

* Frequently Asked Questions

FAQs for both Landowners and Communities

1. How long is it reasonable to expect the negotiated sales process to take?

Realistically the entire process will take somewhere between six months and two years, depending on the scale and complexity of the land/ assets in question. Taking previous experience into account then we would estimate that a large whole estate process with complex mapping took two years while smaller land transfers have taken considerably less time. Things that could potentially cause delays include the timing of important stages in the process e.g. community consultation having to take place at holiday periods or requests for landowner information during important times of the year for certain land management activities e.g. sporting management or harvesting. The commissioning of professionals to undertake surveys or carry out business planning, the timing of grant decisions etc. can all add time. However early dialogue along with detailed and well informed project planning at the earliest stages should provide realistic timescales for both parties to work to.

2. Can any restrictions/ conditions be placed on the future use of the land as part of the sale?

It is likely that the Scottish Land Fund will be at least part funding any purchase of land by a community. SLF have indicated that they would require that “the title is good and marketable with no burdens, wayleaves, conditions, or leases which would prevent full and continuous project delivery throughout the period of the grant agreement.” The funders will take this view as it is essential that the community is able to deliver its aspirations in full and that no unnecessary financial burdens are placed on the sale as this may affect the financial sustainability of any development the community may seek to deliver.

3. How will the value of the land/ assets be assessed?

The protocol sets out that an independent valuer should be jointly appointed and instructed by the landowner and the community. In previous cases this service has frequently been carried out by the District Valuation Service but could be carried out by any suitable qualified and accredited valuation professional that is acceptable to both parties. With a joint appointment and instruction process each party has the opportunity to present a case on what ‘material considerations’ the valuer should take into account in their assessment. There is an opportunity to make further representations once an initial value has been set. However at the end of the process a value is reached which should be acceptable to both parties.

4. What options are available to the community to pursue a purchase of the land/ asset in question should the landowner not agree to a negotiated sale at any point in the process?

The community will have a range of options available to them but both the options and the route they take will be specific to their own circumstances; based on the land in question, the proposed post transfer land use, the route they have taken to date and the response of the landowner. At the earliest opportunity the community should seek advice from Community Land Scotland and Scottish Government (refer **Contacts and Resources Section**) about which rights they may have in law. For an outline of what may apply please refer to the **Summary of Community Rights in Law to Seek to Purchase Land Section**.

5. What happens if there is a problem at any stage in the process, for example perhaps one party is taking too long to respond or communications have broken down?

Should a problem be experienced by either party, in relation to the behaviour or actions of the other party, then either Community Land Scotland or Scottish Land & Estates can be contacted to aid with facilitating a solution. CLS or SLE may seek to undertake this facilitation themselves or they may seek to bring in an independent third party to do so. This is in line with the mediation process now available to Scottish Government in supporting the Community Right to Buy process and will follow similar guidelines, where available.

6. What type of information should be included in the Memorandum of Understanding?

A template/ guidance for a Memorandum of Understanding between a landowner and a community is available from either CLS or SLE (refer ***Contacts and Resources Section***). A typical MoU sets out the arrangements for the community to investigate the feasibility of purchasing land and stipulates that the landowner will provide reasonable assistance with this process. It sets out arrangements for a range of issues such as communications, valuation and mapping stipulating timescales where appropriate.

7. Can the landowner decide not to sell land to the community if they just don't like the idea of what the community is proposing to do?

If using the protocol landowner should provide a clear justification for deciding not to commence with a sale of land to the community. For example reasons for doing so may include potential development which the landowner wishes to progress on the land or the impact of a partial asset transfer on the viability or operation of the landowners business or the value of their remaining landholding. The landowner may also have a change of circumstance which may impact on a potential sale. Should the community disagree with any of the reasons the landowner has provided for pulling out of a negotiated sale then they can still explore rights the community may have in law. For an outline of what may apply please refer to the ***Summary of Community Rights in Law to Seek to Purchase Land Section***.

Landowner FAQs

8. How do I know a community organisation is credible/ legitimate?

If you as a landowner are initiating a sale and wish to identify a credible/ legitimate community organisation then it is recommended that you make contact with Community Land Scotland (refer to ***Contacts and Resources Section***) to either secure assistance with identifying the correct community organisation or to confirm that the organisation you have identified is the right one. It is important that any organisation is viewed within the community to be representative and this will vary from community to community. If however you as a landowner are contacted by a community organisation then the protocol process facilitates clear demonstration of both credibility and support for whichever community body leads on the process. At every stage in the protocol there are requirements for public meetings or community consultations/ ballots to provide a clear mandate. This high level of community engagement and support is also looked for by funding organisations such as the Scottish Land Fund and no land purchase can take place without it.

9. How can I be reassured that a community's plans are in the wider public interest and/or that securing the land/ assets in question is necessary to deliver these plans? How do I know the community's plans are credible?

There are a considerable number of checks and balances in the system and the community's plans will be assessed fully by a range of organisations, not least the funding bodies including Highlands and Islands Enterprise and the Scottish Land Fund. Public funds will not be invested in projects that cannot clearly demonstrate both delivery of public benefits and adequate financial viability in the long term. Community bodies are expected to back up any funding applications with relevant supporting information including a Feasibility Study (which may include an Options Appraisal) and a Business Plan along with relevant technical and/or demand surveys.

10. The community is proposing a project that I previously looked at but considered not viable. What, if anything, should I do about this?

If you are prepared to share your research with the community that would be beneficial in ensuring both that efforts are not duplicated and that all relevant information is fed into any decision making process. However you should bear in mind that there may be a different outcome to the decision on whether the project is viable or not. Time will have moved on since the initial assessment and a different policy and funding framework will be in place, communities may have access to a wider range of support than private landowners and may therefore be able to deliver projects which may not be possible based on private finance alone and finally communities may also have different objectives/ success criteria than private landowners and may not be looking for the same level of returns.

11. What information, if any, do I have to supply to the community regarding the land/ assets they are negotiating to purchase?

The landowner should provide details all relevant details pertaining to the subjects of sale. At the **minimum** this should consist of a detailed description of the land or asset in question which enables clear identification by the community; details of current use including information on any current wayleave agreements, tenancies or occupancy agreements; details of recent or current planning applications relating to the land/assets (or neighbouring land and assets if relevant); any designations pertaining to the land/assets; any restrictions or conditions of use; any detail known to the landowner which could materially affect the valuation of the land/assets and other relevant information pertaining to the land/assets including details of any liabilities or burden. The landowner should also provide detailed maps. The landowner **may** also wish to supply the community directly with information on the current operating costs and income of the land/ assets being offered for sale or information on any development feasibility work they have previously undertaken but there is no obligation for them to do so.

12. What should I do if I am approached by a third party who is interested in either buying or leasing the land/ asset in question while negotiations with the community are ongoing?

While you are in negotiations with a community about a specific area of land you should refrain from entering in to discussions with anyone else regarding the future of the land until such time as the negotiations have been concluded one way or another. It is extremely important that both parties enter into this process in good faith and that trust is maintained throughout. Any discussions with third parties would be regarded as breaching this trust.

13. What advice/ guidance is available to me throughout this process?

Landowners should approach Scottish Land & Estates in the first instance to identify what support might be available to them. There are also some online resources. Please refer to ***Contacts and Resources Section*** for details.

14. Will any professional fees or other costs that I incur through this process be met by the community?

If a final purchase price for the land is to be at market value as set by the jointly commissioned valuation process then the landowner will be expected to meet all of their own costs pertaining to the sale, whether it has been initiated by either themselves or the community. If however the landowner is prepared to gift the land or offer it to the community at a significant discount then it may be possible that the community would be able to access funding to meet all/part of the landowner's professional costs depending on scale. If a landowner is considering a gift/ discount then it would be sensible to ask the question regarding professional fees at an early stage in the proceedings.

Community FAQs

15. If we are approached by a landowner who wishes to dispose of land/ assets to the community can we say no?

The community is within its rights to say it does not wish to progress with purchase of land that it is offered however there are a number of things that should be considered before coming to a decision. Firstly as the organisation that has been approached are you sure that you have taken into account the views of the wider community and other organisations within your community – there may be plans for activities which may be able to utilise the land which you may not be aware of. Alternatively the wider community may view this as an opportunity which needs to be fully considered through some form of feasibility before coming to an informed decision one way or another. Finally you could potentially be interested in the land offered for sale but there are conditions attached which would restrict future use and the potential viability of any plans you may have. In this instance you could choose to negotiate removal of these conditions to continue with a negotiated sale or consider what other options may be available to you, please refer to ***Summary of Community Rights in Law to Seek to Purchase Land Section***.

16. How can we be sure that we are not going to take on a liability?

It is good practice (and required by funders) for the community to carry out a Feasibility Study and prepare a Business Plan relating to any land and assets you may wish to purchase (or are offered). You should be able to access preparatory funding which will enable you to commission a consultant or other professional advisors to assist you with the necessary work. This planning exercise will enable you to fully investigate the community's aspirations, the potential of the land to deliver these aspirations and both the capital and ongoing running costs of any proposals. To aid this process through the protocol it is recommended that landowners share all relevant information relating to the land which may have a bearing on the future use of the land such as any designations, any restrictions or conditions of use, or any liabilities or burdens and this can then be taken into account.

17. The protocol refers to a 'preparatory group' talking forward plans on behalf of the community what does this mean? Is this the same as the Steering Group referred to later on?

The term 'preparatory group' refers to any group of individuals within the community who wish to explore the purchase of land/ assets in order to realise a range of benefits for the wider community. The

'preparatory group' may be linked to an existing community organisation or it may not. This group of people are responsible for arranging the initial public meeting to establish the level of support within the community to take the idea forward and for making early contact with the landowner, signalling a possible interest. If the community is interested in exploring the idea of a land purchase further then based on previous experience it is recommended that a Steering Group be established. The Steering Group members may be selected from those present at the public meeting but could also include community representatives to be approached out with the meeting to ensure effective coverage of geographical or sectoral interests. The Steering Group could be affiliated with an existing community organisation or could be established as an 'unincorporated association' in their own right and may or may not comprise members of the initial 'preparatory group'.

18. How do we evidence community support for our plans?

At every stage in the protocol there are requirements for public meetings or community consultations/ ballots to provide a clear mandate and evidence of community support. This high level of community engagement and support is also looked for by funding organisations such as the Scottish Land Fund and no land purchase can take place without it.

19. What funding is available for pre-purchase, purchase and post-purchase costs?

The Scottish Land Fund will provide up to a maximum of £1million per application or 95% of eligible costs, whichever is the lesser. A maximum of £100,000 is available for professional/ post purchase revenue costs of which up to £30,000 can be obtained pre purchase (to meet costs such as feasibility studies, technical surveys or legal costs). If £100k is used to meet pre/post purchase costs this will reduce the maximum available for capital costs to £900,000. Note these are maximum awards and it is expected that funds will be sought from other grant making bodies, from community fundraising and possibly through loans or a reduced sale price being agreed by the landowner which can count as a private contribution. It should be noted that securing adequate funding may take some time.

20. What information does the community have to share with the landowner?

The community should share with the landowner information that they are prepared to share with the wider community. This will include summary documents of the feasibility study and business plans. It is expected that there may be information of a confidential nature which may have a bearing on the outcome of any negotiations which should not be shared more widely. Summary information should be sent to the landowner as a courtesy at the same time that it is made available to the wider community.

21. Should the community register an interest in the land, and if yes at what stage in the process?

It should be noted that a properly constituted community body has at any time a right to seek to 'register an interest in land' under the terms of the Land Reform (Scotland) Act 2003 and upon application to the Scottish Government. It is a matter of choice and judgement as to whether a community wishes to do this in their particular circumstances and each community should seek advice from Community Land Scotland and Scottish Government in relation to their individual circumstances. Registering an interest in the land is not incompatible with or does not invalidate the purpose and function of this protocol, and nor is it necessary under the protocol. Please refer to **Summary of Community Rights in Law to Seek to Purchase Land** section for further information.