

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997
TOWN AND COUNTRY PLANNING (NOTIFICATION OF APPLICATIONS) (SCOTLAND)
DIRECTION 2007

PUBLIC LOCAL INQUIRY

INTO

**OUTLINE APPLICATION FOR GOLF COURSE AND RESORT DEVELOPMENT
ON LAND AT MENIE HOUSE, BALMEDIE, ABERDEEN**

STATEMENT OF CASE

On behalf of

SCOTTISH NATURAL HERITAGE

(DPEA REFERENCE: CIN/ABS/001)

5th May 2008

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PROVISIONAL

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1. Introduction

- 1.1 This is a Statement of Case made under Rule 9 of the Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997 as amended. It gives particulars of the case which Scottish Natural Heritage (SNH) intends to make at the public local inquiry into an outline application by Trump International Golf Links Scotland (TIGLS), for the development of a golf course and resort development at Menie House, Balmedie, Aberdeen ("the Application").
- 1.2 The Application was called in by Scottish Ministers on 4 December 2007.

2. Role and Responsibilities of Scottish Natural Heritage

- 2.1 SNH is a non-departmental public body, established in April 1992 by the Natural Heritage (Scotland) Act 1991, ("the 1991 Act"). The general aims and purposes of SNH, are to:
 - secure the conservation and enhancement of the natural heritage including its flora and fauna, geological and physiographical features, and its natural beauty and amenity;
 - foster the understanding, appreciation and enjoyment of the natural heritage in Scotland.
- 2.2 The 1991 Act also stipulates that SNH shall "*have regard to the desirability of securing that anything done...in relation to the natural heritage of Scotland, is undertaken in a manner which is sustainable*" (section 1 (1)) and shall, in exercising its functions, take into account as appropriate *inter alia* the need for social and economic development and actual or possible ecological and other environmental changes to the natural heritage.

3. The Application

- 3.1 Solicitors for TIGLS confirmed by letter on 17 April 2008 addressed to the DPEA that the proposed development ("the Development") comprises:
 - I. two x eighteen hole golf courses;
 - II. a golf clubhouse;
 - III. a golf academy;
 - IV. a golf maintenance building and caddy shack;
 - V. a short game area and driving range;
 - VI. a 450 unit resort hotel;
 - VII. a conference centre and spa;
 - VIII. 36 golf villas;
 - IX. 950 holiday homes in four blocks;
 - X. accommodation for 400 staff;
 - XI. parking areas and access roads; and
 - XII. 500 private residential houses.

- 3.2 The Development is partly sited within the southern part of the Foveran Links Site of Special Scientific Interest ("the SSSI"); is 3km south from the Ythan Estuary, Sands of Forvie and Meikle Loch Special Protection Area ("the SPA"); and extends onto ground south of the SSSI which, although not formally notified, is also of SSSI quality and of high biodiversity value. The Development also extends onto habitats listed as Annexe 1 Habitats in the EU Habitats Directive.

4. The Consultative Process

- 4.1 In summary, and as set out in the main response letter of 30 May 2007 and reiterated in our supplementary response letter of 16th August 2007, although acknowledging the potential to construct a single championship course on adjacent land within the Development site, SNH objected to the development as currently proposed on the following grounds:-

- (i) Adverse impacts upon the SSSI and upon coastal habitat south of the SSSI recognised in the Environmental Statement as of SSSI quality and to Annex 1 Habitats and biodiversity;

We also raised the following points of concern:

- (ii) insufficient information to advise whether there was likely to be a significant effect on the SPA;
- (iii) insufficient information to determine whether there would be adverse effects on bats and otters, both European Protected Species; and
- (iv) insufficient information to determine whether there would be adverse impacts on badgers.
- (v) landscape and visual impact, impacts caused in respect of access and recreation and related policy and sustainability assessment issues.

- 4.2 Elements (ii) to (v) inclusive can be updated as follows:

- (ii) SNH has advised Aberdeenshire Council (letter of 12 November 2007) and DPEA (letter of 25 January 2008) that there is likely to be a significant effect on the qualifying interests of the SPA and that in consequence an appropriate assessment is necessary under the provisions of Regulation 48 of the Conservation (Natural Habitats &c.) Regulations 1994 (as amended). A revised draft appropriate assessment appraisal report prepared on behalf of TIGLS has been recently submitted to SNH for its consideration. Without anticipating the final decision, there is a reasonable expectation that SNH will be able to advise Scottish Ministers that if certain conditions / legal agreement are imposed, there will be no adverse effect on the integrity of the SPA.

- (iii) By letter dated 16 August 2007 SNH have now advised that its concern in relation to possible impacts to otters and bats has, following receipt of further information, been withdrawn.
- (iv) In similar fashion SNH will be advising in writing that its concern in respect of badgers is withdrawn.
- (v) SNH will not offer to the Inquiry any oral evidence on the matters listed under this bullet point number, but will rely on its consultative responses and a further written submission lodged prior to 21 May 2008.

4.3 In conclusion therefore the oral evidence to be presented by SNH to the Inquiry will be limited to [i].

5 Scope of Evidence

5.1 Geomorphology and Coastal Processes

5.1.1 The SNH witness will describe the geomorphological interests of Foveran Links SSSI with a specific assessment of that part which falls within the Development at Menie Links, and the dynamic processes and vulnerabilities underpinning those special interests. The interests within the Menie Links part of the SSSI will be compared with the special interests in the remainder of Foveran Links SSSI, with other designated and undesignated sites in Northeast Scotland and the broader sand dune resources of Great Britain. The witness will also provide consideration of the geomorphological interests of the dune area within the Development which occur outwith the SSSI.

5.1.2 In its evidence SNH will explain how the development will have adverse impacts on the geomorphological interest of the coastal sand dunes within the Development, and the conservation significance of those impacts

5.1.3 The potential impacts of future climate change scenarios for the sand dune systems and the processes supporting them will be described, with comment on the potential implications for the Development in this part of the application area. Consideration will also be given to the likely efficacy of the applicant's proposed mitigation/compensation measures.

5.2 Ecology and Mitigation

5.2.1 The SNH witnesses will assess the conservation importance of the impacts of the Development on the habitats within the coastal strip of the development site, including the SSSI area. This will include the conservation importance of the impacts upon the habitats within the SSSI, and also upon those sand dune habitats which occur within the

Development site, both on and off the SSSI, which are listed as Annex 1 habitats within the EU Habitats Directive and are included within the UK Biodiversity Plan for Sand Dune Habitats. An explanation will also be provided of the interdependence and reliance of these habitats on the dynamic geomorphological processes, and the consequences of the Development on these interdependencies.

5.2.2 An assessment of the likely efficacy of the proposed mitigation and compensation measures proposed by the applicants will be provided.

5.3 Legislative and Policy Requirements

5.3.1 It is proposed that SNH will provide written evidence in relation to the status of the SPA under European legislation and highlight the duties placed on public bodies (including SNH, the Council and Scottish Ministers) and individuals under inter alia the Conservation (Natural Habitats &c.) Regulations 1994 (as amended). The implications of development proposals affecting Natura sites and the tests which must be applied will be explained. Emphasis will be placed on the roles and requirements of competent authorities when considering development proposals affecting European Sites. The role of SNH in providing advice to competent authorities will be explained. This written evidence will only be included if at the time of exchange of precognitions there are still any unresolved matters in relation to the current ongoing advice with respect to the appropriate assessment appraisal provided by the applicants.

5.3.2 SNH will also provide written evidence on the legislative and policy requirements that apply to proposals affecting habitats listed on Annex 1 of the EU Habitats Directive, and where such habitats occur outwith designated Special Areas of Conservation.

5.3.3 SNH will also provide written evidence on the domestic legislative and policy requirements that apply to proposals affecting SSSIs. This will be explained and applied to this application by reference to the oral evidence presented by the SNH witnesses. The role of SNH in relation to the designation and protection of SSSIs will be provided along with our advice in relation to planning policy, including that contained in National Planning Policy Guidelines 14 – Natural Heritage, will also be included as written evidence. An explanation of the relevance of the Biodiversity Duty arising from the Nature Conservation (Scotland) Act 2004 will also be given.

6. **Length of Case**

Although witnesses will read from summary precognitions, technically complex issues such as the geomorphological processes and the interdependency of the ecology on those processes may extend the cross

examination to an unknown length. SNH would however expect its case to last the order of 3 days.

7. Witnesses

7.1 The case for SNH will be presented by Mr David Cockburn and Ms Louise Cockburn of Archibald, Campbell and Harley WS.

7.2 SNH expect that evidence at the public inquiry will be given by:

- Dr Jim Hansom, Reader - Geographical and Earth Sciences, Glasgow University
- Mr Stewart Angus, Policy and Advice Manager, Coastal and Marine Unit of SNH
- Mr Paul Rooney, Senior Lecturer – Science and Social Sciences Deanery, Liverpool Hope University

SNH reserves the right to substitute and/ or add to the witnesses.

8. Productions

SNH notes the preliminary list of core documents offered by Aberdeenshire Council. In addition to those documents offered as core documents SNH is likely to make reference to *inter alia* the following documents:

Legislative Framework

The Conservation (Natural Habitats, &c.) Regulations 1994

The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2004

The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 2007

Nature Conservation (Scotland) Act 2004

The Wildlife and Countryside Act 1981

National Planning Policy and Guidance

National Planning Policy Guidance NPPG 14: Natural Heritage. Scottish Office January 1999

Circular 6/95 (as amended June 2000). Scottish Executive June 2004

Development Plans and other Council Policy / Guidance

North East Scotland Together, (NEST)

Aberdeenshire Local Plan

Application Documents

TIGLS Environmental Statement March 2007

Supplementary Information July 2007

Supplementary Information October 2007

Revised Golf Course Layout April 2008

SNH Formal Responses

SNH response to Aberdeenshire Council dated 30th May 2007 regarding the application

SNH response to Aberdeenshire Council dated 16th August 2007 regarding the application

SNH response to Aberdeenshire Council dated 4th September regarding application APP/2006/4608

SNH response to Aberdeenshire Council dated 12th November regarding the application

SNH letter to DPEA dated 25th January dated regarding the application

Notes:

It is assumed that other parties will also be referring to some of the above. SNH will cooperate with parties to establish a Core Document List and identify who is to produce its components. Where the above list overlaps with that of Aberdeenshire Council then SNH would suggest that they become Core Documents that SNH can circulate.

SNH reserves the right to amend the list.

9. Parties

Electronic copies of statements, productions and precognitions will be circulated to the following:

The Reporters: Colin Bell, DPEA, 4 The Courtyard, Callendar Business Park, Falkirk, FK1 1XR colin.bell@scotland.gsi.gov.uk

The applicants: Ann Faulds, Dundas and Wilson CS LLP, Saltire Court, 20 Castle Terrace, Edinburgh, EH1 2EN ann.faulds@dundas-wilson.com

The Council: Sonya Galloway, Planning & Environmental Services, Aberdeenshire Council, 45 Bridge Street, Ellon, AB41 9AA sonya.galloway@aberdeenshire.gov.uk

RSPB Scotland: Dunedin House, 25 Ravelston Terrace, Edinburgh, EH4 3TP
anne.mcall@rspb.org.uk

Councillor Martin Ford: cllr.m.ford@aberdeenshire.gov.uk

Ramblers Association Scotland: Kingfisher House, Auld Mart Business Park, Milnathort, Kinross, KY13 9DA scotland@ramblers.org.uk

Aberdeen and Grampian Chamber of Commerce, Greenhole Place, Bridge of Don, Aberdeen AB23 8EU info@agcc.co.uk

Transport Scotland: Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF malcolm.forsyth@scotland.gsi.gov.uk

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Public Local Inquiry website: menieinquiry@aberdeenshire.gov.uk

Hard Copies will be forwarded to:

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