



Not Coul Factsheet INADEQUATE PROTECTION

Material here is based on the professional knowledge and experience of *Not Coul* members, supporters and legal advisers. Factsheets are used to explain more complex matters and to fact check Communities for Coul material.

It uses:

- in-depth familiarity with the Coul Links site for decades, as well as most dunes and machair in Britain
- deep knowledge of the attempt to impose a golf development on supposedly-protected land at Coul
- years of experience in using evidence to unpick disinformation¹ in the developer case.

Not Coul does its best to be factually correct. It avoids exaggeration and obfuscation in giving opinion.

Not Coul exposes and calls out disinformation and greenwash. These are now so commonplace in the developer case for golf at Coul that actually finding real merit in that idea is now difficult. Any individual developer or organisation using such tactics so obviously and repeatedly must be suspect. Such behaviour is a good sign that Communities for Coul (C4C) is probably an astroturfing operation². There is now indirect evidence that 2016 to 2020 developers are behind C4C.

Our main aim is simple: conservation of a dune system that really, really matters to the world. The debate is a wide one and requires analysis of environmental and community issues relevant to SE Sutherland, the Highlands, Scotland and, yes, even the planet.

Please let us know if there is anything here which you know is erroneous and that you can evidence. *Not Coul* is willing to admit proven error and publish corrections if we are wrong. Contact us via www.notcoul.org

SUMMARY

This Factsheet explains why Coul Links is supposedly heavily protected by nature designations yet remains threatened, for a second time in recent years, by golf course development on and off site. Proper protection should obviously be sufficient to stop development proposals happening in the first place.

Site of Special Scientific Interest (SSSI)

Much of Coul Links lies within Loch Fleet SSSI. All sand dune habitat in the SSSI (not just at Coul) is in Unfavourable Condition. The C4C developers are using that unfavourable condition as a lever to justify constructing a golf course at Coul. They will be proposing to use golf profits to pay for management to achieve Favourable Condition, in exchange for what will be claimed as a small amount of habitat loss and damage by the golf course. This allows C4C to greenwash their scheme. They have claimed for a year that it is environmentally-friendly. They will conclude that it represents sustainable development because it is improving the environment and at the same time generating 200 or more new jobs. That is all that needs to be stated to get deciding Highland Councillors' approval at the Northern Planning Applications Committee. There was no proper scrutiny by Councillors in 2018. It is as simple as that to override SSSI legal 'protection'. The 2019 Coul PLI showed without doubt that the 2017 development did not represent sustainable development.

¹ Wikipedia: "false information that is spread deliberately to deceive people".

² Wikipedia: "Astroturfing is the practice of masking the sponsors of a message or organization to make it appear as though it [*i.e. C4C in this case*] originates from and is supported by grassroots participants".

Special Protection Area (SPA)

C4C will claim that two qualifying SPA wintering duck species, Teal and Wigeon, will be unaffected by the golf development. Closure of the course in winter and a plan to prevent disturbance when closed is all that is needed. That worked in 2017, with developer bird data and a Recreational Access Management Plan convincing SNH that there would be no significant adverse effects on SPA Qualifying Species. Highland Council was the authority responsible for making that decision, based on SNH advice. That was misjudgement by SNH because it was reversed in the findings of the 2019 Coul Inquiry. Expect C4C to claim “no effect” when in fact winter disturbance by walkers, especially with dogs, will be certain on a closed golf course. The C4C mown fairways and paths are routed close to dune slacks flooded in winter which are used by Teal and Wigeon during storms and at high tide. Protection therefore depends on NatureScot’s judgement. That judgement, as SNH, was regrettably wrong in 2017/18.

Special Area of Conservation (SAC)

There is no further protection as SAC for Loch Fleet SSSI. For unknown but wrong-headed reasons, the SSSI was not added to the Scotland SAC list by the Natura 2000 process in the early 1990s, controlled by the Scottish Office. Of all the designations, SAC protection is known to be the strongest we have for natural habitats in Scotland. At Coul it would prevent harmful development to dune heath, dune grassland and dune slack via the Appropriate Assessment process. Dune heath remains a clear case for SAC status at Loch Fleet SSSI, as well as extending the SSSI boundary to the south. That would include ground with a Habitats Directive Annex 2 bryophyte species, discovered in 2022. *Not Coul* intends to petition NatureScot and the Scottish Government for both SSSI extension and SAC status.

Ramsar Site (Wetland of International Importance)

Investigations by *Not Coul* in 2017 and 2018 revealed that Ramsar sites in Scotland have to be treated differently, for developments, according to their other underpinning designations. Loch Fleet SSSI, containing Coul Links, is under-protected because its dune habitats can only be assessed as SSSI status. This arises from the failure to award SAC status to the SSSI under the Natura 2000 process. In short, at Coul, Ramsar status means nothing extra. *Not Coul* will petition the Scottish Government to have all Ramsar sites in Scotland treated equally under the Habitats Regulations.

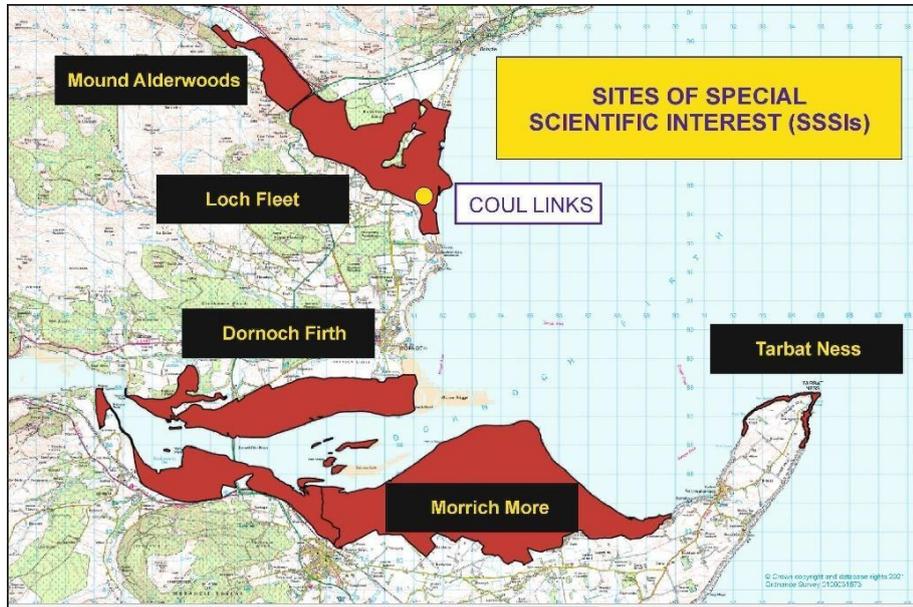
Conclusion

Despite being triple-protected, **the Coul sector of Loch Fleet SSSI is only effectively protected under SSSI legislation and its implementation within the planning system in Scotland.** This is a fundamental weakness. It can only be addressed in the medium-term by seeking SAC status and strengthening Ramsar protection for the SSSI, as well as for many other Ramsar sites or parts of sites. The C4C application will likely be assessed only as SSSI ground. This therefore will be a repeat of the 2017 application process. It requires NatureScot to maintain an objection to the planning application.

If the application is approved by The Highland Council, that NatureScot objection will be essential for Coul Links to survive as an intact nature site, beyond the decision date of the North Planning Applications Committee. If that happens, a Scottish Government call-in will occur, followed by announcement of a second PLI. It is likely that C4C and their vision of golf at Coul will then withdraw the planning application. C4C, or rather their backers, will know they would be unable to win via a second PLI, following the result of the 2019 Inquiry.

TYPES OF INADEQUATE PROTECTION

Site of Special Scientific Interest SSSI



The map shows the location of Loch Fleet SSSI, plus other local coastal SSSIs. Together, these particular SSSIs are mixed and matched into larger units with higher protection (SPA, SAC, Ramsar Wetland of International Importance) – see below.

Notification

Coul Links was first included ('notified') in a Site of Special Scientific Interest in 1975, within Loch Fleet SSSI.

That was reviewed in 1984, with Loch Fleet SSSI increasing in area by 45 ha. That 1984 SSSI accolade was part of a national review of nature protection required by the UK-wide Wildlife and Countryside Act 1981. The review applied consistent comparative rules to site selection at an all-UK scale, for the very first time. The general 'rules' for selecting sites are here, plus specific guidance for sand dune habitats under Coastlands and additional material on invertebrates, vascular plants, bryophytes, lichens and fungi:

[Guidelines for selection of biological SSSIs | JNCC Resource Hub](#)

These guidelines have been updated in recent years but, in *Not Coul's* opinion, NatureScot has not reviewed Loch Fleet SSSI in terms of its outstanding natural features. That needs to be done for invertebrates, bryophytes, lichens and fungi – if for no other reason based on the information arising from the 2019 Coul PLI and more recent species information. Each of those features might now be worthy of addition as notified natural features for protection.

Summary details about Loch Fleet SSSI are given here.

[SiteLink \(nature.scot\)](#)

Out of date information

A lot of the Loch Fleet SSSI information is old. *Not Coul's* opinion is that it requires review in the light of the Coul PLI and more recent discoveries. The Site Management Statement was last reviewed in 2014. Condition information on eight notified natural features is well out-of- date: 2004 to 2014.

There could now be 12 natural features worthy of notification within Loch Fleet SSSI, with Coul Links being the most or equally important (compared to Littleferry to the north) for sand dunes, invertebrates, bryophytes, lichens and fungi. The last four would be new feature additions.

In addition, an Annex 2 (Habitats Directive) bryophyte was discovered at Coul in 2021. It was confirmed by experts in November 2021, outside the SSSI boundary. Scotland has a duty to protect such species as SSSI and/or SAC. This is grounds for an extension to the SSSI and *Not Coul* will be petitioning for that. The location is not being revealed here to avoid damaging the population. NatureScot has been informed of the species and provided with location details.

How C4C can bypass SSSI Inadequate Protection in the planning system

The Local Development Plan has policies supposed to protect SSSIs. Locally, any development in an SSSI has to represent 'sustainable development'.¹ Those are the words which Councillors will be looking for in the planning application. Councillors applied little scrutiny in 2018 to the earlier application and ignored considerable objecting material, letters of concern and a petition with >90,000 signatures. C4C is assuming the same will happen with its 2022/23 application.

All sand dune habitat in the SSSI (not just at Coul) is considered to be in Unfavourable Condition. That is based on old survey using the SNH approach to Site Condition Monitoring. It was last done in 2014 by SNH staff **because the Coul landowners refused access permission for contractors.**

The C4C developers will use that Unfavourable Condition as a lever to justify a golf course at Coul. They will claim their golf scheme represents a sustainable development: they will make the Unfavourable Condition disappear and ensure that Favourable Condition is restored 'forever'.

This is all part of an elaborate hoodwink – see the *Not Coul* Factsheet *A Coul Hoodwink Exposed*. The Coul landowner family has used zero and poor management for 12 years, declining any management agreement with Scottish Natural Heritage. That has contributed greatly to Unfavourable Condition. There is deep irony here, overseeing unfavourable condition in the first place and then arguing that only a golf course can reverse all that, via the planning system.

C4C will be proposing golf course construction based on magical thinking to get their golf course: mowing of existing vegetation to convert it into a fairway of world-class quality. Beyond the golf footprint, the development will supposedly be profitable and so provide the funds to pay for the management there to achieve Favourable Condition for all habitats. The only downside, C4C will claim, is a 'small' amount of habitat loss and damage by the golf course. Mown fairways will be promoted as changed habitat, not habitat destruction or damage.

Beware too of disinformation claims that it will be <1% of the SSSI, hence 'small'. The SSSI is mainly extensive intertidal sand flats, so it easy to get a tiny percentage number: simply ignore the SSSI dunes where destruction and damage will occur. The avoided key number will be more like 10% of the SSSI sand dune feature at Coul, currently self-sustaining, directly lost under a golf footprint, plus loss of supported wildlife too.

¹ Development that meets the needs of the present without compromising the ability of future generations to meet their own needs. *The Brundtland Definition. Our Common Future, The World Commission on Environment and Development, 1987.*

Special Protection Area (SPA)

Most of Coul Links was included in a Special Protection Area designated in 1997, part of the Dornoch Firth & Loch Fleet SPA. We have two large abutting SPAs in the map below. The designation was part of the Natura 2000 project to implement the EC/EU Habitats Directive. That followed national-scale bird population monitoring over several years, to identify and provide evidence that sites like this are nationally-important.



There are 10 qualifying bird species in the Dornoch Firth & Loch Fleet SPA ([SiteLink \(nature.scot\)](http://nature.scot.nhs.uk)) but only two of them use dune habitat: Teal and Wigeon. This is winter use, in the larger dune slacks when they are flooded. This ground offers shelter in westerly storms when the Loch Fleet basin can seem very exposed, with waves. Birds also use the dune open water at high tide.

The 2017 golf application sidestepped SPA protection because SNH accepted developer bird data and a “Recreational Access Management Plan” as showing “no significant adverse effect”. That SNH call used Appropriate Assessment, a supposedly tough procedure, under The Habitats Regulations. That was a misjudgement. The 2019 Coul PLI reversed that. **For SPA protection to work, the correct 2022 call has to be made by NatureScot. It is hoped that 2018 history will not be repeated.**

The flooded ground used by qualifying species is spread widely within the proposed golf course. The Winter Loch lies between Holes 16 and 17, close to Embo. Two large, flooded slacks in a felled forestry compartment at Coul are particularly quiet and used by large bird numbers. The Coul PLI site visit disturbed a large flight of Teal here in March 2019. Proposed Holes 9, 10 and 11 are routed here and the first fairway of Hole 11 is completely crossed by a wide piece of the most eastern slack. The second-largest flooded slack at Coul lies adjacent to tees and the shot direction for Hole 3.

Disturbance is in fact bound to happen from walkers, particularly those with dogs, on an unused golf course when there would not be winter supervision. A new C4C “Recreational Access Management Plan” will doubtless suggest no adverse impact: it has to, for the application to survive! We already know that C4C had done winter bird surveys, before seeking Scoping advice. That might undermine confidence in their findings but will third party opinion from RSPB be heeded? It will be the responsibility of Highland Council to assess the C4C case, relying as in 2018 on NatureScot advice regarding Appropriate Assessment. There will be very close national scrutiny of this decision.

Special Area of Conservation (SAC)



Loch Fleet SSSI was not designated SAC under the Natura 2000 process in the 1990s. With SAC protection, a golf course would be impossible. The developers would be unable to demonstrate no potential adverse effect on dune heath, dune grassland and dune slack. The rules under The Habitats Regulations are strict and clear on that, unlike legislation backing SSSI protection.

There is no clear explanation for leaving such a noticeable legal gap in protection, for an SSSI with a range and quality of dune habitat better than Dornoch Firth SSSI, within the Dornoch Firth & Morrich More SAC. Some habitats such as dune heath and most dune grassland are better at Coul than at Morrich More SSSI/SAC/SPA/Ramsar site. The latter site is heavily grazed by sheep.

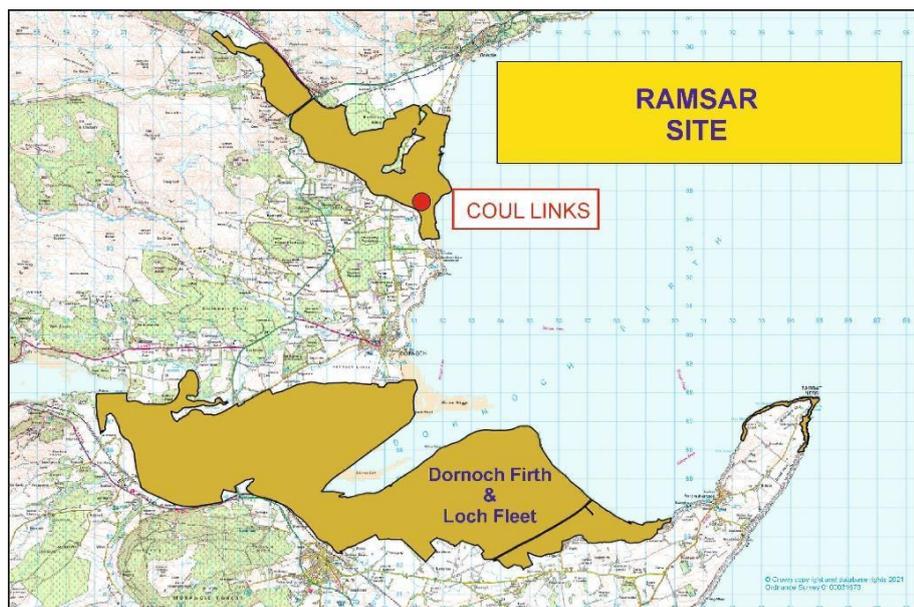
In an age when Scotland aims to provide strongly-protected connected areas of habitat to maintain biodiversity, the attack upon five qualifying SAC habitats at Coul now, by this golf development, is testament to wrong-headed decision making in the 1990s by the Scottish Office, pre-devolution. Those Coul habitats are coastal dune heathland, dune grassland, dunes with juniper thickets, humid dune slacks and lime-deficient dune heathland with crowberry. Sizeable areas of all of those will be destroyed or damaged by this proposed golf development. In the case of dune heath and dune grassland, Coul contains the best examples in the Moray Firth.

Petition for SAC status

There is no reason for not seeking SAC status now for Loch Fleet SSSI. The case now could be even stronger, given the presence of a Habitats Directive Annex 2 bryophyte, outside the Loch Fleet SSSI boundary.

Not Coul will therefore petition NatureScot and the Scottish Government for both an SSSI extension and SAC status. The petition will be evidenced and delivered by late summer 2022.

Ramsar Site (Wetland of International Importance)



The Dornoch Firth & Loch Fleet Ramsar site has the same boundaries as the SPA. Details on the site are here: [Sitelink - Home \(nature.scot\)](#). Ramsar sites are wetlands protected by an international treaty. Some countries (e.g. Australia) have laws for strong protection. That is not the case in the UK.

In England and Wales, all developments potentially affecting a Ramsar site have to be assessed under The Habitats Regulations, with the process the same as for areas designated as SPA and/or SAC. Not so for Scotland. When Ramsar sites were notified in the 1990s, in a parallel process to Natura 2000, a large proportion (about 30% of sites and features) were left without SAC and/or SPA designation. Their only other protection is as SSSI.

It was *Not Coul* that discovered this in 2017 and 2018. The information was in FOI released in 2017. The extent of the problem (affecting 30% of sites and features) came from an FOI release to *Not Coul* in 2021.

This issue of different levels of protection for the Ramsar designation featured in parliamentary questions at Holyrood. A Scottish Government Minister made an incorrect statement to Parliament saying that all Ramsar sites in Scotland have the same protection as SAC/SPA. Then, shortly before the 2019 Coul Inquiry began, new guidance was issued stating that Ramsar sites were protected by their underpinning designations. **So, habitats at Coul, not protected by SAC status, have only the equivalent of SSSI protection. Ramsar status at Coul is no better than SSSI, as a form of protection.**

This means that some parts of Ramsar sites in Scotland, including Loch Fleet SSSI, have less protection than in other parts of the UK. This is a major irregularity and needs correction. *Not Coul* intends to petition the Scottish Government to give protection equivalent to SPA/SAC to all Ramsar sites in Scotland, irrespective of other protections. That is necessary to reflect the international status of the Ramsar Treaty signed by the UK.

The Ramsar Secretariat in Switzerland will be informed of the C4C development shortly. The implications could be onerous for C4C. Compensation arrangements (providing equivalent habitat elsewhere) are required under the terms of the Ramsar Convention.

Conclusions

Based on experience of the 2017 application and planning permission being granted in 2018 by The Highland Council, the Coul Links SSSI sector has little or no extra protection above what the Local Development Plan affords to an SSSI.

In 2018 the North Planning Applications Committee simply disregarded SSSI status and decided that forecasted jobs (shown to be exaggerated in the 2019 Coul Inquiry Report) were more important than the net loss of what was seen as only a few hectares of dune described as unkempt in limited chamber debate. It took a PLI to assert correctly the importance of SSSI status.

SPA and Ramsar status mean little or nothing for protecting Coul from the C4C proposal, unless NatureScot decides to accept that SPA winter qualifying species will be affected by increased recreational disturbance by walkers, including those with dogs. SNH failed to do that in 2017/18.

It is important that the legal gap, namely lack of SAC status for Loch Fleet SSSI, is addressed. An extension to Loch Fleet SSSI is proposed at Coul, with a petition for the enlarged SSSI to be awarded SAC status.

If consultation on SAC status is started, it is likely that the C4C planning application will be abandoned. The same result could occur if all Ramsar sites in Scotland were assessed under The Habitats Regulations, e.g. within forthcoming National Planning Framework 4 policy.

It is unlikely that these moves will take effect before the C4C planning application is determined. That is likely to be in early 2023. Protection is therefore dependent largely on NatureScot maintaining an objection to the application on the overall basis of threat to the integrity of Loch Fleet SSSI. That was the SNH case in 2018 and at the 2019 Coul Inquiry. The conclusions of the Inquiry Reporters agreed that the 2017 development was a threat to the integrity of Loch Fleet SSSI.

If NatureScot maintains an objection too, that should ensure a Scottish Government call-in and then announcement of a second PLI. At that stage it is likely that C4C and their vision of golf on protected ground will disappear. C4C and its backers know that success at a second Inquiry is unlikely, given the strength of the 2019 conclusions. All therefore depends on that maintained objection by NatureScot.