

# PROPOSED RESORT AND GOLF DEVELOPMENT AT MENIE ESTATE:

## PUBLIC LOCAL INQUIRY

*Precognition by John W Mackay  
on behalf of the*

### **Scottish Rights of Way and Access Society**

## INTRODUCTION

### ***Witness statement***

1. I give evidence on behalf of the Scottish Rights of Way and Access Society (ScotWays) of which I am a Board Director. ScotWays is a longstanding voluntary body, whose main purposes are to safeguard and promote public rights of outdoor access, also the amenity enjoyed by people participating in open-air recreation. ScotWays pursues these objectives in various ways: first, by seeking to influence the actions of others; by advice, notably on the law relating to access and by maintaining a national catalogue of rights of way (CROW); by promoting open-air recreation through publications; and by practical action. Of the last, we have erected some 3000 of the familiar green rights-of-way signposts, and assisted in the repair and construction of bridges. ScotWays has only a few paid staff, ably supported by volunteers. It is funded by membership subscriptions and grants from mainly public sector sources: currently we are cataloguing heritage paths, a project assisted by SNH and Lottery funds.

2. I draw from the experience of my employment for 32 years with the former Countryside Commission for Scotland (CCS) and its successor, Scottish Natural Heritage (SNH). I am a geologist by original training and was an academic before joining the public service. My relevant experience is as follows.

- When with the CCS, I mainly worked on research, experimental projects and policy issues, much of which concerned open-air recreation. With SNH, I was initially head of its Recreation and Access Branch, leading policy and practice for this part of SNH's remit, and being the main author of a number of policy

reviews, undertaken in the early years of the agency, including SNH's own review of arrangements for public access to land. Latterly (and until retirement), my work focussed on policy issues across much of SNH's non-nature conservation work. This included leading for SNH on the new legislation for public access, enacted in Part 1 of the Land Reform (Scotland) Act, 2003.

- I know the area reasonably well from work and personal experience. Although not part of my evidence, I understand the coastal resource-management issues at Menie, having been involved, when with CCS, in the inventory of Scotland's beaches prepared by staff at the Department of Geography at Aberdeen University. Subsequently, I led a programme of experimental work on dune management, including trials at Foveran, to the north of the development area.

### ***Status of the evidence***

3. ScotWays' evidence expands on the arguments set out in earlier submissions about this proposed development, in particular, ScotWays' letter to Mr Swinney, of 14 January 2008. In response to the Reporter's request for coordination with other parties offering like evidence, I have said less here about some of the local issues than I might otherwise have done. On these local issues, I accord with the submissions from the Aberdeenshire Local Outdoor Access Forum. As is its normal practice, ScotWays offers no view on the merits of the proposal, focussing its comments on public access.

## **MENIE – RECREATIONAL USE, CONTEXT AND VALUE**

*In this first section of our evidence, the significance and value of the area for open-air recreation by the public are described.*

### ***Recreational use and context***

4. Balmedie Country Park is the prime access point to this sector of the coast. Country Parks emerged as a national policy response of the mid-1960's, to provide for a more mobile and wealthier post-war society, at that time seeking more leisure opportunities in the countryside.
5. Growth in the use of Balmedie for beach recreation dates back to the 1950s. It was registered as a Country Park in 1983, and is one of two such parks in Scotland with a mainly coastal focus. There is extensive parking and visitor services, and ample space behind the dunes for events and informal recreation. It has a significant environmental education role, not immediately obvious to the general visitor – all country parks offer this kind of educational experience through their ranger service. Litter is cleared on an impressive length of beach from Black Dog northwards to Newburgh. VisitScotland's *Visitor Attractions Monitor* records Balmedie and Haddo House Country Park as having close to a quarter of a million visits annually, which places these two parks at the bottom of the top third of Scottish country parks for visitation<sup>1</sup>. According to data in the same survey, Balmedie and Haddo are the two busiest rural visitor sites in Grampian<sup>2</sup>.
6. Patterns of use estimated from car counter data (only a small proportion of visitors arrive on foot from Balmedie village) make clear that there is a significant all-year round use of the park. But, as with all such sites, weekends attract most

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<sup>1</sup> Survey data for countryside recreation sites all have different means of recording and estimating visitor numbers, but the figure cited for Balmedie seems reasonably secure, there being only one main access route to monitor.

<sup>2</sup> Use of Aberdeen city beach will well exceed that at Balmedie, but it is an open site with no means of recording numbers, and it is very accessible to the city population, likewise for some of other popular city parks.

visitors, and weather is also a strong influencing factor in visitor numbers. Access over the area of development is also taken to the north from non-public roads joining the A90. The level of access taken here is small, it being difficult (given the volume of fast traffic on the trunk road) to turn off, and pre-knowledge of the opportunities is needed. Some of this access is by car, taken on a customary basis, principally at Pettins and perhaps less so at the Leyton entry. More important at these locations are visits, primarily on foot, by residents on or close to the Menie estate. Access is also taken by some locals via the Menie House main drive. For these residents, this is their local recreation space, and important to them. There is some beach access further north, via Drum; and at East Pitscaff, where a livery stables has beach access for riding, the beach being excellent for this activity; and, yet further north, there is a formal parking entry point on the south side of the Ythan. It does seem that, over the years, there have been significant changes in the pattern of local access. The Beaches of Northeast Scotland reports up to a hundred cars using the Leyton access at peak periods in the 1970s<sup>3</sup>.

7. Balmedie is a venue for events (as described in the ES) for which it has good facilities, but the dominant use is for walking and family beach-activities. The splendid beach is the main draw for visitors. The foreshore is wide, firm underfoot and spacious in aspect. As in all such settings, walking tails off with distance, with the Menie Burn being a common turning point for those on medium length walks. Beyond here, the beach is usually more lonely in character.

8. Use of the back dune area is much less than on the foreshore, but it is important to those who frequent it. People use land behind the dunes in crossing to the beach; it is used as part of circular walks; regular visitors use this area to vary their outdoor experience; bird watchers find a different range of species to the shore; there is riding here; and, finally, it has its own attractiveness for walking, as a contrast to the beach. The dune ridge also provides shelter, on the not infrequent days with strong or cold winds.

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<sup>3</sup> Applicant Doc. C11 pp.279 and 285, which report that the access track was closed by a gate, primarily on account of damage to the unsurfaced track at the steep descent from the former coastal edge to the links.

9. Aberdeenshire Council has not asserted any public rights of way over Menie, and ScotWays has no records on its Catalogue of Rights of Way. However, some routes will have had long-term use and be possible candidates for assertion, subject to meeting the appropriate tests. From our inspection of the ground, the route off the A90 at Pettins, down to the Fishing Station entry to the beach, might be a candidate right of way, likewise the long-used beach access from Leyton. Another might run from Balmedie north to the public road system via Leyton. There is certainly evidence of historic use on this line<sup>4</sup>. These would be possible ways on foot or, perhaps, by riding where there is evidence of such use.

### ***Recreational value***

10. The continuous stretch of sandy coastline between Bridge of Don and the Ythan estuary has special qualities. Long sandy coastline on this scale is uncommon in the UK, especially with the undeveloped and natural character of this part of the Aberdeenshire coast, and its relatively light use. Words that define its special qualities include: natural, unspoiled, and uncrowded, with open and spacious vistas, where the visitor can experience a strong sense of solitude. At the same time, there is good accessibility to much of this coast,

11. The geomorphology of this coast and its scientific interest are well described in the ES (and in the Beaches of Northeast Scotland). But these are descriptive accounts that are not evaluative of the significance of this setting for public enjoyment. The frontal dune ridge is bold in height and breadth, especially to the north of the site; some of the highest dune topography in Scotland is to be found on the Aberdeenshire coast, reflecting the dynamic nature of the sand dune systems. Seen from the higher points of the dunes at Menie, the long vista towards Foveran is a most impressive landscape, with the extent of dune vegetation and the degree of active sand movement adding to the visitor's perceptions of this being a very natural setting.

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<sup>4</sup> On the Roy map of ca1750, the historic road from Aberdeen to Ellon, and also to Newburgh is shown take a line close to the coast on back dune land, all the way from Bridge of Don, only turning inland in the Leyton-Hatterseat area.

12. The values that people enjoy in this kind of setting are of an intangible kind – the sense of freedom and escape; appreciation of its beauty and its wild and natural character; and the pleasures of taking exercise in an inspiring setting. This is what counts most for most people, who know and use the area regularly. There is no formal means of ascribing recreational value to settings of this kind – compared, say, to the care of conservation resources. However, the intrinsic quality of the landscape, its strong natural qualities, the scale and spacious nature of the setting and its accessibility, all point to this being place of high value for open-air recreation. It can be asserted that open-air recreation by the public is and for a long time has been the *de facto* prime use of the coastal edge here, but subsequent to post-War increased mobility by car, the public have visited the area in increasing numbers. It is regionally, and perhaps even nationally, a significant recreation site.

## **IMPLICATIONS OF THE DEVELOPMENT ON PUBLIC ACCESS AT MENIE**

*In this section we set out our assessment of the main implications for public recreation in the area of the proposed development, followed by our main concerns. Uncertainty about future access arises because the proposal is mainly an application in outline, with many of the details not yet visible.*

### ***Potential impact of the development on the enjoyment of open-air recreation***

13. Our analysis of the implications for the enjoyment of open-air recreation is as follows.

- First, the public will be mainly constrained to the beach by virtue of the golf course taking a significant area out of full statutory access rights. That is where most people go most of the time: but the back dune area is also used for a number of reasons (mentioned earlier). There will be significant losses to the natural character and enjoyment of this part of the site from proximity to the proposed buildings.

- There are potential implications for local access by residents of scattered properties on and close to the Menie estate – loss of customary access and losses to the quality of their recreational experience.
- The scale of the physical development is such that it is bound to impose on the setting and its enjoyment. While walkers very close in to the dune front may be shielded from the proposed buildings, it seems likely that they will be visible out on the foreshore, especially through gaps in the dune front and in longer oblique views inland<sup>5</sup>. By virtue of size and exposed location, this is a very dominant built-development, on the former coastal edge: the landscape impact will be severe, and this will diminish the sense of naturalness and (further up the beach) the sense of remoteness and isolation.
- There will be many more people around. If developed as proposed, the size of the new population – guests plus resident staff, plus those from the housing – can be estimated reach at least 2500 persons when only moderately busy, perhaps double that figure at peak periods, when all the accommodation is fully occupied. It may be that many of the customers of this development will not participate much in outdoor activities, but it would be surprising if a fair proportion did not want to go down to the sea, given the magnetic attraction that the coastal edge can have. While we can only welcome more people enjoying the outdoors, a major new flow of visitors coming in from new access points the resort will significantly change the pattern of use, and will change the ambience of this part of the beach.

### **Concerns**

14. ScotWays notes the statements by the developer<sup>6</sup> that access rights will apply – indeed this is the law. But we are still concerned that access will be assured in practice, and that we all have a common understanding over what is intended by

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<sup>5</sup> Core Doc G3 This is confirmed in general in the ES chapter 8, say at para 8.7.1. However, the ZVI maps as visible on the Internet are not of a scale to confirm the exact details of local visibility.

<sup>6</sup> At p.14 of the Proposal and in the supplementary Public Access Plan at para 1.1.

these words, and over how the details will be resolved. Our letter of 14 January 2008 implied that we had not been sufficiently reassured that public access rights over the whole area would be safeguarded. We explain this below.

- The proposed development will remove a considerable area of land from general access rights, subject to the ability of people to take passage anywhere across the course,<sup>7</sup> in a setting where there is a high level of existing use. In our view, and given the recreational importance of the location, this calls for effort by the developer (under its LRA s.3 obligations and Council policy Env22) to offer mitigation and provision of alternatives. The supplementary access strategy is a start, but needs more effort: the northern-most route is not satisfactory.
- The exercise of access rights depends crucially on the ability of people to exercise them – that is, accessibility to and over the site. The Urban Design Framework document<sup>8</sup> does helpfully state that there will be a cycle-footpath network on site that will connect the housing areas to the resort: but the extent of how this connects outwards is not described. The developer's response on access says that there will be connections<sup>9</sup>, but the report of the Public Hearing records that persons in the Hatterseat area will not be able to take access via existing routes<sup>10</sup>. In addition, the developer's proposals for access focus on access to the beach and crossing the course, leaving aside the fact that access rights will extend all over the site subject (of course) to the statutory exemptions. Opportunities for circular routes will now be limited.
- The master plan for the proposal shows a gatehouse and security gates on the main entry road. In the absence of information, there has to be a presumption that its purpose will be to exclude people who are not customers of the development and, if exclusion is proposed, it has to be asked on what

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<sup>7</sup> ACC1 (hereafter referred to in the text as LRA), See s9(g) as it interacts with s1(2)b). Greens and trees would be wholly outwith rights – LRA s.7(7)b.

<sup>8</sup> Applicant Doc. T69

<sup>9</sup> Core doc. at G1 Summary of Environmental Commitments C6, p315

<sup>10</sup> Core doc. at G9, Hearing Minute, p37, second para.

legal basis is this to be done. Likewise, for the 'residential gatehouse' labelled on the southern area for proposed residential development. Limitations on people attempting to exercise access rights may fall foul of LRA s.14. Public rights of access would continue down the relevant entry roads (and the internal path network)<sup>11</sup> but not public access by motor vehicle, unless under the provision for the disabled<sup>12</sup>. Local private owners will have their own access rights.

- Draft condition 32 invites the developer to identify proposed privacy and exclusion zones. This condition follows the model planning condition set out in the Guidance to Local and National Park Authorities, but the implication of including the privacy-exclusion issue in the condition is that formal exemptions will be sought. The statutory exemption of land from access rights can only be done under procedures set out in the Act, and where the exemption meets the tests in the legislation. In our view, there is no case for any formal exemptions at this site, and we return to this below.

15. As well as these uncertainties about the application of access rights, there are other unresolved issues, as set out below. We acknowledge that the developer's recent Public Access Plan<sup>13</sup> provides an improved approach to recreational use of the area, and we recognise that the access plan proposed in draft Condition 32 is the proper place for resolution of the detail. However, there is some way yet to go, and we need to log some main issues now.

- There has been no discussion about how provision for different visitor interests will be brought together – the visiting public, customers to the resort, residents of the proposed housing, and the large number of employees resident on site. The overall population on site (assuming development as

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<sup>11</sup> Access rights do not apply to any structure (LRA s.6(1)a(i)), but it is provided (at s.6(2)) that 'anything designed to facilitate passage' (that is, including a road or constructed path or track) is not a structure.

<sup>12</sup> LRA s.9(f) excludes being on or crossing land in or with a motorised vehicle...other than a vehicle...which has been constructed or adapted for use by a person who has a disability and which is being used by such a person.

<sup>13</sup> Applicant Doc. T69 Public Access Plan - Appendix 1 to the Developer's Response to Statutory Consultations

proposed) might range from 2500 to 5000 according to the uptake of accommodation. This would be a large, new population, but we know nothing about the developer's intentions for access to the shore by residents on the site. Numbers on site would significantly exceed the numbers of people arriving at Balmedie on the busiest of summer days, although only a proportion of those at the resort will go down to the shore. In addition, there are those who live on or closely adjacent to the site, some of whom walk frequently in the area.

- It has taken a period of initial concern over access for the developer to offer routes for crossing the course. The proposed public access plan should start from the pattern of existing use, and take an integrated approach to the enjoyment of the area by all the existing and potential users. There should be recognition in the plan of the recreational values to be found there, and action for care of them, and of the natural resources people enjoy. ScotWays agrees with the concerns of the Local Outdoor Access Forum that proposals made so far by the developer are not adequate.
- Balmedie Country Park is a busy location, but the area in public ownership is constrained, particularly on its northern edge. Yet, public use has long spilled onto adjacent land, allocated on the plan for future golf development. Obviously there are no details at this stage, but the land allocated for future golf is quite limited in extent, compared to the area of the first course, implying that future golfing will run hard against the northern edge of the Park and possibly cause future pressures.
- It is not difficult to anticipate that a resort might regard the beach as a major asset and want to take commercial opportunity arising from this attraction. This could bring further leisure development perhaps new activities or uses that could be out of character with the setting. Seaward of the links, there should be no development or activities that would detract from the quality of experience enjoyed there for informal recreation: but there could be activities such as riding that would be appropriate.

## THE NEW ACCESS CONTEXT

*In this section, the key elements of the new access legislation are described, and how we think it would apply at the proposed development*

### ***The new access legislation***

16. There has been a long tradition of public access to land in Scotland, especially to the coast and hills. Surveys of outdoor recreation have long shown the coast to be the most popular setting for informal recreation. An early survey by the former Countryside Commission for Scotland indicated that the public regarded the coast as the category of land that they felt most free to visit<sup>14</sup>. Before the access legislation, many of these visitors will have assumed that they had some sort of customary entitlement or freedom to be there, but very few of them would have been aware that there is a public right to be on the foreshore for passage and recreation<sup>15</sup>.

17. Part 1 of the Land Reform (Scotland) Act 2003 (which came into force in early 2005) was a ground-breaking piece of legislation that clarified and modernised the law on access to land. The key elements of the new legislation are as follows.

- It was enacted as part of the first Scottish Executive's land reform agenda, essentially creating a new relationship between the people of Scotland and its land, for which they now have rights and responsibilities (LRA ss.1, 2) – it had wide political support in Parliament at the time of its passage.
- Reciprocal responsibilities fall on landowners (s.3) in relation to their management of land, which has to be responsible, and not causing unreasonable interference to the interests of those seeking to exercise access rights – so land managers have to address this public interest positively;

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<sup>14</sup> Survey by the former CCS in 1991, in which 93% of respondents said that they always felt free to walk on the seashore

<sup>15</sup> See the Stair Encyclopaedia, vol. 18, para 524-6, pp439-441.

- Access rights apply to all land and inland water in Scotland (s.1.7), subject to the statutory exemptions, which were enacted to be the least required for the circumstances, and subject to the public not always exercising their rights everywhere, given their obligation to exercise rights responsibly – so, the intention was to ensure an extensive interpretation of new rights
- The Act does not (with one exception<sup>16</sup>) specify offences, being legislation that is intended to be consensual in the way it operates, using a non-regulatory approach – say, through the Access Code and the provisions for local access forums. There is a wide range of existing criminal law for those who behave improperly.
- Lastly, the new legislation builds on and reinforces what was past practice and expectation by people taking access; it runs alongside existing rights (s.5(3( and (4)) and, importantly, it provides clarity in the law – so the outcome for access takers may not have changed hugely, although it is a significant change to the ownership and management of property.

18. In short, this is legislation that might be described as a framework for a social contract between the public and those who own and manage land. It is amongst the most open access law anywhere. It is egalitarian in approach, reflecting the needs of a modern society – this is a Scandinavian approach, the closest analogy being with the Norwegian *allemannsrett*.

19. Because of the seemingly radical nature of this new legislation, there was anxiety amongst the land-managing community that it might have unwanted outcomes. In practice there have been very few new problems, although there has been a couple of recent high-profile court cases, arising from the actions of individuals concerned about the privacy of their home. Because the legislation builds on existing practice, few land managers report change in the levels of public

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<sup>16</sup> At LRA s,23(3) it is an offence not to reinstate a right of way or core path that has been ploughed or disturbed in accordance with s,23(1) – this was an import from existing legislation south of the Border.

use or new problems arising from the change in the law. Changes to participation or practice in outdoor access are mainly driven by social rather than legal factors. However, we can expect people to become more confident over time in their use of the new law and to exercise their new rights more widely than in the past.

20. Where access problems exist (and issues of this kind will always arise), they are mainly longstanding recreation problems, rather than attributable to the new legislation; or they can arise as social issues, not necessarily connected at all to open-air recreation (say urban problems spilling out into the countryside around towns). People who are on land for malign purposes have no access rights, and there is a range of legal remedies to problems of a criminal nature. Whatever their source, genuine access problems (whether longstanding or novel) now have a new framework for their resolution through the consensual approach that underpins the legislation, with management being the main approach rather than regulation. There is now more action by local authorities and other public bodies to improve provision for access, and to promote the principles of responsibility to access takers, and to land managers. Local Access Forums have a key role in assisting in the resolution of problems, and the National Access Forum can and is taking a lead in looking at some of the generic issues.

### ***How should access rights work at Menie?***

21. There are two general introductory points to make here. First:

- we expect that access rights will continue to apply widely at Menie, subject to exemptions set out in the Act, commented on further below; and
- second, access rights should not be seen as any threat to the development, but they are an unavoidable element of doing business in Scotland.

22. We think that access rights should apply extensively, because that is the intention of the legislation, and because there is no case here for any special exemption. The proposed Menie resort would be a major commercial entity, open

for business to the general public. The main points in how access would operate at Menie without compromise to the business are as follows.

- First, the hotel and time-share buildings are not buildings that are a house but they are places offering privacy and shelter (s6(1)a(ii)) and some permanent staff may be in residence. Anyone exercising access rights over Menie would have to act in line with the Code (at paras 3.13-17)<sup>17</sup>, by maintaining a reasonable distance and by acting with discretion in relation to the interests of those within the buildings. However, this would be a busy commercial venture with far more people circulating around the area who are guests than might ever arise from access-takers. People who are customers are not normally exercising access rights *per se*, in that they will be on the land by virtue of having a contract relationship with the resort, but they would also be expected to act responsibly and with discretion in relation to the interests of others on the site. In turn, the general public have no right to be obtrusively close or to enter any buildings (unless the hotel as intending customers).
- There will be areas of land that require some degree of privacy, say places where a golf professional was offering lessons or where other services are available to guests. If provided formally, these places could be exempt land under the provisions of the Act at s.6(1)f, say the driving range (but possibly subject to s7(7)); or, if used on an informal basis, they could be subject to limitations under the Code at paras 4.11-16. Some facilities for visitors might be built structures or provide chargeable services and would also be land where access rights did not apply.
- The golf courses will cause loss of full existing public access rights, but a right to take passage across the links would exist (as per footnote 7). For good resource management reasons, formal crossings of the links and the dunes are needed where significant numbers are likely to want to cross, for least intrusion to golfing, and because of the sensitivity of dune habitats to overuse.

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<sup>17</sup> ACC3 The Scottish Outdoor Access Code prepared by SNH, under LRA s.10(1), and approved by Scottish Ministers and Parliament via s.10(5).

These routes should be well located to serve all the different groups of potential users. However, the right to cross elsewhere remains, with the obligation to act responsibly in so doing.

- There is a proposed staff residential block marked on the plan, which clearly would call for sensitivity, to avoid disturbance to the permanent residents; likewise Menie House, were it to be used as a private residence. The proposed golf villas, it seems, will be let.

23. There is no case in our view for any special exemption. The Menie development will have much in common with other similar resort sites. Some are new, such as Fairmont Golf at St Andrews and Kingsbarns, others long-standing such as Gleneagles or Turnberry, or Crieff Hydro. All these commercial sites (and the exclusive destination of Skibo) operate without any special access exemptions.<sup>18</sup> Concern about access problems is often led by fears of what might happen rather than the realities.

24. A recent determination by Sheriff MacFadyen, at Dingwall Sheriff Court, bears on the matter of fears of access. The case concerned claims and counter claims on whether it would be responsible for access by horse riders to take place in a small woodland. The Sheriff made a sensible analysis of the claims by the owner of a small wood and of riders seeking access to it: the local authority acted to safeguard access rights. A main basis of his judgement (in relation to his interpretation of the law) was that restrictions had to be based on objective analysis rather than concern about what might happen, and that while access-takers had no exclusive right to assert what is responsible action, exclusions would only be justified in obvious or extreme cases<sup>19</sup>. This case is at appeal by the landowner.

25. Exemptions to access have to be authorised by the appropriate legislative procedures, notably at LRA s.11, which has only had limited use. (Scottish Ministers

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<sup>18</sup> ACC3 The Guidance to Local and National Park Authorities on Part 1 of the Land Reform Act. pp.16-17 notes the possibility of exemptions for hotels. This arose because of concern at the time of the passage of the Act that celebrity-visitor business at Skibo might be affected. In practice all the above-mentioned resorts operate as they did pre-legislation.

<sup>19</sup> ACC4 paras 97-107.

have a reserve power at LRA s.8, and there are national security powers in other legislation that restrict access rights, which are not relevant here). Most events can be easily managed without resort to short-term exemptions from access rights. Notwithstanding the very large number of events held annually in the Scottish countryside – social, commercial, public and private – the number of formal exemptions is small.<sup>20</sup> The legal restraint on access for the G8 Summit at Gleneagles, perhaps the most high profile security event ever held in Scotland, used the short term (up to six-day) exemption procedure set out at s.11(1) of the LRA. National security provisions (which also withdraw access rights on any such land where they might have applied) have only been used in Scotland for nuclear reactor sites, and the Clyde/Faslane nuclear arms base, and not at other high profile security sites in Scotland, where they might have been applied. The last Open at St Andrews operated without exclusions, although there was an exclusion at the recent Carnoustie Open. In short, civic society has learned to live with the new access legislation, and not regard it as an undue problem.

## **OUTCOME**

*This section sets our summary view on the resolution of debate about the operation of access rights over Menie in the circumstances of the development proceeding. We offer a revised condition 32, as a framework for continued discussion about provision for public access at any development given consent.*

### ***The planning context***

26. Other submissions will refer to the planning policies that impinge on this proposal, in particular, policies for the protection of the settings enjoyed by people taking outdoor access. Only a few key policy references for outdoor access are mentioned here. The relevant national planning policy statement for open-air recreation is SPP11 – *Open Spaces and Physical Activity*, recently published. This

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<sup>20</sup> Figures given by a senior official from the Executive at a conference late last year were that the number of short-term (less than six days) exemptions since the legislation came into force was 88, with three longer-term exemptions (which are limited to two years).

establishes access rights and core path plans as material issues in the determination of planning applications,<sup>21</sup> and requires local authorities to maintain audits and strategies. PAN 65 provides guidance. Policy 17 of the Aberdeen and Aberdeenshire Structure Plan gives a lead to the protection of outdoor access<sup>22</sup>. The Aberdeenshire Local Plan, policy Env 22 safeguards existing public access with a requirement for satisfactory alternative provision where access is interrupted<sup>23</sup>.

27. The outcome for public access, given consent to the proposal, must meet the terms of these recreation policy statements. The main vehicle for delivery of access over the area of development should be the proposed new access plan. This plan should be embedded in whatsoever mechanism is used to formalise service or other agreements between the Council and the developer over the implementation and subsequent management of the development, if approved. In considering the key issues for public access, we start from the point that public access at a busy and long-popular location will be significantly affected, both physically and perceptually. That is a fact of development.

28. Our framework for the plan is as follows.

- Public access rights should apply unimpeded across the whole site, subject only to any statutory limitations under s6 or to the normal restraint that would be expected under the Scottish Outdoor Access Code of persons exercising access rights.
- The access plan proposed under draft condition 32 should take an integrated approach to how all sectors of the public will use the whole area from the Country Park to the resort.
- The loss of general access rights over land that will be allocated to golf should have fair and reasonable compensatory access provision, for the general

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<sup>21</sup> Core document C9, paras 20-22

<sup>22</sup> Core document A1. p.38

<sup>23</sup> Core document A2, Chapter 3 p35

public interest, with particular concern for residents who live close to the development.

- Detailed site-design and consents on reserved matters should ensure that limitations on accessibility are not used to debar the general public.
- There should be no provision or development for recreation on the seaward side of the courses that impinges on or devalues the quality of experience enjoyed by people participating in quiet open-air recreation on the adjacent coast.
- The resolution of problems arising from the interaction of access rights and the operation of the development should be through discussion and consensus, primarily through the local authority and its local access forum, but involving a wider community of interest – local and national bodies, as required.

29. We suggest the following as a revised condition of consent to any development.

***Revised condition 32.***

*Prior to the submission of any reserved-matters application, a plan will be prepared to the satisfaction of the planning authority, which sets out both the broad approach and the details of how the developer will meet its obligations under section 3 of the Land Reform Act. This plan will ensure that ensure that public rights of access are not subject to unreasonable interference over the development area, and it should be prepared with the involvement of the relevant recreational and community interests. In particular, the plan should:*

- *describe action to compensate for losses arising from conversion of land to golf course use*

- *integrate provision for access across all sectors of the public who are participating in open-air recreation – those at the resort, the visiting public and local residents;*
- *show any routes proposed for promoted public access, and provide details on how these routes will be constructed and implemented;*
- *provide details of how multi-use access (cyclists, horse-riders and all ability use) will be accommodated;*
- *provide details and specifications for the provision of ancillary facilities such as parking, information boards and way-marking;*
- *provide details of a maintenance regime for the foregoing, including a mechanism for liaison over access with the local authorities, local community interests and the local access forum, as appropriate;*
- *describe in general terms how access might be affected by any special events taking place at the resort;*
- *describe in general how the needs of any community events that impinge on the development area will be accommodated; and*
- *address how access will be accommodated during the construction phase.*

*Reason: In order to promote compliance with Part 1 of the Land Reform (Scotland) Act 2003.*

30. In addition, we think that a new condition (or an addition to an existing condition – either 9 or 32) should require that:

- *there should be no physical development seaward of the golf courses, nor the provision of any recreation activities by the developer there that would detract from the quality of experience enjoyed by those participating in quiet open-air recreation activities on the adjacent shore.*

*Reason: In order to safeguard future public enjoyment of the area.*

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John W Mackay

14 May 2008