SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Natural Capital and Land Reform:
Next Steps for a Just Transition

Advice to Scottish Ministers
June 2023


Executive Summary

Scotland is embarking on significant land use change to meet climate and nature goals. Land reform and wider changes to land, tax, and fiscal policy need to work in coordination to make this a just transition – one which will meet the needs and ambitions of Scotland's people and put the economy in a stronger, more resilient position.

The Scottish Government is committed to increasing the levels of responsible private investment going into climate and nature action. Ministers also underline that this must be a just transition with similarly ambitious commitments to land reform, community empowerment and rural repopulation. There is nothing inherently contradictory in these ambitions if the tensions are addressed by deliberately shaping the markets and policies that drive delivery.

Scotland will need investment, both public and private, in land to deliver on climate and nature goals, but the country can and should be careful in setting the terms for this investment. Now is a critical time to put in place the framework of policy and regulation to direct investment well, and to ensure financial value is shared and used fairly.

Scotland's underlying pattern of concentrated land ownership, combined with a relatively unregulated land market, is a challenge to realising the just transition. Scotland's land is in high demand for a range of reasons, not just for emerging carbon and nature markets but also timber demand, agricultural demand, long-term capital value, and as a financial hedge against inflation. With a limited supply of land coming to the market, prices are high – and rising.

The policy and regulatory response should address the particular role of carbon and nature markets, but a coordinated set of wider reforms should also address the underlying matters of land ownership and the operation of the land market. Agriculture and forestry in Scotland are already heavily shaped by government, and policy levers are available to shape land use change in a joined-up way.

Over the last year the Commission has provided advice to shape and promote responsible practice in natural capital investment, helping to implement the Scottish Government's Interim Principles for Responsible Investment in Natural Capital. The voluntary adoption of responsible practice will remain an important way to achieve positive impact, but it is insufficient. Further steps in policy and regulation are also required.

Both the land market and emerging nature and carbon markets are shaped by public policy and we recommend that both are regulated more strongly if they are to play the role that government seeks.

In line with our recommendations of June 2022 we therefore continue to advise Scottish Government that:

1. Stronger regulation of emerging carbon and nature markets is put in place quickly
2. Stronger regulation of concentrated land ownership is introduced through the Land Reform Bill.

We also make new recommendations for further steps in policy and regulation in three areas:

Ownership, governance and community agency

There is no reason investment in natural capital cannot help accelerate greater community ownership and influence in governance if we shape it deliberately to do so. We see significant potential in developing more varied governance models which enable communities to share the benefits of ownership and control of land and natural capital.

While early adopters are shaping responsible practice on a voluntary basis, delivering local social and economic benefit should be a mandatory requirement. The concept of benefits to communities should extend beyond financial benefit to include community agency in decision-making, control, and ownership. We see significant disparities in capacity, information, and resource between communities and investors, and across the geography of Scotland.

The Scottish Land Commission will include in our programme of work ways to promote and support development of more diverse land governance models in which communities have meaningful agency in decision-making.

3. We recommend the Scottish and UK Governments should build the expectation for direct social and economic benefits to communities into conditionality for carbon and nature market participation and for receipt of public finance.
4. We recommend the Scottish Government and public bodies strengthen the support available to enable communities to have agency in natural capital and land use change.

Land use policy and public finance

Public finance support for land use, such as grants for woodland creation, is one of the key levers available to government to influence change and does not require statutory change.

5. We recommend public finance support should become more conditional on delivering agreed social and economic benefits and community agency.

There is also a clear gap in leadership at a regional level to deliver integration and accountability in land use planning and priorities at a time when the multiple demands on land are growing and the impacts of land use change are potentially far-reaching.

6. We recommend the Scottish Government strengthens regional land use planning. We propose Regional Land Use Partnerships be empowered to integrate land use planning, priorities, and funding at a regional scale.

Treating financial value in a fair and productive way to support community wealth building

Public policy, high demand, and speculation is creating value that is capitalised into land prices, whether or not future value from carbon and nature markets is realised. While capital taxation is the logical policy lever, and we acknowledge this is a reserved matter with significant current reliefs in place, there is scope for the Scottish and UK Governments to make improvements to the current regime.

In the longer term we advise that development of more targeted taxation based on land value is likely to be the most effective means to align taxation with Scottish Government's wider land and economic policy objectives.

7. We recommend the Scottish and UK Governments put in place an effective policy framework now to secure a fair share of capital land value for public and community benefits.

In the shorter term we advise Scottish Government to consider the use of a surcharge on Land and Buildings Transaction Tax (LBTT) for high value land transactions, with receipts reinvested to support community land ownership and capacity, as well as improving land information.

The Commission makes these recommendations now because we see a window of opportunity in which decisions on legislation, policy, and regulatory frameworks can be implemented to shape rapid changes on the ground. We know statutory measures take time, which is why we also propose use of conditionality in public finance as an effective lever.

We acknowledge that policy and regulation will need to continue to develop longer term to fully address the issues discussed here. In planning our future programme of work, the Commission will give careful consideration to how our work can inform longer-term reforms, for example in relation to governance, land values, tax and fiscal policy, or land use planning.

Contents

1. Introduction

In June 2022 the Scottish Land Commission published 'Natural Capital and Land: Recommendations for a Just Transition.' A year on, this report draws on experience gained in the meantime to identify further steps we advise the policy and regulatory frameworks should address.

The report is intended to inform policy development in relation to the market framework for natural capital investment, the Land Reform and Community Wealth Building Bills, and wider tax and fiscal policy development that shapes Scotland's land ownership and use. While much of this is within devolved responsibilities, we also acknowledge in our advice the interaction of policy and markets at UK and international levels.

2. Big picture

Scotland is embarked on significant land use change to deliver on climate and nature goals. The need for this change is widely accepted even if the mechanisms are debated. We are therefore at a critical time to establish an effective framework of policy and regulation that will provide the necessary leadership to deliver on the Scottish Government's just transition commitment, and ensure that where markets have a role, they operate in the public interest.

Scotland needs investment, both public and private, in the land use changes to deliver on net zero and nature goals. But Scotland can and should be careful in setting the terms on which this investment is sought and made. There is currently an emphasis on attracting private investment into natural capital enhancement; this should be matched with a clear regulatory and policy framework to direct investment well and share value fairly.

The Scottish Government is committed to increasing the levels of responsible private investment going into climate and nature action. It is also committed to an ongoing programme of land reform and to community empowerment. There are tensions between these goals, which Ministers recognise in their emphasis on making a just transition.

Challenges arise in part because of the underlying pattern of concentrated ownership of Scotland's land and the relatively unregulated nature of Scotland's land market. Previous research by the Commission has examined the international experience of interventions in land ownership, showing Scotland and the UK to be unusual. The land market, and carbon and nature markets, are created by society and already shaped significantly by public policy choices at Scottish and UK levels. It is therefore sensible and possible to shape the markets through policy and regulation so that investment in climate and nature goals is combined with measures to diversify the ownership and control of land. Agriculture and forestry have long been shaped by government policy and regulation, as well as tax and subsidy regimes; natural capital markets are similarly shaped by public policy and should be considered in a similar way.

The opportunity is for a well-planned approach which actively shapes land use change in the public interest. This will ensure that the change driven by net zero is one which drives wider rural regeneration, meets the needs and ambitions of Scotland's people, and puts the economy in a stronger, more resilient position.

3. Our 2022 recommendations for a just transition

Our overall recommendation in June 2022 was that action is required to shape the land market and emerging natural capital markets in the public interest. We recommended three connected themes of action:

- Making the markets work better – Shaping market frameworks and putting in place regulatory steps so that the land and natural capital markets work better
- Realising the opportunities on the ground – New models of governance and leadership to realise the opportunities for participation and engagement
- Influencing behaviours – Using fiscal and tax policy to influence behaviour within the markets.

We noted then that, while carbon and nature markets are new and emerging, some of the challenges they raise relate more to the underlying ownership and governance of Scotland's land. Experience since then further emphasises the need for a joined-up approach to the policy and regulatory framework for natural capital and land.

4. Market regulation

4.1 Regulating carbon and nature markets

Experience in the last year underlines the need for stronger regulation of the carbon and nature markets. If private investment through these markets is to be harnessed responsibly and seen to be legitimate, effective regulation is required.

There is particular public concern about the role of carbon off-setting in achieving net zero. We note the conclusion of the UK Climate Change Committee in its report on the role of the voluntary carbon market, that it has a small but important role to play in achieving net zero if it is regulated more strongly. In our 2022 advice we also recommended stronger regulation, with a particular focus on:

- Standardisation of measurement and verification
- Buyer verification to ensure land is not used to off-set avoidable emissions
- Embedding community benefit requirements
- Independent oversight.

The specific arrangements for carbon and nature market regulation are beyond the remit of the Scottish Land Commission and something both the UK and Scottish Governments are developing as well as international standards bodies. We are clear though that stronger regulation is essential to managing the risks and opportunities, and to maintaining the social licence for the land use change and investment government is seeking.

Recommendation 1:

Scottish and UK Governments implement stronger regulation of the carbon and nature markets to ensure these markets play the role required and retain social licence.

4.2 Regulating the land market

Even if carbon and nature markets are regulated well, the underlying pattern of concentrated land ownership in Scotland and the relatively unregulated land market mean that wider reforms to law and policy are needed.

Current questions about the influence of natural capital investment sit in a wider context of high land prices, significant disparities in power, and a concentrated pattern of land ownership. Scotland has a finite area of land and as a society we demand increasingly more from it. A combination of limited supply and growing competition between land uses helps drive high land values.

Our land market reports (2022 and 2023) show a growing interest from corporate and financial institutions in buying land in Scotland as well as others. It is common in times of economic uncertainty for pension funds and other investors to seek to own land for medium and long-term investment returns. Our 2023 rural land market report indicates long term capital value gain remains a strong motivator for buying land in Scotland.

This is unlikely to change in the foreseeable future. In a global context there is increased economic uncertainty across multiple sectors. Internationally mobile finance will face new risks as climate change negatively impacts land and land values in other parts of the world. Within the UK and Scotland, tax and fiscal policy continues to make land acquisition attractive and emerging markets such as those in carbon and nature add to this incentive. Therefore, land in Scotland is likely to continue to be highly attractive to many different potential owners and investors.

While carbon and nature markets are a significant focus at present, there will be other, as-yet unknown new markets or motivations that emerge. Modernising the underlying system of land ownership will mean we are not only able to manage current change effectively but be better placed to address future change too.

The pattern of activity in the rural land market continues to underline the need for the measures proposed for the Land Reform Bill. In particular, there is a need to introduce public interest safeguards in a land market which currently has little regulation by international standards.

The Commission has previously proposed measures including a public interest test at the point of significant transfer of land, a requirement for a management plan, and greater statutory weight for the Land Rights and Responsibilities Statement (LRRS). These proposals were taken forward and developed by the Scottish Government in its consultation on the planned Land Reform Bill.

If introduced, these measures will establish a framework of stronger regulation targeting significant land holdings. Greater statutory weight behind the LRRS and a requirement for a management plan introduce increased accountability and the opportunity to apply conditionality. The proposed public interest test on significant land transfers, including prior notification, will introduce public interest safeguards at the point at which significant areas of land change hands, increasing accountability, creating the opportunity to address risks and apply conditionality, for example in relation to governance, partial land transfers or community involvement.

Recommendation 2:

The Scottish Government should implement stronger regulation of land ownership through a Land Reform Bill, putting in place public interest safeguards based on the Commission's previous recommendations to assess the public interest at point of sale, require prior notification of sale, introduce greater statutory weight to the Land Rights and Responsibilities Statement and a requirement for management plans.

Alongside the Land Reform Bill, we also note the relevance of several other planned bills and measures including the Agriculture Bill, Natural Environment Bill, and Community Wealth Building Bill. Together these present a window of opportunity in which the balance of regulation, conditionality, and incentive can be reset. A joined-up approach will also ensure that policy and regulation around natural capital land use and management will be well linked to wider agriculture, environment, and social policy areas. In turn this will allow the limited public financial support available to be targeted most effectively.

5. Progress in shaping responsible practice on the ground

While the policy framework develops, the carbon and nature markets have been developing rapidly in practice, with significant private investment interest in Scotland's land. Even while there remain significant policy questions to address, the Commission's approach has been to support and inform the development of responsible practice, seeking to establish new norms and expectations in line with Scotland's LRRS.

The voluntary adoption of responsible practice, while insufficient by itself, will remain a necessary part of achieving positive impact and culture change. The Commission will continue to provide advice to those who are seeking to develop and deliver responsible approaches to land ownership and natural capital investment.

5.1 Protocol and advice

We worked with the Scottish Government to develop the Interim Principles for Responsible Investment in Natural Capital, engaging with a broad range of stakeholders to inform these. The principles were published in March 2022 by Scottish Government and they set out clear expectations for 'high integrity, values-led investment'.

To support implementation of the Interim Principles we published a Protocol on Natural Capital and Carbon Management in August 2022. This sets out practical expectations for a responsible approach. We have since provided advice to 20 organisations on implementation of the Protocol through our Good Practice Programme, many of whom have been proactive in seeking our input. Examples of impact include:

- Advising NatureScot on plans for a partnership with investors using the Protocol expectations
- A public commitment by Aviva and Par Equity to work within the LRRS principles on the Glen Dye Moor project
- Advice to University of Edinburgh on governance models and working with existing landowners and communities to achieve their targets for offsetting residual emissions
- Advice and signposting to resources on community engagement for project developers
- Advice on ways to secure benefits to communities through both financial and non-financial returns.

We have provided additional advice to embed the Protocol in codes and guides including the Woodland Carbon Code, Peatland Code, and NatureScot's 'Guidance on nature-based finance opportunities for land managers in Scotland'. We have also provided advice to inform wider discussions held to support other organisations embed land rights and responsibilities into work on natural capital including academics, UK Infrastructure Bank, Scottish National Investment Bank and Green Alliance, who have recently published a report 'Green expectations: engaging people on changing land use for climate and nature'.

5.2 Creating social and economic benefits with communities

The Scottish Government's Interim Principles for Responsible Investment in Natural Capital set out the expectation that: "Investment in and use of Scotland's natural capital should create benefits that are shared between public, private and community interests, contributing to a just transition."

Over the last year we have worked with land owners, managers, communities, and investors to consider the expectation that investment creates benefits for communities. In February 2023 we published a discussion paper on approaches to implementing this in practice and, following feedback, we will publish Guidance on creating social and economic benefits for communities through natural capital investment.

The principle that there should be direct benefits to communities through investment in natural capital is widely accepted and that is welcome. In our Guidance we will set out greater clarity on the scope and possible approaches. Key points include the expectation that benefits should be:

- Additional to the wider public benefits generated
- Specific to the local community of place
- Contributing to the long-term economic and social wellbeing of the local community of place
- Increasing community agency in decision-making, control, and ownership of land
- Negotiated and agreed with the local community of place.

It is particularly important that benefits to communities are distinct and additional to wider public benefits that may be inherent in a project, for example the wider contribution to tackling biodiversity loss, and to benefits that are already secured through statutory rights, for example the right of responsible access.

We welcome the positive commitment that some land owners, investors, and project developers are taking in practice. Among parts of the investment community, this expectation is not seen as unusual in an international context and is accepted as an expected cost of responsible business conduct. We also recognise that a degree of experimentation and innovation is helpful and necessary, though not without risk. It is therefore useful for guidance not to be prescriptive, but to set clear principles and expectations.

We consider that at a project level, negotiated social and economic benefits to communities should be an expected part of the process and cost of natural capital investment. Our Guidance will set out practical information and advice to support implementation.

Action:

The Scottish Land Commission will publish further Guidance to support implementation of the expectation that investment creates benefits to communities.

However, we see two reasons to go beyond this approach. First, the delivery of benefits to communities currently rests on voluntary adoption of responsible practice, and whilst this is being explored by some early adopters, it is not universal. This expectation should now be built into conditionality for market participation and for public finance so that it becomes a requirement. For example, we welcome the consideration now being given to community benefits in Scotland's Forestry Strategy Implementation Plan (2022-25), and the recent consultation on the Forestry Grant Scheme, which sought views on how the grant scheme and regulation could be used to support increased community engagement and greater delivery of community benefits and wealth building.

Second, a 'community benefits' approach modelled, for example, on the renewables experience could quickly become a tick-box exercise in which standardised and relatively small benefits are offered without meaningful community agency. The concept of community benefits is better thought of as 'creating social and economic benefits in collaboration with communities' and should be about more than simply making a financial contribution. An ambitious approach to ensuring that investment benefits communities should seek to increase community agency in decision-making, extending to a range of approaches that support community participation in decision-making, control, or ownership.

Recommendation 3:

The Scottish and UK Governments should build the expectation for direct social and economic benefits to communities into conditionality for carbon and nature market participation and for receipt of public finance.

The concept of community benefits should extend beyond financial benefit to include ways that support local economic and social wellbeing and increase community agency in decision-making, control, and ownership of land.

While this recommendation is focused particularly on natural capital investment as a current driver of change, we advise that a similar approach should become an expected part of significant land use change, establishing principles now that will help shape future change in the public interest. The need to strengthen support for communities, capacity and collaboration is addressed in the further recommendations below.

6. Key areas for policy and regulatory action

While the role of support and guidance will continue to be important in influencing practice on the ground, it is not enough to safeguard the public interest or to achieve Scotland's ambition for a just transition. Doing that will require further policy and regulatory steps. This section discusses the key areas in which we recommend further steps are taken. We focus these in three connected themes:

- Ownership, governance and community agency
- Land use policy and conditionality of public finance
- Treating financial value in a fair and productive way to support community wealth building.

6.1 Ownership, governance and community agency

If we are ambitious and act quickly, natural capital investment could increase community ownership, community agency, and support the role communities play in meeting nature and climate goals in ways that also deliver rural repopulation, a just transition, and community wealth building.

6.1.1 Community land ownership and governance

Where communities own land there is a direct connection that ensures benefits and value from land are realised and reinvested locally. Ownership gives communities control, through which they can choose the most appropriate ways to deliver on climate and nature goals, and do so in ways that make use of the value inherent in land to build local economic and social wellbeing.

Despite the political commitment to increasing community ownership and a doubling of the Scottish Land Fund within this Parliamentary term, high land values and a fast-moving land market mean it is challenging for communities to acquire significant areas of land. Current measures intended to help address this include:

- Highlands and Islands Enterprise has established the Community Right to Buy Fund to support early-stage costs for communities to investigate the ownership of land and to register an interest in land, though this is not currently available Scotland-wide.
- The proposal in the Land Reform (Scotland) Bill consultation on a requirement for communities to be notified ahead of a land sale will help ensure communities are aware of forthcoming opportunities, rather than having to react when land is already on the market.

- In our 2022 report, the Commission highlighted the role that public land owners can play in enabling community land ownership. We have since established a joint initiative that will pilot a model in which Crown Estate Scotland acquires land with the specific intention of selling it on to the community within an agreed timeframe. This is intended to be a way to help bridge the transition into community ownership, where a community is not able to act quickly enough in the market, but is in a position over time to buy the land. We expect to learn more from this pilot that will help other bodies consider similar approaches.
- The Commission is also convening the Community Land Leadership Group to bring together key organisations in charting further development of community land ownership and consider the wider changes in governance, finance, support and capacity that will support this.

It is important to continue to enable the expansion of direct community land acquisition, but there is also an opportunity to use natural capital investment to develop a wider range of governance models in which communities share ownership, control, and benefits.

To some extent the emerging carbon and nature value is acting as a disrupter in the land market which, along with risk, brings an opportunity to reshape land ownership and governance. The Commission has been approached by investors that are actively seeking to partner with a community and/or use their investment to enable community land ownership.

The Commission's previous international research shows that mixed ownership models which blend community, public, private or NGO interests are more common in other countries. Mixed governance structures are also not new in Scotland. Some of the early community land buyouts, for example, have governance structures which blend community, public and NGO interests. This is an alternative to the assumption that natural capital investment simply defaults to buying land directly or is channelled through existing ownership structures.

There are several forms this could take. For example, in a similar way to the renewable energy sector, local communities could take an ownership stake in land or in carbon and nature value. This could be through joint venture or collaborative governance models from the start; alternatively a proportion of the financial returns over time could be used to enable a growing community share of ownership.

It may be possible for communities to partner with private investment to achieve a similar outcome to the role public landowners can play, in which a third party acquires land initially with an agreed intent to transfer all or part to community ownership. Public sector support and funding eligibility needs to be flexible enough to support these different types of approach.

We acknowledge there are many questions that would rightly need scrutiny in any such model. Communities would need to be assured of a genuine partnership in which they would share control and would be acquiring assets, not liabilities with the revenue having been extracted. Any such arrangement would need transparency on the business case, revenue, and capital value assumptions, particularly if making use of carbon and nature markets.

Where ownership, either outright or shared, is not an option, formal governance mechanisms which increase community agency in decision-making are another means to share control and benefits. This does not need legislative or policy change but is something that can be done now by landowners, investors, and communities. In support of this, the Commission will consider what further guidance and advice would support wider use of shared governance agreements.

Such approaches could also be incentivised or conditioned through levers such as the proposed public interest test on significant land acquisitions or public funding.

Action:

The Scottish Land Commission will include in our programme of work ways to promote and support development of more diverse land governance models in which communities have meaningful agency in decision-making.

6.1.2 Enabling community capacity

As outlined above, there is a significant and time-limited opportunity to use nature finance in ways which deliver benefits beyond those inherent in nature restoration, supporting a wide range of public and community benefits. However, for communities to play an active and empowered role, they must be supported (with expertise and capacity) to understand the opportunities and risks, engage with and have agency in natural capital opportunities.

At present there is a significant mismatch of resource and pace between communities and natural capital investors/project developers or indeed other drivers of land use change. Many communities are unaware of potential opportunities, and those that are aware are often unsure how to realise those opportunities. Communities are sometimes also understandably cautious about the long-term implications of using carbon or nature finance and what this means for control and liabilities, whether they own land already or are considering collaborations.

There is a lack of clear information for communities and few tools and examples to share and draw on. Without practical support for communities in negotiating and agreeing approaches to community benefits, community ownership, or shared decision-making, it is difficult to see this happening at any kind of scale. We note the Scottish Government's FIRNS (Facility for Investment Ready Nature in Scotland) funding available to develop viable business cases to which communities are eligible to apply. However, we see a need for awareness-raising and access to earlier stage advice and capacity.

Landowners and investors also see a need for capacity to support more collaborative approaches and make it practical to realise the opportunities for communities. For them to work with communities, both parties need to be able to engage effectively and knowledgeably in discussions. Landowners and investors with positive intentions can still find standard community engagement challenging and we have to acknowledge the underlying power imbalance. The kinds of opportunities here go beyond standard engagement and require specialised support.

Given the scale of land use transformation and investment being sought by government, we advise that resource is strengthened to support communities to participate and benefit. We see this model being similar to the dedicated resource units that have supported community participation in ownership of land and renewable energy developments.

There is already relevant expertise and experience among Scotland's Enterprise Agencies and third sector organisations, but the capacity will need to grow with this emerging sector. It will need to raise awareness of the opportunities, build the relationships between communities, land owners and investors, and support practical collaboration. We see this kind of capacity support being catalytic in unlocking ways to increase community ownership and agency and to brokering the relationships needed to make an impact on the ground.

We recognise the resource challenge even if this can build on existing expertise. Given the level of private finance seeking socially responsible investment opportunities, we consider it reasonable that a financial contribution to this capacity should be secured through a voluntary levy as part of a responsible investment approach or through other measures such as taxation discussed in 6.3 below.

Recommendation 4:

The Scottish Government and public bodies strengthen the support available to enable communities to have agency in natural capital and land use change.

6.2 Land use policy and conditionality of public finance

A more integrated approach to land use policy and a more discretionary and conditional approach to public finance are key levers available to government. The fast pace of land use change, the need to direct investment effectively, and the need to address the choices and interactions that will shape a just transition mean that clear direction and leadership are more important than ever.

6.2.1 Conditionality of public finance

We advise that greater use of conditionality and cross-compliance in public finance support for land use is likely to be one of the most effective levers for delivery. For example, grant support for forestry could be reformed to be conditional on significantly enhanced community agency and local social and economic benefits.

With constrained public finance this can help target funding whilst also leveraging changes in approach and standards. The signals sent by public finance availability for woodland creation are significant factors in rising land values and greater conditionality can help temper one of the biggest current drivers in the rural land market.

Recommendation 5:

Public finance support including forestry grants should become more conditional on delivering agreed social and economic benefits and agency at a community level.

6.2.2 Regional land use planning

Stakeholders across sectors identify a strong need for leadership and direction, including at a regional scale to integrate multiple land use objectives and provide the platforms for collaboration.

We consider that Regional Land Use Partnerships and Frameworks are a key part of the infrastructure to create the focus for capacity, integration, and accountability that many stakeholders are seeking. In our advice on establishing Regional Land Use Partnerships in 2021 we set out the Commission's view that they will work best if the Partnerships:

- Stimulate action and delivery as well as having an advisory role
- Connect directly to levers of funding and finance
- Integrate with established regional economic and spatial planning
- Are empowered to make decisions on priorities and resourcing at a regional and local level
- Are well connected to local delivery mechanisms and communities
- Carry sufficient weight to give traction on the ground to the Land Use Strategy and Land Rights and Responsibilities Statement.

Since then, the increase in pace for net zero delivery and activity in the land market means there is a strong case to move beyond the piloting phase for Regional Land Use Partnerships to provide longer term certainty and direction about their role.

Regional Land Use Partnerships offer a practical and transparent means to improve engagement on land use priorities and choices, a focus for integrating data, and the capacity to underpin collaboration. In the context of natural capital investment they also offer an accountable basis through which to aggregate projects and to target effective use of private investment.

Recommendation 6:

Scottish Government should strengthen regional land use planning. We propose Regional Land Use Partnerships be empowered to integrate land use planning, priorities, and funding at a regional scale.

6.3 Financial value and Community Wealth Building

We acknowledge there remains much uncertainty about financial value, particularly in relation to carbon and nature markets. It is not clear how carbon and nature prices will evolve and whether long-term value will be realised. It is also reasonable to acknowledge that like many investment scenarios, natural capital projects will often not yield revenue in the early years, with significant early costs. However:

- There is significant investment being made into rural Scotland through land acquisition and through carbon and nature markets
- There is expectation of significant potential financial value in future, which could be both revenue and/or capital value.

The policy framework should therefore be in place so that if significant revenue or capital value is indeed realised, a fair share is secured and reinvested for community and public benefits. In our 2022 report we discussed why in economics terms, as a public good, the government should be setting the framework for the distribution of costs and benefits from natural capital.

We believe this can be done in such a way that it does not disincentivise responsible investment now. On the contrary, feedback from some investors indicates they would welcome a clear, effective regulatory framework that would in turn enable the public to have confidence in the integrity and effectiveness of investment.

Achieving this is likely to require a mix of steps in both the regulation of carbon and nature markets as well as in wider land, tax and fiscal and community wealth building. It is reasonable that:

- Investors should receive an appropriate return
- A share of current and future returns is reinvested into social and economic benefits to local communities in line with the principles of Community Wealth Building.

Making the policy framework clear at this stage will also help reduce the incentive to speculate in the land market in anticipation of potential future returns. Even with effective regulation of carbon and nature markets, experience shows that both public and private investment in land use change tends to be capitalised into increasing values for land. Assumptions about future capital values of land will be an integral part of the business case for some of the current private investment in land and natural capital.

Therefore, the policy response should include ways in which an appropriate share of the capital value of land is secured for public and community good. The Commission has already published research and advice on ways to share land value uplift in the context of development land and the same principles apply. A fair share of public and community value can be secured through three broad mechanisms:

a. **Direct financial contributions:** in the development context this relates to infrastructure and developer contributions; in this context it could take the form of mandatory social and economic benefit contributions.

b. **Collaborative or joint venture approaches:** in the development context we recommended land pooling and regeneration partnership zones; in this context we have proposed above the potential for mixed governance and shared equity approaches that embed a community stake and agency.

c. **Taxation:** better targeted taxation of land value can secure a financial return for public benefit and be designed to shape market behaviour.

6.3.1 Taxation

In our previous advice on land reform and taxation in Jan 2022, we advised that the role land value plays in the tax base should be strengthened. We advised that specific consideration should be given to the role of taxation in addressing potential windfall gains and a fair sharing of value arising from emerging carbon and natural capital markets. We cited this as an example of why we propose all land should be included on the valuation roll, a pre-requisite for government to be able to design and target better taxation of land value in future. What we see currently in the rural land market reinforces the case for all land being brought on to the valuation roll in order to provide a transparent basis for consideration of future taxation options.

When land values crystalise at point of sale, the value goes to the seller. Therefore, capital taxation is the logical policy lever to ensure that a fair proportion of value is secured for public benefit. The most direct approach would be to ensure that Capital Gains Tax is applied to relevant land transactions and that a proportion is returned to Scotland and reinvested directly to support the Scottish Government's land policy objectives. However, we acknowledge that capital taxation is reserved and that existing relief provisions for Capital Gains Tax constrain the ability to use capital taxation in this way at present. Changes, such as the devolution of the heritable property element of Capital Gains Tax, would require negotiation and action at UK level.

The ability to introduce new taxation, and adjust Land and Buildings Transaction Tax (LBTT), are both within devolved powers and these are mechanisms we advise the Scottish Government should consider.

In the medium term a shift to taxation based on land values could be designed to incentivise delivery of carbon and nature goals whilst also discouraging financial speculation. Such an approach is likely to be the most effective means of ensuring taxation of land aligns with wider Scottish Government policy priorities for land and the economy and can be targeted to where value lies in the system.

In the shorter term, the devolved tax most directed applied to land values is LBTT, at the point of acquisition. We advised previously that specific consideration be given to the use of a surcharge on LBTT for high value land transactions. We recognise this alone would be unlikely to significantly alter market behaviour, but it does offer a tangible way in which a public share of high land values could be returned, as well as setting a clear policy signal.

These returns could be used directly to help resource delivery of the related recommendations, for example to support community land ownership, strengthen community capacity, or bringing more land onto the valuation roll.

We consider the case for such a measure is further strengthened by the pattern of activity we see in Scotland's rural land market, the capitalisation of public and private investment in net zero contributing to rising land value, and the need to resource the steps that will make this investment work well in the public interest.

Recommendation 7:

The Scottish Government should develop an effective policy framework to secure a fair share of capital land value for public and community benefits and improving land information.

In the short term we advise this should include consideration of a surcharge on LBTT for high value land transactions, with receipts reinvested to support community land ownership and capacity.

7. Conclusion

The Scottish Government has set out a bold direction of change to deliver on climate and nature goals and to make a just transition. Market activity alone is unlikely to deliver the just transition sought, but both the land market and emerging carbon and nature markets are shaped by public policy. Stronger regulation of these markets is necessary to shape them in the public interest.

Some of what we have recommended requires statutory measures, which we recognise take time to develop, and some involve interaction with UK and international frameworks. Aware of the fast pace of change, we also propose greater use of conditionality in public finance support, and support for the capacity and governance models that increase community agency in decision-making, control, or ownership. These do not require statutory measures and could have significant influence.

The Commission makes these recommendations now because we see a window of opportunity in which decisions on legislation, policy, and regulatory frameworks can be implemented to shape rapid changes on the ground.

We acknowledge that policy and regulation will need to continue to develop over the longer term to fully address the issues discussed here and to develop them in the wider context of land use change and the rural economy beyond an immediate natural capital focus. In planning our future programme of work the Commission will give careful consideration to how our work can inform longer term reforms, for example in relation to land values, tax and fiscal policy, or land use planning.

SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Contact us

info@landcommission.gov.scot

01463 423 300

www.landcommission.gov.scot

Find us on: