**Response 026**

**Questions**

**Q1. Do you agree that Highlands and Islands Enterprise Community Land Unit is the appropriate body to provide advice to the KLTR on potentially suitable community groups? If not, who would you suggest and why?**

Probably, in some cases, however, the local authority may be a better source of information on potential projects and suitable community groups.

See also answers to Q10.

KLTR should also contact the local community groups directly to gauge their interest.

**Q2. Do you agree that a valuation and other reports undertaken by the KLTR are sufficiently independent to avoid duplication of cost for all involved in the OPTS? If not, why not?**

Possibly.

If KLTR uses the services of an independent body such as District Valuer Services (DVS), then the process is unlikely to be challenged.

**Q3. Do you think three months for the local authority to decide whether or not it wishes to take ownership of an ownerless property is reasonable? If not, how long would you suggest and why?**

3 months may only just be sufficient for the local authority to lodge an interest in an ownerless property.

Internal decision-making processes will take longer, 6-12 months, and so the 3 months would be too short a time for a formal decision.

**Q4. Do you agree that the above process is reasonable and workable? If not, how would you improve the process?**

**Each case would have to be considered on its own merits.**

Here are few comments on various issues raised in the OPTS consultation paper.

**Clean title**

Not being able to offer a clean title could be an obstacle.

When claiming ownerless property, KLTR obtains a clean title which can be easily transferred directly to a community body. The KLTR has no liability for any outstanding debts of the company at the date of dissolution.

Any purchaser of an ownerless property would have to settle the dissolved company’s secured debt before they can secure their own project funding, such additional expense making the local community projects unfeasible.

If compulsory purchase powers are used, the acquiring authority must pay compensation, so, again, availability of funding is a decisive factor.

**…/Q4 continued**

**Charging orders / repayment charges**

Local authorities would normally seek to recover debt secured on land.

In exceptional circumstances Glasgow City Council may agree to waive the debt or a part of same, if it is deemed to be in the public interest to sell the land to a community body for a local project benefitting the community.

If the owner of land is a dissolved company and if the outstanding secured debt is considerable, the local authority may follow other statutory enabling powers to recover the debt, contacting KLTR to disclaiming the property and applying to the sheriff court for a vesting order under the Companies Act 2006

During these financially challenging times when all Scottish local authorities must work with reduced budgets, it would be a great imposition on a local authority to automatically write off debt secured on onwerless property. Each case would have to be considered on its own merits.

**Standard securities – (see also answer to Q5 and Q6)**

If KLTR does not claim title and if the local authority does not wish to compulsorily purchase the property, then the suggestion would be for KLTR to transfer the property at

1. - nil value, or
2. - nominal value, if there is no negative equity, or
3. - market value minus outstanding debt secured on the property, so that the purchaser can discharge the security and obtain a clean title.

If there is negative equity (the property value being below the value of the outstanding secured debt), a discharge may not be available to the prospective purchasers, making funding impossible for the community group.

**KLTR engaging with the local authority prior to deciding whether to transfer the property**

Glasgow City Council welcomes the proposed early engagement, direct discussion, and collaboration with KLTR regarding ownerless properties.

A further suggestion would be that KLTR engages with local community groups at an early stage where an interest has been registered.

**Q5. Do you agree that the property transfer value for OPTS should be at “nominal value” as described above? If not, what value do you think should apply and why?**

See our comments under heading “standard securities” to Q4 above.

Each case would have to be considered on its own merits.

The KLTR must consider transferring title at zero value if there is negative equity or if the cost of re-instating “less attractive” properties (dealt with at Q8) is substantial.

To bear in mind that most local community groups may have limited or no access to funds, therefore if land is to be transferred to such community groups, then transfer may require to be at zero value.

**Nominal value – v. – Market Value**

“if the OPTS criteria are not deemed to be satisfied, then market value would apply” (page 14 of the OPTS consultation paper).

KLTR must clarify who assesses the proposed use against the OPTS criteria and who mediates a dispute arising from this assessment.

**Q6. Do you think the KLTR should place conditions on the transfer of OPTS property to ensure the intended benefits to local communities are delivered?**

Any title conditions could prohibit or limit access to funding for community bodies.

From experience of dealing with asset transfers under the Community Empowerment (Scotland) Act 2015, Glasgow City Council can advise that it is not always possible to place conditions on a transfer to a community group, as these conditions are not agreed by funders of community projects.

**Annual returns**

The purpose of proposed annual returns is not clear, if KLTR does not plan to “police” those receiving ownerless property and if there are no penalties for not achieving the aims of the scheme, then annual returns would only matter for statistical purposes.

**Q7. Do you think a recognised public authority should retain a property to allow an appropriately constituted community body to raise the necessary funds, etc.? If so, should a timescale be set for raising the funds?**

No.

Glasgow City Council would not be willing to act as a “holding agent” for community bodies. There are financial, environmental, public health and safety, insurance liabilities and many other implications that a local authority should not be expected to deal with on behalf of a community group.

Glasgow City Council would only consider taking ownership of an ownerless property in cases where:

1. there is an agreed project, and a binding legal agreement with a community body (or other person) to purchase the ownerless property from the Council after the transfer of title from KLTR;

or

1. there is a large outstanding debt secured on the property by the Council which could be recovered by taking title, in which case different procedures may apply (applying to the sheriff court for a vesting order under the Companies Act 2006)

**Q8. Do you think the OPTS should apply to all properties as described or should it be restricted to certain types of properties? If the latter, which types?**

Glasgow City Council may consider different types of ownerless properties.

There may be no need to restrict OPTS to certain types of properties, as the OPTS process will identify whether there are any community initiatives that may benefit from the use of a particular ownerless land.

However, there must be a realisation that there will always be properties which will not be attractive to any public body or community group.

**Q9. Do you agree that the above proposals provide an opportunity for ensuring community interests are considered as early as possible? If not, why not?**

Possibly.

KLTR should notify local authorities, local groups or other public bodies of any potential ownerless property to be considered for the OPTS.

KLTR must amend Stage 1 of the OPTS process to include local authorities in the consultation process, as KLTR proposes to only involve the Highlands and Islands Enterprise (see Q1) in the first instance.

KLTR should also take on the assessment of proposed projects submitted directly by individuals or local groups.

**Q10. Do you agree that the above criteria should apply to the OPTS? If not, what criteria do you think should or should not apply and why?**

Yes, the criteria are relevant, but it may be helpful if there was more detail.

**LOCAL**

Does KLTR mean to restrict the use of ownerless property to local projects only?  There may be scope for national projects.

**Q11. Do you agree that the OPTS should ensure the wider public interest is considered before private interest? If not, why not?**

Yes. If there is wider public interest in a site, then this should supersede the interest of private parties.

**Q12. Do you think the public interest is defined reasonably for the purposes of the OPTS? If not, how should it be defined?**

As set out, public bodies would have a wide discretion as to how to assess whether a proposal from a community body was ‘in the public interest’.

Glasgow City Council would want to have that discretion or have criteria, such as those in Part 5 of the Community Empowerment (S) Act 2015, to assess applications against, in cases where KLTR transfers ownerless land to the Council (as per response to Q7).

**Q13: Do you agree that the KLTR should take a high-level approach to sustainable development issues, as above, in order to allow further scrutiny and transparency at local level? If not, why not?**

As per Q12 above.

Glasgow City Council would want to have the discretion to assess applications against sustainable development criteria in cases where KLTR transfers ownerless land to the Council (as per response to Q7).

**Q14: Do you consider there are specific circumstances in which the KLTR should never deal with dissolved company property when a company still remains within its 6-year restoration window?**

The proposals are reasonable.

Glasgow City Council is open to discussions with KLTR on any specific properties.

The Council would apply for a vesting order (under the Companies Act 2006) to recover debt owed to the Council.

The Council would also consider compulsory purchase powers to enable specific projects justified by statute or policy and funded appropriately.

Should KLTR claim the property, then KLTR would have to transfer it directly to the community group (see also answers to Q7).

**Q15. In addition to the above, do think any other financial controls or safeguards are required? If so, please describe how and why.**

A local authority should not be in a position that it must accept an ownerless property.

Acquisition should be at the discretion of the Council to avoid any unnecessary financial burden.

The OPTS scheme should be reviewed for compliance with the new Subsidy Control Act 2022.

**Q16. Do you think the KLTR’s approach to liability and risk is acceptable? If not, how could this be improved?**

Not agreed that KLTR should opt to disclaim the property if there are significant liabilities - see answers to Q4 and Q5.

Agreed that KLTR should carry the risks associated with the restoration of a dissolved company.

**Q17. Are there any other ways you think the OPTS may be monitored? If so, in what way?**

If KLTR does not intend to create any new penalties or sanctions for the failure to deliver on the OPTS aims, then the purpose of the monitoring is restricted to assessing performance of the scheme.

**Q18. Do you agree that penalties for non-delivery of aspirations are unnecessary, as above, and that local accountability should be sufficient to ensure delivery of agreed aspirations?**

There is always a risk that the community group may not be able to utilise or develop a site for the purpose initially proposed. Grants or other funding received may have conditions attached, which could determine uses for the site.

Title conditions, or other contractual conditions could be used when the public body transfers the property to the community body which would make performance more likely and easier to enforce. However, see answer to Q6.

**Q19. Which of the further measures above do you think should be applied to the OPTS?**

KLTR should contact the community councils and the local authorities at stage 1 of the OPTS.

Limiting the scheme to individual properties with a market value of £0.5m or less.

**Q20. Do you think properties within the 6-year restoration window should be excluded from OPTS or do you agree that a criteria-based policy approach, as described above, is the best way of addressing this?**

No, as this would frustrate community opportunities.

KLTR should claim such properties (see answers Q4 (clean title) and Q14) and include these in the OPTS scheme.

**Q21. Are there any other measures you think should be taken to safeguard those involved in the OPTS process?**

No comment

**Q22. Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?**

No.

**Q23. Are you aware of any examples of particular current or future impacts, positive or negative, on young people, (children, pupils, and young adults up to the age of 26) of any aspect of the proposals in this consultation?**

No.

**Q24. Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?**

No.

**Q25. Are you aware of any examples of potential impacts, either positive or negative, that you consider any of the proposals in this consultation may have on the environment?**

The OPTS should have a positive impact on the environment. If Glasgow City Council was to pursue the acquisition of such land, then this would be a major consideration and form part of our own EQIA assessment.

**Q26. Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on groups or areas at socioeconomic disadvantage (such as income, low wealth or area deprivation)?**

The OPTS is potentially good for local communities. As above at Q25.

**Q27. Are you aware of any potentially unacceptable costs and burdens that you think may arise as a result of the proposals within this consultation?**

As already highlighted in the consultation (page 17), ownerless sites come with potential risks such as ground remediation issues etc. This could influence and limit uses for the site.

**Q28. Are you aware of any impacts, positive or negative, of the proposals in this consultation on data protection or privacy?**

No

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