

Development Trusts Association Scotland
Land Reform Review Group: Call for Evidence

INTRODUCTION

The Development Trusts Association Scotland (DTAS) is the national organisation for development trusts in Scotland, with a membership of just under 200 community-led organisations who are utilising a combination of enterprise, community ownership and creativity to regenerate their communities. A recent survey of members, established that in 2011 DTAS members had a combined annual turnover of £39 million (of which £21 million was derived from non-grant income) and owned assets valued at £51 million. This response draws on that collective wealth of knowledge and experience of community enterprise and asset ownership, and, in addition, the direct experience of DTAS in running both the Promoting Asset Transfer programme and our current Community Ownership Support Service (both initiatives funded by the Scottish Government).

In responding to this Call for Evidence from the Land Reform Review Group, DTAS is conscious that the Scottish Government's Community Empowerment and Renewal Bill is being developed in parallel to the Land Reform Review process. While the issue of community ownership of land and assets potentially figures large within both these policy development processes, the precise interface between these respective processes has yet to be made clear. As such, while attempting to focus on community acquisition of land and assets, DTAS has included some information and views which have been previously submitted to the CERB consultation exercise, within this response.

In terms of existing Land Reform legislation, this submission is particularly concerned with Part 2 of the Land Reform (Scotland) Act 2003 which focuses on Community Right to Buy.

THE CASE FOR LAND REFORM

DTAS is aware that land ownership patterns in Scotland are among the most concentrated in Europe. The pattern of the land ownership and the processes which contribute to this state of affairs are well documented in books such as Wightman's "The Poor Had No Lawyers". DTAS also notes that with the exception of growth in the community ownership of land (see below) the Land Reform (Scotland) Act 2003 has had little overall impact on patterns of land ownership in Scotland. The recent Scottish Government's Land Use Strategy suggests that current patterns of land use will not deliver the sustainable development required to deliver a successful and thriving Scotland nor will current land use patterns enable Scotland to effectively address the environmental and climate change challenges we face. In addition, the availability of land is a crucial factor in addressing Scotland's pressing housing needs.

Land and other physical assets have always been a significant lever for economic development within Scotland. If Scottish Government economic objectives are to be met, a significant modernisation of land and asset ownership will be required. The transfer of land and assets from those who did not make a beneficial economic impact in the past to those who have the potential to make a beneficial impact currently and in the future, needs to be facilitated. Without this transfer, land ownership will remain a considerable barrier to economic and social progress. Previous governments have understood this in relation to business development – for example land was easily transferred to encourage the growth of the high tech, Silicon Valley type development in Scotland. This kind of political imperative needs to inform the support available for community ownership within the land reform process.

While the economic, social, environmental and moral case for further land reform is compelling, the direct interest of development trusts (and therefore DTAS) is less around the broader patterns of land ownership (although this clearly has the potential to impact on the local work of development trusts) and more on how the current patterns of ownership of land and assets either assists, or prevents, community-led regeneration processes. Since our establishment 10 years ago, DTAS has consistently argued that the acquisition, development and management of assets, within a framework of enterprise, is a critical element of successful community-led regeneration, and we therefore have specific interest in advancing community ownership within the land reform review process.

A range of movements and developments have contributed to Scotland experiencing a huge growth in the community ownership of land and assets over the last 30 years or so – assets which include housing, land, buildings, renewable energies and many other types of physical assets. At the Scottish Government's request, DTAS recently produced a Community Ownership Baseline Study which sets out the growth, scale and patterns of community ownership in Scotland.

The success of the community ownership of land and other physical assets, and the contribution it has made towards community led bodies tackling community issues and leading regeneration processes has been nothing short of remarkable. What is particularly noteworthy is that this transcends different types of communities and different physical assets. Over the last thirty years or so, community controlled housing associations and tenant co-operatives have made a major contribution to addressing housing problems in Scotland and many of them have used this activity base to go on and lead wider regeneration processes. The succession of community land buy-outs, particularly in the North West of Scotland, is arguably, equally well documented, but none-the-less impressive. But in communities throughout Scotland, and indeed the rest of the UK, the community acquisition of land and property has increasingly been a critical element within community efforts to regenerate high streets, develop community hubs and run thriving community businesses. DTAS has numerous successful members, operating in communities from Shetland to Dumfries and Galloway, and in rural, island, small town and city communities. South of the border there are equally inspiring examples of what can be achieved by development trusts - the impressive commercial success of Coin Street in London which has funded 4 housing co-operatives and a range of community facilities, the Goodwin Development Trust in Hull

which has grown from a housing estate tenants association to become one of the major employers in the town, or the impressive community-led redevelopment of the town centre of Caernarfon in Wales.

While much of this activity has taken place below the radar of the media, this success has not gone totally unnoticed - with academics and commentators increasingly recognising and writing about what can be achieved through community ownership. The achievements of community-led regeneration and community ownership have also been increasingly noticed by politicians of all persuasions, and encouragingly, support for community ownership has grown considerably within the Scottish Government in recent years. This support is evidenced by the Community Empowerment Action Plan (2009), the promotion of community-led regeneration with the Scottish Government's Regeneration Strategy (2011) and the imminent Community Empowerment and Renewal Bill. Support for community-led regeneration and community ownership has also underpinned the Scottish Government's policy towards the development of renewable energy in Scotland.

In addition to an increasingly supportive policy context, the banking and financial crisis in 2009 has led to unprecedented pressures on public spending for the foreseeable future. In response to this situation, the Scottish Government established the Christie Commission to advise on the future provisioning of public services. The Christie Commission reported in 2011.

The combined impact of these policy processes and financial pressures has been to considerably raise the expectations of, and present considerable challenges to, communities up and down Scotland. It seems that the success of a considerable amount of Scottish Government policy will be dependent on the ability and capacity of communities to 'step up to the plate' with creative and enterprising responses to the range of challenges that undoubtedly lie ahead. If this was not daunting enough, communities are being asked to do all this in an extremely challenging financial context! This situation demands a much more creative use of land and physical assets, and in particular, community acquisition and ownership, of assets. Without access to land and assets, the ability of communities to develop local responses to the challenges which lie ahead will be severely curtailed.

The ability of communities to respond to the challenges ahead will also depend to a large extent on the degree to which communities are empowered to do so. DTAS has always believed that the ownership and control of land and other assets, is a crucial element within an enterprising approach which can generate independent income streams, and which in turn helps empower communities. DTAS therefore welcomes the recognition increasingly being assigned to community ownership as a means of empowering communities, and believes this needs to be a central theme of the Land Reform process.

DTAS therefore proposes that significantly increasing community ownership should be an explicit aim of any further policy development or legislation on land reform, and this submission will therefore explore how, and in what circumstances, communities should be able to acquire assets from both local authorities and other public bodies, and from the private sector. In addition to the obvious, direct benefits of community ownership, experience suggests that the adoption of this position will also have a number of wider societal benefits. Firstly it will contribute to positive behavioural change, with

landowners and other asset holders being encouraged to take a more responsible approach to their land and assets, and striking a better balance between public benefit and private interest. It has the potential to foster new and exciting partnerships between communities and a wide range of public and private bodies. Evidence from around the UK also suggests that some of the most successful community-led regeneration initiatives which have utilised an asset-based approach have managed to reinvigorate the private sector, giving private bodies the confidence to adopt a more positive and pro-active approach to property development and physical regeneration.

REFORM OF THE COMMUNITY RIGHT TO BUY

The relatively small number of land transfers to community ownership which have taken place within the provisions of Part 2 of the Land Reform (Scotland) Act 2003 suggests that the major successes of the introduction of Community Right to Buy have been the message which has been sent out about government intent, the confidence it has installed within aspiring communities and the general cultural change which this part of the Act has effected. In commenting on impact, it is difficult to separate the direct contribution of Community Right to Buy from the availability of the Scottish Land Fund (and subsequently the Big Lottery's Growing Community Asset Fund). The geographical imbalance of community ownership throughout rural Scotland also suggests that the role of Highlands and Islands Enterprise in encouraging and supporting community ownership in particular parts of the country has also been a telling factor in the development of the community ownership of land.

There is however no doubt that despite the best efforts of the civil servants in the Community Land Branch, the Community Right to Buy provision is unnecessarily complicated and overly bureaucratic for community organisations. The web-site of the Machrihanish Airbase Community Company displays a time line for the purchase of the air base, which gives an interesting illustration of how complex the CRtB process can be: <http://machrihanish.org/diary.html>. As such, if an objective of the Land Reform Review process is a significant increase in community ownership, there is a compelling case for a fundamental review of how the CRtB provision currently operates. This would also enable CRtB to be updated to reflect subsequent developments such as the introduction of the SCIO (Scottish Charitable Incorporated Organisation). DTAS would be delighted to contribute to a more detailed review of CRtB, but would offer the following observations on some of the areas requiring attention:

1. Recognition of a 2 Stage Process

It should be noted that the Community Right to Buy is essentially a community right to register an interest in a property, and a right to buy (at market value) should the property comes on to the market. By definition this means that for many communities the identified property may never come on to the market. As such the requirements of simply registering an interest should be proportionate to the speculative nature of the activity and certainly less onerous than the 'live' stage of the process, when the property is actually put up for sale. In addition, the requirement to go through a not dissimilar process every 5 years is a major disincentive to community bodies.

2. Organisational Form

The current requirement that a community organisation should be incorporated as a CLG (Company limited by guarantee) should be reviewed and widened. The obvious candidate is a SCIO (Scottish Charitable Incorporated Organisation) which has been introduced since the Land Reform Act was introduced, but thought also needs to be given to other organisational forms such as an IPS (Industrial and Provident Societies) Community Benefit Society, which may be necessary if the acquisition is to be financed through a community share issue. Currently community bodies often have to amend their articles depending on what they are involved in and who they are applying for funding to, which suggest a need to ensure that OSCR, Scottish Government Community Assets Branch, and key funders are all singing from the same hymn sheet. There is also a need to achieve consistency with other government departments. For instance a community body would need to be a CLG to use CRtB to purchase land, but should they decide to build a wind turbine on that land, DECC (Department of Climate Change) are currently proposing not to recognise a CLG as an eligible organisation for feed in tariff payments!

Within the context of CRtB effectively being a two stage process (see point 1) serious consideration needs to be given to the organisational form required to register an interest, as opposed to activate that interest should the property come in to the market. The current framework begs the question of whether it is really necessary for an interested community to set up (and service) an incorporated body, solely for an eventuality which might never occur?

3. Ballot Process

Any review of CRtB would require a review of the balloting arrangements. Firstly there are general questions about the requirement for, and nature of, the ballot. Is it the only and most efficient way to demonstrate community buy in? Securing 10% support within a small settlement is, in absolute terms, clearly more achievable than in a settlement with a significant population. There is also a lack of flexibility within the current arrangements – effectively, the community has little control over when the ballot is required to take place, and experience shows that inappropriate timing can have a significant impact on the outcome. Finally, there is also a perverse logic to the democratic credentials of the ballot in that if you are against the proposed community buy-out, it is more effective not to vote, than to vote ‘no’!

Even if the ballot continues to be regarded as the requirement for demonstrating community support, there is a strong case to be made that community organisations who have registered for CRtB, should not be required to re-ballot every 5 years, simply to keep that interest ‘live’.

The second area of concern is around the specific requirements of the ballot. There are practical problems around the use of mapping and postcodes and several DTAS members have had wholly unacceptable experiences accessing the electoral roll (in Machrahanish, the community had to hand write the electoral roll from the copy held in the Library – twice!). In general terms, the provisions of Part 2 regarding the ballot seem much too prescriptive.

4. Timescales

The current timescales within the CRtB process are one sided (in that the timescales all apply to what the community has to do, rather than the Scottish Government end of the process) and can occasionally present insurmountable challenges for the community bid. In particular the 6 month timescale to assemble a capital package can sometimes be unrealistic, being dependent as it is on external grant funding and borrowing processes, community fund raising, etc. In addition any delay in Scottish Government approval (sometimes up to 2 months) automatically results in even less time being available to the community to pull together a financial package.

5. Decision Making Process

The CRtB would greatly benefit from a decision making approval process which is more transparent, more efficient and more robust. Viewed externally, the appearance is that the Minister has too much power in the process and certainly the discretionary nature of that power creates inconsistencies and delays which could be ironed out within an alternative approval framework. Any ambition to increase the rate of community ownership through the CRtB will require a much more efficient decision making process.

6. Flexibility Within the CRtB Framework

As one would expect, a number of unforeseen scenarios have been experienced since the Land Reform Act was written. For example, the current configuration of the CRtB framework makes it difficult for a community body to register late for a local asset (particularly one which has significant social and economic impact) should it suddenly come up for sale. It is unrealistic (and undesirable) to expect communities to register for every potential piece of land or asset in their community which may come up for sale, so given this particular scenario is likely to be a more frequent occurrence, it would be helpful to build a degree of flexibility into the CRtB provision.

There have also been examples of the seller of the land or asset pulling out, well into the CRtB process. This can result in a situation where a community body may have invested considerable time and energy within the process, possible even assembling, or part assembling a financial package. Community expectations may also have been understandably raised by a successful ballot, and this kind of late withdrawal has the potential to impact negatively on the credibility of the organisation. Consideration therefore needs to be given as to how the seller could be 'locked into' CRtB, at a certain point in the process.

7. The Business case

While it is in everyone's interest that the community body produce a robust business case for taking on the asset, there needs to be a greater understanding of the nature of enterprise and an appreciation of the existence of risk. While evidence suggests that community enterprise tends to have a much greater success rate than business in general, it still involves an element of risk – and this dynamic needs to be

recognized. While good practice will mitigate risk, it needs to be acceptable for some communities to only partially succeed and for some to fail. This is particularly relevant where community bodies are being asked to turn around, what is often in effect, a failing asset. Within this context, there needs to be a consistency in the way in which private sector and community ventures are treated by public bodies, and risk should not be used as a ground to block community enterprise.

EXTENSION OF THE COMMUNITY RIGHT TO BUY

DTAS has argued consistently over a number of years that the Community Right to Buy should be a universal principle, particularly as a mechanism to underpin community-led regeneration. While there are undoubtedly some contextual differences and some challenges around extending the CRtB into some urban contexts, this should not be accepted as a reason not to extend the CRtB and establish it as a universal principle. A universal community right to buy would make a powerful statement about Government intent on future land and asset ownership, and is a pre-requisite if communities are to be able to rise to the challenges described in the earlier part of this paper.

As with rural communities, urban communities are not homogenous entities. Small towns with failing high streets, former coalfields and other former industrial settlements, town and city centres, and the peripheral estates of Scottish cities may all be slightly different in character but there is no doubting the scale of the regeneration challenge within each. Equally, the opportunities for community enterprise activity which will generate income will differ from urban community to urban community. It is essential that local communities are empowered as much as possible to respond positively to these challenges and exploit any opportunities which exist, and the extension of the CRtB into urban communities would therefore provide a vital tool within the urban community regeneration toolkit.

Any decision to extend the CRtB will clearly need to be factored into any review of the current CRtB provision (as suggested above). In particular the precise definition of 'the community' and demonstration of community support within large urban conurbations will have a bearing on how the current framework is developed. DTAS believes that as a general principle, the definition of 'community' should be a matter for the community in question to decide. There is no reason why this principle cannot be applied to urban communities: in most cases the definition of community within small towns will generally be fairly self-evident, while in larger urban conurbations people relate to a neighbourhood or a particular part of a city. The only requirement should be that a line can be drawn on a map to clearly delineate the boundaries of the community in question.

Comparing the experiences of urban and rural development trusts across the DTAS membership, there are some noticeable patterns which emerge. Unsurprisingly, there is a greater interest in land per se, in rural communities (although a growing demand for allotments, land for community growing and recreational space in urban communities is clearly apparent). In general land tends to be more expensive in urban communities, particularly the big cities. Urban-based development trusts tend to be

more interested in buildings, facilities and other physical assets. Currently, urban communities are less likely to acquire land from private owners than their rural counterparts, and when they do engage with the private sector they have more chance of encountering large national corporations such as supermarkets, national house building companies and other big developers. In terms of public assets, urban communities have favoured local authority assets while the target of rural communities is more likely to be assets held by other public bodies. However, while these general patterns are interesting, each community (whether urban or rural) is unique, and these observations have no significant bearing on the case for, or against, extending the CRtB into urban areas.

To explore the question of extending CRtB in more detail, DTAS facilitated a session with a number of urban-based development trusts. Collectively they had significant experience of acquiring, or trying to acquire both land and physical assets from the local authority, other public bodies and the private sector. The overwhelming conclusion was that irrespective of who the seller was, all these development trusts had had to overcome, and are still trying to overcome, significant, time-consuming and often unnecessary barriers to acquire assets which are based within their communities. The fact that they had succeeded in most cases was due to their strength and perseverance (often having to play a 'long game' to acquire a particular asset).

In some cases the barriers which had to be overcome were of an attitudinal or bureaucratic nature, and there was clear evidence of double standards (particularly in relation to the different ways community organisations and private sector organizations were dealt with in the disposal of public assets). There were recurring issues around inappropriate timescales, the valuation of assets, inappropriate disposal conditions and other factors which stacked the odds against the community achieving a successful and sustainable acquisition. The point was also made that no right of appeal exists when the decision goes against the community (who have often invested significant time and effort in the process). While it was accepted that the acquisition / asset transfer process should not be easy (the process should encourage the community organisation to address key questions around vision, organisational capacity and business case), a clear and robust framework for this activity which enshrined the rights and responsibilities of both parties would represent a significant step forward. The consensus of the focus group was that the extension of the CRtB could provide this, but only if it cut through, rather than increased, the bureaucracy which community organisations currently experience. There also needs to be a clear rationale and demonstrable benefit from any work required of the community organization within the process. It was felt that any timescales should apply to both parties and that some kind of appeal process was necessary.

In one particular case, a development trust operating in a very disadvantaged community had been trying to acquire land which was owned by an estate, held by a private trust. The efforts of the community had highlighted the fact that none of the trustees were in fact alive, which in turn had triggered a complicated administrative and legal process. This had proved to be extremely costly for the community organisation (both in terms of time and money) and what should have been a relatively simple exercise in turning unused (and in this case mis-used) land into allotments and community

growing space had developed into an issue which could run for years. This kind of example highlights the need for some kind of legislative action (either in the form of more pro-active powers within the CRtB or the introduction of a community right to trigger a compulsory purchase process in the new Community Empowerment and Renewal Bill). However this issue is addressed, clear and enforceable timescales are crucial.

ABSOLUTE RIGHT TO BUY (Subject to Public Benefit)

As has already been pointed out, the Community Right to Buy is effectively a community right to register an interest, and if the property comes on to the market, and a right to buy (at market value) should the property comes on to the market. For many communities the opportunity may never come! Given the increasing expectations being placed on communities to lead regeneration processes, contribute to public service delivery, provide stewardship of heritage assets, etc then the Land Reform Act needs to be strengthened so that communities can be pro-active around asset acquisition. Where there is a well defined case, which can be justified in terms of delivering public benefit, communities need additional rights to address those property owners whose reluctance to sell, or even engage, effectively blocks or undermines the delivery of community-led regeneration efforts.

Experience to date suggests that the vast majority of community asset acquisition activity has been achieved through market processes or through discussion and negotiation, and there is no reason to think that this will not continue to be the case. Indeed, the combined potential impact of a Community Empowerment and Renewal Act and further land reform legislation will send a clear message which should effect further cultural change. Any strengthening of community rights to engage with reluctant sellers will clearly contribute to this process, while at the same time providing a mechanism of last resort for the minority of situations where some form of compulsion is necessary.

DTAS firmly believes that this issue needs to be considered within the Land Reform Review process, but feels that a robust analysis of the relative pros and cons of potential mechanisms is necessary. The recent consultation around the Community Empowerment and Renewal Bill explored the area of Compulsory Purchase Orders, and specifically whether communities should have rights with regard to CPOs. Other potential solutions have also been emerging within various discussions and consultation processes, and a thorough and effective assessment needs to be made, of which mechanism (or combination of mechanisms) would most effectively deliver the desired outcomes.

Community Land Scotland has recently suggested the establishment of a third party 'land agency' to facilitate and manage the process of land transfers to communities. While this proposal has yet to be fleshed out in more detail, DTAS believes that this idea is worthy of further consideration. Thought would clearly need to be given to what the precise remit, scope and powers of such an agency would have, but the combination of such an agency having a facilitative role, but also teeth to compel if necessary, is an interesting idea.

It also needs to be recognised that many of the public sector assets which are identified as surplus to requirements and offered to communities are, in their current form, often liabilities rather than assets. Communities need to be able to acquire real assets from public sector bodies, and not just failing social amenity-type assets which may be challenging and time consuming to turn around. If they are to take on failing assets, then a creative response to this challenge is for the public body to adopt an 'asset balancing' approach. While this issue may be covered to some extent within the development of assets strategies and processes across the public sector, it should not be assumed that these will adequately address the ability of communities to be pro-active. As such, public sector assets also need to be considered within any further consideration of possible mechanisms which enable communities to acquire targeted property.

CATEGORIES OF ASSET OWNERSHIP

If a key aim of land reform is to build on and expand the positive and successful experience of community ownership, then any further legislative measures or re-design of the CRTB need to take cognisance of the fact that, there are, essentially 3 broad categories of land and asset owners with which communities engage – the private sector (although this ranges from individuals to multi-national corporations), local authorities and other public bodies (this ranges from public bodies for whom assets are a means to an end to public bodies which have been established specifically to provide stewardship for assets). The distinction between local authorities and other public bodies is an important one to make because of the democratic nature of councils, their role within communities and the (currently unique) discretionary power they have to transfer assets at less than market value. Efforts to introduce measures which will increase levels of community ownership need to recognise and reflect both the commonalities between, and the differences within, these 3 broad categories of ownership.

Through our COSS (Community Ownership Support Service) work, DTAS has a unique overview of how the community ownership / asset transfer agenda is reflected within Scotland's 32 local authorities. While progress is still patchy, there is a growing awareness of the importance of this issue, reflected in the fact that more and more councils are developing strategies and putting asset transfer policies in place. COSS is working closely with ACES (Association of Chief Estate Surveyors) to increase awareness among council officials, address key challenges and develop and share good practice. The current funding challenges facing local authorities will undoubtedly result in more council assets being deemed surplus, but these same financial challenges will increase pressure to maximise capital receipts.

While the Disposal of Land by Local Authorities (Scotland) Regulations 2010 gave councils discretionary powers to transfer assets at less than market value, the awareness of these powers is less than one would expect, and their use to date has been limited. In addition to the financial pressures facing councils, it would seem that many council officers are uncomfortable using these powers (often citing best value, falling foul of Audit Scotland, state aid, etc) so there is a question of whether the CRTB could be developed in a way which addresses this problem, thus enabling more assets to be transferred into community ownership at less than market value. Currently, many communities are the last to find out about the disposal of assets, or they find out at short notice, and the CRTB could be used to prevent key

community assets being sold off to the private sector, or hived off to arms-length organisations, without the community first having had the option to explore and test their potential interest in acquisition.

In terms of other public sector agencies, the promotion and expansion of community ownership would benefit from two major developments. Firstly, there needs to be a duty placed on all public agencies to develop asset transfer strategies and procedures. While it may not be perfect, the Forestry Commission's National Forest Land Scheme is a working example of how a public body can deal with community ownership aspirations, and there is no reason why other public bodies should not have similar frameworks in place. The second requirement is the extension of local authority discretionary powers to transfer at less than market value, to other public bodies. The current funding and financial context is likely to be a major stumbling block to increased levels of community ownership. If one accepts the case for community ownership to be regarded as a modern form of public ownership and asset stewardship, then the power to transfer of public assets at less than market value (when that disposal is likely to deliver additional social, economic and/or environmental benefit) is both morally justifiable and essential to extending community ownership.

The current CRtB provision has been used by communities in a number of situations to stop an immediate sale or simply give the community the opportunity to acquire an asset from a public sector body (Ministry of Defence, Health Authority, etc). Even if the above two recommendations were implemented, CRtB would continue to provide a useful mechanism to support further community ownership, particularly to slow down, or stop, assets being sold off without the community having the opportunity to explore potential acquisition. To some extent this is simply about creating a level playing field which enables communities to be able to compete with much larger private (and other) organisations who have the capacity and resources to respond quickly to opportunities which arise.

It is arguably in relation to the community acquisition of private sector assets that CRtB is particularly crucial. The somewhat organic development of community ownership has invariably been driven by market failure and poor stewardship of assets (both private and public sector assets!), or simply opportunity. However, going forward, the increased role being ascribed to communities, demands that the ownership of assets can no longer be a block to activities and development which have a demonstrable community or public benefit and this requires that a balance is struck between public good and private interests. It is important to recognise that to date the majority of community acquisitions of private assets have taken place outwith the scope of the CRtB framework, through discussion and negotiation. While this will continue, and should clearly be encouraged, it is important to have a revised and simplified CRtB framework in place, for those situations where discussion and negotiation is insufficient and a legal framework will continue to be necessary.

VALUATION OF LAND AND ASSETS

As has already been said, in the current economic climate, a significant expansion of community ownership will not take place if communities are being charged the market price for all land and assets. With regard to private sector assets, the case for continuing to pay the market price is compelling, although there can be issues about how the 'market price' is determined, and whether it is reasonable and fair. Arriving at a fair market value within the current context of flat and fluctuating markets is, at the very least, challenging.

With regard to local authority and other public sector assets, the experience of DTAS and our membership suggests that the valuation of assets being transferred to communities is often inconsistent and unfair. For instance, it is difficult to see how the practice of local authorities charging notional "market value" can be justified when invariably the public body has been losing money operating the asset in question or the asset requires significant investment. In addition, key funders such as the BIG Lottery will not contribute to the purchase of public sector assets, when the full market value is being asked for. Finally, the 'over-valuation' of public sector assets (whether or not the disposal is being discounted) can have major implications for the community organisation, if the De Minimis provision of State Aid Rules is being deployed.

Our experience of local authority asset transfer to date suggests that both parties would welcome a clearer framework for establishing an appropriate and fair system for assessing the value of an asset, and this is an issue which should be addressed within the Land Reform Review process. A number of suggestions as to how this could be done have been made, including:

- The district valuer setting the initial starting figure, which would then be applied to a table of factors which would reduce this figure further.
- Adopting the principle that public assets have a value which is more than simply financial and the development of a framework which reflects economic, social and environmental benefit
- Setting conditions which affect 'market value' (eg planning status)
- Utilising an auction process to sell off surplus public assets as a means to drive down land value in urban areas

While recognising the importance of this issue, DTAS has no fixed view on how this could be achieved, but would welcome being involved in further discussion on how to progress this.

In addition to the valuation, DTAS believes that as a general principle, any conditions attached to the sale or transfer of public assets should be minimal and proportionate to any discount being offered and the expected level of public benefit. If asset transfer is to be genuinely about empowering communities, then there should be no unduly restrictive burdens. Having said that, some kind of balance clearly needs to be struck, and where an asset is being transferred at considerably less than market value, then some kind of monitoring of ongoing community / public benefit being delivered would seem reasonable.

Within this context there is a need to develop a modern and robust definition of ‘public interest’ and a workable public benefit test.

COMMUNITY BODIES

This paper has been written from the perspective of development trusts. The arguments put forward relating to community-led regeneration, a wider definition of public ownership and transfer at less than market value are premised on the basis of the community body being a development trust or other community anchor type organisation, which is able to demonstrate the following characteristics:

- Independent
- community-controlled
- democratically run
- inclusive and committed to open access
- representative and working to a community mandate
- non profit distributing
- on dissolution assets can only be transferred to other similar community organisations
- operating within a defined geographical community.

DTAS also recognises however, that in addition to community anchor organisations leading regeneration processes (as described within the Scottish Government’s Regeneration Strategy), other community organisations can make important contributions to regeneration processes and to community life in general. Many of these organisations will also aspire to own land and assets, for a variety of reasons – providing and / or saving valued community assets and vital local services, developing new community opportunities and providing stewardship of local heritage assets. These assets will be owned by various bodies and the condition of these assets will vary enormously. Some will be surplus to the requirements of the existing owners, others not. In these situations the nature of the community body, the clarity of vision and degree of community support for the asset, the nature, status and condition of the asset itself will vary from case to case and each situation will therefore have to be judged on their respective merits. If CRTB is to cover this area of activity, a more nuanced approach to community ownership and asset transfer frameworks will be required.

RESOURCING AND OTHER REQUIREMENTS

While this response has focused largely on rights, powers and potential legislative changes, DTAS recognises that the further growth of community ownership will require non-legislative developments to take place as well. In particular, the following issues are all critical elements if we are to create a positive and supportive environment for the next stage in the development of the community ownership of land and assets.

1. Culture Change

Achieving the necessary cultural change which facilitates and supports community ownership and community enterprise will be neither easy nor quick. As has been already pointed out current drivers of this process include a favourable policy context, leadership from the Scottish Government, economic and financial pressures, the state of the property market, success of community ownership and general pressure from below. The Land Reform Review Group may however want to consider how this necessary process of cultural change can be strengthened and made more effective.

2. Resources

The success of community acquisition and ownership to date has been due in part to the availability of funding and finance to acquire and develop land and assets, and revenue funding to implement business and development plans. An expansion of community ownership will only be possible if it can be adequately resourced, and achieving this will be a major challenge in the current financial context. This will undoubtedly require a degree of prioritisation across a range of funders together with a more creative use of existing support agencies, programmes and budgets.

3. Capacity Building

There are two main aspects to this which are very much related. The first of this is the availability of appropriate developmental support, along the lines of that delivered by HIE within the Highland and Islands. There is a clear correlation between patterns of community ownership of land and the areas where HIE have historically targeted some of their support and investment. The lesson from this successful intervention is the increasing need to link economic and social development and similar support needs to be available in other parts of Scotland. There is no good reason why people in other rural parts of Scotland, depressed town centres, former coalfields and industrial communities and peripheral housing estates should not be able to access this kind of support. Given the considerable level of resources invested in Scottish Enterprise and the Business Gateway Network, this is clearly a political rather than a resource issue.

The experience of the CAM programme which HIE currently operates mirrors the experience of development trusts in other parts of Scotland. While voluntary effort is a crucial aspect of development trusts, community land initiatives and other community anchor organisations, there are clearly limits to what can be achieved by voluntary effort alone. The proven solution is to invest directly into community anchor organisations and build their capacity through enabling them to create a staffing resource which can manage development and implement their strategies and action plans. This represents a fundamental change in approach – historically capacity building investment in Scotland has funded external organisations (local authority, third sector interfaces and community development agencies) who do capacity building to community organisations. While some of this work will still be required, particularly in disadvantaged communities, a greater proportion of this resource needs to be invested directly in community anchor organisations.

4. Planning

There is a strong feeling among DTAS members that the planning process no longer pertains to communities any more. In addition the Local Plan sets out a range of development options, but the planning process is site specific, lacking the kind of strategic overview which would, for instance, constrain the apparently unfettered proliferation of supermarket development. There also needs to be a much stronger link between the land use strategy and the planning process, and as suggested above, planning could be used to lower land values to assist community acquisition.

The Scottish Government's desire to promote community ownership and community-led regeneration also needs to be reflected within, and supported by, the planning process, which currently treats 'community developers' (with their relatively meager resources) in the same way that it treats national developers and supermarket chains. Given increasing levels of support within Scotland for 'development which is subject to democratic control', thought needs to be given as to how the planning process could be reviewed to better support what is increasingly becoming a political priority, and how it can work with 'community developers' in a more effective and efficient way. The under-use or improper use of land and assets, the practice of land-banking, derelict and empty property, addressing blight, etc should all be given greater consideration within the planning process.

5. Taxation

While DTAS does not have a clear position on the introduction of a Land Tax, it recognises some of the merits of such a proposal, and, given the potential impact such a measure would have on the ownership and use of land, feel that it is an area which the Land Reform Review process should explore further.

6. State Aid

In developing enterprising ways to sustain assets and address community need, community organisations often encounter State Aid regulations - or the threat of State Aid regulations from cautious public officials! This position needs to be clarified with relation to community enterprise (as part of community-led regeneration), community ownership and asset transfer projects, and any progress which the Land Reform Group could make in addressing this issue would provide an important practical contribution towards furthering community ownership.

7. Common Good

The issue of Common Good assets is likely to figure within the Land Reform Review process, but within the context of this paper, there is an issue around community acquisition of Common Good assets. Within the current context, where the common good asset is not 'inalienable', it can be disposed of in the same way as other local authority assets. However, when a Common Good asset is inalienable this creates a problem in that (costly) legal processes are involved and the Sheriff Court must release the asset from Common Good for disposal to the community group. The Land Reform Act should be amended in some way to facilitate this process?