



SCOTTISH LAND COMMISSION  
COIMISEAN FEARAINN NA H-ALBA

# Natural Capital and Land: Recommendations for a Just Transition

Advice to Scottish Ministers  
June 2022



# Executive Summary

Scotland has an opportunity to attract substantial investment into its land and natural capital. Doing this in a fair and effective way is key to making a just transition. Our advice focuses on how Scotland can do this well by being proactive in shaping our land market as well as emerging natural capital markets.

There is welcome shared purpose across public, private and third sectors with commitment and finance to restore and enhance natural capital, addressing the twin crises of climate change and biodiversity loss. With emerging new markets come risks and opportunities.

The carbon market is the most developed of natural capital markets. Our research shows carbon and natural capital are an increasing influence in the land market, driving new motivations for land acquisition and contributing to rising land values.

Without active design these changes risk greater concentration of the ownership and benefits of land, with individuals, local businesses, farmers, and communities finding it harder to participate in the land market, decision making, and sharing in the benefits.

We see two key requirements to handling this new investment and value in Scotland's land responsibly for a just transition. First, communities should be able to engage, influence, and participate, and second, the financial and wider benefits should be shared fairly.

We advise positive steps to shape the land market and emerging natural capital markets in the public interest in three ways:

- Creating effective market frameworks – putting in place appropriate regulatory steps;
- Governance and leadership – action to realise the opportunities on the ground;
- Fiscal and tax policy – using policy to influence behaviour.

We make recommendations for reforms to improve accountability and participation in the land market and to improve land market reporting. We also recommend strengthening regulation in the carbon market to improve transparency and integrity.

We propose ways to implement more diverse forms of collaborative governance in land ownership and natural capital investment, harnessing private finance in the public interest. We identify a leadership role for public land and improvements in land use planning.

Finally, we make recommendations for ways in which land use policy and funding, as well as tax policy, can be used to influence behaviour and secure public value in balance with the changing availability of private finance.

The drivers of the carbon market and natural capital shine a fresh light on the governance of Scotland's land. But the underlying issues, as well as some of the tools to address them, are not all new. In shaping the land and natural capital markets in these ways, government will be creating an effective framework through which other future drivers of land use change can also be managed productively as they emerge.

Three of our recommendations focus on regulatory steps and the others on changes in culture, practice and policy. Shaping a responsible approach to new investment and value in Scotland's land is not a matter only for government, but for all in the land sectors.

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# 1 Introduction

## 1.1 The opportunity

Scotland has an opportunity to attract significant investment into our land and natural capital. Our advice focuses on how Scotland can do this well, in a way that is fair and effective.

Investing to restore our natural capital where necessary and enhance it where possible, to hand on to future generations is one of the great challenges of our time. Doing so is vital to addressing the twin crises of climate change and biodiversity loss. This is of course a global focus, in which Scotland can both learn from and lead others.

Together with strong government commitment there is substantial private finance being directed to natural capital with shared purpose across Scotland's public, private and third sectors.

As a fundamental national resource, the ways Scotland's land is owned and used will shape the progress of a just transition, influencing how the costs and benefits from investing in our land are shared fairly and productively.

## 1.2 A Just Transition

The 2021 report of the Just Transition Commission recognises that net zero land use change *'may risk new injustices emerging, but equally may introduce fresh impetus for reform and a fairer way of managing our land and spreading the benefits widely'*.<sup>1</sup> This is the core challenge our advice addresses.

The Just Transition Commission goes on to state *'Part of ensuring a just transition must be about making sure the benefits of investment in carbon sequestration are felt as widely as possible. Without careful design and meaningful engagement there is a risk that benefits may flow mainly to large landowners and opportunities for community benefit will be missed'*.<sup>2</sup>

We see two elements to ensuring changes in land and natural capital markets are handled fairly. First, people must be able to engage, influence and participate. Second, the emerging financial value must be shared fairly and productively.

<sup>1</sup> [Just Transition Commission: A National Mission for a fairer, greener Scotland \(2021\)](#), Scottish Government.

<sup>2</sup> Ibid.

Scotland's Land Rights and Responsibilities Statement<sup>3</sup> provides a framework for how we can make these changes in Scotland's land in a fair and accountable way, underpinned by recognition of human rights. This framework is further developed in the Scottish Government's Interim Principles for Responsible Investment in Natural Capital.

## 1.3 Natural Capital and Land

### Scotland's natural capital – a public good

*Natural capital is defined by the Scottish Government as 'the renewable and non-renewable stocks of natural assets, including geology, soil, air, water, and plants and animals that combine to yield a flow of benefits to people'. In other words, it is the capital assets that nature provides us all for free.*

*In economic terms natural capital can be considered a 'public good'.<sup>4</sup> That means that its use or enjoyment by one person does not prevent others using or enjoying the same assets. The better the condition of this natural capital, the greater the benefits to the public good, but if over-exploited the costs do not necessarily fall on those responsible. Scotland's land, by contrast, is governed through a system of private property rights. This has implications for the governance and regulation of natural capital assets – while private interests have a significant role in managing them, the distribution of costs and benefits should be directed by a clear framework of public policy and regulation.*

Managing Scotland's natural capital is not a new concept. Through fisheries, agriculture, forestry, and other land uses we have long made use of natural resources and put in place different governance approaches for exploiting, improving and managing them. What is newer is the current policy focus on natural capital systems accounting, the emerging natural capital markets, and resulting new land uses, notably carbon sequestration at present.

The clarity of purpose and urgency of the climate and nature crises is also new. Scotland's Climate Change Plan<sup>5</sup> shows the pace and scale of land use change required this decade, highlighting the level of private investment that is required to achieve this. Growing understanding of the role our land plays in meeting the climate and nature challenges is rightly changing the ways finance is directed and how land is valued, as well as priorities in land use decisions.

These changes shine a fresh spotlight on the governance of land ownership and use. Net zero is an accelerant of change, but some of the risks it raises are not new; they have long been a feature of Scotland's underlying pattern of land ownership. Thus some of the measures we propose are not unique to the current focus on carbon, but will help ensure the governance of Scotland's land delivers on the public interest as other drivers of change emerge in years to come as well.

<sup>3</sup> [Scottish Land Rights and Responsibilities Statement](#) (2017), Scottish Government.

<sup>4</sup> Helm, D. (2022) [Natural capital, carbon offsetting and land use](#). Scottish Land Commission, Commissioned Paper.

<sup>5</sup> [Securing a green recovery on a path to net zero: climate change plan 2018–2032 – update](#) (2020), Scottish Government.

## 1.4 Focus of our advice – shaping the land and carbon markets in the public interest

Our advice seeks to help the Scottish Government take forward its ongoing programme of land reform in a way that supports the transition to net zero and delivers on the commitment in the National Strategy for Economic Transformation to ‘establish a values-led, high integrity market for responsible private investment in natural capital, one that will support a just transition’.<sup>6</sup>

Our Rural Land Market Insights Report<sup>7</sup> shows that decisions about land ownership and use, land values, and investment are already significantly shaped by the public policy, tax and fiscal frameworks. It is usual for governments to shape and regulate markets in the public interest, as we see, for example, in communications or financial services.

By taking positive measures to shape both the land market and the carbon market, the Scottish Government can create the conditions for the investment needed and ensure that the risks and benefits are shared fairly. In doing so, government will be creating an effective framework through which wider natural capital markets or other future drivers of land use change can also be managed productively as they emerge.

We are realistic about the early-stage nature of natural capital markets and the inherent uncertainties. There remains uncertainty about long-term supply and demand, the prices paid for carbon units, and how land values will change, whether we are seeing a speculative bubble or long-term trends. What is clear is that the emergence of carbon and natural capital value in Scotland’s land is at present a significant influence in rising land values, motivations, and demand for land acquisition, and in land use decisions.<sup>8</sup>

The measures proposed here, or other actions government may take, cannot be seen as a one-off intervention. Rather, there is a need to provide clear signals that shape markets now and ensure regulatory and policy approaches continue to align and evolve, to keep pace with and influence market behaviour.

Our advice focuses on three key opportunities to shape land and carbon markets in the public interest, by:

- Creating effective market frameworks to make the land and carbon markets work well;
- Governance and leadership to realise the opportunities on the ground;
- Using fiscal and taxation policy to influence behaviour.

While part of our advice addresses regulatory and legislative options, we are clear there is also significant opportunity to address the risks and opportunities through leadership, responsible practice and non-legislative action. This is not a matter only for government, but an opportunity for all in the land sectors to shape an effective and responsible approach.

<sup>6</sup> [Scotland’s National Strategy for Economic Transformation](#) (2022), Scottish Government.

<sup>7</sup> McMorran, R.; Glendinning, J. and Glass, J. (2022) [Rural Land Markets Insights Report](#). Scottish Land Commission, Commissioned Report.

<sup>8</sup> McMorran, R.; Glendinning, J. and Glass, J. (2022) [Rural Land Markets Insights Report](#). Scottish Land Commission, Commissioned Report.



# 2 Evidence and Analysis

## 2.1 What is happening in Scotland's rural land market?

The Commission has published two reports on the rural land market: the Rural Land Market Insights Report<sup>9</sup> which provides qualitative information about market trends and the Rural Land Market Data Report<sup>10</sup> providing quantitative analysis. Relevant research has also been published by the SEFARI research group on 'Large Scale Land Acquisition for Carbon: risks and opportunities.'<sup>11</sup>

The research found that Scotland's rural land market saw significant rises in value as well as broader changes in 2020 and 2021, in part driven by the demand for land for carbon sequestration. Across Scotland, with some regional variation, commercial forestry appears to be the biggest driver of increasing land values. However, the land market is complex, varying significantly by sector and region.

As a whole, the land market is experiencing significantly increased demand, but the amount of land coming to market has remained largely the same and is in line with the ten-year average. These demand pressures are being felt differently across sectors.

- In lowland prime agricultural areas, activity is mostly farm consolidation and expansion, as well as farmers relocating from upland holdings and England. Non-farming investors are playing an increasing role. This includes growing demand for smaller farms as lifestyle holdings, and those seeking land for small, mostly native, woodland projects.
- Upland agricultural land – from marginal to good pasture – is under strong pressure from commercial forestry interests. The demand for plantable land and established forestry plantations is being driven by a combination of factors including high timber prices, government planting targets and supportive policy, generous incentives and tax reliefs, as well as speculation.
- The estates market has seen a surge in land values, as a range of new buyers with different motivations enter the market, although the number of sales remains low. Nearly half of all estates purchased in Scotland in 2021 were sold to corporate bodies, investment funds or charitable trusts, who are more likely to be interested in environmental and natural capital approaches to land management, marking a clear shift away from more traditional motivations.

9 Ibid.

10 McMorran, R.; Thomson, S. and Glendinning, J. (2022) [Rural Land Market Data Report](#). Scottish Land Commission, Commissioned Report.

11 McMorran, R.; Reed, M.; Glass, J.; Bauer, A.; Glendinning, J.; Macaulay, B.; McKee, A.; Peskett, L.; Rothenberg, L.; Rudman, H. and Williams, A. (2022) [Large-Scale Land Acquisition for Carbon: Opportunities and Risks](#). SEFARI.

The research also shows that sales taking place off the market have increased across all land categories in the last two years, driven mainly by the high demand and continued low supply of land. This is particularly marked in the estates market with 64% of sales in 2021 taking place privately.

The increase in off-market sales as well as changing buyer motivations is affecting valuations. The research indicates that the basis for valuing land is changing from a focus on agricultural and sporting values towards natural capital values and forestry potential. Simultaneously, limited comparable sales evidence is creating greater uncertainty in valuations particularly for holdings with peatland and plantable land.

The element of speculation in the market arises as investors both look for a safe haven in a turbulent global economy, as well as bet on future carbon and/or timber values rising.

The research provides an analysis of what is happening in the land market now, though is not able to determine whether these changes in activity will become a long-term trend, or are a short-lived bubble. However, the research does highlight several factors that indicate that the land market is likely to continue to experience strong growth due to:

- Continued low supply and high demand for land;
- High levels of private wealth and corporate interest seeking land;
- Long term climate change mitigation drivers including net zero commitments;
- Increasing pressure on global timber markets and food supply chains.

## 2.2 Land market data

Alongside the research outlined above, the Commission also reviewed the available quantitative data to assess land market activity. We sought data sets from land agents but this was largely unsuccessful, with commercial confidentiality being cited as the main reason to refuse data sharing. Therefore, the quantitative analysis focussed on Land Register data obtained from Registers of Scotland (RoS), with some supplementary data provided by Strutt and Parker. This RoS-based approach, while possible, encounters some challenges which we discuss further in section 3.3 on improving land market reporting.

## 2.3 Stakeholder engagement

Following the publication of the Commission's research, the Commission has undertaken stakeholder engagement through a series of one-to-one meetings and an in-person workshop held on 7 June 2022 with representatives from across the land sector.

Stakeholder feedback has been consistent in indicating experience on the ground is aligned with the research findings and helpful in understanding the nuances of different circumstances. Stakeholders have expressed shared concerns over the pace of change and the rate of increase in land values and, while noting uncertainty, tend to view the current market conditions as a trend that will continue rather than a short-lived bubble.



## 2.4 Discussion Papers – economic and legal principles

Alongside research into the land market, the Commission has sought expert opinion on the economic and legal principles which frame consideration of natural capital and land. We published two discussion papers in May 2022 as part of our Land Lines series to inform the ongoing discourse: *Natural capital, carbon offsetting and land use* by Professor Sir Dieter Helm,<sup>12</sup> and *Carbon Markets, Public Interest and Landownership in Scotland* by Dr Jill Robbie and Dr Giedre Jokubauskaite.<sup>13</sup> Following publication these were discussed in two public webinar events. The Commission has drawn upon these papers and feedback to inform the recommendations in this paper.

12 Helm, D. (2022) [Natural capital, carbon offsetting and land use](#). Scottish Land Commission, Commissioned Paper.

13 Robbie, J. and Jokubauskaite, G. (2022) [Carbon Markets, Public Interest and Landownership in Scotland](#). Scottish Land Commission, Commissioned Paper.



# Key Issues and Recommendations

## 3 Market Frameworks

### Making land and natural capital markets work well

Government plays a key role in creating market structures and regulation that provide clarity for investment and build public confidence in the markets. This section considers regulatory steps in both the land market and emerging natural capital markets.

The land market is well-established, though Scotland is unusual in having relatively little regulation on who can own land and how much they can own when compared to common international practice.<sup>14</sup> The voluntary carbon market is, by comparison, new and rapidly emerging and at this point it has no statutory regulation.

The carbon market is currently the most developed natural capital market, but others are likely to develop soon. We therefore focus particularly on the carbon market here as the immediate opportunity, but the principles apply to the development of all natural capital markets.

#### 3.1 The land market – ownership and accountability reforms

While carbon and net zero are recent drivers of change in Scotland's land market, they shine a fresh light on the underlying and longstanding conditions in Scotland's pattern of land ownership and its land market. The concentrated pattern of land ownership is a significant factor in the issues and risks we see in the present market.

This concentrated pattern of ownership contributes to the consistently limited supply of land coming to the market each year, meaning land does not often change hands. It also means that when land does come to the market, it is often as large holdings, even if divided into lots. Whether or not land is bought and sold, the large size of holdings means that when land use change decisions are made, change can happen at significant scale with the potential to impact many others, including communities. We acknowledge the benefits of land use change at scale in meeting net zero ambitions but identify risks in how this change is handled accountably.

<sup>14</sup> Glass, J.; Bryce, R.; Combe, M.; Hutchison, N.E.; Price, M.F.; Schulz, L. and Valero, D. (2018) [Research on interventions to manage land markets and limit the concentration of land ownership elsewhere in the world](#). Scottish Land Commission, Commissioned Report.

The Commission's previous work found that the core risk to the public interest of concentrated ownership is the concentration of power, and particularly the risk of localised monopoly power.<sup>15</sup> With emerging new financial value associated with carbon and natural capital, the benefits and value of Scotland's land may by default become further concentrated among those who currently own land and constrain efforts to diversify land ownership. The Just Transition Commission recognised in their recommendations the need to address the specific challenges this raises in relation to land.<sup>16</sup>

The emergence of new value in Scotland's land associated with carbon and natural capital further strengthens the case for measures that improve accountability in land ownership, given the underlying pattern of concentrated land ownership.

**Recommendation 1** – The underlying effects of concentrated land ownership can be significantly addressed through the introduction of measures already proposed by the Scottish Land Commission<sup>17</sup> for the forthcoming Land Reform Bill. These are:

- A public interest test at the point of large-scale land transactions;
- An obligation to prepare and engage on a management plan for large land holdings;
- Strengthening implementation of the Land Rights and Responsibilities Statement through increased statutory weight and a review mechanism to provide a backstop in addressing poor practice.

Together these measures would improve the accountability of land ownership, addressing the risks of localised monopoly power and strengthening consideration of the public interest. They would provide backstop measures for use where necessary, while at the same time signalling a shift in culture and expectations that we anticipate would result in changes in voluntary practice, delivering on the land rights and responsibilities principles.

15 Glenn, S.; MacKessack-Leitch, J.; Pollard, K.; Glass, J. and McMorran, R. (2019) [Investigation into the Issues Associated with Large scale and Concentrated Landownership in Scotland](#), Scottish Land Commission.

16 [Just Transition Commission: A National Mission for a fairer, greener Scotland](#) (2021), Scottish Government.

17 [Legislative proposals to address the impact of Scotland's concentration of land ownership](#) (2021), Scottish Land Commission.

## 3.2 The land market – participation

While Scotland’s land market has long been characterised by low supply, the current conditions further increase the risk that a large number of people and communities are simply unable to participate effectively in the market, limiting the diversification of land ownership.

The high and rising land prices, combined with a significant increase in off-market sales (i.e. transactions not publicly advertised), mean it is more challenging for a wide range of individuals, businesses, farmers, organisations, and communities to compete effectively in the market, or even to be aware of when there may be opportunities for land acquisition.

Feedback from the Scottish Land Fund, for example, indicates that communities are finding it harder to secure negotiated land acquisitions given the high prices and the pace at which the market is moving. In two cases this year, despite having Stage 1 awards from the Scottish Land Fund for land asset acquisition, communities have found the seller has accepted a higher offer from another party despite being at an advanced stage of negotiation with the communities. It appears that asset owners may be less inclined to give communities the time they need to mount a bid in a competitive market with no shortage of private purchasers who can move quicker. Communities are also constrained by grant funding being determined as a percentage of an independent valuation. Private bidders are now routinely bidding more than the community will be able to raise.

For communities, Scotland has in place a suite of rights to buy. By registering an interest in land under the Part 2 Community Right to Buy,<sup>18</sup> a community can ensure that the land is not sold without first having the opportunity to acquire it. This applies whether or not the land is actively marketed and advertised. Where an interest has not been registered before steps are taken to market land, it is challenging for communities to register an interest given the intention of the Act to support ‘timeous’ applications. Therefore communities should be encouraged to make use of the ability to register an interest in land where they consider they may have a future interest in acquisition. We understand that Highlands and Islands Enterprise (HIE) will shortly offer new support for communities to be proactive in registering an interest in land, and we consider similar support should be available across Scotland.

Statutory community rights to buy inevitably set a high bar for use and in our 2018 advice on community ownership<sup>19</sup> we emphasised that negotiated transfers to communities should be the norm, with the use of rights to buy a backstop rather than first resort. This is the approach promoted by land ownership membership groups across all sectors, encouraging willing seller/willing buyer negotiated transactions, and further outlined in our Protocol on Negotiating Transfer of Land to Communities.<sup>20</sup>

<sup>18</sup> Part 2 of the Land Reform (Scotland) Act 2003

<sup>19</sup> [Community Ownership and Community Right to Buy – Recommendations to Scottish Ministers \(2018\)](#), Scottish Land Commission.

<sup>20</sup> [A Protocol – Negotiating Transfer of Land to Communities \(2020\)](#), Scottish Land Commission.



Our advice in 2018 recommended consideration ‘of a requirement for landowners to notify communities of, and/or advertise locally, intended sales’ to help normalise a negotiated sales approach. This is further supported through our Protocol on Diversification of Ownership and Tenure<sup>21</sup> which encourages land owners to publicise their intent to sell.

However, community rights to buy do not address access to land for individuals, local businesses, and other organisations. Our 2019 research into scale and concentration<sup>22</sup> also showed strong unfulfilled demand from individuals, local businesses, farmers, and other organisations to have better access to the land market. Alongside supporting community ownership, these aspirations for modest individual ownership could play a key role in ensuring long term sustainability and productivity in rural Scotland contributing to a just transition. Considering the changes in the market we consider a form of prior notification of intent to sell is now more necessary to support not just community land acquisition, but the wider participation in the market necessary to achieve more diverse land ownership.

**Recommendation 2 – We recommend a mandatory requirement for prior notification of intended sales for land holdings above a defined size threshold. This should be complemented by good practice guidance to support prior notification where appropriate for other land holdings.**

Prior notification processes are already used in the land sector. Planning notifications are one of the most common types of notice, usually requiring a notice to be published in the local paper and/or direct contact with neighbouring property owners.

Crofting regulations require a range of notifications to be made, with crofters responsible for advertising in local media under seven different scenarios, while the Crofting Commission itself must advertise notices for croft creation, de-crofting, and registration of new common grazings.

What we propose is that an owner intending to sell land above a defined threshold should first be obliged to make public the intention to sell, at a defined period ahead of the transfer. The purpose is to improve transparency and provide the opportunity for others to be aware of an intended sale and therefore the possibility of entering into a negotiation.

Such a notice would not bind the land owner to a particular course of action or accepting a particular offer, but simply allows the opportunity for interested individuals, local businesses, or communities to make an approach.

There are a number of options for how a prior notification process could work. At its simplest it could require public notification in a local newspaper. Alternatively notification could be direct to defined community bodies or to a third-party organisation.

More open transactions will better reflect value for all parties, facilitate broader participation, and if there is particularly strong interest, the use of an appropriate closing date would prevent gazumping.

21 [A Protocol – Diversification of Ownership and Tenure](#) (2020), Scottish Land Commission.

22 Glenn, S.; MacKessack-Leitch, J.; Pollard, K.; Glass, J. and McMorran, R. (2019) [Investigation into the Issues Associated with Large scale and Concentrated Landownership in Scotland](#), Scottish Land Commission.

We recognise such notification in itself does not address the financial constraints in community acquisition, which is why we recommend in section 4 leadership on collaborative ownership and governance. We also acknowledge the challenges in making 'late' registrations under the Part 2 Community Right to Buy and consider the emphasis should be on supporting communities to register an interest in land, or engage in negotiations, well in advance of sales.

In the short term we propose that the Commission develops good practice guidance on prior notification with stakeholders, within our suite of Land Rights and Responsibilities Protocols and Guidance.

### 3.3 Future reporting on the land market

The market data report published by the Commission identifies challenges in collating land market data and proposals for improvements. Good market data is needed to inform public policy, as well as supporting an effective market through transparent information about transactions and values.

At present Scotland lacks a fully cadastral system of land information, with many of the relevant data sets needed for robust analysis held by different bodies, often in differing formats. Registers of Scotland hold data for their statutory purpose of guaranteeing property titles. However, the data Registers of Scotland hold has much wider public value, and if this can be unlocked it would make regular market reporting more straightforward, as well as bring wider benefits.

The qualitative data of the insights report is particularly valuable in order to understand market trends. While many agent firms publish their own analysis, we see value in a regular national survey that tracks changes in land market conditions. As well as informing public policy, we see improved transparency in data helping address some of the valuation challenges agents have raised.

**Recommendation 3** – We recommend the establishment of regular land market reporting that brings together quantitative data with market insight. To do this, the Commission will work with Registers of Scotland, the Royal Institution of Chartered Surveyors (RICS), and other relevant partners to establish a repeatable methodology, drawing on the lessons from our recent reports.

We will seek to implement an annual survey and report that establishes a robust basis to monitor trends, inform market information and public policy.

## 3.4 The carbon and natural capital markets – high integrity

While improved regulation of the land market can address some of the risks identified, we also advise early consideration be given to the regulation and governance of the developing carbon and other natural capital markets. Understanding that the carbon market is trading commitments to undertake sequestration activity – not physical carbon itself – means that these issues are best approached as a matter of contract law within a framework of public regulation.

It is welcome that private finance is becoming available at scale to tackle our big societal challenges in climate and nature. As with all markets it needs active design and effective regulation to manage the risks and harness this investment in the public interest. The Scottish Government is committed to establishing a high integrity, values-led market and has recently published the Principles for Responsible Investment in Natural Capital.<sup>23</sup>

Building public confidence in the way the carbon and other natural capital markets function will be vital in carrying public support through the significant land use changes inherent in the transition to net zero. The Woodland and Peatland Carbon Codes put in place non-statutory regulation for this sector of the market with independently certified processes for monitoring, reporting and verification with principles of permanence and additionality. This experience should inform the development of effective regulation in wider emerging natural capital markets.

Stakeholder feedback from multiple perspectives across the land sectors has consistently expressed risks perceived in voluntary carbon markets. Particular risks identified include:

- Poor environmental outcomes delivered as a result of insufficiently rigorous accreditation or unverified buyers;
- Decision-making and benefit becoming detached from the underlying land asset as a result of the trading of carbon units;
- Inequitable distribution of benefits.

Scotland's land is a strategic asset in tackling climate change. It is limited in supply and therefore Scotland must ensure that its land is being used to best effect. For carbon sequestration, this means offsetting only unavoidable emissions, not using sequestration as a substitute to enable avoidable emissions elsewhere. We note the Voluntary Carbon Markets Integrity Initiative is currently considering this issue. Without appropriate regulation and assurance, it will be hard to have confidence that an ad-hoc combination of corporate offsetting through voluntary markets, tying carbon units and land use over significant time periods, will necessarily make best use of our land resource.

<sup>23</sup> [Interim Principles for Responsible Investment in Natural Capital](#) (2022), Scottish Government.

**Recommendation 4** – In the Scottish Government’s engagement with UK partners to establish market design for carbon and natural capital markets we recommend particular consideration is given to:

- Standardisation and transparency in measurement, accreditation and pricing;
- Buyer verification that will ensure land is not used to offset avoidable emissions;
- Embedding community benefit requirements as a condition of market participation;
- Sufficient independent oversight to monitor compliance and keep risks and benefits under review.

We note the recently published report of the UK Financing Nature Recovery coalition ‘Roadmap and Recommendations’ provides a detailed analysis of possible reforms to establish high integrity markets.<sup>24</sup> Scotland has an important leadership role to play in maintaining a high level of ambition in the way these markets are designed and regulated.

## 3.5 Community benefit

The Interim Principles for Responsible Investment in Natural Capital set out the expectation that investment will create community benefit. We discuss in section 4 the opportunities for communities to own or control land directly or in collaboration, but where that is not the case there remains the expectation that communities will benefit in tangible ways. There are some core principles for how community benefit is delivered that maximise the opportunity for mutual benefits. The Commission will shortly publish a Land Rights and Responsibilities Protocol that sets these out, supporting delivery of the Scottish Government’s Interim Principles.

There is no single approach to fairly delivering community benefit and work on different approaches is in early stages through the Commission, enterprise agencies, and other partners. At a national level appropriate taxation of gains from carbon trading combined with a community wealth fund offers a consistent means of securing public value from rising carbon prices.

At a regional scale, a community wealth building approach is being explored, through which natural capital investment is deliberately structured to support local skills and providers, embed fair work principles, inclusive ownership models, and reinvest financial gain within the local economy.

At a project level, community benefit should be tailored to the particular circumstances of each land holding and community, rooted in place and the result of effective engagement between communities, land owners and project developers.

<sup>24</sup> [Final Recommendations and Roadmap \(2022\)](#), Financing Nature Recovery UK.



Previous natural capital windfalls have distributed benefits in the form of a community benefit fund. Community benefit funds are already a recognised form of good practice for onshore renewables projects<sup>25</sup> and, although there are differences, this model should be considered for other natural capital projects.

Community benefit can be advantageous to those investing in land to demonstrate impact in the achievement of Economic, Social and Governance (ESG) goals. The provision of a carefully designed community benefit package or fund can build relationships with a community and ensure long-term buy-in for the project. There are also indications that buyers of carbon units may be prepared to pay a premium for carbon credits which deliver demonstrable social as well as environmental impact.

At this stage we recommend in section 3.4 (above) that the design of the carbon market governance embeds community benefit expectations as a requirement for participation in the market. Similarly in section 5.1 (below) we recommend that community engagement and benefit expectations form part of the conditionality expected for public funding.

To support this, the Commission is conducting collaborative research into different approaches to community benefit to develop and identify good practice and to support those wanting to demonstrate leadership in this field. Through this work we will provide further advice for both policy and practice over the coming year.

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<sup>25</sup> [Scottish Government Good Practice Principles for Community Benefits from Onshore Renewable Energy Developments](#) (2018), Scottish Government.

# 4 Governance and Leadership

## Realising the opportunities on the ground

The recommendations above address steps that help create the conditions for success in the way land and carbon markets function. We also see a need for focus on land governance arrangements and the leadership required to realise the opportunities on the ground. By governance we mean the different ways land rights and decision-making are structured. Underpinning these recommendations is a need for strong leadership at a national level to achieve coherent delivery of multiple land use objectives.

### 4.1 Collaborative ownership and governance

Our 2020 Review of International Experience of Community, Communal and Municipal Land Ownership<sup>26</sup> shows that Scotland is unusual in defining very separate sectors of private, public, or community land ownership. Many countries have land governance models which blend these sectors, drawing on the strengths, experience and capacities of each. While these vary widely in form, they all show governance models which can help share the benefits of land and natural capital among multiple parties.

Such models are not entirely alien to Scotland. Crofting tenure can provide a robust framework for collective land management, while some early community acquisitions such as Eigg demonstrate the effectiveness of mixed governance by bringing different interests into decision making.

In practice this could be shared ownership in which private investors, community, public or NGO partners come together in a formal ownership structure. It could also be models of participation in decision-making and co-investment which deliver for each party their different motivations from the same land area.

We see a growing opportunity to establish collaborative governance models in Scotland. These approaches will help deliver on the Scottish Government's objective of increased diversity of land ownership and open up ways of sharing responsibility and benefit in natural capital. They offer an alternative to a default assumption for corporates or financial institutions that they should buy land directly for carbon or natural capital value.

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<sup>26</sup> McMorran, R.; Glass, J.; McKee, A.; Atterton, J.; Combe, M.; Xu, T.; Jones, S. and Perez Certucha, E. (2019) [Review of International Experience of Community, Communal and Municipal Ownership of Land](#). Scottish Land Commission, Commissioned Report.

To make this a normal option there is a need to develop shared understanding of the interests different parties would seek, how risk would be shared, and develop the heads of terms of potential governance models.

This approach is not wholly reliant on government and public bodies; there is a significant role that third sector public interest bodies can and do play. Some NGOs are already taking imaginative approaches to developing collaborative and shared governance models with communities and we see significant potential for this approach to be scaled up, working across the NGO, community and private sectors. In order to do so, the Commission will support and facilitate collaborative approaches and develop practical guidance for collaborative governance models.

Collaboration is also required in the context of landlord/tenant relationships in the agricultural and crofting sectors. For example, in the context of selling carbon units it is clear that agricultural tenants cannot generally proceed without the agreement of the landlord and that landlords are limited in their ability to resume land without the agreement of the tenant. Both are likely to have an interest in making carbon management and sequestration work well, and therefore exploring contractual arrangements that serve both parties. The Tenant Farming Commissioner has published interim guidance on this specific context.<sup>27</sup>

## 4.2 Financing community and collaborative land ownership

Integral to supporting more diverse and collaborative governance is a strategic approach to financing land acquisition, building on Ministers' commitment to the Scottish Land Fund. The Commission was asked to consider ways to complement the Scottish Land Fund with wider sources of finance. Our initial review of options<sup>28</sup> identifies a range of opportunities to improve knowledge and capacity and to be more proactive in brokering mixed finance approaches. This includes the opportunity to harness corporate natural capital investment in ways that co-invest with, rather than compete against communities in land acquisition. It also identifies the potential role of the Scottish National Investment Bank in leveraging finance from other sources into funds that support community-led investment.

Realising the potential to lever private, institutional and philanthropic finance alongside public funding to support diverse governance models will need significant collaboration and leadership focus.

<sup>27</sup> [An Interim Guide to Securing Tradeable Carbon Credits in an Agricultural Holdings Situation](#) (2022). Tenant Farming Commissioner, Scottish Land Commission.

<sup>28</sup> MacPherson, D.; Macleod, F.; McGhee W.; Westwater, D. and Paterson, J. (2022) [Community Ownership Financing: Options to Complement the Scottish Land Fund](#). Scottish Land Commission, Commissioned Report.

## 4.3 The role of public land

Land held by public bodies and the Scottish Government is an opportunity to provide leadership in facilitating greater public interest land ownership and more diverse governance structures.

The existing functions and capabilities of public bodies that own land can be harnessed in a deliberate strategy of public interest land acquisition. We consider the opportunity is less about maintaining a static public estate and more about using public land acquisition in a dynamic way to create and unlock opportunities. For example, land can be acquired with a deliberate intention of restructuring it to offer opportunities that might include entry into agriculture, small land holdings, housing, crofts, woodland crofts, joint ventures, and/or shared governance structures with local communities.

Public bodies – for example, Forestry and Land Scotland and Crown Estate Scotland – are in a strong position to act both as long-term stewards and short-term enablers, creating and retaining public value while facilitating more diverse governance arrangements within the public land holding. They can also facilitate models in which ownership ultimately transfers to communities or other public interest vehicles at a pace that builds capacity to take on ownership.

Public bodies can act more quickly in the current land market than many communities and are therefore in a position to acquire land with the deliberate intention of transferring part or all of that land into community control over the longer term, allowing time for properly planned and financed community transfer. This need not be focused solely on community ownership. Such an approach could open opportunities for a combination of retaining appropriate land in public ownership, lotting and transferring land to third parties including communities, or individuals, and establishing governance models which share risks and benefits.

The Commission and Crown Estate Scotland intend to collaborate in piloting a facilitated approach to bring together aspiring community owners, potential investors and Crown Estate Scotland's own acquisition capabilities to explore how a collaborative approach can harness private finance, address clarity of accountability and risk, and seek opportunities to trial the approach in practice.

We acknowledge that public bodies will continue to face financial constraints in available funds for land acquisition, and that they face the same challenges as others competing in a fast-moving market with high prices being paid. This in part is why it is timely to consider a more strategic approach to financing community and public interest control and why a dynamic approach to the public estate that creates value for reinvestment is important.



**Recommendation 5** – We recommend a proactive approach to supporting collaborative ownership and governance structures for land and investment in natural capital. To do this we propose:

- The public estate provides leadership in developing collaborative governance models within the public land holding;
- The Commission and Crown Estate Scotland collaborate to pilot facilitation of community-led land acquisition that brings together aspiring community owners, finance sources and Crown Estate Scotland’s land acquisition capability to explore governance options;
- Re-establishing the Community Land Ownership Leadership Group with a refreshed membership and remit to develop the opportunities for more strategic alignment in financing community and collaborative land acquisition.

## 4.4 Land use planning

Stakeholder feedback indicates that while the policy direction for land use is broadly understood, many people feel unease at the pace and scale of change, the potential for unintended consequences, and disparities in who benefits from this change. Improved accountability and transparency in decision-making, together with clarity on how tensions in land use choices are addressed, will help support public confidence.

Landscape-scale planning is necessary to attract private finance at sufficient scale. It is also necessary for making informed decisions on land use choices and priorities, and in planning a fair sharing of benefits. To support a just transition, the decision-making process needs to connect national strategic land use priorities with local priorities, support collaboration, and engage local communities and stakeholders.

Stakeholder feedback identifies a growing cumulative impact from land use change which is not well addressed by individual site-level consultation and decision-making. Community engagement in land use decisions at a land holding scale is becoming normal expected practice and is important. Landscape-scale planning, where communities and stakeholders are effectively engaged in strategic decision-making, can be more efficient and impactful, reducing tensions and consultation fatigue.

Regional Land Use Partnerships, being piloted by Scottish Government in five areas, are a means to improve the integration of land use planning and the accountability of land use change decisions. The existing experience of collaborative land use initiatives in Scotland provides a firm foundation, but there is a gap that Regional Land Use Partnerships address, to unlock better delivery and align policy, support, funding and collaboration.

Our advice on Regional Land Use Partnerships<sup>29</sup> in 2020 noted the opportunity for the Partnerships to broker multiple sources of finance including private investment and direct this to agreed regional priorities in a co-ordinated way. Public bodies can underpin a collaborative approach by managing engagement and funds for land use change through Regional Land Use Partnerships.

Navigating the strategic choices inherent in meeting national priorities such as woodland expansion, food production, biodiversity enhancement, rural repopulation, and more, cannot be left to decision-making at a land holding scale. It requires a very deliberate land use strategy that provides a framework in which to address the choices at a regional and local scale in a way that is seen to be fair and accountable, and which delivers national ambitions.

**Recommendation 6** – We recommend giving traction to the Land Use Strategy and the forthcoming just transition plan for agriculture and land by empowering Regional Land Use Partnerships as an accountable means of aligning land use priorities.

<sup>29</sup> [Advice to Scottish Government on the Establishment of Regional Land Use Partnerships \(2020\)](#), Scottish Land Commission.

# 5 Fiscal and Taxation Policy

## Using policy to influence behaviour

Beyond setting the market frameworks and supporting effective governance structures, public policy and the use of public finance is a significant lever in influencing behaviour and implementing the Scottish Government's principles for responsible investment in natural capital.

### 5.1 Targeting public finance

Scotland's Climate Change Plan is clear in signalling the land use change required to meet net zero and nature goals. Current Scottish Government policy and funding is particularly successful in stimulating woodland expansion and peatland restoration, two cornerstones of the land use commitments in the Climate Change Plan. It demonstrates well the impact policy can have in shaping decisions on the ground. What will be important now is continuing to evolve the public policy and funding levers to manage the risks that emerge and adapt to the high levels of private finance available, particularly in a time of challenging public finances.

The favourable financial conditions driving woodland expansion are in part created by tax policy and by public funding support as well as high timber demand and prices. The land market report shows that government policy is a significant driver in forestry investment, as intended. However, as the level of private finance available evolves, particularly through carbon market mechanisms, there is a risk that public funding inadvertently fuels land values in an already buoyant market.

We recognise the ongoing need for public finance to support woodland creation and public interest outcomes, but action is needed so that the balance of how and where public support is best targeted keeps pace with the changing availability of private finance. We note the recent changes to the 'additionality' rules in the Woodland Carbon Code<sup>30</sup> which in part may reduce a further driver of increasing land prices. We also recognise the development of further carbon codes, like the Soil Carbon Code,<sup>31</sup> could significantly influence decision making and investment and that interaction between carbon codes will need greater consideration to avoid unintended consequences.

30 [Woodland Carbon Code \(2022\)](#), UK Government.

31 [UK Farm Soil Carbon Code \(2022\)](#), Sustainable Soils Alliance.

We expect the policy signals supporting woodland expansion and peatland restoration to remain consistent but there is an opportunity to adjust both the targeting and intervention rates of public funding and the conditionality expected in return. For example, conditionality could secure greater implementation of land rights and responsibilities principles through community engagement and benefit as pre-requisites for public support.

We also propose consideration is given to the longer-term relationship between public and private finance. While public funding may continue to be needed to de-risk investment in woodland and peatland up front, if and when payment for carbon units is received through market mechanisms there is a case that a share of the public funding be repaid to enable reinvestment in further delivery.

**Recommendation 7** – We recommend that the targeting of public finance for land use is kept under review in order to maximise public value, with particular consideration given to:

- Using adjustments in eligibility and intervention rates to better target public grants;
- Increasing the conditionality expected in return for public finance.

We see opportunities to address these in consideration of the fiscal support framework in the forthcoming Agriculture Bill, implementation of the Scottish Forestry Strategy and ongoing development of peatland finance mechanisms.

## 5.2 Role of taxation

We published advice on taxation and land reform<sup>32</sup> in January 2022 which noted the significant influence taxation policy has in shaping decisions about land ownership and use. Our advice on taxation acknowledges that significant levers in respect of inheritance and capital gains taxes are reserved to Westminster and we advised that the Scottish Government engage on a UK basis on the potential for a more progressive approach to the use of reliefs and exemptions in relation to land that would support current policy goals.

We also made two recommendations on taxation within devolved powers. The first is that the Scottish Government takes steps to improve the options available to it by strengthening the role of land in the tax base, through:

- Establishing a programme to bring all land onto the valuation roll; and
- Committing to the development and use of a consistent and comprehensive cadastral approach which would enable the integration of information on land ownership, use and value, building on the current work of Registers of Scotland.

<sup>32</sup> [Land Reform and Taxation: Advice to Scottish Ministers \(2022\)](#), Scottish Land Commission.

The second is to consider further the potential role of Land and Buildings Transaction Tax in relation to shaping the land market in a just transition. In particular, we advised consideration of either a change in the top rate or a targeted supplement in Land and Buildings Transaction Tax that would better address the very high land prices being paid at the top of the market. We acknowledge that such a change would be unlikely to have a major impact on market behaviour but does offer an ability to raise revenue associated with high land prices, with the option of hypothecation open to Ministers.

Finally we also consider taxation has a significant role to play over the medium to long term in shaping an appropriate balance of public and private benefit from natural capital value. For example, where there are potential windfall gains arising from trading in carbon or other natural capital markets, a well-designed tax instrument targeted to where that value lies could ensure an appropriate share of the increase in value is secured for public benefit.

We recognise that designing such a measure would need significant work to strike an effective balance between incentivising behaviour and securing public value and will need consideration in the UK context.

**Recommendation 8** – We propose consideration is given to the role of taxation as a means of securing public value from emerging financial value associated with carbon and wider natural capital and refer to the specific proposals set out in the Commission’s advice of January 2022 on Taxation and Land Reform.



# 6 Conclusion

Scotland is well-placed to secure responsible investment in natural capital and to manage this well in support of a just transition. Our advice sets out ways to be proactive in shaping both Scotland's land and natural capital markets that help deliver on the Scottish Government's land reform programme and its commitment to establishing high integrity, values-led natural capital markets.

We propose steps to create effective market frameworks, realise the opportunities on the ground and use policy to influence behaviour and secure public value. In conclusion we note again that while the current drivers of carbon and natural capital are new influences in land ownership and the land market, they shine a fresh light on the underlying pattern of land ownership and governance. Much of what we propose therefore seeks to address not just the risks and opportunities of the immediate changes, but to ensure Scotland's land governance is able to continue to adapt to emerging new drivers, investment and value in future.

The Fannichs, North West Highlands



# ANNEX

## Summary of Recommendations

### Market Frameworks

To create the conditions for the land and natural capital markets to function well, we recommend:

#### In the land market

##### Recommendation 1

Addressing the effects of the underlying pattern of concentrated land ownership by the following measures proposed in the Commission's earlier advice:

- Introducing a public interest test at the point of large-scale land transactions;
- An obligation to prepare and engage on a management plan for large land holdings;
- Strengthening implementation of the Land Rights and Responsibilities Statement through increased statutory weight and a review mechanism to provide a backstop in addressing poor practice.

##### Recommendation 2

A mandatory requirement for prior notification of intended sales for land holdings above a defined threshold. This should be complemented by good practice guidance to support prior notification where appropriate for other land holdings.

##### Recommendation 3

Establishment of regular land market reporting that brings together quantitative data with market insight. To do this the Commission will work with Registers of Scotland, RICS and other relevant partners to establish a repeatable methodology, drawing on the lessons from our recent reports.



# In natural capital markets

## Recommendation 4

Design of the market framework for carbon and other natural capital markets that addresses:

- Standardisation and transparency in measurement, accreditation and pricing;
- Buyer verification that will ensure land is not used to offset avoidable emissions;
- Embedding community benefit requirements as a condition of market participation;
- Sufficiently independent oversight to monitor compliance and keep risks and benefits under review.

# Governance and Leadership

To realise the opportunities on the ground we recommend:

## Recommendation 5

Proactive support for collaborative ownership and governance structures for land and investment in natural capital. To do this we propose:

- The public estate provides leadership in developing collaborative governance models within the public land holding;
- The Commission and Crown Estate Scotland collaborate to pilot a facilitation approach to community-led land acquisition that supports aspiring community owners and explores governance options;
- Re-establishing the Community Land Ownership Leadership Group with a refreshed membership and remit to develop the opportunities for more strategic alignment in financing community and collaborative land acquisition.

## Recommendation 6

Giving traction to the Land Use Strategy and the forthcoming just transition plan for agriculture and land by empowering Regional Land Use Partnerships as an accountable means of aligning land use priorities.

# Fiscal and Taxation Policy

To influence behaviours through policy we recommend:

## Recommendation 7

The targeting of public finance for land use is kept under review in order to maximise public value, with particular consideration given to:

- Using adjustments in eligibility and intervention rates to better target public grants;
- Increasing the conditionality expected in return for public finance.

## Recommendation 8

Consideration is given to the role of taxation as a means of securing public value from emerging financial value associated with carbon and wider natural capital and refer to the specific proposals set out in the Commission's advice of January 2022 on Taxation and Land Reform.



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