

Appendix D - Maintenance of land on private housing estates



RESPONDENT INFORMATION FORM

Please Note. This form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Homes for Scotland

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Trouten

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Karen

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3. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)? *Please tick as appropriate* Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis
Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

CONSULTATION QUESTIONS

Question 1. Do you consider that the Government could take steps to increase use of the Development Management Scheme option, when appropriate? [Yes/No. Please give reasons for your answer].

Yes No

Without details on the steps that the Scottish Government intend to take to achieve this increase in use, it is difficult to comment and more information on this would be helpful (i.e. Issuing guidance or changing legislation?).

The important thing is that the provision is provided through statute as an option for use where appropriate.

In our member's experience, it is crucial that arrangements are in place to ensure that the management of maintenance of open space operates irrespective of whether the residents are involved or not. Hence the appointment of professional land maintenance companies as normal practice.

While disseminating the outcomes from this consultation, Homes for Scotland would be happy to assist the Scottish Government in briefing the home building industry on the statutory provisions in place. Raising awareness of the provision within the Title Conditions (Scotland) Act 2003 in this way may encourage increased use of the provision for Development Management Schemes where appropriate.

Question 2 Do you consider more could be done to advise prospective homeowners of potential obligations in relation to the maintenance of open space? [[Yes/No. Please give reasons for your answer].

Yes No

As stated within the consultation paper, the Home Building industry has established a UK Consumer Code for Home Builders. Although the paper correctly describes the Code as 'voluntary' it should be noted that this is only in the sense that it is not regulated by Government legislation. The Code was developed by the industry itself to ensure good practice and provide customers with a Independent Dispute Resolution Service. If Home Builders do not comply with the Code they will be struct off by their Warranty Provider and will be unable to sell any homes. The scheme is therefore self-regulated by the industry and has some very real and incisive teeth.

The Consumer Code requires that home buyers must be given enough pre-purchase information to help them make suitably informed purchasing decisions, including a description of any management services, any organisation to which the home buyer will be committed together with an estimate of their costs from the very earliest stage of the buying decision process.

The Consumer Code was introduced for all new purchases from April 2010. Given the market suppressed number of transactions that have taken place since that date, it is still very much a new provision in the home buying journey (note: 'new' in the formal sense, the majority of home builders would have been giving this information routinely at the pre-reservation stage anyway). It is therefore far too

early to give consideration to the need for any further expanded pre-purchase advice.

Question 3. Do you consider more could be done to provide information to homeowners, after they have purchased the house, on the maintenance of open space? [Yes/No. Please give reasons for your answer].

Yes No

Given the amount of information given before the purchase, this would only duplicate work and add to the costs to the homebuilder (and therefore ultimately the customer) in providing this information. In our members experience, despite all the information given, the reality of the factoring costs does not become an issue until the home owner receives their first bill from the land maintenance company. At this stage however the home owner should simply refer back to the information given pre-purchase.

Question 4. Do you consider the suggested period of two years before residents could dismiss and replace the land maintenance provider is reasonable? [Yes/No. Please give reasons for your answer].

Yes No

This timescale seems sensible but it is important to note that the two years could not begin until the last unit on the development is sold and the final handover of the landscape maintenance is complete. It would not be possible to phase this and the timescale set against the last unit sold will be crucial in large scale developments.

It will be important that residents are aware of any notice to be given to existing maintenance companies and also the mechanism for residents to consult and appoint new managers prior to the termination of any existing contracts. Residents should also be aware that the costs of using this mechanism will need to be added to factoring bills and shared by all residents, for example including but not limited to legal costs.

Question 5. Do you support amending the 2003 Act to lay down that title deeds cannot place an obligation to pay a named body for land maintenance, except by way of a new burden (a "maintenance burden") which would have to include provision on how home-owners could dismiss and replace the named body? [Yes/No. Please give reasons for your answer].

Yes No

Given that most Deeds of Conditions do not name a body we would be comfortable with this. However, these provisions should not be capable of 'retrospective application' as it is neither possible nor desirable to re-open the missive terms of existing purchases already complete or in the process.

Question 6. Do you support the idea of enhancing consumer choice on a voluntary basis? [Yes/No. Please give reasons for your answer].

Yes No

We would support the exploration of this option. As long as the model policy on consumer choice made it clear how the mechanism would operate and the set timescale following the handover of the last unit (i.e. 2 years) had past.

Question 7. Do you consider that amendments should be made to the 2003 Act so that two thirds of those paying land maintenance bills on private estates should be able to dismiss and replace land maintenance companies? [Yes/No. Please give reasons for your answer].

Yes No

It would be helpful to obtain clear guidance on the majority required to make such a change. It is important that the formal process and mechanisms that need to be put in place to take such a decision (i.e. residents vote) and measure the majority is just as clear. Furthermore any default positions must be clear (i.e. no show/vote = status quo).

Question 8. If amendments to legislation are made to make it easier for residents to dismiss and replace land maintenance companies, do you consider provision should be also made in relation to land maintenance companies transferring ownership of the land? [Yes/No. Please give reasons for your answer].

Yes No

As far as we are aware there is only one company that may insist on the ownership of the title being transferred. Our members preference is often for the land to be held in common, but sometimes there is no choice, if this solution is driven by Local Authority Planning Requirements or the Phase of the site is part of a bigger development, especially where a lead developer is in place. Any change in legislation would need to take this into account and a similar timescale (i.e. 2 years) following the handover of the last unit would need to be set.

Question 9. Are there any other points you would like to make, including any comments on the Impact Assessments? If so, please outline these points.

It is important that any legislation introduced in relation to land maintenance fits with the newly introduced Property Factors Bill. In disseminating the outcomes of this consultation, and for future discussion on such matters it would be helpful if parallels or fundamental variances are highlighted.

Please email this response form to PropertyLaw@scotland.gsi.gov.uk or you can post it to:

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By 6 June 2011

