Scottish Law Commission
140 Causewayside
EDINBURGH
EH9 1PR

19th June 2015

For the attention of Mrs Lucy Galloway

Dear Madam

Consultation on Reform of the Compulsory Purchase Legislation

We write as landowners affected by the Fastlink section of the Aberdeen Western Peripheral Road ("AWPR").

Elrick is farmed as a family business. For administrative purposes there are various titles that the family hold the property on: -

- The main part of the farm extending to 173 acres is owned by myself but farmed as a partnership with my wife and son. (Plots 3302, 3305, 5301 and 5302 of the AWPR Compulsory Purchase Orders).
- My wife, Mrs P Hutchison, (Plot 3306 and 5303) diversified her farming business of purpose-built holiday lodges on some 3 acres.
- We set up a limited company to build and operate a specialist broiler unit which is affected by plot 201.

Clearly the original preferred route announced in Spring 2005 would not have affected our property but in December of that year, in response to lobbying against that route, the Scottish Ministers announced a different route involving a direct link known as the Fastlink, which ran through the middle of our property.

Background to our situation

We set out our comments on aspects of the questions raised in the consultation process relevant to our situation.

Chapter 5 Procedure for obtaining a CPO

Stonehaven has no major supermarket which would avoid travel to Portlethen or Aberdeen and we very much welcomed plans to build such facilities in the north west of the town off the Netherley Road. We were somewhat shocked to learn that Transport Scotland failed to take into account this proposal in their design for the Stonehaven junction with the A90.

You ask:-

> Should all CPOs made by local authorities and statutory undertakers require to be confirmed by Scottish Ministers and, if not, in what circumstances should acquiring authorities be able to confirm their own CPOs?

Comments on Proposal 17

We believe that there needs to be a form of independent judicial oversight in the exercise of compulsory powers.

Any decision and reasoning of the CPO request in such circumstances should be transparent and public. This is particularly so when confirmation is carried out by an arm or related minister of the acquiring authority.

We consider it essential that any CPO legislation should set out a clear legal obligation on any confirming authority to act independently and judicially in order to emphasise that this is not merely a rubber stamp exercise as often appears to be the case.

Chapter 6 Challenging a (confirmed) CPO

Public schemes are frequently promoted by private companies. We have found them not to be willing to consider alternative proposals after they have selected a route or design, despite the fact that contact with us prior to that point was minimal. Private companies are not directly accountable to the community and are profit orientated.

We therefore consider it important that there should be a clear statutory duty placed on acquiring authorities to carry out all work necessary leading to the preparation of a CPO such as in route selection or Environmental Impact Statements. There should be a clear duty of care towards affected parties to ensure a fair and equal assessment of route options.

In their CPO application for the AWPR Transport Scotland relied upon work undertaken by Jacobs and the Scottish Agricultural Colleges (SAC). Much of that work appeared to have been insufficiently researched. Examples of this include: -

1. It was stated by SAC that remedy/offset measures for mitigation included compensation and it was upon this basis that Graham Kerr of SAC concluded that the Fastlink proposals of the AWPR would not affect the viability of any farm[1].

   In the AWPR EIA and in Mr Kerr's evidence in his supplementary evidence at Public Inquiry, Mr Kerr referred to his findings in the ES at 37.6 and to Appendix A37.2, but went on to say at 8.2 "…*no commercial agricultural units will have their viability affected*…". Mr Kerr suggested at the Public Inquiry that the impact of the Fastlink on our farming operations was LOW.

   The purpose of any EIA is to inform on a particular proposal which may lead to a CPO and to incorporate into the scheme measures to avoid or mitigate adverse impacts. The elimination of adverse environmental impacts, or their reduction to an

[1] EIA (CD) Chap 37 para 37.6.11 to 37.6.16

acceptable level is at the heart of the EIA process. We had always understood that one of the main purposes of an EIA is to ensure that potentially significant environmental effects of proposed projects are avoided or reduced as far as possible or practicable. Mr Kerr as part of the EIA, however, assumed that remedy/offset measures for mitigation ought to be included within the compensation. Therefore Mr Kerr's assessment was fundamentally flawed as it is not within the EIA remit to make any recommendations for offset or compensation. Proper consideration of alternatives was therefore not undertaken.

Other witnesses for the Scottish Ministers referred to Mr Kerr's conclusion that no agricultural business would be unviable, as did the Reporter (see paragraph 10.242). Transport Scotland subsequently accepted our notice of severance and that our poultry business has now been terminated.

We commissioned a specialist poultry veterinary report which concluded that the proximity of the AWPR presented an unacceptable threat to the biosecurity of the unit which would result in its closure.

Transport Scotland/Jacobs refused to accept this and instructed SAC to provide a separate 'independent' veterinary report. This suggested tree planning to mitigate any hazard! Following meetings with the District Valuer they agreed to refer the matter to another specialist poultry veterinary expert whose evidence fully supported our original report.

This illustrates the lack of proper investigation into route selection carried out on the AWPR. The process for selecting the Fastlink took 5 months and could not have been informed by any EIA which only appears to have been completed after the route was selected. It is no surprise therefore that much of the controversy over the AWPR centred on the Fastlink.

Had the EIA been undertaken correctly and ahead of time, it would have afforded the opportunity to discuss and consider the route impacts further and could potentially still have been amended to potentially take account of our own business viability and also allowed the development of the long awaited supermarket in nearby Stonehaven.

In effect those preparing EIA's are experts who's professional judgement has to be relied upon by any Reporter. Those promoting schemes must have properly informed, weighted and considered alternatives. Failure to do so can result in flawed schemes. In any new legislation there should therefore be a clear duty on any acquiring authority to carry out such an assessment leading to the implementation of a CPO with due care and diligence and there should be clear sanctions for noncompliance or failure to adhere to the guidance.

If agents for an acquiring authority adopt a partisan approach in respect of such work leading to any CPO process or refuse to consider alternatives put forward, the likelihood of challenge and potential injustice increases. It is entirely reasonable therefore to ensure that in any new CPO legislation that there should be such obligations. It is also an important facet where private property rights are being overridden.

You ask:-

> Should the proposed new statute make it clear that objections to a CPO, on the basis of allegations of bad faith on the part of those preparing the Order, are not competent under whatever provision will replace paragraph 15 of Schedule 1 to the 1947 Act?

Comments on Proposal 29

If those promoting a scheme have failed to properly address the requirements for an objective and independent EIA, it should be open to those affected to pursue them for damages.

You ask:-

> Should the proposed new statute make it clear that applicants claiming that there has been bad faith in the preparation of a CPO have a right to claim damages from those allegedly responsible?

Comments on Proposal 30

Protection against failure (bad faith) should be covered by a right to claim damages.

You ask:-

> Where an applicant has been substantially prejudiced by a procedural failure, should the court have a discretion to grant some remedy less than the quashing of the CPO, either in whole or in part?

Comments on Proposal 34

Yes, this would accommodate existing ECHR legislation and allow partial satisfaction to those affected.

You ask:-

> Should the time period of validity of a confirmed CPO be expressly extended, pending the resolution of any court challenge to the CPO?

Comments on Proposal 35

In our case we were effectively 'in limbo' for some 6 years much of this as a consequence of the judicial challenge to the CPO. If such measures are introduced there will need to be a much clearer process for the service of blight notices.

Chapter 7 Implementation of a CPO

We were entitled to payment of our claim in January 2013. Our agents served 90 day notices at that time.

- Mrs Hutchison received an advance payment in June 2013. This was 50% of the subsequent assessment of our claim reported in June 2015.
- North Elrick Poultry received an advance in December 2013 – some …….. months after such payment was due following the 90 day notice. This was only 26% of the amount reported by the DV in June 2015.

You ask:-

> Compensation should be assessed as at the date when the property vests in the acquiring authority, and interest should run on the compensation from that date.

Comments on Proposal 53

We accept that claims be assessed at the date of vesting so long as provisions are made for losses prior to this. As a consequence of delays between any draft order and the GVD, 6 years elapsed for the AWPR. During that time our business was in a state of limbo.

Statutory interest is linked to the Bank of England base rate and does not reflect the commercial rates on interest incurred by us under overdraft facilities with compound rather than simple interest rates. The DV is refusing to consider a disturbance claim based on overdraft costs because of the statutory interest provisions set out in current legislation.

Chapter 13 Valuation of land to be acquired – establishing development value

You ask:-

> What should be the relevant date for determining whether there is existing planning permission over land to be compulsorily acquired?

Comments on Proposal 87

The promotion or mere consideration of a future scheme may involve an element of protection in respect of any planning application on the affected land. The route for the AWPR was protected meaning that any planning application could not be determined as would have been the case in a no scheme world.

Such planning protection should not be allowed to continue. A landowner is prevented from exercising his normal property rights and has no means of obtaining compensation for any losses arising until the GVD, when market factors may have changed only due to the time delay.

You ask:-

> Should the provisions of Part V of the 1963 Act, relating to compensation where there is permission for additional development after the compulsory acquisition, be repealed and not re-enacted?

Comments on Proposal 96

There should instead be some clawback provision, as might well be the case with a commercial transaction, and noted in *Crichel Down* cases in favour of the authority.

You ask:-

> If not, should the period for considering subsequent planning permission remain as 10 years?

Comments on Proposal 97

The period shou33ld reflect what would happen in commercial transactions.

Chapter 14 Valuation of land to be acquired - CAADs

You ask:-

> Should there be a time limit for applying for a CAAD following the making of the CPO and, if so, what should that limit be?

Comments on Proposal 98

We understand that it is 6 years from the GVD, which seems appropriate.

You ask:-

> Do CAADs currently provide sufficient information and, if not, what further information should they provide?

Comments on Proposal 99

We believe considerable changes should be made to the current CAAD provisions. CAAD applications should not be considered to be a full planning application.

At present CAAD applications are restricted to land acquired only and do not extend to retained land. The Acquiring Authority argue that development outside the acquired land is to be valued on a “hope” basis, which based on recent LTS decisions was only 20% of Development Value.

You ask:-

> Provision along the lines of section 30(2) of the 1963 Act should be included in the proposed new statute and should apply to statutory planning assumptions as well as to CAADs.

Comments on Proposal 100

We do not agree with this proposal.

You ask:-

> When an acquiring authority are considering a CAAD, the proposal to acquire the relevant land, and the underlying scheme, should be assumed to be cancelled at the time when the CPO is first published, with no assumption to be made about what may or may not have happened before that date.

Comments on Proposal 101

We support this proposal.

You ask:-

> The cancellation assumptions in relation to CAADs should be set out expressly in the proposed new statute.

Comments on Proposal 102

We support this proposal.

You ask:-

> The same cancellation assumptions should apply to consideration of all potential planning consents, including CAADs.

Comments on Proposal 103

We support this proposal.

You ask:-

> Should the relevant date for determining a CAAD be linked to the date for cancellation of the scheme for the valuation of planning assumptions?

Comments on Proposal 104

We do not agree with this proposal.

You ask:-

> Should the parties continue to be entitled to insist upon a public inquiry when appealing against a CAAD decision?

Comments on Proposal 105

We consider that any right of appeal should be limited to the landowner as currently within the Planning process.

You ask:-

> Should there be any change in the current (one month) time limit for appealing against a CAAD?

Comments on Proposal 106

If there is a right of appeal the time limit should be extended to 3 months, to allow sufficient time to consider the options. This is the time allowed for an appeal against a refusal of planning permission.

You ask:-

> Should an appeal against a CAAD be made to the LTS rather than to the Scottish Ministers?

Comments on Proposal 107

There appears to be no good reason for an acquiring authority to have such a right of appeal when it would not in respect of a planning application (save in respect of judicial review). Any appeal should be to the LTS since a CAAD is a valuation tool.

You ask:-

> If so, should the inquiry procedure before a DPEA reporter be retained, with the reporter reporting to the LTS rather than to the Scottish Ministers?

Comments on Proposal 108

We would agree with this proposal if it were felt necessary to allow the acquiring authority a right of appeal. Given the inter-relationship between Government ministers, the perception of a conflict of interest would remain if the Reporter reports to the Scottish Ministers.

You ask:-

> Should planning permission, which could reasonably have been expected to be granted as at the relevant valuation date, be assumed to have been granted?
>
> (Paragraph 14.64)

Comments on Proposal 109

We support this proposal.

You ask:-

> Where none of the statutory assumptions apply should such planning permission be reflected, for the purposes of valuation, in hope value only?

Comments on Proposal 110

We consider there is still need for a CAAD process to allow an accurate compensation assessment.

You ask:-

> In any event, should the same criteria be applied in relation to all relevant planning assumptions?

Comments on Proposal 111

We support this proposal.

Chapter 15 Consequential loss – retained land

You ask:-

> The statutory definition of retained land should continue to be based on the effect of the acquisition on that land and not merely on the physical proximity of the retained land to the acquired land.

Comments on Proposal 112

We support this proposal.

You ask:-

> The proposed new statute should provide that the assessment of compensation for severance or injurious affection should be carried out on a "before and after" basis.

Comments on Proposal 113

There are two main methods of assessing disturbance: -

- "before" and "after"
- Value land acquired on open market basis and the diminished value of the retained land.

The latter is used where the parts are used for different purposes and/or land development potential for different uses.

Both should be retained.

You ask:-

> Claims for injurious affection should be assessed as at the date of severance.

Comments on Proposal 114

The claims should certainly be at the date of vesting but be able to take account of factors only known about after the date. Where factors change during the construction it should follow that these can be reflected in the overall compensation payable.

You ask:-

> Compensation for injurious affection, properly so called, should be limited to damage caused to the market value of the retained land.

Comments on Proposal 115

We agree with the Law Commission's comment at 5.40 that:-

> *'compensation for injurious affections will not cover loss of profitability of the retained land or the costs incurred by the claimant in terms of remedying the detriment caused to the land by the compulsory acquisition.'*

We agree with this proposal <u>provided</u> loss of profits etc as noted are clearly and expressly dealt with elsewhere.

You ask:-

> The proposed new statute should confer a discretion on an acquiring authority to carry out accommodation works.

Comments on Proposal 116

We do not agree with this proposal - it leaves the acquiring authority too much scope to underspecify works such as fences.

You ask:-

> Is the current rule, that set-off for betterment applies to land which is "contiguous with or adjacent to the relevant land", satisfactory?

Comments on Proposal 117

The rules pertaining to betterment are confused and inconsistent. From other cases we have heard about on the AWPR they are being used by one DV to counter any claim by affected parties for the market value of their property.

You ask:-

> The provisions which require any betterment to the retained land to be set off against any compensation paid to the landowner in respect of the acquired land should be repealed and not re-enacted.

Comments on Proposal 118

Agreed, this makes sense given that neighbouring landowners who do not have land acquired may benefit from the scheme with no set-off.

Chapter 17 Non-financial loss

You ask:-

> Should the provisions relating to farm loss payments be amended so as to be more flexible and less onerous on the agricultural landowner?

Comments on Proposal 141

There are significant issues regarding assessment of farm loss payments:-

- farm loss payments on the basis of average annual profit from the use of the land for agricultural purposes. This could be problematic after a few poor years, or where there is significant non-agricultural income.
- deduction of imputed rent figure, whether or not the farm is rented. Again problematic.

- if the land acquired is worth more than that given up, the farm loss payment will be reduced by that amount. This seems unreasonable.

We consider that there is justification of an additional premium based on a percentage of market value to be paid in CPO situations as is the case in other jurisdiction.

You ask:-

. The proposed new statute should provide for two supplementary loss payments, one for home loss, and one for farm loss, which would, in each case, compensate for all aspects of non-financial loss arising from compulsory purchase.

Comments on Proposal 142

Yes, would simplify matters significantly and minimise disputes. We see no reason however why this should be confined to home and farm and not extend to other cases. Business loss is payable since 2003 in England but similar legislation was not enacted in Scotland.

We consider there is a strong argument for a premium over market value to be paid in CPO situations which may contribute to a more streamlined process.

Chapter 18 Process for determining compensation

The following 90 day notices were served on the Acquiring Authority: -

- 90 day notice served on 11th January 2013, payment made in May 2013
- 90 day notice served on 11th January 2013, payment made in June 2013
- 90 day notice served on 11th January 2013, payment made in December 2013

On the 2nd April 2013 Transport Scotland gave notification of the DV's assessment of the claim over the main part of the firm and requested bank details etc. On the 27th April they acknowledged they had all the requisite details and we were paid £45,900 on the 1st May 2014 (being 90% of the DV's assessment of the claim of £51,000). There appears no good reason why any acquiring authority should not put proper procedures in place to ensure payment is made timeously – we know that this has been an issue elsewhere on the AWPR.

You ask:-

Should it be made clear, in the proposed new statute, that a six-year time limit to claim compensation runs from the date of vesting (or from the date when the claimant first knew, or could reasonably have been expected to have known, of the date of vesting)?

Comments on Proposal 146

This would seem reasonable. We consider that it is not always possible to determine the extent of a claim until a scheme is completed and it might be better to consider a period of 6 years from a date of 'declared completion'.

You ask:-

> Should it be made clear, in the proposed new statute, that the same time limit operates for any claim of disputed compensation, regardless of whether it follows a notice to treat or a GVD?

Comments on Proposal 147

We agree that standardisation would assist.

You ask:-

> What, if any, changes should be made to the time limit to claim compensation?

(Paragraph 18.23)

Comments on Proposal 148

We consider there should be a single CPO system.

You ask:-

> Should the LTS be given discretion to extend the time limit in some circumstances?

(Paragraph 18.23)

Comments on Proposal 149

We consider discretion to extend the time limit will lead to extensions becoming the norm. We do not support this proposal.

You ask:-

> Should the current rules on expenses be amended to allow the LTS a wider discretion to award claimants all of their reasonable expenses in some situations, even if they are ultimately awarded a smaller sum than had been offered?

Comments on Proposal 150

The LTS should be given such discretion. A claimant should only be awarded costs against him if he raised matters upon which he fails which have significantly increased the length or cost of the proceedings or raises issues improperly or unreasonably.

It should be borne in mind that any claimant did not choose to have a CPO imposed upon him and should be free to properly pursue the compensation upon which he is entitled.

You ask:-

> Should provision be introduced to allow the LTS to make an order at an early stage, to limit the expenses of a claimant in appropriate cases?

Comments on Proposal 151

In the PI the AWPR team comprised a team of professional advisors led by Senior Counsel. Faced with such, any affected party has to seek adequate professional representation to stand a reasonable chance – the same is true in respect of compensation claims.

You ask:-

> There should be a prescribed form to claim an advance payment.

Comments on Proposal 152

No, as this may unfairly rule out claims not following such format.

If however such a measure is introduced, the acquiring authority must be under a clear obligation to properly inform all potential claimants of the advance payment procedure and the prescribed form.

The courts must also be given some discretion in determining claims which do not strictly follow the prescribed format.

The Acquiring Authority must also ensure such claims are processed timeously.

You ask:-

> Are there circumstances in which an acquiring authority should be required to make an advance payment before taking possession?

Comments on Proposal 153

This appears reasonable.

You ask:-

> Should it be competent for the LTS to provide an enforceable valuation figure for an advance payment?

Comments on Proposal 154

Such a procedure would be cumbersome and by the time LTS make an order, it may well be irrelevant and a waste of all parties' time.

The acquiring authority's response to a 90 day notice is a good indication to any claimant of the stance of the acquiring authority in respect of compensation.

Any acquiring authority should not be surprised (as the Scottish Ministers claimed to be) at any referral of a claim to the LTS if a response to a 90 day notice is inadequate. A landowner has to serve a 90 day notice and only then does this appear to trigger a review of the compensation payable. Acquiring authorities appear to be under the impression that there is no duty on them to subsequently update compensation payments. A claimant therefore has to raise multiple 90 days notices to obtain realistic advances as a claim progresses.

Any new legislation should place a clear duty on acquiring authorities to make advances as a claim progresses (with an appropriate sanction in the event of a failure to do so).

You ask:-

> At what rate should interest be paid on advance payments, and should the acquiring authority be liable for an increased rate if payment is delayed?

Comments on Proposal 155

The statutory interest rate payable has been 0% since 2009 whereas, like most landowners, we incur interest on our overdraft at 3% over base and arrangement fees. A penal rate of interest is essential for the validity of the advance payment process, otherwise why would they pay timeously.

It is for the acquiring authority to ensure that it has proper valuation and payment procedures in place prior to exercising compulsory powers. It is our experience that this simply was not the case in respect of the AWPR despite the time Transport Scotland had to do so. (8 years).

To encourage acquiring authorities to make proper assessment of compensation timeously in response to such notices it would seem reasonable that they be required to pay interest on the basis set out in the Late Payment of Commercial Debts (Scotland) Regulations 2002 on any balance outstanding from the date that payment under a 90 day request should have been made.

Transport Scotland has offered compensation for our professional fees on the basis of Rydes Scale plus 25%. Rydes Scale was prepared by the Valuation Office Agency (VOA). It was scrapped by an announcement on 18th July 2002 from the Office of the Deputy Prime Minister.

We are aware that the Scottish Government have continued to base all payments on Rydes Scale notwithstanding the anti-competitive nature of that scale. Other Acquiring Authorities reimbursed fees on the basis of the 1996 Scale (the last one prepared by the VOA) uplifted by 40% (and more recently to Rydes plus 50%).

The VOA has advised Transport Scotland that Rydes plus 25% is not an appropriate basis for the reimbursement of professional fees. Notwithstanding this the Scottish Ministers are still only offering landowners reimbursement of professional fees based on Rydes Scale with a 25% uplift notwithstanding any agreement between affected landowners and their agents. DV's are following this line.

In drafting recommendations and legislation for a revised CPO regime the Law Commission should clearly state the obligation for the reimbursement of professional costs.

You also ask:-

> Should the LTS have discretion to:
>
> (a) provide for interest from a date earlier than its award, and
> (b) increase the rate of interest where it finds that there has been unreasonable conduct by an acquiring authority?

Comments on Proposal 157

Like many fellow landowners affected by the AWPR, Transport Scotland failed to deal with our 90 day notice timeously.

The legislation should not rule out any entitlement for a claimant to seek a higher rate interest as part of a disturbance payment if that is what he suffers as a consequence of the Scheme. It is currently argued by DVs that such a claim is incompetent because of the existence of the statutory rate notwithstanding the fact that claimants may be incurring bank costs well over such interest rate provisions, such as arrangement fees and bank charges..

You ask:-

> What are the advantages and disadvantages in resolving disputes in compulsory purchase cases by (a) ADR, and (b) a reference to the LTS?

Comments on Proposal 158

ADR may be cheaper than the LTS and may be suited for lower value claims or where specific items of claim remain disputed.

You ask:-

> Can consultees provide evidence of costs incurred in relation to resolving disputes by (a) ADR, and (b) a reference to the LTS?

Comments on Proposal 159

No.

Chapter 19 Crichel Down Rules

You ask:-

> Should the Rules for giving former owners of compulsorily acquired land a right of pre-emption, where the land is no longer required for the purpose for which it was purchased, be placed on a statutory footing?

Comments on Proposal 160

Yes, avoids the disputes noted in the text, we believe this should be nominal value to encourage Acquiring Authorities to properly assess their actual need in respect of any CPO.

You ask:-

> Should the Rules apply to all land acquired by, or under threat of, compulsion?

Comments on Proposal 161

We believe this would be fair and reasonable.

You ask:-

> Should the obligation to offer back land continue to be limited to cases where the land has undergone no material change since the date of acquisition?

Comments on Proposal 162

“Changed in character” appears to be a very subjective test.

You ask:-

> Are the current provisions setting out the interests which qualify for an offer to buy back land satisfactory?

Comments on Proposal 163

We do not consider these to be satisfactory.

At the moment we understand that surplus land is offered to other Government departments or to conservation bodies before being offered to the successors of those from whom it was acquired. It ought to be offered where use by the Acquiring Authority only is surplus to requirements.

You ask:-

> Should the same time limit apply in relation to the obligation to offer back land, regardless of the type of land acquired, and how long should that time limit be?

Comments on Proposal 164

It should remain an obligation and within the Title.

You ask:-

> Should a time limit be introduced for land purchased between 1 January 1935 and 30 October 1992?

Comments on Proposal 165

No.

You ask:-

> Should the seven exceptions to the obligation to offer back, currently provided for in the Rules, be retained and are there other exceptions which should be included?

Comments on Proposal 166

There should be no exception but there should be an obligation on the acquiring authority in respect of the process of declaring land surplus to requirements.

You ask:-

> Should the special procedure in paragraph 23 of, and Annex 1 to, the Rules, relating to the obliteration of boundaries in agricultural land, be retained?

Comments on Proposal 167

This should be retained.

You ask:-

> Do time limits in the current Rules to carry out the process to offer back land operate satisfactorily?

Comments on Proposal 168

This does not appear unreasonable.

You ask:-

. Should clawback provisions in terms of the development value of surplus land be time limited and, if so, to what extent?

Comments on Proposal 169

No time limit should apply. The acquiring authority should not gain financially and there should be no limit to clawback. Surplus land should be returned to the landowner if not used for the scheme.

You ask:-

Should the proposed new statute provide that any tax liability which the landowner incurs as a result of the compulsory acquisition may be recoverable under the head of disturbance?

Comments on Proposal 176

Yes. A landowner normally has a choice of when to dispose of property and the tax regime will influence such a decision. Where land is acquired compulsorily a landowners has no such option and this should be taken into account in assessing disturbance. In our case because of issues in respect of notice of severance discussed above we may lose the opportunity to claim Entrepreneurs relief. In addition, taxation needs to be amended such that rollover relief extends to investment in a building on remaining land.

The AWPR is being built on a design and build basis. Transport Scotland gave undertakings that they would refund the cost of drainage works on our land to tie up with the road drainage. We were told that plans would be available shortly after vesting but there are still not forthcoming from the contractor. We have requested this information from Transport Scotland but have had no response. Drainage is crucial to the productivity of the farm and we can do nothing to address any potential losses until these plans are available as we cannot design or build any scheme until then.

There should be a one system arrangement for the process incorporating the fundamental democratic rights to object; the process must recognise private property and human rights.

The use of CPOs should be strictly controlled and any CPO process should be properly carried out with due regard to those affected by the scheme. An acquiring authority should not be able to abrogate its responsibility to private firms and there must be sanctions for non-compliance. Current legislation takes no account of the potentially significant issues between proposing a scheme and draft orders to date of vesting.

There should be a flexible and sympathetic compensation regime, recognising the problems arising between claimants and acquiring authorities inherent in the existing process. A premium over and above market value for land acquired would go a long way in breaking down the current antagonistic attitude towards schemes for those affected and would make the system smoother and easier.

I would be happy to meet you or your colleagues if you wish me to expand to elaborate on any of the issues raised in the consultation response.

Yours faithfully

D J Hutchison