

# **PAPER 1:**

**(Boat of Garten Housing Application)**

## **APPENDIX B**

### **Consultation Responses on Capercaillie Mitigation Report**

**From**

- **SNH**
- **CNPA**
- **Community Council**

**& Appropriate Assessment**



## Scottish Natural Heritage Dualchas Nàdair na h-Alba

All of nature for all of Scotland  
Nàdar air fad airson Alba air fad

Andrew Tait  
Cairngorms National Park Authority  
Albert Memorial Hall  
Station Square  
Ballater  
Aberdeenshire  
AB35 5QB

Your ref: 08/272/CP  
Our ref: CNS/DC/HI/BOGH

11<sup>th</sup> October 2011

Dear Andrew

**Town and Country Planning (Scotland) Act 1997: 08/272/CP – Reconsultation:  
Planning Application For Erection Of 72 Houses; Formation Of 5 House Plots;  
Provision Of Primary School Site; Associated Amenitly Ground, Roads And  
Footways at Land 200m West Of Football Field, Craigie Avenue, Boat Of Garten,  
for Davall Developments**

Thank you for your letter of 26 September 2011 requesting our comments on the above development proposal. We understand that this consultation is restricted to the "Further Information Report" submitted by MBEC on behalf of the developers in September 2011.

In preparing this response we have followed the role for SNH that is set out in the SNH/CNPA Casework Agreement. Under this agreement, within the National Park, SNH only advises on any implications for Natura sites, Sites of Special Scientific Interest, National Nature Reserves and European Protected Species. CNPA advises on other natural heritage issues including outdoor access, landscape and visual impacts, wild land, wider biodiversity interests, and impacts on the National Park itself, although they may also comment on issues normally addressed by SNH if they so choose. In this case CNPA, as the local access authority, have advised us on how effectively the access management aspects of these proposals will influence the additional recreational use of the woods that would arise from the proposed development.

### **SNH position**

We object to the proposal as currently submitted, because the development is likely to cause disturbance to capercaillie using the adjacent woodland. This is likely to have a significant effect on capercaillie populations in four nearby Special Protection Areas (SPAs). We have assessed the effects of the proposed development and mitigation measures in relation to disturbance to capercaillie in Boat of Garten woods, and consider that that it cannot be ascertained that the proposal will not adversely affect the integrity of the SPAs.

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We recognise that, in line with our previous advice, the developers have now collected and collated valuable data to inform mitigation proposals. In our view the results of their recreation survey reinforce the need for effective mitigation.

### **Background**

This proposed development has a long and complex planning history including a larger previous proposal for a similar site, and proposed allocations in local plans. Our advice in relation to relevant previous proposals was outlined in our letter to you dated 17<sup>th</sup> December 2010, and is not repeated here.

We responded to earlier versions of the current planning application in letters dated 14<sup>th</sup> October 2008, and 17<sup>th</sup> December 2010. In these we objected to the proposal because of the potential to disturb capercaillie using the adjacent woodland, which could have a significant effect on capercaillie populations in four nearby SPAs. We also advised it was possible that disturbance to capercaillie could be reduced by implementing mitigation measures – possibly to the extent that there would be no adverse effect on the site integrity for the capercaillie populations within the nearby SPAs. We included advice on the data about capercaillie and recreational use of the woods that would need to be collated and/or collected to guide effective mitigation, and also on the types of mitigation that could be considered.

Since your planning committee last considered this case in January 2011, we have been pleased to work with yourselves and the developers to further advise on the criteria which mitigation proposals would need to meet in order to be effective; to provide data on capercaillie use of the woods; to advise on proposals for gathering data on recreational use of the woods; to advise on interpretation of the results of the various surveys; and on draft mitigation proposals.

The developers have designed and successfully implemented a survey of recreational use of the woods which has provided useful and illuminating data. In particular, the overall levels of recreational use of the woods; the volume of dog walking; the popularity of off-path use by people; and the proportion of dogs off-lead, particularly on the paths through areas most used by capercaillie; are all higher than we had previously assumed. This data reinforces our view that effective mitigation is required in order to avoid significant additional disturbance to capercaillie arising from this proposal.

### **SNH APPRAISAL OF THE PROPOSALS**

#### **Natural heritage interests affected:**

The proposed development site lies within woodland at Boat of Garten. This woodland is not designated but is known to be well used by capercaillie which are part of the wider metapopulation in Badenoch and Strathspey. This metapopulation holds around 75% of the UK population. Four of the five Special Protection Areas (SPAs) designated to safeguard the Strathspey metapopulation are close to Boat of Garten woods: Craigmore Wood; Kinveachy Forest; Abernethy Forest; and Cairngorms.

We have assessed the connectivity between these SPAs and Boat of Garten woods. We conclude that, if that part of the capercaillie metapopulation using the Boat of Garten wood were to be negatively affected by this proposal, the conservation objectives of the SPAs could be affected. If the capercaillie in Boat of Garten Wood can continue to live in the wood, including breeding successfully, then the population using the SPAs would be unaffected. As this proposal could affect the nearby SPAs, the legislative requirements for European sites

summarised in Circular 6/1995 as amended June 2000 apply. We can advise further on this legislation if necessary.

**SNH appraisal of the likely impacts of the proposal on natural heritage interests:**

The 'Further information report' estimates that, following occupation of the houses, this proposal would increase the population of Boat of Garten by approximately 32%. This could lead to increased disturbance to capercaillie via disturbance during construction; disturbance from occupation of the houses; and disturbance as a result of increased recreational use of the woods. Given the level of use of Boat of Garten woods by capercaillie, its proximity to the SPAs listed above, the known dispersal distances of capercaillie, the need to manage capercaillie at a metapopulation scale, and their sensitivity to disturbance, in our view this proposal is likely to have a significant effect on a qualifying interest – ie. capercaillie - of the four nearby SPAs. As a consequence, Cairngorms National Park Authority is required to undertake an appropriate assessment in view of the sites' conservation objectives for this qualifying interest.

We have assessed the effects of the proposed development and mitigation measures in relation to disturbance to capercaillie in Boat of Garten woods, taking into account the data provided on current levels and patterns of use of the woods by capercaillie and for recreation. Our analysis identifies six scenarios by which this proposal risks increasing disturbance to capercaillie. These are listed in Annex 1, along with our assessment of the extent to which the mitigation proposals will effectively address these risks. Where the mitigation proposals involve access management measures, our assessment is informed by your advice, as the local access authority under the terms of the Land Reform (Scotland) Act 2003, on whether the proposals will successfully influence recreational behaviour.

Our appraisal of the effect of the proposal on site integrity shows that there are significant doubts over the likely effectiveness of the mitigation measures proposed to avoid increases in disturbance to capercaillie in Boat of Garten woods from three of the six risks listed in Annex 1:

1. Significantly increased recreational use of the currently little-used path 7, and of routes in the SW sector of the woods accessible from path 7;
2. Increased off-path use by people in areas used by capercaillie;
3. Increases in the number of dogs ranging off paths in areas used by capercaillie.

These doubts mean that we cannot conclude that this proposal will allow the conservation objectives of the SPAs to be met.

On the basis of information currently available, and for the reasons given above, we consider that it has not been ascertained that the proposal will not adversely affect the integrity of the sites. This proposal raises natural heritage issues of national interest and we therefore **object** to this proposal.

We understand the considerable efforts that the developers and other interested parties have made to collect and collate survey data and develop mitigation, and we remain happy to advise further on any future iterations of this or related proposals and associated mitigation measures.

Please contact Anna Elliott or myself at our Aviemore office if you need any further information or advice from SNH in relation to this proposal. I would be grateful if you would let us know of your Authority's decision in due course, or of any further changes to the proposal which would be relevant to our interests. We remind you of the terms of the Town and Country Planning (Notification of Applications) (Scotland) Direction 2007 in relation to

development affecting a European site where SNH has advised against granting planning permission.

Yours sincerely,



Debbie Greene  
Operations Manager, Cairngorms  
South Highland  
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**Annex 1: Key potential scenarios that could arise from this proposed development that risk increasing disturbance to capercaillie.**

<b>Risk</b>	<b>Assessment taking into account proposed mitigation</b>
Temporary disturbance from construction activity	This would be a short term effect, in an area close to existing sources of disturbance, with relatively low current usage by capercaillie. The report proposes to limit construction activity to the development site, to retain a screen of trees around the site and to construct a 2m high solid fence around the development site prior to construction starting. Conclusion: risk addressed effectively; no significant disturbance to capercaillie.
Disturbance from the housing site once occupied	This would be a permanent effect, in an area close to existing sources of disturbance, with relatively low current usage by capercaillie. The report proposes to retain and thicken a screen of trees and shrubs around the site; and to construct a 2m high solid fence around the development site in addition to, and outside of, individual garden fences. Conclusion: risk addressed effectively; no significant disturbance to capercaillie.
<b>Disturbance arising from increased recreational use of Boat of Garten woods</b>	
A proliferation of informal 'desire line' paths in the woods around the development	<p>This would increase disturbance to capercaillie and reduce the available area of lower disturbance in between paths. The report proposes a double fence around the development which will be monitored and maintained in perpetuity; retaining and thickening a screen of trees and shrubs outside the outer fence; and designing the site layout so that the only access from the site to the woods will be via the new link directly onto the adjacent core path, which links to the existing path network in the woods.</p> <p>Advice from CNPA as access authority: these proposals are likely to stop all access from and through the development into the woods and will result in access being directed eastwards to path 2.</p> <p>Conclusion: risk addressed effectively; no significant disturbance to capercaillie.</p>
Significantly increased use of some currently lightly-used paths in the NW sector of the wood that are close to the development site. Also consequential increased use of some relatively lightly used paths in the SW sector, as a result of the potential for circular routes.	<p>This could significantly increase disturbance to capercaillie in some areas where there is currently relatively little recreational disturbance. The report proposes designing the site layout so that the only access from the site to the woods will be via the new link directly onto the adjacent core path to the east; and to try to 'close' two infrequently used paths in the lightly used NW sector of the wood (paths 7 &amp; 8) by scarifying their surfaces to allow natural regeneration, and by publicising and explaining this course of action to the community.</p> <p>Advice from CNPA as access authority: Given the relatively low use of path 8, it is likely that scarifying the path surface with some blocking material will result in low to no use of this path. Unless there is clear community support for all the management measures proposed there must be significant doubt that access will be prevented along the line of path 7.</p> <p>Conclusion: risk not addressed effectively; cannot conclude no significant disturbance to capercaillie.</p>
Increased off-path use by people in	This could increase disturbance to capercaillie. The report proposes a suite of education and awareness raising initiatives for existing and

<p>areas used by capercaillie, eg for wildlife watching, taking a short cut, picking berries &amp; mushrooms.</p>	<p>new residents, and visitors, involving signage, written advice, meetings and peer pressure; scarification and enrichment planting alongside tracks close to areas used by capercaillie and vulnerable to off-path access to reduce the potential for people to leave paths and increase the screening effect in the longer term, once vegetation has thickened.</p> <p>The scarification and planting is likely to take several years to become effective, and it may require careful management to create an effective physical and visual barrier, given the low density of some existing trackside regeneration in the woods. It is not likely to be effective in the short or medium term.</p> <p>Advice from CNPA as access authority: The modification of new residents' behaviour is likely to work but only if existing recreational behaviour changes significantly. Changing existing behaviour requires a significant majority of people to understand and then buy in to new values. It remains unclear as to whether behaviour will change amongst existing users as a result of these proposals.</p> <p>Conclusion: risk not addressed effectively; cannot conclude no significant disturbance to capercaillie.</p>
<p>Increases in the number of dogs ranging off paths in areas used by capercaillie</p>	<p>This could lead to increased disturbance to capercaillie, and mortality. The report proposes a suite of education and awareness raising initiatives for existing and new residents, and visitors, involving signage, written advice, meetings and peer pressure; scarification and enrichment planting alongside tracks close to areas used by capercaillie and vulnerable to off-path access to reduce the potential for people to leave paths and increase the screening effect in the longer term, once vegetation has thickened; establishing an off lead dog play area within the woods close to the village and the new development, in an area not currently used by capercaillie.</p> <p>The scarification and planting is likely to take several years to become effective, and it may require careful management to create an effective physical and visual barrier, given the low density of some existing trackside regeneration in the woods. It is not likely to be effective in the short or medium term.</p> <p>Advice from CNPA as access authority: The off lead dog play area will cater for some use but the existing evidence from survey points to the frequency of dogs off lead being higher the further they are away from the village. The dog area will not address existing demand for longer distance off lead walking which is likely to continue, and no alternative routes are identified to meet this demand. There are no proposals put forward for the short term other than general advice about staying on tracks and keeping dogs on leads. Changing existing behaviour requires a significant majority of people to understand and then buy in to new values. It remains unclear as to whether behaviour will change amongst existing users as a result of these proposals.</p> <p>Conclusion: risk not addressed effectively; cannot conclude no significant disturbance to capercaillie.</p>

# CNPA Ecology

**Planning reference 08/272/CP - Boat of Garten housing proposal for 72 houses and 5 Self build plots**

**Update Report on Ecology Issues 21<sup>st</sup> October 2011**

## **Summary**

This report considers only new information on capercaillie and red squirrels. Since January 2011 more work has been undertaken by the developer into the impacts upon capercaillie in the woodland and possible mitigation measures. The CNPA and SNH drew up criteria in February 2011 to assist the developer in developing the mitigation measures.

SNH has undertaken an assessment of the possible impacts upon adjacent SPAs and concluded that impacts are likely. Consequently the CNPA has been obliged to undertake a formal Appropriate Assessment. This has concluded that there are likely to be adverse impacts on the SPAs from an increase in human and dog disturbance to the capercaillie resulting from the proposed development. It has also concluded that the mitigation measures are unlikely to be effective in changing the behaviour of users of the woods. The infrastructure measures will be partially effective. The fencing around the development should deter a proliferation of desire lines near the proposed development site, however the scarifying of the path edges to encourage regeneration for screening will be take several years (at least 5-10) to be of value, so providing no mitigation in the short term.

The assessment against the ten mitigation criteria set by CNPA and SNH shows that from a biodiversity point of view none have been fully achieved. Nine of the ten have been partially achieved and one has not been met. Having assessed the proposed mitigation it is not clear how the proposal could comply with policies 1, 4 and 5 of the Local Plan.

Since the adoption of the WANE Act in June 2011 there is now a mechanism for applying for a licence to remove squirrel dreys. This is managed by SNH and they assess each case against criteria set out in the Act.

## **Capercaillie**

This application was taken to the CNPA planning committee in early January 2011. It was deferred at that meeting to allow the developer to investigate more fully the potential impacts upon capercaillie and the effectiveness of proposed mitigation. This report considers this new information.

In order to assist in this process SNH and CNPA drew up a list of criteria against which the mitigation measures could be assessed. The report below describes the assessment against these criteria. The habitats regulations require that the competent authority (the CNPA in this case) makes an Appropriate Assessment where the qualifying species of a Special Protection Area (SPA) may be affected by a development. This has also been undertaken and is appended at the end of this report.

The mitigation is required to comply with the Habitats Regulations by ensuring that this development results in no increase in disturbance to Capercaillie that might affect the nearby Special Protection Areas. It must also comply with policies in the National Park Plan and the Local



Plan for the Cairngorms National Park as supported by the Supplementary Guidance on Natural Heritage.

### **Criteria 1**

**Current and estimated recreational use and provision:** The mitigation proposals should be based on a detailed and evidence-based understanding of current recreational use of the area, (both spatially and temporally) in terms of numbers, distribution, behaviour and reasons and take account of the predicted future recreation demand arising from the proposed development.

**Assessment:** Criteria partially met. The developer has undertaken a thorough assessment of the current recreational use of the woods using both questionnaire and fixed-point remote camera surveys. This survey and the following analysis provide valuable information to inform our understanding of people's movements, the approximate numbers involved, the popularity of individual paths, the activities undertaken and the frequency of dog walking both on and off lead.

It has been highlighted by the CNPA Access Team that the assessment of future use is likely to be flawed in relation to mountain bike use. The oversight of the probable development of informal mountain bike "skills areas" when combined with the lack of demonstrable knowledge of use of the site by capercaillie (compared with data published by Moss et al 2010) would suggest that this activity is likely to have a considerable and sustained impact on the area of habitat available to capercaillie.

Future recreational use may also penetrate deeper into the woods as likely consequence of the loss of woodland near the village resulting from the development, so potentially increasing the area of habitat avoided by capercaillie in future (capercaillie droppings are found to be significantly sparser up to 125m from tracks and about 350m from a much-disturbed region near the village).

### **Criteria 2**

**Best practice:** The mitigation proposals should be built on best practice and reference should be made to relevant examples elsewhere in UK or Europe where similar approaches have been proven to be effective in such situations

**Assessment:** Criteria partially met. Elements of the mitigation are drawn from best practice. However, there is a very high level of off-lead dog walking taking place which increases with distance from the village. The off-lead dog play area will cater for some use but it is unlikely to meet the clearly identified need of the local residents to walk their dogs off-lead over much greater distances. While there is reference to the Stephen Jenkinson report, there is no reference to mitigation that is proven to be effective for capercaillie to limit the effects of disturbance. It also ignores Stephen Jenkinson's findings that dog owners have a preference for not meeting other dogs, so effectively putting more pressure on quiet areas of the woods.

No baseline data was gathered on capercaillie use of the site, which is standard practice when proposing a long-term monitoring of mitigation effectiveness.

### **Criteria 3**

**Location and time-specific:** The mitigation proposals should be designed to avoid an increase in disturbance throughout the parts of Boat of Garten wood currently used by Capercaillie. They should analyse information on the sensitivity of different parts of the wood for Capercaillie, and the sensitivity of different times of the day and year, alongside consideration of current and likely future levels and patterns of recreational use.

**Assessment:** Criteria not met. There is a serious lack of knowledge/data presented on the sensitivity of various parts of the wood for capercaillie. Moss et al 2010 shows a much wider usage (via observations of droppings) of the Northern Boat Woods throughout the year than is acknowledged in this report. Research by Wegge et al 2007 shows that broods move continuously and over considerable distances, presumably to search for food and avoid predators. It is possible if the increased human usage pressure of 32% is concentrated into areas to the north and east of the woods, the capercaillie may become confined only to the fragmented areas in the west of the site, which may provide insufficient area for successful brood rearing. This effect will be increased if the prediction of the development of informal mountain bike skills areas sees a sustained use of woodland closer to the settlement.

We can also not be confident that mitigation will be effective at preventing an increase in off-lead dog walking at sensitive areas further away from the settlement.

#### **Criteria 4**

**Paths and peoples' use:** The proposals should consider the need for a reduced network of paths, which still meets the needs of the community, addresses the management needs of Capercaillie and are practical and enforceable mechanisms. The proposals should identify how they will ensure that there is no increase in recreational disturbance that might affect the nearby Special Protection Areas by people and dogs off paths, or on minor / informal paths, as a result of this development and that how the proliferation of new informal paths will be avoided.

**Assessment:** Criteria partially met – as indicated by the CNPA Access Team, the removal of Path 7, while on paper appears beneficial for capercaillie, may in practice result in an increased disturbed zone for capercaillie. Path 7 can form part of two loops, both of which will be removed as a consequence of Path 7 being removed, with no obvious similar length alternatives available. The desire to walk on a circular route is deemed important to the local residents (which is consistent with other consultations and research) and the removal of this option could lead to limited compliance or a proliferation of new informal paths being created. The community's desire and willingness to keep paths open has been demonstrated by some recent wind-blown trees across Path 7 being cut with chain saws to maintain access.

There is little evidence to inform why, based on user pressure, that Path 7 has been chosen for closure. Higher levels of pressure have been observed elsewhere and the channelling of access away from the development to the east via the double large fence may potentially reduce pressure in this area.

The current deer numbers in the woods are sufficiently high to inhibit natural regeneration. This is resulting in little or no regeneration in the woodland itself and stunted growth along some of the major path edges. This is the result of sporadic grazing in the more disturbed areas where deer are limited to foraging under cover of darkness. This repressed growth must have been ongoing for many years as the area was replanted in the 1960's.

Tree screening and juniper will be potentially slow growing with nothing proposed in the interim period. This will be a vital period for establishing how new residents use the woods and may therefore have significant impact on the capercaillie population.

#### **Criteria 5**

**Community engagement and support:** The proposals should demonstrate effective engagement with the community and recreational users and a sufficient degree of support to ensure the proposals are effective.

**Assessment:** Criteria partially met. The community have been kept informed of progress with the development, but the proposed mitigation measures have not yet been presented to the community. The Community Council state that the degree of community buy-in required has not yet been fully assessed and the effectiveness will have to be judged over time. Several submissions from residents suggest that the proposed mitigation won't work in altering established behaviour. This presents an unacceptable degree of risk as the consequences of non-compliance would have a significant impact on the effectiveness of proposed mitigation.

#### **Criteria 6**

**Alternative recreational provision:** The mitigation proposals should demonstrate how any predicted increases in the types of recreational use that are likely to disturb Capercaillie (e.g. dogs ranging off paths) will be catered for and diverted to a suitable location that won't disturb Capercaillie.

**Assessment:** Criteria partially met. This has been detailed in the assessment of Criteria 3 & 4 above. The report does not take account of how capercaillie are using the site in its entirety and has not adequately demonstrated that the access pressure can be controlled and diverted as it suggests.

#### **Criteria 7**

**Any Screening proposals,** including planting and vegetation management, requires to be effective and commensurate with the phasing of the development, including the construction phase.

**Assessment:** Criteria partially met. The fence around the development is likely to be effective in preventing immediate "back-door" access into the woods. The screening proposals using trees and juniper will not be effective in the short-term and may take longer to establish than anticipated as regeneration may require deer management and canopy restructure to establish. This is a vital period when new residents will be establishing their patterns of use in the woods and could potentially lead to an increased level of disturbance as they seek areas to exercise their dogs off-lead and away from other dog walkers.

#### **Criteria 8**

**Practical enforcement:** The mitigation proposals should demonstrate that the measures will be practically enforceable and maintained for the lifetime of the development at no cost to the public purse.

**Assessment:** Criteria partially met. There is a clear discrepancy between the survey and camera work showing that people can sometimes say one thing and do another, even when they know that their path usage behaviour was being observed. Without existing behaviour being moderated it is difficult to see that behaviour that is being encouraged in new residents will be sustainable. It is not likely to be practically enforceable and may lead to an increase in disturbance. The report does not demonstrate how measures could be enforced.

#### **Criteria 9**

**Phasing:** The mitigation proposals should identify how mitigation measures will be effective at the appropriate time in line with the construction and development phasing.

**Assessment:** Criteria partially met. Screening and juniper growth will not be effective at the appropriate time as there will be a significant and crucial time lag before cover is obtained. There is also no legally binding contract being offered to ensure that these measures are effective and sustained.

### **Criteria 10**

**Monitoring, review and adaptive management:** The mitigation and management measures must be monitored and reviewed to ensure effectiveness for the lifetime of the development and a mechanism put in place to take further management measures to reduce disturbance if necessary.

**Assessment:** Criteria partially met. Monitoring detail is to be developed by the proposed Steering Group. This is insufficient to gauge effectiveness at this stage. Any monitoring developed subsequently may in itself prove to be an additional level of disturbance if it is going to be successful at gathering data on the impacts on capercaillie use over the site (which was not done to produce a baseline data set).

### **Cairngorms Local Plan Policy 1, 4 and 5**

The capercaillie is a protected species for the purposes of Policy 4 in the Local Plan. It is also a Priority Species identified in the Cairngorms Local Biodiversity Action Plan as included in Policy 5. The assessments by SNH and the CNPA heritage team of the development proposals show that there is likely to be a detrimental impact upon the population of capercaillie within Boat wood. This is despite the various mitigations offered as part of the development. The impact is derived from an increase in disturbance from people and dogs originating from the new development.

Special Protection Areas (SPAs) are Natura 2000 designation areas included within Policy 1. The site itself is not an SPA; however what is clear from the assessments is that it forms an important part of a woodland habitat network for capercaillie. It is this network that supports the meta-population of the area. This includes the four nearby SPAs at Kinvoachy, Abernethy, Craigmore wood and Cairngorms. The conclusions of the assessments show that the impact upon the population for the site itself is likely to reduce the ability of the wider area to act as one meta-population. This in turn is likely to impact upon the individual populations of the SPAs.

It is clear from the above that there is a likely conflict with policy 1, 4 and 5 of the Cairngorms Local Plan.

### **Red Squirrels**

The situation regarding red squirrels has changed since the decision to defer was taken in January 2011. Under the terms of the Wildlife and Countryside Act 1981 as amended (Scotland) 2004 it was not possible to gain a licence to disturb or remove a drey. However since then the Wildlife and Natural Environment (Scotland) Act 2011 (WANE Act) has been passed. This has introduced a new licensing facility for certain (non-bird) species protected under the WCA 1981 (as amended).

SNH are the licensing authority and will only issue a licence if two criteria are satisfied:

- That undertaking the conduct authorised by the licence will give rise to, or contribute towards the achievement of, a significant social, economic or environmental benefit: and
- That there are no other satisfactory solutions.

The guidance prepared by SNH also states that "SNH will have regard to conservation status of the species concerned, where appropriate".

As stated in the previous CNPA ecological response during a survey commissioned by the applicant in 2009, 49 dreys were recorded, scattered within the survey area, which includes the proposed development site and a 50m buffer. Dr Mel Tonkin (Project Manager of Saving Scotland's red squirrels) suggested that there was probably around 12-13 adult squirrels within this area, making it very valuable red squirrel habitat. As this survey is now 2 years old the drey location and number is likely to have changed, although it is not expected to be vastly different as no habitat changes have occurred.

The CNPA cannot determine if a licence would be granted for removal of red squirrel dreys for this proposed development. However, it must be borne in mind that alternatives to this development site have been demonstrated and this area is known to be valuable squirrel habitat, therefore, a licence being granted by SNH is not assured.

Justin Prigmore – Cairngorms LBAP Officer

Karen Couper – Ecology Officer

Matthew Hawkins – Senior Heritage Officer

# CNPA Access

Planning reference: 08/272/CP - Boat of Garten Housing

## Appraisal of the proposals from an access and recreation perspective

In February 2011, Scottish Natural Heritage and Cairngorms National Park Authority drew up a set of criteria, the purpose of which was to assess any mitigation proposals coming forwards for the applicant in relation to the deferred proposals for 72 houses and five house plots in Boat of Garten Woods.

The mitigation is required to comply with the Habitats Regulations by ensuring that this development results in no increase in disturbance to Capercaillie that might affect the nearby Special Protection Areas. It must also comply with policies in the National Park Plan, other relevant legislation and be framed within the vision, guiding principles and policies contained within the Local Plan for the Cairngorms National Park and relevant Supplementary Guidance.

The outcome sought from the mitigation proposals is that there must be no increase in disturbance to the Capercaillie in Boat of Garten Wood as a result of this development. In particular, the mitigation proposals must ensure that the development will not affect the ability of the Capercaillie there to continue living and breeding successfully, at levels which sustain the meta-population.

Ten criteria were identified and the mitigation proposed by the developer is assessed against each in turn.

### Criteria 1

*Current and estimated recreational use and provision: The mitigation proposals should be based on a detailed and evidence-based understanding of current recreational use of the area, (both spatially and temporally) in terms of numbers, distribution, behaviour and reasons and take account of the predicted future recreation demand arising from the proposed development.*

**Assessment:** The developer has undertaken both a questionnaire survey targeted at all households in the community and has also completed two weeks of camera survey within the Boat of Garten woods. The analysis of both provides a clear understanding of where people are currently going, the approximate numbers involved, the popularity of individual paths, the activities undertaken and the frequency of dog walking both on and off lead. The current use is therefore fully understood.

It is predicted in the MBEC Report (para. 9.2.5) that the development will result in the local population increasing by approximately 32%. The analysis of predicted future use is detailed in MBEC Report (paras. 9.3.5 and 10.4.8). The report highlights that the social mix of housing may result in a younger profile of residents with two potential consequences. The first is an increase in mountain biking and the second an increase in short walks close to the village. The latter is projected on families taking pushchairs or young children on relatively short walks and is a sound assumption.

The potential increase in mountain biking is likely to occur and the Report suggests that this will be on paths (para. 10.4.8). Whilst a significant proportion of it will be on paths there must be a significant likelihood that informal areas will be developed with jumps and other pieces of infrastructure. These informal 'skills areas' are prevalent in woodland adjacent to a number of other communities in Strathspey such as Grantown on Spey, Aviemore, Carr Bridge and Nethy

Bridge. The predicted future use is therefore not fully covered within the Report, nor how it might be managed.

### Criteria 2

*Best practice: The mitigation proposals should be built on best practice and reference should be made to relevant examples elsewhere in UK or Europe where similar approaches have been proven to be effective in such situations.*

**Assessment:** Reference is made to the CNPA and FCS jointly commissioned report: People and Dogs in the Outdoors, (Jenkinson S. 2011). This report is relevant in relation to mitigation proposals that relate to dogs as the Jenkinson report marries practical applications that have been tried in various locations throughout the UK with more academic research on behavioural psychology (Ajzen's Theory of Planned Behaviour 1991 and related work by Professor Sam Ham). There are no further references to examples drawn upon by the Report's author.

Elements of the mitigation are therefore drawn from best practice. However, there is a very high level of off lead dog walking taking place (varied between 62.8% and 82.1% over the two weeks of camera survey) and which increased with distance from the village. The off lead dog play area will cater for some use but the existing evidence from survey points to the frequency of dogs off lead being higher the further they are away from the village. This is consistent with evidence from the Jenkinson report which identifies that dog owners will seek out quieter areas to let their dogs off lead where they are less likely to encounter other dogs. The off lead area will therefore not cater for this type of use and therefore best practice is not being followed to its full extent.

### Criteria 3

*Location and time-specific: The mitigation proposals should be designed to avoid an increase in disturbance throughout the parts of Boat of Garten wood currently used by Capercaillie. They should analyse information on the sensitivity of different parts of the wood for Capercaillie, and the sensitivity of different times of the day and year, alongside consideration of current and likely future levels and patterns of recreational use.*

**Assessment:** The double fencing proposed around the new development to prevent direct access into the woods immediately to the west and south of the development is likely to be successful. The creation of a path to link with the existing path network to the east (Path 2) coupled with the information in the 'welcome pack' should avoid any short-cutting over the fence which will be 2m high. The factoring arrangements, which will ensure maintenance of the fence in perpetuity, should ensure that access is prevented directly into the woods to the south and west.

Signage is proposed at the main entry points (Figure 8) which will contain advice about ground nesting birds, dog control and not to stray off track. There is no indication given to the wording of the signs at the entry points and the report indicates that they could be a mix of either permanent or temporary signs. (MBEC 12.1.3) There is therefore a lack of clarity on what the signs will say, whether it will be compliant with SOAC, whether the messages will change throughout the year and the precise time the signage will be up.

### Criteria 4

*Paths and peoples' use: The proposals should consider the need for a reduced network of paths, which still meets the needs of the community, addresses the management needs of Capercaillie and are practical and enforceable mechanisms. The proposals should identify how they will ensure that there is no increase in recreational disturbance that might affect the nearby Special Protection Areas by people and dogs off paths, or on minor / informal paths, as a result of this development and that how the proliferation of new informal paths will be avoided. [Examples of the range of mechanisms might include signs, wardening, guidance to new house occupiers through to more formal arrangements such as an agreement through the Town and Country Planning (Scotland) Act 1997, the powers contained in the Land Reform (Scotland) Act such as provisions for byelaws, Rangers, powers to protect the natural heritage, or powers such as Management Rules contained in the National Park (Scotland) Act 2000 and Wildlife and Countryside Act and habitats regulations.]*

**Assessment:** Paths 7 and 8 (Figure 6) are two of the least used paths according to the user survey (MBEC Report, page 30 and 31) and the camera survey would appear to substantiate this relative use for path 7. (No camera data exists for path 8.) Access to path 8 can be from two paths that will be within the area of development (paths 20 and 21) and from Deshar Road at the start of path 1. It is likely therefore that a significant percentage of use of path 8 will be excluded by the removal of the links through paths 19, 20 and 21. Access to the start of the path will still be possible from both path 1 and 2. Given the relatively low use of path 8, it is likely that scarifying the path surface with some blocking material will result in low to no use of this path.

Path 7 can be accessed from path 1 in the north west and from the junction with paths 12 and 14 in the south west. Path 7 can form part of two loops: either 1, 9 and 12 or 1, 9, 15, 17 and 14. Both end at the small access area on Deshar Road west and outside the proposed development. Both loops will be removed as a consequence of path 7 being taken out and there is no obvious similar length alternative to the shorter loop that will have the same degree of quietness. Alternatives to the east will be considerably busier. There are no proposals to remove the informal car park at the start of route one and therefore with the lack of a comparable route, compliance will have to rely strongly on "buy in" to the importance of capercaillie otherwise off path use is a distinct possibility. Unless there is clear community support for all the management measures proposed there must be significant doubt that access will be prevented along the line of path 7.

#### **Criteria 5**

*Community engagement and support: The proposals should demonstrate effective engagement with the community and recreational users and a sufficient degree of support to ensure the proposals are effective.*

**Assessment:** The community have been kept informed of progress with the development and a presentation was made by MBEC to the Community Council on 29 June (para. 7.9.1) where the results of the questionnaire survey were explained. The camera survey had not been completed at that time. The proposed mitigation measures have not yet been presented to the community. The Community Council did however have the opportunity to discuss the proposals at their meeting on 3 October 2011.

The Community Council will continue to use the newsletter to keep the community informed of all aspects of the development and are very supportive of the proposed Steering Group having effective local representation (11.5.2). However, the degree to which the users of the wood will 'buy-in' to the mitigation measures proposed in the Report is yet untested.

#### **Criteria 6**



*Alternative recreational provision: The mitigation proposals should demonstrate how any predicted increases in the types of recreational use that are likely to disturb Capercaillie (e.g. dogs ranging off paths) will be catered for and diverted to a suitable location that won't disturb Capercaillie.*

**Assessment:** The proposals to close paths 7 and 8 are dealt with in the assessment against Criteria 4. The likely success of an off lead dog exercise area adjacent to the community is dealt with under Criteria 2.

#### **Criteria 7**

*Any Screening proposals, including planting and vegetation management, requires to be effective and commensurate with the phasing of the development, including the construction phase.*

**Assessment:** The effectiveness of the proposed fence around the settlement is assessed against Criteria 3. The scarifying of ground adjacent to tracks is likely to encourage growth which will subsequently result in an effective barrier (para. 12.1.3 BP3). For proposed screening other than that planned adjacent to the proposed 2m fence, this will however take time and in the short and medium term is unlikely to provide a barrier.

#### **Criteria 8**

*Practical enforcement: The mitigation proposals should demonstrate that the measures will be practically enforceable and maintained for the lifetime of the development at no cost to the public purse.*

**Assessment:** The questionnaire and camera surveys have produced detailed information about how the woods are currently being used. From this it is clear that there is currently significant use of the woods by people with dogs that are off lead and off path in areas where capercaillie are likely to be present and at times of the year when disturbance to the species is likely to have an adverse impact. The mitigation proposed for new residents with the welcome pack will help them understand the importance of the woods and what would be responsible behaviour on their part. This will be supported by the Community Council newsletter. The long term goal of peer pressure re-enforcing the appropriate behaviour is the right one and the newsletter and meetings will help in this regard. However, without existing behaviour being moderated it is difficult to see that behaviour that is being encouraged in new residents will be sustainable and practical enforcement is not covered in the report other than taking advice from the Steering Group (Section 11).

#### **Criteria 9**

*Phasing: The mitigation proposals should identify how mitigation measures will be effective at the appropriate time in line with the construction and development phasing.*

**Assessment:** The physical aspects of mitigation (erection of fence, blocking of paths 7 and 8 and the creation of the new link from the development to path 2 will all be done before the first house is occupied (summarised in para. 12.1.6). Signage, community involvement, targeted woodland management and the creation of the dog play area and selective thinning are also planned to be done before any occupation occurs (paras. 12.1.3 and 12.1.6). The effectiveness of the scarifying to encourage growth alongside paths 9 and 15 will take some time to become effective.

As the community has yet to make comment on the mitigation proposals or their phasing it is not possible to gauge how effective they will be during both construction and in the longer term.

Longer term success will be reliant on community support and compliance with the restrictions proposed.

**Criteria 10**

*Monitoring, review and adaptive management: The mitigation and management measures must be monitored and reviewed to ensure effectiveness for the lifetime of the development and a mechanism put in place to take further management measures to reduce disturbance if necessary.*

**Assessment:** Monitoring is proposed and fed in to a Steering group (MBEC report 11.5.2, 11.5.3 BP3 and 12.1.6). The detail of the monitoring required and its frequency will be left to the Steering Group. Given the range of expertise proposed for the Steering group this seems sensible. Powers to "tweak" existing mechanisms are also catered for in this approach but there is no reference to the powers that may be required. As highlighted under proposal 4 above there is a strong possibility that some existing patterns of use will remain the same. There therefore requires potential mechanisms to address these which could include for example Rangers, dog wardens and/or byelaws. There is a lack of any detail about how adaptive management would work in practice and whether it would be enforceable.

# **BOAT OF GARTEN AND VICINITY COMMUNITY COUNCIL**



Please send letters by post to the Secretary, Tigh an Iasgair, Boat of Garten, Inverness-shire PH24 3BY.

Please send all e-mail correspondence to the Chair: [REDACTED]

Don McKee  
Head Planner  
CNPA  
Albert memorial hall  
Station Square  
Ballater AB35 5QB

8<sup>th</sup> October 2011

Your ref. 08/272/CP

Dear Mr McKee

**Reconsultation 08/272/CP Planning Application for erection of 72 houses; formation of 5 housing plots; provision of primary school site; associated amenity ground, roads and footways at land 200m west of football field, Craigie Avenue, Boat of Garten for Davall Developments.**

Please find enclosed the response from Boat of Garten and Vicinity Community Council regarding the Capercaillie Mitigation Report dated September 2011. A copy has been sent by Royal Mail and email. Please acknowledge receipt.

With thanks

Yours sincerely

Alison A Fielding  
Vice Chair  
Boat of Garten and Vicinity Community Council

Chairman: Mrs Mary Clark  
Tel. (01479) 831480

Secretary: Frank Bardgett  
Tel. (01479) 831751

Treasurer: W.H.H. Cruickshank  
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Visit our Community website: [www.boatofgarten.com](http://www.boatofgarten.com)

## BOAT OF GARTEN AND VICINITY COMMUNITY COUNCIL

### RESPONSE TO RECONSULTATION REGARDING - MBEC ENVIRONMENTAL FURTHER INFORMATION REPORT of September 2011 Ref 08/272/CP

- 1) This Community Council re-affirms its commitment to achieving further housing provision for the Boat of Garten area, in particular affordable housing, to ensure a sustainable community for the long-term. The Council is also committed to ensuring the protection and enhancement of the local environment for the mutual benefit of people and wildlife. With these principles in mind, we welcome the more comprehensive report from MBEC dated September 2011 regarding detailed Capercaillie Mitigation Proposals linked to the proposed housing development by Davall Developments Ltd.
- 2) We recognise the statutory role of SNH to advise on the implications of proposals for designated sites. At the time of writing, the SNH full response to this updated report is unknown and we have to take this fact into account when preparing this report. The Community Council, as a non-specialist body, does not seek to comment in detail about specific mitigation proposals, but rather to address proposals in general and, in particular, the criteria of community engagement.
- 3) Our approach to this report is to consider how we would wish matters to be taken forward if planning consent is forthcoming from CNPA.
- 4) Firstly we consider the questionnaire survey and camera survey both provide invaluable information for the village, demonstrating the importance of the woods to the local population and to visitors. The high response rate of over 60% to the written questionnaire, and the result that 83% of respondents say they use the woods on a regular basis, are testament to the importance of the woods for recreation and quality of life of both residents and visitors. The MBEC report states at para.10.3.5. *'Overall it is clear from this work that the existing level of disturbance to capercaillie is high to very high within the northern Boat of Garten woods.'* This information provides an important foundation for community engagement. We consider it very important for the community to understand the mitigation measures being proposed and to encourage responsible use of the woods. The Community Council welcomes the recommendation at para 11.5.2. to set up a Steering Committee to include community representation. In our view community engagement is not something which ends if planning consent is granted. The implementation and monitoring of mitigation measures are long-term issues which would require community engagement and Steering Group involvement over a period of years.
- 5) We became aware that at the August draft report stage SNH/CPNA regarded criteria 5 'Community Engagement and Support' as 'Not met.' The Community Council sought clarity on this from CPNA and was advised it was a statement of their view at that point in time and that our right to make a written response at this later date was not compromised.
- 6) It is the view of the Community Council that there has been on-going engagement by the community in respect of this housing application and associated mitigation. The Planning Committee already has a number of documents filed by the Community Council between 2008 and 2011 in response to consultation and a verbal presentation was made at the Planning

Committee on 7/1/11 in support of the application. Since that time MBEC/Davall have maintained communication and consulted us about the survey questionnaire and camera survey. We have kept the local residents informed of progress through the monthly Community Council meeting minutes which are publicly displayed, and through articles in the local newspaper, BOG Standard, which is delivered free to all households within the PH24 postcode. At the request of MBEC/Davall the Community Council facilitated a public meeting at Boat of Garten Community Hall on 29<sup>th</sup> June. The minutes of this meeting have been filed by MBEC at Appendix 5. At para.5 of Appendix 4 MBEC state the purpose of the presentation was to make the community aware of the detailed results of the questionnaire survey and provide an opportunity for discussion of likely mitigation options. At that point in time the camera survey was on-going.

- 7) This public meeting allowed the Community Council to gauge the response of a cross-section of local residents to the mitigation principles being outlined. There was a positive approach to discussion with genuine interest being shown in the options outlined and discussion of the benefits/complexities of mitigation. We draw the committee's attention to two paragraphs in particular from the minutes:
- 8) Para 3.2 *'Discussion covered the benefits of signage; the need for good quality signage to avoid vandalism; advisory signage e.g. explaining about ground nesting birds; the importance of education of woodland users; the buying in of local communities ; and peer pressure to encourage responsible behaviour in the woodland. Location of signs is also important.'*
- 9) Para. 3.5. *' Discussion took place on the benefits/disbenefits of identifying a particular 'dog off lead' zone . The idea was generally welcomed. It was suggested by the residents that this is an issue in the whole of the National Park for the protection of wildlife and the CNPA officers should be asked to take the lead on this and identify possible zones in all sensitive park areas, possibly using our area as a pilot scheme.'*
- 10) The Community Engagement and Support criteria from SNH/CNPA reads : *'The proposals should demonstrate effective engagement with the community and recreational users and a sufficient degree of support to ensure the proposals are effective. (Reason: To be effective there needs to be clear support from regular users shown through positive behaviour change so that informal networks are unlikely to be created or existing desire lines restored if removed.)'*
- 11) The Community Council wishes to express its concern that the reason given implies a level of support (*'shown through positive behaviour change'*) which is unrealistic to expect at this stage of this Housing Application process. People need time to become familiar with and give consideration to, the details of and reasons for proposals. Whilst this latest mitigation report provides greater detail of what is proposed, time is needed to engage the community with those detailed proposals, for the community to receive the full advice of SNH, for actual details to be worked through, and the commitment and agreement of all stakeholders to be achieved. This needs to be an on-going process which takes time to implement and does not start or finish with planning consent. At the most recent Community Council open meeting on 3/10/11, members took the view that the public meeting of the 29<sup>th</sup> June gave a positive steer to the draft mitigation proposals and that detailed proposals would be best discussed with all stakeholders after the Housing Application has been determined. Therefore if planning consent is given, we

would recommend including a planning condition relating to continuing community engagement and the setting up of the recommended Steering Group. We believe a further public meeting would be most effective if held after planning consent is granted (if granted) rather than before. At that stage the community would have the benefit, not only of the SNH/CNPA advice but also all respondents' views on the mitigation proposals and any report from/conditions imposed by the planning officers and committee. This additional information, and the knowledge that housing was to be built in the near rather than very distant future, would provide a strong incentive to all stakeholders to refine the mitigation proposals to achieve the best possible outcome for protection of the capercaillie, minimise the impact on those residents living nearest to the proposed site and maintain the recreational facilities for all those who use the woodland. We would wish the public meeting to occur before the start of the working group to assist community representatives to take matters forward.

- 12) We accept that for successful mitigation measures to be achieved, understanding about the impact of human and animal disturbance is vital. Education, information and good signage are key to this but positive change takes time and requires regular focus over a matter of years. People's attitudes and understanding can develop and behaviour change but it would be naïve to expect a few meetings to achieve this. In representing the community we have to recognise the variety of views within the village about what might work and maintain a consultative process for the foreseeable future. Many people live in this area because they value wildlife and want to enjoy the outdoors and protect the environment, a first step to positive approach to change. Some residents have suggested that the existence of a warden to help with education and monitoring would be useful.
- 13) In terms of specific points raised within the documentation, the Community Council anticipates that the community would want to keep the informal car park and wildlife information board at the beginning of Path 1 as it is regularly used by both residents and visitors, not just for access to the woods but also for observation of bird life on the land on the other side of the road.
- 14) In response to the proposal to close paths 7 & 8, we appreciate the reasons for this proposal. Paths 7 & 8 are not included in the new Boat of Garten Trails leaflet and therefore we think they are more likely to be used by locals who know of their existence rather than visitors. We note from the camera survey that there are far fewer people and dogs on these paths. It is likely that residents' views will vary about the proposed path closures. There are a variety of circular walks within the woods already available. We are not in a position to say what all residents' views might be about closing these paths but we suggest this is the kind of issue which can be most usefully discussed at a post planning consent meeting, and hopefully a compromise found which meets the approval of all stakeholders.
- 15) The 'dogs off lead' area proposal met with favour in principle from those who attended the public meeting in June, but will require further community discussion. At the meeting emphasis was also placed on encouraging residents and visitors to keep dogs on paths and under control. It is unrealistic to expect all dogs to be kept on a lead. This does not happen in any other area of the National Park and we would be naïve to think we could achieve that here. As mentioned in para. 9, residents suggested this is an issue for the whole of the National Park for the protection

of wildlife and CNPA officers should be asked to take a lead on this and identify zones in all sensitive park areas, possibly using our area as a pilot scheme.

- 16) Mitigation proposals relating to land management / vegetation are clearly necessary to protect capercaillie given the high level of disturbance identified through the recent survey work. The Community Council considers the effectiveness or otherwise of these particular proposals to be the responsibility of the environmental professionals and does not seek to comment directly on these at this stage. Instead we would wish to be advised and consulted about them further
- 17) In conclusion, it is the wish of the community to achieve further housing provision, particularly affordable housing, but also some private housing to ensure the long-term sustainability of the community within a reasonable time frame. We ask the CNPA Planning Committee to consider this mitigation report bearing in mind the vital importance of achieving a balance between the interests of the natural heritage of the area and the interests of the human population. It is the view of the Community Council that this or any other future housing development will necessitate an understanding of, and positive engagement in, any mitigation arrangements. Consequently if planning consent is given, we will actively seek the co-operation of local residents in working with all the stakeholders to achieve success.

Dated 8<sup>th</sup> October 2011

# Appropriate Assessment

## CNPA HABITATS REGULATIONS ASSESSMENT

Casework Recording System Ref.  File Ref.  Planning Ref.

### SITE DETAILS

#### 1a. Name of Natura site affected

- Kinveachy Forest SPA
- Abernethy SPA
- Craigmore Wood SPA
- Cairngorm SPA

#### 1b. Name of component SSSI if relevant

- Kinveachy Forest SSSI
- Abernethy SSSI
- Glenmore Forest and North Rothiemurchus Pinewood SSSIs

#### 1c. European qualifying interest(s):

- Kinveachy Forest SPA: capercaillie and Scottish crossbill
- Abernethy SPA: capercaillie, osprey and Scottish crossbill
- Craigmore Wood SPA: capercaillie
- Cairngorm SPA: capercaillie, dotterel, golden eagle, merlin, osprey, peregrine and Scottish crossbill

#### 1d. Conservation objectives for qualifying interests:

##### 1. Conservation Objectives For Kinveachy Forest Special Protection Area

To avoid deterioration of the habitats of the qualifying species:

- Capercaillie
- Scottish Crossbill

or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained.

To ensure for the qualifying species that the following are maintained in the long term:

- Population of the species as a viable component of the site
- Distribution of the species within site
- Distribution and extent of habitats supporting the species
- Structure, function and supporting processes of habitats supporting the species
- No significant disturbance of the species

##### 2. Conservation Objectives for Abernethy Forest Special Protection Area

To avoid deterioration of the habitats of the qualifying species:

- Capercaillie
- Osprey
- Scottish crossbill



or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained.

To ensure for the qualifying species that the following are maintained in the long term:

- Population of the species as a viable component of the site
- Distribution of the species within site
- Distribution and extent of habitats supporting the species
- Structure, function and supporting processes of habitats supporting the species
- No significant disturbance of the species

### **3. Conservation Objectives for Craigmore Wood Special Protection Area**

To avoid deterioration of the habitats of the qualifying species:

- Capercaillie

or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained.

To ensure for the qualifying species that the following are maintained in the long term:

- Population of the species as a viable component of the site
- Distribution of the species within site
- Distribution and extent of habitats supporting the species
- Structure, function and supporting processes of habitats supporting the species
- No significant disturbance of the species

### **4. Conservation Objectives for Cairngorms Special Protection Area**

To avoid deterioration of the habitats of the qualifying species or significant disturbance to the qualifying species, thus ensuring that the integrity of the site is maintained.

To ensure for the qualifying species that the following are maintained in the long term:

- Population of the species as a viable component of the site
- Distribution of the species within site
- Distribution and extent of habitats supporting the species
- Structure, function and supporting processes of habitats supporting the species
- No significant disturbance of the species

## **PROPOSAL DETAILS**

### **2a. Proposal title:**

Full Planning Application for erection of 72 houses; formation of 5 house plots; including MBEC final capercaillie mitigation plan Sept 2011

### **2b. Name of competent authority**

Cairngorms National Park Authority

2c. Type of Case:

Planning application CNP Ref

2d. Details of proposed operation (inc. location, timing, methods):

Timing of development at discretion of developer if PP granted, start must be within 3 years of any decision.

#### APPRAISAL IN RELATION TO REGULATION 20 or 48

3a. Is the operation directly connected with or necessary to conservation management of the site? YES/NO If YES give details:

No

*If yes and it can be demonstrated that the tests in 3b have been applied to all the interest features in a fully assessed and agreed management plan then consent can be issued but rationale must be provided, including reference to management objectives. If no, or if site has several European qualifying interests and operation is not directly connected with or necessary to the management of all of these then proceed to 3b.*

3b. Is the operation likely to have a significant effect on the qualifying interest? Consider each qualifying interest in relation to the conservation objectives.

Of the qualifying interest species present in the SPAs, it is likely that only capercaillie could be significantly impacted upon. Therefore, only capercaillie will be considered further as part of this assessment. This assessment is a revision of the assessment made by CNPA in December 2010, taking into account the new data available and the revised mitigation proposals submitted.

#### Capercaillie use of Boat of Garten wood

Boat of Garten wood (Craigie Wood) hosts a significant population of capercaillie which are a qualifying interest on four nearby SPAs – Abernethy, Craigmore woods, Cairngorm and Kirvechy (there is a fifth SPA at Anagach woods of which capercaillie are a qualifying interest, but in line with SNH advice, it will not be considered as part of this assessment). Due to the proximity of the forests of Strathspey and the known dispersal distances of capercaillie, the birds using the area have to be considered as one ecological unit or meta-population. Strathspey is the last refuge of the species containing c.75% of the UK population, with populations still in decline in all other areas.

The proposed development site appears to be little used by capercaillie, which is almost certainly a result of disturbance on and near the site. However, the wider Boat of Garten wood is used by capercaillie and is known to contain one lek, which although not on the development site is in relatively close proximity. Much of the surrounding habitat is of use year-round and is suitable as brood rearing and wintering habitat.

The area has been monitored for a number of years so a reasonable picture exists of population size. Collated records of capercaillie sightings and signs (feathers and droppings) from 1994 to 2010 showed that capercaillie were widely recorded through much of the wood. Research shows that the birds generally avoid the existing houses and the tracks (Moss, 2009 and 2010).

The data below shows the number of male capercaillie recorded at the known Boat of Garten lek site between 1999 and 2011.

Year	'99	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11
No. of Leking Males	3	2	-	1	2	5	5	6	4	5	3	3	3

Research on productivity in the woods through brood counts indicate that the woods is productive, with chick density at or higher than the national average, which could potentially mean that Boat of Garten woods could be producing a surplus of chicks that could be recruited into the neighbouring SPA's as a source population. The following two tables give details of brood counts undertaken on site in 2008 & 2009.

Boat of Garten capercaillie brood counts 2008 - undertaken 11-13/8/08

Grid Ref	Sex	Young	Comments
NH 9297 1838	Ad male		
NH 9309 1845	Ad Fem	2 young	Flew from trees
NH 9283 1870	2 Ad females		Flew from trees
NH 9276 1869	Ad male		
NH 9257 1846	Ad male		
NH 9228 1797	Ad fem		
NH 9207 1846	Ad male		
NH 9141 1794	Ad Fem	2 young	
NH 9310 1796	Ad male		
NH 9333 1826	Ad fem		
NH 9244 1717	Ad male		
NH 9190 1710			Male feathers and dust bath
<b>Total</b>	6 males plus feathers, 6 females, 4 young		

Boat of Garten capercaillie brood counts 2009 - undertaken 7-8/8/09

Grid Ref	Sex	Young	Comments
NH 92868 17772	Ad Female	1 male, 1 female chick	
NH 92962 17760	Ad Male		
NH 92728 17640	Ad male		
NH 92906 18520	Ad female	1 male, 1 female chick	
NH 92636 18554	Ad female	Male chick	
NH 92110 18186	Ad male		
NH 92036 17687	Ad female	No young	
NH 92115 17094	Ad male		
<b>Total</b>	4 males, 4 females, 5 young		

No brood counts were undertaken on the site in 2010, but a 2011 survey counted 4 males, 2 females and 3 chicks. Research indicates that a productivity success of 0.6 chicks per hen (in the absence of fence strike mortality) is required for a population to be sustained.

Some earlier assessments of Boat of Garten woods used a x2 multiplier to assess capercaillie population size. This method simply multiplies by two the number of males

counted at the lek site. Most recent research indicates that this is inaccurate and likely to under estimate population size. The Caper BAP Group and RSPB use x4 multiplier, which makes a consideration for males not counted at the lek (capercaillie can lek over a very wide area), juvenile birds that do not present themselves at the lek, birds that may not have appeared at the lek at that particular morning (the lek period is several weeks long, with no sure way of knowing when the peak of activity will be) and a variation in the sex ratio (there seem to be more females than males in the population). This has been published in the book entitled "Grouse" (Moss and Watson, 2008) and is consistent with recommendations of bird census and survey published by Sutherland *et al*, 2004 in "Bird Ecology and Conservation: A Handbook of Techniques". Recommendations for the acceptance of the x4 multiplier has been submitted to the Avian Population Estimates Panel. Regardless of methodology used for calculating the population estimates, evidence suggests that the Boat wood supports over 1% of UK capercaillie population. The number of cock capercaillie constituting the National population is estimated from lek counts undertaken each spring. The number at Boat of Garten woods is consistently estimated at or above 1% of the National figure. This suggests that the whole population is at least at this level, irrespective of the multiplier used to estimate the population of both sexes. A local population is considered of national importance if it contains more than 1% of National population.

The table below shows the lek count data for Boat of Garten wood compared with number of males recorded nationally:

LEK COUNTS	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Boat of Garten Wood	3	2	-	1	2	5	5	6	4	5	3
Mean no cocks per lek	2.94	2.37	2.75	2.45	2.56	2.88	2.79	2.24	2.39	2.21	1.87
Total no cocks	100	121	66	179	184	222	234	206	220	212	194
Total no leks counted	34	51	24	73	72	77	84	92	92	96	104
Boat of Garten as a total of National Population	3	1.65	-	0.56	1.09	2.25	2.14	2.91	1.82	2.36	1.55

#### Links between the site and the SPAs

The latest national survey data shows a non-statistically significant decline in the population to 1228 birds (Ewing *et al* in prep). Despite this, it is considered that the national population of capercaillie appears currently to be stable after a period of rapid and significant decline (Eaton *et al*, 2007). However, the national population is still small and its range is contracting significantly. The 2003/04 Capercaillie national survey suggested that the range of Capercaillie had contracted into core habitat, with over 60% of all birds recorded occurring in Strathspey (Eaton *et al*, 2007). This figure has recently been estimated to have increased to c.75% in Strathspey (Poole, 2010). 67% of Capercaillie cocks observed during lek surveys from the spring of 2010 were in Strathspey (Table 1). Although capercaillie numbers have held up in Strathspey, the population is still extremely vulnerable elsewhere. Capercaillie persist in other areas (Deeside, Donside, Easter Ross, Moray and Perthshire) but these populations are more fragmented and numbers are lower. The Strathspey capercaillie population is crucial to the long-term survival of the species in the UK.

Table 1: Summary of total and average number of cocks on active leks in Scotland in 2010

Region	No. of active leks	Min No. of cocks	Mean cocks/lek
Perthshire and Loch Lomond	7	9	1.3
Deeside and Donside	13	21	1.6

Moray and Naimshire	9	20	2.2
Easter Ross	9	22	2.4
Strathspey	33	141	4.3
<b>TOTAL</b>	<b>71</b>	<b>213</b>	<b>3</b>

Whilst Boat of Garten wood is not designated as a Natura site, it does host a significant proportion of the population which are a qualifying interest on four nearby SPAs: Abernethy (~ 0.9 km from between nearest points), Kinveachy (~ 1.5 km), Cairngorms (~ 4.5 km) and Craigmore Wood (~ 8 km). These distances are well within maximum capercaillie dispersal distances known from the literature. Storch (1995) radio-tracked 40 capercaillie in the Bavarian Alps and found that throughout the year distances of females from the leks they attended in spring averaged 1.3 km (Standard Error = 0.1 km). In winter and spring males aggregated within a 1 km radius of the lek, but dispersed within a 3 – 4 km radius during summer. Storch (2001 cited in Moss *et al* 2006) concluded that most males settle close to their chick range but young female dispersal distances were typically 5 – 10 km. A radio-tracking study of males at leks in Russia and Norway recorded average dispersal distance of males to summer range of 2.3 km, SE = 0.37 (Russia 2.2 km, SE = 0.70; Norway 2.4 km, SE = 0.43) (Hjelford *et al.* 2000). Storch & Segelbacher (2000) summarised known movements as average seasonal movements of 1 – 2 km for adults and median dispersal distances of < 10 km for juveniles. The distances recorded in a Scottish study (Moss *et al.* 2006) are somewhat longer than those above, which may be related to the fragmented nature of Scottish forests showed first-winter dispersal distances of 13 hens radio-tracked ranged within 1 – 30 km (median: 11, mean 12.3, SD 9.8).

Habitat suitable for capercaillie in Scotland is heavily fragmented into comparatively small areas of forest. None of the capercaillie populations in these individual woodlands have the capability to be self-sustaining in the long term. For genetic diversity to prevent inbreeding depression, discrete groups of birds must be linked with nearby groups (i.e. recruiting and exporting birds) forming a metapopulation. Conservation of capercaillie requires consideration at the metapopulation scale as well as at the scale of individual sites. The area functions as a vital 'stepping stone' for capercaillie, by facilitating movement between SPAs.

#### Sensitivity of capercaillie to disturbance

Despite the proposed mitigation plan submitted by the developer, it is likely that the proposed development would lead to an increased level of public use of the adjacent woods with an associated increase in disturbance.

Capercaillie is listed in Schedule 1 Part I of the Wildlife and Countryside Act 1981 and the EU Birds Directive. It is a **criminal offence to intentionally or recklessly disturb leking or breeding capercaillie**. According to Article 6.2 of the EU Habitats Directive: 'Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, ***in so far as such disturbance could be significant in relation to the objectives of this Directive.***' Article 7 of the Habitats Directive states that Article 6.2 applies to the Birds Directive.

There is a growing body of evidence indicating capercaillie and other grouse species are adversely affected by disturbance resulting from human recreational activities. Our knowledge on the impacts of recreational disturbance has increased during the last few years due to the increasing body of research undertaken, although it is very difficult to measure scientifically.

Capercaillie have been shown to avoid habitat close to tracks, which may reduce overall carrying capacity in forests with a high density of tracks. Fewer droppings are found in areas of woodland close to heavily used tracks. A study in neighbouring Abernethy forest

estimated that 21-41% of suitable woodland habitat at Abernethy could be lost due to avoidance of tracks (Summers et al., 2007). Studies conducted by Robert Moss in Strathspey (including Boat of Garten woods) indicate that capercaillie make less use of forest habitat within 200-250m of well-used tracks. This implies that tracks may need to be more than 500m apart to avoid disturbance (Moss et al, 2008 and 2009). There was a higher density of male than female droppings in the above studies suggesting that hens may be more susceptible to disturbance. In the most recent Strathspey study at FCS Glenmore, findings indicated that capercaillie avoid areas around busy entry points to woodlands (Moss et al, 2010).

A study in Central Europe showed that flushing distance was greater in the presence of regular disturbance events (Thiel et al, 2007). Flushing distances are greater in open forests where the availability of cover is low (Thiel et al, 2007) as in Boat of Garten woods. Other European studies show that raised stress hormone metabolite levels were noted in capercaillie regularly disturbed by off-piste skiers. (Thiel et al., 2005, 2008). Repeated flushing, such as could occur due to increased disturbance caused by new residents, increases the energy burden. This impact is likely to be of greatest significance in very cold weather, when birds are already close to their physiological limit (Zeitler, 2000). Disturbed capercaillie are also likely to be more visible and will need to spend more time feeding to counteract the increased energy losses, possibly increasing exposure to predators.

Human disturbance can affect capercaillie by reducing the availability of otherwise suitable habitat (including habitat used for roosting, feeding, nesting and brood rearing), displacing the birds from leks, disrupting behaviour patterns and increasing the risk of predation which may lead to reduced survival, recruitment and carrying capacity. These effects can occur separately or additively. Capercaillie are sensitive to disturbance at all life stages but especially so when attending leks, incubating eggs (late April to mid June) or rearing broods (late May - late August but critically during June and July when the chicks are small and dependent on the hen for warmth), which coincides with when people are most frequently using the woods.

Grouse experts questioned as part of the Delphi study (Marshall, 2005) suggested that dogs off leads during the breeding season were the most significant issue for capercaillie in Scotland. The impact on dogs on ground nesting birds is a concern that CNPA, with support from the Cairngorms Local Outdoor Access Forum are attempting to address through the promotion of a targeted responsible dog walking campaign, due to the potential impact this may be having on breeding success. Dogs off-lead can have a greater impact by flushing birds further away from paths, so further limiting the amount of available habitat; can separate broods from the hen which could result in chicks becoming cold and wet; and dogs can catch and kill both chicks and adult birds. Due to the large size, especially of males, chicks require a large amount of energy to grow to adult size during a short period. Due to poor nutritional qualities of their food, they are more susceptible to the effects of disturbance than smaller birds and have a higher mortality rate over a longer period. Most robust chicks are hatched, and therefore more likely to survive, if a hen has good energy reserves during egg development.

The studies conducted by Robert Moss looking at the distribution of capercaillie droppings on transects in Boat of Garten woods found that cocks' droppings were about twice as common as hens, suggesting a sex ratio skew (consistent with evidence that suggests hens are more susceptible to disturbance than cocks); droppings were sparser within 700 m of a much-disturbed zone near the village (significantly so up to 250 m), and within 250 m of tracks (significantly so up to 120 m). Results were consistent with those from other studies at Anagach Woods and Glenmore Forest. Distances between tracks of > 500 m would be required to provide capercaillie with relatively peaceful havens between tracks. According to

the results, distances between tracks of > 500 m, a criterion just satisfied by the two biggest track-free blocks of woodland at Boat of Garten, would be required to provide capercaillie with a relatively peaceful haven at their centre.

#### **Loss of capercaillie habitat**

The habitat on the development site is Scots pine plantation. The habitat quality of Boat of Garten Wood is relatively good, which is evidenced by sustained chick productivity and the persistence of the population in the area despite current levels of disturbance. Trees are relatively well spaced and there is an understory of heather, blaeberry and cowberry.

The proposed housing would result in a permanent loss of 5.8 ha of Scots pine woodland. The evidence suggests that capercaillie rarely use the site of the proposed development. This is not unexpected given the proximity of several existing sources of disturbance (the road, cycle path, car park and existing housing), and it is reasonable to assume that the existing level of disturbance there means that the apparently suitable habitat for capercaillie is effectively unavailable to them. While this direct loss may not be considered of a large scale, research on use in the woods adjacent to the development site through analysis of dropping also suggests that there is an avoidance of useage. This again is probably attributable to the disturbance being experienced from existing sources and accumulatively creates a more significant area of unavailable habitat. Much of the area is potentially brood rearing habitat. Capercaillie chicks need high quality protein food to grow rapidly, which can be distributed patchily over a wide area. Chicks are born precocial and move constantly over a wide area to find food and avoid predation (Wegge *et al*, 2007).

The Scottish capercaillie population declined significantly between the 1970s and 1990s. From an estimated 20,000 birds in 1970, numbers fell to 2189 birds in the first national survey in 1993/94. A surveys in 1998/99 estimated a population of just 1073 birds (95% C.L.549-2041) - a decline of 51% between the two surveys. The 2003/04 survey gave an estimate of 1980 birds, which could potentially to be considered an overestimate in light of results developing from the 2009/10 survey which indicates a population size of 1228. Studies have suggested that the national decline of capercaillie was driven by low productivity (Moss *et al*, 2001).

A programme of targeted habitat management in capercaillie core areas seems to have halted the population decline in Strathspey. Among the factors that may limit capercaillie populations in Scotland are habitat fragmentation and limited habitat availability. In order to address this conservation groups including the Caper BAP group are seeking to ensure opportunities to increase the amount of habitat that is available are developed to ensure that connectivity is increased. This is also a key priority for the CNPA as set out in the National Park Plan. Additional effort needs to focus on increasing productivity and addressing issues that may impact upon it i.e. reducing disturbance. Fragmentation of the Strathspey core area would be increased if the functioning of this woodland diminished and would be in conflict with conservation aims.

Strathspey is the most important area of woodland in the UK for capercaillie, holding c.75% of the population (Poole, 2010). The species requires large, connected areas of woodland for the metapopulations to function effectively. Therefore, the woodlands of Strathspey need to be considered as one ecological unit for the purposes of capercaillie management. This habitat loss is contrary to targets to increase capercaillie habitat and to increase pine woodland. This is in terms of direct loss from the development itself and from reduced habitat available through disturbance impacts which could increase habitat avoidance by capercaillie and magnify the impacts as highlighted above.

#### **Proposed Mitigation**

The Further Information Report submitted by MBEC on behalf of the developer sets out the further work undertaken since the planning application was considered in January 2011 and the proposals for mitigation.

The mitigation proposed includes a variety of measures including fencing at the development site boundary, seasonal and permanent signage, residents information pack, off-lead dog area, trackside tree regeneration, path closure and woodland management.

The study undertaken as part of this report which included a resident questionnaire and fixed-point remote camera survey shows that there is a high recreational pressure within the Boat of Garten woods, particularly by off-lead dog walkers. These current levels of disturbance are already having an impact on the capercaillie population using the area (Moss et al, 2010). There are areas of habitat being avoided, but also there is evidence of a sex-ratio skew, with less females using the area than males. Evidence suggests that females are more susceptible to disturbance effects and are less likely to persist in a disturbed area. If this situation were increased it could potentially have a significant impact on productivity within the woods.

The proposed mitigation has been assessed to consider if reasonable action could be undertaken that would ensure no increase in recreational disturbance. CNPA and SNH developed a set of 10 criteria to help assess the proposed mitigation and to gauge its likelihood of success. CNPA's Strategic Land Use team's assessment of the criteria on natural heritage grounds is as follows:

#### **Criteria 1**

**Current and estimated recreational use and provision:** The mitigation proposals should be based on a detailed and evidence-based understanding of current recreational use of the area, (both spatially and temporally) in terms of numbers, distribution, behaviour and reasons and take account of the predicted future recreation demand arising from the proposed development.

**Assessment:** Criteria partially met. The developer has undertaken a thorough assessment of the current recreational use of the woods using both questionnaire and fixed-point remote camera surveys. This survey and the following analysis provide valuable information to inform our understanding of people's movements, the approximate numbers involved, the popularity of individual paths, the activities undertaken and the frequency of dog walking both on and off lead.

It has been highlighted by the CNPA Access Team that the assessment of future use is likely to be flawed in relation to mountain bike use. The oversight of the probable development of informal mountain bike "skills areas" when combined with the lack of demonstrable knowledge of use of the site by capercaillie (compared with data published by Moss et al 2010) would suggest that this activity is likely to have a considerable and sustained impact on the area of habitat available to capercaillie.

Future recreational use may also penetrate deeper into the woods as likely consequence of the loss of woodland near the village resulting from the development, so potentially increasing the area of habitat avoided by capercaillie in future (capercaillie droppings are found to be significantly sparser up to 125m from tracks and about 350m from a much-disturbed region near the village).

#### **Criteria 2**

**Best practice:** The mitigation proposals should be built on best practice and reference should be made to relevant examples elsewhere in UK or Europe where similar approaches have been proven to be effective in such situations

**Assessment:** Criteria partially met. Elements of the mitigation are drawn from best practice. However, there is a very high level of off-lead dog walking taking place which increases with distance from the village. The off-lead dog play area will cater for some use but it is unlikely to meet the clearly identified need of the local residents to walk their dogs off-lead over much



greater distances. While there is reference to the Stephen Jenkinson report, there is no reference to mitigation that is proven to be effective for capercaillie to limit the effects of disturbance. It also ignores Stephen Jenkinson's findings that dog owners have a preference for not meeting other dogs, so effectively putting more pressure on quiet areas of the woods. No baseline data was gathered on capercaillie use of the site, which is standard practice when proposing a long-term monitoring of mitigation effectiveness.

### **Criteria 3**

**Location and time-specific:** The mitigation proposals should be designed to avoid an increase in disturbance throughout the parts of Boat of Garten wood currently used by Capercaillie. They should analyse information on the sensitivity of different parts of the wood for Capercaillie, and the sensitivity of different times of the day and year, alongside consideration of current and likely future levels and patterns of recreational use.

**Assessment:** Criteria partially met, but not met on natural heritage grounds. While the CNPA Access team consider the fencing and welcome pack will likely be successful, the criteria have not been met in regard to capercaillie. There is a serious lack of knowledge/data presented on the sensitivity of various parts of the wood for capercaillie. Moss et al 2010 shows a much wider usage (via observations of droppings) of the Northern Boat Woods throughout the year than is acknowledged in this report. Research by Wegge et al 2007 shows that broods move continuously and over considerable distances, presumably to search for food and avoid predators. It is possible if the increased human usage pressure of 32% is concentrated into areas to the north and east of the woods, the capercaillie may become confined only to the fragmented areas in the west of the site, which may provide insufficient area for successful brood rearing. This effect will be increased if the prediction of the development of informal mountain bike skills areas sees a sustained use of woodland closer to the settlement.

We can also not be confident that mitigation will be effective at preventing an increase in off-lead dog walking at sensitive areas further away from the settlement.

### **Criteria 4**

**Paths and peoples' use:** The proposals should consider the need for a reduced network of paths, which still meets the needs of the community, addresses the management needs of Capercaillie and are practical and enforceable mechanisms. The proposals should identify how they will ensure that there is no increase in recreational disturbance that might affect the nearby Special Protection Areas by people and dogs off paths, or on minor / informal paths, as a result of this development and that how the proliferation of new informal paths will be avoided.

**Assessment:** Criteria partially met – as indicated by the CNPA Access Team, the removal of Path 7, while on paper appears beneficial for capercaillie, may in practice result in an increased disturbed zone for capercaillie. Path 7 can form part of two loops, both of which will be removed as a consequence of Path 7 being removed, with no obvious similar length alternatives available. The desire to walk on a circular route is deemed important to the local residents (which is consistent with other consultations and research) and the removal of this option could lead to limited compliance or a proliferation of new informal paths being created. The community's desire and willingness to keep paths open has been demonstrated by some recent wind-blown trees across Path 7 being cut with chain saws to maintain access.

There is little evidence to inform why, based on user pressure, that Path 7 has been chosen for closure. Higher levels of pressure have been observed elsewhere and the channelling of access away from the development to the east via the double large fence may potentially reduce pressure in this area.

The current deer numbers in the woods are sufficiently high to inhibit natural regeneration. This is resulting in little or no regeneration in the woodland itself and stunted growth along some of the major path edges. This is the result of sporadic grazing in the more disturbed

areas where deer are limited to foraging under cover of darkness. This repressed growth must have been ongoing for many years as the area was replanted in the 1980's. Tree screening and juniper will be potentially slow growing with nothing proposed in the interim period. This will be a vital period for establishing how new residents use the woods and may therefore have significant impact on the capercaillie population.

#### **Criteria 5**

**Community engagement and support:** The proposals should demonstrate effective engagement with the community and recreational users and a sufficient degree of support to ensure the proposals are effective.

**Assessment:** Criteria partially met. The community have been kept informed of progress with the development, but the proposed mitigation measures have not yet been presented to the community. The Community Council state that the degree of community buy-in required has not yet been fully assessed and the effectiveness will have to be judged over time. Several submissions from residents suggest that the proposed mitigation won't work in altering established behaviour. This presents an unacceptable degree of risk as the consequences of non-compliance would have a significant impact on the effectiveness of proposed mitigation.

#### **Criteria 6**

**Alternative recreational provision:** The mitigation proposals should demonstrate how any predicted increases in the types of recreational use that are likely to disturb Capercaillie (e.g. dogs ranging off paths) will be catered for and diverted to a suitable location that won't disturb Capercaillie.

**Assessment:** Criteria partially met. This has been detailed in the assessment of Criteria 3 & 4 above. The report does not take account of how capercaillie are using the site in its entirety and has not adequately demonstrated that the access pressure can be controlled and diverted as it suggests.

#### **Criteria 7**

**Any Screening proposals, including planting and vegetation management, requires to be effective and commensurate with the phasing of the development, including the construction phase.**

**Assessment:** Criteria partially met. The fence around the development is likely to be effective in preventing immediate "back-door" access into the woods. The screening proposals using trees and juniper will not be effective in the short-term and may take longer to establish than anticipated as regeneration may require deer management and canopy restructure to establish. This is a vital period when new residents will be establishing their patterns of use in the woods and could potentially lead to an increased level of disturbance as they seek areas to exercise their dogs off-lead and away from other dog walkers.

#### **Criteria 8**

**Practical enforcement:** The mitigation proposals should demonstrate that the measures will be practically enforceable and maintained for the lifetime of the development at no cost to the public purse.

**Assessment:** Criteria partially met. There is a clear discrepancy between the survey and camera work showing that people can sometimes say one thing and do another, even when they know that their path usage behaviour was being observed. Without existing behaviour being moderated it is difficult to see that behaviour that is being encouraged in new residents will be sustainable. It is not likely to be practically enforceable and may lead to an increase in disturbance. The report does not demonstrate how measures could be enforced.

#### **Criteria 9**

**Phasing:** The mitigation proposals should identify how mitigation measures will be effective at the appropriate time in line with the construction and development phasing.

**Assessment:** Criteria partially met. Screening and juniper growth will not be effective at the appropriate time as there will be a significant and crucial time lag before cover is obtained. There is also no legally binding contract being offered to ensure that these measures are effective and sustained.

#### **Criteria 10**

**Monitoring, review and adaptive management:** The mitigation and management measures must be monitored and reviewed to ensure effectiveness for the lifetime of the development and a mechanism put in place to take further management measures to reduce disturbance if necessary.

**Assessment:** Criteria partially met. Monitoring detail is to be developed by the proposed Steering Group. This is insufficient to gauge effectiveness at this stage. Any monitoring developed subsequently may in itself prove to be an additional level of disturbance if it is going to be successful at gathering data on the impacts on capercaillie use over the site (which was not done to produce a baseline data set).

#### **Conclusions regarding the likely significant effect on capercaillie**

The significant level of use of the wood by capercaillie, its proximity to the four neighbouring SPAs, the current and potential impact of recreational use and the sensitivity of capercaillie to disturbance lead us to conclude that the development could have a significant effect on capercaillie. The criteria for mitigation have only been partially met, meaning that the proposals submitted are not sufficient to ensure no increase in recreational disturbance.

In light of these concerns about the effectiveness and enforceability of the proposed mitigation and the likely negative impacts of any increase in disturbance on the capercaillie population that may result, we cannot be confident the proposal will not have an adverse effect on capercaillie in Boat of Garten Wood and in the four identified SPAs.

#### **3c. Assessment of the implications for the site in view of the site's conservation objectives.**

*i) Describe for each European qualifying interest the potential impacts of the proposed operation detailing which aspects of the proposal could impact upon them and their conservation objectives*

*ii) Evaluate the significance of the potential impacts, e.g. whether short/long term, reversible or irreversible, and in relation to the proportion/importance of the interest affected, and the overall effect on the site's conservation objectives. Record if additional survey information or specialist advice has been obtained.*

*iii) In the light of the appraisal, ascertain whether the proposal will not adversely affect the integrity of the site for the qualifying interests. If conditions or modifications are required, proceed to 3d.*

In this assessment, the implications of the proposal for the sites' conservation objectives are assessed in order to answer the question: "Can it be ascertained that the proposal will not adversely affect the integrity of the sites?"

The over-arching conservation objective of SPAs is to avoid deterioration of the habitats of the qualifying species, or significant disturbance to the qualifying species, thus ensuring that the integrity of the sites is maintained. This over-arching conservation objective can be broken down into the following detailed elements:

To ensure that the following are maintained in the long term for the qualifying species:

- Population of the species as a viable component of the sites
- Distribution of the species within sites
- Distribution and extent of habitats supporting the species
- Structure, function and supporting processes of habitats supporting the species
- No significant disturbance of the species

For the purpose of this assessment, the conservation objectives apply to the Natura sites, i.e. the elements of the conservation objectives relating to supporting habitats apply only to habitats within the SPAs and the supporting habitat within the SPAs is protected in its own right as part of a 'most suitable territory'. Habitat used by SPA birds outwith the site does not have this level of protection – it is important only in so far as it affects the SPAs' abilities to maintain their populations and the distribution of those populations within the sites' boundaries. The Appropriate Assessment is restricted to impacts on the SPAs and does not allow for a full assessment of Boat of Garten woods as part of the overall capercaillie population. Only c.50% of the national capercaillie population is found within SPAs and the number of cock capercaillie lekking at Boat of Garten woods is consistently estimated at or above 1% of the national figure (the national population is estimated from lek counts undertaken each spring). This suggests that the whole population is at least at this level, irrespective of the methodology used to estimate the population of both sexes. A local population is considered of national importance if it contains more than 1% of National population. A site containing 1% or more of the national population could potentially also be eligible for SPA status.

Despite the evidence above, only if these factors have the potential to affect the maintenance of the populations as viable components of the Natura sites, or if loss of off-site habitat may affect distribution within the Natura sites, could we conclude that the proposal would adversely affect the integrity of the sites.

The assessment against the Conservation Objectives is given below.

#### **1. Population of capercaillie as a viable component of the sites and distribution of capercaillie within the Special Protection Areas**

Boat of Garten Wood has proven to be a productive site, consistently producing chicks (see 2008, 2009 and 2011 brood count surveys noted above), so can be considered as a functioning part of the Strathspey meta-population. It therefore has potential to export birds to the four surrounding SPAs (and others including Anagach). Scotland's capercaillie population contains six meta-populations, of which Strathspey is the largest and probably most important. The more birds that there are in the meta-population, the more viable the population and the more robust it would be to a catastrophic event at any one site.

Capercaillie will move from site to site, sometimes over large distances (Moss et al, 2006). Boat of Garten wood forms a link between Kinveachy, Craigmore, Cairngorms and Abernethy SPAs (and Anagach SPA), all of which support significant elements of the Strathspey meta-population. Boat of Garten woods may be a key element for dispersal and relocation of birds and therefore an important area of habitat for the species in the wider countryside. Given its location, structure and size, Boat of Garten Wood can be considered to function as a potential 'stepping stone' for capercaillie, e.g. by facilitating movement between SPAs and also with the undesignated countryside. This may be a vital location in its function of facilitating the retention of genetic diversity in the metapopulation and avoiding inbreeding depression.

If recreational disturbance increased as a result of this development, the wood could become unsuitable for capercaillie and connectivity between SPAs on each side of Strathspey may be impaired and the 'meta-population' could suffer as a result.

## **2. Distribution and extent of habitats supporting capercaillie and structure, function and supporting processes of habitat supporting capercaillie**

The cumulative effects of the development in terms of loss of capercaillie habitat and the resulting avoided adjacent area due to recreational pressure could potentially be significant to the viability of the Boat of Garten woods and therefore the SPAs.

## **3. No significant disturbance of capercaillie**

There are three ways in which the proposal could cause increased disturbance to capercaillie:

- Disturbance during construction.
- Disturbance arising directly from the housing site once it is occupied.
- An increased number of people recreating in the wider woodland.

### **Disturbance during construction**

There may temporarily be an increase the area of woodland avoided by capercaillie due to increases in noise, but this will likely be mitigated by the construction of a 2m high fence prior to construction. The temporary disturbance from construction activity within the development area is unlikely to negatively affect the capercaillie within Boat of Garten Wood sufficiently to have the potential to affect the maintenance of the populations as viable components of the Natura sites or their distribution within the Natura sites.

### **Disturbance arising directly from the housing site once it is occupied**

The housing site would cause increased disturbance levels further into the woodland. It has been assessed that capercaillie use could be reduced by a further 350m into the woods from the development (Moss et al, 2010). The construction of the fencing at the rear of the houses would significantly reduce any increase in informal paths and desire lines being created as a result of residents accessing the woods from their gardens. This would be a permanent effect, but would not likely disturb capercaillie sufficiently to affect this conservation objective.

### **An increased number of people recreating in the wider woodland**

It is reasonable to assume that recreational use of the wood would increase as a result of the proposed housing allocation. This would be a long-term and probably permanent effect. Of the potential effects described so far this is the one which causes the greatest concern since the recreational use increases and extends disturbance further into the wood. The survey data collected by the developers clearly shows that there is a high recreational pressure with a variety of uses, by locals and visitors at all times of the day and year. 72% of residents use the woods at least weekly, with 32% doing so daily. 42% of respondents indicate that they venture off-track. The camera survey showed 73% of groups were accompanied by a dog and 83% of dogs were off-lead. The proportion of dogs off-lead increased with distance away from the village (between 90-100%). The volume of dog walking recorded by the camera study, particularly off-lead was very high and was not consistent with results of the questionnaire survey.

We can assume that the existing level of disturbance has a negative impact. As outlined above, research does show that human disturbance adversely affects capercaillie by reducing the availability of otherwise suitable habitat, displacing the birds from leks, disrupting behaviour patterns and increasing their risk of predation.

The proposed housing development is for 77 houses housing units. The MBEC Report estimates an increase of 199 people occupying these properties. Using the National Census data, MBEC estimate that the population increase in the village will be 32%.

Although only indicative, it could be estimated that this will result in a 32% increase in recreational pressure in the woods. This is potentially an under-estimate, as this increase will be related to the demographics of the new residents, which may be younger than the current resident profile. As outlined above, the mitigation proposals submitted only partly address the criteria set to judge their effectiveness. Therefore, this increased disturbance has the potential to affect the distribution and the population of birds more widely and could affect the conservation objectives of the SPAs.

### Conclusion of effect on site integrity

On the basis of the proposals including the mitigation plan, we cannot conclude that the proposal would have no adverse impact on the capercaillie population. We consider that this proposal could adversely affect the integrity of the SPAs.

### 3d. Conditions or modifications required.

Indicate conditions/modifications required to ensure adverse effects are avoided, & reasons for these.

Condition: N/A	Reason: We do not consider that conditions or modifications to the proposals could sufficiently mitigate the adverse effects identified.
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### 3e. Advice sought.

Include here details of or clear reference to, any advice sought from colleagues etc.

Capercaillie BAP Group, RSPB Scotland, SNH, Robert Moss (independent scientist), Tim Poole (Capercaillie Project Officer), CNPA Access Team.
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Appraised by	Justin Prigmore (Biodiversity Officer)
Date	19/10/11
Checked by	Hamish Trench (Strategic Land Use Director)
Date	20/10/11

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