



## Ownerless Property Transfer Scheme (OPTS)

### Consultation Analysis Report

31 July 2023



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## 1. Introduction

This report provides an analysis of responses to the consultation on the King's and Lord Treasurer's Remembrancer's (KLTR) proposals for introducing a new administrative process, the Ownerless Property Transfer Scheme (OPTS or "the Scheme"), to provide opportunities for public bodies, local authorities and communities across Scotland to benefit from *bona vacantia* properties brought to the KLTR's attention where it is in the public interest to do so.

The long-term negative impact that ownerless land and buildings can have on our communities, our cities, our towns, and on residents within these areas is well recognised and the OPTS is intended to provide opportunities for tackling some of the issues by bringing ownerless properties back into productive use.

The OPTS is an ambitious scheme that will require collaborative working between public sector bodies and representative groups if real and tangible benefits are to be delivered to the people of Scotland. It will not force anyone to take ownership of properties and should bring interested parties together to consider how ownerless properties can be used in the best possible way to benefit local communities.

### 1.1 Background to *bona vacantia*

The KLTR is the Crown's representative in Scotland who has the authority to deal with ownerless property (*bona vacantia*). In Scots Law, the Crown has discretion to claim or disclaim ownerless property. In other words, property does not automatically become owned and controlled by the Crown at the point it becomes *bona vacantia*. In practice, *bona vacantia* commonly comprises heritable property which last belonged to a dissolved company or sometimes with no traceable owner at all. Typically, suspected *bona vacantia* is brought to the KLTR's attention by individuals who are often interested in acquiring title to a property. The Scottish Government, local authorities and other public bodies also refer suspected *bona vacantia* property to the KLTR for consideration.

A property whose ownership is still in the name of a company when that company dissolves becomes *bona vacantia* at the point of dissolution under the Companies Act 2006. Whilst the dissolved company's assets fall to the Crown, the company's liabilities do not and the KLTR has no liability for any outstanding debts of the company at the date of dissolution. The Companies Act provides a limited period of six years during which the dissolved entity can usually be restored. If a company is restored, a property that had been *bona vacantia* automatically may revert in the company.

## 1.2 Background to OPTS and the consultation process

Historically, the KLTR's focus was on the feasibility of selling *bona vacantia* properties at full assessed value, typically to the approaching party if they were interested, failing which, at auction or disclaiming properties, generally if they were high risk. However, the KLTR's Office has been reviewing the way it works. It has been exploring the feasibility of taking a more proactive approach to *bona vacantia*, increasing collaboration with public sector partners, looking at ways to overcome some of the barriers to dealing with ownerless property and aiming to facilitate the use of *bona vacantia* for public benefit. From this was created the OPTS. The proposal is for OPTS to provide a mechanism for the KLTR to transfer ownerless land to another public body at below Market Value or at a nominal value where it is in the public interest to do so: either to use that land itself for local public benefit or to transfer it to an appropriately constituted community body demonstrating purposes aligning with local needs and aspirations. In some cases, the KLTR may transfer a property direct to such a community group.

The KLTR has undertaken 13 pilot cases across Scotland to assist with developing the OPTS process and policies and to work with key stakeholders to ensure our proposals are workable. Lessons have been learned from these pilots on how the OPTS process can be improved and the outcomes to the pilots have been considered in conjunction with views expressed during the consultation period.

A consultation on the OPTS took place from 23 September to 16 December 2022 and the consultation document can be viewed at [www.kltr.gov.uk](http://www.kltr.gov.uk). The consultation was primarily aimed at local authorities, public bodies, voluntary and community bodies, but open to all with an interest in ownerless property.

The KLTR also arranged 6 online events during the consultation period, some of which were hosted by key partners. These events were attended by a wide range of people representing the Scottish Government, local authorities, other public bodies, the community sector, representative organisations and others. The structure of these events consisted of a presentation of the proposed OPTS process and policies, followed by a question-and-answer session to provide attendees with opportunities to raise any issues and discuss any points of interest. Key points raised at these events have been considered alongside written responses to the consultation document.

The KLTR's Policy Team also maintained ongoing discussions with stakeholders throughout the consultation period to provide further opportunities for detailed discussions and comments on the proposals

Twenty-six written responses were received during the consultation exercise, which provided a high level of positive interest in, and support for, the Scheme. These

responses form important contributions to how the Scheme will look and operate and can be viewed on the KLTR's website at [www.kltr.gov.uk](http://www.kltr.gov.uk). A full list of respondents is annexed to this report and details are provided for those who selected "publish response with name" in their response. This dialogue will continue as further policy considerations develop.

Bona vacantia differs from properties conveyed to communities under legislative means, such as the Community Rights to Buy, in that there is no owner and properties submitted to the KLTR are usually problematic. Commonly, they are subject to a 6-year restoration process and other requirements under the Companies Act 2006 and can be in a poor condition or have other liabilities. The OPTS also provides an opportunity for property to transfer at well below market value and, therefore, requires a different approach to safeguard public funds and ensure the transfer takes into account best value and which proposals are in the best public interest. The OPTS is, therefore, a public interest scheme and not a "right to buy" for any sector.

## **2. Consultation responses and analysis**

### **Methodology**

The OPTS consultation document set out proposals for developing the Scheme and contained 28 questions seeking consultees' views on a wide range of key issues.

To simplify the consultation process, a Respondent Information Form was provided within the consultation document, although some respondents chose to submit their comments in other forms, such as letter format. However, all responses were included in the analysis.

Questions were both quantitative (closed "yes/no" questions) and qualitative (open-ended questions) to invite further comments consultees wished to be considered. Qualitative responses were considered in detail to identify any common themes and suggestions.

The remainder of this section provides a question-by-question analysis of issues raised in the order the questions appeared in the consultation paper, together with the KLTR's decisions on specific policy and processing points, as follows:

Q1 Highlands and Islands Enterprise to provide advice to the KLTR on community groups

Q2 Sharing KLTR reports to avoid duplication of costs

Q3 Timescale for local authority to consider its interest

Q4 OPTS process reasonable?

Q5 Property transfer at "nominal value"

Q6 Applying conditions on transfer

Q7 Public body as a "holding agent"

Q8 Properties to which OPTS should apply

Q9 Considering community interest

Q10 OPTS criteria

Q11 & Q12 Public interest issues

Q13 Sustainable development issues

Q14 Dissolved companies and 6-year restoration window

Q15 Financial controls and safeguards

Q16 Liability and risk

Q17 & Q18 Monitoring OPTS and penalties

Q19-Q21 Further measures

Q22-Q28 Assessing Impact

Any additional points raised which do not relate to the above questions are detailed in section 3 of this report.

**Profile of respondents** The following table provides a breakdown of the responses by sector/group and the number of responses received for each category:

Sector/group	Number of responses
Local authority	8
Public body	9
Community (and community-related)	2
Legal profession	1
Charity	2
Individual	3
Other	1
<b>Total</b>	<b>26</b>



## Highlands and Enterprise to provide advice to the KLTR on community groups

### Question 1

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

20 respondents provided answers to Question 1 as follows:

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	4	2	2	8
Public Body	7			7
Community	2			2
Legal profession				
Charity				
Individual	2		1	3
Other				
<b>Total Respondents</b>	<b>15</b>	<b>2</b>	<b>3</b>	<b>20</b>

17 respondents made additional comments to Question 1.

*“HIE have experience in identifying, dealing with and supporting community groups take on assets and would be well placed to provide a consistent approach to community awareness of OPTS opportunities within this local authority area, and more generally across Scotland.”*

*Local Authority*

A significant majority (75%) of those who responded agreed with the proposal that Highlands and Islands Enterprise (HIE) is the appropriate body to provide advice to the KLTR on potentially suitable community groups. However, some felt that there may be other organisations that could also offer advice and support including

Development Trust Association Scotland (DTAS)/Community Ownership Support Service (COSS), Scottish Government Community Land Team and other local/regional third sector organisations, etc.

Of those who agreed with the proposal in Question 1:

- 6 thought that there should be other agencies involved too, including South of Scotland Enterprise, Community Land Scotland and other public or third sector bodies, to work in partnership with HIE.
- It was suggested that how HIE will engage with community groups should be further considered and developed, noting that community groups in the early stages of being created may be beyond HIE's radar. Proportional efforts should therefore be made to raise awareness of OPTS opportunities locally.

Of those who disagreed with the proposal in Question 1:

- 2 thought that the local authority and/or local community groups would be better placed to understand the complexities and interdependencies of local community groups relating to property at a local level. It was also suggested that a LA may be a better source of information on potential projects and suitable groups, given their local remit and that LAs are best placed to align with legislative responsibilities: others felt that LAs cannot be both administrator and appeals body.

Of those who neither agreed nor disagreed with Question 1:

- One respondent commented that HIE has a lot of relevant experience in this field and is very well suited to this work. They understand that Scottish Government agreement is required for them to take on this role, which would extend out with its normal operational area. Some respondents also noted that it would be useful to know more about how HIE operates and its role as it relates to OPTS.

## **Conclusion**

The KLTR has considered the merits of collaborative working between public and third sector organisations in providing advice on the suitability of community groups to acquire ownerless property via OPTS and recognizes that most key stakeholders will be better placed than the KLTR to consider local circumstances and the needs of local communities. For example, in administering the Scottish Government's (SG) Scottish Land Fund, HIE already has a dedicated team operating across Scotland to support communities in purchasing property for local benefit where it is in the public interest. Local authorities and other local organisations will also be well placed to assist with considering local circumstances relating to, for

example, the most pro-active and suitable community group to take ownership of OPTS property. The source of advice might therefore differ case-by-case.

The KLTR will continue to discuss with SG and HIE how best the KLTR may be advised on issues relating to potentially suitable community groups for ownership of OPTS property. In performing that role, the KLTR would expect advisors to consult relevant parties in any given case before submitting views to the KLTR.

While the consultation document suggested a two-stage approach of offering the property to public authorities and then to community groups if no public authority wished to acquire the property, the process will now be based on a “Standard” and “Fast-track” approach, irrespective of who submits the property to the KLTR initially. Further details are provided at question 4 below.

### Sharing KLTR reports to avoid duplication of costs

#### Question 2

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?

20 respondents provided responses to Question 2 as follows:

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	5	2	1	8
Public Body	5		1	6
Community	2			2
Legal profession				
Charity	1			1
Individual	3			3
Other				
<b>Total Respondents</b>	<b>16</b>	<b>2</b>	<b>2</b>	<b>20</b>

12 respondents made additional comments to Question 2 in support of this proposal.

*"We welcome the fact that the KLTR will provide transparency to the OPTS process by making available any valuation, structural, building or condition surveys, title information and environmental reports to those involved in the process as this may prevent duplication of cost."*

### **Local Authority**

A significant majority of those who responded agreed that the OPTS valuation and other reports undertaken by the KLTR are sufficiently independent to avoid duplication of cost for all involved in the OPTS, provided they are commissioned by appropriately qualified surveyors who are aware that the valuation will be relied upon by more than the instructing authority (the KLTR). It was suggested that, for some organisations to rely on the valuation, the organisation may need to be named in the tender/commission as a body and that Letters of Reliance may be useful.

It was also suggested that, whilst this would save duplication of costs, to ensure the local authority's Best Value obligations are met, an independent valuation at Market Value would still be required. This will allow the local authority to ensure that the Cost Recovery Value (the costs incurred by KLTR) does not exceed the Market Value in a transaction.

Of those who agreed with the proposal in Question 2:

- Two commented that a potential joint valuation could be used where there is community interest so that community bodies could use valuations to support funding applications. It was commented that if funders do not accept a valuation instructed by KLTR, that would put the community body to extra cost obtaining another one.
- One respondent noted that surveyors are independent professionals and therefore the commission of a report by the KLTR should achieve the objective here, provided the report is suitably addressed for the benefit of the transferee to rely upon. It was suggested that Letters of Reliance on the reports should be provided by the consultant to the transferee in that respect.
- One commented that, if timescales are lengthy, the original valuation may be out of date by the time a funder considers a funding application.
- A further view suggested that there should be sufficient discretion and timescales built in to ensure that the local authority/public body or community group can undertake their own due diligence and seek further reports/valuations.

Of those who neither agreed nor disagreed to Question 2:

- 2 commented that in cases of transfer, a third-party valuer be appointed such as the DV (District Valuer).

## **Conclusion**

The KLTR welcomes the high level of support for the sharing of reports with stakeholders to ensure the OPTS process is cost-effective and agreement that KLTR reports are sufficiently independent. The KLTR also notes the suggestion that further assurances may be required (such as obtaining letters of reliance) as additional comfort to acquiring parties and potential funders.

The KLTR wishes to explore opportunities to help keep OPTS-related costs to a reasonable level and believes that two key aspects of the Scheme - avoiding duplication of costs in property valuation and transferring property at cost-recovery value - create opportunities for substantial financial benefits in the public interest.

As indicated in the OPTS consultation document, sharing KLTR reports does not prevent any party from seeking their own valuation, should they wish. We would always encourage parties considering acquiring property to consider taking their own independent advice, as KLTR cannot provide professional advice to other parties. However, the KLTR would encourage a cost-effective approach wherever possible and considers it attractive to make KLTR valuation reports available to other parties in the interest of transparency. It is for funders and other parties to consider whether KLTR reports can be accepted for funding purposes or other purposes. Any additional costs for further valuations will be required to be met by the instructing party.

Ultimately, it would be for other parties to consider how they rely on valuation reports carried out on behalf of the KLTR, and the KLTR would not be in a position to provide a separate "letter of reliance" regarding value, or similar. The KLTR also recognises that sharing of valuation reports may not be possible or may be subject to other restrictions, such as conditions imposed by valuers or where sensitive information has been included.

### Timescale for local authority to consider its interest

#### Question 3

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?

19 respondents provided responses to Question 3 as follows: -

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	1	7		8
Public Body	2	2	1	5
Community		1		1
Legal profession				
Charity	1		1	1
Individual	1	2		3
Other				
<b>Total Respondents</b>	<b>5</b>	<b>12</b>	<b>2</b>	<b>19</b>

A majority of respondents (63%) suggested that more than three months for the local authority to decide whether it wishes to take ownership of an ownerless property was required.

13 respondents (68%) made additional comments to Question 3 and, of those who agreed with the proposal in Question 3:

- 4 commented that it was a reasonable timescale but added that, if it were to be amended, then it should be lengthened rather than shortened.
- One respondent commented that 3 months seemed reasonable adding that, if local authorities did not reach a decision within 3 months, the interested community body should be allowed to proceed to avoid unnecessary delay in regenerating disused property for community benefit. This respondent also recognised that local authority processes are likely to exceed 3 months,

suggesting that they should therefore not have first refusal on OPTS properties due to time implications.

Of those who disagreed with the proposal in Question 3:

- 5 respondents added that the natural pace of a local authority, and the current realities we live in, suggested 6 months should be allowed for local authorities to consult across their departments (planning, building control, regeneration services, public realm, legal services, committees, full Council etc.).
- Others suggested that 4, 5 or 9 months may be more appropriate.
- These longer timescales allow time for awareness to be raised of the property in the community, the decision-making process to be undertaken (allowing time for the relevant local authority committees to meet and consider the matter) and for necessary approval to be obtained.
- It was also suggested that clear contact within local authorities should be agreed.

## **Conclusion**

While some respondents, including some local authorities, suggested that 3 months may be sufficient for local authorities to respond to an ownerless property intimation from the KLTR, the KLTR recognises that, due to the local authority governance/committee processes for decision-making, this may take longer for more complex cases. As discussed below, an option we are considering is that the Standard OPTS process would provide local authorities with up to 6 months to respond to these requests, which reflects the majority of responses received. See question 4, below, for further details.

The KLTR also welcomes the suggestion of a clear contact within local authorities to be agreed and has written to all public body and local authority Chief Executives inviting them to nominate a single point of contact for OPTS purposes. The KLTR believes that a streamlined approach will benefit all involved in the OPTS process. However, if no point of contact is received, the KLTR will contact the authority through available means, e.g., advertised generic email addresses.

## **Is the OPTS process reasonable?**

### **Question 4**

Do you agree that the process outlined in the Consultation paper is reasonable and workable? If not, how would you improve the process?

22 respondents provided responses to Question 4 as follows:

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	7	1	1	9
Public Body	5	1		6
Community	2			2
Legal profession	1			1
Charity		1		1
Individual	2	1		3
Other				
<b>Total Respondents</b>	<b>17</b>	<b>4</b>	<b>1</b>	<b>22</b>

18 respondents (82%) made additional comments to Question 4. There was significant support for the proposal as well as helpful suggestions for alterations to the process.

*“The proposed OPTS is a considerable improvement on current practice and has the capacity to assist communities and public bodies by ensuring that areas of land come into the ownership of an appropriate body, with minimal bureaucracy, who can then make best use of the land in the public interest”.*

**Public Body**

A significant majority of those who responded agreed that the OPTS process was reasonable and workable.

Of those who agreed with the proposal in Question 4:

- One commented that other mechanisms, such as Compulsory Purchase Order (CPO) if the building is in significant disrepair and/or if there is an outstanding standard security over the property, might be more applicable.
- One respondent suggested that KLTR should provide a clear Statement of Purpose for the Scheme (along the lines of the bold text in section 3 of the consultation paper) so that the Scheme can be evaluated and reviewed in years to come. They also suggested the following would be useful:



- Guidance for public bodies to make sure all required points are considered and that due diligence is undertaken.
- More clarity about what happens if relevant public bodies do not agree about a particular area of land or do not engage with the process.
- Clarity about what happens if there is more than one community body interested in the land or if, after a period of time, the land has not been passed by a public body to a relevant community body.
- A flowchart and specially designed application forms at each stage in the process to make clear what information is to be supplied, by whom, and who support in principle is required from at each stage.

Of those who disagreed with the proposal in Question 4:

- 2 commented that the timescales need to be lengthened.

Of those who neither agreed nor disagreed to Question 4:

- Local authorities have concerns around resource implications for themselves if asked to act as an intermediary between KLTR and community groups in relation to transfer of high risk/low value properties.
- One suggested that it seemed unnecessary for a property identified by a local authority to go through the Scottish Government trawl process.
- Some respondents highlighted concern that a property will only be transferred where a public body or the local authority supports a community proposal and that public bodies or local authorities might not engage in the process or support the community body. A suggestion was made that an appropriately constituted community body with support from the Land Fund for an OPTS transfer may not also require local authority backing. In the absence of Land Fund involvement, another trusted intermediary body, such as HIE, could provide assurance that the transfer was in the public interest.
- Another concern was that not granting a clean title could be an obstacle to an organisation taking ownership of a property. Existing charging orders/repayment charges/standard securities over a property would be a great imposition on a local authority to automatically write off debt secured on ownerless property.
- Another point for consideration is whether NGOs/Charities & SCIOs should be entitled to make use of the OPTS such as the National Trust for Scotland or other cultural or social NGOs that may not be regarded as a community body for the purposes of Stage 2. In turn, these bodies may have conditions imposed on them to provide the asset for the community benefit.

## **Conclusion**

The KLTR welcomes the support for the OPTS process and the opportunities it should deliver and responses to the consultation have helped to improve that process. As indicated above, while the consultation document suggested a two-stage approach of offering the property to public authorities and then to community groups if no public authority wished to acquire the property, we are currently considering if the process will now be based on a "Standard" and "Fast-track" approach, irrespective of who submits the property to the KLTR initially. This would be influenced by the extent of collaboration and agreement secured prior to notifying the KLTR of potential ownerless property. The KLTR believes this should provide a fairer process which promotes the main aims of the scheme (public interest, collaborative working and community benefit) and both processes are detailed below.

Both the standard and fast-track approaches may commence in the same way, by a property being submitted to the KLTR as potentially ownerless. As at present, this will require the applicant to provide satisfactory evidence, as determined by KLTR, as to why they think the property is ownerless and "intake criteria" will be provided in the Scheme guidance. In both processes, the applicant may be expected to discuss their proposals with other key stakeholders (relevant public bodies, the local authority in the area in which the property is situated and any appropriately constituted community group in the area) before submitting their application.

Our proposals in this area are in the process of being developed, remain subject to change and will be described in more detail in the anticipated OPTS guidance that will be published in due course.

If the KLTR is satisfied that the property is ownerless and should not be disclaimed, the property will then be considered for OPTS suitability and, if so, the following processes could apply if taken forward:

### **Standard process**

The standard process, as is currently being considered, would apply irrespective of who the applicant is and when no local agreement has yet been reached between the relevant public body, the local authority and any existing community body. As indicated at question 1 above, public bodies, local authorities and the community sector may be notified of the property simultaneously once a valuation has been received by the KLTR, rather than sequentially. We consider this should provide a fairer process with all sectors being given notice of the property at the same time.

This should allow communities additional time to engage in the process and to create a suitable community organisation, should one not already exist.

The property may then be subject to simultaneous timescales from the date the property is circulated: the timings we are currently considering (and remain subject to review) are: 1 month for the SG public bodies trawl; 6 months (increased from 3 months to accommodate local authority governance procedures) for local authorities to address options and confirm its position on ownership, etc.; and 3 months for the community to create a representative body (if one does not already exist). If taken forward, this should allow a further 3 months for the community to also consider its aspirations but local authorities would be encouraged to respond as early as possible and by the 6-month deadline. The KLTR may also determine that is appropriate to disapply the SG public bodies trawl, e.g., where the KLTR considers the property is unlikely to be of interest to other public bodies.

Under the process as is currently being considered, at the same time as responding to the KLTR, the local authority would be expected to copy its response to any known properly constituted community group(s) and to the relevant advisor detailed at question 1, above. The community group(s) would then be given a further 2 months to respond to the local authority's views, if they so wish. The consultation document required communities to secure the agreement of a public body or local authority in order to apply to OPTS, however, the KLTR recognises that some local authorities are concerned about their capacity to act as intermediary between community bodies and the KLTR. The KLTR is currently considering the view that, where a community submits an OPTS application and the local authority does not respond within the 6-month period, the KLTR will proceed on the basis that no objections have been raised and the application will be considered against the OPTS criteria. Where a local authority objects, or expresses concern, to a community proposal, the KLTR may seek further information from either or both parties or require a suitable solution to be agreed locally. The KLTR will, of course, have the final say in determining the application.

To assist the KLTR in the decision-making process, an advisory panel of key stakeholders is being considered.

Where a community application is successful, under current proposals being considered, the community body would ordinarily be given 8 months to raise the necessary funds and conclude the conveyancing of the property at the KLTR's cost-recovery value and subject to such conditions to be attached to a proposed transfer that the KLTR may require. Stakeholders may already be aware that 8 months reflects the time period given to communities to conclude the transfer (rather than

just raise the funds) under the Community Right to Buy in Part 2 of the Land Reform (Scotland) Act 2003. As the OPTS transfer value is nominal value, rather than market value, established community groups may already have sufficient funds available to complete the purchase, although the KLTR would also seek to consider the viability of accommodating a phase in which further funding can be secured by community groups to fund a transfer, subject to the circumstances of a particular case. If, in exceptional circumstances, further time is required to secure funds, the “holding agent” under question 7, below, may be an option to avoid a KLTR disclaimer deadline, however, this is likely to be an aspect that applicants would require to consider for their own circumstances.

Where a public body or local authority is successful, we currently think that 3 months would be provided to conclude the conveyance as funds are expected to be made available from the authority’s budget resources.

### **Fast-track process**

The fast-track process currently being considered would be available for a public body, local authority or appropriately constituted community body wishing to acquire ownerless property in the public interest where the proposals have already been agreed locally. Evidence would require to be provided to demonstrate support and the fast-track criteria must be met.

The KLTR recognises that there may be more than one community body, or both the local authority and community body wishing to purchase an OPTS property and considers that local people and organisations are often best placed to determine local needs in the public interest. In such cases, the KLTR wishes to encourage local collaboration and will expect a single recommendation to be submitted for the proposed use of the property. The KLTR does not wish to engage in local disputes but will determine each case on the information available and on the advice of the advisory panel mentioned in the standard process above. Similar to the standard process, the applicant is required to copy their fast-track application to the other key stakeholders.

Under the current proposals, if the KLTR accepts an application for the fast-track process, key stakeholders would be given 3 months to provide comments on the proposals, as there should already have been discussions prior to the application being submitted. Where a community body is the applicant, any identified relevant public body and the local authority will be asked to provide views on the application within 3 months. This should allow local authorities sufficient time to conclude their governance process, if required, as they will already be aware of the application.

Securing agreement early and using the fast-track approach could reduce the OPTS process by up to 5 months and collaborative working will benefit all involved in the process.

As with the standard process, the KLTR would then determine the application and, if successful, the 8-month and 3-month timescales in which to transfer funds and conclude conveyancing will apply.

Further information on both processes will be provided in the Scheme guidance. Whilst we consider it helpful to share our latest considerations, it remains that all details of the final scheme that will be brought into effect remain subject to change.

Other key issues raised under question 4 are addressed below.

The KLTR is aware of other processes already in existence, such as Compulsory Purchase Orders, the planning system, Community Rights to Buy, Community Asset Transfer, local authority powers, etc., and consideration has been given to how these can complement each other and how best they can align in practice. OPTS guidance is being created to support those involved through the process, to provide transparency and to ensure the Scheme delivers the intended benefits for the people of Scotland.

The KLTR welcomes the suggestions of introducing a Statement of Purpose, which can be periodically evaluated, and the use of flowcharts and application forms to assist the OPTS process and ensure the KLTR receives the information required at each stage of the process. These issues will be addressed in the Scheme guidance.

Following consultation feedback, the KLTR recognises the benefits of publishing information relating to the OPTS, therefore, a list of all OPTS properties will be available on the KLTR's website after the OPTS commences. This will be updated as properties enter the OPTS process and will provide transparency for all stakeholders involved.

The KLTR recognises the financial pressures on public sector budgets but does not regard the OPTS as being financially or resource intensive. A key feature of OPTS is that it should create opportunities but it is for those involved in the OPTS process to consider how potential benefits may best be delivered and, indeed, if they wish to make use of these opportunities. OPTS will not require any party to take ownership of a property, instead, it is a voluntary acquisition process.

The KLTR accepts that local authorities will consider carefully whether to support community organisations and their aspirations on a case-by-case basis. This is a fundamental part of local accountability within the Scheme.

We are also considering eligibility of community bodies and which types of bodies may apply for OPTS property, including bodies constituted under the Community and Crofting Community Rights to Buy in Parts 2 and 3 of the Land Reform (Scotland) Act 2003 and other similarly constituted organisations, such as development trusts. The KLTR is considering if the OPTS process would benefit from seeking confirmation from HIE on a case-by-case basis whether they are satisfied that a community body is appropriately constituted and acceptable for applying for potential Scottish Land Fund support, should it wish. This will allow communities to consider such issues at an early stage and reduce the potential for disappointment later. The OPTS guidance will provide further information on how to create a community body.

A further series of discussions is being undertaken with key stakeholders to discuss changes made to the process and explain the revised policies or, in some cases, why suggested changes have not been made.

### **Property transfer at “nominal value”**

#### **Question 5**

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

20 respondents provided responses to Question 5 as follows:

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	7		1	8
Public Body	6			6
Community	2			2
Legal profession				
Charity	1			1

Individual	3			3
Other				
Total Respondents	19		1	<b>20</b>

There was overwhelming support for the proposal and 11 respondents made additional comments to Question 5.

*“We agree that the property transfer value should be at “nominal value”. This should significantly aid community groups in being able to undertake property transfers, and also aid the sustainability of any future uses.”*

**Public Body**

*“OPTS has the potential to make it more affordable, and therefore more practical, for communities to take ownership of land.”*

**Legal profession**

95% of respondents agreed that the property transfer value for OPTS should be at “nominal value” (i.e. KLTR cost-recovery basis), which should unlock and deliver opportunities to bring ownerless properties back into productive use for the community.

One respondent added that, if the land is transferred to the relevant authority for a nominal sum for onward transfer to a community, it would be expected that the ‘spirit’ of the transfer be maintained throughout the process with the community group also securing the land for a nominal sum.

Of those who agreed with the proposal in Question 5, additional comments included:

- OPTS property should be transferred to local community bodies at a nominal value of £1 in order to improve the Crown’s and KLTR’s public image and relationship with the public.
- If a local authority is putting resource into a project that will benefit the greater public, then should they have to pay for the land at all? Is nominal value always Best Value for the public purse?
- It would be useful to have estimations of what KLTR costs are to estimate what this nominal value would look like.
- The Scottish Land Fund would need to confirm this cost-recovery route would be acceptable to them.

- It's vitally important that suitable and sustainable business cases are in place to ensure properties can become assets and not liabilities.

## Conclusion

The KLTR welcomes the overwhelming support for transferring OPTS properties at nominal value. OPTS will normally provide properties at nominal value and the cost-recovery elements would be restricted to the KLTR's professional costs incurred in each case, such as legal and valuation fees plus any additional expenses relating to environmental surveys, etc, but excluding KLTR internal administrative costs for resourcing OPTS. The total cost will, therefore, depend on the complexity of each case and the KLTR will seek to ensure that any expenses incurred by the KLTR are kept to a reasonable level while, at the same time, applying an appropriate level of due diligence.

However, where the OPTS criteria are not deemed to be met, for example, where the transfer is for purely commercial purposes, the KLTR will consider the possibility of the property being sold at market value. This will usually be achieved by transfer for assessed value on the open market (e.g. by auction).

## Applying conditions on transfer

### Question 6

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

19 respondents provided responses to Question 6 as follows:

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	4		1	5
Public Body	4	2	1	7
Community		1	1	2
Legal profession	1			1
Charity	1			1



Individual	3			3
Other				
Total Respondents	13	3	3	<b>19</b>

A wide range of views were received, from applying conditions in every case to not applying conditions in certain circumstances. 13 of the 19 respondents (68%) agreed that the KLTR should place conditions on the transfer of OPTS property to ensure the intended benefits to local communities are delivered and a range of suggestions as to how this could be achieved were offered. These included a yearly review and, if the property was sold on for profit, clawback by KLTR of a share of any profit.

It was suggested that such conditions may not be necessary if the property is transferred to another public body. Concerns were raised around how local authority resources could accommodate this if responsibility was passed to them.

If property is transferred to an appropriately constituted community body, their Memorandum and Articles of Association will clearly state how the property is to be used and disposed of. Any unnecessary burdens or penalties for non-delivery of aspirations may be seen as a potential barrier/disincentive for community groups to come forward.

16 respondents made additional comments to Question 6. Of those who agreed with the proposal:

- One respondent commented that, 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 be balanced with the Scheme's desire to offer 'clean title' transfers, as detailed on page 10 of the Consultation document, and KLTR's limited resources to manage conditions.
- Another respondent stated that there should be provision for this, but it may not always be necessary. Attaching conditions could help support priorities for community wealth building and the new focus of this scheme by driving objectives.
- One suggested that an enforceable burden by the Scottish Ministers or other relevant agency or directorate of the Scottish Government (eg: Historic Environment Scotland or NatureScot) could be imposed.
- One commented that they would not expect conditions to be necessary where property is transferred to a local authority as there is democratic oversight of

their decisions. Once a property has been transferred to a local authority it is to be expected that the property shall be used to benefit the local community.

Of those who disagreed with Question 6, one commented that imposition of clawback clauses could restrict support by the Scottish Land Fund and other funders.

Of those who neither agreed nor disagreed to Question 6:

- o One commented that only such conditions which are not detrimental to the local community should be imposed.

## **Conclusion**

As a majority of respondents supported conditions being placed on OPTS transfers to ensure the delivery of benefits to the local community, the KLTR will consider how best this can be achieved, including applying conditions on a case-by-case basis, where required. The KLTR agrees that any conditions should be proportionate and not overly onerous on the acquiring party so as not to deter parties from engaging with the Scheme or interfere with securing reasonable aspirations or potential funding. The KLTR hopes that OPTS can dovetail with other schemes and further discussion with the Scottish Land Fund will be required to ensure such conditions are not counter-productive.

NB: One case study (number 4) was referred to as being sold by KLTR and is currently being offered for sale at a higher price. It should be noted that this property was sold at auction only after it had been offered to the community and was not transferred for nominal value. As with all auction sales, it is for the successful bidder to determine next steps for the property.

## **Public body as a “holding agent”**

### **Question 7**

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?

19 respondents responded to Question 7 as follows:

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	1	3	4	8
Public Body	6			6
Community	1			1
Legal profession				
Charity	1			1
Individual	1	1	1	3
Other				
<b>Total Respondents</b>	<b>10</b>	<b>4</b>	<b>5</b>	<b>19</b>

17 respondents made additional comments to Question 7. Generally, there was support for the proposal.

*"This level of collaboration with the public authority/local authority acting as a holding agent is to be welcomed."*

### **Community**

10 respondents agreed that a recognised public authority should retain a property to allow an appropriately constituted community body to raise the necessary funds, etc. However, questions were raised around which public authority this should be. It was suggested that this should not be the local authority for reasons of capacity, internal resource and a risk to local authority budgets. It was added that there are financial, environmental, public health and safety and insurance liabilities.

It was suggested that transfer to community bodies should only be considered after they are appropriately constituted. Guidance should set out what happens to the property if a community body fails to be constituted, is unable to secure funding or its proposals fail.

Crown Estate Scotland agreed (in response to Question 4) that they could potentially act as an intermediary, taking receipt of the asset for a period of time to allow the community body to raise the necessary funding, etc.

National Park Authorities also indicated that they may be able to take on this role, or acquire OPTS property, on a case-by-case basis and this may help to achieve their objectives, such as providing access, recreation, affordable housing and green space.

Of those who disagreed with the proposal in Question 7:

- 3 thought this should remain with KLTR as it was a real risk for local authority budgets. It was added that there are financial, environmental, public health and safety and insurance liabilities and many other implications that a local authority should not be expected to deal with on behalf of a community group.
- It was suggested that the KLTR's disclaimer time limit could be extended by amending legislation to allow the KLTR to hold property for long enough to facilitate an OPTS transfer.

Of those who neither agreed nor disagreed to Question 7:

- One commented that 8 months is the fundraising period for community bodies under Part 2 of the Land Reform (Scotland) Act 2003 and that should be the minimum period they are given under OPTS (or longer, if appropriate). This is addressed under question 4 (OPTS process).
- It was suggested that the OPTS guidance should clarify the status of "holding agent" in terms of ownership, liabilities, etc., and indicate what happens to the land if the community body is unable to raise sufficient funds within the specified time.

Other comments:

- If an asset is transferred to a holding agent, consideration should be given as to whether the community could simply opt for a Community Asset Transfer instead.
- Consideration needs to be given as to who would cover any transactional costs relating to transferring the property to a holding agent.

## **Conclusion**

The KLTR recognises the concerns raised relating to public body/local authority capacity, budget and potential exposure to risk in acting as a holding agent whilst funds are being raised by an acquiring community body. Whilst we are considering which types of bodies may temporarily retain OPTS property and the types of community bodies able to apply to OPTS, we consider that requiring a community body to be appropriately constituted at the stage where they submit comments on the local authority's submission would reduce the risk of an unsuccessful transaction

later, as only those community groups with serious intent to purchase property would establish a community body. This should reduce the risks for the holding agent.

The KLTR welcomes offers from some stakeholders (public bodies and local authorities) to consider acting as holding agents as this will reduce the risk regarding KLTR disclaimer deadlines. Such organisations would not be fettered by a third party requesting the KLTR to disclaim property, which could result in considerable pressure on the OPTS process and, in particular, the amount of time community groups would have to secure funding and may affect the viability of any transfer through OPTS occurring. The KLTR remains open to any further suggestions on how this may be taken forward in the future.

Regarding concerns relating to additional costs for a holding agent temporarily retaining property, the KLTR is mindful that holding agents may wish to recover their costs in the same way as the KLTR and this would primarily be a matter for the holding agent to consider. For example, where a property has a market value of £40,000, if the KLTR's and holding agent's costs total £10,000, the community still benefits by £30,000 by paying a nominal value rather than market value. However, the KLTR recognises that this will need to be considered on a case-by-case basis, depending on the valuation price and costs involved.

### **Properties to which OPTS should apply**

#### **Question 8**

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?

19 respondents provided responses to Question 8 as follows: -

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	8			8
Public Body	5			5
Community	2			2

Legal profession				
Charity	1			1
Individual	3			3
Other				
<b>Total Respondents</b>	<b>19</b>			<b>19</b>

Overwhelmingly, there was support for the proposal and 5 respondents made additional comments to Question 8.

*“All types of land and properties should apply. Working through Local Authorities means that a strategic and partnership approach can support the best outcome for local communities”*

#### **Local Authority**

All respondents to this proposal agreed that OPTS should apply to all types of properties as described, thereby maximising the opportunities via the Scheme for proposals, etc., to benefit the local community.

Of those who agreed with the proposal in Question 8:

- Two commented that, in some cases, it may be that demolition and redevelopment presents an opportunity for a public body or community group to meet its goals for delivering, for example, affordable housing or other much-needed facilities. Commercial properties can be adapted for residential use, and vice versa, if this is seen as necessary for a community.
- Two commented that there should be no restriction on the property types and that there should be a sustainable plan in place for the development and use of the property, as every type of property has the ability to impact negatively on local communities if left ownerless.

#### **Conclusion**

The KLTR appreciates the wide range of aspirations communities may wish to deliver and notes the unanimous agreement by respondents that OPTS should not be restricted to certain types of property. OPTS will therefore apply to all types of properties, land and buildings, to maximise the potential for creating opportunities for community benefit through the Scheme.

However, in order to protect public funds and to limit risks to those involved, only properties up to the market value of £500,000 will automatically qualify for OPTS. Properties over that value will require KLTR management approval, therefore, that does not result in them being automatically excluded. At the other end, so as not to involve disproportionate levels of public resource and expense, particularly small or otherwise minor properties will be excluded.

A further safeguard will apply to properties where the risk and potential liabilities are considered too great for the property to be passed on to another party or where other relevant factors apply. This already applies to ownerless property notified to the KLTR and we will continue to undertake a risk assessment before the property is offered under the OPTS. If the property appears to be too high-risk, the KLTR will disclaim Crown rights but doing so does not necessarily result in lost opportunities for communities. When a property is disclaimed by the KLTR, it then becomes effectively ownerless and communities and other interested parties may then be able to apply to claim the property by other means, such as through a vesting order or by prescriptive claim under sections 43 to 45 of the Land Registration etc. (Scotland) Act 2012. Public bodies also have additional powers available to them, such as compulsory purchase.

In any case, it must be understood that the KLTR, as part of being a properly run public office, requires to maintain control of its own risk exposure, and it may be considered that properties are inappropriate for further consideration in the context of OPTS, in respect of which the KLTR's decision shall be final. The KLTR is often required to balance the risk of dealing with any property against the risk of liability to the public purse, amongst other potentially relevant factors, and must operate within the constraints of law and practice that apply to the KLTR. This may also mean that properties being considered in the context of OPTS may need to be removed from that process on occasion by KLTR and with immediate effect (e.g. by disclaimer). Ultimately, the KLTR will ensure that the Crown's ability to deal with, or disclaim, bona vacantia is suitably preserved, in order to ensure that the KLTR is able to address Crown interests effectively in the variety of factual circumstances that may arise.

### **Considering community interest**

#### **Question 9**

Do you agree that the proposals from section 3.4 of the consultation document provide an opportunity for ensuring community interests are considered as early as possible? If not, why not?

20 respondents provided responses to Question 9 as follows:

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	5		3	8
Public Body	5		1	6
Community	2			2
Legal profession				
Charity	1			1
Individual	3			3
Other				
<b>Total Respondents</b>	<b>16</b>		<b>4</b>	<b>20</b>

12 respondents made additional comments to Question 9. There was significant support for the proposal.

*"It's encouraging to see that the proposals reflect the aspirations of the Scottish Land Commission protocol on engaging communities in decisions about land."*

**Community**

16 out of 20 respondents (80%) agreed that the proposals from section 3.4 of the consultation document provide an opportunity for ensuring community interests are considered as early as possible. It was considered appropriate that communities should be notified at the same time as local authorities and public bodies (through HIE or another recognised community organisation).

Some respondents suggested that publication of the available properties on an open searchable database on the KLTR website would be helpful in alerting relevant community bodies and local authorities about potential opportunities. It was also suggested that working through local authorities would be the best way of ensuring that communities are made aware of the opportunities regarding local ownerless assets. This utilises the existing networks for communication, such as Community Councils, Locality Partnerships, community organisations and local social media.



Further guidance would be welcomed on what evidence of support from the local authority is required and how local authorities are expected to engage with the local community to ensure that local collaborative working is achieved.

Of those who agreed with the proposal in Question 9, additional comments were noted:

- One respondent queried how HIE, as the community advocate body, fits into the initial notification process and observed that there is no mention of signposting the community to HIE, but just to the local authority.

### **Conclusion:**

The KLTR notes stakeholder interest in being notified about OPTS properties and a list of such properties will be maintained on the KLTR's website. This should enable those interested to view properties within their local authority area. The KLTR also recognises the need to engage with local community members as early in the process as possible and the OPTS process has been amended to reflect this. While the consultation document proposed a sequential approach to advertising property, firstly to public bodies through the Scottish Government's trawl process, then to local authorities in the event of no public body interest and, thereafter, to communities if the local authority had no ownership interest, the KLTR believes the OPTS process will be fairer and more transparent if intimation of properties issues to all parties simultaneously. Notification will therefore be sent to the OPTS community co-ordinator, who will then notify other key community stakeholders, and discussions on how this might work in practice are ongoing. This should provide a unified approach within the community sector. However, while notification will be simultaneous, the public interest criteria will still apply in relation to who receives the property.

### **OPTS criteria**

#### **Question 10**

Do you agree that the criteria from section 3.5 of the consultation document should apply to the OPTS? If not, what criteria do you think should or should not apply and why?

19 respondents provided responses to Question 10 as follows:

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	6	1		7
Public Body	5	1		6
Community	2			2
Legal profession				
Charity	1			1
Individual	3			3
Other				
<b>Total Respondents</b>	<b>17</b>	<b>2</b>		<b>19</b>

17 of the 19 respondents (89%) agreed that the criteria from section 3.5 of the consultation document should apply to the OPTS.

9 respondents made additional comments to Question 10. Of those who agreed with the proposal:

- One suggested that the KLTR delegates this policy task to the Scottish Government's Community Land Team given its experience in reviewing community land proposals under the Community Right to Buy scheme.
- Another commented that 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 that used by Forestry and Land Scotland) would be preferable.
- One respondent suggested that it would also be beneficial to consider the nature of the community organisation, for example: when it was established; if it is constituted; its level of membership; and its purpose and main objectives to ensure that it aligns with the purpose of the redevelopment of the property.
- It was also suggested that specially designed application forms at each stage of the process would be helpful to clarify what information is to be supplied, by whom and what support in principle is required at each stage.

## Conclusion

The KLTR considers the criteria to be necessary and justifiable to allow evaluation of whether the identified property is suitable for transfer to the applicant under the OPTS. The KLTR welcomes the significant support from respondents to the proposed criteria and further consideration will be given to the more detailed points raised.

The KLTR accepts the suggestion that application forms should be created to assist with the OPTS process and to ensure the correct information is submitted at each stage by the relevant parties. The OPTS guidance will provide further information.

One respondent queried whether the KLTR's proposals meant to restrict the scheme to local projects as there may be scope for national projects. The aim of the OPTS is to create opportunities to bring ownerless properties back into productive use for community benefit where it is in the public interest to do so. While there is no intention to restrict community aspirations, communities will wish to consider how their proposals for a national project will meet subsidy control criteria. It is for recipients of OPTS property to satisfy themselves, and the relevant authorities, that subsidy control criteria are met and that the level of subsidy control is not exceeded. An undertaking to this effect will form part of the OPTS transfer.

The KLTR welcomes the suggestion of an OPTS evaluation panel and the benefits this could provide. As above, this will be considered alongside other Scheme delivery issues.

## Public interest issues - questions 11 & 12

### Question 11

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

20 respondents provided responses to Question 11 as follows:

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	7		1	8

Public Body	6			6
Community	2			2
Legal profession				
Charity	1			1
Individual	3			3
Other				
Total Respondents	19		1	<b>20</b>

6 respondents made additional comments to Question 11. There was overwhelming support for the proposal.

*“Public interest should always be considered before private interest.”*

It was overwhelmingly agreed by 19 out of 20 respondents (95%) that public interest should always be considered before private interest.

Of those who agreed with the proposal in Question 11, additional comments were:

- This should not preclude private sector use of a site if there is no viable public or community use and where it can be robustly demonstrated that this is in the public interest and has the support of local communities.
- Public and private interests should be considered equally to provide a sustainable outcome.

Of those who neither agreed nor disagreed to Question 11:

- One respondent suggested that advice should be taken from the local authority on competing private and public interests. Local authorities are best placed to advise on resolving the issue of ownerless assets within their area that can best contribute to improving social, environmental and economic wellbeing locally.

Concerns were raised over competing public sector and community body interests and how a decision would be reached.

## Conclusion

The KLTR is pleased that almost all respondents agree that public interest should always be considered before private interest and this will be maintained throughout the OPTS process.

The consultation document recognised that not all public bodies, local authorities, community bodies and individual members of a community have the same aspirations or priorities. Where a community body and public sector organisation both wish to take ownership of an OPTS property, our intention is that the preferred use should be determined locally and a single approach made to KLTR through OPTS. That, of course, does not prevent interested parties from agreeing a multiple use solution. Local authorities already have widespread experience in considering public interest matters and determining local needs, such as in relation to the planning system, local place plans and local development plans, and the KLTR believes that, in general terms, local issues may often be best determined locally. It will be, first and foremost, for the local authority to demonstrate to the KLTR how its conclusions have been reached. The KLTR will then go on to consider whether the public interest has been reasonably applied in each case, taking account of any views submitted by representatives of the community.

The OPTS guidance will provide further information on how this should work in practice.

### Question 12

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

18 respondents responded to Question 12 as follows:

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	3	2		5
Public Body	5	2		7
Community	2			2
Legal profession				

Charity	1			1
Individual	2		1	3
Other				
Total Respondents	13	4	1	<b>18</b>

9 respondents submitted additional comments in response to Question 12. Generally, there was support for the proposal.

*"We think this is reasonably defined. If the definition of "public interest" is too tight, then this could limit what can be done."*

### **Public Body**

13 of the 18 respondents (72%) thought that the public interest was defined reasonably for the purposes of the OPTS. The majority agreed that whilst public interest is a notoriously difficult term to define objectively, a wide discretion is appropriate, and a case-by-case approach should be sufficient for decisions to be consistently made in the public interest.

It was suggested that the definition needs to be sufficiently clear to allow local authorities to anticipate whether their assessment of the public interest for their local area will be accepted by the KLTR and a range of OPTS indicators or policy objectives against which applications will be considered would be helpful.

However, it was also suggested that a public interest test (in line with the Community Wealth Building pillars) could be adopted.

Of those who agreed with Question 12:

- One respondent indicated 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.

Of those who neither agreed nor disagreed to Question 12:

- One comment was that it is notable that the Scheme proposals rely on public bodies or local authorities coming to a view on the public interest. This raises

questions of where the OPTS starts and stops. This requires to be clarified if the Scheme is to work well.

- o Another commented that it may be preferable for the KLTR to publish guidelines of what would not be considered to be in the public interest, given the emphasis on the importance of local knowledge. It continued that the criteria used by the KLTR in assessing whether a proposal is in the public interest should be sufficiently clear to allow local authorities to anticipate, with reasonable certainty, whether their assessment of the public interest for their local area in any given case will be accepted by the KLTR.

## Conclusion

Whilst the majority of respondents thought that public interest was adequately defined for OPTS purposes, Part 5 of the Community Empowerment (Scotland) Act 2015 was highlighted as a suitable mechanism for assessing applications and further consideration will be given to this point.

As the public interest is not universally defined, it is for each policy area to apply criteria for considering public interest issues and the KLTR does not want to create a definition of public interest which, in practice, would be too narrow and restricting, thereby unnecessarily limiting applications under the Scheme.

## Sustainable development issues

### Question 13

Do you agree that the KLTR should take a high-level approach to sustainable development issues, as detailed in section 3.6 of the consultation document, in order to allow further scrutiny and transparency at local level? If not, why not?

20 respondents responded to Question 13 as follows:

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	7	1		8
Public Body	4		2	6
Community			2	2

Legal profession				
Charity	1			1
Individual	3			3
Other				
<b>Total Respondents</b>	<b>15</b>	<b>1</b>	<b>4</b>	<b>20</b>

*“A high-level approach allows receiving authorities sufficient flexibility to determine how best to maximise sustainable development opportunities.”*

### **Public Body**

15 of the 20 respondents (75%) agreed that the KLTR should take a high-level approach to sustainable development issues, as detailed in section 3.6 of the consultation document, to allow further scrutiny and transparency at local level.

It was suggested that the KLTR draws on the approach that has been adopted by the Scottish Land Commission in moving away from using a purely financial basis for evaluating return on investment to one that measures the full range of social, environmental and economic benefits that a project will deliver.

Local authorities are well placed to identify and assess any sustainable development issues brought forward by proposals. However, this process does not provide communities with an option to appeal decisions if they believe sustainable development issues are ignored. Nor does it provide a mechanism to deal with interest from more than one community group interested in the property. Consideration could be given to publishing details of all transfers on the KLTR site. Not only would this raise the profile of the programme, but it would also give transparency to the decision-making process and recommendations made.

10 respondents made additional comments to Question 13 and, of those who agreed:

- One commented that it is best that the public body or local authority undertake the more in-depth consideration of whether a project is satisfactorily addressing economic, social and environmental benefits in the long term.
- Another respondent who agreed noted that this will be aligned to the Scottish Government’s sustainable development goals as Planning, Regeneration, Connected Communities and Business Support and Development teams are all working within that overarching context.



One respondent indicated that National Park Authorities may be able to provide advice and assistance to other public bodies in relation to sustainable development issues.

## Conclusion

Sustainable development is defined in section 3.6 of the consultation document as “development which meets the needs of the present without compromising the ability of future generations to meet their own needs”. This definition is widely recognised and the KLTR notes the support for our sustainable development proposals. It is important that the KLTR, through the OPTS process, takes into consideration social, environmental and economic benefits and that this is visible to the public, perhaps via publication of decisions on our website. The Scheme will require prospective purchasers to provide evidence of how the proposed acquisition and future use of the property will meet the sustainable development criteria and further information will be provided in the OPTS guidance.

## Dissolved companies and 6-year restoration window

### Question 14

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

16 respondents provided responses to Question 14 as follows:

Sector/group	Yes	No	Neither Agree/Nor Disagree	Total
Local Authority	1	4	1	6
Public Body		5		5
Community		1		1
Legal profession				
Charity		1		1

Individual	2	1		3
Other				
Total Respondents	3	12	1	<b>16</b>

12 respondents made additional comments to Question 14. Generally, there was support for the proposal.

*“KLTR is already well aware of risks involved in dealing with a company which could be restored, so we are happy to rely on KLTR’s judgement”.*

### **Community**

12 of the 16 respondents (75%) agreed that all property formerly owned by dissolved companies where the 6-year restoration window has not expired should be considered for OPTS, concluding that the KLTR has sufficient experience to determine the risks involved. However, concerns were raised over where the liability would lie should a dissolved company seek restoration after the property had been transferred.

Of those who agreed that all property previously owned by dissolved companies should be considered (Question 14), added the following comments:

- One agreed, as long as problems and lengthy/costly legal battles don’t arise from any loopholes, so that a dissolved company doesn’t attempt to take a now-refurbished property away from the community.
- Another respondent stated that it should only be those properties where former directors/members of the company have made early contact regarding a company’s restoration that should be excluded from the OPTS process.
- One respondent suggested that the Council could 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.

### **Conclusion**

Often, the KLTR is informed of potentially ownerless property when the dissolved company is still within the 6-year restoration window. To reduce the risk of a restored company making claim to OPTS property, the KLTR will expect applicants to consider the likelihood of a company being restored as part of their due diligence process and demonstrate to the KLTR in their application what steps have been

taken to ascertain such a likelihood. The KLTR cannot control, through OPTS, the question of whether dissolved companies may be restored at any time within the 6-year period. The KLTR will, therefore, take a cautious approach in these cases, especially where there appears to be a realistic possibility of company restoration. This is covered further in relation to liability and risk, below.

### Financial controls and safeguards

#### Question 15

In addition to the points detailed in section 3.8 of the consultation document, do you think any other financial controls or safeguards are required? If so, please describe how and why.

18 respondents provided responses to Question 15 as follows:

Sector/group	Additional safeguards (yes)	No additional safeguards (no)	Neither Agree/Nor Disagree	Total
Local Authority	2	5		7
Public Body	1	3	1	5
Community	1		1	2
Legal profession		1		1
Charity	2			2
Individual	1			1
Other				
<b>Total Respondents</b>	<b>7</b>	<b>9</b>	<b>2</b>	<b>18</b>

5 respondents made additional comments to Question 15. Generally, there was support for the proposal.

*"We agree that penalties for non-delivery of aspirations are unnecessary and may be a potential barrier/disincentive for community groups to come forward."*

**Local Authority**

Of the 18 responses received, 9 agreed that no additional financial controls or safeguards are required. Just under half of the respondents agreed that additional financial safeguards may be required, with the suggestion of annual returns by KLTR for a period of time. However, it was also noted that additional penalties may cause unnecessary barriers to community groups.

Of those who agreed that the proposed measures were adequate, the following additional measures were suggested:

- 2 commented that all safeguards that ensure private profiteering should not in any way hinder or hijack this process. One possible safeguard could be a right of first refusal in favour of the KLTR or local authority.

Of those who disagreed with the proposals:

- One commented that information about the KLTR's fees should be provided upfront to enable the local authority to assess whether the price to be paid is equal to or less than the market value of the property. The use of claw back conditions or similar could offer a good approach to ensure successful delivery.

## **Conclusion**

The KLTR welcomed the support for the proposed financial safeguards and the additional safeguards suggested by respondents. The safeguards proposed in the consultation document will, therefore, be incorporated into the OPTS process, including consideration of relevant safeguards required on a case-by-case basis, such as clawback provisions and conditions. However, the KLTR also recognizes the potential negative impacts for funders of any additional conditions placed on a property therefore conditions will only be included where necessary to protect public finances or where it is in the public interest to do so.

The KLTR will also consider the extent to which checks should be made that the property has delivered the intended benefits and continues to be used in accordance with OPTS aims and objectives.

## **Liability and Risk**

### **Question 16**

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

17 respondents gave responses to Question 16 as follows:

Sector/group	Yes	No	Neither Yes or No	Total
Local Authority	3	1	1	5
Public Body	5	1		6
Community	2			2
Legal profession	1			1
Charity	1			1
Individual	2			2
Other				
<b>Total Respondents</b>	<b>14</b>	<b>2</b>	<b>1</b>	<b>17</b>

Of the 17 respondents who answered this question, 14 (82%) agreed that the KLTR's approach to liability and risk is acceptable but recognised the specific risk of restoration of companies to the Register within the 6-year period following dissolution.

It was suggested that a committee composed of members of the public living near the recently acquired property could be introduced to ensure effective monitoring. Timeframes could also be introduced for properties to be returned to use.

Whilst the KLTR's proposals were accepted, a concern was raised that acquiring property even at a low or nil cost could immediately present significant liability and direct costs in terms of making safe or other actions and such properties present an uninsured risk to the responsible party.

7 respondents made additional comments to Question 16. Generally, there was support for the proposal.

*"We acknowledge the risks identified and commend the KLTR's leadership in developing this approach."*

**Public Body**

Of those who agreed with the proposal in Question 16 but considered that additional measures should be implemented, comments included:

- A clear understanding of what success would look like is required to ensure effective monitoring against established criteria. This may, for example, include timeframes for OPTS properties to be returned to use, as well as quality, cost and the extent to which aspirations are delivered in the completed project.
- A residual power should remain with the Scottish Ministers to intervene. Alternatively, legal powers should be given to local authorities or other bodies through appropriate personal real burdens.

## **Conclusion**

The KLTR appreciates the suggestions received and recognises that safeguards must be proportionate. For example, while creating a committee of members of the public to monitor the use of each OPTS property has its benefits, it will not be a requirement of the scheme. However, that does not prevent a community from creating such a group if they so wish.

The KLTR agrees that a timescale for properties to be brought back into use would be useful and is considering how this might be workable and enforceable.

The KLTR also agrees that low or nil cost properties can be a liability for the receiving party. As at present, the KLTR will assess carefully the risk involved with each OPTS property and may decide to unilaterally disclaim properties with significant associated risk or where other relevant factors apply, and at any point in time where that is considered appropriate. A disclaimer does not necessarily prevent public bodies, local authorities or community groups from acquiring the property as a disclaimed property then becomes effectively ownerless. As with any property transaction, the KLTR expects any potential recipient of OPTS property to similarly undertake due diligence prior to purchase and identify any liabilities involved. As applies presently, any transactions with the KLTR will be structured on the basis that the applicant has fully assessed the risks, on a "buyer beware" basis and without any additional guarantees or warranties from the KLTR. Needless to say, properties will only be transferred by agreement and will not be forced onto any third party. Ultimately, applicants to OPTS will require to take their own legal, financial and other professional advice, make their own enquiries about properties and other aspects, and the KLTR will not provide professional services support through OPTS.

## Monitoring OPTS and penalties - questions 17 & 18

### Question 17

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

14 respondents provided responses to Question 17 as follows:

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	2	3		5
Public Body	5			5
Community	1			1
Legal profession				
Charity	1			1
Individual	2			2
Other				
<b>Total Respondents</b>	<b>11</b>	<b>3</b>		<b>14</b>

Of the 14 respondents, 11 submitted additional suggestions on how the OPTS may be monitored. A large proportion of respondents agreed that monitoring should be introduced. The majority suggested a committee or working group should be created, which could be composed of members of the public, public bodies and/or local authorities. In addition, a review period of between 2-5 years was suggested.

However, it was added that, if the KLTR did not intend to create any penalties for non-delivery of aspirations, the purpose of monitoring is restricted to assessing performance of the scheme.

12 respondents made additional comments to Question 17 as follows:

- A clear understanding of what success would look like is required to ensure effective monitoring against established criteria;

- Case studies could be presented to the collaborative contributors to showcase examples of outcomes to encourage take up; and
- Legal powers should be given to local authorities or other bodies through appropriate personal real burdens.

### Conclusion:

As in the previous section, the KLTR will aim to ensure that any monitoring is proportionate, clearly defined and workable. The KLTR considers that the powers already available to public authorities are sufficient to support OPTS and the creation of any new monitoring groups should be for local communities to determine.

#### Question 18

Do you agree that penalties for non-delivery of aspirations are unnecessary, as detailed at pages 28-29 of the consultation document, and that local accountability should be sufficient to ensure delivery of agreed aspirations?

20 respondents provided responses to Question 18 as follows:

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	4		3	7
Public Body	6	2		8
Community	2			2
Legal profession				
Charity		1		1
Individual	2			2
Other				
<b>Total Respondents</b>	<b>14</b>	<b>3</b>	<b>3</b>	<b>20</b>



There was strong support for the proposals and 8 respondents made additional comments to Question 18.

*“We agree that penalties for non-delivery are unnecessary and may actually create a disincentive for local authorities and public bodies to engage with this initiative. Having a high level of transparency around uptake and progress such as regular published reports is much more likely to promote good practice”.*

### **Community**

14 respondents (70%) agreed that penalties for non-delivery of aspirations are unnecessary and that local accountability should be sufficient to ensure delivery of agreed aspirations. However, there were concerns that, if safeguards were not introduced, projects could remain uncompleted.

There were also concerns that local authorities may be asked to monitor transferred properties and already stretched resources would be impacted negatively.

Of those who agreed with the proposal in Question 18, further comments included:

- I broadly agree with the proposition, the KLTR cannot force a community to act as an instrument of the state in delivering objectives;
- 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; and
- Having a high level of transparency around uptake and progress, such as regular published reports, is much more likely to promote good practice than penalties.

Of those who disagreed with the proposal, comments included:

- The lack of a meaningful form of measurement or accountability would effectively render any conditions placed on a transfer meaningless.
- 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 Question 6.

Of those who neither agreed nor disagreed to Question 18, one respondent suggested that 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.

## Conclusion

The KLTR notes views on public body and local authority resources in considering ongoing monitoring within local communities and considers that, to enable the OPTS to succeed will require the support of, and collaboration between, all stakeholders involved.

A local authority will be expected to take into account any suggestions and aspirations raised by the local community and a community body will require to be appropriately constituted to deliver local benefits. These issues can be considered further when the scheme is reviewed and the KLTR intends to create a working group to consider any issues raised.

## Further Measures - questions 19-21

### Question 19

Which of the further measures listed in Section 4.1 of the consultation document do you think should be applied to the OPTS?

17 respondents provided responses to Question 19 as follows:

Type of Response	Agree - further measures	No further measures	Neither	Total
Local Authorities	5	2		7
Public Bodies	2	2	1	5
Community	1	1		2
Legal Sector				
Charity		1		1
Individuals	1	1		2
Other				
<b>Total Respondents</b>	<b>9</b>	<b>7</b>	<b>1</b>	<b>17</b>

Of the 17 respondents to this question, 9 agreed that the proposed measures were sufficient and 7 thought that further measures should be applied to the OPTS.

A significant number of respondents thought that further consideration should be given to imposing the £0.5m value limit as properties over this value could be valuable assets for communities as they may be in better condition than a lesser value property. It was also noted that the scale of projects will vary (similar to Community Asset Transfer), so setting an arbitrary cap on value would be counterproductive.

Additionally, some respondents supported that care should be applied in acceptance of land/property last belonging to companies still within the 6-year restoration period and concerns raised that the risk should not be passed to local authorities. These issues are covered previously.

Further measures included:

- Relating to limiting the scheme to individual properties with a market value of £0.5 million or less, there should not be a restriction on their inclusion where it can be demonstrated to be in the public interest. Offering such properties for transfer at market value, as suggested as an option in the Consultation, may mean that community interests are ignored and lead to outcomes where commercial interests that are at odds with community wishes are able to proceed.

## **Conclusion**

The KLTR has considered how any additional measures will impact on the ability of communities to take ownership of property via OPTS. Where a dissolved company is within the 6 year restoration window, the KLTR cannot provide any assurances or assessments about whether or not such a company may be restored, as this is not a matter within the control of the KLTR. It is noted however that where the KLTR has validly disposed bona vacantia property that belonged to a dissolved company to a 3<sup>rd</sup> party, a later restoration of that company does not affect the validity of that earlier disposition by KLTR to the 3<sup>rd</sup> party. If properties from dissolved companies still within the 6-year restoration window were excluded from OPTS, the number of properties which could be brought back into community benefit through OPTS may be vastly reduced.

The issue concerning an overall financial limit on the Scheme presents similar drawbacks, however, applying a limit of £0.5m per property would have minimal effect, if any, as the KLTR is rarely made aware of *bona vacantia* property equal to or near this value.

### Question 20

Do you think properties last belonging to now dissolved companies within the 6-year restoration window should be excluded from OPTS or do you agree that a criteria-based policy approach, as described in section 4.1 of the consultation document, is the best way of addressing this?

20 respondents provided responses to Question 20 as follows:

Sector/group	Agree	Disagree	Neither Agree/Nor Disagree	Total
Local Authority	7		1	8
Public Body	6	1		7
Community	2			2
Legal profession				
Charity				
Individual	2		1	3
Other				
<b>Total Respondents</b>	<b>17</b>	<b>1</b>	<b>2</b>	<b>20</b>

Of the responses received, only 1 thought that properties last belonging to dissolved companies within the 6-year restoration window should be excluded from OPTS. 17 respondents (85%) agreed that a criteria-based policy approach was the best way of addressing this. Respondents were content for the risk from restored companies seeking compensation or attempting to recover property to be carried by the KLTR in order to protect the recipient of OPTS property.

There was significant support for this proposal and 10 respondents made additional comments to Question 20. Of those who agreed, additional comments included:

- all properties should be in scope, however, the OPTS may not be suitable in all cases, particularly where a disclaimer offers a better safeguard, but this should not prevent properties being dealt with;
- It should only be those properties where interested parties, such as former directors/members of the dissolved company, have made early contact regarding a company's restoration that should be excluded from the OPTS process;
- The longer a property is left empty (i.e. 6 years or so), the higher the risk of significant damage and associated restoration costs. This would make them particularly challenging to take on for potential public good projects.

Of those who disagreed with the proposal:

- all properties belonging to now dissolved companies which have been dissolved for fewer than 6 years should be excluded, bar compelling evidence that the directors have renounced all intention to restore. The only upshot to this would be to allow a community time to commence the necessary preparatory work and develop sound proposals to allow an expedited transfer upon expiry of the restoration longstop.

## **Conclusion**

The KLTR will carefully consider the risks and options on a case-by-case basis, including disclaiming the property where considered appropriate.

Only a very small per cent of companies that are struck off apply for restoration and applying a blanket ban on disposals within this 6-year period appears disproportionate. The KLTR considers that waiting until the 6-year period has ended will prevent a large number of properties being entered into OPTS and any delay could scupper opportunities for communities to deliver their aspirations. Properties within the 6-year restoration period will, therefore, be included in OPTS. This does mean that additional risk factors are introduced for applicants in this scenario, e.g. abortive costs in the event of a company being restored. Where a company is restored before a disposal by the KLTR, that company may immediately regain ownership of any relevant property, which would almost certainly bring to an end the immediate possibility of any transfer by the KLTR. Applicants will be encouraged to consider the possible implications of company restoration and consider taking their own independent advice.

**Question 21**

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

14 respondents submitted responses to Question 21 as follows:

Sector/group	Yes	No	Neither Yes/or No	Total
Local Authority	2	4		6
Public Body		4		4
Community			2	2
Legal profession				
Charity	1			1
Individual		1		1
Other				
<b>Total Respondents</b>	<b>3</b>	<b>9</b>	<b>2</b>	<b>14</b>

Of the 14 responses to this question, only 4 considered other measures should be taken to safeguard those involved in the OPTS process, mainly relating to further assurances that public bodies are protected from risk.

Also suggested was further clarity to explain the intentions of OPTS and whether this is intended to replace the existing KLTR system in full.

There was a high level of support for the proposals with no other measures being required and 4 respondents made additional comments to Question 21:

- The measures to safeguard the OPTS process are sufficient for ownerless properties that were formerly owned by now dissolved companies. However, large numbers of properties across Scotland are empty following the death of last known owners, or where current owners cannot be traced. Measures that would make it easier for these types of properties to be submitted to KLTR and included in OPTS would be very welcome.

- A fair and transparent right of appeal process should be put in place. Local authorities do not have the time, statutory responsibility or resources to resolve competing interests over ownerless assets. In addition, public consultation should form an obligatory part of the initial decision by a local authority or community group to take ownership of an asset and the appeals process.

## Conclusion

OPTS will not replace the existing KLTR *bona vacantia* process. It should be borne in mind that *bona vacantia* can concern virtually any type of property or right that is capable of ownership, in all manner of circumstances, and it follows that the types of work undertaken by the KLTR are extremely wide-ranging and go beyond the ambit of OPTS. OPTS provides a route to discounted transfers to public and eligible bodies where it is in the public interest to do so. Some properties will be too high risk for OPTS and empty properties passed to the Crown from deceased persons with no relatives (*ultimus haeres*) will continue to be excluded from OPTS because of the likelihood of a previously untraced relative appearing at any time in the future, and will continue to be treated as part of the KLTR's *ultimus haeres* function. However, this can be considered further during the first review of OPTS. It should be appreciated that whilst a property may be functionally abandoned, or neglected, that does not of itself mean that the property is *bona vacantia*; in other words, the KLTR's legal basis does not arise through the problematic nature of a property, and the KLTR must be careful to operate within the ambit of its powers and authority.

The KLTR recognises the need for fairness and transparency in the OPTS process and has considered a potential appeals process. However, he has concluded that, providing the process is conducted fairly and reasonably, there already exists a suitable vehicle for providing judicial review of public sector decisions. No separate appeals process is, therefore, required.

## Assessing Impact - questions 22-28

### Question 22

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?

9 respondents responded to Question 22 as follows:

Sector/group	Yes	No	Neither Agree/Nor Disagree	Total
Local Authority	1	3		4
Public Body		3		3
Community	1			1
Legal profession				
Charity				
Individual			1	1
Other				
<b>Total Respondents</b>	<b>2</b>	<b>6</b>	<b>1</b>	<b>9</b>

A large majority declined to make any comment regarding 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.

Comments in response to Question 22 included:

- 3 commented that higher development costs and lack of availability of contractors and building materials contribute to a more direct impact on Island communities;
- One respondent commented that there are many derelict houses in the island they live on and all assistance to overcome this is welcomed. It was specified that it should be ensured that ownership of these properties go to locals to benefit the community, rather than being transferred for use as holiday homes, as is fairly commonplace.

## Conclusion

The KLTR notes that no concerns were raised on the impact of OPTS, itself, on island communities in comparison to mainland areas but recognises the distinct challenges for our more remote and fragile communities, particularly in the islands. KLTR officials will continue to ensure islands communities are not disadvantaged through OPTS.



**Question 23**

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?

17 respondents gave responses to Question 23 as follows:

Sector/group	Yes	No	Yes/ No	Total
Local Authority		9	1	10
Public Body	2		2	4
Community	1			1
Legal profession				
Charity		1		1
Individual	1			1
Other				
<b>Total Respondents</b>	<b>4</b>	<b>10</b>	<b>3</b>	<b>17</b>

10 respondents confirmed that they were not 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.

Of those who commented further:

- all suggested that OPTS would provide a positive impact, such as increasing the provision of places for community benefit and for all ages.
- 3 agreed that the impact of enlarging the existing social/affordable housing stock for adults up to the age of 26 and (their) children would be beneficial. Bringing sites back into productive use can meet a range of national outcomes.

## Conclusion

The KLTR welcomes the positive responses to this question and is mindful that OPTS has the potential to improve aspects of the lives of young people. He is enthusiastic about this prospect and look forward to welcoming applications under OPTS which include proposals to benefit young people.

### Question 24

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)?

14 respondents provided responses to Question 24 as follows:

Sector/group	Yes	No	Neither Yes or No	Total
Local Authority	1	5		6
Public Body		4		4
Community	1	1		2
Legal profession				
Charity		1		1
Individual	1			1
Other				
<b>Total Respondents</b>	<b>3</b>	<b>11</b>		<b>14</b>

Of those who responded, 11 respondents (79%) indicated that they are not 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).

One respondent suggested that people with protected characteristics are even more likely to have issues accessing/finding affordable housing, so increasing the

provision of this within our communities will benefit all of the groups mentioned above.

## Conclusion

The KLTR agrees that OPTS has the potential to positively impact those with protected characteristics who may face obstacles when accessing affordable housing. A aim of OPTS is to create opportunities for, as far as possible, the community as a whole, which includes those who have protected characteristics.

### Question 25

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?

18 respondents provided responses to Question 25 as follows: -

Sector/group	Yes	No	Neither Yes or No	Total
Local Authority	2	2	3	7
Public Body	6			6
Community	2			2
Legal profession			1	1
Charity	2			2
Individual				
Other				
<b>Total Respondents</b>	<b>12</b>	<b>2</b>	<b>4</b>	<b>18</b>

12 of the 18 respondents agreed that OPTS proposals should have a positive impact on the environment by bringing ownerless assets back into productive use. 13 respondents made additional comments to Question 25.

*“Research into vacant and derelict land, which is often ownerless, has shown clear benefits to the environment of bringing sites back into productive use. In particular, our Case Studies clearly demonstrate how bringing such sites back into productive use can meet a range of National Outcomes”*

**Public Body**

Of those who responded to Question 25:

- All 13 agreed that the proposals will make a positive impact on the environment and go a long way towards the removal of environmental blight that empty properties can often cause. 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.

Of those who neither agreed nor disagreed to Question 25:

- 2 commented that collaborative working, and promotion of the scheme should serve to heighten awareness and secure better use and outcomes. Bringing an unused asset back into use could have core or tangential benefits to the environment. Discussions around the introduction of the Part 3A Right to Buy in relation to abandoned, neglected or environmentally mismanaged land may be instructive in this regard.
- One commented that it would be beneficial to the environment if neglected land or dilapidated buildings could be brought back to useful purpose and good use. Use of this process for bringing empty homes back into use saves efficiencies and is a more sustainable approach to Get to Zero and climate change purposes by re-using existing buildings. It was suggested that refurbishing an existing building generates far fewer carbon emissions than constructing a new building.

Other comments included:

- In addition to direct environmental benefits, there could also be value from a climate change adaptation perspective, in particular with redevelopment proposals that address green infrastructure and water management;
- the scheme could have positive impacts for the historic environment where ownerless property with cultural significance is retained, repurposed and given a sustainable future; and
- Focusing on buildings will help the UK to deliver on its climate targets, support a green and inclusive recovery, and generate innovation.

## Conclusion

The KLTR agrees that bringing disused properties back into productive use benefits the environment in a number of ways and also the communities in which the property is situated. The KLTR encourages all those involved in the OPTS process to consider how ownerless properties can best deliver environmental benefits for the whole of the community.

### Question 26

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)?

16 respondents provided responses to Question 26 as follows:

Sector/group	Yes	No	Neither Yes nor No	Total
Local Authority	2	2	3	7
Public Body	4			4
Community	1		1	2
Legal profession			1	1
Charity	1			1
Individual			1	1
Other				
<b>Total Respondents</b>	<b>8</b>	<b>2</b>	<b>6</b>	<b>16</b>

Most respondents agreed that the the proposals in this consultation would have a positive impact on groups or areas at socioeconomic disadvantage (such as income, low wealth or area deprivation) by bringing ownerless property back into community use. Some commented that some in areas towards the lower end of SIMD (Scottish Index of Multiple Deprivation) indicators may not be able to travel to enjoy amenities and, as such, improving what is on offer locally to them would be

of benefit. The transfer of property at nominal value removes a potential barrier in the form of market value purchase price.

8 respondents made additional comments to Question 26 in support of the proposals.

*“Bringing empty properties back to use can have many positive impacts on communities. Where properties returned to use under these proposals are in areas experiencing socioeconomic disadvantages, there will be a positive effect”.*

**Charity**

Of those who thought OPTS would provide a positive impact:

- 3 agreed that research into vacant and derelict land (VDL), which is often ownerless, has shown that areas of high socio-economic disadvantage are more likely to host VDL sites, and communities to be more heavily impacted by the detrimental issues associated with such sites. It was suggested that research clearly demonstrates how bringing such sites back into productive use can meet a range of National Outcomes.
- 2 commented that many assets subject to OPTS will be located in areas that experience socioeconomic disadvantage and bringing these assets into productive use will have a positive impact in such areas.

Of those who neither agreed nor disagreed to Question 26:

- 2 commented that the revised scheme sounds positive and therefore will hopefully benefit the country if land and buildings can be requisitioned to provide affordable housing.

Other comments included:

- Various positive impacts, including opportunities for development to support affordable housing, improved outlook/amenity of an area, attracting businesses and generating employment; and
- We believe that the proposals to transfer property at the nominal value could positively enhance outcomes for areas of socio-economic disadvantage, by removing one potential barrier in the form of a market value property purchase price. There will, however, remain a need for local animators and local organisations to support the development of sustainable projects.

## Conclusion

The KLTR recognises that OPTS could have a significant positive impact on groups of people and areas at a socioeconomic disadvantage and responses to the consultation support this. OPTS should create positive outcomes in communities across Scotland where there is ownerless property and the KLTR welcomes the support for assisting more disadvantaged areas. He is confident that this can be best achieved through collaborative working.

### Question 27

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

16 respondents responded to Question 27 as follows:

Sector/group	Yes	No	Neither Yes/or No	Total
Local Authority	4	1	2	7
Public Body	1	3		4
Community	1	1		2
Legal profession				
Charity		1		1
Individual	2			2
Other				
<b>Total Respondents</b>	<b>8</b>	<b>6</b>	<b>2</b>	<b>16</b>

8 respondents raised concerns around potential unacceptable costs and burdens that may arise as a result of the OPTS proposals. Concerns were raised around resourcing for local authorities and the additional costs and funding that could be involved with this. It was added that it would be useful to know what the KLTR costs would be upfront to allow local authorities to assess whether proceeding would adhere to Best Value obligations.

4 respondents made additional comments to Question 27:

- 3 commented that costs could be unacceptable, depending on the condition of the land/property. For example, if a high level of risk is assumed and there is a cost of decontamination for former industrial sites.
- One commented that, where a community group identifies a property which is suitable for the OPTS, they will incur costs before contacting KLTR about the property as they are required to obtain title evidence, plans and other reports to present to KLTR.

## **Conclusion**

The KLTR notes concerns around resourcing for local authorities and the additional costs and funding that could be involved with OPTS, plus the benefit in knowing KLTR costs upfront to allow local authorities to assess whether proceeding would adhere to Best Value obligations.

In developing the OPTS, the KLTR will seek to ensure that KLTR costs are kept to a reasonable level. For example, the KLTR will consider the availability of providing copies of the valuation at an early stage of the process, which may avoid duplication in cost. We will also aim to share other appropriate information with interested parties to ensure a sufficient degree of transparency and to help encourage a collaborative approach to cost-effectiveness. As OPTS cost will vary from case-to-case, it is not possible to provide definitive costs but the KLTR intends to focus on recovering its professional costs incurred in any case, such as legal, valuation and survey report fees.

Under existing processes, the KLTR considers transfer of ownerless properties to interested parties for assessed market value. OPTS is a significant departure from that, vastly reducing the revenue raised by the department by operating on a cost-recovery basis. However, it is for others involved in the process to consider how they might equally deliver a cost-effective process. The KLTR would encourage any party preparing to engage in the OPTS process to discuss potential funding with funding providers in advance.

### **Question 28**

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

15 respondents provided responses to Question 28 as follows:



Sector/group	Yes	No	Neither Yes/or No	Total
Local Authority		6	1	7
Public Body		4		4
Community		2		2
Legal profession				
Charity		1		1
Individual		1		1
Other				
Total Respondents				
<b>Total</b>		<b>14</b>	<b>1</b>	<b>15</b>

There were no positive or negative impacts identified in relation to data protection or privacy.

One respondent made an additional comment in relation to Question 28:

- The scheme possibly needs an information sharing agreement - particularly where the land or building relates to a deceased person or dissolved commercial body still within the 6 year restoration period.

## **Conclusion**

The KLTR has a published privacy statement which explains how we use and collect personal data. This will, of course, apply to OPTS as it does to all areas of KLTR work. We are satisfied that no potential negative impacts were identified by respondents and consideration of an information sharing agreement is ongoing.

### 3. Other points raised during consultation

This section covers other key points relating to OPTS raised during the consultation period which did not relate specifically to the questions contained in the consultation document. This covers points during pilot cases, OPTS seminars and in written responses to the consultation exercise.

#### 3.1 The KLTR should publish a list of all OPTS properties on its website.

The KLTR welcomes this suggestion and will consider publishing a list of all properties subject to the OPTS process on the KLTR's website.

#### 3.2 There may be issues where a property lies on the boundary of more than one local authority.

Most properties have delivery points identified for Royal Mail delivery purposes and it is likely that a lead local authority will be identifiable from the postal address. However, where it is identified to KLTR that a property "straddles" two or more local authority areas, the KLTR will inform each local authority involved. OPTS will encourage local authorities to work collaboratively with each other as well as with others involved in the OPTS process and it is suggested that local authorities identify a lead authority to take the property forward, based on local public interest considerations. Further advice will be provided in the OPTS Guidance.

#### 3.3 ***Should restrictions be applied to the valuation report commissioned by the KLTR, for example, in confidence and only to be circulated to directors of the community company?***

In accordance with the Scottish Public Finance manual (SPFM), the KLTR may instruct a valuation of a *bona vacantia* property, where such a valuation is considered necessary, from a suitably qualified valuer. However, the SPFM deems it unnecessary to obtain a professional valuation if the property is estimated to be under the value of £20,000 and the disposal would be non-contentious.

The KLTR does not expect to place any restrictions on sharing a valuation report, as this provides transparency of the process. However, it is acknowledged that valuers may require their own restrictions to be imposed or may provide advice to KLTR recommending that KLTR consider placing restrictions, perhaps in the circumstances of a particular case. Furthermore, the OPTS requires to operate lawfully subject to other compliance regimes, which may restrict the ability to share information. However, it is hoped that the valuation report outcomes can be made

available to those involved in the OPTS process and that this provides a substantial efficiency.

The KLTR cannot provide legal or valuation advice, which includes regarding the content of a valuation report. Prospective purchasers are expected to ensure they are familiar with the property, its condition and any legal issues relating to it as part of their own due diligence process.

### **3.4 *What will the KLTR do should the community body acquiring the property through OPTS cease to operate in the future?***

The KLTR has no intention of reclaiming property after disposal and, providing the property is effectively dealt with by the community body prior to its dissolution, the community company's memorandum and articles of association will provide for disposal of assets on dissolution. Ownership would therefore be transferred in accordance with these provisions.

### **3.5 *What will happen if local authorities do not have the time, statutory responsibility or resources to resolve competing interests over ownerless assets?***

The OPTS is designed to encourage collaborative working and the KLTR hopes that, in most cases, any local competing interests to be resolved mutually, before the property is identified to the KLTR. Proposals should demonstrate the best outcome, in the public interest, for the local community. The KLTR is currently considering offering local authorities six months (increased from 3 months) to respond to an intimation from the KLTR.

### **3.6 *What confidence does the KLTR have that the local authority can perform the functions proposed under OPTS?***

The KLTR considers that local authorities will recognise the significant benefits that OPTS can provide to their community and will want to work collaboratively to secure properties at, in most cases, a small fraction of their market value to improve areas and provide opportunities for communities.

### **3.7 *What will happen if community bodies refer property to the KLTR but their proposals are rejected by the local authority?***

Under the proposals being considered, the local authority will be expected to respond to the KLTR (copying in the community body) providing the reason(s) they are objecting to the proposal. The KLTR will consider the local authority's response

and await the community body's view. The KLTR may seek further advice from whoever is deemed appropriate, such as the Scottish Government Estates or Land Reform Teams, Highlands & Islands Enterprise, Crown Estate Scotland, the local authority or the community, prior to the decision being published. Further consideration will be given to this issue, including such issues being directed to an advisory panel.

The KLTR's decision will be final and will be published on our website.

**3.8 *Is OPTS a scheme operated solely by KLTR requiring voluntary cooperation by other public bodies to make it work, or a partnership approach with the relevant public bodies? In the latter case, is a further agreement required?***

OPTS is a scheme designed to create opportunities for local authorities and communities to work collaboratively to the benefit of their local community. OPTS will be administered by the KLTR with engagement from key stakeholders and is designed to encourage collaborative working between the KLTR, public bodies, local authorities and communities.

**3.9 *Who would be responsible for any liabilities associated with the property if it were to be transferred to a holding agent to allow the community body to raise the required funds?***

The property would be transferred at nominal value and, as with any property transfer, the holding agent would be expected to carry out its own due diligence before accepting the property. It is anticipated that the holding agent would assume responsibility for the property until the community body takes ownership.

#### **4. Next steps**

Subject to the KLTR's approval, the Scheme is expected to be commenced this financial year and following further discussion with key stakeholders.

The KLTR Team is presently undertaking a further series of stakeholder Teams seminars to discuss the policy changes resulting from this analysis and any other considerations during policy development.

Further information will be provided on the KLTR's website.

## List of Respondents

1. Private Individual
2. Office of the Scottish Road Works Commissioner
3. Private Public Body
4. Disclosure Scotland
5. Scottish Empty Homes Partnership
6. North Lanarkshire Council
7. Private Individual
8. Private Individual
9. Crown Estate Scotland
10. East Renfrewshire Council
11. Energy Saving Trust
12. Scottish Land Commission
13. Dumfries & Galloway Council
14. Community Land Scotland
15. Development Trusts Association
16. Historic Environment Scotland
17. Argyll & Bute Council
18. Law Society Scotland
19. Highlands and Islands Enterprise
20. South Lanarkshire Council
21. Scotways
22. Cairngorms National Park Authority
23. North Ayrshire Council
24. South of Scotland Enterprise
25. East Ayrshire Council
26. Glasgow City Council