**Response 014**

**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?**

We support this proposed role for Highlands and Islands Enterprise (HIE).

Details of how HIE will engage with community groups will need to be further developed. In particular, there may be early stage groups, groups that haven’t engaged with the Land Fund, or are outwith the HIE area, that HIE colleagues may not have knowledge of. Therefore a proportionate protocol for raising awareness of opportunities (with appropriate timescales) should be agreed at the outset. Other intermediaries (Community Land Scotland, Development Trust Association Scotland, etc), should be key consultees as they will also be aware of local activity.

There are other public sector models (Forestry and Land Scotland etc) that have proven effective at raising local awareness and these should be explored as examples to follow here. For example, a provision for public notices, perhaps for significant sites, would ensure any community interest which is not yet formalised is able to grasp the opportunity.

**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?**

All reports should be independently commissioned from appropriately qualified experts, and circulated to avoid cost duplication.

If valuation is commissioned early in the OPTS to enable to decision on use of OPTS (e.g. to confirm it is under the proposed threshold of £500K), then this valuation may be out of date by the time a funder, such as the Scottish Land Fund, considers a funding application.

Communities should have an input into any joint valuation to agree terms of valuation and length of validity. Funders will need to be accepting of a joint valuation, otherwise communities will need to commission their own. The proposals as they stand would not meet current Scottish Land Fund requirements in terms of timescales and independence of valuation.

A protocol for the process and the basis on which valuations are to be instructed would be helpful at the outset of the scheme.

**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?**

Yes 3 months seems reasonable. Extensions should not generally be permitted.

We suggest that if a local authority (LA) does not decide within 3 months, then the eligible Community Body should be able to proceed with their acquisition. Unnecessary delay by local authorities will delay the significant community led regeneration which is being supported by the OPTS.

However, we do understand that internal processes in the LA (especially if Member approval is required) would make 3 months unworkable. This is one of the reasons why we suggest LA’s should not have the first right of refusal.

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

The OPTS is proposed in a collaborative spirit, acknowledging the long-term negative impact that ownerless land and buildings can have on our communities, and implementing a recommendation from the Scottish Land Commissions’ Vacant and Derelict Land Task Force. We strongly support these aims.

The practical details of the process need to be further developed, and the process needs to be refined to ensure communities are not disenfranchised as part of the process, possibly unintentionally. This may particularly be the case for more disadvantaged communities.

We set out our key concerns below, and would welcome further discussions.

Our understanding is that the OPTS proposes that the Local Authority and other public body needs to approve any transfer to a community through OPTS. The process relies on public bodies or a local authority to determine the public interest of a transfer of (previously privately owned property) to a Community Body. We are not clear why this element of the process is necessary and would appreciate a clearer explanation. If it is to remove the responsibility for deciding what is the public interest from the KLTR, there are other routes that may be more effective, quicker and transparent to achieve this. In any event, we suggest that public bodies generally may not currently be sufficiently skilled or resourced to perform this ‘public interest’ function.

In addition, local authorities’ capacity varies substantially across the country. In some cases a transfer may be straightforward, but in others it will not be. The evidence for this is apparent in many Community Asset Transfer (CAT) cases.

The process should work for all eventualities, including the worst case. Local

authorities are suffering from under investment, and a reduction in capacity to deal with all but core functions. What confidence does the KLTR have that they can perform the functions proposed under OPTS?

Further, which local authority department will manage OPTS? If the department will vary, but a single point of contact is proposed, we note that a similar approach has proven difficult to implement in the CAT process.

If this route is adopted, is it the intention of all OPTS to be transferred to public bodies and/or local authorities and then transferred on via the CAT legislation?

Again, there is compelling evidence to demonstrate delivery of the CAT is uneven and extremely time consuming and expensive for community groups and Councils. We note the 2021 evaluation of the Community Empowerment Act, and the ongoing review of this legislation in the current parliamentary legislative programme. The challenges with CAT were discussed at length in Scottish Parliament on 15/12/22.

We would therefore be very reluctant for the CAT process to be seen as an exit route for LA’s to dispose of assets to communities from OPTS. Direct application of CAT procedures to the OPTS should be undertaken with care.

Clarity is required as to what might happen if community bodies refer to the KLTR but their requests for final transfer are rejected by the local authority?

Currently, community bodies do not have to engage with local authorities or public bodies to address ownerless land—while we appreciate the KLTR’s position and the reasons why they are proposing greater local authority/public body involvement, we do not think what is proposed is a workable solution.

It is likely that existing processes are sufficient to account for the public interest in OPTS, or if not, existing processes could be refined slightly to address the requirements of OPTS. Further refinement is needed on the OPTS proposals, and we would be happy to help development them. Some initial ideas are provided below.

Existing processes for properly constituted Community Bodies to acquire privately owned land and buildings in the public interest are decided by the Scottish Land Fund for purchase and the Scottish Government Community Land Team/Minister when Community Land Rights are used. If a properly constituted Community Body is purchasing OPTS property through the Land Fund, the consideration of adherence to the public interest may be sufficient using the Land Fund processes. In the rare case of an OPTS without Land Fund support, perhaps Highlands and Islands Enterprise, as a trusted intermediary public body, could confirm that the final transfer to a community was within the public interest?

Guidelines as to what the public interest would look like for final transfer to a community could be developed in consultation with stakeholders. Such guidelines could include whether community acquisition would deliver local economic, social or environmental benefit; is the acquiring body of suitable governance and with local control; is an acquisition by the community body sustainable and feasible? Etc.

If there is a need for additional scrutiny on top of these processes, could there be an evaluation panel as there is with Forestry and Land Scotland's CAT scheme? This independent panel could assess against criteria for the public interest and sustainable development. Given the relatively small number of sites coming through OPTS for communities, perhaps the panel could meet on demand, and be hosted by an existing organisation such as the Scottish Land Commission or the Crown Estate. Such a panel could also be held by an intermediary, if an intermediary organisation is set up to manage timescales in the OPTS acquisition process. (See Question 7)

**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?**

We support nominal transfer value or costs recovery value for the transfers.

The Scottish Land Fund would need to confirm this cost recovery route would be acceptable to them.

**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?**

No. If property is transferred to a properly constituted Community Bodies their articles of governance will clearly dictate how the property is to be used.

Imposition of clawback clauses can restrict support by the Scottish Land Fund and other funders.

**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?**

We appreciate the need for a holding agent given the timescales, but local authorities are not appropriate for this for reasons of capacity and internal resource. We have looked into potential land intermediaries in our research for the Scottish Government in setting up a Community Wealth Fund, and we would

be happy to provide further information. Crown Estate Scotland and the Scottish Land Commission are already working on a collaborative approach to an intermediary function which may be more appropriate here.

**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?**

It should apply to all types of property, as every type has the ability to impact negatively on local communities if left ownerless.

**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?**

We support the general principle that proposals for public interest purchasers, including communities, are considered in advance of private purchasers.

In terms of the OPTS processes as proposed, collaborative working centred around local authorities and other public bodies sounds good in principle, but we doubt it will be effective across the country without additional resourcing. More information is needed on how the process will operate to understand if the proposals are likely to be effective. As it stands the process imposes new barriers to community acquisition as it introduces a new step of body/local authority involvement, which is currently not required for private aquisitions.

**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?**

The criteria are acceptable. We note this is based on the following assumption "The KLTR will take a high-level approach to determining criteria on the basis that the detail will be considered locally by the public body or local authority in each case." We question who in public bodies or local authorities will be trained and resourced to make this public interest determination? As noted elsewhere in our submission, existing processes for community acquisition of privately held land in the public interest do not require local authority or public body sign off, and we question the merit of imposing this step.

It is likely that existing processes should be sufficient to account for the public interest in OPTS, or if not, existing processes could be refined slightly to address the requirements of OPTS. An independent evaluation panel (such as used by

Forestry and Land Scotland) would be preferable. Further work is needed on these proposals, and we would be happy to help development them.

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

We agree.

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

The approach to the definition of public interest on P21 is fine. It should be noted that, for Land Reform, Community Land Rights, and in the planning system, the public interest is not defined in law. It may be preferable to avoid definitions of the public interest in the OPTS by KLTR, and instead allow criteria to be developed by a decision making body within a revised OPTS process.

**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?**

A high level approach is fine, but we are not clear on who is best placed provide further scrutiny and transparency at local level. It is unlikely local authorities will have resourcing and expertise to determine local applications. Further work is needed on establishing how public interest and sustainability determinations in the OPTS which will work in practice. An evaluation panel with a well-developed assessment framework are likely to be more appropriate, and we note Forestry and Land Scotland’s as a precedent.

**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?**

No opinion.

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

No opinion.

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

No opinion.

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

A publicly available annual monitoring report should be provided, and the scheme should be reviewed in the medium term (2 years?) to ensure it is working effectively.

**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?**

We agree. Existing processes for properly constituted Community Bodies, such as charitable aims and articles of association, should be sufficient. There is over

20 years of experience in Scotland of community groups owning land and buildings in the public interest, with strong and effective existing processes; no additional safeguards are needed.

As it stands the KTLR’s processes does not appear to impose any obligations on the private sector, if they acquire, to bring forward sites for development. This needs addressing.

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

We appreciate the risk and financial considerations leading to the limit of a market value of £0.5 million, but there should be the opportunity for special circumstances in the public interest. It may well be that a potentially highly valuable site should be retained in some form of public or community ownership to ensure it is brought back into use (and not left vacant by a private owner until market values to increase).

In addition, the £500,000 should be subject to review as values rise.

**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?**

We are happy with the criteria-based approach, but note it introduces additional risk to participants in the OPTS as the company may be reformed.

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

No opinion.

**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?**

We do not see any different impacts on island communities

**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?**

We do not see any different impacts on the protected groups

**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)?**

We do not see any different impacts on the protected groups.

**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?**

It is likely that additional land will come into productive, community-led uses through this process, which is likley to have a positive impact on the environment.

**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)?**

Given that 55% of the population of deprived areas live within 500 meters of a derelict site (source: Scottish Land Commission), it is likely that approaches which support productive and socially just approaches to derelict land reuse will have a positive impact on socioeconomic disadvantage.

**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?**

No.

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

No.