

THE FUTURE OF COMMUNITY LAND OWNERSHIP IN SCOTLAND A DISCUSSION PAPER

A view from the community land sector prepared for the
Strengthening Communities National Conference 2017

21 & 22 September 2017



Highlands and Islands Enterprise
Iomairt na Gàidhealtachd 's nan Eilean

INTRODUCTION

The Strengthening Communities National Conference 2017 brought together people who are at the heart of community led development in Scotland. Hosted by Highlands and Islands Enterprise (HIE) and Scottish Government, over 250 volunteers, communities groups, social enterprises, development officers, support agencies and policy staff attended the two-day event in Aviemore on 21-22 September 2017.

The aim of the conference was to share the wealth of knowledge on community led development which exists in Scotland and to work together to make plans which keep local people at the centre of their own development.

Community Land Ownership – looking forward to 2050

The conference also celebrated the 20th anniversary of setting up a dedicated team in HIE to support communities to buy land. Twenty years on we have a growing and maturing community ownership sector across our region and communities throughout the whole of Scotland are now pursuing opportunities to buy land and buildings to deliver community benefit.

To mark 20th anniversary of the Community Assets Team (formerly Community Land Unit) HIE commissioned Dr Calum MacLeod, a specialist in sustainable rural and regional development with a particular interest in community ownership and land reform, to prepare a 'think piece' on a vision for community land ownership in 2050. The discussion paper was developed by bringing together a range of community leaders, experts, activists and land reformers to reflect the views of the sector.

***Disclaimer:** Dr MacLeod's paper is reproduced here in its original form. The information and views set out in the paper are those of contributors, with analysis provided by the author, and do not necessarily reflect the views of HIE.*

Conference information and links to videos of the presentations:

<http://www.hie.co.uk/community-support/community-conference/default.html>

The Future of Community Land Ownership in Scotland A Discussion Paper¹

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1. Introduction

This paper has been written to provide a framework for discussing the future of community land ownership² in Scotland at the national *Strengthening Communities* conference in Aviemore on 21st and 22nd September 2017. It outlines a vision for community land ownership in 2050 and identifies and discusses requirements to realise that vision within the broader context of land reform in Scotland.

The core messages of the paper are:

- Land ownership is fundamental to determining land use outcomes;
- Community land ownership should not be conflated with the wider land reform agenda of which it is part;
- Community land ownership needs to be normalised as one element of a less concentrated, more diverse and transparent system of land ownership in Scotland;
- Community ownership empowers communities by democratising and localising decision-making for development and services provision. However, there are important issues to consider regarding how 'empowerment' is structured and supported by the State and the implications of that for local democracy and development.

¹ The analysis contained in this paper is solely the responsibility of the author. It is informed by discussions with individuals who collectively have considerable experience of and expertise in community land ownership and wider land reform issues. These discussions took place via a roundtable meeting in Inverness on August 30th 2017 and telephone conversations with individuals on a one-to-one basis. A methodological note at the end of the paper provides details of participants in the roundtable meeting and telephone conversations. The author is grateful to all of the participants for sharing their insights on the topic of the paper.

² For the purposes of this discussion the focus is on 'communities of place' rather than 'communities of interest' whilst acknowledging that the latter already play an important role in community ownership; for example in relation to Housing Associations in urban areas and crofting trusts in rural areas (Land Reform Review Group, 2014). The discussion focuses mainly on community land ownership in recognition of land as a basic resource for sustainable development that is inextricably linked to the ownership and use of built and natural assets for such development. It classifies the community land ownership sector as containing not-for-private-profit community landowning organisations that are democratically managed so as to be accountable to all people who live in a geographically defined area.

2. Scottish community land ownership in context

It is essential to root any discussion on the future of community land ownership within the wider conceptual context of land reform as it relates to Scotland's framework of land tenure. That framework consists of three main elements: property laws governing land ownership; regulatory laws governing land use; and non-statutory public sector measures to influence how land is owned and used in the public interest (Land Reform Review Group, 2014:20). Land reform can broadly be defined as "*measures that modify or change the arrangements governing the possession and use of land in Scotland in the public interest*" (Land Reform Review Group, 2014:20). A tension between the private and public interest regarding the distribution of property rights³ lies at the heart of the often deeply contentious land reform debate within Scotland. Much of that debate has centred on the relationship between land ownership and use. Specifically whether land ownership is a determining factor in inhibiting or encouraging land use that reflects wider, shared societal objectives associated with the common good.

Proponents of land reform contend that Scotland's extraordinarily concentrated pattern of private land ownership⁴ acts as a significant barrier to sustainable development, itself a highly contested concept. From this perspective the dominant exercise of power (*economic, political, social*) derived from large-scale and concentrated land ownership enables these private landowners to shape, control and benefit from land-based developments in ways that can run contrary to the wider public interest. Land reformers in Scotland consequently advocate a democratisation of property rights through co-ordinated application of a range of legislative and fiscal policy measures that redistribute these rights whilst recognising interdependencies between public and private interests. Rather than seeking to abolish private property rights, land reformers thus advocate redistribution of these rights more widely within the context of an increasingly diverse, transparent and democratic pattern of land ownership in Scotland in support of sustainable development.

Set against that background, community land ownership has captured the political imagination in Scotland to the extent of defining and dominating much of the land reform agenda's evolution over the last 20 years. The idea that geographically defined communities should have a say in shaping the development of the places where they live is neither new nor unique. Community involvement has long been a staple of natural resource management and local development (Bryden and Geisler, 2007). The emphasis placed upon it can be seen as part of a paradigm shift in rural development in which competitiveness is driven by local assets and resources, broadly based rural economies, investment rather than subsidy, and the involvement of local stakeholders in governance arrangements (OECD, 2006). More generally, the current emphasis on community 'empowerment' as a goal of public policy has been linked to a neo-liberal strategy of 'governing through community' (Mackinnon, 2002) because of what Rose (1996) terms 'the death of the social'; a consequence of the State's retreat from welfarism and the erosion of mutual obligations and responsibilities connecting individuals and political authorities within national or regional spaces.

³ The array of property rights is wide-ranging but can be broadly classified as use rights, control rights and transfer rights (Food and Agricultural Organization of the United Nations, 2002).

⁴ Warren (2009) states that 0.025% of the population owns 67% of the privately owned rural land in Scotland.

That community land ownership emerged and evolved as a predominantly Highlands and Islands concern is well known but some of the reasons for that are worth briefly rehearsing. The social injustices of the Highland clearances and their legacy in the form of the crofting system undoubtedly helped facilitate the social, cultural and political conditions for communal ownership of land to take hold in the region. Going back still further, the tribal nature of Gaelic society imbued a sense of land as something more than simply a commodity owned by individuals or the Crown.

Certainly the pioneers of community land ownership's 'first wave' in the 1990s, notably in Assynt, Knoydart and Eigg, were fuelled by anger at the injustice of the conditions in which they lived. Conditions characterised by substandard housing, insecurity of tenure and what could be described as systematic asset stripping that undermined the sustainability of these communities and amplified their perceived lack of power in decision-making affecting their everyday lives. Notably too, many of these early Estate buyouts occurred after the existing private owners found themselves in financial difficulties or had gone bankrupt, with community ownership viewed by residents as an opportunity to take control of their own destinies⁵.

The main purposes of contemporary community land ownership can be traced to the motivations behind these early buyouts. Thus, community ownership seeks to recalibrate relationships of power and control by democratising decision-making at the local level regarding land and asset use; it seeks to overcome barriers to sustainable development associated with the dominance of private interests inherent in concentrated patterns of private ownership; and it seeks to facilitate development opportunities to improve local infrastructure and services. Purposes underscored by a desire to achieve community benefits in the wider public interest.

The community land ownership sector is relatively young and still maturing. The 563,000 acres under community ownership, although a substantial amount, represents only a tiny fraction of the overall land ownership pattern in Scotland. Interestingly the Western Isles represent an outlier in terms of community land ownership concentration. The 375,024 acres of land in community ownership there accounts for two thirds of the overall total for Scotland (Highlands and Islands Enterprise (HIE), undated). Nevertheless there are now many more examples of community landowners than was the case twenty years ago. Community Land Scotland (CLS), created in 2010 to represent the interests of community landowners, has a membership of approximately 70 organisations engaged in a wide range of local development activities from delivering affordable housing to facilitating business start-ups.

It is difficult to imagine the substantial progress in developing the community land ownership sector occurring without the framework of institutional, financial, and legislative policy instruments that has evolved since 1997. HIE's Community Land Unit was established that year and has supplied invaluable practical advice and funding in support of community buyouts over the past two decades. The Scottish Land Fund, now in its third iteration with an annual budget of £10 million, has been crucial in providing capital support for land and asset purchases. The Transfer of Crofting Estates (Scotland) Act 1997 and the Land Reform

⁵ The Highland Council played a vital role in providing institutional and financial support for these early community buyouts; its involvement in relation to the Assynt, Knoydart and Eigg buyouts being especially critical.

(Scotland) Act 2003 initially promised more than they have delivered in terms of direct use for increasing community ownership but remain symbolically significant. It is too early to say how revised and new Community Rights to Buy contained in the Community Empowerment (Scotland) Act 2015 and the Land Reform (Scotland) Act 2016, now focused on urban as well as rural areas, will impact upon the balance of Scotland's overall land ownership pattern. It is also premature to assess the impact of the newly established independent Scottish Land Commission with its remit to provide "*direction, leadership and strategic thought to land reform in Scotland*".

3. A vision for community land ownership in 2050 and underpinning requirements

Much of the policy infrastructure outlined above was called for by leading voices in the land reform movement over two decades ago. Its existence may therefore count as a victory of sorts given land reform's propensity to drop off the political agenda intermittently in subsequent years. That said, there was general agreement amongst roundtable participants that substantial progress has been made in terms of the number of community landowners now in existence, the range of activities in which they are engaged and the benefits they are delivering for their communities and the wider regional economy. It is a perspective that chimes with recent evidence of the sector's positive economic impacts (Bryan and Westbrook, 2014).

How, then, might the community land ownership sector look in 2050? That's a speculative exercise, of course, but the following may be a plausible vision depending on the requirements set out below being met:

By 2050 community land ownership will represent a larger geographical share of a significantly less concentrated, more diverse and transparent system of land ownership in Scotland as a means of creating and consolidating more resilient, inclusive and sustainable communities.

Thinking about the role community land ownership might play in 2050 requires some idea about the kind of society Scotland might aspire to be in the mid 21st century. If 'community' is indeed to have a locus in fashioning the Scotland of three decades hence and beyond, some fundamental interlinked overarching issues need to be addressed. One concerns the relationship between people and the land and the balance between the public and private interest; essentially a recalibration of rights and responsibilities in relation to land ownership and use to better serve the public interest. Another relates to the characteristics of governance structures in society and the extent to which power in decision-making is devolved to the local level to genuinely empower people; essentially an issue of democracy and civic engagement. Still another relates to the relationship between the State and other actors (including but not limited to community landowners) in achieving outcomes that add to rather than subtract from the sustainability of local communities, the Highlands and Islands, and Scotland as a whole.

The pioneers of community ownership highlighted in the previous section bought their land as an antidote to social injustice and inequality experienced as a direct result of their limited

property rights. For them community ownership offered a response to market failure whereby the land was treated as a commodity to be bought and sold to the highest bidder without a thought for the wider public interest at stake in such transactions. They may have represented extreme cases of such market failure but the inequalities these communities faced - of power and, by extension, of opportunity - are structurally hard-wired into the DNA of Scotland's concentrated pattern of land ownership. So the extent to which community land ownership will contribute to the future sustainable development of Scotland depends largely on the extent of the political appetite to rewire that existing pattern of ownership to make it more diverse and much less concentrated. There is undeniably much to celebrate in the evolution of Scotland's community land ownership sector over the last 20 years. Equally undeniably – and despite the institutional support and legislative development mentioned earlier - it remains marginal to a highly concentrated pattern of private land ownership that continues to survive remarkably unscathed. That is a systemic issue that demands political action.

In consequence of the above, and as re-iterated in the roundtable discussion, it is important to ensure that community land ownership is not conflated with the wider land reform agenda. To do so risks obscuring the need for a co-ordinated programme of public policy for land reform, incorporating a range of legislative, financial and fiscal measures and cutting across traditional policy silos and Government departments. Community ownership, in other words, must avoid being portrayed as a 'magic bullet' to solve deep-seated structural causes of societal inequality in isolation. The core aim of Scotland's land reform agenda is concerned with measures to modify or change arrangements governing possession and use of land in the public interest. Consequently community land ownership must be viewed as one part of that agenda. An agenda that could in future involve, for example, changing fiscal arrangements regarding land taxation and payments; introducing a 'right to buy' for all tenants of agricultural holdings; limiting the size of land holdings that private owners may possess; or applying a public interest test to private land sales of particular scale.

It is important to also recognise that community ownership needs to be normalised as a model of ownership for contributing to Scotland's sustainable development; one that can be applied throughout Scotland, rather than being seen as the preserve of the Highlands and Islands. The recent legislative extension of the Community Right to Buy into urban as well as rural geographical locations marks an important development in terms of mainstreaming 'community' as a model of ownership. However, that alone is unlikely to accelerate the process of normalisation.

Other pre-requisites include continuing political and associated institutional and technical support both for land purchases and further development of the kind that HIE in particular has provided over the last 20 years, but on a Scotland-wide basis. That support will be essential to build wider awareness of the social, economic and environmental benefits that community ownership can bring and to help fully realise the development potential of purchased land and assets. Political support must be aligned to a wider programme of land reform as indicated in the preceding. Arguably too it will require further legislative recalibration of the Community Rights to Buy land in line with the general interest, as stipulated in the European Convention on Human Rights. The point is that property rights are not absolute in nature. Rather, they are capable of being modified by the State in pursuit of the public interest, which spans the exercise of individual and *collective* human rights.

Normalising community ownership also requires trust in communities to develop and deliver sustainable outcomes for themselves, whether directly or in partnership with other organisations and institutions. The nature of 'empowerment' and associated governance structures is important in that respect. Traditionally empowerment is understood as a radical political process to maximise citizen (or 'community' in this context) control in relation to problems requiring to be addressed. Community empowerment is certainly high on governmental agendas. However that empowerment (whether in terms of Community Right to Buy legislation or financial support through the Scottish Land Fund) is shaped from the centre of the political system. It promotes agency on the part of communities, but in a structured way according to conditions of legislation and funding schemes. In this way, communities – both rural and urban – are privileged from the top-down by the State whilst encouraging bottom-up initiatives in line with prevailing orthodoxies around ideas of 'sustainable' development.

A more radical approach to empowering communities would be to give them an automatic pre-emptive right to purchase land when there is a willing seller and fund the land purchase without the necessity of a detailed business plan being produced to support funding applications. More broadly, there is an important related issue to consider about finding ways to reinvigorate and reimagine governmental and civic institutions in ways that devolve power to shape urban and rural geographical spaces into the hands of local communities that live in or near these spaces.

An expanded and maturing community land ownership sector also invites consideration of ways in which it may interact with the State and other actors in managing local services, development opportunities and public goods in the future. If, as Rose (1996) contends, the State is in retreat regarding the direct delivery of welfarism – and notwithstanding the earlier observations regarding the nature of empowerment - then there is surely greater potential to co-design and deliver local services to better reflect local communities' needs and aspirations. A roundtable participant highlighted one example of such an initiative whereby a rural community is building its own school to be leased back to the local authority as a better alternative than accepting the proposed new school building on offer from that authority. The underpinning logic being that the building will be a community asset providing an income stream directly to the community when associated debts have been paid off. Such an approach has potential for further application in both rural and urban settings in relation to the provision of a range of services (such as healthcare or renewable energy supply) that reflect local need and demand.

Conceptualising community land ownership as both a rural and urban issue is helpful in normalising the model and considering how it can contribute to the sustainability of communities of place. It does, however, bring to the fore underlying tensions regarding the relationship between land, assets and demand. An upsurge in community demand for (mainly) built asset purchase may have a detrimental impact on the scope for larger-scale land purchases in rural contexts in which ownership of the land asset is a pre-requisite for further asset development on that land. That has implications for the continuing evolution of community ownership in both urban and rural settings. In the likelihood that future public resources for community buyouts continue to be scarce, communities will have to explore a wider range of potential funding mechanisms to support purchases (such as crowd-funding or

community share offers). These underlying tensions further reinforce the need to situate community land ownership as one aspect of a wider, on-going programme of interconnected land reform policy measures, as discussed earlier.

One intriguing but still largely unexplored aspect of how community land ownership could evolve in the future relates to whether it might assist in re-populating rural areas previously containing human settlements but now conceptualised and in some instances classified as 'wild' land. That possibility raises an interesting question about the potential roles that communities of interest, in particular, might play in that regard. It raises still more interesting questions about interpretations of 'sustainability', the social construction of landscapes and the appropriation of territory in the interests of 'stewardship'. These questions are beyond the scope of this paper to address, but they have a particular and profound resonance in relation to the Highlands and Islands nevertheless.

4. Conclusions

Scotland's community land ownership sector has evolved significantly since the first wave of community land buyouts in the 1990s, in terms of the number of landowning bodies and the range of activities they collectively undertake. The sector has potential to contribute considerably more to the sustainable development of Scotland as part of a substantially less concentrated, more diverse and transparent system of land ownership. The extent to which that potential will be realised depends on community land ownership being part of an on-going wider programme of land reform and the establishing of conditions whereby it becomes normalised throughout Scotland as a model of ownership.

Methodological note

A roundtable meeting to discuss the future of community land ownership in Scotland was held in Inverness on August 30th and facilitated by Calum MacLeod. Participants in the meeting included; Amanda Bryan, David Cameron, Michael Foxley, James Hunter, Megan MacInnes, Jamie McIntyre, Agnes Rennie, Sally Reynolds, Lincoln Richford, John Watt, and Angela Williams.

Individual telephone conversations were undertaken with David Adams, Carola Bell, Robin Callander, Ian Cooke, Angus Hardie, Peter Peacock, Lesley Riddoch, Neil Ritch, Bill Ritchie, and David Ross.

All participants expressed their views in a personal capacity.

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