

COMMUNITY*
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Protocol for
Negotiated Sales

* 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 20-25 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 or 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 'Written rules, has confirmed the benefits of negotiated settlements, rather than resorting to the law for purchase.

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 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 considerations 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 declining 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.



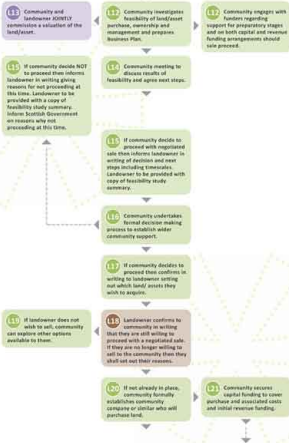
* Landowner Initiated Negotiated Sale

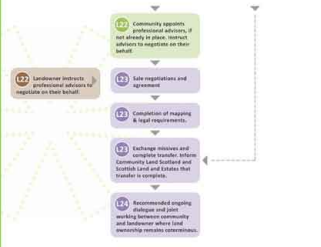
Flowchart to be read in conjunction with Notes section:
L1 relates to Note L1 and so on.

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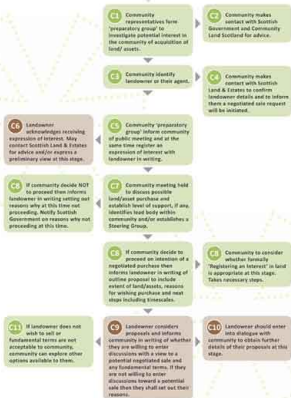
- Community
- Landowner
- Joint Community & Landowner

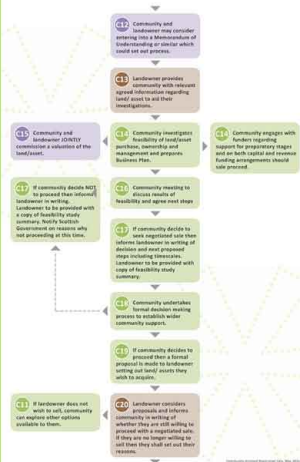
✱ Community Initiated Negotiated Sale

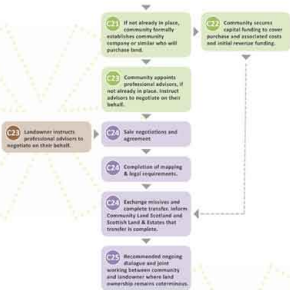
Flowchart to be read in conjunction with notes section:
C1 relates to Note C1 and so on.

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✱ Notes to Accompany Protocol for Negotiated Sales Flowcharts

The protocol as it is set out in the flowcharts and the accompanying notes below is an agreed guide to best practice, but local circumstances demand reasonable flexibility in interpreting whether every step, or adjusting the steps is appropriate and any alteration as such would not of itself invalidate the protocol where the parties are open about and where appropriate agree any deviations.

Notes that apply to both landowner and community initiated voluntary sales

The voluntary negotiated sales process should be entered into in good faith by both parties with the intention that there should be a positive dialogue about reaching a mutually agreed sale. Should a sale not proceed this should not prejudice other forms of arrangements between the parties or affect the parties' rights in law.

When considering the terms of any sale landowners should note that communities will only be able to secure funding for the capital purchase of land/assets from the Scottish Land Fund on the basis that that the "title is good and marketable with no burdens, easements, conditions, or issues which would prevent full and continuous project delivery throughout the period of the grant agreement". This wording has been provided by the Scottish Land Fund team.

Both parties where possible should respond to requests from the other party as quickly as possible, or where there will be a delay inform the other party in writing of the timescales that will be applied giving reasons for any delays.

It is recognised that maintaining good communication links and trust will be important throughout this process. If for any reason there is a breakdown in either communications or trust then either party can seek external facilitation. It is proposed that this would be established by Community Land Scotland and Scottish Land & Estates working in partnership with both parties to find a mutually agreed facilitation process.

No guidance has been given in the timescales that will apply to the negotiated sale process although it is recommended that all communications are dealt with promptly. The timescale of the process from start to finish will vary considerably depending on the complexity of the land and/or assets in question and whether it is a whole or partial estate sale. It is not unreasonable to expect the process to take in the region of 12-24 months although some very simple sales could take considerably less time and some more complex sales could take longer. In some circumstances where a landowner requires to expedite a sale to address liabilities elsewhere or for family settlements it may be possible for all parties including the community, professional advisors and funders to compress the completion of the process, but this would only happen in exceptional cases.

Notes that apply to landowner initiated sales

12. When a landowner decides that they wish to dispose of land and/or built assets whether they form all or part of their property holding, for whatever reason, they should consider offering it to the community before it is placed on the open market. The community may already have plans in place for a range of development activity that the landowner is unaware of and an early approach will avoid issues around a potential late registration of an interest in land under 'community right to buy'. Refer to **Summary of Community Rights in Law to Seek to Purchase Land Section**.
13. Before approaching the community the landowner should seek to take advice from the Scottish Government's Community Land Team and/or Scottish Land & Estates CLEI (refer **Contacts and Resources Section** for details). These organisations will be able to provide advice on how to proceed.
14. The landowner should seek to identify the appropriate community organisation. It isn't always apparent what the most appropriate community organisation is and it should not be assumed that the community council is the correct route in every situation. In addition, the land/asset may be of interest to more than one geographical community (i.e. it may be between two or more towns or villages), there may be several active community organisations within a community who could potentially take the lead or it may be that there are no obvious community organisations or contact names available. It is extremely important that the approach to the community is made in the right way as if this is not handled properly then the community could seek to make a case for a late registration of interest in the land under the Community Right to Buy, part of which might be based around being consulted in an appropriate way should the property be placed on the open market. For example an informal conversation with an individual who is involved with a single community organisation would not constitute a recognised approach to the community. Refer to **Summary of Community Rights in Law to Seek to Purchase Land Section**.
- 14a. The landowner should approach Community Land Scotland (CLS) (refer **Contact and Resources Section** for details) either once they have identified the appropriate community organisation to confirm that this is the right body to approach or if there is any doubt to seek guidance on which is the right community organisation/s. This will also ensure that CLS have been informed that the Protocol for Negotiated Sales has been initiated.
15. Once the landowner is clear about which community organisation/s to approach then they should write to them setting out the details of which land/ assets are to be sold and any terms relating to the sale. The letter should also set out the desired timescale for the community's initial response but should recognise that the co-ordination of a community meeting to discuss the proposal could take a couple of months by the time the community takes advice, books a venue and advertises the meeting, initiating the negotiated sale protocol at particular times of year (e.g. lambing, school holidays etc.) may also lead to delays. It is recognised that if there are existing and sufficiently strong relationships between the landowner or their representative and the community organisation concerned, that informal notification that a letter was to be sent would be appropriate.
16. When in receipt of a proposal from a landowner the relevant community organisation should write to the landowner as soon as practicable, both acknowledging receipt and setting out the next steps they intend to take and the timescale within which they will respond indicating the community's interest in exploring the possibility of a sale or not. The community may wish to consult with CLS on the steps they are proposing.
- 17a. The community should make every effort to engage with the landowner and their agent to fully understand which land/ assets are being potentially offered for sale and what, if any, terms are being applied to the sale.

It is particularly important if the land/assets are only part of an estate to understand the landowner's plans for the remainder of the estate as this may have a bearing on the scope of the community's plans.

- 17b. The community should also at this stage make contact with both Scottish Government's Community Land Team and Community Land Scotland for advice (refer **Contacts and Resources Section** for details). These organisations will be able to advise the community on what their rights are in law and on what the next steps would be. They will also be able to signpost the community to other organisations that could provide support and advice including the Scottish Land Fund (SLF) (Big Lottery and Highlands and Islands Enterprise (HIE)) and existing community landowners who own comparable land/assets. At this stage the community will likely be appointed a case officer by SLF/HIE.
18. The community should at the earliest opportunity hold a public meeting to discuss the proposal from the landowner. It is advisable to consider the location, timing and promotion of this meeting carefully in order to ensure that it is as well attended as possible. A range of speakers should be invited to address the range of questions the community will likely have. Similar meetings held elsewhere have included speakers from Community Land Scotland, Scottish Land Fund/HIE and a representative from another community landowner to talk about their experiences. Local Councils, Council Officials and MSPs have also often been in attendance. At the end of the meeting it should be established whether there is support for further investigation of the proposal. This could be by a show of general consent or, by a vote in a secret ballot to ensure that those present do not feel in any way exposed personally. If there is a NO vote then steps should be taken to establish the reasons why the community voted this way. If there is support for proceeding then a Steering Group should be nominated to take the lead on behalf of the community going forward. The Steering Group members may be selected from those present 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.
- The landowner could be invited to attend the meeting, if they so wish, but recognising that the presence of the landowner may impact the ability of some community members to express their views openly they should depart at a mutually agreed juncture in the meeting.
19. As soon as practicable after the community meeting a letter should be sent to the landowner setting out the community's position. If the community has chosen NO to proceed they should set out the reasons why which could include that there is not enough community capacity at this time due to other commitments or perhaps the terms of the sale are not deemed acceptable. If the community has decided to investigate a possible purchase then it should set out the next steps it plans to take and the timescales it will be working towards.
20. At this stage the landowner and community may wish to jointly enter into a Memorandum of Understanding (a model MoU is available from either CLS or SLF on request) which will set out their respective roles in concluding the negotiated sale process. An MoU may only be considered appropriate in whole estates or other complex acquisitions but it is for both parties to determine where it would be helpful. The MoU could cover exclusive rights to the community to undertake feasibility work, that both parties co-operate to determine the extent of the estate, joint instruction of the valuator, provision of information by both parties, timescales and who will meet the costs of valuation, mapping, site surveys etc.
21. To aid the community in their investigations of the feasibility of purchasing the land/assets in question the landowner should provide 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 details of 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 facilities or burdens. 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.

- L12. The community will have to fully assess whether they wish to purchase the land and this will generally involve carrying out a range of investigations and consultations the scope of which will vary considerably depending on the nature of the land/asset under consideration. This work could include any of the following: property condition surveys, geotechnical surveys, housing needs surveys, habitat surveys, timber volume surveys, planning appraisals, community & stakeholder consultations and financial modelling. It is very likely that some form of feasibility study and/or Business Plan, incorporating the above survey work, will have to be developed. It may also be appropriate to undertake due diligence checks at this time. All of the work will require commissioning different types of consultants or advisers and will cost money. Some of the surveys listed above will require the landowner to provide access to the land/ assets in question. It is expected that the community should seek permission for access in writing and that this should be granted timeously by the landowner.

At this stage the community will have entered into discussions with a range of funders about both the preparatory stages and capital and post purchase revenue funding. Advice on what feasibility work will be required and financial assistance (up to £30,000) will be available through the Scottish Land Fund and possibly others. The community should already have been assigned a Case Officer by SLE/HE and they will be very important at this stage. This case officer will guide and support the community throughout the process.

The community may also wish to identify and retain a range of professional advisers at this stage including a lawyer, an accountant and possibly a land agent who they can call on to offer advice either now or at later stages in the process and for which potential funding support is generally available.

This part of the process is the most difficult to gauge in terms of timescales and the community should provide regular updates to the landowner about what progress is being made. The feasibility could make a range of recommendations ranging from purchase of the whole of the land/ assets being offered for sale, purchase of part of the land/ assets or not to purchase. A partial acquisition may be the preferred route if there are limits to capital funding available or perhaps only the land (not built assets) is necessary to deliver community aspirations.

A summary of the feasibility study will be prepared which will be circulated to the wider community for consideration. The Steering Group however must retain the right to keep detailed information confidential at this stage in case it could prejudice future negotiations.

- L13. As part of the feasibility investigations a value must be placed on the land/asset being offered. It is suggested that this valuation is undertaken either by the District Valuer (DV) or another independent RICS accredited valuer agreed by both parties. The valuer should be jointly instructed by both parties with the cost being split 50:50. Each party will have the opportunity to set considerations that they feel are material to the valuation and the valuer then comes to an independent position based on the information provided by both parties. Each party has the right to query the valuation and the valuer may choose to make adjustments. The agreed valuation then becomes the basis for the capital funding package developed in L12 and will feed into the development of the feasibility study in L12.

124. Once the feasibility and business planning work has been completed then a summary should be circulated to the wider community in advance of a public meeting. As with L8 it is advisable to consider the location, timing and promotion of this meeting carefully in order to ensure that it is as well attended as possible. There should be representatives from any consultants who have undertaken work and advisors such as SJ/WE and CUS should be on hand to address any questions regarding the next stages. A vote should be taken at the end of this meeting to agree whether to proceed or not. As at L8 this could be by a show of general assent or, by a vote in a secret ballot to ensure that those present do not feel in any way exposed personally.
- Again as at L8, the landowner could be invited to attend the meeting, if they so wish, but recognising that the presence of the landowner may impact the ability of some community members to express their views openly they should depart at a mutually agreed juncture in the meeting.
125. At this stage the landowner should be issued with the summary of the feasibility study and informed of the community's position at this time, if the community has agreed NOT to proceed then they will set out their reasons for doing so, if they are to proceed they will set out the next steps.
126. Depending on the scale and type of asset to be acquired and the nature of the community SJ/WE will stipulate what they require in terms of evidence of community support in order to secure capital funding for the purchase. The community must then undertake whatever activity is necessary to demonstrate the level of support required. This is best achieved by a whole community ballot unless that would be a disproportionate act relative to the scale of the asset, if the community decision making process shows that there is not the required level of support then the landowner should be informed in writing that they will not be proceeding, as per L15.
127. Once the community has confirmed support then the Steering Group should inform the landowner of their decision in writing, setting out whether they intend to purchase the whole land/ assets being offered for sale or specifying the details of any proposed partial acquisition and the reasons for their decision.
128. The landowner at this stage should confirm in writing that they are still wishing to proceed with a sale to the community, if they are no longer willing to sell the land/ assets in question then they shall set out their reasons for doing so. Although landowners can of course choose to withdraw at this stage, withdrawal from an offer to sell the land/assets should be limited to cases such as a material change in the landowner's circumstances or in the case of a partial asset transfer if the landowner believes that the proposed post transfer use could have a detrimental impact on the remainder of his landholding. The landowner may also withdraw on the basis of the valuation, however it is recommended that this is only if he feels that his representation at stage L12 has not been taken into account.
129. If the landowner is no longer willing to sell land/ assets then the community should take advice from Scottish Government and Community Land Scotland about what other routes may be available to them to potentially exercise rights they have in law.
130. Before proceeding any further the community at this stage must establish an appropriate community organisation who will own the asset. There may be a pre-existing organisation that the Steering Group has been working under the umbrella of or this may require a new organisation to be established. Advice will be available from a range of sources on what form the community organisation should take.
131. The community will need to secure the necessary capital funding to cover both the sale and the associated professional costs. The Scottish Land Fund will provide up to a maximum of £1million per application or 25% of eligible costs, whichever is the lesser. A maximum of £100,000 is available for professionally post purchase revenue costs of which up to £30,000 can be obtained pre purchase (to meet costs outlined in L32). 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.

122. If the community has not already secured professional advisors they should do so at this stage and instruct them to act on their behalf in the final negotiations and conveyancing of the sale. The landowners will likewise identify and instruct professional advisors to act on their behalf.
123. The final stage of the process is the negotiation and completion of all necessary legal documents. This will also include the provision of maps acceptable to the Registers of Scotland which may require the commissioning of suitable maps and forcrofting estates and built up areas this may be a complex exercise. Once this has all been agreed and all of the relevant documentation is in order then reserves can be exchanged and the sale completed.
- Once a sale has been completed then the two parties should inform both Community Land Scotland and Scottish Land & Estates in writing.
124. Once a sale has been completed then it is expected that in the situation where a landowner and the new community landowner become neighbours that both will adopt good practice in terms of maintaining constructive ongoing relations. It is expected that they would meet regularly (at least annually) to discuss forward plans identifying opportunities for collaboration and to resolve any issues that have or are likely to arise.

Notes that apply to community initiated sales

121. A group of individuals within a community, possibly linked to an existing community organisation or possibly who have identified a community related development opportunity yet to be fully explored identify a possible need to secure specific land/ assets. Such a group is in effect acting as a 'preparatory group' to explore whether procuring land/ assets may be an option before developing their ideas further to take to the wider community. At this stage such a 'preparatory group' does not have a 'mandate' from the community. The more connected such a group is to existing representative organisations or open membership organisations within the community with a development focus, such as a Development Trust or Community Association or Community Council (if such exist), and are acting with the knowledge of such organisations, the better. Any idea for community developments has to start and develop somewhere and any such 'preparatory group' has legitimacy in exploring ideas, provided the clear intention is to take those ideas to the wider community in an open and participative fashion at an early appropriate juncture. Such a preparatory group may choose to operate as an unincorporated association, and this is to be encouraged.
122. Before approaching the landowner the community 'preparatory group' should seek to take advice from the Scottish Government's Community Land Team and/or Community Land Scotland (CLS) (refer **Contacts and Resources Section** for details). These organisations will be able to provide advice on how to proceed. These organisations will be able to advise the community on what their rights are in law and on what the next steps would be. They will also be able to signpost the community to other organisations that could provide support and advice including the Scottish Land Fund (SLF) (Big Lottery and Highlands and Islands Enterprise (HIE)) and existing community landowners who own comparable land/ assets. At this stage the community will likely be appointed a case officer by SLF/HIE.

13. The community 'preparatory group' should seek to identify the owner of the land/ assets and/or their agent. This information may be known locally or may be available from the Register of Scotland.
14. The community 'preparatory group' should approach Scottish Land & Estates (SLE) (refer **Contacts and Resources Section** for details) either once they have identified the landowner and/or agent to confirm that this is the right person to approach or if there is any doubt to seek guidance on who should be contacted. This will also ensure that SLE have been informed that the Protocol for Negotiated Sales has been initiated.
15. The community 'preparatory group' should seek to inform both the wider community and the landowner of an interest in exploring an option to purchase land/ assets at the same time. This is important in order to ensure that there is complete openness and transparency. The community should be informed through the advertising of the meeting which will take place at C7. The landowner should be informed through the formal notification by the community 'preparatory group' of an 'Expression of Interest' (EoI) under the terms of this protocol. The purpose of the 'Expression of Interest' is to simply signal that thought is being given and steps are being taken to explore with the community their potential interest in the possibility of buying land for potentially a variety of community and local development purposes. It should inform the landowner of the date of the community meeting which will be held to discuss the idea. A template EoI has been prepared by HEI and is available from them. This will have to be adjusted to meet local requirements and specific details of the land, community interest to date and proposed timescales for the next steps. The EoI letter should also set out the desired timescale for the landowner's initial response but should recognise that initiating the negotiated sale protocol at particular times of year (e.g. lambing/ harvesting, holiday periods etc.) may also lead to delays.

16. When in receipt of an EoI from a 'preparatory group' within a community the landowner or their agent should write to the community as soon as practicable, both acknowledging receipt and setting out their initial thoughts at this stage, if any. The landowner may wish to seek guidance from Scottish Land & Estates before preparing their response.
17. The community 'preparatory group' community should then hold a public meeting to discuss the proposal and to assess the community interest in pursuing a purchase of the land/ assets in question. It may be that they have yet to receive a response from the landowner but the meeting should be timed to allow the landowner adequate time to offer an initial response or at least an acknowledgement of the EoI. It is advisable to consider the location, timing and promotion of this meeting carefully in order to ensure that it is as well attended as possible. A range of speakers should be invited to address the range of questions the community will likely have. Similar meetings held elsewhere have included speakers from Community Land Scotland, Scottish Land Fund/ HEI, and a representative from another community landowner to talk about their experience. Local Councillors and Council Officials and MSPs have often attended such meetings. At the end of the meeting there should be a vote taken to establish whether there is support for investigating a community purchase of the land/ assets being sold. This could be by a show of general assent or, by a vote in a secret ballot to ensure that those present do not feel in any way exposed personally.

If there is a NO vote then steps should be taken to establish the reasons why the community voted this way. If there is a YES vote then a Steering Group should be nominated to take the lead on behalf of the community going forward. The Steering Group members may be selected from those present 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.

The landowner could be invited to attend the meeting, if they so wish, but recognising that the presence of the landowner may impact the ability of some community members to express their views openly they should depart at a mutually agreed juncture in the meeting.

12. As soon as practicable after the community meeting a letter should be sent to the landowner setting out the community's position. If the community has chosen NOT to proceed they should set out the reasons why. If the community has decided to pursue a possible purchase then it should set out details of the land/assets being sought, an outline of the reasons for wishing to purchase the land, the level of community support at the meeting, the next steps and the timescales it will be working towards.

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 Act 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. Applying to formally register an interest in the land is nothing more than it says, it simply registers a community interest in the possible purchase of the land and if and when the land comes to the market for sale and when they would then have the first right to purchase the land. Registering an interest in the land is not incompatible with or invalidates the purpose and function of this protocol, and nor is it necessary under the protocol. See the [Summary of Community Rights in Law to Seek to Purchase Land Section](#) for more information.

13. The landowner at this stage should consider the proposals set out by the community and confirm in writing whether they are willing to proceed to enter discussions with a view to a potential negotiated sale of the land/assets in question. If the landowner does not wish to sell the land/ assets then they should advise the community of their reasons for their decision. 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 either the financial viability or operation of the landowner's business.

14. The landowner should make every effort to engage with the community and their advisors to fully understand what land/ assets are being sought for purchase and for what purpose (although recognising that full details may not yet be available). It is particularly important if the land/assets sought are only part of an estate to understand the community's plans as this may have a bearing on the scope of the landowner's plans for the remainder of their estate.

15. If the landowner is no longer willing to sell land/ assets then the community should take advice from Scottish Government and Community Land Scotland about what other routes may be available to them to potentially exercise rights in law.

16. At this stage the landowner and community may wish to jointly enter into a Memorandum of Understanding (a model MoU is available from either CLS or SLI on request) which will set out their respective roles in concluding the negotiated sale process. An MoU may only be considered appropriate in whole estate or other complex acquisitions but it is for both parties to determine where it would be helpful. The MoU could cover exclusive rights to the community to undertake feasibility work, that both parties co operate to determine the extent of the estate, joint instruction of the valuation, provision of information by both parties, timescales and who will meet the costs of valuation, mapping, site surveys etc.

17. The landowner, on the basis that they are a willing seller and will achieve market value for the sale should provide 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 details of 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 burdens. 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.

- C14. The community will have to fully assess whether their proposal to purchase the land/ assets are viable and this will generally involve carrying out a range of investigations and consultations the scope of which will vary considerably depending on the nature of the land/asset under consideration. This work could include any of the following: property condition surveys, geotechnical surveys, housing needs surveys, habitat surveys, timber volume surveys, planning appraisals, community & stakeholder consultations and financial modelling. It is very likely that some form of feasibility study and/or Business Plan, incorporating the above survey work, will have to be developed. It may also be appropriate to undertake due diligence checks at this time. All of this work will require commissioning different types of consultants or advisors and will cost money. Some of the surveys listed above will require the landowner to provide access to the land/ assets in question. It is expected that the community should seek permission for access in writing and that this should be granted timorously by the landowner.

At this stage the community will have entered into discussions with a range of funders about both the preparatory stages and capital and post purchase revenue funding. Advice on what feasibility work will be required and financial assistance (up to £20,000) will be available through the Scottish Land Fund and possibly others. The community should already have been assigned a Case Officer by SU/HSE and they will be very important at this stage. This case officer will guide and support the community throughout the process.

The community may also wish to identify and retain a range of professional advisors at this stage if they have not already done so, including a lawyer, an accountant and possibly a land agent who they can call on to offer advice either now or at later stages in the process.

This part of the process is the most difficult to gauge in terms of timescales and the community should provide regular updates to the landowner about what progress is being made. The feasibility could make a range of recommendations ranging from purchase of the whole of the land/ assets being offered for sale, purchase of part of the land/ assets or not to purchase. A partial acquisition may be the preferred route if there are limits to capital funding available or perhaps only the land (not built assets) is necessary to deliver community objectives.

A summary of the feasibility study will be prepared which will be circulated to the wider community for consideration. The Steering Group however must retain the right to keep detailed information confidential at this stage in case it could prejudice future negotiations.

- C15. As part of the feasibility investigations a value must be placed on the land/asset being offered. It is suggested that this valuation is undertaken either by the District Valuer (DV) or another independent RICS accredited valuer agreed by both parties. The value should be jointly instructed by both parties with the cost being split 50/50. Each party will have the opportunity to set considerations that they feel are material to the valuation and the valuer then comes to an independent position based on the information provided by both parties. Each party has the right to query the valuation and the valuer may choose to make adjustments. The agreed valuation then becomes the basis for the capital funding package developed in C12 and will feed into the development of the feasibility study in C14.
- C16. Once the feasibility and business planning work has been completed then a summary should be circulated to the wider community in advance of a public meeting. As with LB, it is advisable to consider the location, timing and promotion of this meeting carefully in order to ensure that it is as well attended as possible. There should be presentations from any consultants who have undertaken work and advisors such as

SL/HEI and CLS should be on hand to address any questions regarding the next stages. A vote should be taken at the end of this meeting to agree whether to proceed or not. As at CP this could be by a show of general assent or, by a vote in a secret ballot to ensure that those present do not feel in any way exposed personally.

As at CP the landowner could be invited to attend the meeting, if they so wish, but recognising that the presence of the landowner may impact the ability of some community members to express their views openly (they should depart at a mutually agreed juncture in the meeting).

- C17.** At this stage the landowner should be issued with the summary of the feasibility study and informed of the community's position at this time. If the community has agreed NOT to proceed then they will set out their reasons for doing so. If they are to proceed they will set out the next steps.
- C18.** Depending on the scale and type of asset to be acquired and the nature of the community SL/HEI will stipulate what they require in terms of evidence of community support in order to secure capital funding for the purchase. The community must then undertake whatever activity is necessary to demonstrate the level of support required. This is best achieved by a whole community ballot unless that would be a disproportionate act relative to the scale of the asset. If the community decision-making process shows that there is not the required level of support then the landowner should be informed in writing that they will not be proceeding, as per C17.
- C19.** Once the community has confirmed support then the Steering Group should confirm their proposal to the landowner setting out the extent of the land/ assets they wish to acquire, at what price, and the purposes to which this will be put (in line with the feasibility summary already issued). The results of any community ballot or similar should be provided.
- C20.** The landowner at this stage should consider the proposals set out by the community and confirm in writing whether they are willing to proceed with a negotiated sale of the land/assets in question. If they are no longer willing to sell the land/ assets then they must set out their reasons for doing so. Although landowners can of course choose to withdraw at this stage, withdrawal from an offer to sell the land/assets should be limited to cases such as a material change in the landowner's circumstances or in the case of a partial asset transfer if the landowner believes that the proposed post transfer use could have a detrimental impact on the remainder of his landholding. The landowner may also withdraw on the basis of the valuation, however it is recommended that this is only if he feels that his representation at stage C15 has not been taken into account.
- C21.** Before proceeding any further the community at this stage must establish an appropriate community organisation who will own the asset. There may be a pre-existing organisation that the Steering Group has been working under the umbrella of or this may require a new organisation to be established. Advice will be available from a range of sources on what form the community organisation should take.
- C22.** The community will need to secure the necessary capital funding to cover both the sale and the associated professional 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 outlined in C14). 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.

223. If the community has not already secured professional advisers they should do so at this stage and instruct them to act on their behalf in the final negotiations and corresponding of the sale. The landowners will likewise identify and instruct professional advisers to act on their behalf.
224. The final stage of the process is the negotiation and completion of all necessary legal documents. This will also include the provision of maps acceptable to the registers of Scotland which may require the commissioning of suitable maps and for crofting estates and built up areas this may be a complex exercise. Once this has all been agreed and all of the relevant documentation is in order then missives can be exchanged and the sale completed.
- Once a sale has been completed then the two parties should inform both Community Land Scotland and Scottish Land & Estates in writing.
225. Once a sale has been completed then it is expected that in the situation where a landowner and the new community landowner become neighbours that both will adopt good practice in terms of maintaining constructive ongoing relations. It is expected that they would meet regularly (at least annually) to discuss forward plans identifying opportunities for collaboration and to resolve any issues that have or are likely to arise.



* Case Studies

Mutually Agreed Negotiated Sale of Village Land and Foreshore: Findhorn, Moray

The Findhorn Village Conservation Company (TFVCC) was initially formed in April 2011 after an opportunity arose to register a community interest in a site within the village which was being used as a garage site by residents, however it was subsequently removed from the market. Then in 2012 the organisation had an opportunity to speak to the landowners Never Estate (NE) about the ownership of the strips (lanes) in Findhorn which run through the former fishing village connecting the cottages, as there was concern that these were being lost to the community through ruin and subsequent development. Through these discussions NE asked whether there was community interest in purchasing all remaining NE owned land in and around the village area which comprised a range of different areas of land from lanes and public spaces within the village, areas of foreshore and green space and conservation areas. Early in the process a 'Minute of Agreement' was drawn up by NE's solicitors, signed by both parties, which set out that no land could be sold by NE until TFVCC had explored funding options and also set out arrangements for mapping, valuation etc. The community then undertook a full examination of feasibility and levels of community support, jointly commissioning a mapping exercise with NE and commissioning a valuation of the land, submitting a first application to the Scottish Land Fund in July 2014. Consideration of the application was deferred twice to address issues around foreshore ownership and the level of the purchase price with final approval of £520,000 towards purchase and conveyancing costs awarded in January 2015. The land was finally transferred to TFVCC on 1st March 2016. Although this was a mutually agreed sale it took four years to complete in considerable part due to the extremely complex mapping requirements which NE was responsible for. (<http://www.findhornvillageconservation.org.uk/>)



Landowner Initiated Whole Estate Negotiated Transfer: Scalpay, Western Isles



The island of Scalpay which lies off the East coast of North Harris in the Western Isles was owned by a private individual Mr Ford Taylor until its transfer to the community in November 2013. Mr Taylor having taken advice from the community council and the community members of the North Harris Estate made his plans, to gift the island to the community, known to Scalpay residents at a public meeting in March 2011. Following the very positive meeting a Steering Group was established to investigate the feasibility of the islanders taking

ownership and to consider the options for what mechanism should be used as the Islanders could either opt to set up a new community land trust for Scalpay or seek to join with North Harris Trust (NHT) which owned the adjacent North Harris Estate. The final decision on how to proceed was subject to a community ballot in November 2012 which asked two questions, the first relating to whether the gift should be accepted and the second related to whether to go with North Harris or whether to have a standalone Scalpay Trust. The community opted to accept the gift and to proceed in partnership with North Harris who then had to adjust their articles of association to reflect the extended geographical coverage and nominator/ election of Directors from Scalpay. While no money changed hands at the time of the transfer there were a range of other acquisition and development related costs incurred by both Mr Taylor and NHT which were met through a Scottish Land Fund grant and NHT's own funds. (<http://www.north-harris.org/>)

Community Initiated White Estate Negotiated Sale: Carloway, Western Isles



In December 2011 Breacale Community Council approached the landowner of Carloway Estate to identify if they were interested in selling the whole estate to the community. The landowner indicated they were amenable to an approach at which time SCC spoke with neighbouring Carloway Community Council and the various grazing committees. In July 2012 a public meeting was held which agreed that the community would investigate the feasibility of a purchase. A Steering Group was established on the night with additional

members co-opted after the meeting. During late 2012 early community consultations took place and the landowner confirmed details of the land and assets to be included in the sale. In early 2013 funding was secured for a feasibility study and a renewables study and consultants were appointed through an open tendering process. In the second half of 2013 the feasibility and renewables work was completed, the community established the Carloway Estate Trust (CET) and a valuation was commissioned from the DVS which was accepted by both the community and the landowner. The community held a ballot to demonstrate community support in February 2014 which had a 98% turnout with a



75% vote in favour of purchase.

Funding for the purchase was secured from the Scottish Land Fund, Comhairle nan Eilean Siar and HIE in May 2014. Conveyancing and mapping account for the remainder of 2014 and on into early 2015. CET formally took ownership of Carloway Estate on 1st May 2015. Carloway Estate Trust or Iain Dòmhnachd Charlachairigh is now up and running; their first election for Directors took place in August 2015 with 36 nominations for 12 places. They have employed a development officer and are investigating a number of development opportunities.

Landowner Initiated Negotiated Sale, Community Declined: Tanera Mor, Wester Ross

In October 2012 the Wilder family, owners of the 760-acre island of Tanera Mor, lying just west of Achiltibuie, announced their intention to offer the community the opportunity to purchase the island and its assets including 9 houses, a café, workshop and other associated infrastructure. At a public meeting it was agreed that the

existing community company Colgach Community Development Company (CCDC) who had recently taken ownership of the Achiltibuie Smokehouse buildings, would investigate the feasibility of a purchase. With the financial support of HR, an options appraisal and financial review was commissioned, a process which included a questionnaire to all residents. In February 2013 a further public meeting revealed that while buying the island would be a huge opportunity the questionnaire returns indicated that the community felt it was simply too large a project for CCDC to take on at that time, there were also unresolved issues about the availability of the funding required and the community not being resident on the island. The Chair of CCDC in closing the meeting said: "We support the conclusion of the questionnaire that we do not pursue the generous offer made for community purchase of Tanera Mor. In coming to this conclusion we recognise that the future of the island plays an important part in the future of the wider Colgach community. As such we undertake to assist the owners in finding a purchaser who will serve the interests of both them and the rest of the community". The proposal was supported by a show of hands in favour. At time of writing in May 2016 Tanera Mor is still on the market. (<https://colgachcompany.wondpress.com/>)



Photo by Sam Baker

Landowner Initiated Housing Site Negotiated Sale in Direct Response to Identified Community Need: Ulva Ferry, Mull



In 2010 the primary school in Ulva Ferry on the island of Mull was threatened with closure. In response to this a community group, the Ulva School Community Association (USCA), was formed both securing the future of the school and the development of a community plan through HR's Growth at the Edge initiative. The community consultation on work, as part of the development of the community plan, carried out in 2011 identified that the greatest threat to

the local community was the lack of affordable housing meaning that young families were not able to live in the area. In direct response to this a local farmer approached the community and indicated that they would be prepared to sell some land to the community specifically for affordable housing. USCA then approached the Mull and Iona Community Trust (MICT) to take the lead on the project as they lacked the capacity and structure to develop the project further. MICT subsequently worked with the local authority planners and the farmer to identify potential housing sites in this very sensitive National Scenic Area. Two sites were identified, one adjacent to the school and one 2 miles from the school, the former was sold to the community at full market value while the latter was gifted. While the sites were agreed in 2013 it took two years to complete the sale process as

planning permission was first secured, a rural housing burden was then placed on the land and there was also a complex process of registering the land as the sites had to be surveyed and mapped. In 2015, MCT finally took ownership of the two plots one of which, adjacent to the school, it will develop to create two highly energy efficient houses for affordable rent built to 'Passive House' standards and costing only £300 per annum to heat, the other of which will be sold with a rural housing burden conditions attached. It is expected that the first two houses will be built by Easter 2017.



(<http://www.mct.co.uk/projects-services/ulwaferrydevelopments/ulwaferry-housing-project/>, www.justplanning.com/ulwaferryhousing/)

Community Initiated Village Land Negotiated Transfer/⁷ Sales: Johnstonebridge, Scottish Borders

The Johnstonebridge Community has secured ownership of 5 sites within the village to deliver a range of projects including a community centre, play area, village gateway, apartments and potentially affordable self-build housing. The first site, as of 2015 fully operational as a multi-functional community centre and play area was gifted to the Johnstonebridge Centre and Community Development Trust (JCCDT) by Annandale Estates (AE) in 2010/11 following two years of project development, discussions and negotiations. Part of the delay was due to the need to establish a community company as the community council is not deemed to be an appropriate legal structure to own and manage facilities as was proposed. The remaining four sites were secured after the community first registered an interest in them through Part 2 of the Land Reform (Scotland) Act 2001 when they were due to be placed on the open market and sold at auction in mid-2012. In late 2012 with support from the Big Lottery community consultation and feasibility work was able to be carried out which demonstrated both community support and suitable end uses for the sites. JCCDT, with ongoing advice from AE, who had originally sold the 4 parcels in 2006, secured ownership of the four plots in January 2014 which are all now under various stages development. (<http://www.johnstonebridgecentretrust.co.uk/>)

Landowner Initiated Negotiated Sale, Property Subsequently Removed from Market: Whitmuir, Scottish Borders

The owners of Whitmuir Farm in the Scottish Borders took a decision in 2012 that they would consider selling the farmland, extending to 140 acres, to the community. At that time a community benefit society Whitmuir Community Farm (WCF) was established and subsequently a community share issue was launched in March 2013 which raised almost 50% of the asking price. Then in 2014 the extent of the property to be sold was increased to include the farmhouse and a range of other buildings which raised the price considerably but the owners still agreed to offer a first right of refusal to WCF. After further investigation including a detailed valuation of the farm and buildings by Bill Ingram, the owners decided to withdraw the property from sale. The owners



have however continued to work with WCF and in 2015 signed a five year Memorandum of Understanding with the group to enable them to use the land for a local food and food waste recycling project which has been funded by the Climate Challenge fund from 2015-2017. (<http://www.whitmucommunityfarm.org/index.htm>, <http://www.whitmuithenorganically.co.uk/about/>)

Community Initiated Negotiated Sale of Property Being Marketed for Sale: Bonar Bridge, Sutherland

In 2010 the owner and manager of the Post office in Bonar Bridge put both the business and property in which it was located on the open market as they wished to retire. It failed to sell in over three years, possibly as the property also included a house and extensive garden that had been unoccupied for some considerable time and was in need of renovation. In late spring 2013 the local development company the Kyle of Sutherland Development Trust (KoSDT) approached the owner with a view to buying



the property but not the business to help address the perceived barrier and the property was taken off the open market. With support from the Big Lottery's Investing in Ideas fund by August 2013, KoSDT had commissioned a feasibility, undertaken community consultation and had the property valued. The DVV placed a value on the property less than what it was being marketed for but the owner accepted the new value. An application for funding the purchase was submitted to the Scottish Land Fund in November 2013, the funding approved in February 2014 and the property was transferred in March 2014, less than a year after the idea was first mooted. The Post Office has continued to be run privately renting space from KoSDT who have renovated the house and are letting it at an affordable rent. KoSDT are now seeking to develop a terrace of 3 one-bedroom houses for affordable rent in the garden area of the property. In addition to the post office and housing units in Bonar Bridge KoSDT are in the process of securing two other areas of land for other developments, however these have progressed less smoothly one due to having to deal with an 'offshore company' owning one area of land being procured and there being outstanding debts associated with another. (<http://www.kyleofsutherland.co.uk/>)

* 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 stage 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 grant 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/balotts 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 useful 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/ access 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 of 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 burdens. 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 chose 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, 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 than 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/forums 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 so 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 impede 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.

✱ A Summary of Community Rights in Law to Seek to Purchase Land

1. The following is a summary of what the current position is in law relating to community rights to seek to purchase privately owned land. Full details of both communities and landowners rights as set out in the legislation are provided in the original legislative instruments referred to in the text below which can be accessed at legislation.gov.uk. A full list of guidance and support in relation to the provisions set out below is provided in the **Contacts and Resources Section** of the Protocol. This summary does not replace the need to consult the actual statute direct or to access legal advice; it serves purely as an overarching summary of the main provisions and their significance. It is also recommended that the Scottish Government's Community Right to Buy team is consulted at an early stage (refer **Contacts and Resources Section** for contact details).
2. It should be noted that communities have a range of additional rights in relation to land that is owned by the public sector but that is not dealt with here.

Established Provisions

Community Right to Buy (CRB)

3. Community Right to Buy provides the opportunity for communities across Scotland to register an interest in land and buy that registered land, at an independently assessed market value, once it is offered for sale. The process is based on the premise of there being a "willing seller" with the "right to buy" only triggered when the owner wishes to sell the land or any part of it. The legislation establishing these rights falls within Part 2 of the **Land Reform (Scotland) Act 2003** as amended by the **Community Empowerment (Scotland) Act 2015**. It should be noted that while the LRA 2003 applied only to geographical communities of 10,000 population or less (therefore mostly rural) in Scotland, the CRB rights as amended by CEA 2015 now apply to any community.
4. Under the LRA 2003 the community should first "register an interest" with the Scottish Government (SG) in the land that they are interested in purchasing. Registrable land could include built assets, salmon fishings or mineral rights (with some exceptions). This should be done in advance of the land being offered for sale by its current owner (timeous) although "late" applications lodged once land is marketed can be considered, where the community can show there has been "relevant work" or "relevant steps" taken to consider a potential purchase, or otherwise where there would be "good reasons" for allowing a late application. A late application would not be accepted where the community had been offered the land to purchase within the previous 12 months and they had declined to do so, unless there were "good reasons" for having declined.
5. The term "community body" is used to describe a legal community organisation which can take the form of a Company Limited by Guarantee (CLG), a Scottish Charitable Incorporated Organisation (SCIO) or a community benefit society (BenCom). The community body must have at least 10 members at least 75% of which should be drawn from the organisation's defined "community" the nature of which is set out in the

legislation. The community body must demonstrate that its main purpose is consistent with the delivery of sustainable development (development encompassing economic, social and environmental objectives).

6. In order to 'register an interest' in a specified area of land the community body has to make an application to Ministers in order to satisfy them that it is in the public interest for the community to be given the right to buy should the landowner of the land in question offer the land for sale or take any action with a view to the transfer of that land. They must clearly demonstrate the community's connection to the land in question and both the benefits to the community of owning the land and that there is sufficient support within the community for registering an interest in the land. At the registration stage this amounts to obtaining at least 10% community support (unless exceptional circumstances can be demonstrated). Once Ministers are satisfied that a case has been made the registration will be placed on the Register of Community Interests in Land (RCIL) for a period of 5 years, after which time an application would have to be made to re-register for a further 5-year period if the community wish to retain their interest. In the instance where more than one community body registers an interest in the same area of land then a decision will be taken by Ministers as to which community body, if any, has made the strongest case to secure the registration. Community bodies can register an interest in more than one area of land.
7. If, and when the owner of land that has been registered decides to sell all or part of the land in question then they must inform Ministers and the community body of this. This triggers the right of the community to exercise their right to purchase the land before it is placed on the open market. At this time an independent valuer is instructed by Ministers to value the land and the community is balloted. The community has a period of 8 months from the notification of the landowner taking steps to sell or transfer (or 6 months in the case of a registration prior to 15 April 2016) to raise the necessary funds and to complete the purchase, should the community ballot demonstrate adequate community support.
8. Landowners are given opportunities to comment on applications to register a community interest in land. A registration of land does not stop the landowner from developing their land or transferring the land in certain circumstances e.g. a transfer of croft land to the crofter (ensuring it), transfer to a spouse as part of a divorce settlement or similar or transfer to creditors, etc. Strict time limits are applied throughout the process.
9. Both community bodies and landowners have the rights to appeal any decisions taken by Ministers at various stages in the process. Ministers can facilitate the arrangement of mediation at any time, on the request of interested parties (community body, owner or creditor) to smooth the process of registration or purchase.
10. Further information on community right to buy is available at <http://www.gov.scot/Topics/Planning/land/land/communityleadrighttobuy/Community>.

Crofting Community Right to Buy

11. Part 3 of the **Land Reform (Scotland) Act 2003** established that a crofting community may acquire eligible croft land under the Crofting Community Right to Buy whether there is a willing seller or not. Croft land is that which is subject to crofting tenure and regulation and includes any land, including common grazings, which have not been subject to an 'Apportionment Order' from the Crofting Commission. It also includes salmon fishings and some mineral rights so long as owned by the same landowner (salmon fishings can be purchased up to 1 year following transfer and mineral rights up to 5 years following transfer of land). Sporting rights may also be purchased either at the time of purchase of the land or up to 5 years after the purchase of the land. The Act also enables a crofting community to acquire, in certain circumstances,

additional 'eligible' land which is contiguous to the croft land and owned by the same person (excluding salmon flytings and mineral rights). Finally the crofting community can also seek to purchase the interests of the tenant in any interposed leases.

12. A crofting community/body (CCB) as defined by the Act and which represents a defined crofting community must apply to Ministers for consent to buy croft land (Please refer to the relevant legislation and Scottish Government guidance for this definition: refer **Contacts and Answers Section** and para. 17 below). The application must set out the extent of the land in question along with the use, development and management proposed, the extent to which these activities would support sustainable development and evidence of community support (both wider community and croft tenants) on the basis of a ballot which must be conducted within the immediately preceding 6-month period of the date of submission to Ministers and the result of which must be published within 14 days. A copy of the application is also sent to the landowner.
13. As indicated above there requires to be evidence of support from **both** the more narrowly defined crofting community in addition to the wider community. The crofting community is defined as those persons who (i) are resident in the crofting township which is situated in or otherwise associated with the croft land which the crofting community has the right to buy, (ii) are registered in the Crofting Register (or Register of Crofts maintained by the Crofting Commission) as tenants of crofts in the crofting township in question, or (iii) are owner-occupier crofters of a croft in the crofting township in question. The crofting community as such is a sub-set of the wider community.
14. After full assessment of the application and consultation with various parties including the landowner Ministers will decide whether to issue consent for the sale to proceed. Should consent be given Ministers shall then appoint an independent valuer who will assess the market value of the land and associated interests. The Crofting Community Body can then exercise its right to buy the croft land and associated interests.
15. Both CCBs and landowners have the rights to appeal any decisions taken by Ministers at various stages in the process. Ministers can facilitate the arrangement of mediation at any time to smooth the process of purchase.
16. The application of Part 3 of the URA 2003 has proven challenging to both landowners and crofting communities. For this reason Scottish Ministers and their advisors recommend that land should be transferred by agreement with the legislation used as a fall-back should negotiations fail.
17. Further information on crofting community right to buy is available at <http://www.gov.scot/Topics/Forms/propriet/land/land/land/rights-to-buy/crofting>

Provisions Introduced in 2015/16

Community right to buy land even where there is not a willing seller if they can show the land is abandoned, neglected or detrimental.

18. The **Community Empowerment (Scotland) Act 2015** has introduced a new Part 3A to the **Land Reform (Scotland) Act 2003** setting out new rights in relation to a 'Community Right to Buy Abandoned, Neglected or Detrimental Land'. This would facilitate a community's right to purchase land deemed to be 'abandoned or neglected' by Ministers from an 'unwilling seller'. It is for Ministers to exercise judgement on whether the

land subject to any application is either “wholly or mainly abandoned or neglected” or “the use or management of the land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community.” The issue of what factors should be material considerations when considering whether land is neglected, abandoned or detrimental along with the interpretation of other aspects of the new Part 5A will be the subject of secondary legislation not established at the time of preparing this guidance (May 2016).

19. Similar to the arrangements for CILB there must be an eligible community body and an application must be made to Ministers for consent to trigger a right of purchase of ‘neglected or abandoned land’. In addition to defining the land in question, demonstrating the community’s connection to the land, the proposed use, development and management of the land and the community support the community must set out the reasons why it considers that the land is either wholly or mainly neglected or abandoned or how its use/management is causing harm as it is described in the Act. A copy of the application must be sent to the landowner and other relevant parties as defined in the Act.
20. After full assessment of the application and consultation with various parties including the landowner Ministers will decide whether to issue consent for the sale to proceed. Ministers must be satisfied that the land in question meets the criteria for being considered abandoned or neglected or that its current use constitutes harm to the environmental well-being of the local community and that the exercise of the rights of the community under Part 5A is both in the public interest and compatible with achieving sustainable development in relation to the land. Should consent be given Ministers shall then appoint an independent valuer who will assess the market value of the land and associated interests and a community ballot will be held. As long as the ballot demonstrates adequate levels of community support for the purchase of the land the community body can then exercise its right to buy the land and associated interests.
21. Both community bodies and landowners have the rights to appeal any decisions taken by Ministers at various stages in the process. Ministers can facilitate the arrangement of mediation at any time to smooth the process of purchase.

Engaging Communities in Decisions Relating to Land

22. Part 4 of the *Land Reform (Scotland) Act 2016* establishes provisions for Scottish Ministers to issue guidance for land owners, tenants and occupiers of land on engaging with communities in decisions relating to land, which may affect them. This is for the purpose of promoting responsible practices in relation to land, reducing inequalities that arise from socio-economic disadvantage and furthering the achievement of sustainable development in relation to land. This guidance will set out the types of land and types of decisions to which community engagement should apply, when and how consultation and engagement should take place. At the time of writing (May 2016) this Guidance had yet to be consulted on or issued by Scottish Ministers. It should be noted that where the engagement of the owner with the community was deemed not to follow the guidance, that matter may be one the Minister can consider in any application to purchase the land under Part 3 of the *Land Reform (Scotland) Act 2016*, below.

Community Right to Buy Land to Further Sustainable Development

23. Part 5 of the *Land Reform (Scotland) Act 2016* has introduced a new form of community right to buy land for the purpose of furthering sustainable development. This would facilitate a community’s right to purchase land deemed to have satisfied conditions for sustainable development by Ministers from an

'willing seller'. The Act sets out 4 conditions which must be met, these are: a) the transfer of land is likely to further the achievement sustainable development of the land; b) the transfer of land is in the public interest; c) the transfer of land will either likely result in significant benefit to the community or is the only or most practicable way of achieving significant benefit, and; d) not granting consent to the transfer of land is likely to result in harm to the community.

24. In this instance the community can either make the application under Part 5 themselves or can nominate another person to exercise the right to buy (a third party purchaser). Eligible community bodies are defined in a similar way to that already established for the CRB.
25. Similar to the arrangements for CRB there must be an eligible community body and an application must be made to Ministers for consent to trigger a right of purchase land to further sustainable development. In addition to defining the land in question, demonstrating the community's connection to the land, the proposed use, development and management of the land and the community support, the community must set out how their proposal meet the 4 conditions above. A copy of the application must be sent to the landowner and other relevant parties as defined in the Act.
26. After full assessment of the application and consultation with various parties including the landowner Ministers will decide whether to issue consent for the sale to proceed. Ministers must be satisfied that the land in question meets the 4 conditions and that all processes have been adequately followed. In determining what constitutes significant benefit or harm to the community Scottish Ministers should consider the likely effect of granting (or not granting) consent to land transfer on economic development, regeneration, public health, social wellbeing and environmental wellbeing. In taking decisions under this Section Ministers must have regard to the desirability of encouraging equal opportunities and also certain human rights provisions, most notably the International Covenant on Economic, Social and Cultural Rights. Ministers must also invite the owner or, as the law may be, the tenant to give Scottish Ministers information about the owner's or tenant's views on the likely impact on the owner or tenant of the proposal for the land or tenant's interest, including current use or intended use or other matters the owner or tenant considers relevant. Should consent be given Ministers shall then appoint an independent valuer who will assess the market value of the land and associated interests and a community ballot will be held. As long as the ballot demonstrates adequate levels of community support for the purchase of the land the community body can then exercise its right to buy the land and associated interests.
27. Both community bodies and landowners have the rights to appeal any decisions taken by Ministers at various stages in the process. Ministers can facilitate the arrangement of mediation at any time to smooth the process of purchase.

* Contacts and Resources

Main Contacts

Community Land Scotland

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Scottish Land & Estates

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Sarah Jane Laing: 0131 653 5400

Donald Inks: 0131 653 5400

Scottish Government Land Reform and Tenancy Unit

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Saughain House
Broomhouse Drive
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EH11 3PD

www.gov.scot/topics/environment/land-reform

LandReform@scotland.gov.uk

Dave Thomson: 0300 244 9435

Scottish Government Community Right to Buy Team

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Saughain House
Broomhouse Drive
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EH11 3PD

www.gov.scot/topics/farmingrural/rural/rural-land/right-to-buy

CRBT@gov.scot

Community Right to Buy: 0300 244 9822

Crafting Community Right to Buy: 0300 244 9817

Highlands and Islands Enterprise

Tigh Feinne
Lochabh Business Park
Auchtertyre
Kyle
IV40 8AD

www.hie.co.uk/community-support/community-assets

Firstname.lastname@hieint.co.uk

Sandra Holmes: 03000 135 078

Allie Raeburn: 03000 134 799

Helen Macdonnell: 03000 135 126

Scottish Land Fund Big Lottery Fund

Pacific House
10 Wellington Street
Glasgow
G2 6AJ

www.biglotteryfund.org.uk/sf

adv@scotland@biglotteryfund.org.uk

Tel: 0300 123 7110

Additional Useful Contacts

Development Trusts Association Scotland Community Ownership Support Service

15 Washington Lane
Edinburgh
EH1 1JH

www.dtasccommunityownership.org.uk

csos@dtascot.org.uk

Unda Gillespie: 0131 225 2080

Resources for Communities

Highlands and Islands Enterprise has a range of resources on their website including: Community Assets Guides, Template Documents, Community Right to Buy (AC) and Case Studies. These are available from:

<http://www.hie.co.uk/community-support/community-assets/resources.html>

Community Land Scotland has produced a guide for prospective community landowners: An 8 step Guide to Land Purchase. This is available via Lindsay Chalmers (contact details above).

Scottish Government has produced a range of information leaflets and more detailed guidance on Community Right to Buy. These are available from <http://www.gov.scot/Topics/commongrowth/land/local-land/right-to-buy/Community>

Scottish Land Fund has produced guidance on what it will fund and the application process. These are available from <https://www.highlandscotland.org.uk/scottishlandfund>

Development Trusts Association Scotland operates the Community Ownership Support Service (COSS) which has a wider range of online resources for both community owned land and assets including buildings. The information and guidance sheets cover a range of topics including skills assessment, managing risks in asset transfers, feasibility studies and business planning, engaging stakeholders and securing finance amongst others. The full range of resources is available from <http://www.dtasccommunityownership.org.uk/resources>.

SCVO provides a range of resources to assist in setting up and running voluntary organisations. They have a handy step by step guide which will assist you in deciding what type of organisational structure to use and resources such as model constitutions. The step by step guide is available from <http://www.scvo.org.uk/setting-up-a-charity/>.

Scottish Community Development Centre (SCDC) is recognised by Scottish Government as the national lead body for community development. They have online resources supporting an asset based approach to community development which can be found at <http://www.scvdc.org.uk/what-we-do/scdcinfo/what-we-do/resources/>.

In addition to the above there are a range of other organisations which provide specialist support depending on the nature of the initiative a community may be developing these include Community Woodlands Association, Planning Aid Scotland, Flunkert Foundation, Semios, HSEJ etc. It is likely that community organisations will be referred to these specialist advisors via one of the key contacts resource providers listed above.

Resources for Landowners

Scottish Government has produced a range of information leaflets and more detailed guidance on Community Right to Buy. These are available from <http://www.gov.scot/Topics/farmingrural/Wales/rural-land/right-to-buy/Community>

Scottish Land & Estates (SLE) is able to provide general advice to all landowners on community engagement and the various routes to community right to buy. It is also able to provide more detailed advice to its members who are looking to transfer land or assets to a community or who have been approached by a community looking to purchase land or assets. Information and resources such as template letters can be obtained by emailing info@scottishlandandestates.co.uk or from www.scottishlandandestates.co.uk.

SLE was a partner in the Sustainable Estates for the 21st Century project, which was carried out at the Centre for Mountain Studies, Perth College, University of the Highlands and Islands, between 2007 and 2012. The work included four projects funded by the Henry Argent Foundation. As part of the project the Sustainable Estates team produced a short, engaging booklet that explores the potential of collaborative initiatives between privately owned rural estates, rural communities and other partners in upland Scotland. This booklet is aimed at land owners, estate managers, community groups, policy makers and others interested in the topic. The booklet is available for viewing and download [here](#). If you would like to receive a printed copy, please send your details to info.cms.perth@uhi.ac.uk.

Scottish Community Development Centre (SCDC) is recognized by the Scottish Government as the national lead body for community development. They support the National Standards for Community Engagement (NSCE) which will inform the process established under Part 4 of the Land Reform (Scotland) act 2016 (refer to [Summary of Community Rights in Law to Look to Purchase Land Section](#)). The NSCE can be found at <http://www.scdc.org.uk/what/national-standards/>.





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