**Response 019**

**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?**

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| Highlands and Islands Enterprise is open to conversations with KLTR and Scottish Government to discuss how our role delivering the Scottish Land Fund (in partnership with The National Lottery Community Fund) could be expanded to undertake this function on a formal basis.We consider there to be much alignment and complementarity with our existing Scottish Land Fund role and this potential advisory role. Indeed, it is likely that some of the community groups that wish to benefit from the OPTS will apply to the Scottish Land Fund for financial assistance.NB The work we have done to date to support the OPTS pilots was authorised by Scottish Government, as an informal and time-limited measure only. Scottish Government agreement will be required if this work to be included within our Scottish Land Fund role. |

**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?**

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| Yes |

**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?**

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| This appears reasonable, but local authorities are better placed to comment. |

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

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| We do not consider these processes to be reasonable or workable, for the three reasons outlined below.1. A weakness in the process is that **no single body/entity is charged with making a decision** as to whether an ownerless property should transfer to a community.

The consultation document states that the property will only be transferred where a public body or the local authority supports a community proposal. This assumes that public bodies and local authorities will actively engage in this process. As these organisations have no connection to, or responsibility for, the assets concerned we consider active engagement across the public sector to be a potential challenge for the OPTS.It would be unfortunate if a nil response, or a public sector body not wishing to take on this responsibility of supporting a community, negated a community body’s ability to participate in the OPTS. Whether the asset is to transfer or not should be determined by the strength of the community’s application and development plans for the asset, rather than the voluntary participation of the public sector in the OPTS process.Further, it is not clear how this process would accommodate differing views within the public sector, such as one body being supportive and another not, or more than one community body being interested in the property. 1. Secondly, the transfer of ownerless assets to communities will require an **appropriate level of** **due diligence** to ensure this is in the public and community interest, and that the development plans are considered to be viable and sustainable. As OPTS assets will include problematic sites we are not persuaded that public body or local authority ‘support’ is a sufficiently robust process to determine such transfers.

Also, there is a large number of public bodies in Scotland, many of which are perhaps not well placed to undertake this role. 1. Related to our second point is the issue of **resourcing,** should appropriate due diligence be undertaken. Public sector organisations will require to understand the OPTS and have the capacity and skills to appraise proposals. Asset Transfer legislation places a statutory duty on public authorities to undertake a similar role. It is clear that this works well in some organisations and less well in others. This is despite very detailed guidance from Scottish Government and their Community Ownership Support Service contract with Development Trusts Association Scotland to support both communities and public authorities. The proposals for OPTS implementation are not statutory but based on significant ‘good will’ and co-operation within the public sector. Unless this is adequately resourced in some way, we consider this highly unlikely to be achievable.

Overall, we consider KLTR’s aspiration for a ‘public sector partnership and collaborative approach’ to determine such matters to be overly optimistic and unlikely to deliver an equitable and transparent OPTS across all of Scotland. Whilst we understand the KLTR’s desire not to engage in decision making we think it is unrealistic and inappropriate for such decisions to take place at a local level without a robust process and a lead organisation. We cannot see a collaborative process establishing itself ‘organically’ as proposed. Rather we envision no clear outcome nor end date.We are of the view that structure and leadership is required for this part of the process. If this role is not to be undertaken by KLTR, then we suggest a formal agreement is entered into with all local authorities or other public bodies to undertake this work. Alternatively, if Scottish Government is agreeable, the Scottish Land Fund could potentially take on this role. Members of the Scottish Land Fund Committee are appointed by Ministers and are knowledgeable of the community assets sector. |

**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?**

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| Yes, nominal value is most welcome. |

**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?**

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| As the assets are to transfer for nominal value it is reasonable for KLTR to be able to apply conditions on the transfer to ensure the future use of the asset remains compatible with the aims of the OPTS. However, this needs to balanced with the Scheme’s desire to offer ‘clean title’ transfers, as detailed on page 10, and KLTR’s limited resources to manage conditions.**Transfers from KLTR to a community body:**HIE has been a long standing supporter of community ownership of assets as this helps empower communities and provides a foundation for sustainable growth and community resilience. An unburdened transfer enables the community to develop the asset to best meet the needs of the community. These needs may change over time. If conditions are to be applied these should have a clear purpose and trigger point, and should be proportionate. In addition, the intention to apply conditions, and by what mechanism they will be secured, should be shared with the community at an early stage in discussions, particularly as some conditions may not be compatible with Scottish Land Fund support. |

**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?**

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| We support the ability for a public authority to act as a ‘holding agent’ on behalf of a community. We suggest that up to 18 months is allowed for the community to receive the asset. More complex assets are likely to benefit from a longer timescale. |

**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?**

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| We think the OPTS should apply to all properties as described. |

**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?**

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| We support a mechanism to ensure a community interest is considered as early as possible. However, it may be challenging for a community body to engage with a local authority or public body on such matters. These are large institutions and without a named contact who is aware of OPTS, it may take some time for the community body to gain traction in such discussions, yet alone secure formal support prior to KLTR involvement. Also, we think it much more likely that a community body or individual will contact KLTR in the first instance.As an alternative, it might be helpful if the mechanism to identify local community groups (as detailed in Q1) is implemented prior to the public body ‘trawl’ and then notification to the local authority. This way, a prospective community interest in the asset could be included in the information sent out at Stage 1. Whilst recognising that the public sector would still get ‘first refusal’ they would be able to take cognisance of community interests in the asset when considering their own position. This will also ensure that wider community interests are aware of the potential OPTS opportunity.We very much welcome the OPTS and consider its policy objectives to be aligned with Scottish Government’s community empowerment and land reform agendas. However, we are concerned that its implementation may be disempowering if community aspiration is thwarted by factors beyond a community’s control, such as effective engagement by the public sector as we have highlighted in our response to Q1. |

**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?**

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| The proposals in Section 3.5 are quite difficult to follow. A flow-chart would be helpful. Based on our understanding we offer the following:We consider that integrity in the process will be undermined where a public body or local authority is both the applicant and the assessor of the proposals. If there are two public bodies interested in the asset, who decides? As noted in Q4, we consider that an appropriate level of due diligence is required prior to an asset transferring to a community body. We would favour an application process for stage 2 applications. Such a process would ideally consider the applicant eligibility and capacity, community engagement and support, community outcomes and a viable business plan. The assessment process should also undertake an assessment of subsidy control, displacement and risk. |

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

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| Yes. |

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

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| No. The consultation document does not define the public interest for the OPTS; instead it states that this will be for the public body or local authority to determine.To support transparency and clarity for all we would favour a range of OPTS indicators or policy objectives against which applications will be considered. This will be particularly important if there is more than one interest being considered. |

**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?**

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| We are of the view that sustainable development is a well-recognised and understood concept.To assist with the appraisal of applications it would be helpful to have an OPTS application form for stage 2 applicants (community). |

**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?**

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| We welcome the proposed approach to enable dissolved company property to be considered as a candidate for OPTS within the 6-year restoration window. |

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

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| No |

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

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| We are satisfied with the approach outlined. The KLTR’s proposal to carry the risk of directors of a restored company claiming the value of the asset, is welcomed.  |

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

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| The proposals listed appear robust and appropriate. |

**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?**

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| We are not persuaded that local accountability and annual returns will ensure delivery of agreed priorities. KLTR may wish to manage a risk-based approach with appropriate use of conditions as detailed in Q6. |

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

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| We are satisfied with the recommendations outlined in section 4.1. |

**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?**

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| We agree with the approach proposed. |

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

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| No |

**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?**

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| 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?**

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| 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)?**

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| 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?**

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| Bringing ownerless assets back into productive use, where this is deemed to be in the public interest and consistent with sustainable development is likely 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)?**

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| It is anticipated that some, perhaps many, of the assets subject to these provisions will be located in areas that experience socioeconomic disadvantage. Access to the OPTS to help bring such assets into productive use will have a positive impact in such areas. |

**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?**

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| No |

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

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| No |

Please email to the KLTR Policy Team’s mailbox at **Policy@KLTR.gov.uk****.**
You can save and return your responses while the consultation is still open but please ensure that consultation responses are submitted before the closing date.

If you are unable to respond by e-mail, please print and complete the Respondent Information Form and send it by post to:

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