

**NOTE OF PRE-EXAMINATION MEETING ON 31 OCTOBER 2018
PLANNING APPLICATION: PROPOSED DEVELOPMENT OF 18 HOLE GOLF
COURSE ON LAND NW OF EMBO COMMUNITY CENTRE, SCHOOL STREET,
EMBO, KNOWN AS COUL LINKS**

Introduction

1. The pre-examination concerned the planning application by Coul Links Ltd ('the applicants') for the proposed development of an 18-hole golf course at Coul Links, north of the village of Embo. The proposal includes the erection of clubhouse, renovation of existing buildings for maintenance facility, pro-shop, caddy hut, workshop, administration building, information booth, and formation of new private access from the C1026 road.
2. The planning application was made to The Highland Council, but was called in by the Scottish Ministers for their own determination "*as the proposal raises issues of national importance in relation to natural heritage issues and its compliance with SPP [Scottish Planning Policy] which require further scrutiny at a national level.*"
3. David Liddell and Timothy Brian, who are Inquiry Reporters within the Scottish Government's Planning and Environmental Appeals Division (DPEA), have been jointly appointed by Scottish Ministers to conduct a public inquiry, and to prepare a report and recommendation to them as to whether to allow or reject the proposals.
4. The purpose of the meeting was purely to discuss the arrangements and procedures to be followed in the consideration of the planning application, and not to hear any views or evidence on the proposals. The meeting was recorded so that anyone not able to attend the meeting would be able to view the proceedings on the DPEA website. Unfortunately, due to the corruption of a data file, only the second part of the meeting is available to view. It is intended that the Coul Links inquiry will also be webcast.

Procedural matters

5. The procedures for planning appeals and applications called in for determination by Scottish Ministers are explained in the Town and Country Planning (Appeals) (Scotland) Regulations 2013, and in Circular 4/2013: Planning Appeals, which can be viewed through the DPEA website.
6. It is for the reporters to decide in each case whether any further procedure is required. Where they require further information before making a decision or a recommendation to Scottish Ministers, or where they would like to test the evidence of the parties or particular elements of their case, they will decide which issues they require a further procedure on. In practice, the reporter can seek further written evidence on certain issues, and might want others to be explored through the hearing process or the inquiry process, or both.
7. A hearing session is essentially an informal round table session chaired by the reporter, whereas an inquiry session is a more formal, adversarial procedure in which evidence is led by witnesses for each side, who are open to cross examination by representatives of the opposing side.

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Choice of procedures

8. The Reporters confirmed that their consideration of the case is not restricted to the matters referred to in the direction by Scottish Ministers. On the basis of their initial review of the file, they had identified a number of issues/topics that require further procedure, which were listed at Annex A to the agenda for the meeting. Of those, it appeared that certain key issues would need to be addressed at a more formal inquiry session, due to the number of parties involved, and because some of the topics would lend themselves to cross-examination.

9. The applicants, Not Coul and the Save Coul Links Conservation Coalition (see paragraph 23 below) argued that it was essential for the inquiry to consider national policy (including socio-economic policy) as well as development plan policy. The Reporters accept the point made by the parties, and propose to expand the scope of the further written submission accordingly. If necessary, they will arrange an additional inquiry or hearing session to address any unresolved national policy matters.

10. In response to a question from the representative of Scotways (and Ramblers Scotland), the Reporters agreed that the socio-economic impacts under discussion should include public access to, and enjoyment of, the links.

11. However, the Reporters are not persuaded that an inquiry or hearing session is justified on landscape and visual impact, having regard to the material which is already before them.

12. The applicants asked for clarification as to what is meant by “impact on the water environment”. Having considered the issue, the Reporters would invite the parties to concentrate under that heading on the particular matters which are in dispute between the parties.

13. Accordingly, the following issues will be considered at the **inquiry sessions**:

A. Impacts on natural heritage and protected species – including:

- effect on Dornoch Firth & Loch Fleet Special Protection Area (and Moray Firth proposed Special Protection Area)
- impact on Loch Fleet Site of Special Scientific Interest & Ramsar Site
- purpose and significance of above designations
- impact on the water environment
- (short term and long term) impact on sand dune-related habitats
- risk of habitat fragmentation
- effect on natural dune and coastal processes
- likely effect on breeding and other birds and other fauna and flora
- impact on existing woodland
- proposed mitigation measures, including translocation of habitat
- habitat management and control of invasive species

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B. Socio-economic impacts – including:

- significance of golf tourism
- net economic impact during construction period
- net economic impact when golf course in operation – additional employment and expenditure in the area
- impact on local recreation and tourism, including public access to, and enjoyment of, the links
- other socio-economic impacts

14. There will also be an informal **hearing session** to consider what conditions and/or legal agreements would be required if permission was granted for the proposed development. This is standard procedure at inquiries, and does not pre-judge the outcome.

15. Parties are also invited to make **written submissions** on the extent to which the application proposals are consistent with relevant provisions of: (a) national policy; and (b) the Highland-wide and Caithness and Sutherland Local Development Plans, and relevant statutory supplementary guidance.

16. The Reporters are satisfied that they already have sufficient evidence on all the other matters which are relevant to the case, including landscape and visual effects, traffic and transport and cultural heritage.

17. If a topic is not earmarked for an inquiry or hearing session, or further written submissions, it does not signify that the Reporters regard it as unimportant – it means that they already have enough written material on the topic, or that it is an issue best assessed on site, rather than at an inquiry.

18. All of the written material already lodged, including the numerous letters of support and objection, will be fully taken into account in any case, so it is not necessary for an individual or body to take part in the inquiry to have their views considered.

Participation of interested parties in the inquiry/hearing sessions

Inquiry session

19. The applicants will be represented at the inquiry session by Ailsa Wilson QC, instructed by Moray Thomson (lead contact for correspondence) and Steven Stewart, Shepherd & Wedderburn LLP. Ms Wilson will call 5 witnesses at the natural heritage session who will cover the topics of ecological impact assessment, botany, hydrology, coastal processes and dune habitats, and a further 2 witnesses at the socio-economic impact session.

20. Scottish Natural Heritage (SNH), represented by Peter Ferguson of Harper Macleod LLP (contact for correspondence), may instruct counsel for the inquiry

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session on natural heritage, who will lead 2 witnesses at the natural heritage session giving evidence on coastal habitats and ecology, and translocation of habitats.

21. The Not Coul objection group, including the British Lichen Society, will be represented at the inquiry sessions by John Campbell QC and Simon Crabb, Advocate, who are instructed by Tom Dargie of Not Coul (contact for correspondence). Not Coul will have 4 witnesses at the natural heritage session (ecology, hydrology, coastal processes and lichens), 2 at the socio-economic impact session, and a further 2 witnesses if there is a hearing or inquiry session on policy matters. The Botanical Society of Scotland (represented by Julia Wilson), and Peter Batten may join the Not Coul group at the inquiry.

22. The Save Coul Links Conservation Coalition (comprising RSPB Scotland, Scottish Wildlife Trust, National Trust for Scotland, Marine Conservation Society, Plantlife, Buglife and Butterfly Conservation Society) will be represented by Neil Collar, Brodies LLP. Correspondence should be directed to Kate Bellew at RSPB Scotland. The Coalition is likely to present 5 witnesses on invertebrates, habitats, plants, ornithology and the international importance of the site. Highland Biological Recording Group, represented by Murdo Macdonald, may also join the Coalition at the inquiry.

23. Scotways will be represented at the socio-economic impact session by John Mackay (contact for correspondence). Scotways hope to combine their evidence at the inquiry with Ramblers Scotland, whose representative is Helen Todd (contact for correspondence). They also intend to make a written submission on conditions.

24. Embo Trust, which is represented by Councillor Jim McGillivray (contact for correspondence), propose to arrange a coalition in support of the application, to take part in the socio-economic session of the inquiry, which would include Dornoch Community Council and Embo Amateur Football Club.

25. Tain and District Field Club may wish to join with like-minded objectors at the inquiry.

26. Valerie Smith proposes to give evidence on natural heritage, but may join the Not Coul case.

27. Colin Taylor, Farm Manager, Coul Farm wishes to give evidence on natural heritage, but he may decide to collaborate with other supporters.

Hearing session

28. The applicants, the council, SNH, Not Coul, the Coul Links Conservation Coalition and Embo Trust propose to take part in the hearing session to consider the proposed conditions and any legal agreements.

29. The Highland Council will be represented at the hearing session by Karen Lyons, council Solicitor (contact for correspondence) or by leading counsel.

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Further written submissions

30. The applicants, the council, SNH, Not Coul, the Coul Links Conservation Coalition, and probably Scotways/Ramblers Scotland wish to make further written submissions on the policy matters described in paragraph 15 above. SNH and the Coalition will confine their contribution to national policy.

Time requirements

31. On the basis of the time estimates of the parties it appears that the inquiry will last for 3-4 weeks.

Date and venue of inquiry/hearing sessions

32. The inquiry/hearing sessions will be held on consecutive days within the following dates:

- 26 February – 1 March 2019;
- 5-8 March 2019;
- 12-15 March 2019; and
- 19-22 March 2019 (if necessary).

33. The inquiry will sit each week from Tuesday to Friday (to allow the parties to prepare and travel on the Monday) until the proceedings are completed, and will start on 26 February 2019. The inquiry and hearing sessions will sit each day from 10 am until around 4.30 to 5 pm, with a break for lunch of about an hour starting at a convenient time between 12.30 and 1 pm. Depending on the progress of the proceedings, the start time may be brought forward to 9.30 am with the agreement of the parties.

34. DPEA are currently investigating the potential venues in the area where the inquiry could be held, including the Carnegie Hall in Clashmore where the pre-examination meeting was held. The inquiry venue requires to be large enough to accommodate the likely high level of interest in the inquiry, and needs to be available for the lengthy inquiry period, accessible for those taking part, and (ideally) suitable for live webcasting of the proceedings. Parties will be notified when an appropriate venue has been secured.

Hearing of the evidence – procedures for hearing and inquiry sessions

35. The running order of the parties at the inquiry will be agreed at the start of the inquiry, when their evidence has been lodged.

36. During evidence-in-chief each witness at the inquiry session will be invited to read his/her precognition (written statement of evidence). Then the witness will be subject to cross-examination by the opposing parties, following which there will be an opportunity for re-examination by the witness's advocate or representative. The

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parties are asked to co-operate with each other to avoid unnecessary or repetitive cross-examination.

37. When all of the evidence is complete, each participating party will be given the opportunity to make a closing statement. Closing statements will be heard in the reverse of the order in which the evidence is presented, which means that the applicants' closing statement will be heard last. Closing statements by the main parties should be lodged in typed form before they are read at the inquiry. Alternatively, with the agreement of the parties it may be decided to exchange closing statement in writing after the inquiry, in accordance with a fixed timetable.

Arrangements for the prior exchange of documents

Exchange of documents

38. The inquiry process is based on the principle of prior disclosure – every party is required to disclose its case to the other parties well in advance of the inquiry, in accordance with a strict timetable.

39. Therefore, all those taking part in the inquiry session are required to lodge inquiry statements by 5 December 2018, setting out the particulars of the case they propose to make on the matters specified in paragraph 13 above, the documents to be relied upon, and a list of anyone who is to speak at the inquiry session on their behalf, including the matters to be covered by each person and their relevant qualifications.

40. By the same date (5 December 2018) the parties should lodge further written submissions on the planning policy matters referred to in paragraph 15 above, including a statement of agreed matters (to be initiated by the applicants, and involving the other relevant parties) which highlights the areas of agreement and disagreement between the parties.

41. Any documents to be referred to at the inquiry should be submitted at least 28 days before the start of the inquiry (i.e. 29 January 2019). Each witness giving evidence at the inquiry session will need to lodge a precognition (written statement of evidence) at least 14 days before the start of the inquiry (i.e. 12 February 2019). All precognitions should be a maximum of 2000 words. Witnesses should not attach as appendices to their precognitions documents which other parties have not seen, as these documents should be lodged as documents in the normal manner.

42. The council has already tabled its draft schedule of conditions. The applicants and any other parties wishing to lodge an alternative schedule of conditions, or comments on the council's schedule, should do so by 29 January 2019. That would allow the applicants to produce an annotated version of the proposed conditions (highlighting any agreed changes or remaining areas of disagreement) by 12 February 2019.

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43. In preparing evidence for the inquiry and hearing sessions, the main parties will consider the scope for further agreed statements, for example on technical matters, so that the sessions can focus on the matters in dispute which are relevant to the proposals before Scottish Ministers. Any such studies or agreed statements should be lodged by 5 December 2018.

44. In order to help the parties to prepare their cases, the council and the applicants will provide an indexed list of, and will produce copies of, all of the extant application drawings and associated documents, and extant environmental information, by 21 November 2018.

Deposit of documents

45. All parties are encouraged to submit their documents and precognitions electronically, so they can be readily viewed on the DPEA website by other parties. It is also helpful for lists of documents, inquiry statements, precognitions, and draft conditions to be submitted as Word documents, so they can be incorporated as appendices to the report if appropriate.

46. In addition, hard copies of all the relevant material connected with the case will be placed on deposit at Dornoch Library, 8 High Street, Dornoch where they can be referred to by members of the public. The deposit copy will include the planning application and supporting documents (including representations to the planning application), together with all the inquiry papers lodged by the main parties. Parties are requested to submit a hard copy of each of these to the council for that purpose. The council will bring the deposit set of documents to the inquiry/hearing sessions when they open.

Site inspections

47. The Reporters have already walked over the application site to familiarise themselves with the area. Either during the inquiry/hearing sessions, or (more likely) at the end of the proceedings, they will conduct an accompanied site inspection, which the parties will be able to attend.

Other matters

Role of SEPA

48. The Reporters drew the parties' attention to a letter received on 24 October from Dr Dargie of Not Coul, which asked the reporters to request that Scottish Environment Protection Agency (SEPA) participate in the pre-examination meeting and in the public inquiry itself. SEPA, who do not object to the proposed development subject to the imposition of certain conditions, had indicated previously that they did not propose to take part in the proceedings. In response to the recent letter from Not Coul, SEPA have reaffirmed that they do not intend to participate in the proceedings.

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49. At the meeting Mr Campbell, on behalf of Not Coul, advised that he would make a formal application asking the Reporters to request SEPA's attendance at the inquiry to explain their position, and failing that to require SEPA to attend under the provisions of section 265 of the Town and Country Planning (Scotland) Act 1997. Ms Wilson indicated that the applicants will oppose such a request, which they regard as unjustified.

50. Mr Campbell subsequently advised that, in fact, no such application would be made at the present time. The Reporters note that SEPA has not objected to the development (subject to the imposition of conditions) in respect of impacts from the development relevant to their interests. Whilst other parties disagree about such impacts, and may wish to present evidence to the inquiry on them, at present the Reporters are content that they understand SEPA's position in respect of the proposal. Therefore they do not intend to invite SEPA to participate.

Environmental impact assessment

51. The applicants agreed to produce copies of the scoping request and the scoping opinion in relation to this case, which in the opinion of the reporters may be helpful to them and to the parties.

Ramsar designation

52. RSPB Scotland has raised the question of the need for an 'appropriate assessment' (similar to what would be required for a Natura site under the Habitats Regulations) of the impacts on the Dornoch Firth and Loch Fleet Ramsar site. SNH are in dialogue with the applicants on the matter and will set out their position on the matter in writing by 21 November 2018.

DPEA contact

53. Anyone wishing to contact the DPEA about the application or the inquiry should phone the case officer Fiona Manson on 0131 244 6915 or email her at Fiona.Manson@gov.scot. DPEA's address is 4 The Courtyard, Callendar Business Park, Falkirk FK1 1XR, but the best way to keep in touch with developments in the case is via the DPEA website: www.scotland.gov.uk/Topics/Planning/Appeals.

Note of the meeting

54. This note is being sent to all of those who have expressed an interest in the case and those who have signed the attendance list, and will be posted on the DPEA website. **Parties now have 14 days to confirm whether they wish to take part in the inquiry/hearing sessions.** The proceedings will also be advertised in the local press.

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55. The note comprises a procedure notice for the purposes of the appeals regulations.

T. Brian – 5 November 2018