



Scottish Land Commission  
Coimisean Fearainn na h-Alba

GOOD PRACTICE



## Protocol on opportunities for ownership, lease and use of land and buildings

Being able to own, lease or use land allows businesses, organisations, individuals, and communities to identify and respond to their own needs, and pursue projects to support their wellbeing and resilience.

Landowners play an important role in supporting opportunities for ownership, lease and use of land and buildings by other parties, and can realise benefits such as generating funds to reinvest in their business and build a more varied asset base, improving their public profile and relationships with the local community, and identifying opportunities for collaboration and innovation.

The purpose of this protocol is to set out reasonable expectations for how landowners can work with other parties in an open and positive way to explore transfer, lease and management of land and buildings through a proactive and amicable process. This protocol supports the practical implementation of the Land Rights and Responsibilities Statement (LRRS).

## How this protocol should be followed

- ✓ Where we use the word must, this means the action is required by law and failing to comply would be a breach of legislation.
- ✓ Where we use the word should, we expect everyone involved to follow the approach described, unless it conflicts with their legal duties.
- ✓ Where we use the word recommend, it means this is good practice, but we recognise that other approaches may be equally effective or necessary.

## Expectations

### **Potential landowners should consider whether ownership of land is necessary and what alternative options they have.**

Potential purchasers of land and buildings – whether extending an existing landholding or purchasing a new landholding – should consider whether they need to own land, and to what extent, to meet their objectives. It is recommended that alternatives to ownership are considered, including opportunities for collaboration or partnerships with landowners, tenants, and local communities.

### **Regularly review maintenance and productivity of land and buildings**

Land owners and managers should consider whether land and buildings are being maintained and used productively. It is recommended that self-assessment of landholdings is part of regular business planning and review.

### **Assess whether there are opportunities for collaboration**

Land owners and managers should consider whether there are opportunities to work with others to make more productive use of land and buildings to support sustainable local development.

### **Create a diversification policy**

It is recommended that landowners create and follow a policy on how leases, sales and other agreements relating to land will be handled. It is recommended that the policy considers how the expectations set out in this protocol will be implemented, and that it includes reasonable expectations for all parties, is informed by community engagement, and is shared with relevant parties.

## **Make an active decision about who should be approached about a potential transfer or lease of land or buildings**

Landowners should consider who is most impacted by a potential transfer of land or buildings and explore any interest in ownership or lease by those affected parties. Firstly, those with existing pre-emption rights must be approached. Secondly, it is recommended that sitting tenants are offered a right of refusal. Finally, it is recommended that landowners work with the community to support the delivery of the community's social, environmental, economic, and cultural aspirations.

## **Be transparent about transfers of land and buildings**

Landowners should be transparent about transfers of land and buildings. When a landowner is considering an off-market transfer of land and buildings, they should make the local community aware that this is the case, where possible.

## **Consider requests for sale, lease or use of land and buildings**

Landowners and managers should consider requests for sale, lease or use of land and buildings when they are reasonably made. They should consider whether land and buildings can contribute to the community's wellbeing and sustainability. They should be open and transparent in their decision-making processes and provide clear reasons for their decisions.

When a change in ownership of land or buildings is not feasible or appropriate, landowners should consider whether there are opportunities for leasing, partnership working, or other collaborative working arrangements.

## **Share plans relating to land use or acquisition**

Community organisations who would like to buy or lease land, or enter into a collaborative working arrangement, should share information with the landowner and manager about their aspirations for the land. It is recommended that they share information about the reasons for, and benefits of, their plans as early as possible.

## **Take into account wider local and public impacts and benefits when making decisions about land and buildings**

It is recommended that when deciding if there are opportunities to develop, purchase, transfer or lease land or buildings, landowners should ensure decision-making processes take into account the wider local and public impacts and benefits. These benefits could be social, environmental, economic, and cultural. Consideration should be given to long-term benefits that could outweigh the value of short-term gains.

## **Consider joint valuation of assets**

When a transfer of land is taking place landowners and community organisations should consider using a joint valuation process and sharing the cost.

## **Use conditions of transfer responsibly**

Burdens, lease conditions, title conditions, or clawback arrangements should only be used if they are necessary, appropriate and proportionate. Landowners should avoid conditions of transfer that will have an adverse impact on the viability or sustainability of businesses, community projects or other activities on the land.

## **Put fair agreements in place for joint ventures**

If a joint venture between landowners and any other parties is proposed, appropriate sharing of risks, responsibilities, costs and incomes should be considered. If agreements are reached between landowners and other parties, it is recommended that the parties enter into a legal contract that binds both parties to respect the agreements made.

## **Additional expectations for public bodies only:**

### **Publish a register of assets**

Relevant authorities must publish lists of assets held, in line with the Community Empowerment (Scotland) Act 2015. These should be published on websites and kept up to date. It is recommended that these registers are map-based and provide additional information on the status and use of land and buildings.

### **Follow Community Asset Transfer process**

All relevant authorities must follow statutory processes when community bodies submit asset transfer applications under the Community Empowerment (Scotland) Act 2015. Relevant authorities, including their staff, boards and elected representatives, should not unreasonably discourage community groups from exercising their rights under the act. Relevant authorities must submit annual reports to Scottish Government on community asset transfer.

### **Support opportunities for community ownership of assets**

It is recommended that public bodies review their policies and processes to identify ways in which they can support and increase opportunities for community ownership of land and buildings.





## Who this protocol is relevant for

- ✓ Owners of land, including companies, trusts, public bodies, non-governmental organisations, sole traders, charities, and community landowners, but excluding individual homeowners
- ✓ Land managers including tenants or agents or other people employed or contracted by the owner to manage or look after land or property on their behalf
- ✓ The community comprising of:
  - Community Councils representing any area(s) which may be impacted by the landholding;
  - Constituted community organisations, who have an open membership, demonstrate community control, and who represent a defined geographic area, which may be impacted by the landholding, and;
  - Residents who live in and businesses that are based in the local area.

## Definitions

You can find definitions of terms used in our protocols in our Protocols Definitions document.

[Protocols Definitions](#) →

## How to use this protocol

If you own or manage land, you can use the expectations set out in this protocol as a guide to assess the actions you are taking in relation to community engagement.



### **If you have an example of good practice to share:**

Consider writing a case study to share your positive example with others. We may be able to help with this.



### **If you are experiencing a situation that differs significantly from the expectations we have set out:**

Speak to the relevant landowner or community organisation to try to find a resolution.



If the situation relates to a regulated issue (like the environment or planning) then approach the relevant regulator.



If you have not been able to resolve the issue, then contact us with details and any supporting evidence. Where appropriate we will provide advice and work with you and the other parties involved, if applicable, to deal with any difficulties and help improve practice.

If you would like support to assess or improve your practice or have any questions about this protocol:

We may be able to provide advice or support about your situation.

### **Contact the Good Practice Team:**

@goodpractice@landcommission.gov.scot ☎ 01463 423 300.