Mrs Lucy Galloway
Scottish Law Commission
140 Causewayside
Edinburgh
EH9 1PR

22nd June 2015

Dear Mrs Galloway

Consultation on proposed Reform of the CPO Legislation
Milltimber Farm

We as a family have farmed in the vicinity of the Milltimber Brae for several generations. The family purchased the 200 acre holding as sitting tenants from the Culter Estate in 1984. Following work carried out by consultants for the AWPR in 2001/2002 a preferred route for the Bypass was announced in the Spring of 2005, which would not have affected our property.

In December of that year, in response to lobbying against that route because of its perceived effect on the Camphill Community, a Rudolf Steiner School for children and young people with special needs, the Scottish Ministers announced an entirely different route further to the west, avoiding the Murtle Brae which had been safeguarded for the route of an Aberdeen Bypass for some 30 years in favour of a route affecting Miltimber Farm.

The exact route selection for this was developed between December 2005 and May 2006 when the new route was announced. Little consultation was undertaken in respect of this route selection, which led to the Scottish Government having to relocate the Aberdeen International School at a reputed cost of in excess of £51 Million. They also had to buy out 12 houses blighted by the proposal, the total cost of which was in the region of £17.67 Million.

As a consequence of the changing nature of agriculture, our farming system was diversifying from cattle and arable production towards livery.

We raised with the AWPR team at various meetings in 2006 and 2007 issues regarding the design of the road in relation to the livery business which is located at Milltimber Farm, whereas the majority of the fields to the east were liable to be severed by the AWPR proposals.

By February 2007 25% of the livery business had already been lost as a result of the proposed AWPR, Transport Scotland rejected proposals for an overbridge. The scheme involved the loss of some 47 acres out of 270. Transport Scotland considered that an overpass to link the main steading to the severed area was unnecessary and suggested that horses would walk to grazing on the other side of the B979 between the Milltimber Road and the AWPR via an underpass formed by the new Dee Bridge on the floodplain.

Transport Scotland's agents, Graeme Kerr of the Scottish Agricultural College, considered that although the effect on our property was adverse, he went on to state that the business would still be viable (despite the loss of liveries).

Mr Kerr's evidence before the Public Inquiry indicated high sensitivity. He identified the need to provide overbridges and underpasses to limit the effect of severance and loss of access. This evidence at 5.4.3 of

his precognition was the proposals would involve an additional 310m journey length predominantly adjacent to public roads and acknowledges that this additional journey length of its own would increase safety risk.

In the light of such evidence we had to commission our own equine assessment from a specialist equine consultant with internationally recognised expertise to support our position and business. This was entirely at odds with the evidence provided by Transport Scotland raising considerable concerns about the impartiality of the EIA carried out by Transport Scotland upon which the route choice was predicated.

Given the circumstances and Transport Scotland's refusal to consider relocating the business to the east of the proposed route, we had to spend approximately £1.4 Million in obtaining planning consent and building a new livery yard in an attempt to mitigate the haemorrhaging livery business.

We are now faced with a major difference of opinion regarding the compensation payable which could proceed to the Lands Tribunal if these matters cannot be settled.

In relation to the Law Commission's proposals, we have the following observations based on our experience to date of the CPO process: -

Temporary rights

Because Transport Scotland have promoted the route design etc through their agents, Jacobs, a profit making organisation, it is interesting that Jacobs planning consultants in their EIA consider that there was no development potential over our land, notwithstanding the fact that it had been under various option arguments for some 10 years with competition from interested parties.

Having promoted the scheme via a profit making organisation, the acquiring authority divested the responsibility for build to another profit making organisation who will deliver the scheme.

Promises made by Transport Scotland particularly in relation to our private drainage scheme have been rejected by the consortium building the road and Transport Scotland appear to be attempting to abrogate their responsibilities by insisting that this is a matter for discussion with the contractors.

We have been seeking drawings of levels because of concerns regarding the increased risk of flooding on our property since 2007, but these have still not been forthcoming.

As a consequence of the tender, extensive ground investigation works were required involving a series of pits and boreholes across our property from 2006, culminating in an extensive archaeological survey in 2014. We have had considerable difficulty in obtaining compensation for these works, let alone obtaining payment. We acknowledge that acquiring authorities should have a general power to take temporary possession but any new legislation must protect landowners' interest and provide for proper compensation at the time such entry is taken.

We believe there should be a clear duty on acquiring authorities to take into account those affected by CPO schemes, both in the design and promotion phases as well as the implementation. The acquiring authority should not be able to abrogate its responsibility to those affected by the scheme to profit making third parties at any time.

Private Water Supplies

We have also experienced significant issues with Design & Build by trying to ensure that our Private Water Supply would not be affected. Assurance was given that if any issues arose a mains connection would be provided but as a result of the contractual basis we have had water quality issues and no timeous responses from Transport Scotland and the CJV to resolve.

Confirmation of CPO

We find it somewhat strange that the Scottish Ministers should be able to confirm a CPO promoted by them. It would appear that in so doing they act as judge, jury and executioner! We are acutely aware of the issues that have arisen in respect of this elsewhere on the AWPR and we consider that all CPOs should be confirmed by an independent and arm's length organisation.

Valuation date and interest

We accept that compensation should be assessed at the date when the property vests with the acquiring authority. Given the length that such schemes now take, it is essential that there is a statutory mechanism to claim for losses incurred during the promotion phase.

It is of interest to observe that our neighbours were able to obtain compensation in 2006 for their property yet I have been unable to obtain any realistic compensation to date.

At present the statutory rate of interest is linked to the Bank of England base rate and set at 0.5% below base. The result is that the statutory rate of interest since March 2009 has been nil. Whereas previously we had no need for an overdraft, the scheme resulted in us incurring an overdraft in the order of £1Million pounds at a commercial interest which is considerably in excess of that.

The District Valuer is refusing to consider any claim for interest at a higher rate on the basis of legislation providing for a statutory rate, notwithstanding the principle of equivalents and that we can demonstrate a causal link between the scheme and the costs we are incurring.

We served a claim for an advanced payment on the 11th January 2013. This should have resulted in payment of compensation on the 11th April 2013. In the event, Transport Scotland only offered an advance payment in January 2014. In order to receive this compensation Transport Scotland required various details including whether or not a heritable security was held over the property. It appears to us that this further delay was wholly unnecessary in that Transport Scotland had ample time prior to the vesting date to obtain such details to ensure timeous payment and could make better use of information already obtained a well as lessons learned from other schemes.

Any new legislation should provide for a realistic payment of interest close to the commercial rate, (say 4% over base) calculated on a compound rather than a simple interest basis. If an acquiring authority ignores a request for advance payment, it is wholly reasonable for them to pay interest at a higher rate, otherwise there is no incentive.

It occurs to us that the Scottish Government promote timeous payment of debts by means of the Late Payment of Commercial Debts Scotland Regulations 2013 and it is wholly reasonable therefore that an acquiring authority pay interest on a similar level where they have failed to make timeous payment. Furthermore, any such provision for statutory interest should not rule out a claim for a higher rate if that can be established by a claimant.

Injurious affection/disturbance

Many of the issues in our claim relate to the effect of the scheme on our retained business.

Transport Scotland acquired an area of sand which formed a key area of our livery business in that it provided all weather exercise. The District Valuer is resisting any realistic payment compensation for the loss of this land.

As I understand it, the issue is whether such loss would be reflected in the open market value of the land rather than the peculiar circumstances of our own business.

We accept that definition of personal circumstances could be extremely difficult to draft in any new legislation, but consider that in principle a more liberal and flexible view with regard to the assessment of disturbance compensation requires to be adopted.

The District Valuer is suggesting that disturbance should be addressed by looking at changes in our revenue for a period after the vesting date to enable the extent of the loss to be quantified. Whilst we accept that this may be a practical way forward, it does not address the fact that we are incurring substantial overdraft costs which the acquiring authority is refusing to recognise.

This also gives rise to difficulties in respect of a six year time limit to claim compensation from the date of vesting.

Crichel Down Rules

At present we have direct access from our property to the Milltimber Brae. The scheme will result in the loss of that direct access and therefore potential for the acquiring authority to ransom any future development of our property, as Transport Scotland apparently attempted in respect of land at Stonehaven. We consider given that Transport Scotland have acquired an area of 14 acres and which forms an all-weather exercise route in order to alter levels we consider there should be a statutory obligation on them to offer it back on the same basis as compensation was computed.

An acquiring authority should not be able to benefit financially from a compulsory acquisition.

Blighting Effect

The mere promotion of a scheme has a blighting effect on development in the area. When the revised route was announced in 2006 house prices along the revised route plummeted.

The effect is also illustrated by the fact that the 2012 Aberdeen City LDP did not allocate some of our land for development. One of the reasons given for the failure to allocate this was the potential reservation of the land in the area for the AWPR. It is interesting to note that as part of the same LDP review, a section of our property at Peterculter East (unaffected by the AWPR) was in fact rezoned for housing.

Yours sincerely

J Mitchell