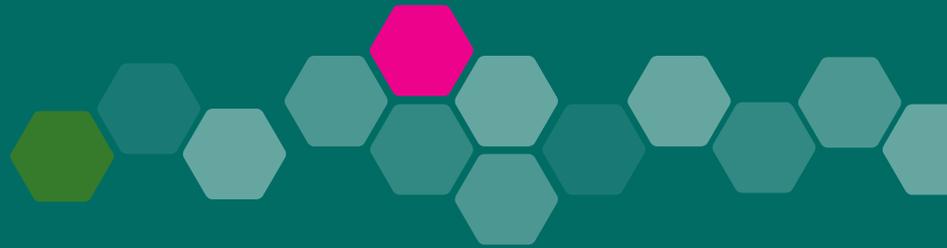




Good practice in overcoming barriers to community land-based activities



AGRICULTURE, ENVIRONMENT AND MARINE

Good practice in overcoming barriers to community land-based activities

Report for the Scottish Government

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Contents

Good practice in overcoming barriers to community land-based activities	1
Report for the Scottish Government	1
Contents	2
Executive summary	4
Background and approach.....	4
Findings	4
(i) Case studies and resolution strategies	6
(ii) Success factors	6
(iii) Challenges facing private landowners	7
(vi) The role for policy in supporting good practice	8
1. Introduction.....	10
1.1 Policy context.....	10
1.2 Project background and objectives.....	10
2. Theoretical background to the project: resolving barriers through collaborative planning and engagement	12
3. Research Approach	16
4. Findings	18
4.1 Summary of case studies and types of resolution strategies adopted	18
5. ‘Success factors’ in overcoming barriers to community land-based activities. 20	
5.1 The importance of behaviour and attitude: the role of individuals	20
5.2 Sharing viewpoints and seeking areas of common cause: opportunity of community-landowner partnerships.....	21
5.3 The importance of proactive and high quality engagement.....	21
5.4 The importance of communication and language.....	22
5.5 The role of professional brokers and external support	24
5.6 Adopting an outcomes approach: assessing options for community land-based activities	25
5.7 The importance of community planning processes	26
5.8 Tools and approaches for successful community engagement	28
5.9 Private landownership accountability: balancing incentives and regulation	29
6. Challenges facing private landowners	31
6.1 Challenges and opportunities specific to geography/ activity type	36
7. Good practice principles	38
7.1 Good practice principles for private landowners.....	38
7.2 Good practice principles for communities/community bodies.....	41

7.3 The role for policy in supporting good practice to overcome barriers to community land-based activities.....	45
8. References	48
Appendix A	51
Appendix B	55
Appendix C	56

Executive summary

Background and approach

Roberts and McKee (2015) identified a number of different types of barriers to community land-based activities. This report focusses on ways in which such barriers can be overcome. The findings are based on an interview survey of representatives of private and third sector landowners. A number of types of 'resolution strategies' are described along with the factors for success in overcoming barriers, a review of the challenges facing landowners, and perceived principles of 'good practice' by both landowners and communities. The report concludes with views on the role for policy in helping to overcome barriers to community land-based activities. The project findings are relevant to Part 4 of the Land Reform (Scotland) Act 2016 – engaging communities in decisions relating to land, and provide recommendations for the guidance to be issued by Scottish Ministers.

The project was based on an interview survey of twenty individuals representing private landownership in Scotland, including representatives of those who act as intermediaries and facilitators during resolution processes. Interviewees therefore included representatives of Scottish Land & Estates (SLE) and the National Farmers Union Scotland, representatives of the forestry sector, representatives of conservation landowners, representatives of the Royal Institution of Chartered Surveyors and the Valuation Office Agency (VOA), as well as rural and urban land surveyors (e.g. employed within traditional land agency companies), and planning professionals.

Findings

Through reflection on their personal and professional experience of working with landowners and communities, the interviewees identified a number of principles for 'good practice' by communities and landowners, as summarised in Box 1. Many of the principles are shared by both community bodies and landowners; nonetheless, key distinctions arise.

Good practice principles for private landowners

- (i) Ensuring clarity and transparency regarding engagement processes (e.g. regarding intentions, through an agreed discussion format and recording discussions).**
- (ii) Ensuring supportive behaviour and attitude (i.e. respect, honesty and responsiveness, plus commitment to community engagement).**
- (iii) Fostering positive relationships through direct communication, and building a ‘track record’ of community engagement.**
- (iv) Involving expertise and specialist knowledge, and ensuring that professional land management advisors adhere to good practice principles.**
- (v) Reflectivity in land ownership and management (i.e. promoting a transparent estate development strategy, including community engagement, recognising the public interest in decision-making, identifying surplus land/assets and make available for community land-based activities, etc.).**

Good practice principles for communities

- (i) Ensuring positive and early engagement with the relevant landowner(s) (e.g. presenting proposals, and seeking up-to-date information and views).**
- (ii) Undertaking strategic and critical thinking (i.e. regarding community dynamics, capacity, governance, and needs, in addition to the role of asset ownership and alternatives).**
- (iii) Establishing a ‘sustainable development’ plan, demonstrating community visioning, land use assessments and resource planning.**
- (iv) Achieving a unified community voice, through active participation in local democracy and dialogue.**
- (v) Building community capacity, positive engagement behaviours and knowledge (e.g. of valuation processes, negotiation practices, business planning, etc.).**
- (vi) To work with objective and highly skilled community advisors (including development officers and land agents), in order to support the progress of land-based activities (e.g. in seeking funding, devising business plans, commissioning feasibility studies, transacting land sales, etc.).**

(i) Case studies and resolution strategies

The interviewees described their experience and knowledge of a number of case studies, which demonstrated how barriers to community land-based activities may be overcome. Strategies described include direct discussion and negotiation between landowner and community, information provision, provision of land/assets by the landowner to the community (including through tailored lease arrangements, or identifying alternative sites), agreeing contracts or conditions for land use, and partnership approaches between landowners/management and community bodies. Challenges and opportunities of overcoming barriers to community land-based activities were argued to vary between rural and urban settings. These differences derive from the scale of urban communities and associated challenge in reaching consensus, in addition to the greater number of communities of interest and stakeholders necessary to include in consultation processes in urban contexts. Furthermore, interviewees recognised a greater use of third party agencies in urban areas, and therefore less direct landowner- community engagement, and a potential difference in motivation on the part of urban landowners in community engagement processes.

(ii) Success factors

A range of success factors were identified based on past experiences of overcoming barriers to community land-based activities. These include an awareness of the influence of individual personalities as either positive or negative in overcoming barriers, and the role of ‘champions’ in community engagement processes who build trust and transparency. A related success factor is establishing ‘rules of engagement’, i.e. the codes of conduct expected within landowner-community dialogue processes. Such codes of conduct should include the shared responsibility of all stakeholders to explain their aspirations, motivations and circumstances, in order to seek areas of ‘common cause’. It follows that successful partnerships are underpinned by “openness, sharing information, communications, and willingness of community to work with the estate [owner/management] and vice-versa.”

Pre-emptive engagement was identified as helpful in that it provides a point of departure for dialogue. Such proactive engagement may range, for example, from landowner involvement with children’s education, to so-called ‘constant consultation’ with a community on day-to-day and strategic land management planning decisions. Success factors therefore include ‘friendly’ negotiations focused on outcomes as opposed to discussions around land value. High quality engagement ensures that all viewpoints are incorporated (including those not active in community bodies), and it is important that monitoring and evaluation of the engagement process occurs. A handbook detailing ‘good practice’ in landowner-community engagement is recommended in order to ensure quality and flexibility in engagement practices.

The importance of communication practices and the role of language are also highlighted as critical success factors, and a ‘communication plan’ is suggested as a core component of estate management and community planning. Communication

relies on a clear understanding of who is the landowner and the 'community', in addition to a common technical language for land management/transactions. The role of professional brokers and external support was considered in detail by the interviewees and they were in agreement that direct communication is preferable between landowner and community, but that external support may be necessary in certain circumstances to overcome barriers to community land-based activities. In particular, the involvement of individuals and organisations with specialist knowledge can support an 'outcomes' approach. Therefore, the role of land agents, lawyers, community support agencies and others, their culture, attitude, and advisory services are key success factors. The opportunity for further training in community engagement and greater use of mediation and dispute resolution services for these intermediaries was advocated.

A common theme identified as important for achieving positive outcomes was community action planning integrated with a proactive local development plan. This would require evidence gathering processes, effective public consultation, and clarity of communication, community-led visioning and associated action plans. It was also considered important to include land use/capability assessments and that both the community and landowner commit time and effort to the planning process. Tools and approaches for successful community engagement described by the interviewees, included the interactive 'Charrette' process, the use of participatory mapping and technology-based approaches (in particular for gathering the views of urban communities). Stakeholder mapping is also highlighted and the role of facilitated 'round table' discussions to consider alternative options. Availability of funding to support such tools and approaches is important.

Finally, interviewees explained that a critical success factor in overcoming barriers to community land-based activities is an approach to governance and regulation that ensures landowners engage effectively and proactively, with associated penalties and incentives to ensure this is the case. Some interviewees asserted that changing the rhetoric around land reform is important. Others suggest that ensuring the accountability of private landowners is as important in overcoming barriers. At a more specific level, interviewees suggested that greater consideration could be given to identifying opportunities for assets to be sold where not central to the requirements of a land-based business. However, others stressed the need for 'protection' for both communities and landowners, and were concerned that the landowners' perspective is under-represented in such considerations.

(iii) Challenges facing private landowners

The interviewees recognised a range of challenges facing private and third sector landowners in overcoming barriers to community land-based activities. These include landowner perceptions that the community lacks a cohesive vision (due to the small scale of the community body, internal divisions, or the heterogeneity of urban communities), and limitations within the community group, including their capacity, skill set (e.g. communication and business skills) and knowledge (e.g. of land management and farming practices). Challenges also arise when landowner and community engagement is conducted at too late a stage in the development

process, where there is an apparent lack of community interest in engagement processes, or where engagement is not well received by the community.

Disputes between landowner and community can arise due to a lack of trust, or polarised viewpoints. Landowner 'exclusion' from a community body was considered a challenge by interviewees in some cases; in contrast, farmers tend to be more likely to be perceived as community members. Conflicting motivations and objectives of the landowner (and landowning trustees, e.g. conservation objectives) with the community (whose wishes may be for greater employment and housing) can also contribute to challenges.

Further challenges detailed by the interviewees include multiple uncertainties arising from family responsibility and expectation, political rhetoric around land reform, lack of experience in community engagement, negative perceptions held by the community, and/or personality type, in addition to uncertainties that concern business interests (e.g. community land uses and potential security of tenure). Perceived and actual resource costs on the part of the private landowner can be an issue, in terms of time, effort and skills required, plus the expense of community engagement processes. Potential tax liabilities, the scale of impact on land-based businesses, and the costs associated with lease arrangements can also inhibit private landowners from seeking to overcome barriers to community land-based activities as can the landowner's personal capacity and skill set. In addition perceived power imbalances, with disempowerment both on the part of the community and that of the landowner, can inhibit the dialogue necessary to overcome barriers.

(vi) The role for policy in supporting good practice

The interviewees agreed that policy has a key role to play in supporting good practice in overcoming barriers to community land-based activities. However they also stressed the need to evaluate existing legislative measures and underlying policy before seeking to add further regulation or guidance.

The opportunity for policy to better support community capacity building was raised, including knowledge around land management and terminology, an awareness of available support and participation opportunities in the planning system, as well as further training for institutions in community engagement. A collaborative role for policy, working with landowners, and the professions (e.g. planners, surveyors, lawyers) was advocated. It is recommended that policy development builds on experience from related policy, e.g. the Scottish Outdoor Access Code. Measures of success should be incorporated into policy implementation and guidance as should recognition of good practice and standards of professional conduct.

'Soft' policy approaches were suggested by the interviewees, including best practice templates and guidance. The interviewees also called for clarity regarding the consequences for land owners/managers of failing to adhere to engagement guidance (Part 4 of Land Reform (Scotland) Act 2016), whether statutory or voluntary. There should also be recognition of the role of the forthcoming Land Commission to gather necessary evidence and make recommendations for

mediation, negotiation, and compensation processes. More generally, the interviewees called for policy 'work streams' to be brought closer together (e.g. the Land Use Strategy, LEADER and the National Planning Framework 3), and for planning policy to support community developments (e.g. through 'bolder' use of CPO powers).

1. Introduction

1.1 Policy context

The Land Reform (Scotland) Act 2003 was a significant step in the Scottish institutional framework, enabling community empowerment through asset-based rural development (Shucksmith, 2010; Skerratt, 2011). The Community Empowerment (Scotland) Act 2015 extends the potential for community land acquisition to urban areas and includes powers for communities to pursue absolute right-to-buy where land is considered abandoned or neglected. Community land acquisition is often supported by public bodies such as Highlands and Islands Enterprise, who ensure that engagement processes demonstrate community representation and seek to appraise the options available for community land-based activities to be pursued. In many cases, effective engagement and negotiation between community and landowner (both public and private) can ensure that community needs are met (Roberts and McKee, 2015) and partnership working between private estate owners and communities has been promoted as a route to sustainable rural development (McKee, 2015; Glass et al., 2012).

The need to promote partnership working between landowners and communities was recognised in the much anticipated Land Reform Bill (now Land Reform (Scotland) Act 2016)¹. In particular, the Act includes the provision of guidance by Scottish Ministers for landowners and tenants on engaging with communities on land-based decisions (Part 4). The Policy Memorandum that accompanied the Land Reform Bill (as introduced to the Scottish Parliament on 22nd June 2015) also detailed some potential consequences for landowners if they fail to consider the guidance including, for example, reduced access to grant funding, as well as measures affecting private property rights, most significantly potential for compulsory sale orders where a community's 'sustainable development' is considered inhibited ('significantly harmed') by landowner actions (Part 5; Scottish Government, 2015).

This project aims to provide an overview of stakeholder views relevant to Part 4 of the Land Reform (Scotland) Act 2016 and to provide recommendations for the guidance to be issued by Scottish Ministers.

1.2 Project background and objectives

Roberts and McKee (2015) provide a classification scheme that distinguishes categories of land ownership barriers to community land-based activities. Each category of barrier identified in the classification scheme arises from a different source and thus may require a different resolution mechanism. The case studies identified in this earlier project highlighted several different resolution strategies which had been used to overcome land ownership barriers to community activities. For example, external mediation and consultation processes had been effective in overcoming problems between particular landowners and communities, allowing activities to proceed. The role of intermediaries such as community support actors

¹ The Land Reform Bill was passed by the Scottish Parliament on 16th March 2016 and received Royal Assent on 22nd April 2016.

and land agents was highlighted as critical to a successful resolution, as well as the timescale for negotiation (Roberts and McKee, 2015).

This report builds on this by reporting insights from interviews with the representatives from the private landowning sector regarding the challenges and opportunities to the adoption of different strategies and achieving good practice in the resolution of barriers to community land-based activities. It complements previous research on landowner-community engagement and partnership working (cf. McKee, 2015; Glass et al., 2012) and provides detail on the practicalities, resource implications and the role of policy in supporting and resolving barriers when they occur.

2. Theoretical background to the project: resolving barriers through collaborative planning and engagement

An increasing emphasis is being placed on ‘community engagement’ by practitioners and academics, building on lessons of best practice and developing contemporary ‘participatory governance’ (see Reed, 2008; Sarkissian et al., 2009; SCDC, 2011). The term ‘engagement’ is taken to represent different types of participatory processes and information flows, in particular reflecting the higher ‘rungs’ of Arnstein’s ‘ladder of participation’ (1969; see Figure 1). It is defined within the ‘National Standards for Community Engagement’ as:

“Developing and sustaining a working relationship between one or more public body and one or more community group, to help them both to understand and act on the needs or issues that the community experiences” (Communities Scotland, 2005: 4).

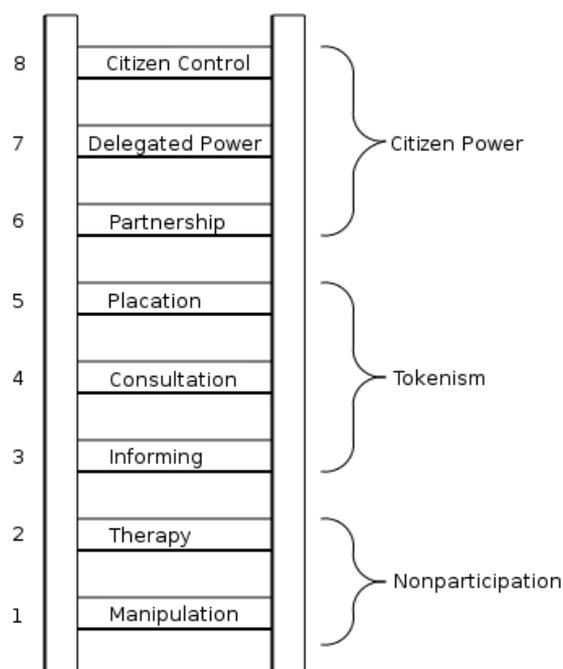


Figure 1 The eight-rung ‘ladder of citizen participation’ after Arnstein (1969)

There is consensus within the academic literature that community engagement processes can lead to community empowerment in decision-making (Carr and Halvorsen, 2001; Mohan and Stokke, 2000; Habermas, 1973; Habermas, 1981; McKee, 2015). The literature on participatory governance highlights further benefits to community engagement processes, including:

- better decision-making due to the inclusion of a wider range of perspectives and expertise and local knowledge (Reed, 2008; Irvine et al., 2009);
- increasing the potential for innovation (Brandenburg et al., 1995 in Carr and Halvorsen, 2001);

- greater support for land management practices and land use change through increased public understanding and ‘social learning’ (Reed et al., 2010);
- providing support for the implementation of policy;
- reducing the potential for conflict (Warren, 2009; Dandy et al., 2014);
- building trusting and respectful relationships (Richards et al., 2004; Sarkissian et al., 2009; Walker et al., 2010); and
- offering financial and time-saving benefits (Pretty, 2003 in Dandy et al., 2014).

Key thinkers in spatial and urban planning have considered the potential for communicative or collaborative processes to improve public participation and achieve consensus between diverse communities. Healey and colleagues advocate the change in governance ‘culture’ necessary to improve the management of co-existence in ‘shared spaces’ through deliberative processes and ‘collaborative, inclusionary planning processes’ (Healey, 2006:297; see also Healey et al., 2003). Such planning processes may include the ‘*Charretteplus*®’ model designed and utilised by PAS, involving a series of intense, collaborative workshops, informed by local community aspirations and concerns, and integrating both spatial and community planning (PAS, 2014). Participatory mapping techniques have also been used by researchers to bring together community perspectives, for example, to resolve marine planning conflicts, or to resolve water quality issues within the implementation of the Water Framework Directive (Martin-Ortega et al., 2015). Healey explains that through social interaction and debate, collective action can be achieved, contributing to mutual understanding and in turn building relational resources. These relational bonds rely on trust and generate intellectual, political and social capital, as well as institutional capacity (Healey, 2006:297; see also Healey et al., 2003).

Similarly, Allmendinger (2009) supports the shift to communicative and collaborative planning approaches to allow disparate communities to reach agreement and formulate plans, in particular advocating the following principles: (i) to undertake constant reflection to ensure transparency; (ii) to expose and challenge existing power relations; and (iii) to adopt a more ‘active and creative’ role in the development of new processes and structures, leading to ‘planner reflexivity’ regarding current roles and existing power relations (Allmendinger, 2001 in Allmendinger, 2009: 10).

As MacGregor (1993) asserts, private landowners in Scotland play a central (if informal) role in rural planning. It follows that the principles derived from Allmendinger may be applicable in the context of rural land use planning, for example with regard to increasing landowner accountability and allowing for traditional power structures in rural areas. A knowledge gap exists with regard to urban landowners, although Adams (2013) highlights the necessity to promote a ‘discourse of property responsibility’ in urban areas. Nonetheless, greater community involvement in land management may be facilitated through the

encouragement and/or requirement for private landowners to adopt the principles advocated by Healey and Allmendinger, amongst others. Even after adopting these principles, several barriers may exist that inhibit resolution strategies. For example, private landowners may be limited by a lack of practical facilitation skills or may lack confidence to engage with communities. Incorporating a wide range of viewpoints into a decision-making or development process takes time and can result in costs. Identifying the 'community' and community representatives with which to engage is similarly reported as a common challenge for landowners (cf. McKee, 2015; Glass et al., 2012). Further challenges include issues around managing community expectations, and the constraints of 'non-negotiables,' or where community involvement in the decision-making process is not an option (Richards et al., 2004). A further critical challenge is capacity, on the part of the landowner (see Skerratt, 2010) and the level of community capacity, either collective or individual (Baker, 2006; Middlemiss and Parish, 2010; Fischer and McKee, under review).

The design of successful engagement processes in order to achieve mutual understanding can be derived from the Theory of Communicative Action, devised by the social theorist Jürgen Habermas (Habermas, 1973; 1981). Habermas argues that mutual understanding (and thus 'Communicative Action') is supported through the creation of a so-called 'ideal speech situation'. The ideal speech situation ensures that all participants have the opportunity to express their views and contribute to democratic decision-making (Harvey Brown and Goodman, 2001; Allmendinger, 2009). A summary of indicators of ideal speech are presented in Table 1.

Table 1 Summary of indices of an 'ideal speech situation' according to Habermas (after Duckett *et al.*, Under Review).

Summary 'ideal speech' indices	Description
(1) Domination-free	<ul style="list-style-type: none"> • Voices are heard equally; • Absence of hierarchy; • Authority based on 'good argument'; • Allows for criticism and reply.
(2) Free from strategizing	<ul style="list-style-type: none"> • Rationally motivated agreements end disputes; • Implicit knowledge is theoretically explicit ('all cards on the table'); • Universality: principles transcend specific locations and situations.
(3) Deception-free	<ul style="list-style-type: none"> • Absence of deception through participation; • Trust implicit through assumption of consensus.
(4) Egalitarian	<ul style="list-style-type: none"> • Power relations between participants play no role in the situation.
(5) Promotes intersubjective validity claims	<ul style="list-style-type: none"> • Encourages exchange and acceptance of diverse viewpoints.
(6) Recognises different kinds of evidence	<ul style="list-style-type: none"> • An open, respectful environment allows a variety of knowledge claims, different grounds or ways of backing claims to be brought to the table including anecdotal evidence.
(7) Constraint-free	<ul style="list-style-type: none"> • No limits on participation (i.e. in terms of numbers, knowledge types, etc.); • No force (or exertion of power), except the force of better argument; • Better arguments to stand, nothing ruled-out or ruled-in.
(8) Inclusive	<ul style="list-style-type: none"> • Includes all those who are affected by its decisions.

Research findings based on six ethnographic case studies by McKee (2015) sought to identify the opportunities and threats of partnership working between estates and communities, including the importance of positive engagement processes. Incorporating a Habermasian perspective highlights the importance of the principles of Communicative Action for landowner legitimacy and sustainable estate community development (McKee, 2015).

Based on this theoretical background and building on previous studies in the area, this report explores the range of resolution strategies adopted to overcome barriers to community land-based activities, the challenges and opportunities associated with their adoption, and the types of incentive and support required to ensure successful resolutions to barriers to community land-based activities on privately-owned land.

3. Research Approach

The findings reported are based on data collected through semi-structured interviews with a purposive sample of 20 key informants (henceforth project 'interviewees') who represent the private landowning sector in Scotland. The interviewees were selected to cover a range of private landowner types and included those who act as intermediaries and facilitators during such resolution processes. The project therefore gained from their professional experience (rather than the personal involvement of landowners directly). Interviewees were also recruited in order to cover a range of landholding size and land use types, invited from the professional networks of the project team, according to previous knowledge, and in conjunction with Scottish Government and stakeholder recommendations. Interviewees were further identified according to the regional and urban-rural differences noted by Roberts and McKee (2015). Final interviewee lists were agreed with the Scottish Government².

Interviewees included representatives of Scottish Land & Estates (SLE) and the National Farmers Union Scotland (NFUS), representatives of the forestry sector, including those with community development responsibilities, representatives of conservation landowners, representatives of the Royal Institution of Chartered Surveyors (RICS), as well as rural and urban land surveyors (e.g. employed within traditional land agency companies), planners and representatives from the Valuation Office Agency (VOA).

In advance of the interview, a copy of the 'barriers framework' developed in Roberts and McKee, (2015) was sent to interviewees. During the interview, the interviewees were asked to describe their experience of overcoming barriers to community land-based activities, including the types of strategies adopted, and their associated benefits and challenges. This provided detail on the perceived 'success factors', resource implications and the role of policy in overcoming barriers to community land based activities from the perspective of the private landowning sector. The interviewees were also asked to provide their views on 'good practice' by communities and landowners in overcoming barriers to community land-based activities, in addition to their perceptions of whether type of landowner or geography (i.e. whether urban or rural) influences how barriers may be overcome. The majority of interviews were conducted over the phone (two were undertaken face-to-face) and typically lasted between 50 and 90 minutes.

Interviews were recorded by digital Dictaphone, with permission from the participants. A thematic analysis of the qualitative data gathered from the interviews was undertaken using Nvivo software.

² Interviewees will remain anonymous until they have received a copy of this draft report, and confirm that they are happy to be listed as a consultee.

Sections 4 - 7 describe overarching findings from the interviews, presenting a schematic for supporting good practice in overcoming barriers to community land-based activities (Figure 2). Section 4 begins with details of the case studies described by the interviewees and highlights the types of resolution strategies adopted. Section 5 presents the range of 'success factors' identified by the interviewees and the challenges facing private landowners are outlined in Section 6. Principles for 'good practice' for both communities and landowners as suggested by the interviewees are detailed in Section 7, with the report's findings concluding with views on the role for policy in this area.

4. Findings

4.1 Summary of case studies and types of resolution strategies adopted

The interviewees described their experience and knowledge of a number of case studies which demonstrated the resolution of barriers to community land based activities, including the resolution strategies adopted, and associated benefits and challenges. The case studies involved community asset transfer processes around forestry and key infrastructure, such as harbours and community centres, as well as community-led affordable housing, renewable energy, crofting and non-crofting land acquisition. Examples of effective community engagement also emerged in conjunction to private water supplies, estate master-planning, as well as residential and commercial developments, in rural and urban areas, and lead by both landowners and developers. A summary table of illustrative, anonymous, case studies with positive resolutions is presented in Table 1, Appendix A.

The barriers evident in these case studies align with those presented in the classification by Roberts and McKee (2015; reproduced in Table 2, Appendix B). It is interesting to note that a common barrier highlighted by interviewees was a lack of confidence in the community body seeking to use/acquire the land asset, in particular where there is the sense that the community has not agreed a vision for the asset (and ensuring representation from the community as a whole), they do not have a viable business plan, and/or there is a lack of leadership, accountable governance structures, funding, or adequate (and apolitical) community advisory support. Interviewees also raised concerns that current land use was not considered in community land-based activity development, or the impact on existing land-based businesses. These perceived barriers from the landowning perspective provide further insights on the nature of sub-categories F and G: 'structural barriers facing communities' and 'community constraints and decisions' in the Roberts and McKee classification scheme, as well as sub-category E: 'owner unwilling to sell or lease land'.

Strategies adopted in order to overcome barriers to community land-based activities within the cases described by the interviewees can be categorised into five sets as follows:

- **Communication:** Information provision for the community (by face-to-face presentation or document, e.g. newsletter) by landowners/land management representatives.
- **Community engagement:** Public meetings (either development specific or pre-planned community council meetings); Charrette-type processes; negotiation; facilitation by external 'honest broker'/mediation.
- **Partnership approaches:** Between proactive landowner/management and community body; estate provision of expertise and/or financial

support for community land-based activity; advisors and lawyers adopt partnership principles.

- **Land access agreements:** Signing of concordat between landowner, local authority, community bodies, and other actors, e.g. developers and power companies; agreement of 'meanwhile use' or special purpose vehicle for community land-based activity (e.g. license).
- **Transfer of ownership/management rights:** Provision of land/asset by landowner to community (by donation, discounted sale or market price); consideration of alternative sites; lease arrangements; partial community purchase; asset ownership jointly between community and third sector organisation.

Further details of the challenges and opportunities of these resolution strategies are considered in the following sections.

5. 'Success factors' in overcoming barriers to community land-based activities

The interviewees highlighted the range of perceived 'success factors' that emerge from their experiences of these resolution strategies. A simple schematic of an ideal scenario is presented in Figure 2.

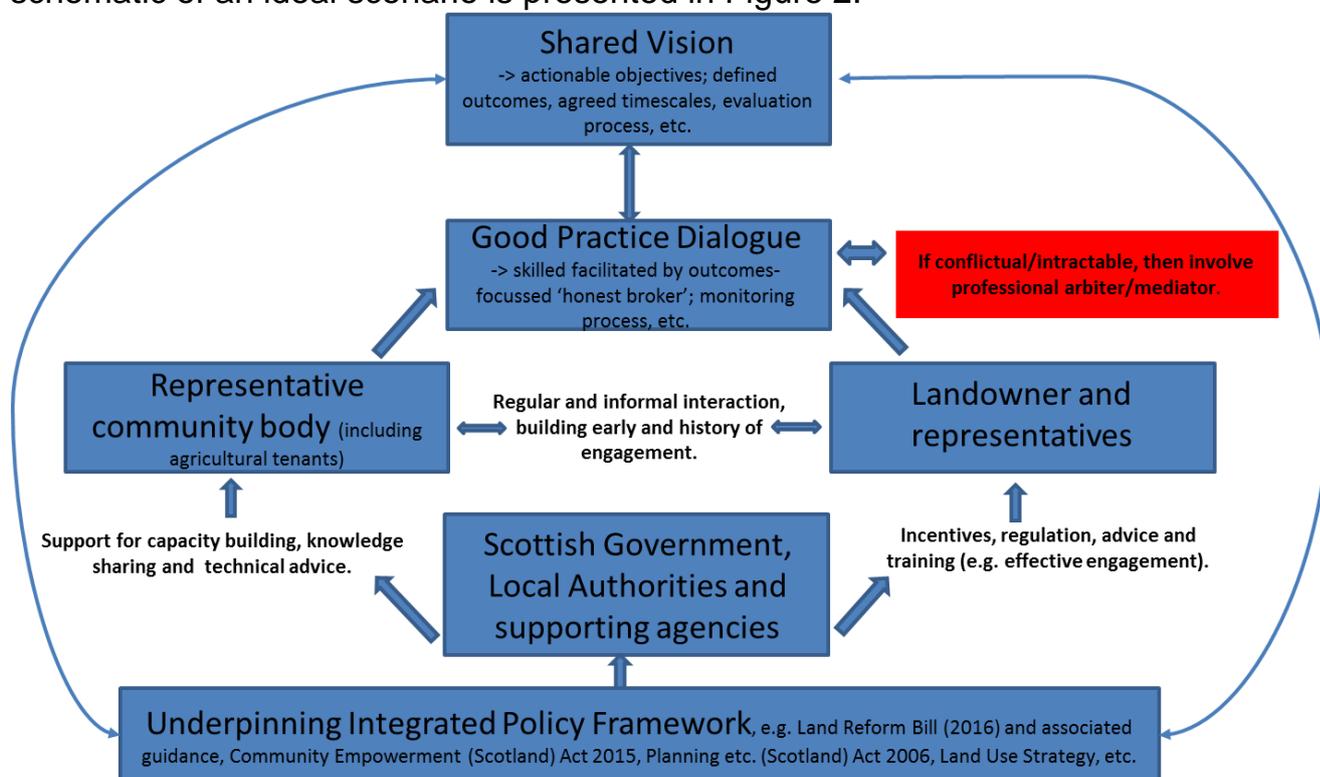


Figure 2. Schematic summarising the components and participants of 'good practice' for supporting community land-based activity.

5.1 The importance of behaviour and attitude: the role of individuals

The interviewees stressed the importance of awareness of the influence of individual personalities in overcoming barriers to community land-based activities, thus: "individual characters – they can play such an important part... You get the wrong person and it is a complete disaster." Personalities which were considered to be conducive to overcoming barriers are described as 'engaging', energetic, capable and with an understanding of community dynamics. Barriers are therefore overcome by 'champions' within organisations or individuals, who are willing to talk to stakeholders and drive a process of joined visioning. A key factor is therefore that the landowner works with these individuals or may be that person themselves.

Similarly, the interviewees described the importance of behaviour and attitude in overcoming barriers to community land-based activities. Again it is highlighted that attitude relies on personalities, and that success is built on developing trust. There is therefore a need for individuals involved to act in a professional manner, be respectful, honest and open about the process.

Building trust can take considerable time, and relies on an ability to understand the perspectives of others. Interviewees recommend that one success factor is establishing 'principles of exchange', i.e. the rules and framework for engagement between parties although applied with discretion and flexibility. For example, if a community seeks an asset transfer, identifying and agreeing the 'rules of engagement' surrounding this transfer, can allow a more constructive and responsive approach, and overcome perceived or actual immediately negative reactions from landowners on community requests for land. Furthermore, this approach could mitigate the influence of the 'individual', by providing a 'code' for different situations/community requests.

5.2 Sharing viewpoints and seeking areas of common cause: opportunity of community-landowner partnerships

The interviewees highlighted a shared responsibility to engage in discussion as important where 'everyone sits around the table and thinks for the common good'. This discussion incorporates all stakeholders (beyond only the central 'players) in order to understand their different roles and drivers. There may be a need for greater explanation between landowner and community regarding their different circumstances and aspirations, for example, the challenges facing community volunteers, or landowners who wish to retain ownership for family heritage. There must be respect for each party and their role in the discussion. Overall, the interviewees called for a conciliatory commentary, seeking areas of 'common cause' and collaborative problem solving, and seeking to achieve the best outcome for all.

Case studies show that the existence of tangible links between communities and estates can contribute to the success of community land-based activities. Communities can benefit from access to capital investment (that can in-turn lead to opportunities for further public funding), expertise, and capacity through partnerships with landowners. Successful partnerships develop 'win-win' outcomes for landowner and community. For example, with regard to a joint renewable energy development, the landowner could gain income from a lease arrangement, whilst the community (the lease holders) would gain income from the renewable energy developed. However, the interviewees also described the importance of identifying aims and objectives, and the purpose of the partnership, in addition to the terms of reference (although these can be quite 'high level' and summarised to a short document). Underpinning successful partnerships are principles of: "openness, sharing information, communications, and willingness of community to work with the estate and vice-versa."

5.3 The importance of proactive and high quality engagement

This 'willingness' to engage was explained in-depth by the interviewees, who agreed that proactive engagement between landowner and community is crucial. A key success factor in overcoming barriers to community land-based

activities is pre-emptive engagement that provides a baseline for future dialogue if a dispute arises (e.g. a hostile sale or registration of community interest in the land), thus, as described: “do it in peacetime and you might get some really good results, and when opportunities come up, you might be able to react to them.” Proactive engagement may also avoid so-called ‘have a punt’ planning applications by community groups, as reported by the interviewees, without the landowners’ knowledge. Interviewees explained that it can be more difficult to reach agreement where engagement has built around a conflict. Proactive engagement can include education, e.g. involving school-age children in countryside management, as opposed to reactive engagement, when complaints or barriers arise. Similarly, during processes of valuation, interviewees explained that opening a dialogue with reference to land price can lead to enflamed discussions; therefore success factors include ‘friendly’ negotiations from the outset, including a spirit and readiness to get to a conclusion (i.e. an effective valuation process), and establishing a dialogue process centred on the objectives for the sale, instead of the price.

Underpinning this success factor is the need for the development of positive relationships between all stakeholders. Interviewees described success factors as sustainable/sustained and meaningful engagement in a community, or ‘constant consultation’, which would contribute to community empowerment. As mentioned by some interviewees, there is a need to ensure engagement by those who are ‘seldom heard’, e.g. young people, and those not involved with their community council or interest groups. Indeed, there is a need for other agencies (beyond landowners) to be more proactive in wider engagement. Interviewees also raised the question of community ownership (or the disputed phrase ‘sense of ownership’) as underpinning engagement processes; this may be interpreted as the need for power relations to be equal in discussions between landowners and communities.

Ensuring the quality of engagement processes was raised as a key success factor by interviewees, and that this requirement is an ongoing challenge. High quality engagement includes monitoring and evaluation of the engagement process occurs. There is, however, no ‘one-size-fits-all’ approach, and whilst community engagement theory is well understood, its practice is considered highly variable by interviewees. Therefore a handbook detailing ‘good practice’ in landowner-community engagement is recommended by this group of interviewees (see also Section 7).

5.4 The importance of communication and language

A further key success factor in overcoming barriers to community land-based activities described by the interviewees relates to how individuals/organisations communicate. Communication from and between all parties is crucial, and having a ‘communication plan’ was suggested as essential. This plan should detail the range and type of stakeholders, plus “what are you going to tell them and how are you going to tell it.” Provocative

or 'marketing' language is not recommended; instead communication can involve a simple update of estate management/ community planning. For example, interviewees suggest that farmers 'knock on doors' and explain what they are going to do on farmland adjacent to communities. For example, in overcoming barriers to community recreational access, one interviewee explains:

“It can come down to something as simple as...approaching the party that does not wish to provide access and explaining why access is required – and identifying incentives to that individual to allow a project to continue.”

An associated success factor is a clear definition of 'who is the community', in addition to an awareness of previous community activities. Similarly, the landowner must be known to the community, therefore the importance of visible and accessible land management representatives (e.g. landowner (estate owner or farmer) and/or appointed land manager) is highlighted as important. If land management representatives are not known to the community, there may be a greater likelihood of negative communication, as described:

“People have got to know who to come and speak to – or they just won't do that. If it is easier to pick up the phone to the local paper or councillor, then they will do that. ...you've got to put yourself out there [i.e.as the representative of landowner].”

However, this viewpoint contradicts that held by other interviewees, who believe that a distance or external perspective to the community can be important for land management representatives in order to overcome barriers (see also Section 5.3). More generally, as mentioned in Section 5.1, the perceived attitude of the land management representative is considered the key success factor in communications with communities. Therefore, land management representatives are also required to be “open, honest, and transparent in their thinking”.

A further success factor relating to communication is the need to 'get the language right for engagement'. In particular, certain words and the technical use of language used in land management can be exclusionary for those not involved in the professional land sector, therefore such language may be misconstrued and misunderstood. Land managers may be asked to explain processes, such as the requirement for slow-moving and heavy machinery, deer management, etc. Interviewees asserted that all landowners, agents, communities, and those acting for communities should be able to speak a similar or common professional language. However, it was questioned whether land agents should speak a language that those not trained in land transactions/management could also understand, or whether community

representatives should be trained to be able to better understand the existing professional language. Nonetheless, a common technical language is considered a critical success factor by the interviewees, as well as consideration of the role of culture in land management.

5.5 The role of professional brokers and external support

Professional brokers can act as the intermediary when disputes arise, can lead negotiations, understand the processes and viewpoints, build on existing positive relationships (e.g. with landowners), or alternatively can adopt an external, facilitative position: 'I'm an outsider, let's talk this over'. The interviewees described a current perception that advisors tend to be aligned with one or other viewpoint in the current land reform debate. Nonetheless, the involvement of high quality support staff, able to bridge the gap between land managers and other parts of the community, are considered a critical success factor to 'working well together'. Such support roles may be provided by charities, bodies such as the administrators of the CARES Fund, Foundation Scotland, independent 'registered facilitators', or Local Access Groups.

A further factor suggested by the interviewees is the ability of communities to partner with commercial enterprises or governmental bodies to help them to overcome a lack of expertise, issues of community capacity and critical mass. Stronger partnerships between communities and local authorities were also identified as useful. Consequently there is a need to ensure 'helpful' staff cultures within community support agencies, local authorities, the national park authorities, amongst others. Scottish Enterprise, Business Gateway and SRUC were highlighted as providing support to communities and landowners, especially private landowners, due to existing policy support for public landowners. Raising awareness of the support available to landowners and communities (in particular where it is free) was highlighted as important.

Training is also recommended by the interviewees for institutions (including local authorities or other public bodies) in order to improve community engagement, and to foster a 'cross-cutting' culture of assisting and being integrated with communities; thus: "training programmes or signposts to assistance for communities should be very well known across council departments or other bodies." It is noted that PAS has specifically designed training in advanced engagement skills for the public and private sector³. Similarly, community engagement training has been explored by Scottish Land & Estates, in order to encourage landowners and land agents to 'put themselves in the shoes of the local community'. The interviewees believe that such training should be integrated into college courses on estate management and that there is an opportunity for community development professionals to

³ Interviewees referred to the PAS toolkit for effective engagement 'SP=EED®' and associated verification programme.

update their approach. A key success factor in overcoming barriers to community land-based activities is thus developing the knowledge base and skillset of Local Development Officers (see also Section 5.1).

5.6 Adopting an outcomes approach: assessing options for community land-based activities

Interviewees also described the merits of an ‘outcomes’ or ‘shared visions’ approach, with consideration of the options for achieving the desired outcomes, as a means of overcoming barriers to community land-based activities. Such a ‘resolution-focussed’ dialogue approaches issues from the ‘solutions-end’, rather than a negative perspective (see also Section 5.3). A resolution strategy ‘road map’ or ‘toolkit’ is suggested by interviewees, similar to that provided by DTAS, Cairngorms National Park toolkit or the visioning, charrette approach used in creating ‘Ballater, One Voice Our Future’. Interviewees stated that even the process of completing this toolkit during a meeting would encourage progress, allowing discussion regarding aims, ambitions and agreed measures of ‘successes. This will require all stakeholders expressing the goals of what they are trying to achieve, and the involvement of individuals and organisations that specialise in the desired outcome, e.g. housing associations, Rural Housing Scotland, private companies, etc.

Related to this, the interviewees highlighted the need to understand the desired ‘end-points’ of those in the discussion, including political timescales and budget cycles. It should also be recognised that cycles of community capacity exist and community energy can diminish. Therefore, there is a need to be transparent, up-front and honest about time requirements/limitations faced by the community, landowner and public bodies involved, including the time anticipated for decision-making, and additional time required in the instance that a decision has to go to the Minister.

The interviewees described how motivation can change towards community land-based activities when ownership becomes an option, thus: “once people take over the land they have much more incentive or investment in making things happen – and therefore they tend to happen more.” In many situations ownership is considered the best option to ensure a continuous/secure land use and/or access to land for a community activity. However, the interviewees also suggested that assessing options other than ownership might lead to better community outcomes. Establishing alternative arrangements for community use of land other than ownership, e.g. lease arrangements, part ownership, could be a way forward. The interviewees advocated ‘thinking outside of the box’ in order to overcome barriers, with one example of a special purpose vehicle designed for a community group to become ‘gardening contractors’, therefore establishing a maintenance agreement (and access to land for a community garden), rather than a lease or ownership transfer.

It was agreed that different types of assets require different types and lengths of leases and a success factor is ensuring the appropriate lease type is agreed. A further success factor may be to reduce fees for lease arrangements and to develop relationships with funding organisations that will provide support to communities with lease arrangements. Examples of landowners negotiating with the source of community funding (e.g. the Big Lottery) were highlighted in order to reach agreement that a long lease was a suitable alternative to ownership transfer. This arrangement was considered successful because it permits community capacity building through the management of the asset and demonstrates the community's commitment to the land-based activity, which supports a later proposal for ownership.

Whilst opportunities of 'meanwhile use' by communities can be a route to overcome barriers, the interviewees explained that further concerns regarding the community group getting security of tenure may be overcome by documenting community use as a licence and not a lease, thereby removing the possibility of creating unintentional agricultural leases (which may lead to eligibility by the community for right to buy, compensation for improvements, etc.). However, where community growing becomes more commercial it may be considered closer to the definition of agriculture, thus highlighting the potential for 'unintended consequences' of insufficient landowner-community engagement. A key success factor therefore is ensuring early and adequate discussion, and supporting requests for appropriate lease arrangements.

'Local Management Agreements' (LMAs) were also highlighted as useful by the interviewees. LMAs are described as an option with a full lease attached, an option within a lease, or an option with a possibility to purchase, depending on the aspirations of the community body. The LMA mechanism is designed to overcome a community perception that the landowner will automatically refuse a request for land access, therefore dissuading community proposals. It therefore 'removes barriers' and seeks to demonstrate that the landowner is supportive of community land-based activities, developing positive relationships. The documentation of a LMA can support funding applications by the community body, as well as an "incremental process for people to have the confidence to say, 'we're making progress and this might work'."

5.7 The importance of community planning processes

A common theme amongst the interviewees was the importance of community action planning that integrates with a proactive local development plan. Critically, this relies on greater awareness by, and community engagement in, local planning processes, and ensuring opportunities for participation. It was recognised that this goal is supported by the increasing dynamism of local development planning processes within Scotland and the increasing frequency of the plan review process. Similarly, the role of the 'Place Standard' was highlighted by interviewees as supporting more discussions around 'place', and encouraging greater involvement in the place agenda, by

landowners and community groups (i.e. taking an interest earlier rather than waiting to be consulted). The interviewees believe that local planning authorities can be a catalyst for positive relationships through initiating and participating in multiple discussions with housing associations, private landowners, developers and community groups, and can provide an honest broker-type role. Neighbourhood planning in England and Wales was also highlighted as models from which to learn. The ability of communities to hold local authorities and public landowners to account is also recognised as a success factor in overcoming barriers to community land-based activities.

The interviewees suggested that the production of a community action plan should involve consultation with all community groups (including children; see Section 5.3) undertaken by clearly-defined facilitators, and with the ability to gather the wishes/needs of the community and landowners, as well as an objective assessment of how/who can fulfil these needs. Success factors therefore include evidence gathering processes, effective public consultation, clarity of communication, community-led visioning and associated action plans. It is also considered important to include land use/capability assessment and the identification of 'most productive use'. Both community and landowner need to maintain a broad outlook, possess an appropriate skill set, provide time and effort to the community planning process, and where necessary, funding. The opportunity to explore examples of best practice (and to identify why certain options have been unsuccessful) was highlighted as useful, in particular the level of high quality information available from existing community land-based activities. It was also flagged by interviewees that DTAS provides grants for members to visit other community projects around the country.

5.8 Tools and approaches for successful community engagement

A key factor in overcoming barriers to community land-based activity highlighted by interviewees is the need for an engaged general public, in both rural and urban areas, and it was recognised that successful engagement required the use of appropriate and high quality tools and approaches. For example, a 'Charrette' process is advocated by interviewees, as it provides an opportunity to begin open discussions with community groups regarding local development and land use planning, as well as a route to ensure that community proposals are well considered. Charrette processes are interactive, but also resource and time intensive, and the issue of who should cover this cost (i.e. developers, landowners or communities) remained unclear. A further challenge to successful Charrette processes was the need to integrate 'animation' and to ensure a 'hook' to motivate participation. One suggestion to overcome this challenge is to develop processes/policy in conjunction with national-scale funders, therefore undertaking this engagement model could be a criterion for funding.

Whilst some Charrette processes experienced by interviewees have included external parties, such as famous architects, it was suggested that locally-focussed events may be more 'sustainable'. A successful Charrette depends on the engagement process overall and how it is perceived by different parties, including the community, and their expectations. Interviewees noted that the PAS *Charretteplus*® programme is increasingly used by communities and Local Authorities to build partnerships and align aspirations.

Managing expectations is important. This depends on the composition and concerns of the 'community (e. g. whether there is housing need, which may minimise objections to new developments, etc.), and where consultations cannot be a 'blank sheet' for community input, because of restrictions in terms of critical infrastructure needs and engineering parameters. In such cases, interviewees recommend the use of large-scale, clear maps during consultation processes (e.g. for forestry planning), and to provide a set of draft proposals that consultees can agree/disagree with. However, there is also a need to recognise the difference between 'informing' and 'consulting', and to be clear as to which operational aspects require consultation.

The greater use of IT for gathering views from urban communities in particular (e.g. through online polls) was suggested. Stakeholder mapping exercises were also suggested as a means of ensuring representation of community members beyond the community council. Therefore: "it is important to take some time to think through everybody that you are trying to reach, before you start - rather than just putting an ad in the paper, or saying 'we need to have a drop-in event'."

A related success factor in overcoming barriers to community land-based activities is the presentation of alternative locations/timescales, in order to

seek compromises. A facilitated 'round table' discussion can be successful for all stakeholders to present and discuss alternatives, and was frequently mentioned by the interviewees. To overcome entrenched views, or if the outcome of the discussion is binding for participants, mediation processes are recommended. The interviewees stressed that mediation should be undertaken by a professionally trained mediator. It is reported that in other countries (e.g. Austria and Sweden), mediation is more successfully utilised than in Scotland, and that there is potential for greater uptake in Scotland. Indeed, a key success factor is awareness amongst landowners that guidance exists regarding community land-based activities. For example, the RICS dispute resolution service was flagged by interviewees as useful and freely available to all.

Despite the availability of free support, a critical success factor is funding, for both community groups and landowners. Funding is required for feasibility options appraisal, technical and surveyor costs, as well as the cost of asset acquisition. Government funding at present does not provide all funding required and particular skills are required in order to be awarded grant funding. Interviewees highlighted the need for bridging finance for community groups as critical when competing with a conventional buyer. Land use planning that seeks to avoid land value inflation is considered a further success factor. However, others believe that funding availability is a driver for community ownership. Either way, funding provides confidence and the possibility of assessing different options to achieve positive outcomes.

5.9 Private landownership accountability: balancing incentives and regulation

Finally, interviewees explained that a critical success factor in overcoming barriers to community land-based activities is an approach to governance and regulation that ensures landowners engage effectively and proactively, with associated penalties and incentives. Interviewees asserted that if a barrier is insurmountable through processes of dialogue (using tools and approaches outlined in Section 5.8) then legislative power should be enacted although it was noted that this has been a rare occurrence since the implementation of the Land Reform (Scotland) Act 2003. An integrated regulatory system is recommended, but also one that is not overly-bureaucratic. For example, interviewees propose that it is in the landowners' interests to register land assets with the Land Register for their own 'data storage', as well as for public knowledge.

The interviewees also asserted that changing the rhetoric around land reform is critical, promoting the message that supporting community land-based activities is neither about removing private landowners across Scotland, nor about 'winning with others losing'. Instead, a matrix of land tenure is desired and changing relationships amongst different groups in society. The accountability of private landowners in Scotland is a critical factor in

overcoming barriers to community land-based activities. Improving accountability is intended through the Scottish Land & Estates' 'Landowners' Commitment', which seeks to encourage landowning members to be much more open about their management practices, to provide management statements and estate plans, for wider scrutiny. This may help identify opportunities for assets to be sold where not 'needed' by landowners.

6. Challenges facing private landowners

A range of challenges facing private and third sector landowners were identified affecting their ability to overcome barriers to community land based activities. These included perceptions that **the community lacks a cohesive vision**. Interviewees shared experiences of community groups 'at odds with each other', presenting different views and aspirations, and raising the question of 'who' is the community. Indeed, interviewees agreed that there is a need to define 'community' and challenged the correspondence of existing legislative definitions with 'reality', e.g. the differences between crofting and non-crofting communities, plus communities of interest (e.g. recreational land users).

Challenges arise where a community's population lacks consensus and it is difficult for landowners to decide which community group to work with when divisions appear. Furthermore, where a community land-based activity is proposed on land owned by multiple owners, there may also be division in views between landowners, thus: "other landowners didn't necessarily sing from the same hymn sheet".

The interviewees perceived a tendency of communities to object to new developments, unless there is housing or employment need. A fundamental challenge as expressed by the interviewees is that stakeholders (including communities) become aware too late of how the planning system works, and therefore, there are too few people involving themselves at the early, development planning stage. Landowner and community **engagement may therefore be at too late a stage** during the development process to be able to overcome barriers. Early stage discussions can identify current assets and potential, as opposed to late stage discussions that tend to meet barriers, for example, mis-matched timescales for development that inhibit partnership working. However, interviewees explained a sense of anxiety on the part of landowners with regard to open consultation processes, due to the need to manage expectations (especially where infrastructural limitations to development exist), in addition to scepticism, thus: "if you look to ask, you'll definitely get answers". They also highlighted a need to be 'politically careful' as to whether concerns raised through consultation processes are valid.

Interviewees identified several challenges arising from **perceived limitations in community capacity, in terms of skills and knowledge**. This can lead to a slow pace of decision-making/action by some community groups/leaders, limited business experience of some community groups, and concerns where active individuals were to depart from the community. Challenges also arise when messages are not understood, or there is a lack of knowledge and awareness by community groups, e.g. a lack of understanding of farming practices and cycles by those who live in rural areas. Community groups also may lack communication skills, and can struggle to articulate what their aims

and intentions are; this type of communication underpins mutual understanding and respect. There may also be unwillingness within the community to assess alternative options (e.g. different sites/buildings) for their land-based activity, therefore landowners may consider them inflexible. Interviewees stressed that community land-based activities must be “backed up by well thought through, costed, and deliverable plans”.

In some cases challenges arise from **an apparent lack of community interest in engagement processes**, and a lack of direct contact between community and landowner. As experienced within forestry management planning, the interviewees reported that only a small number of people are motivated to comment, with key issues around recreation and maintaining the right of responsible access. Most don't respond due to lack of interest and distance from forests. Challenges therefore arise where communities are considered 'apathetic' (e.g. failing to attend planned meetings) and presume that their proposals will be refused (i.e. perception that landowners will say 'no'). In other cases the community may reject the opportunity to work with a landowner, or where engagement is not well received, e.g. people don't want to speak to the landowner or see them as 'normal', through maintaining a 'feudal' perspective. Interviewees believed that this indicates a need for cultural change. A further challenge, as described by interviewees, arises when a community group does not attempt to speak to a landowner. Indeed, one interviewee described an example where a steering group and feasibility study had been established, before the landowner was approached for land access. Experiences of planning applications from community groups that come 'out of the blue' can be a challenge to landowners, especially as it is easier to integrate community proposals with development plans (as previously described).

Private and third sector landowners are faced with challenges in overcoming barriers to community land-based activities **where disputes arise between landowner and community**, there are conflicting motivations, polarised relationships and a lack of trust between landowner and community (and at times, within the community group). Ongoing disputes between landowners and communities can create pre-emptive barriers. Interviewees explained, for example, that whilst farmers would like the rural community to 'enjoy' their land, disputes can arise when access is taken irresponsibly, e.g. during lambing season, disturbing cereal crops, etc. Landowner representative interviewees explained that challenges to engagement can be due to perceived rudeness, the rejection of landowners' ideas, individuals being made to feel uncomfortable, and even concerns regarding personal attack. Similarly, the apparently 'irrational and unreasonable viewpoints' that can emerge when land use decision-making becomes more participatory can be difficult to overcome on the part of the landowner, as community members can be seen to persist if their wishes are not accommodated for in the final land use plan.

Challenges also arise from entrenched viewpoints and potential loss of control by both parties. For example, it is reported that NGO landowners face 'resentment' due to their involvement in some community projects, despite community capacity issues. Polarised relationships can occur due to behaviours and circumstances (see Section 5.1). Whilst the example of one landowner demonstrates their desire to work in partnership with the community, interviewees perceived that communities generally view this landowner as a 'benign landlord' rather than an empowering partner.

Furthermore, whilst some interviewees believe that 'farmers should be part of the community', others explained that in their view there can be a different relationship between farmers and communities than that of estate owners and communities; thus, whilst estates can provide employment and facilities on their land, farmers tend to be more involved in the local community. Farmers can also be tenants of the estate (in addition to owner-occupiers); therefore inherent differences emerge. The interviewees agreed that a key challenge is the difference in perceptions between landowners and communities; in particular there is a sense that the community want to see the landowner as 'laird'; therefore a key challenge is how to change societal views more widely towards landowners. There is also a sense that landowners are 'damned if they do and damned if they don't', i.e. if they want to be part of the community, they can then be excluded.

The interviewees explained that at times, landowning trustees do not prioritise and therefore proactively support community land-based activities, especially where they do not fit with landowners' objectives. Where local debates are not central to landowners' objectives, landowners can take an 'ostrich approach', and avoid engaging with the issue. Conflicting motivations and objectives of the landowner (e.g. conservation objectives) with the community (e.g. employment and housing) can also contribute to challenges.

Uncertainty on the part of the landowner was highlighted as a significant challenge, reflected in a lack of confidence to initiate/participate in community engagement activities. This may result from family responsibility and expectation, political rhetoric around land reform, lack of experience in community engagement, negative perceptions held by the community, and/or personality type. In more detail, the interviewees described uncertainty regarding what is needed by the community and its location, as well as managing different views. Concerns also arise regarding the long term prospects for the community land-based activity/land use, therefore questions emerge including: 'what will happen when community use ends?' and 'will the government take on ownership/management?' There was a perception amongst the interviewees that landowners have concerns regarding the short and long term issues facing community groups. They are also uncertain regarding their role in the community and its development, thus:

“As a landowner, with communities living on the land...[complicated by some crofting and some non-crofting] – should we have a community development officer role really – to be helping to do that. Or should the community be doing that and we’re just part of that process? At the moment, neither is really happening.”

On the other hand, interviewees described uncertainties perceived by landowners that solely concern their business and personal interests. These include: (i) that the landowner will not be able to get vacant possession of a site if it is offered on a temporary basis to a community, and if they need to resort to legal action, then they risk reputational damage; (2) that the resultant land use may be ‘inappropriate’; and (3) that community use could endanger the security (i.e. property rights) of other land. The interviewees describe a fear amongst landowners of acting incorrectly and jeopardising their landowning continuity (with an impact on their family, for example). Uncertainty regarding the impact/influence of the Land Reform Bill⁴ was highlighted by interviewees, in addition to the surrounding political rhetoric.

Perceived and actual resource costs are a challenge to landowners. Such costs can include estate staff time, specialist advice, funding for feasibility studies, support for project management, and facilitating community engagement activities. There is also a perception that creativity in community engagement can be restricted due to associated costs (and tight resources) as well as ‘defensiveness’ and mistrust. Landowner representative interviewees explain that land use decision making that is more participatory and requires facilitating a dialogue with a community is in turn more time-consuming. This could lead to less management time available, and due to a lack of funding, there could also be less access to specialist advice (e.g. crofting expertise). This has implications for the availability of skills and how landowners’ undertake estate management/future planning. Interviewees also highlighted commercial sensitivity which can impact on how barriers to community land-based activities can be overcome.

When barriers arise regarding a landowners’ reluctance to sell land, interviewees recommended an increased understanding of the landowner’s tax situation would be helpful. Therefore, the landowner may not wish to/be able to sell land (and at time desired by the community), because if the sale counts as a capital receipt then the landowner may have to pay 40% tax. Such tax consequences are also mentioned in relation to current and potential absolute ‘rights-to-buy’ for communities. Furthermore, interviewees representing third sector landowners revealed a lack of community and funder recognition of the landowners’ fiduciary duty and conditions of ownership (e.g. inalienable rights).

⁴ During the period of interviewing the Land Reform Bill had not yet reached the Stage 3 debate in the Scottish Parliament; see also Footnote 1.

The interviewees also described issues associated with lease arrangements, including the potential cost to landlords of registering leases of more than 20 years in the Land Register⁵, as well as examples of defectively-worded leases and community groups that no longer functioning, therefore it is not clear who is entitled to end the lease. However, these problems must be kept ‘in proportion’ according to the interviewees and to satisfy the Registers of Scotland, therefore interviewees are in agreement with the intentions of the Long Leases (Scotland) Act 2012.

Interviewees agreed with the earlier report (Roberts and McKee, 2015), which they believe suggests that ‘farmers are sometimes less willing to communicate with communities in order to take a project forward’, due to the scale of impact on farm businesses⁶ and the potential to lose income from transferring land ownership/management to communities. Thus: “small farmers...might have more to potentially lose, than a bigger estate – they could afford to lose a small piece of land, whereas a small piece of land to a farmer could be 25% of their income.” In addition, estates may be better placed to offer alternative sites for community projects. Interviewees agreed that scale of business and land owned is a critical factor in how landowners engage with communities. Interviewees recommend that ‘safeguards’ /government interventions are established that understand the implications for the individual farmer, and assess the extent of landownership, land use, and the potential impact on the value of the business overall.

A further challenge as described by the interviewees is that of **landowner capacity and skill set**. At times landowners can be less well equipped to communicate an estate/business plan, which restricts their perceived transparency, and how well a community can understand their position. Landowners (and their representatives) are described as at times lacking in ‘emotional intelligence’ and empathy, although it is noted that this is very subjectively viewed. Nonetheless, apparently panicked and reactionary responses by private landowners to requests by local authorities or communities can generate a perception that the landowner does not wish to engage in discussion or negotiation. Interviewees mention a tendency for foreign and absentee owners to appear less motivated to engage, which can lead to a lack of recognition by the landowner of the representative community body, as opposed to individuals (e.g. tenants).

⁵ As explained by one interviewee, the cost of registering a lease would be borne by the tenant – i.e. the community group. However if the landlord’s ownership title is not yet in the Land Register of Scotland, in terms of the Land Registration etc. (Scotland) 2012, the owner’s title must be registered at the same time as the new lease. This is where the cost to the owner may arise.

⁶ To clarify, the interviewees in this earlier study argue that “individual private owners of small landholdings are more cautious in engaging with community land-based activities” (Roberts and McKee 2015: 24).

Related to this challenge is that of **perceived ‘power imbalances’** as described by the interviewees. Firstly, on the part of communities, it is recognised by interviewees that community groups are unable to afford the fees of land agents (or other intermediaries), in contrast to private landowners who can afford the advice of these professionals. Interviewees also highlighted a perceived sense of ‘disempowerment’ on the part of landowners, and rhetoric of ‘landowners – bad, community leaders - good’, therefore power is held in the hands of community leaders (see also ‘polarised relationships’ above). Challenges to landowners therefore include a perceived fear that being ‘open’ may lead to further ‘attack’. Similarly, interviewees explained that the regulation of land-based businesses has increased, therefore reducing landowners ability and freedom in decision-making. The significance of ransom strips as a barrier (Category C1; Roberts and McKee, 2015: 15) is highlighted by interviewees, especially in relation to renewable energy developments. However, the alternative as explained is to increase the powers of wayleaves, and in turn reducing the security held by the landowner, who then ‘cannot control what happens on their land’. Interviewees also proposed that a perceived ‘sphere of influence’ held by landowners is preconceived and less significant than assumed. In particular, interviewees described a lack of recognition of conservation landowners on a national scale, who struggle to raise their profile and therefore have their voice heard/ be able to contribute to debates.

6.1 Challenges and opportunities specific to geography/ activity type

Whilst most interviewees initially agreed that there should be no differences in barriers between rural and urban areas – for example, community dynamics are often shared, and the market value of property is calculated in the same way – there are practical differences, thus: “the principles in the round are exactly the same, but the realities of doing them is hugely different.”

In rural areas, the issue of scale was raised, in particular the challenge of scattered rural communities hindering effective community governance, issues of transport and broadband networks (with associated communication limitations) and the role of small community bodies undertaking negotiations with landowners (which may be much larger institutions or powerful individuals). Whilst urban communities have a greater pool of potential community body members, there was a perception amongst interviewees that it is more challenging within urban areas to reach a consensus within a community due to the larger population. It is also necessary to negotiate with a greater number of communities of interest and range of stakeholders within urban areas. The interviewees considered that ‘the rural is easy’ with regard to accessing ‘community’ for engagement exercises, and in contrast, it is more challenging to engage urban communities within the ‘responsibility agenda’, e.g. to encourage local people to join boards, or generate income from asset ownership. For example, one public meeting can involve a significant proportion of a rural community, which would be very unlikely within an urban

area. This challenge relates to the perceived limits of rural communities, in contrast to unclear community boundaries within urban contexts.

Specific challenges to overcoming barriers to community land-based activities in urban areas were anticipated to become more apparent as the community right-to-buy powers are implemented through the Community Empowerment (Scotland) Act 2015, and are likely to add 'complexity' for property owners. A key role for community councils is also mentioned in this context; however, interviewees also anticipate issues around community representation and the legitimacy of community bodies in urban areas (e.g. tensions between development trusts and community councils in urban areas). Community viewpoints are perceived as more difficult to gather in urban areas, with the limitations of single ballots highlighted, and a lack of community cohesion. Interviewees raised common themes of the need for enthusiasm and leadership on the part of urban community bodies.

The role of property agents and intermediaries was considered to be different between rural and urban areas, with the latter focussing on commercial land sales/management, and with potentially different educational backgrounds and professional experience. The interviewees reinforced the role of professional culture and standards in overcoming barriers. Furthermore, interviewees recognised a greater use of third party agencies in urban areas, therefore less direct landowner- community engagement. This may be because in rural areas the personal impact of decisions is more evident. For example, the resident rural landowner has to 'live with the consequences' of decision-making, therefore wishes to maintain a good relationship with the local community. As one interviewee surmised, 'rural landowners work better with communities than urban landowners, because there is a greater need for them to do it.'

7. Good practice principles

Through reflection on their personal and professional experience of working with landowners and communities, the interviewees described their perception of principles for ‘good practice’ by communities and landowners. Broadly, interviewees agreed that many of the principles should be shared by both community bodies and landowners; nonetheless, key distinctions arise. These ‘good practice’ principles are detailed in the following sections.

7.1 Good practice principles for private landowners

(i) Clear aims and processes

The interviewees were in agreement that good practice on the part of private landowners includes clarity and transparency regarding engagement processes (the developing Community Land Scotland (CLS) and SLE protocol was advocated⁷) in addition to honesty about intentions including whether or not motivations are financial. Establishing a shared understanding of timescales and pressures is perceived as important, plus a recognition of the costs associated and who should cover them. For example, clarity of terms at the outset of a discussion regarding land sale/transfer, and based on a shared framework of principles, in addition to a mutually-agreed land value (based on the VOA/DV’s advice) was considered ‘good practice’. Interviewees also highlighted the need to increase awareness of the likely impact of the land use planning system on future community land-based activities.

An agreed format or discussion agenda for landowner-community engagement processes was suggested by the interviewees. Such a format, including facilitation, would build confidence amongst participating individuals, including landowning representatives. Existing standardised formats include Charrette planning processes (see Section 5.8) and statutory pre-application consultations with stakeholders and local communities for defined major developments. However, a development may not be ‘major’ in terms of a statutory requirement, but still significant to that local community. Therefore additional good practice principles in community engagement are required by the landowner.

Interviewees also suggest that community-landowner discussions and engagement processes are recorded for decision-making purposes to permit later scrutiny. For example: “if the landowner had a meeting with the community council, they could fill in 10 boxes of things that they had discussed, and that could be appended to the minutes of the community council.” This record would allow for subsequent comparison, and external evaluation (e.g. by Ministers).

⁷ The ‘Protocol for Negotiated Sales’ was published on 28th May 2016; see: <http://www.communitylandscotland.org.uk/find-out-more/resources/> (accessed: 2.6.16).

(ii) Supportive behaviour and attitude

In alignment with clear aims and an agreed process, good practice for private landowners is also dependent on individual behaviour and attitude. Principles should reflect a change in ‘thinking about how you interact with people’. The interviewees suggested that there is a need for a shift in thinking and attitude and to normalise community within land management business. Whilst the proposed CLS-SLE protocol (see above) will ‘get people to the table’, the interviewees questioned the extent to which such a protocol could succeed in directing behaviour.

Good practice with regard to landowner behaviour and attitude (as detailed in Section 5.1) includes respect, honesty, responsiveness, as well as a willingness and commitment to community engagement. It also requires attitudes of pragmatism and compromise, thus landowners seeking to be practical and reasonable about reaching a solution. Some interviewees advised that landowners be clearer about the challenges they face, demonstrate leadership and flexibility, and not to feel obliged to comply with community wishes/intentions. Time is required to appreciate the views and interests of others’ within decision-making processes, avoiding reactionary responses, and considering underlying motivations if problems arise.

Furthermore, the interviewees believe that good practice involves landowners being prepared to support communities and to demonstrate that they are making a positive contribution to the community who lives on and around their land (i.e. more than monetary return). This may involve support through funding, and involving those who have energy and commitment to progress community engagement/land based activities.

(iii) Fostering positive relationships and direct communication

The interviewees asserted that the key principles of good practice relate to ensuring amicable and constructive relationships between landowner and community, and to maintaining processes of dialogue, ‘understanding issues and frustrations’. As mentioned above, it is good practice to develop a ‘track record’ of community engagement, not only because isolated engagement processes are not sufficient, but also to ensure an ongoing dialogue. Indeed, the interviewees described examples of estate businesses that are successful and multifunctional due to a basis of constant dialogue with those on and around the estate, and where landowners meet together (and with the national park authority, for example) to discuss and debate. Therefore, as interviewees explain, ‘talking’ is key to good practice, thus: “I don’t want to say that all landowners aren’t talking – many of them do; many of them have been talking to their communities for many years, and they’ve been doing it very successfully.” Good practice therefore involves frequent, open, honest and consistent conversations that tackle barriers, empower people to speak freely, and necessitate senior management capacity and networking.

Direct contact between landowner and community including communication about day-to-day and strategic land management (on farms and estates) was considered important. Landowners are advised not to abdicate responsibility to professionals, instead to be 'known and open'. Direct communication has benefits in terms of efficiency and accountability; can be simpler, ensure consistency in message, and build positive relationships. Thus: "the more direct contact that you have between the landowner and the community the better, and building that relationship is really key". Direct communication is also cost saving; if there are concerns about the need for legal advice, communication can be caveated (i.e. 'this is what I'm thinking, but I'll need to check'), therefore ensuring direct dialogue rather than working through a third party who might have a different agenda.

(iv) The role of advisors

Interviewees recognised that there is sometimes a need to involve expertise and specialist knowledge (e.g. regarding crofting), and it is suggested good practice for landowners to establish an advisory group, to support the landowner and management, and avoid mistakes. However, the personalities of advisors were frequently highlighted by interviewees as a critical factor (see Section 5.5), and the difference between professional advisor or agent (i.e. representing those who have employed you) and mediator (i.e. when a conflict or impasse arises) is also recognised.

Interviewees who represent the rural land agency sector explain that they appreciated the recent approaches by CLS to 'reach out' in a pragmatic way to the land management sector: "We want to understand, in real life, how can a [rural surveying] company... reach out in that way, and how could we shape ourselves as a company to meet the challenge." Good practice therefore includes a role for land agents to 'think more widely', e.g. to become more involved locally, building relationships with the community council, Scottish Enterprise, tourism organisations, etc.; building knowledge and profile. Landowners are also advised to partner with more experienced partners in order to build that relationship, with SLE providing 'peer review and solidarity'. Overall, interviewees stressed the need for good practice guidance to be published for professional land management advisors⁸.

(v) Reflectivity in land ownership and management

Finally, interviewees advocated reflective and transparent ownership. As described: "I've seen really good examples of individuals just sitting down and saying, 'do you know the reason why I own this estate?'" Landowners are therefore advised to have a clear vision for their farm/estate, and a development strategy, of which a key part should be a community engagement strategy. They should communicate their vision/development

⁸ Including a link to the existing guidance documents on rent reviews produced by the interim tenancy commissioner, plus NFUS, SLE and STFA.

strategy, involving community views. As described: “Estates have to get used to understanding what their goals and aims are and they have to get used to, first of all, conveying that, but also then moving towards involving the local community in that.” Whole estate reviews are also recommended by the interviewees. There may be potential long-term benefits of supporting community land-based activities (e.g. providing land assets may lead to increasing value of estate through developing access roads, etc.).

‘Reflective ownership’ thus also includes identifying which parts of a landholding are central to the estate business/family ownership, and which might be made available for community land-based activities. Interviewees highlighted the need to fully understand the benefits and dis-benefits to landowners of community land-based activities, and for wider stakeholder reflectivity (i.e. including community and policy; see Section 7).

Good practice by private landowners therefore includes recognising the public interest in their decision-making; indeed, interviewees advised that large estate owners take a more strategic view, and act in a more altruistic manner. Adherence with SLE’s ‘Landowners Commitment’ was suggested as a significant mechanism for overcoming barriers to community land-based activities.

7.2 Good practice principles for communities/community bodies

The interviewees discussed the key principles and practices which may be considered ‘good practice’ by community bodies in overcoming barriers to community land-based activities. Interviewees agreed that community landownership is challenging, and some barriers may be insurmountable. However, there is also the recognition that there are ways of achieving goals, despite structural and ‘systemic’ barriers.

(i) Early engagement with the landowner

Positive, early community engagement with the relevant landowner(s) is advocated as the first step in the pursuit of any community land-based activity. Information flows must be two-way. Some interviewees intimated that landowners and farmers should be considered part of the ‘community’ (according to definition), in order for land-based activities to progress. Community groups are invited to send questionnaires to landowners to seek up-to-date information and views, rather than ‘jumping to conclusions’ that access to/purchase of land will be prevented. At minimum, the respective parties need to be clear on community aspirations, and the implications for the landowner. Communities need to respect and value land management practices throughout the year (e.g. farming cycles) and recognise what the land is used for at present and its ‘best use’. This will mean the benefits of proposed alternative land-based activities are considered in the context of current land use, Local Development Plans and the national-scale Land Use Strategy.

(ii) Strategic and critical thinking

A further crucial step for communities is to undertake strategic and critical thinking, i.e. 'what are we trying to achieve?' Some interviewees were concerned that communities are adopting an 'unthinking route' with regard to asset ownership, and there is a need for community 'self-examination' regarding dynamics, governance and needs. Whilst the empowering role of asset ownership is asserted, leasing and other management agreements are highlighted as a valued alternative (see Section 5.6). Communities are advised to be 'realistic' in terms of progress pace and scale of land-based activity. For example, one community body seeking to develop a community garden have initiated land-based activity through establishing a community composting scheme, in order to build activity incrementally.

(iii) Establishing a 'sustainable development' plan

Good practice by community bodies seeking to develop land-based activity is centred on establishing a robust, realistic and strategic 'sustainable development' plan. It is expected that the implementation of measures within the Land Reform (Scotland) Act 2016 will ensure that communities go through the process of developing such a plan, establishing what they want to do and what can be done on the land in question. Communities will have to prove to that they can make 'best' use of the land asset (if they wish to acquire rights), that there is long term support for the project and that they have sustainable resources. Communities will be challenged as to whether they are proposing the most sustainable land use (economically, environmentally and socially). The planning process should anticipate questions regarding what would happen if/when community land-based activity ends, and the role of government in taking on ownership/management of assets, given issues of timescale/capacity of the community group. Community visioning processes are advocated as a means of developing and agreeing action plans, and engaging positively with private and public stakeholders (e.g. the local authority). Such a process should produce a comprehensive and detailed plan for the community's land-based activity, but recognising that planning process and accompanying dialogue is the key outcome and can, in itself, be rewarding.

(iv) Achieving a unified voice

Due to the present heterogeneity of communities in both rural and urban Scotland, interviewees explained that it is challenging to obtain a unified voice within a community. Associated challenges are the lack of standard 'community' definition, and recognition that the majority of residents in a community of place have little active participation in community governance, apparently due to a wish to remain outwith the process or anxiety around participating. Therefore, it remains "hard to judge what they would want or need". Community bodies need legitimacy (e.g. to progress negotiations in pursuing land-based activities), and such legitimacy can suffer if different groups are in dispute over the ownership or use of assets. Furthermore, given

the number of community groups and plans, working with different parts of the public sector, it is realistic to assume that not all land-based activities will be achieved.

Interviewees highlighted the importance of community dialogue processes and ballots, ensuring quorum, establishing community companies, as well as measures to show that a majority of the community has engaged to ensure the representativeness of community plans. In identifying the consensus view or action plan by community bodies, there is a need for local democracy that functions well, however this is challenged by a reliance on volunteer time and effort.

(v) Community capacity, behaviour and knowledge of process

Particular issues arise due to a lack of capacity associated with the reliance on volunteers within community bodies. Community body members are 'juggling' and not able to focus their efforts full-time. Interviewees recognised a need for communities to consider contingency, for example, if key community members are unavailable for decision-making processes.

Interviewees described that in some cases, communities don't know how to behave, and that they can meet perceived power with 'all guns blazing'. Therefore it is good practice to act in a professional manner, and to be courteous. Community bodies must 'get all the facts in place' (i.e. be certain of landownership, although this inhibited by the lack of coverage of the Land Register), and to be open to suggestions of alternative locations. Interviewees also highlighted the need for community good practice to include a broader understanding and awareness of wider processes of change and policy drivers.

The opportunity for capacity building to include developing skills in negotiation, in order for community groups to understand good quality negotiation process, is also highlighted, plus the need for compromise and reciprocity. This approach can engender 'goodwill' and realistic and positive engagement, in order to achieve 'win-wins' and partnership working. Indeed, whilst it is recognised that that communities are no longer 'passive consumers', but empowered 'players', community bodies may benefit from training with regard to how the approach processes of land acquisition/development (e.g. planning applications, fundraising, growth and succession planning, identifying potential liabilities, etc.). Similarly, it is suggested that communities should be pragmatic and with business acumen, articulating their community plan to demonstrate that they 'know what they are doing and why they are doing it'. As one interviewee asserted: "if you want to be in the position of managing land, then be organised, with a clear sense of purpose, and with an outcome."

A particular area for greater community education and awareness-raising relates to the valuation process. Interviewees described concerns raised by

the Valuation Office Agency (VOA) regarding the quality and level of detail presented, demonstrating: “a lack of understanding...[on the part of] both parties – the vendor and the potential purchaser – as to what level of information we seek when we ask for their representations”⁹. It is important that communities provide the correct information to the VOA/District Valuer (DV) and with consideration of which capacity the VOA/DV is appointed (i.e. whether in a client-acting capacity or as a statutory appointment under measures within the Land Reform (Scotland) Act 2003): “it’s about the valuation integrity, so that when you report back the community have the confidence that you’ve covered everything”. Communities need to understand and provide the VOA/DV with all of the information required on exactly what the asset is that they wish to acquire, in addition to all leases and up-to-date rent information, feasibility studies, etc. Good examples of documentation received from communities included detail on what the land holding comprised, how it was constituted (e.g. how many acres were under crofting tenure).

Communities also need to understand that their particular future planned use of the land is not considered in the valuation; the valuation process is based only on market value and not on future social benefit/end use value. This process therefore relies on community capacity, skills, plus an awareness and understanding of the ‘right to buy’ mechanisms within the Land Reform (Scotland) Act 2003. Interviewees recommended greater sharing of good practice, to ensure that these messages are reaching communities, and that they are receiving sufficient advice.

(vi) The role of community advisors

The role of community advisors was highlighted by interviewees as central to overcoming barriers to community land-based activities, in particular sourcing funding and providing guidance in ‘good practice’. In particular, interviewees raised concerns regarding whether communities were accessing apolitical advisors and whether available advisors had the same skills as those found internally within public sector agencies (e.g. Forestry Commission Scotland). Communities typically lack expertise in engaging with the process of acquiring rights to land. Whilst there is a need for the appropriate professionals to progress transactional/legal processes (i.e. professionals with indemnity insurance), and act as an arbiter, an opportunity is recognised for a specific support role between community bodies and lawyers in particular, which may be more economical.

This support role would be best provided by professionals who regularly deal with complex land issues, e.g. chartered surveyors or ‘land agents’. A

⁹ Interviewees reiterated that these comments also apply to the vendor (i.e. the landowner), not only community groups seeking to acquire the land, therefore may be considered in conjunction with the good practice principles for private landowners presented in Section 7.1.

'community land agent' would be ideal to finalise land transaction details for community groups. However, the interviewees were not sure that communities frequently access land agents/rural surveyors, due to perceived costs. This barrier might be best overcome by making it clear to communities how land agencies are paid (i.e. whether standard day rate or by commission). Interviewees also describe legal firms that specialize in charity law, which could be replicated for a community land agency, and the role of PAS in providing advice and training through its network of volunteers representing a range of disciplines including planners, architects, planning lawyers, landscape architects. One example described a 'community-minded' land agent who was praised for "speaking the same language" in negotiations between landowner and community (see Section 5.4).

Independent community development agencies can provide a support role, and interviewees also suggested a mentoring scheme for communities, to build understanding and ensure that when they do engage with landowners, they know what questions to ask, and the options available. Finally, whilst community networks are well established (i.e. through CLS or DTAS), interviewees suggested that there may be the opportunity for greater networking by/with local authorities and the professional land sector, e.g. engaging with council planning departments.

7.3 The role for policy in supporting good practice to overcome barriers to community land-based activities

The interviewees were largely in agreement that policy has a role to play in overcoming barriers to community land-based activities although they cautioned that there is value in evaluating the existing legislative measures and underlying policy, before seeking to add further regulation or guidance. They also raised concerns that policy considers the impact on Scottish businesses within a global market and avoids over-regulation in particular for farmers. Interviewees therefore suggested a collaborative role for policy, through working with landowners, communities, and the professional disciplines (e.g. planners, surveyors, lawyers). Policy development should include discussions with stakeholders, and build on experience from related policy, e.g. planning and outdoor access. The interviewees recommended measures of success to be incorporated into policy implementation and guidance, in addition to a need for recognition of good practice and standards of professional conduct.

The area identified where policy has a role is in diffusing conflict situations and reassuring land managers. Interviewees recognised a role for policy to support capacity building within communities, e.g. developing knowledge and experience of how to access funding, land management and wider training, information sharing. Some interviewees would also like communities to be made more aware of the possibilities 'beyond the feudal system'; such capacity building could contribute to that culture change. There is also a need

to raise community awareness of support available, and the future trajectory of support. It is therefore suggested that policy support the SQA in developing training/qualifications to help community capacity to manage resources. There is also a role for policy in building public knowledge and awareness of the planning system, including how and when to participate; this may include overcoming challenges and exclusions regarding language use.

Monitoring whether the supporting agencies and charities are delivering according to their funding was considered useful and a policy priority. There is then the opportunity to provide further support to those services that are effective (e.g. role of the Rural Forum – and how that can be replicated). Some interviewees were concerned that there is a need for good quality support, rather than a greater quantity of support services. The example of the Scottish Outdoor Access Code was raised by interviewees as a model that could be translated for the guidance proposed within the Land Reform (Scotland) Act 2016. The Code is considered to have been successful due to its accompanying educational campaign and government funding for access officers and local authorities to introduce and embed the legislation, contributing to a perceived ‘cultural change’ around how people use the countryside. Opportunities are also perceived as arising from the Land Use Strategy pilot projects in Borders and Aberdeenshire, e.g. using the maps as a tool for bringing together local stakeholders to identify the best use of land on local scale, underpinned by national-level principles, therefore a locally-tailored approach. The interviewees believe that ultimately it is not possible to ‘legislate for stubbornness’, and the key factor in overcoming barriers to community land-based activities is to ensure face-to-face dialogue between all stakeholders.

Opportunities were also identified for simplifying planning policy to remove barriers to community land-based activities, and how this is considered at local authority scale. The different approaches taken between local authorities are perceived as at times frustrating and that policy is convoluted; the interviewees would like more easily understandable policy for those who are influenced by it (e.g. helping communities to progress projects). The provision of training for institutions in community engagement is suggested. ‘Soft’ policy approaches are suggested by the interviewees, including best practice templates and guidance that is regularly updated. Guidance may be piloted by local authorities, and is requested in particular with regard to barriers arising from divided (multiple) ownership. Local ‘visions’ are recommended as the basis for local development planning (see Section 5.7). Local authorities are apparently reluctant to exercise their existing powers of CPO because of perceived risks and costs and the interviewees wished to make local authorities ‘bolder’ in utilising existing CPO powers.

There is a need for clarity regarding the consequences of land owners/managers failing to adhere to forthcoming engagement guidance

(Part 4 of Land Reform (Scotland) Act 2016), whether statutory or voluntary. The forthcoming guidance should consider who the stakeholders are, how best to include them equally in an engagement process (i.e. avoiding a 'tick box' exercise). The interviewees would like to see policy-led (rather than politically-driven) stakeholder guidance. Indeed, they suggested that policy explores the experience of localism in England and Wales. The role of existing the 'Community Engagement Standards' as 'rules of engagement' were considered and the interviewees were doubtful of real change due to the influence of relationships and power. The Planning etc. (Scotland) Act 2006 brought in a requirement to 'engage', which it is believed was valuable. It is suggested that a benchmark is established and a set of incentives for landowners to achieve with regard to Part 4 of the Land Reform (Scotland) Act 2016. Some interviewees believed that 'community' should be defined within the then Land Reform Bill (see Footnotes 1 and 2), including how community groups should be constituted (i.e. required office bearers, etc.). The interviewees would like to see greater transparency around the boards of community trust, to ensure good governance.

Similarly, with regard to the Land Reform (Scotland) Act 2016, the interviewees described a role for the proposed Land Commission to gather necessary evidence and make recommendations for mediation/negotiation/compensation processes, but the interviewees believe that further work is required to develop the relevant policy. The interviewees also suggested a revision of the local government finance manual, questioning whether 'best value' should be required for asset transfer, accounting for social and environmental benefits (in addition to economic).

Overall the interviewees called for policy 'work streams' to be brought closer together (e.g. the Land Use Strategy, LEADER and the National Planning Framework 3). There should also be recognition of the similarities and implementation of the three intervention measures available for overcoming barriers to community land-based activities, namely CPOs, the Community Empowerment (Scotland) Act 2015 (namely the 'abandoned and neglected' measures), and the Land Reform (Scotland) Act 2016 'sustainability test'. Furthermore, there is a call amongst the interviewees for planning policy to better support community developments (see Section 5.7), with national policies to be better integrated (e.g. LUS and NPF 3).

8. References

Adams, D. 2013. 'The potential for urban land reform in Scotland'. In: AESOP-ACSP Joint Congress, 15-19 July 2013, Dublin, Ireland. Available online: <http://eprints.gla.ac.uk/81527/1/81527.pdf>; Last updated: 27.06.13; Accessed: 03.09.15.

Allmendinger, P. 2009. *'Planning Theory'*, Second Edition, Palgrave MacMillan, China.

Arnstein, S.R. 1969. 'A ladder of citizen participation', *Journal of the American Institute of Planners* 35(4): 216-224.

Baker, S. 2006. *'Sustainable Development'*, Routledge, New York.

Carr, D.S. and Halvorsen, K. 2001. 'An Evaluation of Three Democratic, Community-Based Approaches to Citizen Participation: Surveys, Conversations With Community Groups, and Community Dinners', *Society and Natural Resources* 14: 107-126.

Communities Scotland 2005. *'National Standards for Community Engagement'*, Communities Scotland, Scottish Executive.

Dandy, N., Fiorini, S. and Davies, A.L. 2014. Agenda-setting and power in collaborative natural resource management. *Environmental Conservation* 41(1): 311-320.

Duckett, D., McKee, A., Sutherland, L-A., Kyle, C., Boden, L., Auty, H., Bessel, P., and McKendrick, I.J. (Under review) 'Scenario Planning as Communicative Action: lessons from participatory exercises conducted for the Scottish livestock industry' (Submitted to *Technological Forecasting and Social Change*, April 2015).

Fischer, A. and McKee, A. (Under review) A question of capacities? Community resilience and empowerment between assets, abilities and relationships (Submitted to *Journal of Rural Studies*, March 2016).

Glass, J., Mc Morran, R., Price, M. and McKee, A. 2012. 'Working Together for Sustainable Estate Communities: Exploring the potential of collaborative initiatives between private estates, communities and other partners', Centre for Mountain Studies, Perth College, University of the Highlands and Islands, 2012.

Habermas, J. 1981. 'The Theory of Communicative Action Volume 1: Reason and the Rationalization of Society', Translated by Thomas McCarthy (1984), Heineman, London.

Habermas, J. 1973. 'Legitimation Crisis', Translated by Thomas McCarthy (1976), Heinemann, London.

Harvey Brown, R. and Goodman, D. 2001. 'Jürgen Habermas' Theory of Communicative Action: An Incomplete Project'. In: Ritzer, G. and Smart, B. (Eds.) (2003) 'Handbook of Social Theory', SAGE Publications, London. pp. 201 – 216.

Healey, P. 2006. '*Collaborative Planning: Shaping Places in Fragmented Societies*', Second Edition, Palgrave MacMillan, Great Britain.

Healey, P., de Magalhaes, C., Madanipour, A. and Pendlebury, J. 2003. 'Place, identity and local politics: analysing initiatives in deliberative governance'. In: Hajer, M. A. and Wagenaar, H. (Eds.) '*Deliberative Policy Analysis: Understanding Governance in the Network Society*', Cambridge University Press, United Kingdom.

Irvine, R.J., Fiorini, S., McLeod, J., Turner, A., Van der Wal, R., Armstrong, H., Yearley, S., and White, P.C.L. 2009. 'Can managers inform models? Integrating local knowledge into models of red deer habitat use.' *Journal of Applied Ecology* (46): 344-352.

Glass, J.H., McKee, A. and Mc Morran, R. 2012. Working Together for Sustainable Estate Communities' exploring the potential of collaborative initiatives between privately-owned estates, communities and other partners. Centre for Mountain Studies, Perth College, University of the Highlands and Islands.

MacGregor, B. 1993. '*Land Tenure in Scotland*', The 1st John McEwen Memorial Lecture. Available online: <http://www.caledonia.org.uk/land/macgrego.htm>; Last updated: 2007; Accessed: 07.09.2007.

Martin-Ortega, J., Perni, A., Jackson-Blake, L., Balana, B., McKee, A., Dunn, S., Helliwell, R., Psaltopoulos, D., Skuras, D., Cooksley, S. and Slee, B., 2015. A transdisciplinary approach to the economic analysis of the European Water Framework Directive. *Ecological Economics* 116: 34-45.

McKee, A. 2015. Legitimising the Laird? Communicative Action and the role of private landowner and community engagement in rural sustainability, *Journal of Rural Studies* 41: 23-36.

Middlemiss, L. and Parish, B. 2010. Building capacity for low-carbon communities: The role of grassroots initiatives. *Energy Policy* 38, 759 – 7566.

Mohan, G. and Stokke, K., 2000. 'Participatory development and empowerment: the dangers of localism.' *Third World Quarterly* 21(2): 247-268.

PAS 2014. '*charretteplus*TM', Planning Aid Scotland. Available online: <http://www.pas.org.uk/charretteplus/>; Last updated: 2014; Accessed: 03.09.2015.

Reed, M.S. 2008. 'Stakeholder participation for environmental management: A literature review'. *Biological Conservation*, 141: 2417-2431.

Reed, M.S., Evely, A.C., Cundill, G., Fazey, I., Glass, J., Laing, A., Newig, J., Parrish, B.,

Prell, C., Raymond, C. and Stringer, L.C. 2010. 'What is Social Learning', *Ecology and Society* 15 (4): r1. Online access:
<http://www.ecologyandsociety.org/vol15/iss4/resp1/>

Richards, C., Sherlock, K. and Carter, C. 2004. '*Practical approaches to Participation*', Socio-Economic Research Programme (SERP) Policy Brief Number 1, Macaulay Institute.

Roberts, D. 2015. 'Evidence to support Proposal 4: Sustainable development test for land governance, Land reform Bill: A framework for understanding land ownership barriers to community land-based activities'. Unpublished report for RESAS, Scottish Government, March 2015.

Roberts, D. and McKee, A. 2015. 'Understanding the barriers to community land-based activities'. Report for Scottish Government, September 2015.

Sarkissian, W., Hofer, N., Shore, Y., Vajda, S. and Wilkinson, C. 2009. '*Kitchen Table Sustainability: Practical Recipes for Community Engagement with Sustainability*.' London, Earthscan.

Scottish Government 2015. Land Reform (Scotland) Bill – Policy Memorandum. As introduced in the Scottish Parliament on 22nd June 2015.

SCDC 2011. '*Community Resilience and Co-production: Getting to grips with the language*', A briefing paper, Scottish Community Development Centre, March 2011.

Shucksmith, M. 2010. 'Disintegrated Rural Development? Neo-endogenous rural development in an uncertain world', *Sociologia Ruralis* 50(1): 1-14.

Skerratt, S. 2010. 'How are Scotland's rural communities taking ownership of their own future?'. In: Skerratt, S., Hall, C., Lamprinopoulou, C., McCracken, D., Midgley, A., Price, M., Renwick, A., Revoredo, C., Thomson, S., Williams, F. and Wreford, A. '*Rural Scotland in Focus 2010*', Edinburgh: Rural Policy Centre, Scottish Agricultural College. pp. 42-51.

Skerratt, S. 2011. 'Community land ownership and community resilience', Rural Policy Centre Research Report, Scottish Agricultural College, June 2011.

Walker, G., Devine-Wright, P., Hunter, S., High, H. and Evans, B. 2010. 'Trust and community: Exploring the meanings, contexts and dynamics of community renewable energy', *Energy Policy* 38: 2655-2663.

Warren, C.R. 2009. '*Managing Scotland's Environment: Second Edition*', Edinburgh University Press, Edinburgh.

Appendix A

Table 1. Case studies of strategies adopted to overcome barriers to community land-based activities (sorted by barrier type, cf. Roberts and McKee, 2015)

Location	Community land-based activity pursued	Perceived barrier	Barrier type¹⁰	Resolution strategy
[Unknown]	Community garden	Trustees of landowning trust all deceased; local authority reluctant to engage.	B1	Community group working with solicitors representing landowning trust; have now agreed short term lease for growing.
Highlands and Islands	Community shop	Landowner unable to transfer ownership of property to community due to inalienable rights (and wishes of former owner who bequeathed land). Community unable to obtain funding without asset ownership	B4	Long lease agreed and funding obtained from the Big Lottery Fund.
Highlands and Islands	Community purchase of foreshore.	Landowner can only sell to formally constituted community body.	B4	Partnership/collaborative approach adopted; representative lawyers working together; landowner and community representatives in touch by email and developing relationship.

¹⁰ See classification by Roberts and McKee (2015), reproduced in Appendix B.

Highlands and Islands	Community-owned village hall	Due to conservation landowner with inalienable rights, transfer of ownership to community restricted.	B4	Community has partially bought property, with remaining part leased from conservation landowner on 120 year lease.
Borders	Community allotments	Allotments developed on privately-owned site bought for supermarket development.	B6	Community have approached landowner, who has agreed to find alternative site for allotments when development begins. Commitment both on part of community and landowner.
Badenoch and Strathspey	Community allotments	As a result of objections from neighbouring property owners; estate has pulled out of lease arrangement.	E2	Alternative allotment sites sought by local councillor.
Highlands and Islands	Community purchase of estate.	Lack of affordability of estate market price to community body.	F1	Community buy-out through traditional negotiation: 'friendly rather than statutory route', involving VOA. Due to affordability, community seeking to buy only part of estate.
Aberdeenshire	Community-led housing	Community lacked funding/expertise to develop housing.	F1/G3	Private landowner willing to sell land; joint ownership agreed with housing association.
Morayshire	Asset transfer of harbour.	Lack of community representation; high	F1, F3, G2/3	Landowner, local authority and community group have agreed

		maintenance and liability costs; lack of business plan.		'Charrette-type' planning process.
Edinburgh	Community garden	Legal fees to establish lease with landowner too expensive for community group.	F1	Special purpose vehicle established for community group, therefore community operating as grounds maintenance company.
Edinburgh	Community use of former walled garden	Two community groups seeking to buy same plot of land, but with different aims and intentions.	G2	Unresolved – community groups reluctant to work together.
Aberdeenshire	Community garden	Change of landowner requires 're-start' of negotiations by established community group.	[No barrier?]	Process of negotiation for land access starting again from outset.
Highlands and Islands	Community-led housing	Planning barrier, plus community not satisfied with sites suggested by private landowner; perceived lack of community vision.	G2	Community involved local housing trust as objective mediator to achieve outcome (affordable housing).
Dumfries and Galloway	Community-owned village hall and business hub	Despite gift of land from private estate, community group unable to source necessary funding for development and agreed that group did not have skills required to progress project.	F1, G3	Estate took property back 'in hand' and leased to community at peppercorn rent. Estate also provided project management and additional financial support for development.

Dumfries and Galloway	Redevelopment of multi-purpose community facility	Community project management challenged by skill set and availability (capacity) of community group, pre- and post-development.	G3	Community working with estate; estate took on project management with community group agreement.
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Appendix B

Table 2 Classification of alternative land ownership barriers to community activities (Roberts and McKee, 2015: 15)

Categories of barriers	Sub-categories	Underlying cause
Deficiencies in ownership rights	A. Ownership unknown or unclear	A.1 Information on title deeds are incomplete, missing or difficult to access
		A.2 Ownership in dispute
		A.3 Owner lacks legal capacity (including executors/administrators)
	B. Ownership rights divided	B.1 Land held in Trust [functionality of Trust]
		B.2 Land subject to leases or licences [or subordinate real rights]
		B.3 Land subject to mortgages or other securities
Landowner behaviour	C. Assembly of ownership required	B.4 Land subject to restrictive Title conditions/real burdens
		B.5 Land subject to servitudes or rights of way
	D. Unacceptable terms	B.6 Land subject to options or conditional contracts
		C.1 Ransom strips
	E. Owner unwilling to sell or lease land	C.2 Multiple ownership
		D.1 Restrictive terms of conditions of sale/transfer of lesser rights
D.2 Different valuations		
E.1 Retention for continued current use (includes for occupation/investment/making available to others on non-profit basis)		
External factors affecting communities	F. Structural barriers facing communities	E.2 Retention for control or protection/conservation
		E.3 Retention for subsequent own development
		E.4 Retention for subsequent sale (due to indecision, postponement, uncertainty or speculation)
		F.1 Inability to raise funding
Internal factors affecting communities	G. Community constraints and decisions	F.2 Regulations and limitations to advisory support
		F.3 Lack of legitimacy
		G.1 Potential liabilities of ownership disproportionate to community benefits
		G.2 Differing community aspirations
		G.3 Lack of community capacity
		G.4 Lack of willingness to engage with landowner

Appendix C

Report consultees

Steve Callaghan, The National Trust for Scotland
Ian Cooke, Development Trusts Association Scotland
Mike Daniels, John Muir Trust
Teresa Dougall, National Farmers' Union of Scotland
Hew Edgar, Royal Institution of Chartered Surveyors
Murray Ferguson, Cairngorms National Park Authority
Bob Frost, Forestry Commission Scotland
John Glover, Community Land Advisory Service
Priscilla Gordon-Duff, Moray LEADER Local Action Group (former chairperson)
Raymond Henderson, Bidwells
John Hillis, Scottish Hydro Electric Transmission plc
Alan Laidlaw, The Crown Estate
Sarah-Jane Laing, Scottish Land & Estates
Drew MacFarlane-Slack, Scottish Land & Estates
Debbie Mackay, Savills
David Melhuish, Scottish Property Federation
Lorna Paterson, National Farmers' Union of Scotland
Lucy Sumsion, National Farmers' Union of Scotland
Alastair Watson, Valuation Office Agency

How to access background or source data

The data collected for this <statistical bulletin / social research publication>:

- are available in more detail through Scottish Neighbourhood Statistics
- are available via an alternative route
- may be made available on request, subject to consideration of legal and ethical factors. Please contact annie.mckee@hutton.ac.uk for further information.
- cannot be made available by Scottish Government for further analysis as Scottish Government is not the data controller.



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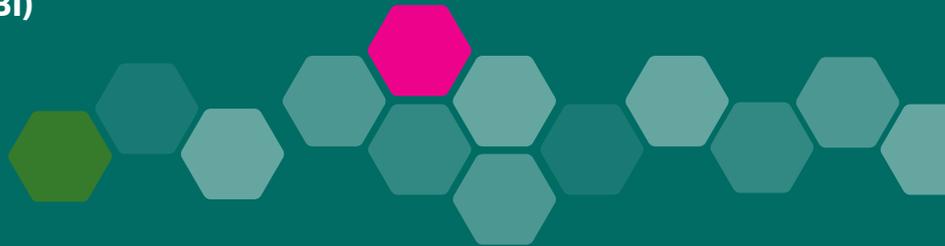
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