



<b>Case reference</b>	NA-HLD-086
<b>Application details</b>	Development of 18 hole golf course, erection of clubhouse, renovation of existing buildings for maintenance facility, pro shop, caddy hut, workshop, administration building, information booth, formation of new private access from C1026
<b>Site address</b>	Land 1700M NW of Embo Community Centre, School Street, Embo
<b>Applicant</b> <b>Determining Authority</b> <b>Local Authority Area</b>	Coul Links Ltd The Highland Council (ref: 17/04601/FUL)
<b>Reason(s) for notification</b>	Category 2 (objection by Government Agency) (SNH)
<b>Representations</b>	2363 + letters to SG and Ministers
<b>Date notified to Ministers</b> <b>Date of recommendation</b>	4 July 2018 16 August 2018
<b>Decision / recommendation</b>	Call in

## Description of Proposal and Site:

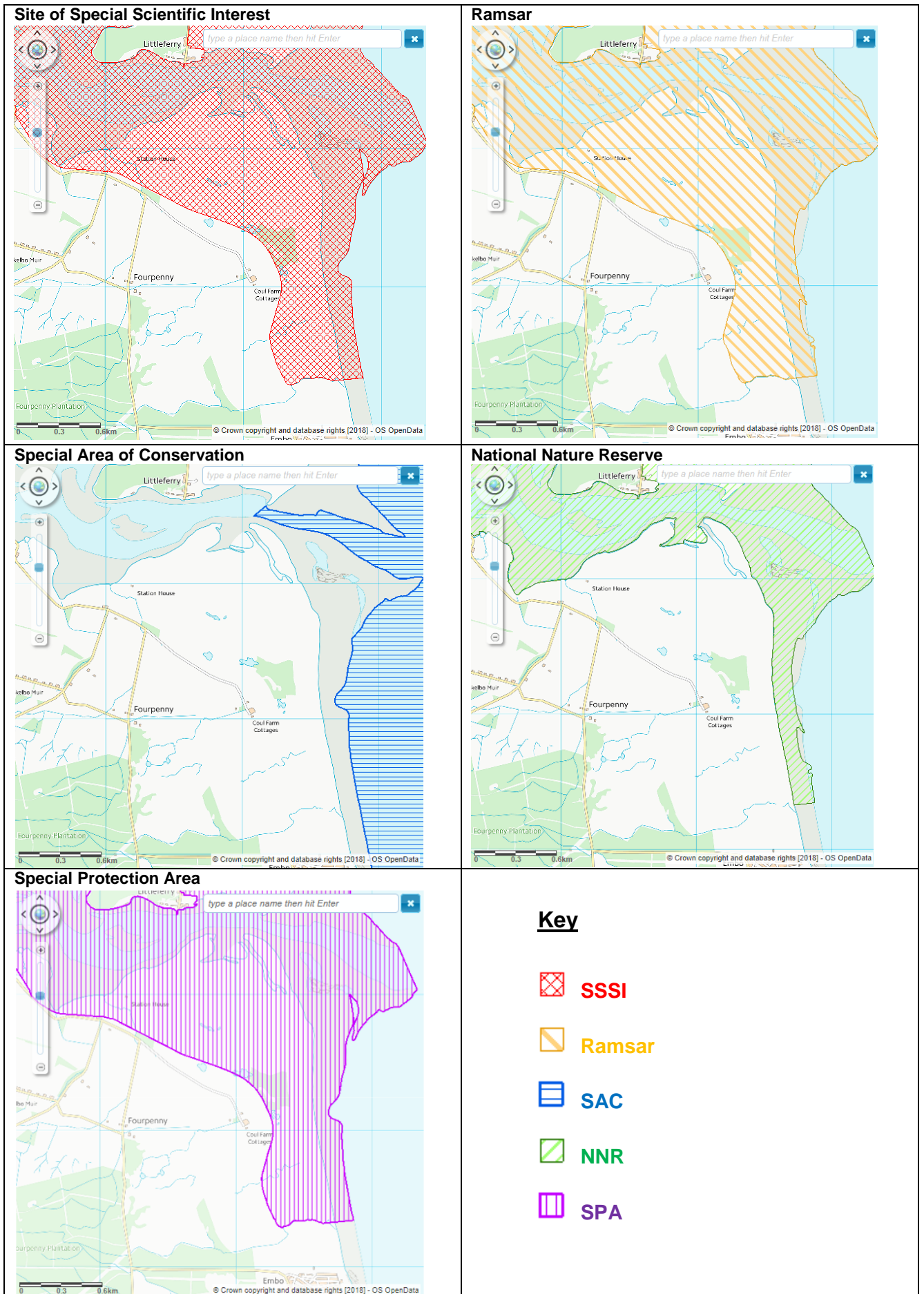
- This notified application seeks full planning permission for the construction of an 18 hole golf course, along with the erection of a clubhouse, the renovation of existing buildings to form a maintenance facility, along with a pro shop, caddy hut, workshop, administration building, and information booth. A new private access to the site would be constructed, and would connect the site to the existing road network. A car park for 85 cars would be constructed. Publicly accessible site accesses would be constructed, and interpretation boards erected.
- The application site is located to the north of Embo village, near Dornoch. It comprises a total area of 328.4 hectares (811 acres) of coastal land. To the north and north west of the site is Loch Fleet. East of the site is the North Sea. The site comprises areas of improved pasture, areas of dynamic sand dune, and areas of farmland. There are patches of scrub, of dune heath and of woodland.
- The proposal engages with a number of natural heritage designations at national, European and international level: the Loch Fleet Site of Special Scientific Interest (SSSI) notified in accordance with the requirements of the Nature Conservation (Scotland) Act 2004; the Dornoch Firth and Loch Fleet Special Protection Area (SPA) classified under the requirements of the EU Birds Directive; and the Dornoch Firth and Loch Fleet Ramsar Site designated under the requirements of the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat. The extent to which these designations overlap and interact, including in terms of their geographical extent and their notified habitats and species, is less than straightforward. The SSSI is 1,232 ha, the Ramsar site is 7,836 ha and the SPA is 7,856 ha.

- Scottish Natural Heritage (SNH) prepared mapping of the application site showing the proposal in relation to the SSSI boundary:

**Coul Links Golf Course – Application submitted October 2017**



- Designation Mapping of the site and surroundings (via SNH SiteLink):



## **EIA Development:**

- The proposal was subject to an Environmental Impact Assessment Screening and Scoping Opinion in terms of the EIA Regulations then in force (The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011). The Council provided a screening response.
- The application was supported by an Environmental Statement (ES), published on the Council *PublicAccess* website for this planning application. The ES and its appendices set out the detailed consideration of the site and the effects of the development. It includes
  - a Non-Technical Summary
  - Environmental Statement
  - Description of the Development
  - Planning Policy Context
- Annexes to the ES covered various matters, including ornithology (annex A), ecology (annex B), hydrology and hydrogeology (annex C), landscape and visual amenity (annex D), access, traffic and transport (annex E), cultural heritage (annex F). An addendum to the Environmental Statement set out a Landscape and Visual Impact Assessment (LVIA) report, along with LVIA visualisations of the development.
- Objectors have highlighted that within the ES erroneous reference is made to the “EIA Regulations 1999” (for example on page 32); however it is noted that the remainder of the extensive document references the correct regulations applicable to the site, and generally follows the correct methodology.

## **Consultations and Representations:**

- Highland Council received 2363 representations at the point of decision. At the previous committee meeting 2007 public comments had been received regarding the proposal. These comprised a total of 1594 objections and 349 support comments. A further 64 representations did not specify if they were supporting or objecting to the application.
- The Dornoch Area Community Council supported the proposals.
- SNH object due to the impact of the proposed development upon the sand dune system and dune habitat present on parts of the site, and the specific impacts on the Dornoch Firth and Loch Fleet Ramsar Site, and the Loch Fleet SSSI.
- RSPB Scotland objects to the proposal, citing concerns that the development is not in accordance with international obligations, specifically the Ramsar Convention on Wetlands of International Importance and United Nations sustainable development goals. RSPB Scotland has expressed concerns over due process being followed by the Planning Authority. We are also aware of a RSPB petition against the development. At the time of the finalisation of this report, no petition had been lodged with us, however the petition displayed on the RSPB website noted over 12,600 signatures opposing the development.
- The International Union for Conservation of Nature (IUCN) World Commission on Protected Areas (WCPA) object as the proposal would destroy the integrity of rare dune habitats and lead to irreversible biodiversity loss.
- Following notification, Scottish Government Natural Resources Division were consulted. Natural Resources colleagues note Scottish Planning Policy (SPP – paragraph 211) says that ‘all Ramsar sites are also Natura 2000 sites and/or Sites of Special Scientific Interest and are protected under the relevant statutory regimes’.

- They advise that there are matters which would benefit from further examination and clarification, primarily in relation to an assessment of the effect of the proposal on the integrity of the Dornoch Firth and Loch Fleet Ramsar site overall. They advise that this could be achieved by undertaking the equivalent of a HRA and that much of the work to inform such an assessment has been undertaken.

### **Assessment:**

#### Development Plan Position

1. The Highland wide Local Development Plan was adopted April 2012. The Caithness Local Plan was adopted June 2010 and continues in force as at April 2012.
2. The replacement for the Sutherland Local Plan, the Caithness and Sutherland Local Development Plan (CaSPlan), has reached an advanced stage. It was approved as a Proposed Plan on 4 November 2015. The plan is currently before Scottish Ministers. One respondent to the Plan sought a specific, positive reference to the Coul Links proposal. The Council declined to include such a reference given the adequacy of the separate development management application process and the timing of the application submission, late in the Plan process. The Reporter in his conclusions on CaSPlan agreed with this approach.

#### **Issues for SG consideration**

3. The planning authority has considered in detail the material considerations with this case. Our role at this stage is to consider which level of Government should make the decision on the application. Where issues of national or international significance are present or require further examination, that may indicate that a decision by central rather than local government would be appropriate. The relevant issues with this case which could be nationally significant are environmental matters, and economic matters.

#### Environmental designations and issues

4. Scottish Government Natural Resources Division confirm that the proposal engages with natural heritage designations at a national (Site of Special Scientific Interest - SSSI), European (Special Protection Area - SPA<sup>1</sup>) and international (The Ramsar Convention on Wetlands of International Importance – ‘Ramsar’) level.

#### *Scottish Planning Policy*

5. The SPP sets out “planning permission should be refused where the nature or scale of proposed development would have an unacceptable impact on the natural environment. Direct or indirect effects on statutorily protected sites will be an important consideration, but designation does not impose an automatic prohibition on development.”
6. SPP advises “that planning authorities should apply the precautionary principle where the impacts of a proposed development on nationally or internationally significant landscape or natural heritage resources are uncertain but there is

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<sup>1</sup> The ‘Natura 2000’ network of nature protection areas in the European Union comprises SPAs and Special Areas of Conservation (SACs) designated respectively under the Wild Birds Directive and the Habitats Directive.



sound evidence indicating that significant irreversible damage could occur. The precautionary principle should not be used to impede development without justification. If there is any likelihood that significant irreversible damage could occur, modifications to the proposal to eliminate the risk of such damage should be considered. If there is uncertainty the potential for research, surveys or assessments to remove or reduce uncertainty should be considered.”

### *Designations*

7. The site includes part of The Loch Fleet SSSI. SPP states that developments can only be permitted that impact a SSSI where effects are clearly outweighed by social, environmental or economic benefits of national importance. The site comprises part of The Dornoch Firth and Loch Fleet Special Protection Area, which is protected for its range of non-breeding waterfowl and breeding osprey. Species impacts were considered by The Highland Council. The developers have set out a position to achieve Biodiversity Net Gains. These are detailed in full in the ES and the report on “Biodiversity Net Gains at Coul Links” by Dr Peter Cosgrove of Alba Ecology.
8. The developers noted the golf course will include 22.7 ha of tees, fairways and greens of which 14.0 ha are within the SSSI, 8.7 are outside the SSSI. The developers have committed to remediate a 5.7 ha felled tree plantation inside the SSSI which is environmentally compromised. They have also committed to expand the habitat adjacent to the SSSI via the purchase, remediation and management of 14.3 ha near Embo which is currently the source of significant invasive species migration onto the SSSI. The net result of these efforts is to offset the 14.0 ha of golf course within the SSSI with 20.0 ha of environmentally improved habitat all under the proposed Site Management Plan.
9. The site includes part of The Dornoch Firth and Loch Fleet Ramsar site, which is designated and protected because of its range of coastal features. The Ramsar Convention on Wetlands of International Importance, especially as waterfowl habitat, is an international treaty for the conservation and sustainable use of wetlands.
10. Scottish Government Policy is to apply the same level of protection to Ramsar sites as that which is afforded to designated Natura sites. Natura sites (Special Areas of Conservation and Special Protection Areas) are designated under the European Habitats and Birds Directive. The qualifying interests of the various environmental designations at this site differ. Most Ramsar sites in Scotland are linked to the Natura 2000 network - either as a Special Protection Area (SPA) or Special Area of Conservation (SAC). The majority of Ramsar sites are underpinned by Sites of Special Scientific Interest (SSSIs). The Convention includes various measures to respond to threats to the ecological character of Sites. The inclusion of a wetland in the List embodies the government’s commitment to take the steps necessary to ensure that its ecological character is maintained. The Ramsar Convention on Wetlands of International Importance is listed in Scottish Planning Policy as being a Key Document in terms of the Natural Environment. SPP states that all Ramsar sites are also Natura 2000 sites and/or sites of Special Scientific Interest and are protected under the relevant statutory regimes. Scottish Government policy is to apply the same level of protection to Ramsar sites as that which is afforded to designated Natura sites.

11. For Special Areas of Conservation (SACs) and SPAs that contribute to the Natura 2000<sup>2</sup> network of protected areas, SPP says that any development plan or proposal likely to have a significant effect on these sites which is not directly connected with or necessary to their conservation management must be subject to an 'appropriate assessment' of the implications for the conservation objectives. Such procedural considerations are commonly referred to as "Habitats Regulations Assessments" (HRA). SPP further states that such plans or proposals may only be approved if the competent authority has ascertained by means of an 'appropriate assessment' that there will be no adverse effect on the integrity of the site.
12. An Appropriate Assessment under The Habitat Regulations was carried out for the SPA site. However, an Appropriate Assessment was not undertaken for the Ramsar site. It will be necessary for an Appropriate Assessment for the Ramsar site to be carried out before the application is determined, to give effect to the Scottish Government policy position on Ramsar sites.

#### *Scottish Natural Heritage Position*

13. SNH withdrew holding objections on several matters, which were suitably addressed to their satisfaction. However, in specific relation to the impacts upon the Dornoch Firth and Loch Fleet Ramsar Site, and the Loch Fleet SSSI, SNH concluded that the adverse effects from the development would be likely to alter sand dune habitats resulting in permanent habitat change/loss. SNH ultimately maintained its final position of an objection to the application, concluding that the construction of the golf course would result in additional adverse effects on Ramsar and SSSI sand dune habitats, particularly Dune Slack and Dune Heath. SNH undertook a "Site Integrity Assessment for the Golf Course affecting the Loch Fleet SSSI" to reach this conclusion.

#### *Other Environmental Matters*

14. It is noted that concerns were highlighted by objectors regarding inaccuracies in the submitted environmental statement. A range of matters were raised by objectors, which were considered by the Council and SNH during the processing of the application.
15. The layout, siting and design of the golf course were given consideration. SNH has suggested revision to the proposed course layout since pre-application stage. The course layout could be altered to include more agricultural land, and reduce further or remove the impact upon dune slack and dune heath habitat, by bringing some or all of the course inland. However, the applicant wishes to create a traditional links golf course, which requires a site located largely within the dune system. Constructing a links golf course within a dynamic dune system, no matter how sensitively undertaken, will result in a degree of disruption to that dune system.

#### Economic matters

##### *Economic benefits*

16. The committee report summarised the position in terms of predicted economic benefit arising. The ES outlines details of an independent study. These figures

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<sup>2</sup> The 'Natura 2000' network of nature protection areas in the European Union comprises SPAs and SACs designated respectively under the Wild Birds Directive and the Habitats Directive

were disputed by objectors. Objectors provided an independent analysis of the economic benefit of the development. These found a much lower level of benefit.

### *Policy position*

17. The proposed course at Coul would result in a degree of local economic impact, and whilst the level of benefit is disputed between supporters and objectors, the expectation of some positive economic impact appears not to be disputed. However, SPP sets out that, development which affects a SSSI can only be permitted where any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, environmental or economic benefits of national importance.

### *National importance*

18. Determining whether the economic benefit from the development of a single golf course would be of national importance, and would outweigh the adverse environmental effects is a matter requiring further scrutiny.

### **Conclusion:**

Fundamentally, the key matter upon which this case relates is in terms of the construction of a new golf course, and all of the associated benefits which that would bring; and how that can be accommodated within sensitive, protected landscapes and habitats. The key issue for Ministers' consideration at this stage is whether the case raises issues of national significance:

- The site includes parts of national, European and international natural heritage designations and the construction of the proposed course could result in permanent loss of protected sand dune habitat, particularly dune heath and dune slacks, which may have species impacts. The development has the potential to cause irreversible adverse impacts upon parts of nationally and internationally designated areas covered by SSSI and Ramsar designation.
- To give effect to Scottish Government Policy on Ramsar sites being treated in the same manner as Natura sites, an Appropriate Assessment requires to be undertaken in terms of the Ramsar designation applicable at this site, and this has not been completed at this time.
- The level and nature of economic and societal benefit which could arise from the development needs to be fully considered, and the scale of such benefits should be subject to close scrutiny.

Given the national and international natural heritage interests present at Coul, and the need for an appropriate understanding of the scale and degree of potential economic benefits arising from the proposals, it is appropriate, that further consideration is given to this application at a national level.