

THE HIGHLAND COUNCIL
BADENOCH AND STRATHSPEY AREA COMMITTEE

18TH NOVEMBER 2005

Agenda Item	
Report No	PL81/2005

**02/230/OUTBS: DEVELOPMENT OF HOUSING, COMMERCIAL, BUSINESS AREAS ETC.,
EXPANSION AREA SOUTH OF DESHAR ROAD, BOAT OF GARTEN**

Report by Principal Planner

Summary

The Committee is invited to consider and determine application 02/230/OUTBS, which is an application for outline planning permission for housing and other development on land south of Deshar Road, Boat of Garten, having regard to the Development Plan and all other material considerations as set out in this report.

POTENTIAL DEPARTURE APPLICATION – HEARING REQUESTED.
CAIRNGORM NATIONAL PARK AUTHORITY – COMMENTS RECEIVED.

Recommendation: minded to approve and refer to Scottish Ministers.

Local Member: Councillor A Gordon

1.0 PROPOSALS

1.1 DEVELOPMENT: development of housing, commercial, business areas, lorry park, primary school, community uses, roads and foot/cycle paths [outline].

1.2 LOCATION: expansion area south of Deshar Road, Boat of Garten.

1.3 APPLICANT: Aviemore & Highland Developments.

1.4 SITE DESCRIPTION: large area of plantation origin woodland lying generally west, southwest and south of existing development at Deshar Road, Craigie Avenue and the football ground, on the south-western fringe of Boat of Garten.

2.0 PUBLIC PARTICIPATION

2.1 ADVERTISEMENT: Potentially Not in Accordance with the Provisions of the Development Plan, Section 34; re-advertisement of amended indicative layout plan and additional supporting information. Expiry Date for original advertisements 5/9/02; for re-advertisement, 14/9/05.

2.2 REPRESENTATIONS: a considerable number of representations were received in response to the original advertisement of this application. These are listed in 2.3 below. The re-advertisement of additional information and amended indicative layout attracted further representations which are listed in Section 2.4 below.

2.3 Representations were received from the following parties in response to the original application proposal –

- Woodland Trust Scotland, Glenruthven Mill, Abbey Road, Auchterarder, Perthshire
- Ms M Dunlop, Deshar Road, Boat of Garten, PH24 3BN
- Gordon Grant, 2 Grampian Crescent, Boat of Garten, PH24 3BJ
- Mr & Mrs A Cowe, Birch Cottage, Birch Grove, BOAT OF GARTEN, PH24 3BA
- A J Allen, Allen's, Deshar Road, Boat of Garten, PH24 3BN
- Mel and Letti Sim, Croftwood Cottage, Deshar Road, Boat of Garten, PH24 3BN
- Denis and Elaine Lyons, 12 Craigie Avenue, Boat of Garten, PH24 3DL
- *Andrew Nisbet, 20 Craigie Avenue, Boat of Garten, PH24 3BL*
- Alan Fox and Lynn Spencer, The Boat House, Deishar Road, Boat of Garten
- Robert Barton, Craigowrie House, Boat of Garten, PH24 3BP
- *Mrs Anne S Ross, Caberfeidh, Church Drive, Boat of Garten, PH24 3BZ*
- Mrs A M Martin, Glen Dhu, Kinchurdy Road, Boat of Garten, PH24 3BP
- Mary & Malcolm Clark, Bracklinn, Deshar Court, Boat of Garten, PH24 3BN
- *Anna Barton, Craigowrie, Boat of Garten, PH24 3BP*
- James Dunbar, Kincardine House, Boat of Garten, PH24 3BY
- Barbara Davison & John Davison, Locheil, Drumuillie, Boat of Garten, PH24 3BX
- Allan Bantick & Heather Bantick, 23 Craigie Avenue, Boat of Garten, PH24 3BL
- Iain & Ann Napier, Glenavon House, Kinchurdy Road, Boat of Garten, PH24 3BP
- Liz and Joe Wallace, 64 Deevie Road, Banchory, AB31 5UT
- *Jimmy Oswald, Newton Farmhouse, Dimmet, Aboyne, AB34 5PE*
- David Whyte, The Manse, Deshar Road, Boat of Garten, PH24 3BN
- Professor John Nisbet, 7 Lawson Avenue, Banchory, AB31 5TW
- *Mrs Gill Nisbet, 20 Craigie Avenue, Boat of Garten, PH24 3BL*
- Mrs S Grant, 26 Craigie Avenue, Boat of Garten, PH24 3BL
- Mr S M Simpson, 8 Birch Grove, Boat of Garten, PH24 3BA
- Mrs Jane C Smith, Blairmore, Grantown on Spey, PH26 3PL
- Irene Eastwood, 31 Craigie Avenue, Boat of Garten, Inverness-shire
- *Ian D Gow, Morar, Kinchurdy Road, Boat of Garten, PH24 3BP*
- W P Gibson, Balblair, Drumuillie Road, Boat of Garten, Inverness-shire
- W G McDermott, An Tearmann, East Lewiston, Drumnadrochit, Inverness,
- Roy Turnbull, Torniscar, Nethybridge, PH25 3ED
- Paul Gallagher, Scottish Wildlife Trust, 3 Carsegate Road North, Inverness,
- Francis á Court, Manor Farm House, Tarrant Keynston, Blandford,
- Dr Christopher Carter, Etchachan, 12A Deshar Road, Boat of Garten, PH24 3BN
- Stuart Benn, RSPB Scotland, Etive House, Beechwood Park, Inverness, IV2 3BW
- *H M D McWilliam, Finchwood, Kinchurdy Road, Boat Of Garten, PH24 3BP*
- Mrs Jean Stevenson, Broomfield, Drumuillie, Boat Of Garten, PH24 3BX
- Mrs Renate Boyd &, Dr Hugh Boyd, 65 Antonine Road, Bearsden, Glasgow
- Paul Edwards, 1 Muirton Place, Boat of Garten, PH24 3DA
- Mr & Mrs B Sparham, 18 Muirton Place, Boat of Garten, PH24 3JA
- Wm D MacBean, Tomboyach , Boat of Garten, PH24 3BQ
- *Dr A M Jones, Badenoch & Strathspey Conservation Group, Fiodhag, Nethybridge,*
- Dr D Evans, The Cairn Deisher Road, Boat of Garten
- Dr D Evans, 7, Rue de la Maison Rouge, 94120 Fontenay sous Bois, France

Names shown in italic are persons who requested a Hearing. In addition a petition objecting to the proposed development, signed by 90 people mostly residents of Boat of Garten, was received on 28 January 2003 under a covering letter from Andrew and Gill Nisbet of 20 Craigie Avenue.

2.4 In response to the re-advertisement, representations were received from the following parties

- I D Gow, Morar, Kinchurdy Road, Boat Of Garten, PH24 3BP
- Mrs Marion Wilson, Anne's Place, 49 Birch Grove, Boat Of Garten, PH24 3BA
- Mrs A Ross, Caberfeidh, Church Drive, Boat Of Garten, PH24 3BZ
- Stuart Benn, RSPB, Etive House, Beechwood Park, INVERNESS, IV2 3BW
- Dr C Carter, Etchachan, 12A Desher Road, Boat Of Garten, PH24 3BN
- Mr J Dunbar, Kincardine House, Boat Of Garten, PH24 3BY
- Mr I C Murray, Drumullie Mill, Boat Of Garten, PH24 3BG
- R D Burton, Craigowrie House, Boat Of Garten, PH24 3BP
- Mr R Maund, Scottish Council For National Parks, The Barony, 2 Glebe Road, Kilbirnie, Ayrshire, KA25 6HX
- Alison Trinder, 6 Grampian Crescent, BOAT OF GARTEN, PH24 3BJ
- Anna Barton, Craigowrie, Boat Of Garten, PH24 3BP
- Dr A M Jones, Fiodhag, Nethybridge, PH25 3DJ
- J L Davison, Locheil, Drumuillie, Boat Of Garten, PH24 3BX
- Iain Brodie Of Falsyde, Auchgourish Garden & Arboretum, Boat Of Garten,
- B A Birchwood, Cuilalunn, Kinchurdy Road, Boat Of Garten, PH24 3BP
- Gordon Grant, 2 Grampian Crescent, Boat Of Garten, PH24 3BJ
- Mr & Mrs G Smith, Granlea Guest House, Deshar Road, Boat Of Garten, PH24 3BN
- Audrey M Martin, Glen Dhu, Kinchurdy Road, Boat Of Garten, PH24 3BP
- Mrs W Gibson, Balblair, Drumuillie Road, Boat Of Garten, PH24 3BE
- Barbara Davison, Locheil, Drumuillie, Boat Of Garten, Inverness-shire
- Iain C Murray, Boat Of Garten Community Hall, Drumuillie Mill, Boat Of Garten,
- Commander J B Fletcher, Flowerfield, Pityoulish, Aviemore
- Roy Turnbull, Torniscar, Nethybridge.
- Cairngorms Campaign, R Drennan Watson, Brig o Lead, Forbes, Alford, AB33 8PD

2.5 The grounds of objections advanced by original objections cover the following points –

- Development of the scale proposed would change the character of the village.
- Although land was allocated for development, this was expected to be a gradual development over a 20 year period; the applicants propose a much quicker rate of building which would have significant harmful effects on village character and make it difficult for the community to absorb the new development.
- The Local Plan is out of date and pre-dates the National Park's designation.
- Development is contrary to the National Park's objectives.
- Infrastructure is unable to cope. The sewage works is at capacity and there are difficulties with water pressure.
- It is inappropriate to develop villages as satellites of overdeveloped Aviemore.
- Development on this scale would spoil the character of the village and have an adverse effect on businesses which depend on tourists being attracted to the village.
- There are too many houses in the one area.
- Some low cost housing for local needs would be acceptable but not large numbers of expensive houses.
- Proposals take no account of recreational value of the area and well used path network around "Fairy Hill", and take no account of topography.
- School can barely cope with existing demand.
- Development must not prejudice new Primary School – this should precede any house building.
- Construction traffic and the access arrangements proposed would endanger public and pupils using cycle track.
- There is no need for commercial land in a village where some businesses have already closed.

- A Development Brief based on Local Plan layout and density and design criteria should precede and be a condition of any planning permission.
- Many houses would be second and holiday homes contributing nothing to the community.
- Impacts of this kind of development include rapid rise in property prices often leading to locals being unable to live in their own communities.
- Although the land was allocated in the Local Plan this was against SNH and RSPB objections. This is relevant to nature conservation issues.
- Development would result in loss of long established woodland of plantation origin.
- Majority of area of housing proposed is in woodland designated on the ancient woodland inventory.
- Destruction of trees and ground flora would be harmful to protected species including capercaillie, red squirrels and other birds.
- Native Caledonian Pine Forest is a priority habitat; semi-ancient woodland is a valuable and rare habitat which should be protected from piecemeal degradation by developments such as this.
- Capercaillie would be affected by direct habitat destruction, increased disturbance by dogs, and egg predation by crows.
- It is government policy to expand forest resources especially native woodland which has greatest value for nature conservation.
- Destruction of trees and ground flora would be harmful to protected species.
- Even in planted woodland, the understorey containing cowberry, ling, blaeberry, crowberry and barberry on soils of ancient/semi-natural woodland origin is of nature conservation value.
- Development would be in conflict with Cairngorms and National Biodiversity Action Plans.

2.6 In response to the revised illustrative proposals, while a limited number of correspondents have welcomed the reduction in house numbers and increased commitment to provision of affordable housing, most respondents reiterate the grounds of objections outlined in the foregoing paragraph. Additional emphasis is placed on possible effect of development on water supply to properties and businesses in the surrounding area. The density of development proposed is inappropriate and the layout inappropriate for Boat of Garten. Reference is made to the Consultative Draft National Park Plan as a more appropriate form of village growth. Reference is made to the need for balanced development and it is suggested that the new illustrative layout take insufficient account of the community centre development approved recently. Natural heritage interests and the protection of priority species and habitats is an overriding issue justifying refusal. These include disturbance to capercaillie including indirect effects on its range across several SPAs round about Boat of Garten, and loss of ancient woodland which is recognised as a reservoir of threatened species and in need of greater protection from development. There appear to be a number of errors in the capercaillie report notably length of transects – overestimation of length of transect surveyed is liable to lead to corresponding underestimation of the encounter rate of evidence of capercaillie. It is likely that Scottish Forestry strategy will provide for high level of protection for ancient and native woodlands. These are identified within General Policy 2 of Draft CNPA Local Plan. European Commission has expressed concerns regarding apparent failure to ensure that sufficient account is being taken of capercaillie with regard to planning proposals in the National Park, with large number of development proposals zoned for woodland areas important to capercaillie. Concerned that there is still no clear guidance being given to the Local Planning Authorities on this matter and apparently no overall assessment of likely cumulative impact of these various individual proposals as required under Article 6 [3] of the Habitats Directive. The applicant's supporting statement is wrong to say that lack of water and sewerage facilities is not a ground for refusal, many people have been refused planning permission in the last couple of years because of inadequate wastewater infrastructure in other settlements.

2.7 Cairngorms National Park Authority have expressed concerns regarding whether the changes proposed would warrant a fresh application rather than an amendment of the existing. Proposed development in original form matched zonings and allocations of Local Plan which is considerably out of date. Determination in line with this plan would disregard new National Park context. Consider determination to be premature to publication of the Local Plan. At community consultation meeting on 29 November 2004 there was general community opposition to the scale and location of this proposal particularly as site is currently used as amenity woodland. Local Plan will be developed paying serious attention to needs and wishes of local communities. Original application included sites for lorry parking and commercial use, these semi-industrial uses would be somewhat unsightly "gateways" at entrance to development and to the village. Would expect that minimum ratio of 25% affordable housing would be applied but a study of general housing needs in the Boat of Garten area should be carried out to justify basic need for this proposal. That study would also determine whether a higher affordable housing quota was required. Housing allocation numbers in existing Local Plan can no longer be used to justify housing development. Proposal would represent significant loss of valuable habitat – approximately two thirds of site is registered under ancient woodlands inventory. Site is also a known lek and main brooding habitat for capercaillie, any loss of its habitat is unlikely to be viewed favourably. Other species such as red squirrel, crested tits, wood ants and nationally rare plants should also be considered. A development of this scale within a National Park would most likely require a comprehensive environmental assessment to investigate all possible impacts and effects. Proposed assessment should not just focus on natural environment but also look at social and economic impact on village. Boat currently has approximately 225 houses, adding another 120 would make a considerable impact on services and facilities such as the school. There will also be a considerable increase in car traffic, the impact of which should be carefully considered. One of the reasons this application is not yet determined is lack of sewage treatment capacity and water supply. CNPA would support the development of a suitably sited new school within the village. Proposals of the site layout and suburban style bear no relation to existing structure and density of village. Scale of development is not how we would envisage the Park's communities growing, development should be smaller scale and lower impact, design to be organic growth by incremental measures. Would recommend refusal on the following grounds as justified above and relative to the National Park context – existing Local Plan is out of date; determination would be premature to publication of the National Park Local Plan; local community is opposed to the proposal; Local Plan housing projections are no longer relevant; proposal would represent significant loss of valuable habitat and cause resultant damage to populations of endangered species; environmental assessment would be required to determine impacts on natural heritage and landscape; socioeconomic assessment required to determine impact on village and surrounding community of such a disproportionately large development; there is inadequate infrastructure capacity and provision; scale, layout, location and design are inappropriate to development of a Highland Village within the National Park.

2.8 Following consideration of the revised illustrative plans, the National Park Authority maintains its objections, both to the revised proposal and the principle of development. Development even in amended form will continue to have adverse impact on woodland area which is an important valuable natural heritage resource and habitat, and is important as a landscape setting for this part of the village. As such it would be negative to first and second aims of the National Park [conserve and enhance natural heritage, and promote sustainable use of natural resources]. Proposal is a sizeable development not of an appropriate scale, density and type in relation to the scale, structure, character and pattern of development in Boat of Garten and therefore has negative implications for cultural and built heritage of the area. Development is premature to publication and proper consideration and development of the Local Plan which also seeks to further the aims of the National Park. Development does not provide for any business/industrial allocation, which has negative implications for fourth

aim of the National Park, part of which is to promote economic development of the area. Development will result in quality and character of existing informal recreational use of the area being diminished. This is negative to the third aim of the National Park [promote understanding and enjoyment, including recreational enjoyment, of special qualities of the area]. Development is currently constrained by a lack of sewerage and water infrastructure.

[Full text of letter available from APM]

3.0 CONSULTATIONS

- 3.1 Scottish Water: objection – inadequate wastewater infrastructure. Insufficient capacity within the Wastewater Treatment System. Treatment Works at capacity – programmed for improvement by 2005 but no scheme has been legally committed at this time [*note – this was written on 9 August 2002 – Principal Planner*]. As at 17 October 2005, Scottish Water continues to formally object to this application. This objection can be deemed to be withdrawn if the Council can attach the following conditions to any consent – no development shall commence until evidence is exhibited to the Planning Authority that an agreement has been reached by the applicant with Scottish Water for the provision of a drainage and water scheme to serve the development; if connections to the public sewer and water main have to be laid through land outwith the applicant's ownership, the applicant must provide evidence of formal approval from the affected landowners at the time of application. There are currently constraint issues at the Wastewater Treatment Works hence this objection. Scottish Water will remove this objection if the developer can show that the development will not have an impact on Scottish Water assets or that suitable infrastructure can be put in place to support the development. A totally separate drainage system will be required with surface water discharging to suitable outlet or SUDs. Scottish Water will not adopt surface water drainage systems that involve pumping. Proposed development lies within water catchment area for Blackpark Water Treatment Works therefore Scottish Water objects as it may prejudice our ability to supply potable water. Scottish Water will withdraw its objection if the developer can show that the development will not have an impact on our assets or that suitable infrastructure can be put in place to support the development.
- 3.2 S.E.P.A.: developer should draw up a drainage strategy which should be submitted as an integral part of the outline application. This should set out detailed sustainable urban drainage system proposals in line with published guidelines particularly PAN61 and the SUDS Design Manual for Scotland and Northern Ireland. It is noted that the applicant is proposing much hard surface on what is currently woodland so there could be potentially substantially more surface water to deal with. Opportunities for a future pond or similar feature in the development to hold surface water could usefully be explored.
- 3.3 Area Roads & Community Works Manager: in principle, no objection to the internal road layout proposed in the revised submission. All roads should be of adoptable standard. Junction works at Deshar Road shall include provision of a right turn shelter lane on Deshar Road. Street lighting and existing speed restriction shall be extended southwards to appropriate locations relative to the new road junction. Suitable pedestrian and cycle links shall be provided between the development and both Kinchurdy Road and Deshar Road. 4.5 metres by 90 metres visibility splays to be provided on either side of junction of development access road with Deshar Road. Parking and manoeuvring space for each element of the development to be provided in accordance with Council guidelines. It would appear that the point of access to the site could be shifted eastwards to the vicinity of the existing lorry park, without materially affecting implementation of the recommended conditions; this would have the advantage of more closely linking the development to the existing village.
- 3.4 Boat of Garten & Vicinity Community Council: unanimously agreed to oppose the application in its original form. Concerns related to the ability of the infrastructure to successfully deal

with pressures which will be placed on it. As a result of assurances given by developer at public meeting held on 13 September 2005, Community Council is prepared to consider approval of the amended plan but requests that another amended plan incorporating these assurances be submitted so that there are no misunderstandings. These assurances were that the developer will donate the area of land marked for a new primary school to the community, and would revise layout drawings to accommodate access to the school and the proposed community hall, and that the developer would expect a suspensive condition regarding water and sewerage. Community Council would wish to be assured that on the first point, access would be vehicular access, and on the second point, that new pipe work needs to be in place along the entire distance from the development to the extended and upgraded sewage treatment facility, before any building is started. As rate of building was one of main concerns at meeting, would ask that a condition limiting development to 15 houses per year would be imposed on any permission. A gradual increase in the number of houses would be necessary to assimilate increase of population into the village. Many members of community feel that increase of approximately 25% will create a number of problems. A binding agreement preventing any future development on the remainder of the area within the site boundary would need to be secured. Council would therefore wish to consider a second amended plan before making a final recommendation.

3.5 S.N.H.: object to development on the ground of loss of habitat used by capercaillie and increased disturbance to an important population of capercaillie. Recognise that since original consultation, applicants have carried out a survey of capercaillie use of the woodland. While evidence provided is useful, it is not sufficient to justify withdrawal of our objection. Consultant who produced the report was provided with comments and details of capercaillie signs in Boat of Garten wood collated by Kenny Kortland in March 2005. Capercaillie Survey Report confirmed that the woodland is important for caper, and holds a nationally significant number of birds. It must also be emphasised that any impacts on the population using Boat of Garten wood could affect integrity of populations in nearby SPAs at Kinveachy Forest, Abernethy and Craigmore Wood.

3.6 Area Education Manager: current projection for the school roll of Deshar Primary is for it to fall from 59 pupils in August 2005 to 36 pupils in session 2011/12. Projection for the school roll for that year, assuming that the 103 houses are phased over a number of years, is 55 pupils. This is within the school's capacity which is 71 pupils.

4.0 APPLICANT'S SUBMISSION

4.1 Refer to overview supporting statement setting out case for planning permission being granted. As a result of earlier concerns raised by SNH, a Capercaillie Survey Report has been prepared which informed mitigation measures. Influenced by this, proposal has been modified to reduce area of development to 57% of the allocated land and reduction in housing units from 120 to 103. To address affordable housing, this has been increased to 40% [41 out of 103]; these houses will comply with Council's Affordable Housing Policy and Affordable Housing Definition. Our consultants believe that the diminution of site area coupled with further mitigation results in a proposal which responds to issues raised by SNH. Although part of site described as ancient/semi natural woodland, this area has previously been felled and replanted. Would accept a suspensive condition to the effect that house building cannot commence until a binding agreement was entered into with Scottish Water to ensure adequate waste water treatment and provision of water. Applicant prepared to donate area of land identified for new Primary School and revise layout drawings at the reserved matters stage to accommodate vehicle and pedestrian access to school and Village Hall. Also confirm that if application is approved, applicant will set up a working group comprising member of Community Council, Housing Association Offices and Project Architects meeting at regular intervals throughout design and construction process. Phasing of the development would be a rate of 15 houses per year with the proviso that an initial allocation of two or three years [30 to 45 units] is allowed to

cover the planning application period. Note that Consultative Draft Local Plan does not identify application site as a development opportunity allegedly due to loss of habitat, weight of community concern about development of site following Local Plan community consultation process. This is not consistent with Community Council's revised response which states "as a result the Council is prepared to consider approval of the amended plan". CNPA has no basis for asserting that revised Master Plan is not now in accordance with extant Local Plan allocation. There is no requirement for a development to occupy entire amount of land allocated in Local Plan, nor for it to deliver all of Local Plan aspirations – Appeal Decision for Carrbridge affirms this decision. Dispute assertion that layout is inappropriate to village form.

[Full text of letter available from APM]

5.0 POLICY BACKGROUND

5.1 LOCAL PLAN STATUS: Badenoch & Strathspey Local Plan, Adopted September 1997

5.2 POLICIES: the site boundary encompasses land allocated in the Local Plan for housing, business and community facilities development. Policies 5.6.2, 5.7.5, 5.7.6, 5.8.2, 5.8.4. The text of these policies is annexed to this report for brevity. Surrounding woodland is subject to policies 5.10.1 [landscape corridor] and 5.10.6 [commercial forestry], also annexed.

5.3 PREVIOUS DECISIONS: none.

6.0 PLANNING APPRAISAL

6.1 This application is for outline planning permission and as originally submitted was virtually a carbon copy of the Proposals Map which illustrates the written policies of the Badenoch and Strathspey Local Plan. In response to objections raised from statutory consultees and community interests, the plans [which are illustrative rather than taxative] have been amended, reducing the number of dwellings to 103 rather than the 120 specified in the Written Statement; reducing the extent of housing development and confining development closer to the existing village; adjusting the location of the Primary School and community facilities, land allocations; and omitting the commercial and business/lorry parking land allocations.

6.2 Although the issues surrounding this development have led to considerable delay and the generation of very detailed submissions both in support of and opposition to the development, the basis for making a decision is, as always, relatively straightforward. If the development accords with the Adopted Local Plan, there is an expectation that planning permission will be granted unless material considerations are of sufficient counter balancing weight that refusal of planning permission is the appropriate decision. At this stage I should point out that a decision to approve the application does not lie in Members' hands as Scottish Natural Heritage are maintaining an objection on the basis of loss of habitat use by capercaillie and increased disturbance to an important population of capercaillie. Since capercaillie is a priority species, any decision to approve a development in the face of an outstanding objection from Scottish Natural Heritage must be referred to Scottish Ministers.

6.3 The principle of development generally on the scale proposed by the applicants is in accord with the Local Plan Adopted in September 1997. The area was envisaged as the major reservoir of housing land for future expansion of Boat of Garten due to natural heritage and servicing constraints in other directions. While the Proposals Map appeared fairly prescriptive, it is clear from the text of Policy 5.6.2 that much remains to be specified in more detail subject to more analysis of the site. Ideally this would have been undertaken through the mechanism of the Development Brief proposed in the Local Plan but resources and competing priorities did not allow for this. In fairness to colleagues in the Planning Service, I have to say that there was little evidence of developer interest in Boat of Garten in the decade following publication of the

finalised Draft Local Plan and preparing a Development Brief for the Boat of Garten expansion area could not therefore have been given a high degree of priority. Following completion of the Birch Grove development at the beginning of the 1990s, private sector house building activity in Boat of Garten has been concentrated entirely on non allocated infill opportunities in back gardens, vacant "amenity" feus and such like sites. Conventional "estate" housing development activity has been undertaken exclusively by registered social landlords during that period.

- 6.4 The wider Policy context of the land allocations was Scottish Office [as it was then] advice that Planning Authorities should maintain several years' supply of housing land, based primarily on developer views of market demand, in a diversity of locations and ownerships. In Badenoch and Strathspey this was further complicated by the rolling forward of house building rates which, at the end of the 1980s, were exceptionally high when seen in a longer term context. It could therefore be asserted with some justification that housing land allocations were excessive in relation to actual requirements [whether expressed as need or demand] as it actually developed in the years immediately before and after Adoption of the Local Plan. Now there are signs of increasing demand once again. Contributory factors may include the strong development of the Inverness/Inner Moray Firth economy and region; improved transport links permitting some housing demand to be displaced from the Inner Moray Firth to at least the northern parts of Badenoch and Strathspey; and the designation of the area as a National Park. Even had that not been the case, however, there would still have been the need for a vision of how Boat of Garten [and indeed other settlements] are to develop, and in what form. Objectors have questioned the appropriateness of this development, in part using the argument that the current Local Plan is obsolescent and overdue for review. Notwithstanding that, it remains the Local Plan in force until replaced. The replacement Local Plan, being prepared by the National Park Authority, is purely at consultative draft stage. Apart from that narrow legal interpretation, it is necessary to reach a view on the robustness of the existing Local Plan's development strategy. In other words, is it still appropriate taking account of changing circumstances? – and, more specifically, how does it measure up against any alternatives being put forward?
- 6.5 In my view, the provisions of the Development Plan which are relevant to this decision are the need to accommodate general growth in the area as part of the area's contribution to the Development Strategy set out in the Structure Plan; the need to distribute this growth so as to support the population and economic activity of all the settlements in the Strath; and to do so in a manner which delivers housing and other community requirements in the most appropriate locations, having regard to servicing, amenity and conservation interests. The proposed development accords with these priorities.
- 6.6 It is therefore necessary to ask whether other material considerations outweigh the development's compliance with the Local Plan to such an extent that a grant of outline planning permission would not be appropriate.
- 6.7 The age of the Local Plan and the fact that planning guidance has changed in the last 10 or so years is certainly a material consideration. Material considerations can include Scottish Executive, U.K. and Government Policy, Draft Local Plans, infrastructure, environmental impact, design, the views of statutory and other consultees, and legitimate public concerns.
- 6.8 Since the Local Plan was Adopted, the **Structure Plan** of 1990 has been replaced by the 2001 Highland Structure Plan. An explanatory note annexed to Policy H2 of the Structure Plan notes that in Badenoch and Strathspey, housing land supply beyond five years can only be maintained if infrastructure investment has been made to bring forward the Cambusmore site at Aviemore; the assumption underlying that statement is that housing land allocations already identified in the Adopted Local Plan will be progressively taken up. Policy H3 indicates that housing development will generally be within existing and planned new settlements and the provision of development land for the planned expansion of Boat of Garten broadly accords with that Statement of Intent. Policies H4 and H5 refer to the supply of affordable housing; the proposed

development promises to deliver affordable housing. General Strategic Policies emphasise the expectation that developments will benefit the local community while recognising the wider national interests [Policy G4 "Community Benefit and Commitment"]; Policy G2 indicates that proposed developments will be assessed on the extent to which they impact on community, landscape and natural heritage interests, individual and community residential amenity, and contribute to the economic and social development of the community. In my judgement these Policies all support development and growth of Boat of Garten in principle. It is in my view important to state this in light of the natural heritage considerations set out later in this appraisal.

- 6.9 The National Park Authority's objection is, in essence, based on the contention that an alternative development strategy is more respectful of the interests set out in Policy G2 [as well as the four aims of the National Park] than is the strategy of the Adopted Local Plan. In my opinion, the Consultative Draft National Park Local Plan is characterised by two material weaknesses. Firstly, it admits that the preliminary draft "will not be attributing population/housing need projections/allocations as these are still being calculated" and overall land allocations have at this stage been pitched at a level of approximately 1200 to 1400 homes. This is based on previous recent building rates of approximately 115 per year plus a requirement of nearly 600 affordable homes. However in the absence of population and housing need projections, I am not persuaded that there would be no need to allocate additional housing land in Boat of Garten, over and above the sites proposed in the Draft Local Plan, *even if the latter were all developable*. I have serious doubts as to the developability of the Draft Local Plan's proposed housing allocations. One [Policy Site H2] is admitted by the Draft Plan to be "ultimately unlikely to be suitable as a development site", while the other two sites [H1 and H3], and the preferred alternative school site [C5] appear to have significant access constraints. At this stage in the replacement Local Plan preparation process, therefore, I do not believe that much weight can be attached to the Draft Replacement Local Plan as a material consideration supporting refusal of the present application.
- 6.10 While in the logical order of things consideration would next be given to **European Directives** and associated Scottish Executive Guidance, issues relating to community development raised by the Community Council and numerous objectors are worth discussing at this stage. In my view they also have a bearing on the European issues, which boil down to the impact on protected species and habitats. Many objectors have suggested that the level of development proposed by the applicants is too large in relation to the existing size of the village. There is no doubt that too rapid growth of any settlement can have harmful effects on the structure of the community, community relationships, and community facilities. In terms of the scale of development, however, there appear to be no great differences between the scale of growth envisaged in the Draft Local Plan, and the scale proposed in the current application. The former allocates three specific sites [H1-H3] and under H4 indicates that infill sites may be available within Boat of Garten to consolidate the village structure, with any proposals having to "reflect the existing house positions and spacing/density/scale". Sites H1-H3 inclusive appear to me to have potential capacity for up to 60 houses; Members have previously asked me to consider what capacity there might be for infill development in Kinchurdy Road, and while I am not yet able to present a finalised report in response to that instruction, I would say that, depending on the building layout precedents which might be applied from various examples in Kinchurdy Road, it is possible to envisage as many as 30 houses being accommodated on infill sites. Arguably, distributing this level of growth over several separate allocations could extend the development process over a slightly longer period that might result from development of a single large allocation, but any development process based on estate layouts will be "lumpy", that is to say it will have a tendency to deliver a concentrated number of houses in a short space of time. That would normally be true regardless of whether the housing was market or affordable.
- 6.11 When this application was first submitted, Scottish Natural Heritage objected on the grounds of loss of habitat used by capercaillie and increased disturbance to an important population of

capercaillie. In response to that, the applicants commissioned research into the presence of capercaillie in the woodlands generally south and west of Boat of Garten, and the possible impact of development thereon; the reduction in site area attempts to address this issue based on the results of those surveys, which are reproduced as annexes to this report. It is this issue which bears on a European dimension since capercaillie is a priority species and the EC Habitats and Birds Directives emphasise that not only should capercaillie be designated through designation of Special Protection Areas, but also that efforts should be made to avoid pollution or deterioration of habitats outside the SPA network. While the proposed site does not directly affect any site designated for capercaillie, and the applicant's survey provided useful supporting information, SNH adhere to their original advice that development could impact on the species through direct loss of habitat, and by increasing the level of disturbance by walkers and their dogs in the adjacent woodland. SNH's advice is that a development of this scale will have adverse impacts to an extent that no mitigation can be undertaken which will safeguard the capercaillie population. Recent efforts to safeguard the species have been based on a recognition that there is regular movement of individual birds between sites, and that the Strathspey population is effectively a single population. Loss of habitat or significant increased disturbance in one site may therefore also affect the wider population and the impact from the proposed development could therefore have an impact on capercaillie population using Kinveachy Forest and Abernethy Forest Special Protection Areas.

- 6.12 SNH recognise that the issue was raised at the Public Inquiry into the Local Plan held in August and September 1994, and that at that time the Reporter determined that various initiatives in the area would more than compensate for any environmental losses which might be caused by the proposed development. However, since that time the capercaillie population has declined to its current critical level and the increased availability of habitat and other measures taken to safeguard the bird have not yet led to any recovering in population, either in Strathspey or elsewhere in Scotland. SNH is therefore of the opinion that greater emphasis is now required to safeguard populations where they still occur than was the case when the Local Plan Inquiry was held. SNH are effectively submitting that the potential environmental impact of the proposal has increased since the Local Plan was Adopted.
- 6.13 NPPG14 *Natural Heritage* underlines that the presence of a protected species is a material consideration and advises that Planning Authorities should take particular care to avoid harm to species or habitats protected under European Directives or identified as priorities in the U.K. Biodiversity Action Plan. SNH's objection was based on the presence of wintering, roosting and brood habitat within the application site boundary and the presence of a lek within 1.5 kilometres of the proposed area of housing. The additional survey information supplied by the applicants suggested that capercaillie signs and sitings are remote from the application site but as mentioned above, the methodology has been the subject of criticism. A more comprehensive collation of capercaillie sitings prepared by Kenny Kortland was attached to SNH's letter confirming maintenance of their objection.
- 6.14 The Kortland map, if anything, adds to the difficulty in interpreting the relevance of capercaillie as an issue which would support a decision to refuse planning permission. The map in question shows an oscillating pattern of sitings and signs across the whole area of woodland stretching from Loch Vaa to Creag Bheag. Sightings and signs in or close to the application site [even into the reduced development area shown on the revised illustrative plan] were recorded in 1994, 2003 and 2005; but there are also contemporary and 2002 sightings between the application site and Kinchurdy Road, on the slopes of Creag Bheag, and a pattern of recent sightings between the application site and the south western extremity of the adopted length of Kinchurdy Road. There is a dense pattern of sightings over a number of years further to the west, approximately halfway to Loch Vaa, but there are also several sightings over the years [including several in 2004] near to Kinchurdy Road on its unadopted length, between the village and the Kinchurdy Farm railway underbridge. These sightings nearer to the village, in areas already well used for informal recreation [Kinchurdy Road is part of the Speyside Way]

do not in my opinion point to a clear cut picture of development and human activity being incompatible with, and harmful to, the presence of capercaillie in these woodlands as a whole.

- 6.15 Similarly, I have difficulty reconciling the assertion that this development would have adverse impacts on the integrity of populations in the nearby SPAs [Kinveachy Forest, Abernethy and Craigmore Wood] with the evidence presented in the Kortland map. No only does the area of development proposed represent an insignificant percentage of the total area of woodland in the designated and non designated complex of Pine woodland across the named areas; the assertion seems to disregard the existing urban structure of Boat of Garten. The latter is apparently neither an insurmountable obstacle to movement between and through the Pine woodlands in the wider area, nor does it appear not to absolutely deter capercaillie from appearing close to the village.
- 6.16 In my opinion, if the presence of capercaillie is an overriding obstruction to development of the application site, it must also raise serious doubts as to the acceptability of **any** growth in Boat of Garten, and serious questions as to the acceptability of continued unmanaged public access to these woods for informal recreation. While development of the application site may have some "edge" effects on capercaillie habitat, this would also be true [albeit to a lesser extent] of the development of the CNPA's preferred housing site H3 and school site C5. **Any** increase in the population of Boat of Garten through housing development anywhere in the village is likely to add to existing recreational use of the woodlands southwest of the village.
- 6.17 The Park Authority has also expressed concern about the loss of woodland "registered under the Ancient Woodlands Inventory". This is seen as a valuable habitat. However the great weakness of the Ancient Woodlands Inventory is that it can include woodland originating from as late as 1860, and it does not record what has happened to such woodland since that date. Much of the woodland around Boat of Garten which appears in this inventory has, in fact, been logged and replanted in the twentieth century. While that is not to say that in future it should not be managed in a way which will restore it to a more natural condition, equally it does not suggest to me that its presence on the Inventory represents a material ground for refusal of this application.
- 6.18 The next category of material considerations relate to infrastructure and views of statutory consultees. It will be noted from Section 3 above that, with the exception of Scottish Natural Heritage, the only absolute objection is offered by Scottish Water. [The Community Council's objection is now highly qualified]. Under normal circumstances I would regard a Scottish Water objection on the grounds of inadequate wastewater infrastructure as fatal. However given this developer's track record in being able and willing to address infrastructure constraints on development sites [currently most evident in the construction of a new A9 underpass at Edenkillie, Aviemore] it seems to me that there can be a reasonable expectation of infrastructure objections being overcome within a reasonable timescale.
- 6.19 Under the heading **public concerns**, some of the matters raised in objections summarised in paragraph 2.5 are addressable through conditions relating to phasing and layout, while others would require a Section 75 Agreement. School capacity issues are dealt with in the area Education Manager's consultation response.
- 6.20 It is interesting to examine a number of the issues raised by objectors in the context of the CNPA's draft alternative. This proposes a significant increase in the number of dwellings in Boat of Garten albeit in a different layout. Infrastructure constraints would presumably apply to those allocations as well. The Adopted Local Plan strategy leaves opportunities for access to woodland for recreation close to existing properties in Deshar Road whereas the Draft National Park Local Plan Development Strategy would appear to create barriers in the form of an alternative Primary School site and housing site. The suggestion that the applicant's illustrative layout takes insufficient account of the Community Centre development approved recently is

somewhat ironic insofar as that development was approved by the Park Authority but the Draft National Park Local Plan will offer no means whereby the Community Centre can be provided with a more appropriate form of vehicle access than the existing route through Craigie Avenue, which I believe is only acceptable a short term expedient. Indeed, the very word "centre" in the name "Community Centre" starts to look rather inappropriate in the context of the Draft National Park Local Plan. An improved access to the Community Centre is not the only community benefit which the development would deliver. The illustrative layout shows 41 affordable houses out of a total of 103; only Aviemore North [where Communities Scotland became the landowner] has delivered a higher percentage of affordable housing in any recent major application. A site for a Primary School would be reserved.

6.21 There has been some criticism of the potential landscape impact of the development and of the illustrative layout. While any development on this scale is likely to have some impact on landscape, the fact that it will be set in and surrounded by retained woodland will significantly mitigate any such impact. Certainly it will be far less prominent in the landscape than would development on the more open grazing land to the north of Boat of Garten as identified in the Draft Local Plan. The Adopted Local Plan Proposals Map did have the potential to significantly harm the landscape as the later land allocations in particular took little or no account of the topography of the land between the expansion area and Kinchurdy Road, but the reduction in developed area shown in the revised illustrative plan successfully addresses that problem. The plan is, as I have said, illustrative and the details of housing layout and grouping shown thereon are not in any way binding; notwithstanding that, I cannot accept the National Park's criticism of the illustrative layout as being necessarily inappropriate to a Highland village. All villages, including Boat of Garten, feature a diversity of housing layouts and designs characteristic of their period. An obvious local example is the formal layout of Grampian Crescent around a central open space.

6.22 In summary, I assess the material considerations as follows:

1. Development generally on the scale envisaged accords with the strategy of the general direction and scale of village expansion envisaged and provided for in the Adopted Local Plan.
2. Natural heritage considerations do not provide a clear cut case for refusal.
3. Notwithstanding that, if natural heritage considerations are an absolute bar to development of the application site, they must be also considered a significant constraint to any expansion of Boat of Garten and to public use of the nearby woods for informal recreation.
4. There are no significant infrastructure or servicing constraints other than those highlighted by Scottish Water; on the basis of the applicant's past performance, it is reasonable to anticipate that these constraints could be lifted within a reasonable timescale at the applicant's expense.
5. The scheme will deliver significant community benefits in the form of affordable housing, suitable vehicle access to the recently approved Community Centre, a more central location for the Community Centre in relation to the distribution of housing in the village, and a Primary School site.
6. The landscape impact of the development is mitigated by enclosing woodland and amendments to the illustrative layout which have moved development away from the rising ground towards Creag Bheag.

6.23 Because of the objection from Scottish Natural Heritage, the application cannot be approved without reference to Scottish Ministers and my recommendation is therefore a set of pre-conditions which the Council would wish to attach to any approval, were the Council free to grant such approval, and which Members would wish to see attached to any consent granted by Scottish Ministers if that is the outcome of referral of the application.

7.0 RECOMMENDATION

Outline planning permission should be granted upon conclusion of a Section 75 Agreement providing for the following –

- Conveyance to the Education Authority and any appropriately constituted community body, respectively, of the School and Bowling Green sites at nil land value;
- Conveyance to an appropriate mix of registered social landlords and/or Community Housing Trusts, the precise mix to be agreed by negotiation, of land sufficient to accommodate 41 dwellings; in the case of conveyance to Community Housing Trusts, the price for the land to be an equitable pro rata share of servicing costs only and nil land value;
- Subject to a suitable partner being found, that undeveloped areas within the application boundary shall be transferred to community use and ownership, and that in any event
- There would be no further development beyond the southernmost limit of development shown on the illustrative plan.

The conditions which should be attached to any consent would be as follows –

1. Prior to the commencement of operations details shall be submitted to and approved by the Planning Authority showing the siting, design and external appearance of buildings, means of access thereto, and proposals for landscaping. These are reserved matters to this outline permission. [For the avoidance of doubt, landscaping includes all matters relating to boundary walls or fences, hard and soft surfacing, and tree/shrub planting]

Reason: As the application is submitted in outline only.

2. Permission is granted in principle for the development of up to 103 dwellings, a Primary School, and Bowling Green and any other community recreational facilities as may be approved by the Planning Authority, generally in the area south of Deshar Road shown in the illustrative plan as being occupied by developments of this nature but no specific details of road layout, house positions and orientations, building lines and school and community facility locations, are approved. Development of the site shall take place in an orderly manner in accordance with a phasing plan to be submitted to and approved by the Planning Authority and which shall address the following requirements –

- The provision, as soon as is practicable, of vehicular and pedestrian access from Deshar Road through the site to serve the Community Centre recently approved by the Cairngorms National Park Authority on an area between the current application site and Craigie Avenue, the access in question to be constructed to a standard capable of adoption by Highland Council as Roads Authority and connecting to the car park of the said Community Centre;
- The retention of a belt of woodland along the whole of the Deshar Road frontage of the site of a depth not less than that shown in the illustrative plan;
- The development of the site in an orderly manner progressing from north to south at a rate of not more than 15 dwellings commencing construction in any calendar year;
- The Primary School site to be so located and orientated in relation to the boundaries that its pupils will be able to use the existing village football ground for pitch sports purposes;
- The provision of amenity and play areas sufficient to meet the needs of residents of the development hereby approved, in accordance with the standards published by the National Playing Fields Association or such other standards as may be approved by the Planning Authority;
- Housing layouts in which all dwellings will face onto a street, unless otherwise required to provide overlooking of remote pedestrian and cycle routes in accordance with the principles of *Secured by Design*;

- All roads and footways and remote footpath/cycle ways to be designed and constructed to a standard capable of adoption by the Highland Council as Roads Authority;
- Provision of safe, direct pedestrian and cycle links from the development to and through nearby areas for access to bus stops, shops, community facilities, and existing networks of pedestrian and cycle routes serving the area generally.

Reason: to ensure that the site is developed in an orderly manner and in such a way as to relate properly to adjoining housing areas and facilities and to the rest of the village generally.

3. No development shall take place at the site until such time as evidence is exhibited to the Planning Authority that an agreement has been reached between the applicant and Scottish Water for the provision of a wastewater and water supply scheme to serve the development. No dwelling shall be occupied unless it can be supplied with water, and connected to the public sewer, in accordance with the aforesaid agreement.

Reason: in the interests of public health and to prevent overloading of the wastewater treatment works and consequent pollution of the River Spey Special Area of Conservation.

Signature:

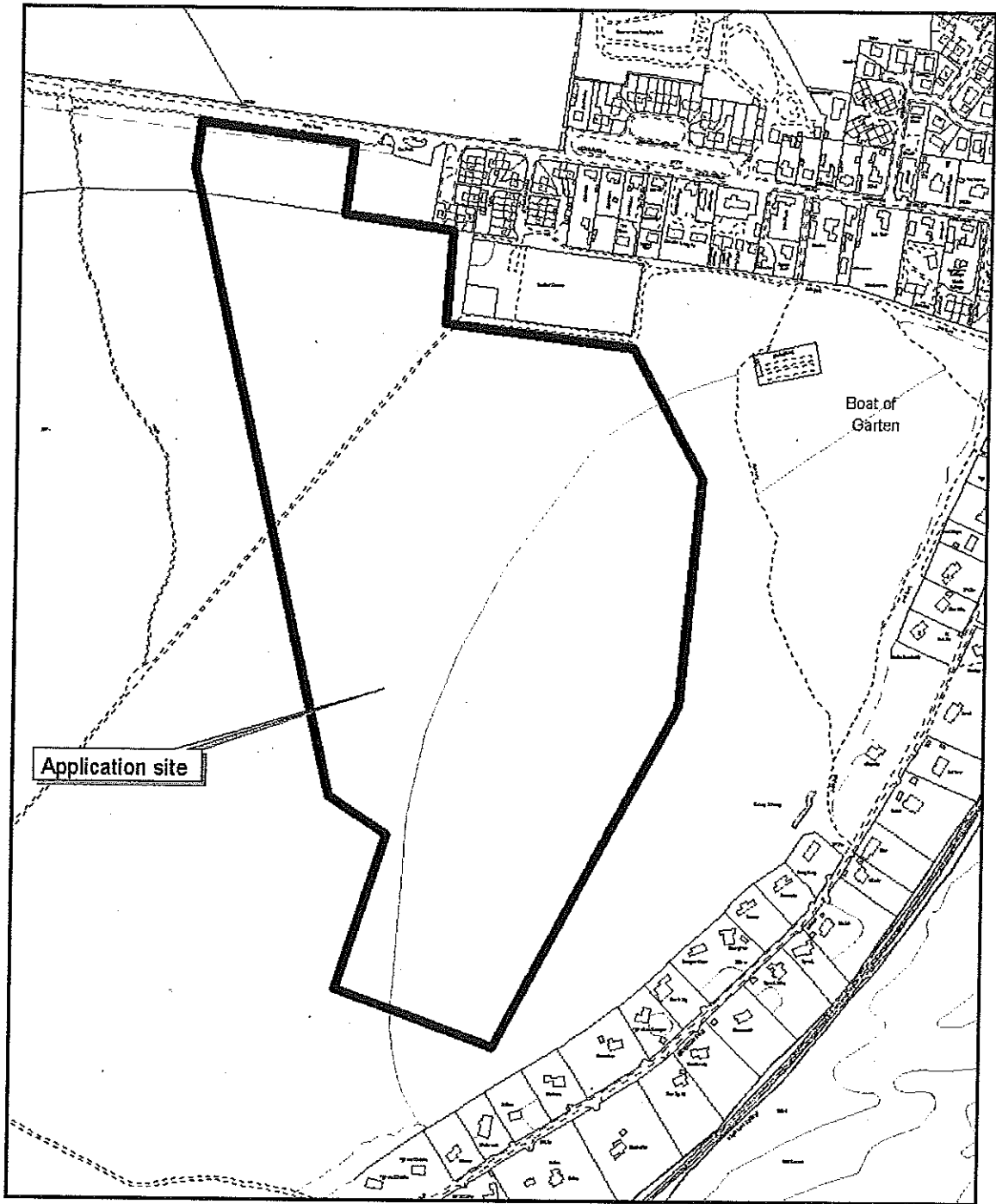
Designation: Principal Planner

Date: 4 November 2005

Background Papers

1. Badenoch and Strathspey Local Plan – Adopted September 1997.
2. Consultations and correspondence referred to in Sections 2, 3 and 4 above.
3. The Cairngorms National Park Authority Consultative Draft Local Plan.
4. The Highland Structure Plan 2001.
5. SPB1 *The Planning System*.
6. NPPG14 *Natural Heritage*.



Author: Mr A McCracken , Telephone 01540 661700



Application site

Boat of Garten

50 0 50 100 150 200 250 Meters

 <p>The Highland Council Comhairle na Gàidhealtachd Highland Local Government</p>	<p>02/230/OUTBS: HOUSING DEVELOPMENT LAND SOUTH OF DESHAR ROAD, BOAT OF GARTEN AVIEMORE HIGHLAND DEVELOPMENTS</p>	 <p>Scale 1:5000</p>
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