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Rough Justice?

Information access and environmental justice relating to two controversial coastal developments in North-east Scotland



Image: RCAHMS



Image: *The Scotsman*

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Environmental Justice

‘Fairness in the distribution of the factors affecting environmental quality (both good and bad)’

AND

‘Fairness in providing the information and opportunities necessary for people to participate in decisions about their environment’

(Scottish Executive Environment Group, 2005)



1998 Aarhus Convention

'...improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns.'
(p.2)

Paved the way for European Directive 2003/4/EC on public access to environmental information

CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

done at Aarhus, Denmark,
on 25 June 1998

L 41/26 Official Journal of the European Union 14.2.2003

DIRECTIVE 2003/4/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 28 January 2003

on public access to environmental information and repealing Council Directive 90/313/EEC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission (1),
Having regard to the opinion of the European Economic and Social Committee (2),
Having regard to the opinion of the Committee of the Regions (3),

Acting in accordance with the procedure laid down in Article 251 of the Treaty (4) in the light of the joint text approved by the Conciliation Committee on 8 November 2002,

Whereas:

- (1) Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.
- (2) Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (5) initiated a process of change in the manner in which public authorities approach the issue of openness and transparency, establishing measures for the exercise of the right of public access to environmental information which should be developed and continued. This Directive expands the existing access granted under Directive 90/313/EEC.
- (3) Article 8 of that Directive requires Member States to report to the Commission on the experience gained in the light of which the Commission is required to make a report to the European Parliament and to the Council together with any proposal for revision of the Directive which it may consider appropriate.
- (4) The report prepared under Article 8 of that Directive identifies concrete problems encountered in the practical application of the Directive.
- (5) On 25 June 1998 the European Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention). Provisions of Community law must be consistent with that Convention with a view to its conclusion by the European Community.

(1) OJ C 337 E, 28.11.2000, p. 156 and OJ C 240 L, 28.8.2001, p. 286.
(2) OJ C 116, 20.2.2001, p. 41.
(3) OJ C 148, 28.5.2001, p. 9.
(4) OJ C 10, 14.2.2003, p. 1.
(5) Council Directive of 14 March 1990 (89 C 143, L31/2001), p. 145, Council Commission Decision of 21 January 2002 (2002/112/EC), p. 11 and Decision of the European Parliament of 30 May 2002 (see text published in the Official Journal), Decision of the Council of 14 December 2002 and Decision of the European Parliament of 18 December 2002.
(6) OJ L 18, 25.6.1990, p. 9.

In Scotland...

Implemented through the *Environmental Information (Scotland) Regulations 2004*

Came into force on 1 January 2005

The same day as the *Freedom of Information (Scotland) Act 2002*

SCOTTISH STATUTORY INSTRUMENTS

2004 No. 520

FREEDOM OF INFORMATION

The Environmental Information (Scotland) Regulations 2004

Freedom of Information (Scotland) Act 2002 (asp 13)



Freedom of Information (Scotland) Act 2002
2002 asp 13

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Content of certain notices

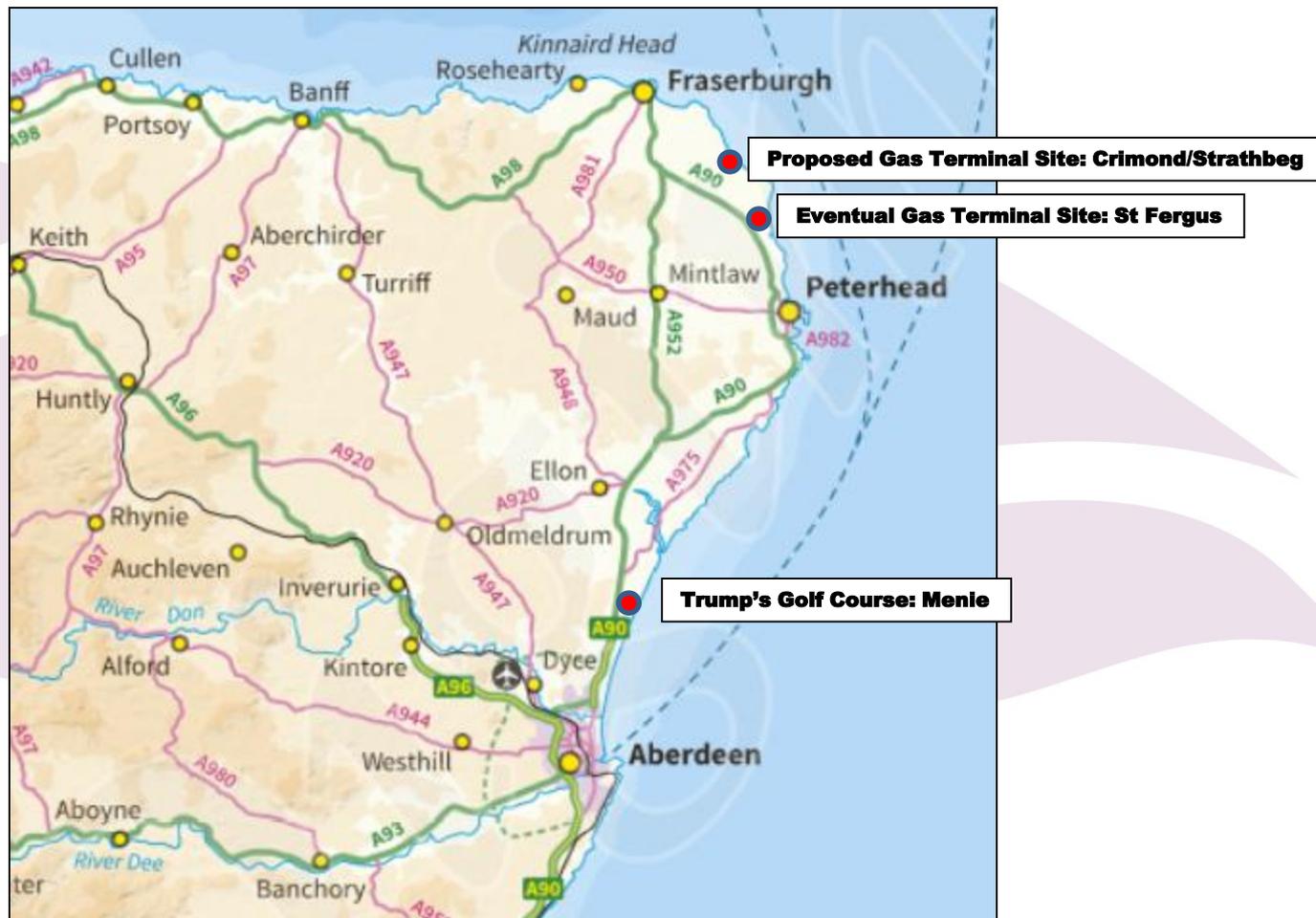
19 Content of certain notices

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20 Requirement for review of refusal etc.
21 Review by Scottish public authority



Location of the Two Developments



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“Gas versus Geese”: the Terminal Development

- **Proposal to build terminal at Crimond announced by British Gas Council and Total in Nov 1972**
- **Airfield adjacent to the Loch of Strathbeg**
- **Britain’s largest coastal dune lake, recently designated a SSSI**
- **Internationally important site for wintering wildfowl**
- **RSPB in the process of securing land around the loch for a nature reserve**
- **MOD already had clearance to build a radio station on airfield**



Fraserburgh Herald

FRIDAY, 1st DECEMBER, 1972 Registered 4p.

SURVEY CRIMOND UNDER PRESSURE

MONSIEUR J. L. DANIAUD, London Manager of Total Oil Marine Ltd., outlined to "The Fraserburgh Herald" this week plans for a gas terminal at Crimond aerodrome. "Total's" senior partner in the deal is the Gas Council. It was confirmed by M. Daniand that a planning application will be forwarded to the local planning authority today (Friday) for the development of 500 acres at Crimond.

MEMBERS of the 1st Fraserburgh Unit Guides lead out the Queen's Colours after the Guides' Service at St. Paul's Protestant Church on Friday.

Retired C. G. Receives Imperial Long Service Medal

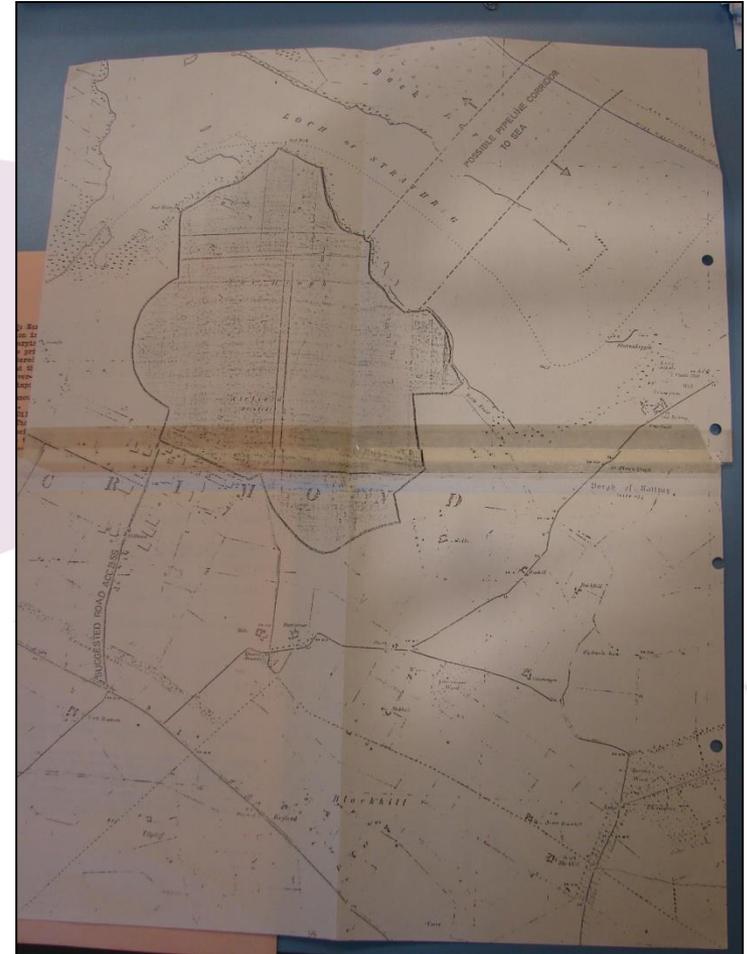
Bird-lovers and Defence chiefs oppose oil firm

Less than a year ago bird lovers and conservationists were fighting a Ministry of Defence proposal to set up a naval radio station on a former airfield at Crimond, near Peterhead, because of the threat that a 900-foot mast would present to birds. Now former foes will be allied in opposing what the Royal Society for the Protection of Birds regards as a much greater menace—the proposal by a French company, Total Oil, to build a gas terminal at Crimond. The development cannot move a few miles nearer to Peterhead, where it fits an already industry. Presumably the attraction lies in the ease of transport, which can be quick adapted for other purposes. It should be destroyed, says the Heritage, to save money for oil companies. "The Ministry of Defence had the fixing of lights on their radio masts and on other measures to lessen the danger to birds, and having come to this arrangement with them we were prepared to set up a nature reserve with full-time staff, which gives an indication of the importance we attach to the area. The man in the middle of Crimond, not of war is Mr. Norman Cowie, a county councillor, farmer and owner of the land, part of which he farms. The controversy over the ultimate use may lead to a public inquiry and decision by the Secretary of State for Scotland."

Public 'Consultation' on Crimond Gas Terminal: Dec 1972

**“Outline planning permission was sought on the sketchiest of information”
(Dunnet, 1974)**

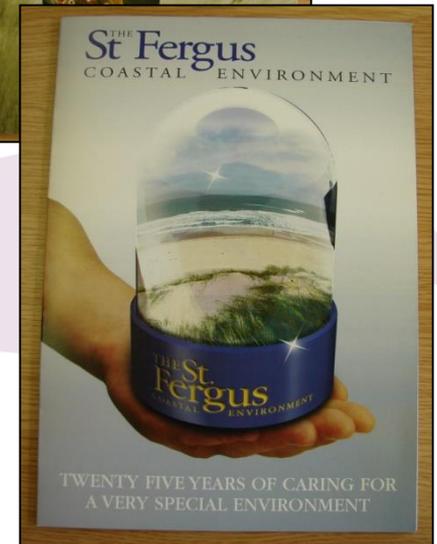
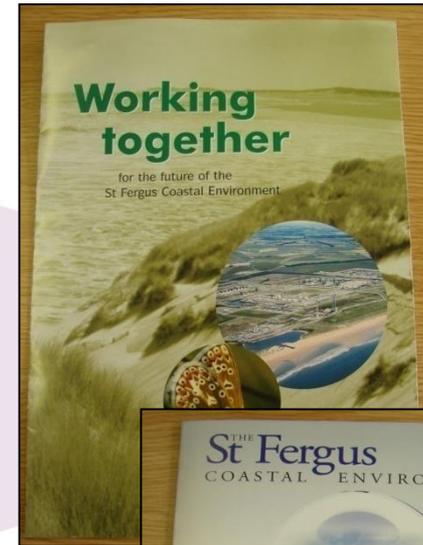
**“The planning application is in the most outline of outline form”
(Scottish Development Department official, Nov 1972; SEP 4/2370)**



Source: Scottish Ornithologists' Club Archives

Dunes Management Committee Formed

- An 'offshoot' of NE Environmental Liaison Group
- Representatives of developers/operators, council, Aberdeen University, and conservation groups
- Terminal expanded, and additional pipelines laid, throughout 1980s and 1990s
- 1988: Replaced by St Fergus Dunes Management Committee
- 1998: Renamed as St Fergus Coastal Environment Committee
- Monitored wildlife, vegetation, soil, drainage, etc.



St Fergus: Has Environmental Justice Been Done?

- **Dunes reinstatement generally successful**
- **Terminal complex became a haven for ground-nesting birds**
- **Terminal operators have won various environmental awards**
- **Information on environmental performance publicly available**



“Livelihoods Before Liverwort”: Trump’s Golf Resort

- **Mar 2006: Trump announces plans to build ‘the greatest golf course in the world’**
- **£1bn project, to include two championship courses, 5-star hotel, and housing**
- **But part to be built on a SSSI, including a dynamic, shifting dune system**
- **Rejected by Aberdeenshire Council’s Infrastructure Services Committee in Nov 2007**
- **But days later ‘called in’ by Scottish Government, who granted outline planning permission in Nov 2008 after a public inquiry**
- **First course opened in Jul 2012, but rest of resort now abandoned because Trump objects to plans for a nearby offshore windfarm**

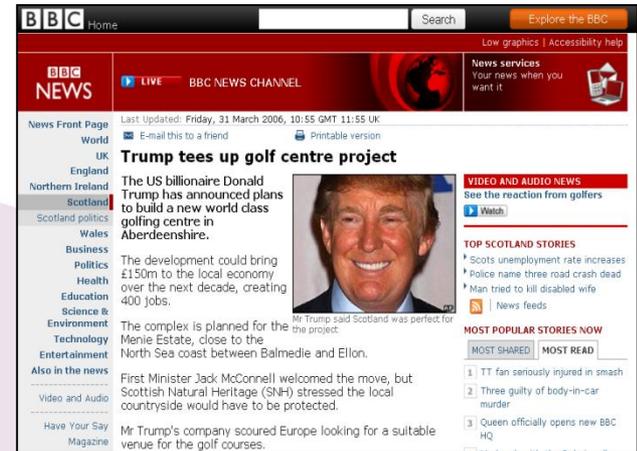
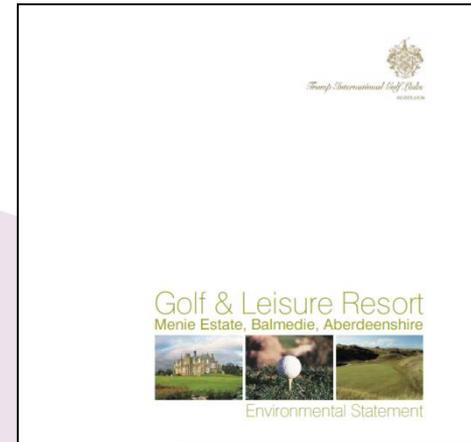


Image: Ramblers Scotland

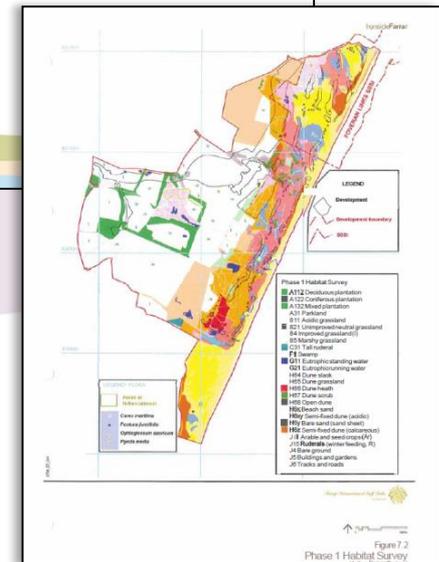
Trump's Golf Resort: Environmental Impact Assessment

- **Statutory requirement for EIAs introduced with the *Environmental Impact Assessment (Scotland) Regulations 1988***
- **316-page EIA (plus appendices), publicly available online, and at libraries and council offices.**
- **Acknowledged that there would be “significant adverse changes” to the SSSI, but promised various “mitigation measures” to “maintain and enhance as much natural interest as possible”**



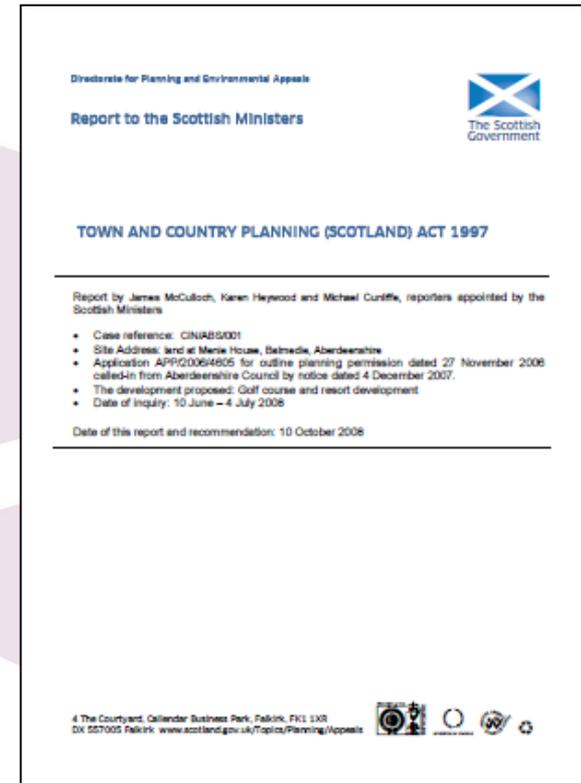
Trump:

- **“Because we are stabilising the land, the environment will be much superior when we are finished” (*Scotsman*, 9 Oct 2007)**



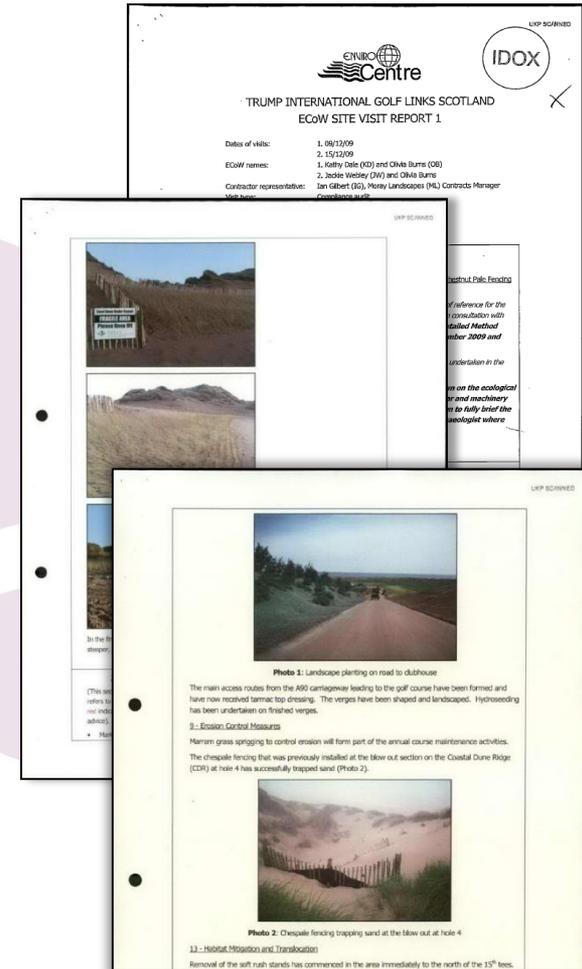
2008 Public Inquiry

- **Outline planning permission granted, subject to 46 conditions, including:**
 - **agreed methods of stabilising dunes**
 - **safeguarding foraging routes of otters and badgers**
 - **management scheme for pink-footed geese**
 - **provisions for bats and barn owls in built elements**
 - **scheme for monitoring local water quality**
 - **appointment of Ecological Clerk of Works to monitor course construction work**
- **Noted an existing agreement between Trump and Aberdeenshire Council to create a Menie (Links) Environmental Management Advisory Group (MEMAG), which would provide advice on:**
 - **environmental management ‘best practice’**
 - **monitoring the local environment**
 - **minimising unanticipated adverse changes**
 - **complying fully with planning conditions**



Menie: Has Environmental Justice Been Done? (1)

- **Ecological Clerk of Works (ECoW): 21 site visit reports, Dec 2009 to Jun 2012**
- **All available on Aberdeenshire Council website (but not until Nov 2012?)**
- **TIGLS largely compliant with planning requirements**
- **Some opponents sceptical of ECoW's impartiality**
- **Final report suggested that Council and MEMAG deal with ecological issues during golf course's operational phase**



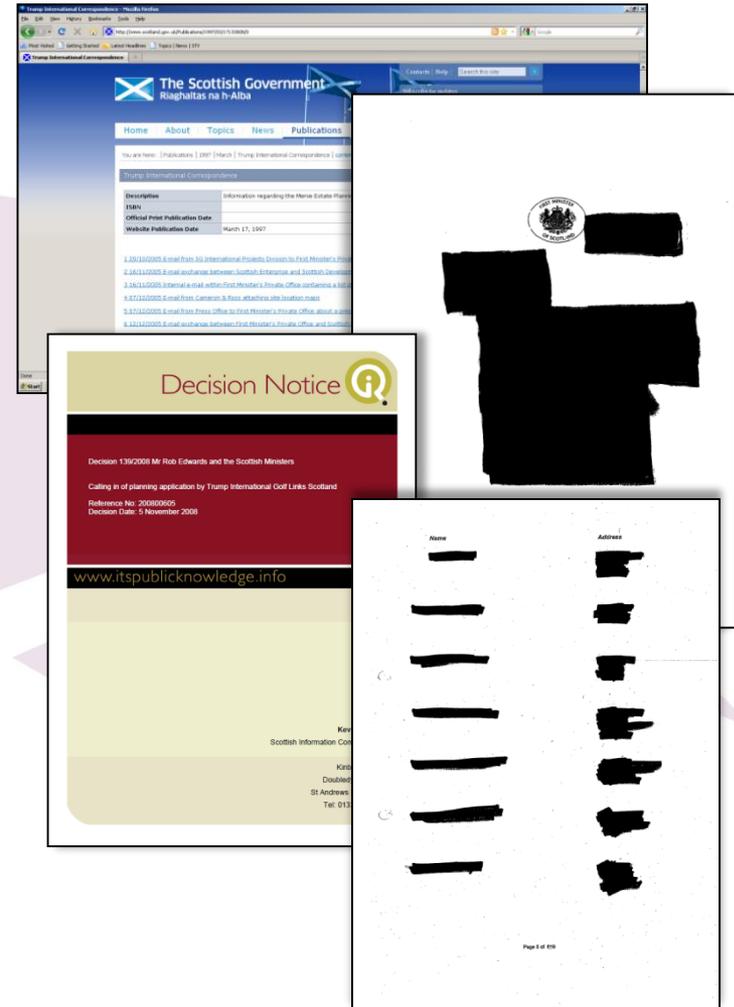
Menie: Has Environmental Justice Been Done? (2)

- **MEMAG: representatives of Trump Organisation, Aberdeenshire Council, Belhelvie Community Council, Scottish Natural Heritage and Scottish Environment Protection Agency**
- **Dec 2009: MEMAG meet for first time**
- **By May 2012: MEMAG minutes note that absence of Trump representation at recent meetings was “unfortunate”**
- **Jun 2012: Trump representative claims Menie site has received “glowing reports” from MEMAG**
- **Jan 2013: MEMAG meet for the last time**
- **By Aug 2013: all minutes removed from MEMAG website**
- **By Feb 2014: MEMAG website had disappeared**



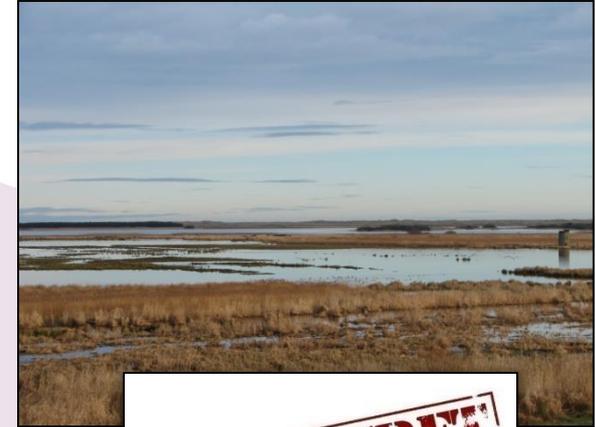
Impact of Freedom of Information (Scotland) Act 2002 and Environmental Information (Scotland) Regulations 2004

- **Scottish Information Commissioner highlighted the “wealth of information” relating to Trump’s resort released under FOI in 2008**
- **But 20% of these were subject to significant redaction**
- **SIC has conducted six investigations into FOI or EIR applications relating to golf resort – each found that public bodies had failed to comply fully with legislation**
- **Author has recently made an appeal to SIC**



Environmental Information and Justice: Now More Readily Attainable?

- **At planning application stage, information on the potential environmental impact of Trump's golf course was more forthcoming, compared with that from Gas Council and Total in 1970s**
- **During and after construction stage, information on Trump's golf course meeting environmental planning conditions has been less forthcoming, compared with St Fergus terminal 40 years ago**
- **Questions about the actual environmental impact of 'the greatest golf course in the world' remain unanswered**



TOP SECRET

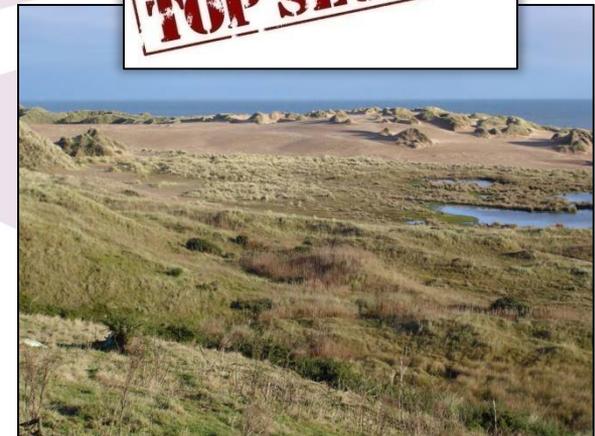


Image: SNH



Thank You...



Image: Animal Spot



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