

# **Community Ownership and Community Right to Buy**

## **Recommendations to Scottish Ministers**

02 November 2018



## **Purpose: to advise Ministers of the key findings and recommendations from the Scottish Land Commission’s review of community ownership mechanisms.**

### **Background**

In the Programme for Government 2017, the Scottish Government asked the Scottish Land Commission (SLC) to review existing right to buy mechanisms and recommend how best to enable community ownership in appropriate circumstances.

This report sets out the Commission’s conclusions and recommendations. It has been informed by commissioned research carried out by a team led by SRUC, which has been published and submitted to the Minister alongside these recommendations.

### **Scottish Land Commission’s Conclusions and Key Recommendation**

For Scotland’s community land ownership sector to reach its potential our key recommendation is that a clear vision is now needed for the way in which community ownership matures over the coming decades to be a mainstream route to delivering sustainable development for communities across rural and urban Scotland. The Scottish Land Commission is now undertaking work looking at international experience of community land ownership to inform this vision and delivery.

Community ownership has developed significantly over the last 20 years to a point where it is now seen as relevant across rural and urban Scotland, and is increasingly recognised as being integral to regeneration and sustainable development in both rural and urban contexts. We should ensure the next phase of its development opens up community ownership as a normal and realistic option for communities in all parts of Scotland to acquire land and assets in and around their communities to help meet their development needs and ambitions.

*Community motivations for asset acquisition vary according to asset type and community context, but whether intended to deliver employment, housing, education, recreation or amenity, asset ownership is typically a means to an end: addressing community decline and furthering sustainable development.<sup>1</sup>*

It should be seen as normal, as it is internationally, for a community to acquire and own land that could secure provision of local housing, community facilities, recreation facilities, greenspace, as an integral way of contributing to more vibrant communities and regional economies. To achieve these aims the vision should address:

- a clear articulation of the outcomes that community ownership delivers – recognising that it is not an end in itself but a means to delivering wider development and regeneration outcomes;
- a shift from community acquisition being driven either by specific problems or being reactive to land coming to the market, towards being a normal, designed part of community planning, development, and regeneration;

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<sup>1</sup> Mc Morran, R., Lawrence, A., Glass, J., Hollingdale, J., McKee, A., Campbell, D. and Combe, M. 2018. Review of the effectiveness of current community ownership mechanisms and of options for supporting the expansion of community ownership in Scotland. Scottish Land Commission, Commissioned Report.



- a presumption for negotiated transactions between a willing seller and willing buyer being the norm, with statutory rights to buy or asset transfer being used only where this is not possible; and
- a recognition that community ownership is entirely normal, and a pathway that is open to all communities.

In order to build this vision and delivery the Commission propose to work with the Scottish Government to bring relevant stakeholders together in a Community Ownership Delivery Group (CODG). As well as articulating the vision, the group should lead the delivery of the strategic recommendations below, shaping policy tools and interventions as needed.

## **Our Strategic Delivery Recommendations**

### **1. Proactive consideration of community land and asset ownership is embedded as an integral part of local place planning processes.**

While in many cases community ownership developed in response to community decline, conflict, or as a reaction to land being placed on the market, it has already begun to be viewed in a more proactive way by many communities. We should ensure the legislative and policy support continues the shift to community ownership being a proactive, designed part of community planning processes, rather than a reaction to changes in circumstances. Local Place Plans could be one mechanism for achieving this.

Reflecting this planned approach, the expectation should be that negotiated transfers are the norm for acquisitions and transfers, backed by the use of statutory mechanisms only where necessary rather than as the first resort.

However, given that the opportunity for planned acquisitions may not always arise, we recommend consideration of a requirement for landowners to notify communities of, and/or advertise locally, intended sales.

### **2. Development of a new suite of indicators to replace the ‘million acres’ target with targets and indicators that reflect the outcomes sought from community ownership and are relevant to both rural and urban contexts.**

The target to achieve one million acres of land in community ownership by 2020 has provided a clear statement of ambition, but increasingly does not reflect the wide range of public policy outcomes that are sought through community ownership. In particular it does not reflect the nature and public value of community ownership in an urban context, nor necessarily the value of targeted asset acquisition in rural communities.

We recommend that a suite of targets and indicators is developed, including the number and range of community owned assets, and what they are delivering. This should be a key task within the remit of the CODG, building on the work of the One Million Acre Strategic Implementation Group.

New indicators should be informed by the development of the long term vision outlined above, as well as the SLC’s review of international experience of community



ownership reflecting on what successful and sustainable community ownership looks like outwith Scotland.

### **3. Support for enabling community ownership should be further developed to:**

- **provide consistent support equivalent to that provided by Highlands & Islands Enterprise (HIE) across the whole of Scotland (including within the remit of the South of Scotland Enterprise Agency);**
- **provide support to landowners as well as communities in order to encourage and enable negotiated transfers; and**
- **include a proactive communications strategy and programme of education and awareness raising for communities across Scotland.**

At present there is a significant variation in the range and depth of support available to communities depending on where in Scotland they are. We recommend that support equivalent to that provided by HIE is made available across the whole of Scotland. In the south, we recommend this role is included within the remit and resourcing of the South of Scotland Enterprise Agency and we also recommend equivalent support is provided in the remaining areas of central and eastern Scotland.

We also recommend that case advice and support is made available to landowners of all types as well as communities. In order to encourage negotiated transfers to be the norm, it is reasonable to expect to provide guidance and support to both parties involved in a proposed acquisition. It is important that all parties are operating with a common understanding of process, expectations of potential funders, and with access to advice and guidance. Consideration should also be given to how best to ensure costs are not a barrier to parties proceeding with a negotiated approach where this is in the public interest.

We recommend that a key step in increasing awareness of community ownership pathways and mechanisms is to ensure that there is a nationwide communications strategy providing information and case studies to communities, landowners, and other stakeholders, that clarifies the applicability, merits, and potential outcomes of community ownership, whilst also dispelling negative and adversarial perceptions and misinterpretations.

### **4. Adopt a more proactive and strategic approach to the potential transfer of publicly owned land.**

We recommend that public bodies develop a more proactive and simplified approach to implementing the asset transfer obligations under the Community Empowerment (Scotland) Act 2015. There is opportunity to encourage more negotiated transfers that do not require full use of the statutory mechanisms, and for a more proactive approach to identifying and transferring assets that will support sustainable development, especially where a transfer has clear business viability and/or supports wider public policy aims.

To that end, guidance to public authorities should be clarified, with specific revisions on promoting negotiated transfer; presuming against the inclusion of additional non-statutory elements in the process such as an “Expression of Interest” stage; clarifying best practice such as provision of a single point of contact and clear signposting to resources; and clarifying the scope of asset transfer provisions in relation to Arms-Length External Organisations (ALEOs).



To ensure that all relevant authorities are aware of their legal obligations under the 2015 Act to publish asset registers and annual reports, we recommend the regular publication of a list of those relevant authorities in compliance and not in compliance with their obligations as a useful stimulus to action. Annual reporting should also include negotiated transfers to communities (including those occurring outwith the 2015 Act's measures).

We recommend that Scottish Government use the asset transfer provisions of the 2015 Act for future transfer of crofting estate land in the ownership of Scottish Ministers, paving the way to repeal the Transfer of Crofting Estates (Scotland) Act 1997 which is no longer fit for purpose.

Finally, given the common issues and the need to co-ordinate advice and use of the increasing number of rights to buy and asset transfer pathways, we recommend consideration of the merger of Scottish Government teams to create a single team of expertise to provide advice and oversight across community rights to buy and asset transfer, supported by a single public access point.

#### **5. Consider long term financial support beyond the immediate commitments to the Scottish Land Fund including capital and development funding.**

The Scottish Government's current commitment to the Scottish Land Fund (SLF) to 2021 is welcome and a necessary resource to support expansion of community ownership. We recognise the critical role the SLF has played in enabling community ownership to date, and that a source of public funding will be necessary for the foreseeable future and appropriate given the public policy outcomes.

However, funding for community acquisition and development should not be the sole responsibility of the public sector. Communities can and do raise funds through a number of other routes such as donations, crowd funding, peer-to-peer lending, and ethical investors. There is also a role for private finance in such investment. Consideration should be given to how alternative sources of community finance can be identified, promoted, and supported, and what role public bodies can take in enabling such action.

We recommend that consideration is given to longer term sourcing and structure of public finance to support both capital costs of acquisition and post-acquisition development funding. For example, we consider there may be a potential role for the Scottish National Investment Bank in providing long term, patient investment in capital and development funds to support development and regeneration outcomes.

In the long term, we recognise the potential role land value taxation could play as a tool in supporting, or potentially funding, community ownership. SLC will continue to develop this area of research.

#### **6. The Scottish Land Commission consider the impact of tax and fiscal policy on the expansion of community land ownership as part of its wider Programme of Work.**

The Scottish Land Commission's current Programme of Work includes work to review the influence of tax and fiscal policy on land use decisions, as well as the potential role of land value taxation (as noted above) and the implications of trust status. This review



of community ownership highlights a number of considerations which will inform our work on tax and fiscal policy.

This should include consideration of whether the inclusion of all Non-Domestic land and property on the Valuation Roll would help increase transparency, aid communities in accurately planning future sustainable development, and reduce issues with valuation during negotiated or legislative transfers.

## **7. Consider opportunities for simplification and consolidation of statutory right to buy provisions.**

Statutory rights to buy and asset transfer routes have understandably developed through a series of different legislative measures and the SRUC report identifies a number of areas in which there may be potential for better alignment and simplification. While we see negotiated transfers being the norm, it is important that the legislative pathways continue to be seen as an effective and realistic option for communities to exercise. We recommend consideration of opportunities for simplification and longer term consolidation of rights to buy and asset transfer legislation, informed by the proposals in the SRUC report.