should be a more precise condition about light pollution and, in any event the following should be added to the condition or as a new condition: "Details of any external lighting installation that may illuminate any part of the golf courses and ancillary golf facilities shall be submitted to and approved by the Planning Authority in consultation with Scottish Natural Heritage prior to its installation" The reason for this is to prevent adverse effects on wildlife, at night, in the coastal environment.
12. Conditions 34, 35 and 36: RSPB / SWT / BSBI merely observe that the wording of these conditions, allowing the construction of the championship golf course to be commenced before a detailed design brief is submitted and approved for the proposed built development, would appear to be inconsistent with condition 3 relating

to the submission and approval of 'reserved matters'. Under condition 3 no development can commencement until reserved matters are approved, which include the siting, design and external appearance of buildings.

13. Conditions 52, 53, 54 and 55: RSPB / SWT / BSBI are of the opinion that consultation with SNH should be added to these conditions.

Additional conditions proposed by RSPB / SWT / BSBI

14. If the Scottish Ministers are minded to grant outline planning permission for the development as proposed, the following conditions should be imposed for the reasons given.

Condition A

"Notwithstanding the plans submitted as part of the planning application no development and no golf course management activities or operations shall be carried out on the area notified by Scottish Natural Heritage as the Foveran Links Site of Special Scientific Interest as shown hatched red on the attached plan."***

Reason

"To protect the nationally important nature conservation value of the Foveran Links SSSI and in relation to policy Env/2 of the adopted Aberdeenshire Local Plan"

Condition B

"Notwithstanding the plans submitted as part of the planning application no development and no golf course management activities or operations shall be carried out on the part of the Foveran Links Site of Interest to Natural Science comprising the sand dome located in the future golf area, as shown hatched red on the attached plan."***

Reason

"To protect the outstanding nature conservation importance of that part of the Foveran Links SINS and in relation to policy Env/3 of the adopted Aberdeenshire Local Plan"

An illustration of the plan referred to in Proposed Conditions A and B is attached to this written submission.

Condition C

"Prior to the commencement of any development on the site details of a goose management scheme for Pink-footed Geese shall be submitted to and approved by the planning authority, in consultation with Scottish Natural Heritage. The approved scheme shall be implemented in its entirety in accordance with the approved details."

Reason

"To enable the Scottish Ministers to ascertain that there would not be an adverse effect on the integrity of the Ythan Estuary, Sands of Forvie and Meikle Loch SPA and the Ythan Estuary and Meikle Loch Ramsar site." (See further the RSPB / SWT / BSBI Written Statement on the application of the Habitats Regulations (RSB WS/3))

Condition

"Prior to the commencement of any development on the site details of mitigation measures to reduce bird disturbance in the Ythan Estuary, Sands of Forvie and Meikle Loch SPA, comprising, inter alia, the provision within the application site or

other areas owned or controlled by the developer of appropriate forms of open space, the improvement of access on the Menie Estate and enhancing the recreational attraction and capacity of existing semi-natural open space on the Estate, shall be submitted to and approved by the planning authority, in consultation with Scottish Natural Heritage. The approved measures shall be implemented in their entirety in accordance with the approved details.

Reasons

“To enable the Scottish Ministers to ascertain that there would not be an adverse effect on the integrity of the Ythan Estuary, Sands of Forvie and Meikle Loch SPA and the Ythan Estuary and Meikle Loch Ramsar site.” (See further the RSPB / SWT / BSBI Written Statement on the application of the Habitats Regulations (RSB WS/3))

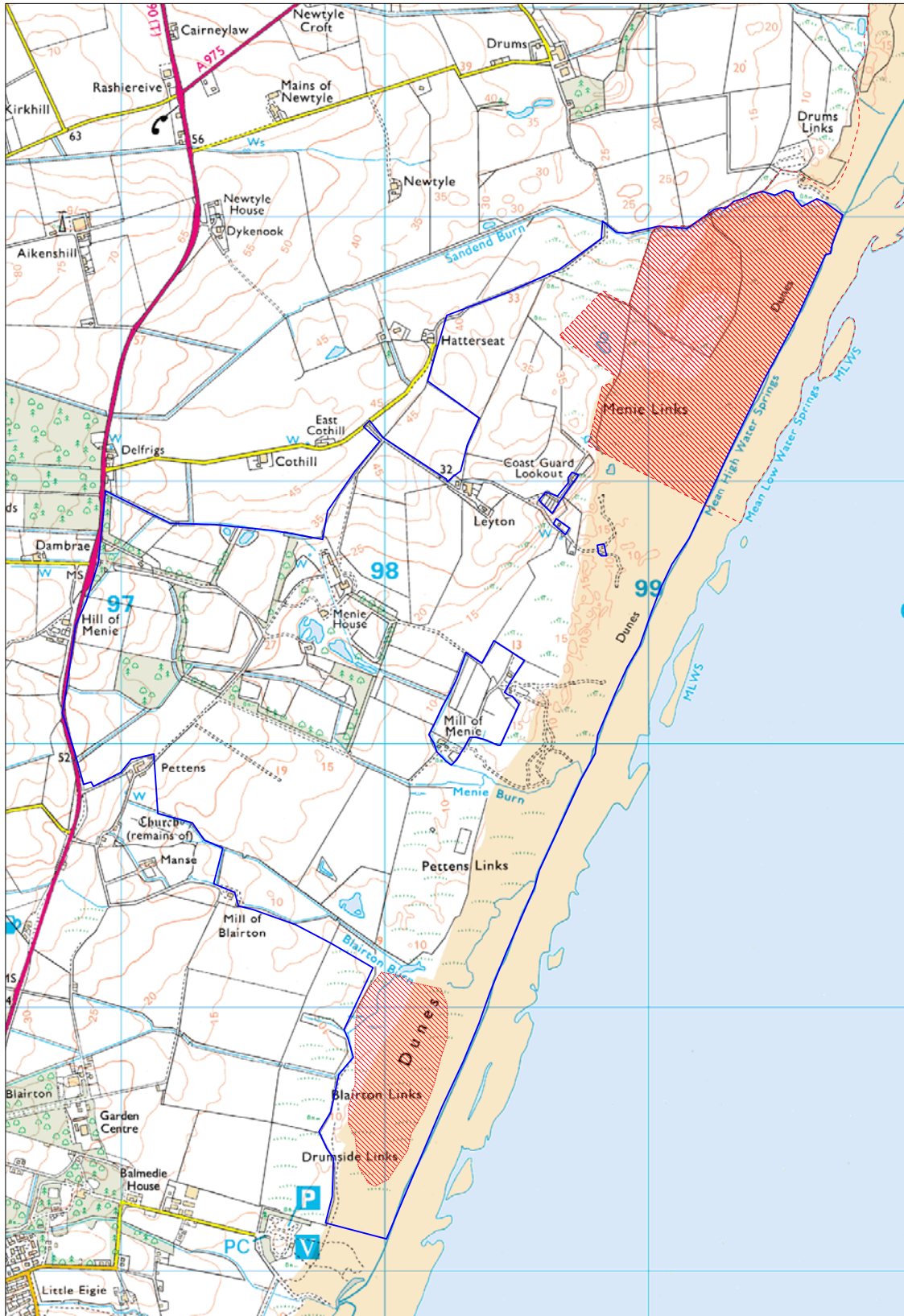
Section 75 Planning Agreement

15. The RSPB / SWT / BSBI are of the opinion that the proposed Menie Environmental Management Advisory Group (the MEMAG) should be the subject of a S.75 planning agreement completed and signed by the applicants and the Council, before the close of the Inquiry. A draft of the Agreement should be discussed during the course of the Inquiry.
16. The Agreement should (as a minimum):
 - a) Require the establishment of the MEMAG by whichever company implements the permission and carries out the development or any part of it that includes the golf course (it should not be specific to the applicant company)
 - b) Set out a constitution for the MEMAG including its establishment, composition, role, scope, powers and duties and how it is to be serviced and supported and how its costs are to be met
 - c) Provide for the establishment of the MEMAG promptly after the grant of any outline planning permission so that MEMAG is operational well in advance of the commencement of development and able to play an influential part in commenting on and guiding the detailed submissions for subsequent approvals
 - d) Provide for the MEMAG to appoint, at the development company's expense, a suitably qualified and experienced ecologist or ecologists to inspect, monitor and advise on the implementation of the development and report regularly to MEMAG members and meetings
 - e) Require the development company and the Council to be fully participating members of the MEMAG
 - f) Commit to inviting sufficient representatives of the Council, SNH, SEPA and at voluntary nature conservation organisations to be fully participating members of the MEMAG such that between them they have a majority of members on the MEMAG
 - g) Empower the Council to enforce the provisions of the Agreement and the operation of the MEMAG
 - h) Set out how recommendations of the MEMAG are to be drawn up and agreed at MEMAG meetings by a majority vote of the members present and voting
 - i) Require the developer to implement the recommendations of the MEMAG agreed at MEMAG meetings
 - j) Provide for:

- i. monitoring the effects of the development on the nature conservation (flora, fauna, geological and geomorphological) interests of the Foveran Links SSSI and the Foveran Links SINS
- ii. reporting to the MEMAG of the monitoring results on a regular basis
- iii. review of the monitoring results by the MEMAG
- iv. MEMAG drawing up recommendations for additional or different mitigation, compensation, translocation and remedial measures where necessary
- v. the submission of such additional or different mitigation, compensation, translocation and remedial measures to the Council for approval
- vi. the timely implementation of remedial measures in accordance with the details approved by the Council and recommended by the MEMAG.

17. The Agreement is the appropriate vehicle for the applicants to deliver a restoration bond, which is proposed by the Council. Whilst we have considerable reservations about the efficacy of a restoration scheme once the dunes had been stabilised, it is quite possible that the bond may be triggered before irreversible damage has occurred. To that extent the RSPB / SWT / BSBI would sooner see an arrangement for a bond than no arrangement. It is for the applicant to come forward with proposals for the restoration bond, when and how it may be triggered, its value and how and on what it should be spent. We will be pleased to comment on such a proposal, but expect such a bond to be substantial, if it is to be effective in achieving any meaningful restoration in the event of the failure of the golf course scheme for whatever reason.

Plan referred to in Proposed Conditions A and B



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