

ANGUS COUNCIL

PLANNING AND TRANSPORT POLICY COMMITTEE

29 AUGUST 1996

SUBJECT: FORESTRY COMMISSION REVIEW OF CONSULTATION ARRANGEMENTS

REPORT BY DIRECTOR OF PLANNING, TRANSPORT & ECONOMIC DEVELOPMENT

Abstract: The Forestry Commission have changed the consultation arrangements in relation to grant and felling licence application from 1 August 1996. Both COSLA and Highland Council have asked to be advised of the Council's opinion on the matter. This report reviews the changes and recommends an appropriate response.

1 RECOMMENDATION

It is recommended that the Director of Planning, Transport and Economic Development be asked to prepare an Angus Council response in accordance with the analysis contained within the body of this report.

2 INTRODUCTION

- 2.1 Since 1984, Local Authorities have been consulted on grant and felling licence applications. Within the former Angus District, Angus District Council has been formally consulted on all such applications. On 9 May 1996, the Forestry Commission issued a "news release" advising of the intention to change the consultation arrangements on 1 August 1996. Unfortunately Local Authorities were not advised of the changes directly and Angus Council was subsequently informed by COSLA in a letter dated 17 June 1996. Since that date, representation from Highland Council has been received regarding the matter asking to be advised of the Council's position on the matter. COSLA have also requested to be advised of the same.

3 REVIEW OF CONSULTATION ARRANGEMENTS

- 3.1 The review of consultation arrangements was started in 1994 when the views of all interested parties on the matter was sought. COSLA co-ordinated the Local Authority response and submitted a detailed critique of the consultation papers revised procedures. In summary the view was expressed that the existing consultation procedures were generally satisfactory and that the new proposals will be a retrograde step. These proposals were submitted to the Forestry Commission in February 1995. It is the opinion of COSLA that the Forestry Commission's new proposals almost wholly ignore the concerns raised by COSLA in February 1995.
- 3.2 The revised consultation arrangements which have been operational since 1 August 1996, have only been supplied in the form of a news release and are attached as Appendix A.

- 3.3 In general the proposals substantially reduce the level of formal consultation with Local Authorities. Highland Council have forwarded copy of the its opinion on the revised consultation arrangements. Following analysis of the changes and the opinions of Highland Council, it is considered that the views of Highland Council are appropriate and the constructive nature of the criticism contained therein is particularly welcomed. Whilst the occasional examples used relate to the Highland Council area, it is nevertheless considered that the broad content of Highland Council opinion is appropriate. The Highland Council opinion is therefore attached as Appendix B.

4 FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications on the Council as a result of this report.

5 CONSULTATION

- 5.1 The Chief Executive, Director of Finance and the Director of Law and Administration have been consulted in the preparation of this report.

6 CONCLUSION

- 6.1 It is considered that the changes to consultation arrangements implemented on 1 August 1996 was a retrograde step. Accordingly it is recommended that an appropriate Angus Council response endorses the opinions of Highland Council as contained in Appendix B.

NOTE

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

AA/SJR/KW
13 August 1996

Alex Anderson
Director of Planning, Transport & Economic Development

184/96
9 MAY 1996

**MORE OPENNESS AND LESS BUREAUCRACY
FOR FORESTRY PROPOSALS**

Consultation on forestry planting and felling proposals in Britain is to be more open and less bureaucratic to increase the opportunity for people to comment and to speed up the processing of applications.

This announcement was made today by Forestry Minister and Secretary of State for Scotland the Rt Hon Mr Michael Forsyth MP in reply to a Parliamentary Question. The full text of the Question and Answer is: -

MR JOHN WHITTINGDALE (South Colchester and Maldon):

To ask the Secretary of State for Scotland, what proposals he has to improve the forestry consultation procedures?

MR MICHAEL FORSYTH:

In our response to the Environment Select Committee's report on Forestry and the Environment we said that we would ask the Forestry Commission to review its procedures for consulting on planting and felling proposals. The Forestry Commission has now completed this review following consultation with the relevant statutory bodies and a wide range of environmental, land use and forestry organisations.

The review revealed that the Forestry Commission consults on the vast majority of schemes but that consultation results in no substantive comment in most cases. Woodland owners and landowners said that the present procedures are time consuming and expensive and that the application of the procedures to small and non-contentious cases results in unnecessary delays; they said that the Forestry Commission should be able to determine applications in a wider range of circumstances than at present. On the other hand, local authorities, statutory nature conservation, countryside and environment protection bodies and environmental organisations were concerned that any changes to the procedures should not preclude consultation on sensitive cases and that the Forestry Commission should agree the circumstances in which consultation will take place. They were also concerned that the procedures should apply to all types of woodland planting including short rotation coppice and planting on set aside land.

Since the present arrangements were introduced in 1984 the background against which grant and felling applications are

considered has changed considerably. We now have a grant scheme designed to deliver multiple purpose forestry and a series of detailed environmental guidelines. We operate a general presumption against the felling and conversion of woodland to other land uses. Large or very sensitive new planting proposals are subject to statutory environmental assessment. In addition, indicative forestry strategies give local authorities the opportunity to indicate in broad terms those areas which they regard as environmentally sensitive and those where they would like to see forestry positively encouraged. We have also introduced a public register of new planting proposals which enables interested parties to know what is proposed and to submit comments. As we announced in the 1996 Sustainable Development White Paper (This Common Inheritance: 1996 UK Annual Report, Cm 3188), the Forestry Commission is preparing a set of forestry standards that we will use as a basis for monitoring and reporting on environmental standards in managed woodland.

Against this background and in the light of the review we have decided to make a number of changes to the procedures.

We believe that the public should be given a greater opportunity to comment on new planting and felling and restocking proposals. We have therefore decided to include felling proposals in the Forestry Commission's public register of applications and to make the register more readily accessible. As well as making the register available for inspection by the public in local authority planning offices the Commission will, in due course, arrange for the register to be accessed via the Internet. The Commission will also send copies of the register to the relevant statutory bodies. Anyone with an interest in a woodland planting or felling and restocking proposal will be able to comment to the Forestry Commission who will take account of all the comments it receives in determining an application.

In addition, the Forestry Commission will consult with relevant statutory bodies before deciding on new planting proposals in the following circumstances:

- planting proposals that affect a National Nature Reserve, Site of Special Scientific Interest, Special Protection Area designated under the EC Wild Birds Directive or Special Area for Conservation designated under the EC Habitats Directive; with Scottish Natural Heritage, English Nature or the Countryside Council for Wales;

- planting proposals that affect a Scheduled Ancient Monument; with Historic Scotland, English Heritage or CADW;

- planting proposals of five hectares or more inside a National Park; with the National Park Authority;

- planting proposals of five hectares or more in a National Scenic Area, Area of Outstanding Natural Beauty or Heritage Coast; with Scottish Natural Heritage, the Countryside Commission or the Countryside Council for Wales;

- in addition, planting proposals of ten hectares or more; with the local authority.

These arrangements for consulting on new planting proposals will apply to all types of woodland planting including short rotation coppice and planting on set aside land.

The Forestry Commission will continue to operate the present arrangements for notifying archeological authorities of new planting proposals.

Whereas new planting involves a change of land use, felling is part of the ongoing business of woodland management and we believe it should be handled with a lighter touch. The Forestry Commission will consult local authorities and the relevant statutory bodies on felling proposals in the following circumstances:

- felling proposals that affect a National Nature Reserve, Site of Special Scientific Interest, Special Protection Area or Special Area for Conservation; with Scottish Natural Heritage, English Nature or the Countryside Council for Wales;

- felling proposals that affect a Scheduled Ancient Monument; with Historic Scotland, English Heritage or CADW;

- felling proposals that affect trees that are subject to a Tree Preservation Order; with the local authority.

Environmental sensitivity does not depend on size and location alone and there may be circumstances in addition to those I have set out when it will be appropriate for the Forestry Commission to consult with local authorities or statutory bodies before determining applications for new planting or felling. The Forestry Commission may therefore agree other, special circumstances when it will consult local authorities or relevant statutory bodies where a local authority or statutory body identifies clear and objective grounds for doing so.

In all those cases where the Forestry Commission consults a local authority or statutory body on a new planting or felling proposal the present arrangements for resolving objections will continue to be applied. In all other cases, the Forestry Commission will determine applications in the light of any comments it receives, including any views it may decide to

solicit from any organisation or individual.

Concern was expressed during the review that the 1984 Ministerial Direction does not give the Forestry Commission sufficient powers to require new planting and felling proposals to comply with its environmental guidelines prior to consultation. This has resulted in the Forestry Commission consulting on proposals that do not meet the necessary standard. This wastes time and reduces confidence in the procedures. We have therefore decided that the Commission should be able to reject an application at any stage if it does not meet the environmental guidelines or if in the opinion of the Commission it would be likely to cause significant harm to the environment.

The arrangements that we have announced today will remove unnecessary and unproductive consultation which is wasteful of everyone's time and off-putting to those wishing to plant or manage woodlands. The greater open-ness we are introducing, together with the Forestry Commission's existing environmental guidelines, statutory environmental assessment for large or very sensitive woodland planting proposals and the forestry standards which the Commission is currently preparing, will allow consultation to be focused on genuinely sensitive cases.

I am confident that the new arrangements will eliminate much of the unnecessary bureaucracy inherent in the present system while, at the same time, maintaining the present high standards of environmental protection. The arrangements will come into effect on 1 August 1996.

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CHANGES TO FORESTRY CONSULTATION ARRANGEMENTS ANNOUNCED 9TH MAY 1996: RESPONSE BY HIGHLAND COUNCIL

General areas of concern:

1. Our general areas of concern are as follows:

- the loss of the local authority's (and by implication the local community's) right to formal consultation on:
 - all new planting schemes under 10 ha
 - all felling outwith Tree Preservation Orders (TPO's)
 - all restocking schemes (including the Forest Enterprise's Forest Design Plans)
- the likely reduction in information flow on forestry activity for the purposes of strategic planning and monitoring;
- the lack of integration with the pattern of sensitivities and area priorities identified in indicative forestry strategies - the principle of using size thresholds is not unacceptable but its application here is too crude;
- the knock-on effects on secondary consultees - the loss of rights to formal consultation and information for key interest groups/agencies
- the logistical implications for local authorities and the Forestry Authority (FA) of the general public being allowed to comment;
- the effectiveness of the public register mechanism to date;
- the absence of proposals for a collaborative approach to genuinely enhance the effectiveness of the consultation system, eg via form redesign, computer networking

Proposed use of size of scheme as a filter for consultation

2. The thresholds chosen seem to be quite arbitrary and have not been the subject of discussion with this authority, or as far as we are aware, with our COSLA representatives. Contrary to the implication in the press release, smaller schemes can be contentious as well as large ones. In practice, we find schemes under 10 ha (and this can mean planting an area the size of 14 football pitches) often attract comment and from a range of quarters - most often where the scheme lies within or close to a settlement or adjacent to roads and other public places. Locations close to the coast tend to be generally sensitive in this regard (eg the west coast of Skye).
3. Sweeping application of this principle does not take into account the varying pattern of sensitivities identified in IFS and Local Plans. Higher sensitivity does not begin and end with formal designations. Indeed, Sensitive zones in IFS may be more useful than formal designations like NSA's as a trigger for full (or enhanced) consultation. Sensitive zones identified in IFS certainly merit extra safeguards against inappropriate schemes - small or otherwise. Small schemes placed within a large scale landscape can still be destructive of landscape character (eg shelterbelt planting in sensitive landscapes). This is a serious danger with the changes proposed.

4. Schemes under 10 ha have sometimes taken good agricultural ground which had a local scenic/open space role (eg Strathnairn, the Black Isle)
5. There is obvious scope for abuse when size thresholds are introduced as triggers for formal consultation. Developers may reduce the scale of their proposals or subdivide them to avoid being subject to consultation (eg as happened recently at Brin in Strathnairn). We already see some instances of estates with large woodland areas submitting WGS applications piecemeal for small blocks at a time, so undermining constructive input on a holistic basis.
6. *Suggestion:*
 - *Filtering by size is not unacceptable per se but needs to be combined with other factors, eg the policy zones in IFS, and there needs to be the safeguard of a right to formal consultation on any scheme in any area if desired. The crucial issues then would be the adequacy of the register as a mechanism for indicating to consultees when full consultation might be necessary, and its timeliness.*

Felling outwith TPO areas

7. We regard the exclusion from formal consultation of what is in effect virtually all felling (even felling in National Scenic Areas) to be a serious defect in the proposed changes.
8. Tree Preservation Orders are a specialist measure and they are very limited in extent. Felling in the wider countryside however is becoming more important as the bulk of post war plantations are reaching harvesting age. It often involves extensive areas in landscapes of all categories of sensitivity and large areas of clearfell can have significant amenity and environmental implications. This has aroused significant public reaction from time to time (eg in relation to forestry in southern parts of the Great Glen). Given this, and the fact that "continuous cover" forestry techniques (long practiced in other countries in Europe) are only starting to become more widely accepted here, it is important that the "checks and balances" are not dismantled.
9. Even small areas of felling can be controversial in the vicinity of settlements (eg Scaniport near Inverness) and consultation on felling proposals is important in relation to management of the road network and protection of archaeological remains.
10. *Suggestions:*
 - *Felling should remain within the scope of public consultation - at the very least within Sensitive areas, close to settlements, and where it is above a certain threshold size (to be determined in conjunction with main consultees).*
 - *Long term felling programmes for larger estates in the private sector are required, eg to assist with programming roads improvements.*

Restocking proposals and FE Forest Design Plans

11. These are becoming more important as the post war plantations are harvested and bring scope for design improvements. However, the existing consultation arrangements and the responsiveness of the FE/FA to suggestions and comments regarding FDP's has not been adequate. Rather than restrict formal consultation in this area it needs to be put on a more solid, accountable basis, especially given the continuing political impetus towards privatisation with its emphasis on stringent timber production targets.

12. Archaeological interests need to be consulted where there is the possibility of restocking or regeneration proposals threatening archaeological sites.

13. *Suggestions:*

- *Wider use of informal pre-application discussion*
- *The one-off consultative panels on FDP's should be complemented by more joint working amongst officials of the relevant agencies. These officials can bring a range of technical expertise to bear to help make FE forests "more than the sum of their parts". Ultimately this will reflect well on the FE itself and the industry as a whole.*
- *A more consistent approach to the presentation of information in FDP's is required: to bring them into line with WGS applications and to encourage consistency of approach between Forest Districts.*
- *More time is needed for comment on large FDP's - 28 days is not enough when the local authority is not constructively involved at an early stage. The timescale for consultation should be broadly related to scale of the proposals and the area's sensitivity.*
- *FDP's should be more comprehensive/holistic in their coverage. There should not be areas within them which are "not up for discussion" (as was the case for parts of the Glen Garry and Glen Nevis FDP's).*
- *Local authorities can come up with ideas for enhancing the recreational use of certain forest areas (and help forge partnerships) which can generate revenue for the FE.*

Secondary consultees

14. Interests dependent on the local authority for involvement in the consultation process will lose out if consultation with the local authority is restricted, eg:

- Services which have to provide and maintain infrastructure - roads departments, water supply authorities
- Services which have to safeguard environmental quality and biodiversity, eg SEPA, SNH
- Services which are charged with protecting heritage interests, eg archaeology
- Representatives of local communities, eg local councillors and community councils
- Special interests which are affected by forestry developments and whose expertise has a role in integrating forestry with the needs of the wider community, eg RSPB, District Salmon Fishery Boards

15. *Suggestion:*

- *The onus should be on FA to consult more widely and more directly (eg SNH outwith SSSI's and Caithness/Sutherland). This would free up some of the local authority's resources and allow it to respond more quickly.*

Effectiveness of the Public Register

16. To date the public register of forestry proposals in Highland Region has had very limited circulation and it includes only the most rudimentary summary information - certainly not enough to allow a reader or consultee to evaluate a scheme or make much useful comment without access to the original plans. If greater reliance were to be put on this mechanism, substantial changes would be required to its form, content and distribution. Key considerations would be its effectiveness (a) as a means of notifying and engaging the general public in relation to schemes which may affect them, (b) as a means of notifying and obtaining the views of statutory bodies and expert interests, and (c) as a source of information on forestry activity (eg for strategic planning purposes).
17. As things stand, the register has only limited value as a means of notifying and engaging the public:
- No press advertising is involved - so how will people know when a proposal affects their area ?
 - In a rural area like Highland the population is very scattered and distribution of information is difficult. Even if the register's weekly contents were to be advertised in the local press, this would not substitute for a proper neighbour notification system. Also the journey which would be necessary for people to inspect the register itself and the original plans, even if copies were placed in the Council's area planning offices, would put many people off (eg from north-west Sutherland to Dornoch, Wester Ross to Dingwall, Morvern to Fort William). This is one of the reasons why the Council's professional representation of the local community interest is so important.
 - The register does not contain any of the maps or diagrams supporting an application which are necessary to help visualise proposals. It also uses abbreviations extensively which the lay person would not readily understand.
18. Similar considerations of access and content apply to the use of the register for notifying statutory bodies and expert interests:
- For the reasons mentioned above, the register at present does not give enough information on applications to allow us to make useful comment or to decide on whether full consultation is required (if this option were to be available).
 - Shifting from formal consultation to notification-only (via the imperfect mechanism of the register) for broad categories of forestry proposal downgrades and to an extent discourages input from statutory bodies and expert interests. This short-changes the public who rely on elected local authorities like ours to act as "watchdog" on its behalf.
 - The timescale between receiving periodic copies of the register and the deadline for responses would constrain even further our ability to respond and would likely be so short we would not be able to do any secondary consultation. This is a serious concern because local authorities have a wider range of responsibilities than most statutory consultees. Periodic rather than continuous mailshots would eat into the 28 day time limit unless there was the understanding that the 28 days began from time of receipt.
19. In a system of selective consultation, a comprehensive public register of forestry proposals (private and public sector) would have an important role as a source of basic information - for strategic planning and monitoring purposes, for ancillary industries, and

for the general public. This role is not being met by the register in its current form. Not only should it include felling, restocking, and regeneration proposals:

- Maps are crucial for understanding what a proposal means in practice - both a location map and a detailed map indicating the nature of proposals. A centroid grid reference itself is not enough.
- A clear statistical breakdown of species mix by type of operation is needed, not just the split between conifers/blvs. The latter obscures the distinction between mainstream timber-producing conifers such as Sitka Spruce and more amenity-orientated conifers such as Larch and Scots Pine, and between native and non-native species.
- The objectives of the applicant in his/her own words is also relevant. The standardised list of objectives with tick boxes for high/medium/low priority is of limited value.
- Formal designations are noted but not the policy category in the IFS
- If adequate information is not provided on smaller planting schemes, or felling/restocking/regeneration schemes, then monitoring of forestry activity in the round will be severely impaired (eg review of IFS).

20. *Suggestions:*

- *The idea of the register is good in principle as long as:*
 - *it is not seen as a substitute for formal consultation and the safeguards that implies*
 - *it contains adequate information in a readily understandable form which meets the needs of both statutory bodies and the general public*
 - *it is reasonably accessible for all the population in the relevant Conservancy area*
 - *the process of distributing updates does not further constrain the timescale for people to respond to new proposals*
 - *it reduces paperwork*
- *Computer networking (eg E-mail links and database sharing between the FA and main consultees) seems to be the way forward on this. The idea of posting proposals on the Internet is useful and promising for the future. At present however it would limit participation amongst the general public to those with access to the necessary technology.*
- *Post offices in rural areas might be used to bring new forestry proposals to the attention of local communities in the same way the Crown Estate uses them for fish farming proposals.*

The role and involvement of the general public and the logistical implications for local authorities and the FA

21. Widening of the scope for public comment will bring more "players" into the consultation system (even if they are only really being notified) and could extend the time taken to

process applications. There could also be a backlash against FA and the forestry industry as a whole once the public realise they and their local authority representatives are only being notified on certain types of scheme and cannot by right trigger arbitration procedure even if they have strong objections to a scheme. This raises serious questions about the value of shifting the balance of consultation from professional local authority officers to lay members of the public. Our experience of dealing with consultations and preparing IFS's suggest there is a broad level of satisfaction amongst the general public with the way local authorities represent the public interest in relation to forestry matters.

22. If the register as proposed is to be made available through Highland Council planning offices and service points [*and if it is not available through these outlets it will have very limited penetration*], it will require staff time to administer, to deal with enquiries arising, and at least in some cases to deal with the public's comments. This means an additional burden on planning and service point staff while at the same time there will be several categories of forestry scheme on the register to which we are denied the right to formal consultation.
23. A point which may have been overlooked is that despite the work it involves, busy FA officials recognise that consultation acts as a "safety net" which helps to pick up flawed schemes. If the scope of consultation is reduced, schemes may occasionally slip through which later generate a public backlash.

Scope for local refinement and customisation of the consultation procedures

24. Scope for local refinement of the consultation procedures to take account of local circumstances is obviously desirable, and we have benefited from this in the past. However the national baseline for consultation has to be adequate if the industry is serious about building public confidence and a more stable investment climate. We believe local authorities, as the representatives of the general public, should have the option of formal consultation on *any* scheme as a failsafe mechanism. This does not preclude the operation of a default system of selective consultation under normal circumstances, but the basis for filtering should be agreed with the consultees. Indeed we would strongly favour filtering since it should help to reduce our workload in terms of secondary consultation.

Conclusions and Recommendations

25. There is a need for improvement of the consultation system but the changes offered in the announcement of 9th May have not been fully thought through and certainly have not been reached by agreement with the interests affected. A consensus on this is worth striving for so we urge the Secretary of State and Forestry Commission to reconsider the proposals and initiate further discussion before introducing such fundamental changes. If this is not done we fear:
 - the environmental implications (WGS guidelines notwithstanding) of important categories of forestry activity being removed from the scope of formal consultation (eg felling/restocking) over large areas
 - the creative input from consultees (eg on Forest Design Plans) will be lost
 - a possible backlash from the general public when it realises its scope for real influence on the conduct of forestry is weakened rather than strengthened by the proposed changes - the image of the forestry industry (which still has not fully

recovered from the criticisms it attracted in the 1970's and 80's) could suffer through perceived lack of accountability

- some of the rapport which has grown up between local authorities and the Forestry Authority in relation to the wider field of forestry development initiatives will be lost
26. This report has sought to advise on shortcomings of the proposed changes to the consultation system and to make various suggestions for improvements. Further work is necessary before we could support changes to the present system and our main recommendations would be:
- (1) The Secretary of State and Forestry Commission should reconsider the proposed changes to the consultation arrangements in the light of the concerns raised here and postpone their proposed introduction on 1st August to allow detailed discussion with COSLA and the main interests likely to be affected.
 - (2) The Forestry Authority should convene a consultation working group - at least at national level but preferably in each of its 6 Scottish conservancies - to allow representatives of at least the main statutory interests to join with FA/FE staff and the private sector in thrashing out improved procedures. We believe this would instil the element of stability and public confidence in the consultation arrangements which is lacking at present. Its work programme should focus on:
 - form design and the presentation of information on proposals
 - the structure of the consultation network and its logistical implications
 - consultation timescales
 - mechanisms for arbitration and resolution of contentious cases
 - application of new technology to speed communications
 - feedback on decisions
 - monitoring of the effectiveness of the consultation system

