

* Introduction

Community Land Scotland (CLS) has been very supportive of the Scottish Government's moves to strengthen the rights of communities who may wish to purchase land, but CLS is clear that the best route to land purchase is through voluntary negotiation directly with owners, in the shadow of the strengthened law. To this end we are pleased to have been working with Scottish Land & Estates (SLE) to agree this joint and voluntary 'Protocol for Negotiated Sales' (PNS) that we now each recommend to our respective members on how such voluntary negotiations might best take place. CLS and SLE hope the PNS will provide practical assistance to owners and communities and assist the move to more voluntarily agreed ownership opportunities for communities across Scotland, helping to deliver the Scottish Government target of 1 million acres in community ownership by 2020.

The PNS has been developed based on the experience of a number of negotiated sales that have taken place over the last 10-15 years, so considerable thanks must go to the community organisations, landowners and their legal advisors who have contributed to this process through sharing their experience. It has also drawn on the expertise of Scottish Government, Highlands and Islands Enterprise, Development Trusts Association Scotland and the Scottish Land Fund who have supported community land/ asset purchase.

It should be noted that the existence of the protocol does not make assumptions regarding the eventual outcome of any negotiated sale process that is initiated. It may be that a successful outcome does not result in a sale at all as for whatever reason it is decided that a sale to the community is not the right route at a particular point in time. This is demonstrated by some of the examples in the **Case Study Section**.

Format

The Negotiated Sale Protocol has a number of elements and provides recommended routes for both landowner initiated and community initiated negotiated sales. It comprises a number of distinct Sections including:

- ***Introduction***
- ***Landowner and Community Initiated Protocol for Negotiated Sales Flowcharts and Accompanying Notes***
- ***A Summary of Community Rights in Law to Seek to Purchase Land***
- ***Frequently Asked Questions***
- ***Case Studies***
- ***Contacts and Resources***

Benefits of Using the Protocol

Notwithstanding the recent changes and improvements to the law, it remains a complex route for communities and landowners to engage and by its nature discussions on transferring land into community ownership can be viewed as confrontational by both parties. Recent experience, particularly in the Western Isles, has confirmed the benefits of negotiated settlements, rather than resorting to the law for purchases.

It is in the best interests of both parties to have open dialogue regarding both the sustainable management of land as it affects the community and where there is a willing seller to explore the option for the community to own land/ assets in order for it to fulfil its potential and secure its environmental wellbeing.. The simple and clear process as set out in the protocol aims to provide a degree of confidence for both parties that there is a well-established route by which a successful negotiated sale can take place within reasonable timescales and with adequate support available at key stages in the process.

The protocol **could** in some circumstances be used in conjunction with a community exercising certain rights that it has in law, for example registering a community interest in land. However it should be noted that a community making a registration of interest is no more than it suggests i.e. that if land comes on to the market the community would like to establish a right to have the first opportunity to consider purchasing it. Registering an interest in land should not be interpreted as casting any judgement on the current ownership or management of the land, but simply a community seeking to preserve a right if the land were to be put up for sale.

Should either a constructive dialogue or a negotiated sale not be possible then both parties can revert to using the processes set out in law as set out in the **Summary of Community Rights in Law to Seek to Purchase Land Section**. Where possible advice contained within the protocol has taken into account current provisions in law and how they could be interpreted. For example advice is given on how a landowner should approach a community to identify whether they might be interested in a negotiated sale in order that any open market sale does not trigger a 'late' registration of a community interest in land. It is however recommended that those using the protocol should take independent legal advice to ensure that their position is protected.

Motivations for Seeking Greater Community Land Ownership

The ownership of land/ assets and their use is universally recognised as being important in terms of the benefits it can deliver to the landowner/ manager no matter whether they are a private individual, a community organisation or a charitable trust. In addition to bringing benefits landownership also brings with it a range of responsibilities. Both these benefits and responsibilities are recognised by the state as demonstrated by Nicola Sturgeon, Scotland's First Minister when in September 2015 she stated *"Using land strategically and sustainably will contribute to a more prosperous and successful nation."*

It is recognised that different types of landowners have different motivations ranging from ecological stewardship to community stewards and from multifunctional landowners to those that wish to maximise economic returns. These motivations in turn affect owners'/ managers' management decisions and approach to consideration of both their neighbours and the wider community's interests. There is no prescribed ideal form of landowner in Scottish Government policy but it is acknowledged that a greater diversity of ownership types can deliver a wide range of benefits.

It is in this context that the increase in community ownership should be viewed. However it is not the amount of land/ assets in community ownership that is the most important motivation for change, but the purposes to which that land is put in order to deliver public benefits. Community ownership of land generally has as its basis at least one of three drivers given below.

Firstly, there has been a need to address the steady depopulation or economic fragility of some communities (very often remote and rural). This is a complex scenario which can consist of a combination of declining

employment opportunities, declining housing quality with uncertain tenure or lack of affordable housing and dwindling services and infrastructure which in turn leads depopulation and a departure of young people and a threat to a valued place and culture. Access to land ownership can enable communities to develop a range of activities which can address some or all of these issues and to be responsive to new problems or indeed opportunities. However, it should be acknowledged that community ownership is just one of several routes to delivering solutions to the problems of depopulation and economic downturn.

Secondly even communities who are not 'under threat' have moved from a project by project approach and have seized the task of developing Community Plans which take a more holistic approach with multi-functional 'Development Trusts' (generally Companies Limited by Guarantee with Charitable Status) being established to deliver improved wellbeing for residents and to safeguard their future. Under a Community Plan initiatives ranging from housing to training and from play parks and flowerbeds to addressing fuel poverty through renewable energy schemes are developed, many of which require access to land/ assets.

Finally, as the community sector moved into the 2000s it became clear that financial sustainability was going to be a major ongoing issue along with the emerging reality that Government and its agencies were not always going to be able to deliver the same level of services with budgets becoming tighter. At this time the sector then looked to how it could generate its own income and become less reliant on the public sector for ongoing funding. The development of social enterprise and the acquisition of land /assets to underpin this income generating activity has been another driver.

