

OFFICIAL-SENSITIVE

From: Keith Connal
ENFOR: Natural Resources
18 January 2019

Cabinet Secretary for Environment, Climate Change and Land Reform

Protection of Ramsar Sites

Purpose

1. To seek your agreement to the terms of guidance we propose providing to the Scottish Government's Planning and Environmental Appeals Division and Scottish Natural Heritage on how, taking account of Scottish Planning Policy and Ministerial clarifications in Answers to PQs last year, our policy on protecting Ramsar sites should be implemented. This has been sought by DPEA to help inform Reporters' consideration of the Coul Links development and, in due course, their report to Ministers to inform the Planning Minister's determination of the case.

2. In summary, the guidance (**Annex A**) does not set out new policy but it rests on the approach in Scottish Planning Policy to protecting Ramsar sites through co-designation with Natura 2000 sites and/or Sites of Special Scientific Interest and protecting these under the relevant statutory regimes; such that where Ramsar interests align with any overlapping Natura qualifying interests - protected under a designated Special Protection Area or a Special Area of Conservation - the interests are given the same level of legal protection as a Natura site; and, where Ramsar interests are not aligned in this way, they receive protection under the regime for Sites of Special Scientific Interest. The guidance does not specify the nature and scope of any assessment required in relation to Coul Links as this currently is a matter for consideration as part of the process before the Reporters.

Priority

3. **Urgent.** A response on Monday 21 January or as early next week as is feasible will enable us to respond to the DPEA in time hopefully to avoid the Public Local Inquiry (PLI) on the Coul Links case being delayed (in part because of our commitment to planning processes being carried out on a timely basis) – the guidance will inform any final written submissions by Parties to the PLI, which are due on 29 January ahead of the Inquiry commencing on 26 February. We have been conducting a thorough examination of this issue given the nature of the risk and this unfortunately has taken some time.

Background

4. Decisions on planning applications are in terms of section 25 of the Town and Country Planning (Scotland) Act 1997 to be made in accordance with the development plan unless material considerations indicate otherwise. Scottish Government policy, where relevant to the decision, is a material consideration to be taken into account when determining a planning application.

5. The Scottish Government has legal and policy protections in place for international and national designated sites, which help guide and inform decisions on development proposals under the statutory planning system. Scottish Government policy on how nationally important land use planning matters should be addressed across the country is Scottish Planning Policy (SPP) published in 2014. This includes the policy to be adopted in relation to Ramsar sites, which are wetlands designated under the Ramsar Convention on Wetlands of International Importance, especially as waterfowl habitat, and Natura 2000 sites – sites designated as Special Areas of Conservation (SAC) and Special Protection Areas (SPA) under the EU Habitats and Wild Birds Directives, respectively. SPP also sets out policy in relation to national designations, including Sites of Special Scientific Interest (SSSI). Other parts of SPP are also relevant, in their generality, to the protection of designated sites as part of the protection of the natural environment and of internationally significant natural heritage resources.

6. The policy in SPP on Ramsar sites is that *'All Ramsar sites are also Natura 2000 sites and/or Sites of Special Scientific Interest and are protected under the relevant statutory regimes.'* This reflects a long-standing approach to protect Ramsar sites through co-designation rather than operate a separate, bespoke, regime.

7. Ramsar sites do not enjoy the same legal underpinning as SSSIs or Natura sites and the Conservation (Natural Habitats &c.) Regulations 1994 – 'the Habitats Regulations' – which govern the assessment of likely impacts on Natura sites (with reference to published conservation objectives), and the Nature Conservation (Scotland) Act 2004, which protects SSSIs, contain no provisions for the protection of Ramsar sites.

8. The interplay between the legal and policy protections for designated sites is complex, in particular in circumstances where an area is protected by more than one designation and where these are not fully aligned in terms of their geographical extent or the interests (such as bird species or habitats or other species) for which they have been designated. That said, the approach of protecting Ramsar sites by co-designation with Natura (an SPA and/or an SAC) and/or a SSSI ensures that Ramsar sites are afforded an appropriate level of legal and policy protection. We should reasonably expect that the nature of any particular site and the distribution of its qualifying features will have been taken into account during the assessments that underpinned the various designations

Coul Links

9. These policy and legal arrangements have been thrown into sharp focus by the proposed development at Coul Links. This engages with natural heritage designations at national, European and international level: the Loch Fleet SSSI notified in accordance with the requirements of the Nature Conservation (Scotland) Act 2004; the Dornoch Firth and Loch Fleet 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. The Highland Council were minded to grant the application on their view that material considerations outweighed the assessment of non-compliance with the development plan.

10. In August last year, following the notification of the Coul Links case to Ministers by The Highland Council (THC) which they were required to do because they were minded to consent the development in the face of an objection by a statutory consultee (SNH), the case was called in by the Scottish Ministers for determination at a national level. SNH's objection was in respect of effects on the sand dune interest of the Dornoch Firth & Loch Fleet Ramsar Site and the Loch Fleet SSSI. Reporters have been assigned and a PLI is scheduled to commence in February.

[Redacted]

11. [Redacted]

12. [Redacted]

13. [Redacted]

Request for guidance

14. Different interpretations of the policy contained in SPP are being made by Parties to the PLI and it is clear that arguments as to what is the policy and how it is to be interpreted and applied will be significant issues at the Inquiry session. We would expect that Reporters will, when preparing their report, consider a range of factors regarding the level of protection afforded by policy framework as a whole. This framework includes the development plan as well as our Ramsar policy. The question of the impact on the Ramsar site is anticipated to be one of the main determining issues for the case.

15. Following questions arising at the Reporters' preliminary hearing, there is an expectation that the Scottish Government will provide DPEA and SNH with guidance on our policy on protecting Ramsar sites and how it should be implemented, to inform the preparation of final statements by Parties to the Inquiry and the Reporters' consideration of the case. [Redacted]

16. [Redacted]

Guidance on policy

17. The guidance which we propose providing is at Annex A. It does not set out new policy and it rests on the approach in SPP to protecting Ramsar sites through co-designation with Natura 2000 sites and/or Sites of Special Scientific Interest and protecting these under the relevant statutory regimes; such that where Ramsar interests align with any overlapping Natura qualifying interests - protected under a designated SPA or a SAC - the interests are given the same level of legal protection as a Natura site; and, where Ramsar interests are not aligned in this way, they receive protection under the regime for SSSIs.

18. Our guidance will not be welcomed by those who argue that it should be interpreted to mean that the Habitats Regulations (including the associated tests which set a higher bar than the SSSI tests) should be applied to assessing likely impacts on the Ramsar interests in the area concerned (primarily sand dune habitat) including where those interests have not been designated for protection either as an SAC or an SPA. This is not how we intend our policy to be implemented.

19. [Redacted]

[Redacted]

20. [Redacted]

[Redacted]

[Redacted]

21. [Redacted]

22. [Redacted]

23. [Redacted]

24. [Redacted]

[Redacted]

25. [Redacted]

Communication

26. We propose that the guidance be relayed to DPEA (and to SNH), who we anticipate will make it known to the Parties to the PLI; and, mindful that this is being provided in the context of a live planning case, that we should not proactively put the guidance into the public domain or arrange a Government Inspired Question.

Recommendation

27. That you approve the terms of the guidance which would be provided to the DPEA and to SNH.

Keith Connal
ENFOR: Natural Resources
[Redacted]

18 December 2018

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Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for the Rural Economy Minister for Rural Affairs and the Natural Environment [Redacted]			X X X		
Permanent Secretary DG Economy Director, Environment & Forestry Chief Planner [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] [Redacted] Leanne Dobson Callum McCaig Kate Higgins Communications Rural Economy and Environment					

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[Redacted]

[Redacted]

**Instances of Expression of Scottish Government Ramsar Policy in Scotland
(including in Written and Oral PQs and published policy)**

PROVIDED UNDER SEPARATE COVER