

## CRITERIA FOR LARGE-SCALE LANDOWNERSHIP

**Q1.** Do you agree or disagree with the criteria proposed for classifying landholdings as 'large-scale':

- a) A fixed threshold of 3,000 hectares  
**Disagree**
- b) Land that accounts for more than a fixed percentage of a data zone (or adjacent data zones) or local authority ward(s) designated as an Accessible Rural Area or Remote Rural Area, through our six-fold urban/rural classification scheme  
**Disagree**
- c) Land that accounts for more than a specified minimum proportion of a permanently inhabited island  
**Agree**

Reasons:

- a) We disagree with the 3000 hectare criteria and would suggest it be lowered to 1000 ha. Based on data provided by Scottish Parliament information Centre (SPICe) we estimate this would extend the number of private estates covered from 386 to 754, with a substantial increase in the total land area that would be required to be managed in the public interest for climate, biodiversity, social justice and communities.

The John Muir Trust looks after various properties in Scotland that range in size from 150 ha to 12,000 ha, and have management plans in place for all of these. Among our properties that would fall below the 3000 ha threshold is the nationally important Ben Nevis Estate (1750ha). One thousand hectares is four times the size of Edinburgh's largest green space, Holyrood Park – which includes Arthur's Seat, the Salisbury Crags and three lochs; it is seven times the size of Pollok Country Park in Glasgow. We believe that 1000 ha easily qualifies as large-scale.

We would further suggest that aggregated landholdings should be taken into account, which would mean that landholdings below the threshold would also be considered 'large-scale' if they were part of a larger portfolio of properties exceeding 1000 (or 3000) ha.

- b) We support the principle of additional criteria based on a fixed percentage of data zones to take account of rural and urban areas where the impact of concentrated landownership is not always related to the size of the landholding. We are aware, however, that there are vast variations in the geographical size of local authority wards, which makes them unsuitable as standard data zones. We would like to see more work done on this element to ensure that the Land Reform Bill will bring potential benefits to all parts of Scotland, rural and urban.
- c) We would support additional safeguards for islands (possibly extended to peninsulas that have similar characteristics). We would further suggest that previously inhabited islands might also be subject to at least some of the proposals set out in this document to encourage repopulation, improve transparency and diversify land ownership.

**Q2.** Do you agree or disagree that family farms should be exempt from the proposals outlined in Parts 5 to 7 even if they are classified as a 'large-scale' landholding?

**Disagree**

Reasons:

We recognise that family farms can work in the public interest by producing food, providing employment and, increasingly, by diversifying into activities that contribute to climate and biodiversity objectives. We also recognise the strong cultural and generational connection with the land and to particular types of agricultural practice. With that strong tie, generally comes a desire to improve the condition of the land and leave it better for future generations. Moreover, most family farms are small to medium size and would not meet the 3000 ha threshold to be considered large-scale (or even the 1000 ha figure that we have proposed).

Nonetheless, we consider that all types of ownership – whether individual, community, charity, public, trust, company or family – should be required to work in the public interest, and operate with transparency, especially if they fall within the criteria for ‘large-scale’.

Clearly, the responsibilities and priorities of a large family farm would look very different from that of a large landholding managed primarily for grouse or deer shooting, for example. We would expect these differences to be reflected in the detail of Management Plans.

We would be concerned that any exemptions could create ambiguity and potential loopholes that would undermine the objectives of the Bill. For the sake of clarity and fairness, our preference would be that all large-scale landholdings be included in the relevant proposals.

**Q3.** Do you think that the proposals considered in this consultation should be applied to the urban context?

**Yes**

Reasons:

Although the John Muir Trust is mainly focused on rural land use, we also work in urban areas (e.g. through our John Muir Award scheme).

There are well-documented concerns around urban landholdings (see for example BBC documentary Who Owns Scotland episode 1, aired in October 2021).

We believe that all urban communities should have the right to a clean, healthy environment, with easy access to green and wild places, affordable housing and social amenities. Because land in our towns and cities is in short supply, expensive and subject to a plethora of competing demands, urban land use is disproportionately determined by the highest bidder.

We support any measure that would tilt the balance, whether in rural or urban Scotland, in favour of the public interest rather than private profit.

## **LAND RIGHTS AND RESPONSIBILITIES**

**Q4.** We propose that there should be a duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols. Do you agree or disagree with this proposal?

**Agree**

Reasons:

The current voluntary approach has had mixed results with some landowners complying and others continuing with business as usual. We are strongly in favour of placing a legal duty on large-scale landholdings to comply. This would help bring about a wider cultural change in which all large-scale landowners see themselves as stewards and guardians of the land whose priorities are to look after the natural environment, support local communities and protect the interests of future generations.

We do feel however, that further clarity at an early stage in the legislative process would be helpful. Much of the Land Rights and Responsibilities Statement refers back to associated advisory notes and protocols, some of which are

framed in vague language without precise requirements. Consequently, it is not entirely clear at this stage which elements of the LLRS would become obligatory under the proposal.

That partly reflects the complexity of measuring public interest objectives across a range of geographically and demographically diverse landholdings which contribute (or should contribute) to the local and national public interest in different ways. While recognising that there needs to be some flexibility in the interpretation of the Land Rights and Responsibilities Statement, we would suggest that a supplementary document be published setting out clear compliance requirements. Some of these may be universal; others may be specific to different land classifications.

On universal compliance requirements, we support the proposal from the National Access Forum that the duty of landowners to uphold access rights as set out in the Land Reform (Scotland) Act 2003 should be monitored and enforced as a key element of Land Rights and Responsibilities.

We would also suggest that whatever criteria is adopted to define large-scale landholdings, the Scottish Government may want to consider setting a target date to broaden the scope of this requirement to all significant landholdings. We understand that would involve additional resources for monitoring and enforcement purposes, but land use is of such fundamental importance to the social, environmental and economic health of Scotland that such investment would reap multiple dividends for society.

**Q5a.** If there was a legal duty on large-scale landowners to comply with the Land Rights and Responsibility Statement and its associated protocols, we propose that this should be enforced by having a formal procedure for raising complaints, and by making provisions for independent adjudication and enforcement.

**Agree**

Reason:

To achieve universal compliance, we need robust processes in place that are fair and transparent. A formal procedure for raising complaints, and provisions for independent adjudication and enforcement appear to us to be a suitable framework within which to establish such processes.

**Q5b.** Only constituted organisations (examples cited are community, charity and public service) that have a connection to the local area or natural environment should be able to report breaches.

**Disagree**

Reasons:

We are not clear of the advantages of this restrictive approach. The Scottish Environmental Protection Agency (SEPA) has a 24-hour pollution hotline open to all members of the public. We believe it should be the responsibility of the overseeing body to filter out vexatious complaints that lack substance or evidence. We can understand a stipulation obliging the overseeing body to investigate any breach reported by a statutory agency such as NatureScot and other named bodies, but beyond that, we would suggest that anyone should be able to report a suspected breach without necessarily expecting that every complaint will automatically trigger a full investigation.

**Q5c.** Should the responsibility for investigating and dealing with complaints sit with the Scottish Government or the Scottish Land Commission or another body.

**Scottish Land Commission**

Reasons:

We believe that the collective expertise, the dedicated focus, and the independence from party political pressures make the Scottish Land Commission the most suitable body to play the principal role advising and overseeing compliance with the LLRS. To play that role, it will require additional resources and powers broadly in line with the current status of SEPA, which is both an advisory and regulatory body.

The Scottish Land Commission could then recommend specific enforcement actions to the Scottish Government at the end of a process (e.g. withdrawal of public subsidy; compulsory purchase etc).

We also recognise that there may be occasional need for judicial intervention, and we would suggest that the powers of the Lands Tribunal for Scotland could be expanded accordingly.

**Q5d.** Should the potential outcome be:

- a) mediation process; **Yes**
- b) recommendation to landowner on how they could comply; **Yes**
- c) Direction to implement changes? **Yes**

Reasons:

These suggestions are not mutually exclusive: together they can form a process that starts by seeking a voluntary resolution before moving on, where necessary, to direction to comply. We would suggest that, given the urgency of ensuring that large-scale landholdings benefit communities, climate and biodiversity, there should be a fixed timescale for that process to be completed.

**Q5e.**

Financial penalties: **Yes**

'Cross-compliance' penalties: **Yes**

Reasons:

Financial penalties, set at a level that is both a deterrent against non-compliance and proportionate to the severity of the breach, will be a vital instrument for achieving the objectives of the legislation. We also understand that cross-compliance, overseen by annual inspections, and enforced by penalties including withdrawal of subsidies, has been standard practice in farming and crofting since it was introduced by the EU in 2003. We would support the extension of these general principles to all large landholdings.

**Q6.** Do you think the proposal to make the Land Rights and Responsibility Statement and its associated protocols a legal duty for large-scale landowners would benefit the local community?

**Yes**

Reasons:

The way in which land is managed and used has both direct and less obvious indirect impacts on nearby communities, positive or negative. As succinctly summed up in principle 5 of the Land Rights and Responsibilities Statement, 'Land ownership, management and use should deliver a wide range of social, environmental, economic and cultural benefits.'

By introducing a legal duty on landowners to comply – and again, we would emphasise that all significant landholdings should be considered – these benefits are more likely to be delivered to local communities.

**Q7.** Do you have any other comments on the proposal to make the Land Rights and Responsibility Statement and its associated protocols a legal duty for large-scale landowners?

The principles that underpin the Land Rights and Responsibilities Statement (2022 update) include safeguarding human rights; contributing to public wellbeing; balancing public and private interests; supporting sustainable economic development; protecting and enhancing the environment; diversifying landownership; helping to achieve social justice and building a fairer society for the common good.

If these principles were to be embedded into the culture of landownership, backed by measurable criteria through which to assess progress, and a legal duty to comply, the long-term impact on localised communities and on the wider community of Scotland, could be transformative.

## **COMPULSORY LAND MANAGEMENT PLANS**

**Q8.** We propose that there should be a duty on large-scale landowners to publish Management Plans. Do you agree or disagree with this proposal?

**Agree**

Reasons:

We believe that obligatory Management Plans would be an essential underpinning of universal compliance with Land Rights and Responsibilities. They provide transparency and can be assessed against the requirements of LRRS to allow for effective monitoring of progress.

**Q9.** How frequently do you think Management Plans should be published?

**Every five years**

Reasons:

The publication of a management plan every five years would strike to strike a reasonable balance to ensure there is adequate time to prepare, deliver and evaluate the success of the plan while allowing landowners to changing circumstances and new public priorities.

**Q10.** Should Management Plans include information on:

a) Land Rights and Responsibilities

**Yes**

b) emissions reduction

**Yes**

c) nature restoration

**Yes**

d) revenue from carbon credits

**Yes**

e) contribution to local economy and community wealth building.

**Yes**

Reasons:

All five of these areas are of key public interest and provide a useful framework upon which management plans can be based.

**Q11.** Should responsibility for enforcing sit with: a) Scottish Government b) public body such as Scottish Land Commission.

**Scottish Land Commission**

Reasons:

See our previous response to Q5c in Section 5. For the sake of consistency, we believe that the body that oversees the Land Rights and Responsibilities should also be responsible for enforcing compulsory management plans. Where enforcement in either case requires severe action (e.g. withdrawal of public subsidy; compulsory purchase etc) this should be carried out by the Scottish Government after considering a recommendation by the Scotland Land Commission. Again, the Lands Tribunal for Scotland could play a judicial role in any dispute as and when required.

**Q12.** Do you think the proposal to make Management Plans a legal duty for largescale landowners would benefit the local community?

**Yes**

Reasons:

Compulsory management plans would improve local transparency and provide communities with a greater understanding of the processes and challenges of land management. By providing clear information on potential changes of land, use, financial opportunities and other projects, they could help facilitate community involvement in key decisions.

**Q13.** Do you have any other comments on the proposal to make Management Plans a legal duty for large-scale landowners?

We would suggest that management plans should be subject to a formal consultation process to ensure the views of local communities, neighbours, key stakeholders and statutory agencies are taken into account.

### **PUBLIC INTEREST TEST FOR LARGE-SCALE TRANSACTIONS**

**Q14.** We propose that a public interest test should be applied to transactions of large-scale landholdings. Do you agree or disagree with this proposal?

**Agree**

Reasons:

While public interest should be the guiding principle for all large landholdings, land sales open up specific opportunities to make progress towards achieving some of the key aims of the Land Reform Bill, such as diversity of ownership, community decision-making and improvements in land use. A public interest test could also protect local communities and the wider national interest from potentially adverse impacts from land transfers that might, for example, magnify ownership concentration, reduce local accountability and transparency, or impede progress towards climate and biodiversity objectives.

**Q15** What do you think would be the advantages and/or disadvantages of applying a public interest test to transactions of large-scale landholdings?

The advantages of a public interest test would depend upon the criteria upon which the test was based. We would suggest the criteria need to assess how a transaction might affect the following: land ownership concentration and diversification; transparency and traceability of landownership; community involvement in future decision-making; progress toward achieving national objectives around carbon emissions, biodiversity and a just transition to net zero; community wealth building; local employment prospects; future population demographics.

Some of these will be more or less relevant depending on geography and land classification but they provide in our view an outline of the potential advantages of a public interest.

We understand that there could be disadvantages looking to sell to the highest bidder, for example. But the advantages for the wider we believe outweigh the disadvantages to sellers and buyers of large-scale landholdings.

We also believe there could be further advantages in broadening the public interest beyond geographical scale to include land or buildings that have special social, economic, cultural, community or environmental significance. This could include vacant and derelict sites, woodland and green spaces, theatres and cinemas, and sites with potential for social housing. In coastal areas, it could also include piers, slipways and areas of foreshore.

**Q16** Should the test apply to a) buyer b) seller c) both.

## The seller and buyer

Reasons:

We strongly support the principle that a public interest test apply to buyer to ensure that a purchase does not aggravate concentration of land ownership or lead to a regressive change in land use. We also see that there is case for a different kind of public interest test applied to the seller that focuses on options for the sale that would best serve the public interest, locally and nationally.

**Q17.** If the public interest test was applied to the seller, do you think the test should be considered as part of the conveyancing process?

**Don't know**

**Q18.** Do you think that all types of large-scale landholding transactions (including transfers of shares and transfers within or between trusts) should be in scope for a public interest test?

**Yes**

Reasons:

This could potentially help prevent complex arrangements designed to benefit private at the expense of public interests through measures such as avoidance of tax, transparency, or accountability.

**Q19.** We have proposed that if a public interest test applied to the seller concluded there was a strong public interest in reducing scale/concentration, then the conditions placed on the sale of the land could include:

- i. The land in question should be split into lots and could not be sold to (or acquired by one party as a whole unit
- ii. The land, in whole, or in part, should be offered to constituted community bodies in the area, and the sale can only proceed if the bodies consulted, after a period of time, indicate that they do not wish to proceed with the sale.

Do you agree or disagree with these conditions?

- Condition i.

**Don't know**

- Condition ii.

**Agree**

Reasons:

We agree with point ii, which fits with our general view that the primary consideration for all large-scale transfers should be community ownership.

In the absence of local support for community ownership, and where there is clear public interest in reducing scale or concentration of ownership locally, we are open to point i. We would suggest, however, that some land classifications are more suitable than others for subdivision into smaller units, and in some instances – for example, steep and rugged mountain landscapes – land reform may be better served by charity or public ownership. Where there are clear benefits to smaller plots, we would like to see safeguards in place to ensure that the subdivided land would continue to comply with the Land Rights and Responsibilities statement and associated protocols.

**Q20.** Do you think that a breach of the Land Rights and Responsibilities Statement should be taken into account when determining the outcome of a public interest test?

**Don't know**

Reasons:

The prospect that a future land sale or purchase could be affected by a breach is likely to act as an additional incentive for voluntary compliance. We would, however, add that a breach rectified voluntarily at an early stage should be discounted.

**Q21.** Do you think that a public interest test should take into account steps taken in the past by a seller to:

- a) Diversify ownership

**Don't know**

Reasons:

We are not entirely clear how relevant this information would be to the key objectives of a public interest test, whose main focus should be on the buyer rather than the seller. Any test applied to the seller should primarily consider the options for sale that would best serve the public interest.

- b) Use their Management Plan to engage with community bodies over opportunities to lease or acquire land

**Don't know**

Reasons:

Don't know because we do not fully understand the intention behind Q21.

**Q22.** Do you think the responsibility for administering the public interest test should sit with:

The Scottish Government

**No**

- A public body (such as the Scottish Land Commission)

**Yes**

Reasons:

We have suggested in previous answers that the Scottish Land Commission be the lead body in achieving compliance with Land Rights and Responsibilities, and compulsory management plans, so for the sake of consistency we would be in favour of the same organisation administering the public interest test.

**Q23.** Do you think the proposal that a public interest test should be applied to transactions of large-scale landholdings would benefit the local community?

**Not answered**

Reasons:

Again this depends on the criteria both for defining large-scale ownership, and for establishing the public interest. The lower and more flexible the threshold that triggers a public interest test, the more communities stand to benefit. And if the test opens up opportunities for communities to either own land, or have a significant involvement in local land management decisions, or reap a fair share of financial benefits from land use, then there will undoubtedly be major benefits for communities.

**Q24** Do you have any other comments on this?

**No**



## PRIOR NOTIFICATION OF INTENTION TO SELL

**Q25.** We propose that landowners selling large-scale landholdings should give notice to community bodies (and others listed on a register compiled for the purpose) that they intend to sell.

- a) Do you agree or disagree with the proposal above?

**Agree**

Reasons:

Under current legislation, a properly constituted community can register a pre-emptive right to buy. Many communities, however, do not have the organisational structures, the time, the resources or the information to register an interest in land that is not on the market.

- b) Do you agree or disagree that there should be a notice period of 30 days for the community body or bodies to inform the landowner whether they are interested in purchasing the land?

**Disagree**

Reasons:

We believe this notice period is far too short for a community to make this decision. The wording of question c) below suggests that the notice period is not merely to register a general interest, but to notify the landowner that they wish to purchase the land.

Community organisations generally operate on a monthly cycle, and attendance at meetings is frequently affected by holidays, illness and other commitments. Moreover, such a momentous decision may also involve a feasibility study and extensive discussion across all sections of the local community (beyond local activists). We would suggest that this phase would require a minimum timetable of up to three months.

- c) If the community body or bodies notifies the landowner that they wish to purchase the land during the notice period, then the community body or bodies should have 6 months to negotiate the terms of the purchase and secure funding.

**Disagree**

Reasons:

Again, we believe this timetable is too short. The most recent large-scale community buy-out, at Langholm Moor, took more than three years to complete, over two phases, from notification of the sale in May 2019, to the completion of the entire purchase in August 2022. The acquisition by a community of a large-scale landholding and associated assets can be a complex and protracted process that involves a major fundraising effort and extensive negotiations around the terms of the transfer. We believe that communities should be allowed at least 12 months to complete a purchase.

**Q26.** Do you have any other comments on the proposal that landowners selling large-scale landholdings should give notice to community bodies that they intend to sell?

**No**

## PUBLIC FUNDING

**Q27.** We propose the following eligibility requirements for landowners to receive public funding from the Scottish Government for land based activity:

- i. All land, regardless of size, must be registered in the Land Register of Scotland.
- ii. Large-scale landowners must demonstrate they comply with the Land Rights and Responsibility Statement and have an up to date Land Management Plan.

Do you agree or disagree with these requirements?

a) Requirement i.

**Agree**

Reasons:

We support the principle of complete transparency of landownership. We do not see why any landowners should seek to avoid registration; if there are practical difficulties for small landholders, they should be assisted to register.

b) Requirement ii.

**Agree**

Reasons:

We support the principle of public goods for public money; large-scale landowners who refuse to act in the public interest should not receive public funding.

**Q28.** Do you have any other comments on the proposals outlined above?

**No**

## **LAND USE TENANCY**

**Q29.** Do you agree or disagree with our proposal that there should be a Land Use Tenancy to allow people to undertake a range of land management activities?

**Agree**

Reasons:

We believe this proposal, including the option for tenant farmers and other small holders to convert their existing tenancy into a new Land Use Tenancy, would be progressive step forward.

Tenant farming accounts for a large proportion of agricultural land (around 23 per cent) and the sector is now going through a process of diversification beyond conventional agriculture to activities that contribute to reduction of greenhouse emissions and biodiversity improvement. A new Land Use Tenancy that recognises that shift and encourages further diversification could help bring small landholdings more closely into line with the changing circumstances and priorities of the 2020s.

**Q30.** Are there any land management activities you think should not be included within a Land Use Tenancy?

**No**

**Q31.** Do you think that wider land use opportunities relating to diversification, such as renewable energy and agri-tourism, should be part of a Land Use Tenancy?

**Yes**

**Q32.** Do you agree or disagree that a tenant farmer or a small landholder should, with the agreement of their landlord, have the ability to move their agricultural tenancy into a new Land Use Tenancy without having to bring their current lease to an end?

**Agree**

**Q33.** Do you agree or disagree that when a tenant farmer or small landholders' tenancy is due to come to an end that the tenant and their landlord should be able to change the tenancy into a Land Use Tenancy without going through the process of waygo, with parties retaining their rights?

**Agree**

**Q34.** How do you think the rent for a Land Use Tenancy should be calculated?

**Don't know**

**Q35.** Would you use a Land Use Tenancy if you had access to a similar range of future Scottish Government payments which other kinds of land managers may receive?

**No**

**Q36.** Do you think that there should be guidance to help a tenant and their landlord to agree and manage a Land Use Tenancy?

**Yes**

**Q37.** Do you think there should be a process to manage disputes between a tenant of a Land Use Tenancy and their landlord?

**Yes**

**Q38.** Do you agree or disagree that tenants of a Land Use Tenancy and their landlords should be able to resolve their legal disputes in relation to the tenancy through the Scottish Land Court?

**Agree**

**Q39.** Do you have any other comments on our proposal for a Land Use Tenancy?

**No**

## **SMALL LANDHOLDINGS**

**Q40.** Would you like to be kept informed about the Small Landholding Consultation for the Land Reform Bill?

**Yes**

## **TRANSPARENCY**

**Q41.** Do you agree or disagree with our proposal to explore:

- Who should be able to acquire large-scale landholdings in Scotland?

**Agree**

- The possibility of introducing a requirement that those seeking to acquire large-scale landholdings in Scotland need to be registered in an EU member state or in the UK for tax purposes

**Agree**

## **OTHER LAND-RELATED REFORMS**

**Q42.** Do you have any views on what the future role of taxation could be to support land reform?

We have concerns at the long-term exponential rise in land values in Scotland, which has been a major factor undermining political ambitions to diversify landownership. Investors have long regarded rural land in Scotland as potential tax havens. In the last few decades, revenues from leasing land for large-scale renewable energy development has given a further impetus to rising land prices, while in more recent times, property agents have reported huge increases in land values driven by a combination of public subsidies, grants, and a form of futures trading in carbon credits. According to the Scottish Land Commission, land prices have risen by 450 per cent since 2005 (while general inflation has risen cumulatively over that period by just 127 per cent).

Against that background, there is a strong case for considering a range of taxation options to help restrain what has become an overheated market that is impeding land reform efforts. Under the Scotland Act 1998, however there are severe limitations on the powers of the Scottish Parliament to introduce new national taxes. Although land and the environment are fully devolved, the ability of the Scottish Government to take effective action in these areas is hampered by a lack of fiscal powers. There is a strong case to be made for devolution of powers such as Inheritance

Tax and Capital Gains Tax, which would allow the Scottish Government greater control over the land market, as well as providing an income stream to help fund an acceleration of climate and biodiversity action programmes on land.

There are also existing fiscal levers which can be used in the meantime, such as the Land and Buildings Transaction Tax, which could be used to expand the Scottish Land Fund.

The John Muir Trust is in the process of developing, with scientists, tax experts, climate campaigners and other interested parties, the concept of a Carbon Emissions Land Tax (CELT), enabled by the Scottish Parliament and administered by local authorities to ensure compliance with devolved powers. Its primary purpose would be to act as an additional lever for land use change in the public interest based on the 'polluter pays' principle. Ideally, this would be part of a wider suite of carbon taxes, but as things stand these are reserved powers and so beyond the scope of the Scottish Parliament.

We envisage that all large landholdings would be placed into a tax band based on their current carbon emissions and potential for reductions. While the main aim of CELT would be to drive forward progressive land management to maximise carbon sequestration and reverse biodiversity, such a tax would, at least in the short-term, provide an important new income stream for rural local authorities, which could be potentially be used for local carbon reduction projects – e.g. concessionary public transport, insulation of buildings, cycling and walking infrastructure, community gardens etc. We are more than happy to supply further information, including work carried on our own properties to quantify our current carbon emissions.

**Q43.** How do you think the Scottish Government could use investment from natural capital to maximise:

- a) community benefit?
- b) national benefit?

- a) Large-scale public, private and third sector investment in nature-based projects could be the catalyst for an economic renaissance across some of our most sparsely populated areas, and help to transform many of Scotland's ecologically depleted landscapes for the better, benefitting the nation, socially, economically and culturally for many generations to come. Without serious government oversight, it could equally, however, magnify existing inequalities in wealth and power in rural Scotland, and squander opportunities for reversing biodiversity decline.

The two existing voluntary codes that govern carbon markets – the Woodland Carbon Code (WCC) and the Peatland Code – are useful safeguards against abuse and manipulation of carbon offsetting schemes, and can help guide forest and peatland management. Their narrow focus on carbon, however, makes them an inadequate lever for tackling some of the new challenges that Scotland faces in the 2020s, specifically in relation to communities and biodiversity.

Neither provide any guarantees that local communities will receive a fair share of the financial benefits. In that respect, we can learn lessons from the development of the onshore wind over the past 25 years. While this has made a vital contribution to climate targets, the financial benefits have flowed overwhelmingly to energy companies and large landowners, leaving local communities with only fractional benefits – at best – under voluntary good practice guidelines.

On natural capital investment, we would suggest that the new Land Reform Bill needs to consider additional codes and protocols – for example by updating the Land Rights and Responsibilities Statement to include a section that sets out a list of specific criteria that landowners should (or preferably 'must') apply to ensure community benefits from nature-based carbon markets.

Requirements could include: a fixed share of net profits from all natural carbon projects to be allocated to a Community Wealth Building Fund administered by local authorities to ensure compliance with devolved powers; communities to be involved in the design and where possible the management or procurement of projects; local people with the necessary skills to be given priority for jobs and contracts (e.g. foresters,

ecologists, deer stalkers, project managers); local training opportunities to be built into contracts; a safeguard to ensure the right of future generations to change local land use decisions.

In addition, we would support many of the suggestions set out in a recent paper published by the Scottish Land Commission – Carbon Markets, Public Interest and Landownership in Scotland – including the appointment of a Carbon Commissioner with legal powers to impose financial penalties for breaches of codes of practice (akin to that of the Tenant Farmers Commissioner).

- b) We support the use of the term 'natural capital' rather than carbon offsets because it indicates a more holistic approach. We are concerned that a narrow focus on carbon could replicate defective approaches from the past, such as the post-war spread of commercial forestry consisting of vast artificial blocks of densely packed non-native Sitka spruce plantations. Because of its geography and abundance of land of low agricultural value, Scotland has been in the past and could become in the future especially vulnerable to quickfire solutions driven by short-term gains.

We would suggest that the Land Rights and Responsibilities Statement include requirements for new woodland projects for carbon sequestration to include a fixed percentage (e.g. 50 per cent) of native species; prioritisation of reduction of grazing pressures over fencing to allow natural regeneration in perpetuity; and all projects to demonstrate they support outcomes set out in Scotland's Biodiversity Strategy 2022-2045.

We would also support fiscal initiatives at national level compatible with devolved powers, designed to allocate a portion of profits from natural capital investment to a national Community Wealth Building fund, possibly through the mechanism of the uniform business rate on non-domestic properties. One precedent for this is the reintroduction of business rates for sports shooting in the Land Reform Act 2016, which classified any land used for fields sports as a business premise and thus liable for non-domestic rates.

Although not specifically focused on revenues from natural capital investment, we believe there is an associated case for an overhaul of the Scottish Government good practice guidelines for community benefit from renewables projects. The current arrangements are both voluntary and paternalistic (leaving energy companies with the power to distribute the benefits to approved local projects). They have generated division within communities and inequality among communities.

An alternative may be to allocate the greater proportion of these benefits (based on £5000 per installed MW of capacity) to a national Community Wealth Building Fund, with a smaller proportion allocated to local communities within a restricted fixed radius (e.g. 3-5km) of the development site.

**Q44. Do you have any additional ideas or proposals for Land Reform in Scotland?**

Over the past decade or so, as land prices have risen, diversification of landownership has slowed down, Community land ownership has fallen far short of the target announced in 2014 of a million acres by 2020. Acquisition of land by environmental and conservation NGOs has also faltered.

The John Muir Trust is of the view that there is an accelerating convergence between the environmental NGO and the community land sectors. Although each sector has its own priorities, there is greater understanding by the environmental sector that protection and conservation of nature can only be achieved at scale with the willing participation, involvement and even leadership of local communities. And there is compelling evidence that land owned and managed by communities is more than pulling its weight in helping deliver carbon, biodiversity and other environmental improvements.

Given that momentum, we see outstanding potential for these sectors to start working closely together to help deliver change that will provide social, environmental and economic benefits locally and nationally. The Langholm Moor community buy-out, for example, was supported by the John Muir Trust, the Borders Forest Trust, Rewilding Britain, RSPB Scotland, the Scottish Wildlife Trust, Trees for Life, and the Woodland Trust.

Although not necessarily a legislative proposal that can be incorporated into the Land Reform Bill, we believe that a framework that could bring together the dynamism, commitment and depth of knowledge of local people with the wider reach, stronger financial capabilities and specialised expertise of conservation/environmental organisations may have the potential to unleash a new wave of ownership diversification based on partnership acquisitions. The public sector too could be involved, along with benevolent individual donors and businesses.

## **ASSESSING IMPACT**

**Q45.** Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?

**No**

**Q46.** Are you aware of any examples of particular current or future impacts, positive or negative, on young people, (children, pupils, and young adults up to the age of 26) of any aspect of the proposals in this consultation?

**No**

**Q47.** Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

**No**

**Q48.** Are you aware of any examples of potential impacts, either positive or negative, that you consider any of the proposals in this consultation may have on the environment?

**No**

**Q49.** Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on groups or areas at socioeconomic disadvantage (such as income, low wealth or area deprivation)?

**No**

**Q50.** Are you aware of any potential costs and burdens that you think may arise as a result of the proposals within this consultation?

**No**

**Q51.** Are you aware of any impacts, positive or negative, of the proposals in this consultation on data protection or privacy?

**No**