



Compulsory Purchase Association in Scotland

Graham Simpson MSP  
The Scottish Parliament  
EDINBURGH  
EH99 1SP

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Dear Sir

**Compulsory Purchase Association in Scotland (CPAS) Response to Agreed Amendment 12,  
on Land Value Capture, to the Planning (Scotland) Bill**

This letter is written regarding the amendment, which was proposed by you, which seeks to introduce an additional element of Land Value Capture through the Planning (Scotland) Bill.

**CPAS**

The CPAS is a “not for profit” member organisation that promotes best and effective practice in the delivery of land for infrastructure, housing and regeneration through the use of compulsory purchase powers. Its members span a range of professional disciplines involved in the compulsory purchase process, including chartered surveyors, solicitors, advocates, forensic accountants and planners. It is a non-partisan organisation and neither supports nor opposes specific public works schemes. The CPAS's members represent both acquiring authorities and claimants affected by compulsory acquisition. The CPAS is regularly invited by Scottish Government to comment on proposed changes to the compulsory purchase and compensation system. We have written this letter to respond to the changes suggested by proposed amendment 12.

**Summary of CPAS’s view on Land Value Capture (LVC)**

The CPAS does not oppose the principle of Land Value Capture (LVC) and is very much engaged in the debate that is ongoing at present. Indeed, it was the subject of our Annual Reform Lecture last year. Members have been involved in discussions through the Scottish Land Commission on historic attempts at LVC; and representatives have participated in the Scottish Land Commission Round Table Discussion on the Briefing Paper “Acquiring Development Land at Existing Use Value” on 7 November.

Land value may be captured for a number of reasons, such as:

- Meeting the external costs of development, such as road improvements, additional health and education facilities, and affordable housing
- Recovering betterment due to public spending on infrastructure

- Recovering betterment due to a policy change or planning approval

CPAS is supportive of LVC when it is captured for these reasons, and is supportive of the current range of LVC methods, such as affordable housing contributions and other S75 contributions. We note that a further method of LVC is already proposed within the Planning (Scotland) Bill – an Infrastructure Levy – and we understand and support the reasons given for its proposed introduction.

We cannot, however, support the introduction of a method of LVC by changes to compulsory purchase law which are proposed by amendment 12, particularly when the Scottish Land Commission is still in the process of investigating LVC on behalf of the Scottish Government, which is due to report in a matter of months from now.

### **Summary of current compulsory purchase system**

The CPAS is supportive of development and infrastructure projects that shape and create better places across the UK. This includes the delivery of affordable housing and investment in public services. Compulsory acquisition can undoubtedly provide significant financial benefits for society when it is needed, by facilitating the release of land that would otherwise not come forward for development.

We believe that compulsory purchase is and should continue to be a mechanism of last resort, used in only a small proportion of schemes. It is therefore a poor vehicle for land value capture due to its relatively limited application. It could, as happened following the introduction of LVC following the Town and Country Planning Act 1947, lead to a dual pricing structure for land, where that acquired under compulsory purchase in Masterplan Consent Areas is acquired in some cases (no doubt after substantial efforts to resist by claimants) at close to existing use value, (although in other cases, due to drafting deficiencies, compensation could exceed that paid under current legislation) and the bulk of development land continues to be sold in the open market at a far higher value and with no additional land value capture.

### **Problems with the Proposed Amendment**

1. 3 (a) (i) essentially seems to be aimed at disapplying S23 (1) of the Land Compensation (Scotland) Act 1963, under which planning permission for the acquiring authority's proposed development is to be assumed. However, although this might well reduce the value of the subjects (because there is no longer an explicit assumption in favour of planning permission for the authority's proposals, there is no mention of any change to S12 (2) of the 1963 Act, so presumably market value is still on the basis of valuation, and as we know, this includes any hope value which the market might assign to the subjects. Thus, the value might not be reduced by much if, in the absence of the scheme, planning permission for the acquiring authority's development would have been likely.
2. If planning permission would, in the absence of the scheme, have been available for another planning use, then the value for that use can also be taken into account.

3. There is no mention of Certificates of Appropriate Alternative Development (CAADs); thus, presumably if there is no repeal then if a claimant submits a CAAD application, which is positive for the acquiring authority's use, then there is an assumption for that use, at full development value, contrary to the stated aim of the amendment.
4. 3 (a) (ii) adds a payment in respect of the "reasonable costs...to the purchase of land...to establish a place of business in a new location". However, as S12 (6) of the 1963 Act is not repealed, there would seem to be two provisions giving disturbance, which would be, to say the least, confusing. If it was meant to replace S12(6), then it would provide wholly inadequate compensation for any businesses affected as there is no mention of disturbance for any other reason – for example, temporary loss of profits – which could easily lead to businesses being forced to close.
5. In addition, if there has for example been a successful CAAD, and this payment under 3 (a) (ii) is also appropriate, then the claimant would quite possibly get more than he currently would (as the case *Horn v Sunderland* currently operates to exclude such an addition) – even before any addition under 3 (a) (iii).
6. It is not clear how "Market Value" in 3 (a) (iii) is to be assessed. Although there is a current RICS definition of Market Value, it should be noted that the basis of value set out in the Land Compensation (Scotland) Act 1963 is "the amount which the land, if sold in the open market by a willing seller, might be expected to realise". If the Amendment wishes to be consistent with the 1963 Act, it should adopt the 1963 Act wording. If it does not, then valuers might interpret the different wording as a direction to use the RICS Red Book definition of Market Value, which might not always be consistent with the 1963 Act definition.
7. 3 (a) (i) refers, not to "market value" as in 3 (a) (iii), but to value. Presumably, the intention is to be consistent. If so, it should read "market value", and the comments above regarding this phrase are also relevant.
8. 3 (a) (iii) says "no more than one quarter"; but this amendment does not say who has the power to decide whether it is to be one quarter, or another portion. Is it the local authority using the powers, or is it the Scottish Government? This needs clarification in the Bill.
9. CPSA doubt whether the supposed catch-all phraseology in 3 (b) could be used to solve all of these issues, as *Horn v Sunderland*, for example, depends on case law and not "provisions of the Land Compensation (Scotland) Act 1963". Substantial amendment to the 1963 Act would inevitably be required.

### **Other Considerations**

CPSA have mentioned the work done on LVC by the Scottish Land Commission. They commissioned a Report, published last year, on "Historic Attempts to Capture Land Value Uplift in the UK", and recently published a further Briefing Paper, on "Acquiring Development Land at Existing Use Value". Following this, there will be a round of further consultations, and Scottish Land Commission have stated that they will provide Ministers with recommendations before the end of the current financial year. It therefore seems to

CPAS to be premature for amendment to be included in the Planning (Scotland) Bill when the Land Commission, at Ministers' request, are engaged in an extensive study on this issue.

It should also be noted that development value can also be captured through Capital Gains Tax and Corporation Tax, albeit that the provisions are complex and tax can often be minimised or avoided.

### **Human Rights Considerations**

If enacted, the amendment will certainly "engage" rights under Article 1 of the First Protocol of the ECHR in individual cases. Given the lack of clarity in the proposals, as outlined above, the potential impact on affected parties is also unclear. The possibility that the changes may in practice place a disproportionate and excessive burden on affected parties, thereby breaching the relevant human rights, cannot be ruled out

### **Conclusion**

CPAS reiterates its support for LVC in principle, when this is appropriate, but cannot support the introduction of LVC by changes to compulsory purchase law in the way proposed, for the following reasons:

- Limited application, particularly so here as it is only those subjects within Masterplan Consent Areas which are affected. It would lead to a dual pricing of development land and leave much of the gain resulting from planning decisions uncaptured.
- There are already extensive means of LVC in use, through affordable housing and other S75 contributions for varied purposes, and the Planning (Scotland) Bill intends to introduce an additional method of LVC, by means of an Infrastructure Levy. Capital Gains Tax and Corporation Tax also catch land value, to some extent. There needs to be a consideration of how any additional means of LVC interacts with these existing means of LVC to ensure that the system of LVC works efficiently and effectively, and amendment 12 contains no such considerations.
- The wording of the amendment is flawed, and it could not work without extensive alterations to existing legislation, none of which is outlined in this amendment.
- The amendment is premature, in view of the extensive work currently being carried out at the request of Ministers by the Scottish Land Commission, on precisely this issue. It would be best to wait until their recommendations are available and an extensive consultation can be carried out.
- The amendment is premature because Ministers are currently considering the recommendations of the Scottish Law Commission report on Compulsory Purchase, dating from 2014, and it would be inappropriate to introduce the proposed amendment at this stage. LVC proposals could potentially be included in a Compulsory Purchase Bill, possibly also alongside legislation on Compulsory Sales Orders, after consultation.
- There are potentially serious Human Rights issues which need to be carefully considered.

CPAS would be grateful if you would consider these views. Copies of this letter have been sent to James Dornan MSP, in his role as Convenor of the Local Government and Communities Committee, Andy Wightman MSP, to the Minister, Mr Stewart, and to the Bill Manager, Andy Kinnaird.

CPAS is happy to discuss the necessary changes to the Bill, as drafted, which might make this amendment workable and acceptable, and would be very willing to meet with you and others to discuss.

Yours faithfully



Odell C Milne  
Chair, SCPA