

Land Reform for a Democratic, Sustainable and Just Scotland

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DECARBONISE / DEMOCRATISE / DECOMMODIFY

CONTENTS

Introduction: Stewarding Scotland’s most important asset	2
1. Summary of recommendations	4
2. Why does Scotland need land reform?	6
2.1 Concentrated pattern of land ownership	6
2.2 Lack of regulatory oversight	7
2.3 Housing supply and affordability	8
2.4 Climate and nature targets	10
2.5 Macroeconomic impact and inequality	11
2.6 Regressive and inefficient taxation	12
2.7 Lack of information and transparency	14
3. Land Reform for a Democratic, Sustainable and Just Scotland	15
3.1 Transforming land market governance.....	15
3.2 Diversifying land ownership.....	17
3.3 Developing land in the public interest.....	21
3.4 Restoring nature for a just transition.....	23
3.5 Taxing land fairly and efficiently	25
3.6 Enhancing information and transparency.....	28
4. Conclusion	30

INTRODUCTION: STEWARDING SCOTLAND'S MOST IMPORTANT ASSET

Land reform has been one of the most significant achievements of the Scottish Parliament. The abolition of feudal tenure, the introduction of Community Right to Buy, and the establishment of the 'right to roam' are just a few of the many accomplishments to date. But as Lord Sewell put it in 1999, land reform should be viewed as an ongoing process, not an event.¹

The need for ongoing land reform, in spite of multiple waves of land reform legislation, can be attributed to Scotland's archaic starting point. While most democracies escaped the land oligopoly many centuries ago, Scotland's democratic revolution never quite came to pass. As a result, the archaic patterns of land ownership and governance that were swept aside amid revolution and revolt elsewhere survive in Scotland to this day, relatively intact.

Perhaps the most obvious expression of this relates to Scotland's highly concentrated pattern of land ownership. With an estimated 67% of Scotland's private rural land owned by just 0.025% of the population, Scotland's concentration of land ownership is almost unique among advanced economies. Not only is this at odds with Scotland's ambition to be a modern, progressive democracy – it stifles entrepreneurial ambition and prevents rural communities from fulfilling their potential.

The need for land reform also extends far beyond the need to diversify Scotland's land ownership. Land plays a central role in all economies, but this role is often overlooked or misunderstood.² Alongside capital and labour, land is one of three economic factors of production that all economic activity requires to take place. Farms require land to produce food; factories require land to produce goods; developers require land to build houses; and governments require land for public infrastructure. Even with the rise of the internet and the digital platforms, land remains the most valuable asset in the UK economy.³

Land is best understood not as the soil under our feet, but as the physical space within which all economic activity takes place. How land is owned, managed and used plays a fundamental role shaping Scotland's economic, social, environmental and cultural landscapes. Land's unique properties – scarcity, permanence, irreproducibility, immobility – mean that the land market does not function particularly well, and is replete with market failures. The supply of land cannot easily be increased or expanded to meet greater demand, and market price signals cannot always be relied on to efficiently guide decisions over what land should be used for. Many of the world's most market-oriented states implicitly recognise this, and impose non-market regulatory controls on land use.

Today however, Scotland's rural land market remains largely unregulated. Anyone in the world can buy large amounts of land with relatively little scrutiny, and transactions can take place 'off-market', in relative secrecy. Without necessary restrictions on who can own land, or how much they can own, policymakers are unable to act to ensure that the way that land is bought and sold serves the public interest. Information on land ownership also remains incomplete and fragmented, and accessing the data that does exist can be prohibitively expensive.

These long standing issues are now being compounded by modern challenges. How Scotland's land is owned, used and managed will play a key role in determining whether Scotland delivers a just transition to net zero. However, the emerging value associated with Scotland's 'natural capital' potential has also opened up new opportunities for 'greenwashing' and value extraction. The rise of carbon offsetting risks exacerbating existing inequalities while undermining efforts to directly reduce emissions. Meanwhile, recent attempts to lure private finance into nature restoration risks socialising risks while privatising rewards, replicating the mistakes made with private finance initiative (PFI) infrastructure projects. Land reform is therefore essential to ensure that land in Scotland is being managed sustainably, and that the financial rewards from Scotland's natural assets are fairly shared.

Land reform is not just an imperative for rural communities – it’s equally important for urban Scotland too. Throughout much of the twentieth century large scale-public house building programmes, together with the ability to acquire land at low cost, were effective at keeping supply up and housing costs affordable. Ever since the state retreated from playing a proactive role in the land market, however, Scotland has relied on speculative private developers to meet housing need. In pursuit of the greatest returns, these developers often prioritise high-value market segments, acquire strategic land banks, and ‘drip feed’ new homes onto the market to keep house prices high. Delivering the affordable homes that Scotland needs, in the places that need it, therefore requires a bold new public-led approach to development.

The land market also plays a crucial macroeconomic role, and has a significant bearing on the distribution of income and wealth. The question of who captures the benefit from rising land values, and how this is used, has been at the centre of land reform debate for centuries. As the value of land is not determined by the efforts of the landowner, but by collective investment, there is a strong argument that this value should be captured to benefit society as a whole. In recent decades however, the UK’s economic model has become increasingly reliant upon a financialised land market to generate private wealth. Today, it is estimated that land accounts for over 60% of the UK’s net worth, and rising land values have accounted for around two thirds of all wealth accumulated since 1995.^{4 5} But the ballooning wealth of property owners has been mirrored by growing deprivation among tenants, creating a widening gap between those who own property and those who do not. Not only is Scotland’s financialised land market not fair, it is also not efficient. The ability to extract economic rents from existing land and property assets has diverted investment from more productive areas, harming productivity and output and increasing financial fragility.

Land reform is therefore not just about tackling Scotland’s archaic patterns of land ownership and governance, important though that is. It is also needed to help move towards a more democratic, sustainable and just economic model. As such, land should not be viewed as an issue that is marginal to Scotland’s economic prosperity. Instead, it should be viewed as Scotland’s most important economic asset that is central to the Scottish Government’s vision for delivering a Wellbeing Economy.

The Scottish Government has pledged to bring forward a new Land Reform Bill, and consulted on proposals in 2022.⁶ The new Bill presents an opportunity to transform how land is owned, managed and used, and bring the governance of Scotland’s land market into the 21st century. It is crucial that this opportunity is not missed.

The rest of the paper proceeds as follows. Section 1 provides a summary of the policy recommendations outlined in the report. Section 2 explores why Scotland needs land reform, elaborating on the issues outlined above. Section 3 outlines the details of a bold agenda for land reform that aims to create a more democratic, sustainable and just Scotland, and Section 4 concludes.

1. SUMMARY OF RECOMMENDATIONS

Transforming land market governance

- The forthcoming Land Reform Bill should introduce a new statutory power to apply a public interest test at the point of sale or transfer for large-scale landholdings over 500 hectares.
- Scottish Ministers should also be granted discretionary powers to apply a public interest test to existing land holdings (of any size) in cases where compelling evidence is presented that a landholding is being managed in a way that is detrimental to economic, social and environmental wellbeing. This should be backed up by the power to issue compulsory sale orders for landholdings that fail to meet the test's criteria.
- The forthcoming Land Reform Bill should introduce a requirement that registering a title to own land in Scotland is limited to those registered in Scotland or the UK for tax purposes. This requirement applies to all landholdings, not just large-scale landholdings.

Diversifying land ownership

- The Scottish Government should strengthen Community Right to Buy powers to enable communities to purchase land at below market value under circumstances that meet a clear public interest threshold.
- The Scottish National Investment Bank should establish a dedicated fund to provide low-cost financing for community owned initiatives, such as renewable energy and affordable housing.
- Forestry Land Scotland and Crown Estate Scotland should scale up strategic public acquisitions of land, backed up by enhanced compulsory purchase powers, enabling large landholdings to be broken up into smaller community-owned holdings, or managed sustainably to generate long-term value for the public exchequer.
- The forthcoming Land Reform Bill should include provisions to improve democratic governance of publicly owned land, such as establishing regional land boards with democratically elected members to oversee the management of public land.
- The forthcoming Land Reform Bill should provide a new statutory framework to modernise and 're-common' the governance of Common Good land, giving the residents of former burghs the right to exert control over Common Good assets.
- The Bill should also create powers to introduce compulsory sale orders in line with the proposals set out by the Scottish Land Commission.

Developing land in the public interest

The forthcoming Land Reform Bill should include the following provisions to replace the dominant speculative model of private development with a new model of public-interest led development:

- The 1963 Land Compensation Act should be amended to reinstate the ability of public authorities to purchase land at near use value, enabling public authorities to acquire low-cost land to deliver affordable housing and infrastructure.
- The Scottish Government should set out a framework for implementing the 'Infrastructure Levy' introduced in the Planning (Scotland) Act 2019 to enable public authorities to capture a proportion of land value uplift to fund public infrastructure.
- The Scottish Government should create a new Scottish Land Agency with the power to purchase, develop and sell land strategically in the public interest. The Agency would act as the 'prime mover' in the land market, working in partnership with key stakeholders to ensure that enough land is brought forward to deliver housing, infrastructure, new towns and regeneration projects.

Restoring nature for a just transition

- The Scottish Government should commission an independent review into the role of carbon credit markets in delivering Scotland's just transition to net zero. The review should consider the extent to which carbon offsetting is diverting capital away from investment in emissions reduction, and assess whether credits generated in Scotland are delivering carbon sequestration that is genuinely additional.
- The Scottish Government should undertake detailed analysis to evaluate the true scale of the natural finance gap in Scotland, and assess the costs and benefits of private-finance led models against an alternative public-led approach, funded by reforming taxation and subsidies.

Taxing land fairly and efficiently

- The Scottish Government should undertake a revaluation of residential property values for taxation purposes, replacing council tax with a progressive property tax – calculated as a flat rate percentage tax on property values.
- The Scottish Government should set an ambition to replace council tax with a 'green' Land Value Tax (LVT) over the medium-term, taking the necessary preparatory steps during this parliament.
- The Scottish Government should bring all land on the valuation roll, and end the universal non-domestic rates exemption for agricultural and wooded land.
- The existing suite of reliefs on non-domestic rates should be abolished and replaced by targeted reliefs and/or penalties that are conditional on whether employers meet fair work criteria, such as the existence of a collective bargaining arrangement, adherence to the real Living Wage and other criteria.
- As with residential property, non-domestic rates should be replaced with a LVT over the medium term, enabling some of the value associated with collective development and natural capital activities to be captured for public benefit.
- Further work should be undertaken to explore whether the principles of a Carbon Emissions Land Tax (CELT) could be incorporated into a LVT framework, whereby large-scale rural landholdings receive a discount on their LVT based on their estimated negative or positive carbon emissions.
- The rate of LBTT should be equalised with that paid on residential transactions, and a surcharge could be introduced on land holdings over a certain scale threshold, operating on a similar principle to the Additional Dwelling Supplement for residential transactions.

Enhancing market transparency

- The Scottish Government should provide additional resourcing to complete the Land Register by 2024, and begin collecting robust data on land values as soon as possible.
- The Scottish Government should fund and coordinate the enhancement of Scotland's Land Information Service (SCOTLIS). The platform should aim to provide an open access, one-stop digital portal for all information on land and property in Scotland, including ownership, value, use, energy efficiency, tax bands, and environmental data.
- The Scottish Government should explore new measures to prevent land sales from happening 'off market' under the guise of secrecy, such as requiring all land sales over a certain size to be subject to a process of public notification, or compelling all land sales over a certain size to be publicly advertised.

2. WHY DOES SCOTLAND NEED LAND REFORM?

In Scotland, the ownership, use and governance of land has evolved over time, and today is characterised by a number of distinct features that are closely intertwined with its history, politics, culture, and geography. This section aims to identify the key challenges that the forthcoming Land Reform Bill should seek to address. Some of these challenges are longstanding features of Scotland's land market, whereas others relate to new and emerging issues.

2.1 Concentrated pattern of land ownership

Despite the progress made by multiple waves of land-reform legislation, it has been estimated 67% of Scotland's private rural land is still owned by just 0.025% of the population.⁷ This archaic pattern of land ownership makes Scotland a significant outlier in the international context, and places considerable power in the hands of relatively few individuals. As land ownership is the most important determinant of land use, large-scale landowners have enormous influence over how Scotland's important natural asset is used. Such concentrated landed power is at odds with Scotland's ambition to be a modern, progressive democracy.

However, the problems associated with concentrated power in the land market are not limited to principled objections. There is also clear evidence that Scotland's pattern of land ownership is undermining the ability of rural communities to fulfil their economic potential. In 2019, the Scottish Land Commission published a report examining the issue associated with large scale and concentrated land ownership in Scotland.⁸ The report drew on the experience of more than 400 people who live and work in communities where most of the land is owned by a very small number of individuals or organisations. The report found that the concentration of power in Scotland's land market is an impediment to economic development, and causes significant and long-term harm to affected communities.

Examples of adverse effects associated with concentrated land ownership include an inadequate provision of affordable housing; limited opportunities for business expansion due to difficulties in securing suitable land/premises; an inability to secure work or contracts due to individuals or businesses being 'blacklisted' by a dominant landowner; and landowner resistance to projects that would deliver social, environmental, and economic benefits for the community.⁹

The Commission's research also drew parallels between concentrations of power in rural land markets and excess market power – or 'monopoly power' – in other areas of the economy.¹⁰ In many other sectors, when the supply of a good or service is controlled by a single entity, regulatory mechanisms are in place to protect consumers from excessive market power. For example, in sectors such as water, energy and rail, economic regulators set price controls in order to limit economic rents that arise from monopoly power, because it is recognised that these rents are both inefficient and unjust. These regulators also have the power to impose penalties and fines where companies fail to meet their regulatory duties. At the economy-wide level, the Competition and Markets Authority (CMA) exists to promote competition and to make sure markets work well for consumers, businesses and the economy.

In contrast, the concentration of power in land markets is largely unregulated, and at present the state has no mechanism to intervene to ensure that the land market functions effectively in the public interest. Just like energy and water, land is one of the most strategically important sectors of the economy, as all economic activity requires it to take place. As such, the prevalence of concentrated power in land markets represents a significant barrier to addressing Scotland's social, economic and environmental challenges. The introduction of new measures to diversify Scotland's highly concentrated pattern of land ownership should therefore be a priority for the forthcoming Land Reform Bill.

Of course, not all rural land in Scotland is privately owned. It is estimated that in 2019, 12.6% of all rural land is owned by public bodies, including Forestry and Land Scotland, Crown Estate Scotland, Scottish Water, and the Ministry of Defense.¹¹ However, public ownership does not necessarily translate into democratic accountability. In many cases, members of the public have very little influence and control over land held by public bodies, and publicly owned land is not always stewarded effectively or sustainably. There is therefore a need to enhance democratic governance of public land, which we explore further in section 3.2.

In addition, most assets in community ownership are land and buildings, which cover an area of 212,342 hectares, amounting to 2.7% of the total land area of Scotland.¹² This has been supported by the introduction of various land reform initiatives, including Community Right to Buy powers.¹³ By putting local communities in control of their future, community ownership has been successful at reversing decades of population decline and economic malaise in many areas. With all profits being reinvested back into the local community, community ownership also exhibits the strongest alignment with Community Wealth Building principles.¹⁴ As will be discussed further in section 3.2 however, scaling up community ownership has been held back by high land prices and a lack of funding.

Finally, some land in Scotland remains held in the form of Common Good property. This is property that was granted to, and acquired by, former burghs over time for public benefit. Common Good land was intended to provide the burgh with space to construct civic buildings and hold markets, as well as areas for recreation, the grazing of livestock, collection of fuelwood, and other activities.¹⁵ The income generated from Common Good assets is held in Common Good funds which are often distributed to local causes or used to fund local events. As will be discussed further in section 3.2 however, in recent decades the status of Common Good property has been degraded, and many Common Good assets have been lost.

2.2 Lack of regulatory oversight

Inherently linked to Scotland's concentrated pattern of land ownership is the lack of regulatory oversight. Scotland's rural land market remains largely unregulated, meaning that anyone in the world can buy large amounts of land with relatively little scrutiny. As a recent report by the estate agent Savills comparing rural land markets around the world noted: "The UK has no restrictions on inward investment and is among the few developed markets not to have some form of government involvement when buying."¹⁶

This lack of regulation has meant that owning land in Scotland has long been viewed as an attractive means for wealthy individuals and companies to store wealth in a tax-efficient way. It has also meant that large areas of Scotland's land are used to serve elite sporting interests, such as grouse shooting and deer-stalking. However, in recent years Scotland – with its large rural land mass, concentrated pattern of land ownership, lightly regulated land market, and favourable tax and subsidy regime – has also become one of the most attractive destinations for investors seeking to purchase land for carbon offsetting and natural capital purposes. This new wave of 'green landowners' includes a variety of investors, including corporations seeking to 'inset' their own emissions; asset managers seeking to add natural capital investments to their investment portfolios; charities and NGOs seeking to advance their philanthropic mission; and wealthy individuals aiming to advance their own business or environmental goals.¹⁷

As will be discussed further in section 2.4, this rising demand – together with high timber prices and subdued levels of supply – has put significant upwards pressure on prices for all types of rural land. In 2021 a record £247m was invested in the purchase of Scottish estates. This was up by 119% from £113m in 2020, which was also a record high, and a 333% increase over the four-year period from 2018 when £57m was invested. The average price of estates increased by 87% – from £4.7m to £8.8m, while the total number of estates sold increased by just 14%.¹⁸ Rural land prices in Scotland increased again in 2022, and are expected to continue rising in 2023.¹⁹

Notably, a growing proportion of these transactions have been 'off-market' sales, meaning they are completed in secret without ever coming to the open market. According to the Scottish Land Commission, 45% of estates were marketed and 33% of sales were completed 'off-market' in 2020, and this increased to a record 64% in 2021.²⁰ Off-market transactions "remained an important feature of the Scottish rural land market" in 2022, however a report published by the Scottish Land Commission was unable to say definitively whether they had increased from the record-high figure in 2021.²¹

As these sales are not publicly advertised and tend to be shrouded in secrecy, they effectively lock out community participation. The Scottish Land Commission has noted that some estate owners prefer to sell privately to "minimise perceived interference from any Community Right to Buy option."²² The Commission has also highlighted growing demand from corporate and institutional investors who view land simply as an effective store of wealth and hedge against inflation.²³

It is clear that much of this recent market activity runs contrary to the Scottish Government's aim to deliver a just transition, scale up Community Wealth Building, and create a wellbeing economy. But without necessary legal restrictions on who can own land, or how much they can own, policymakers are unable to act to ensure

that the way that land is bought and sold serves the public interest. This places Scotland as an extreme outlier internationally, as such restrictions are commonplace elsewhere in the world.²⁴ Introducing new rules stipulating who can buy land in Scotland should therefore be a key priority for the forthcoming Land Reform Bill.

2.3 Housing supply and affordability

The roots of Scotland's housing crises are complex and multifaceted, but it is clear that a dysfunctional land market has played a significant role. To understand why this is the case, it is important to learn from Scotland's own history. Throughout much of the twentieth century the state played an active role in housing supply through large scale house building programmes. This proved to be an effective means of keeping supply up and house prices under control. However, in the late 1970s the state began to withdraw from housing supply, and councils were forced to sell their housing stock under the government's 'Right to Buy' policy, and prevented from building more.²⁵ Rent controls were abolished in 1988 and the private rental market was deregulated, opening the door to a 'Buy-to-Let' frenzy.

In recent years there have been areas of meaningful progress on affordable homes in Scotland, like the abolishment of 'Right to Buy' in 2016 and the delivery of nearly 10,000 affordable homes in 2021-22.^{26 27} Despite this, across both urban and rural Scotland, there remains an acute lack of affordable housing. In the 1960s, households in all tenures typically spent less than 10% of their income on housing costs.²⁸ In recent years however, people living in the private rented sector have spent the highest proportion of their income on housing of all the tenures. Between 2017-20, private rented sector households in the lowest income quintile paid an average of almost half of their household income on housing costs.²⁹ Despite the introduction of a rent cap limiting rent increases to 3%, private rents in Scotland have continued to soar.³⁰ There are nearly 250,000 people on the waiting lists for social housing, but only 26,000 households were allocated one in 2022.³¹ As well as eroding living standards and exacerbating inequality, Scotland's housing affordability crisis also has an enormous public cost; directly through housing benefit and discretionary housing payments; and indirectly through the costs associated with homelessness.

Despite widespread consensus that more homes need to be built, the rate of new house building has never returned to the levels witnessed before the 1980s, when the state played a more proactive role. Often this is attributed to shortcomings in the planning system. While ongoing reform of the planning system is necessary, the focus on planning tends to overlook other more significant factors that constrain housebuilding. The first of these relates to laws on land acquisition and compensation, and the second relates to the dominant market-led development model.

Land acquisition and compensation

In urban environments, the value of a piece of land depends on what can legally be built on it, and the infrastructure and amenities in the surrounding area. Sites with good transport links, located close to schools, shops and other amenities tend to be more valuable than sites without such advantages. The granting of planning permission also typically brings about a large increase in the value of the land, as does public and private investment in new transport links and other infrastructure. Capturing this large increase is often referred to as "planning gain" or "betterment". The question of who captures the benefit from rising land values, and how this is used, has been at the centre of land reform debate for centuries. As rising land values are generally created by collective rather than individual investment and activity, there is a strong moral argument that this value should be captured to benefit society as a whole.³²

In many countries, the planning system or compulsory purchase laws enable the uplift generated by planning and collective development to be captured by the state. This was also historically the case in Scotland. Key to the success of large-scale public house building programmes during the postwar era was the ability of public authorities to purchase land at low cost, bring sufficient land forward for development, and utilise land value capture for public benefit. This system was perhaps most successfully used to develop the New Towns programme.

For each of Scotland's five New Towns, a public development corporation was established which purchased land compulsorily at agricultural prices, drew up a comprehensive masterplan for the town, and then built the necessary infrastructure using money borrowed from the Treasury. They granted planning permission on the sites they owned and sold them to private house builders, using the uplift in the value of the land

to repay the loans.³³ Other sites were sold to local authorities for council housing and community facilities. This meant that the development corporations were largely self-financing, thanks to their ability to borrow cheaply and to capture the uplift in land value they created.

However, the 1959 Town and Country Planning (Scotland) Act reinstated the principle that landowners are entitled to ‘hope value’ on any land compulsorily purchased. In practice, this means that where public authorities wish to purchase land for development, landowners are compensated not on the basis of what the land is actually worth at the time, but on the basis of what it one day might be worth if it ever got residential planning permission. Because the difference between existing use value and hope value is usually dramatic, these changes significantly increased the cost of land for development, and ended the ability of public authorities to deliver cheap land for new housing. In other words: the changes meant that the benefits from rising land values would flow to landowners rather than the general public. Because land acquisition is usually the largest single cost associated with housebuilding, the requirement to compensate landowners with ‘hope value’ created a significant obstacle to building large-scale affordable house building.

Today planning authorities are able to capture a small amount of the uplift through negotiated legal agreements called Section 75 (S75) agreements. S75 agreements place obligations on developers to ensure that part of the planning gain goes towards benefiting local communities, for example through affordable housing or leisure facilities. S75 contributions are negotiated on a case by case basis, and are often reduced or removed due to ‘viability’ concerns on the behalf of the developer. Where Section 75 contributions are negotiated, the value tends to be relatively small compared with the total land value uplift.^{34 35}

Speculative model of development

Ever since the state began to retreat from large-scale house building in the late 1970s, Scotland has been heavily reliant on private developers to meet housing needs. These developers typically operate a speculative, or ‘current trader’, model of housebuilding, which is a cyclical process of raising finance, buying land, securing planning permission, constructing the homes and finally selling them. Several important features of Scotland’s housing system are the product of this model.

Because development is risky, uncertain and requires a lot of capital, developers prioritise strategies that can reduce their risk, such as buying land allocated for housing by the planning system, holding strategic land banks, and seeking to dominate localised new-build markets to reduce competition. As such, developers’ financial success often lies in their ability to successfully navigate the speculative land market, rather in their ability to build high-quality homes. Moreover, as the duty of these companies is to maximise profits to their shareholders, they prioritise markets that provide the biggest and most certain return. This often means focusing on developing larger, detached houses in high value areas (i.e. cities and growth areas) – while neglecting rural and regeneration areas, as well as homes aimed at younger and older people. As the Scottish Land Commission has highlighted, the profit motive also tends to focus effort and investment on those aspects of housing delivery that create private rather than social value, such as luxury interiors rather than greenspace and good transport links.³⁶

In addition, this profit-driven business model makes it inherently difficult for developers to deliver a step change in the number of homes being built. Once land has been secured, developers cannot risk undermining prices in a local market by releasing too many homes at once. To do so would risk lowering the value of the land that the developer has already invested in, and therefore erode the developer’s profit. As such, this business model incentivises the ‘drip feeding’ of new homes onto the market at a slow pace. Housing supply is determined not by housing need, but by the ‘market absorption rate’ – the rate at which newly constructed homes can be sold into the local market without materially disturbing local house prices. As a report commissioned by the Scottish Land Commission notes:³⁷

“commercial housebuilders are set up in a way that preserves rather than reduces house prices and hence affordability. The prevalent (speculative) housebuilding model seems unlikely to deliver a step-change improvement in housing affordability.”

As such, it is clear that the current approach to development, whereby land for development is managed by private developers, is unable to deliver the affordable housing and placemaking needed. As such, reforming the way that land is managed for housing supply should be a key priority for the forthcoming Land Reform Bill.

2.4 Climate and nature targets

The Scottish Government has committed to becoming net zero by 2045 – five years ahead of the UK Government. It also aims to reduce emissions by 75 percent by 2030. Transforming the way that land is owned, managed and used will be critical to achieving this goal.

In 2020, the Scottish Government updated its Climate Change Plan in response to the climate emergency, with targets for land use featuring heavily in the revised plan. The government has now committed to increasing woodland creation to 18,000 hectares in 2024/25, with the aim of “ensuring that forestry and woodlands play an important role in cutting emissions and sequestering carbon.”³⁸ In 2021/22 however, 10,480 hectares of new woodland were created in Scotland – 3,000 hectares less than targeted for the year.³⁹

The restoration of Scotland’s peatlands, which constitute over 20% of the country’s land cover, can also play an important role in meeting Scotland’s net zero targets. In 2020 the Scottish Government set a goal of restoring 250,000 hectares of degraded peat by 2030, with an annual target of 20,000 hectares.⁴⁰ To date, however, progress on peatland restoration has fallen behind targets. Over the past three years, only around 6,000 hectares of degraded peatland were restored annually – falling short of the 20,000 hectare target.^{41 42}

Meeting Scotland’s climate targets will therefore require steps to scale up woodland creation and peatland restoration in the coming years. Delivered effectively, this also has the potential to create well-paid, green jobs in rural communities. However, a key question relates to how nature restoration is delivered and funded.

At present, the Scottish Government covers a majority of the up-front costs of tree planting and peatland restoration through the Forestry Grant Scheme and Peatland Action Fund. Land managers are then able to monetise carbon sequestered by generating carbon credits, which can be sold on carbon markets or used to offset the landowners own emissions. While voluntary carbon markets have existed for many years, the accelerated drive towards net zero has generated a boom in voluntary carbon markets in recent years. As discussed in section 2.2, in recent years Scotland has become one of the most attractive destinations for investors seeking to purchase land for carbon offsetting capital purposes.⁴³ This, combined with buoyant timber prices, has led to soaring investor demand for rural land. The rise of carbon offsetting reflects the broader growth of the ‘natural capital’ agenda, both in Scotland and across the world. This approach involves monetising natural capital ‘assets’ such as forests in order to attract private finance into nature restoration. In doing so, the approach turns nature into an investable asset class for private institutional investors.⁴⁴

The phenomenon of large investors purchasing land in Scotland is not new. But the rise of carbon offsetting poses a number of challenges to a just transition. Firstly, growing interest from corporate and institutional buyers risks exacerbating Scotland’s highly concentrated pattern of land ownership. As land prices continue to rise, there is a risk that local individuals and communities will be increasingly priced out of the market. Such an outcome is clearly at odds with the Scottish Government’s objectives around just transition, land reform and Community Wealth Building. In addition, many investors acquiring land for carbon offsetting purposes plant non-native tree species such as Sitka spruce. While this species is effective at carbon sequestration, some environmental campaigners have argued the large-scale planting of non-native species harms native trees and risks aggravating a biodiversity crisis.⁴⁵

There is also a risk that governments and companies turn to carbon offsetting as an alternative to the more urgent task of reducing direct emissions. By enabling polluters to offset some emissions while continuing to profit from carbon intensive activities, critics have labelled the growth of offsetting by large polluters as little more than an exercise in ‘greenwashing’.^{46 47} The oil and gas sector, for example, is expected to invest heavily in carbon offsetting over the coming years, and the sale of carbon offsets to third parties could potentially generate a viable revenue stream for heavily polluting firms. As will be discussed further in section 3.4, instead of accelerating Scotland’s transition to net zero, there is evidence that the current voluntary approach to carbon markets is undermining it.

In response to these developments, in 2022 the Scottish Government published its Interim Principles for Responsible Investment in Natural Capital, which committed to a “values-led, high integrity market for responsible private investment in natural capital”.⁴⁸ In doing so, the Scottish Government hopes to achieve Scotland’s nature restoration targets by attracting responsive private finance into the sector. In March 2023 Scotland’s nature agency, NatureScot, announced a new private finance pilot that aims to ‘unlock’ £2 billion of investment to restore native woodland and sequester carbon from the atmosphere, which we discuss further in section 3.4.

The primary rationale for relying on private finance is that Scotland faces a significant ‘nature finance gap’, which has been estimated to be as large as £20bn.⁴⁹ With this figure amounting to around a third of the Scottish Government’s annual budget, closing the gap with public funds alone would be highly challenging. However, analysis published by Community Land Scotland and The Forest Policy Group has identified significant problems with the calculation of the £20bn figure, and it appears to be a significant overestimate.⁵⁰ ⁵¹ While the exact ‘finance gap’ remains unknown, other estimates suggest it could be much smaller, at around £118 per year, which amounts to around 0.2% of the Scottish Government’s annual budget. ⁵²

Given the considerable uncertainty around the size of the finance gap, it remains unclear whether this private finance-led approach is the optimal approach. It is also unclear how the private financing of nature restoration aligns with the principles of a just transition. While the costs associated with woodland creation and peatland restoration are covered by public grants, the financial rewards from nature restoration are captured exclusively by landowners and investors. Meanwhile, few benefits flow to local communities, who may also be negatively impacted by rising land values and a more concentrated land market.⁵³ On current trajectories, there is therefore a risk that the private finance-led approach to natural capital will exacerbate inequalities. Such an outcome would appear to be at odds with the goals of delivering a just transition to net zero. As the Just Transition Commission recently noted:⁵⁴

“Part of ensuring a just transition must be about making sure the benefits of investment in carbon sequestration are felt as widely as possible. Without careful design and meaningful engagement there is a risk that benefits may flow mainly to large landowners and opportunities for community benefit will be missed.”

The emerging value associated with Scotland’s natural capital potential also raises vital questions about how Scotland’s natural assets should be owned and managed; how nature restoration activities should be financed; and how the associated economic benefits should be distributed. This should be a key priority for the forthcoming Land Reform Bill, and we discuss this further in section 3.4.

2.5 Macroeconomic impact and inequality

Across the UK, the land market has become increasingly important in determining the distribution of income and wealth in recent decades. Since 1980, house prices in Scotland have soared by 1,125% - far outstripping growth in incomes. Importantly however, it is not the bricks and mortar that have soared in value over time, but the land that sits underneath them. Across the UK, the market value of land has more than quadrupled between 1995 and 2020 – rising from £1 trillion over £6.3 trillion.⁵⁷ Rising land values have accounted for around two thirds of all net wealth accumulated since 1995.

However, because land is fixed in supply and has no cost of production, economists have long considered returns earned from the ownership of land to be economic rents.⁵⁸ Economic rents are returns generated from owning scarce assets that come not from creating new wealth – but extracting wealth from others in the economy. As the economy grows over time, landowners are able to extract higher rents from households and businesses, despite not contributing productivity to the economy. As such, so-called ‘rentiers’ get wealthier not by creating new wealth, but by making others poorer.

When the value of land under a house goes up, the total productive capacity of the economy is unchanged or diminished because nothing new has been produced: it merely constitutes an increase in the price of the asset. For those who own property, rising land values increase individual net wealth. However, this also has a corresponding cost that is borne by those who do not own property, who face higher rents and property prices. As a result, much of the wealth accumulated through the land and property market in recent decades has come at the expense of those who do not own property.⁵⁹ ⁶⁰ While the main beneficiaries of this have been the older generations, eventually this will be passed on to the next generation via inheritance or transfer. The ultimate result is not just a growing intergenerational divide, but an entrenched class divide between those who own property (or have a claim to it), and those who do not.

Not only is Scotland’s current land market not particularly fair, it is also not particularly efficient. The ability to extract economic rents by investing in existing land and property assets diverts investment from more productive areas, harming productivity growth and output. In recent decades banks have shifted from mainly lending to businesses for productive investment, to primarily lending to finance residential property.⁶¹ New mortgage loans collateralised against property have become the main source of the money supply, and bank balance sheets are largely secured against UK land values.⁶² Across the UK, it is estimated that less than 10% of bank lending flows to productive non-financial businesses, and only between 2% and 5%

flows to small and medium enterprises (SMEs).⁶³ Today real estate functions as the prime asset class in the international financial system, and a powerful feedback loop has been established between mortgage lending, house prices and ever increasing levels of household debt.⁶⁴

Consequently, in recent decades the UK's economic performance has become closely intertwined with the land market. Household consumption – the main contributor to economic growth in the UK – has become increasingly linked to the interaction between housing wealth and credit.⁶⁵ Consumers spend more when house prices rise, and spend less when house prices fall. In turn, this means that volatility in house prices is transmitted into volatility in the wider economy.⁶⁶ As such, most major boom bust cycles in the UK and abroad over the past 30 years have been associated with instability in the housing market. An economic model based upon increasing asset-based wealth as a means of stimulating consumption is highly inefficient, and prone to instability.⁶⁷ Large increases in house prices are required to generate small increases in consumption, and this inevitably leads to rising levels of household debt. Eventually rising household debt weighs down on consumption, and can lead to increased financial fragility – particularly if interest rates rise.

Over the past two years, the Bank of England has increased interest rates sharply, rising from 0.1% in December 2021 to 5.25% today.⁶⁸ This, combined with the unwinding of quantitative easing (QE), has triggered a significant slowdown of housing market activity.⁶⁹ After more than a decade of rising house prices, house prices have started to fall across Scotland in recent months – and are expected to fall further in the months ahead.⁷⁰ The Financial Conduct Authority has warned that more than three quarters of a million UK households are at risk of defaulting on their mortgage payments in the next two years.⁷¹ As well as causing tremendous hardship for households, large numbers of mortgage defaults also has the potential to destabilise the banking system. With house prices expected to fall further over the coming months, Scotland's economy is once again at risk of suffering another economic downturn fueled by a heavily financialised land and property market.

As such, land reform is not just about tackling Scotland's archaic patterns of land ownership and governance. Scotland's heavily financialised land market is fuelling inequality, stifling productivity and generating financial instability. Land reform is therefore needed to help move towards a more equal, stable and productive economic model, and addressing these issues should be a key priority for the forthcoming Land Reform Bill.

2.6 Regressive and inefficient taxation

A well-designed tax system can incentivise the efficient use of land, regulate the distribution of income and wealth, and generate revenue for public spending. However, at present the overall approach to taxation of land in Scotland does the opposite – it incentivises the inefficient use of land, exacerbates inequalities, and foregoes opportunities for raising public revenue. As a result, a poorly designed tax system contributes to many of the perverse outcomes in the land market.

While taxes based on land and property continue to form an important part of the tax base, a number of changes over the past half-century have led to both urban and rural land being treated favourably relative to other goods and services.

Taxation of housing

In thinking about the taxation of housing, it is important to recognise that housing has two attributes that are relevant for tax design:⁷²

1. Housing is a consumption good that provides a flow of services to occupants; and
2. Housing provides an asset for homeowners, the value of which can go up or down.

On both of these attributes, housing is treated favourably relative to other goods and services. Historically, housing consumption was taxed via the 'Schedule A' income tax – a tax on imputed rental income – however this was abolished in 1963. While imputed rent from owner-occupancy is no longer subject to taxation, landlords' rental income is still subject to income tax. The tax-exempt status of imputed rental income makes it more attractive to receive income in this form than in other forms, which has the effect of distorting investment decisions, attracting more capital into the housing market.⁷³

Today the council tax operates as a recurring tax on property, however it is a highly ineffective property tax since the tax is based on what the estimated value of the property was on 1 April 1991 and therefore bears little resemblance to current market values. Changes in property values have varied significantly between different

regions since council tax was introduced, yet the tax rate has not changed to reflect this. This means properties are in increasingly arbitrary tax bands that may bear little relation to current reality. In addition, the tax is payable by those who occupy properties rather than own them, meaning that it is paid by renters as well as owner occupiers. Council tax has also long been known to be a highly regressive and inefficient tax, but despite repeated pledges to abolish it, it has been retained.⁷⁴ In October 2023 the First Minister announced that council tax will be frozen in the next financial year, purportedly to bring “much needed financial relief to those households who are struggling in the face of rising prices.”⁷⁵ However, the freezing of council tax will benefit higher income households more than lower income ones, and will do little to help those on the lowest incomes, many of whom do not pay any council tax.⁷⁶

The taxation of housing as an asset is also treated favourably compared to other assets. When capital gains tax was introduced in 1965, an exemption was made for primary residencies.⁷⁷ This tax exemption means that, relative to people who choose to invest in other assets, those who treat their home as an investment will benefit when selling that home. This is particularly relevant in Scotland where real house prices have risen considerably, with owners enjoying windfall gains that have gone untaxed. As such, the favourable tax treatment of housing has contributed to growing demand for housing as a financial asset.

Changes to inheritance tax in recent years have further enhanced the tax treatment of housing compared with other assets. In the 2015 summer budget the Chancellor of the Exchequer announced a new transferable main residence allowance that effectively raises the tax-free allowance from £325,000 to £500,000 per person for estates that include a house, and to £1 million for married couples.⁷⁸

Finally, when tax on property transactions was devolved to Scotland in 2015, the Scottish Government introduced new land and buildings transaction tax (LBTT) to replace Stamp Duty Land Tax (SDLT). Today residential LBTT is more progressive in Scotland than SDLT in England and Northern Ireland. In January 2019, the Scottish Government increased the additional dwelling supplement, which must be paid if the buyer already has another residential property (e.g. on second or rental homes), from 3% to 4% – a move which is estimated to raise around £25 million a year.⁷⁹

Overall however, it is clear that the taxation of housing continues to be unfair and inefficient – creating a bias towards property over other types of assets. This in turn has been a significant contributing factor to soaring house prices in recent decades, which has contributed to growing inequalities between those who own property, and those who do not.⁸⁰ Given that housing is the most valuable source of wealth in Scotland, the fact that it is taxed so ineffectively means that wealth in Scotland remains significantly undertaxed.

Rural and non-domestic land

Non-domestic rates are the primary recurring tax on non-residential property in Scotland, and are levied on the basis of rateable value. However, there are a number of reliefs on non-domestic rates that have been implemented and retained over many years. In 2023-24, non-domestic rates reliefs are expected to cost local authorities £693 million, with Scottish Fiscal Commission forecasts estimating that this will rise over the remainder of the Parliament. The biggest among these is the Small Business Bonus Scheme (SBBS), which offers tax relief to businesses in Scotland under a certain size. In total, these reliefs typically account for just over a fifth of the gross amount payable through non-domestic rates to local authorities.⁸¹ As such, these reliefs represent a significant loss of tax revenue for local councils. Significantly however, there are no conditionalities attached to these reliefs regarding businesses’ environmental or social practice. It is therefore unclear that these reliefs are either efficient, represent value for money, or serve a clear public purpose.

Another significant exemption relates to the exemption of agricultural and wooded land, which accounts for over 90% of the land area of Scotland, from non-domestic rates. The universal exemption of agricultural and wooded land represents a major distortion in the land market, and serves little purpose other than to benefit landowners. As the Land Reform Review Group noted: “there is no clear public interest case in maintaining the current universal exemption of agriculture, forestry and other land based businesses from non-domestic rates.”⁸²

Rural landowners also benefit from a number of tax exemptions which privileges land relative to other assets. This includes a number of exemptions to Inheritance Tax, including Agricultural Property Relief (APR) and 100% Business Property Relief (BPR) for commercial forestry. Land used for commercial forestry benefits from no income tax payable when selling the timber, and no capital gains tax on the increase in value of the trees.⁸³

In addition, under the current taxation system in Scotland there are no taxes which discourage passive landowners from retaining vacant or derelict land. This has meant that, in an environment of rapidly rising land values, it can be profitable to acquire land and hold onto it rather than develop it. A final tax benefit for rural land relates to LBTT. Although LBTT is applied to agricultural and forestry land, it is applied at a lower rate than residential property.

Overall it is clear that the taxation of land and property in Scotland is inefficient, and is in many cases regressive and arbitrary. As such, there is significant scope to reform the tax system in Scotland to incentivise a more efficient use of land and ensure an appropriate balance between public and private interests.

2.7 Lack of information and transparency

In recent years the Scottish Government has made a series of steps towards a more transparent approach to land ownership, notably by making provision for a Register of Controlling Interests in the Land Reform (Scotland) Act 2016.⁸⁴ Despite this, access to land ownership information in Scotland remains fragmented, and lacks a comprehensive framework detailing the principles of provision of land information.

In 2014, Scottish Ministers set a target of completing the Land Register by 2024. As of December 2022 however, only 1.89 million titles - an estimated address coverage of 87% of titles that “regularly transact” - were recorded in the Land Register.⁸⁵ However, this excludes land and property that “rarely sells or may never sell”, including some large land and estates. Including these titles, the total number of addresses is estimated to be “just short of 3 million”, indicating that the coverage of the Land Register is closer to 65% – covering only around 51% of Scotland’s land mass.^{86 87} The majority of the remainder of titles are held in the General Register of Sasines, a deeds-based register established in 1617. Although some limited progress has been made through the Registers of Scotland’s ‘Unlocking Sasines’ initiative, information on land ownership remains incomplete, fragmented and held in different formats in different databases.⁸⁸

Significantly, information on land ownership is not freely available to the public. In order to access information on land ownership in the Land Register, users must pay £3 + VAT to purchase a title sheet. To access information on land ownership in the Sasines, users must pay £30 + VAT per property. With 1.89 million titles in the Land Registry, and around 1 million titles in the Sasines, an individual would have to pay millions of pounds to identify who owns all the land in Scotland. The financial barrier to information undermines market transparency and stifles community participation. The need for greater transparency in the land market is acknowledged in Principle 5 of the Scottish Government’s Land Rights and Responsibilities Statement:⁸⁹

“There should be improved transparency of information about the ownership, use and management of land, and this should be publicly available, clear and contain relevant detail.”

There also remains a near total absence of publicly available data on land values – both in aggregate and at a granular level across Scotland. Despite a plethora of generalised indices of house prices, the only official index of land prices compiled and maintained by the Valuation Office Agency was discontinued in 2011.⁹⁰ The land market is one of the most important and consequential markets in Scotland’s economy. As well as playing a key macroeconomic role, understanding the land market is crucial for assessing important policy questions, from the efficiency of tax reform to the economics of housing development. This paucity of market information on land values creates significant inefficiencies and restricts the ability of policymakers, market participants and researchers to undertake informed analysis about the land market and its wider economic significance.

3. LAND REFORM FOR A DEMOCRATIC, SUSTAINABLE AND JUST SCOTLAND

The previous section identified why undertaking further land reform should be a key priority for the Scottish Government. On issues such as concentration of land ownership, the absence of regulatory oversight, and the lack of transparency, Scotland remains a significant outlier in an international context. An archaic and dysfunctional land market also lies at the root of many of Scotland's most pressing challenges – including the housing crisis, rising inequality, low productivity and climate breakdown. Changing the way that land is owned and governed is essential if we are to create a more democratic, sustainable and just economy.

The Scottish Government has pledged to bring forward a new Land Reform Bill during this parliament, and consulted on proposals in 2022.⁹¹ The new Bill presents an opportunity to address these issues, and bring Scotland's land market into the 21st century. It is crucial that this opportunity is not missed.

In this section we outline the details of a bold land reform agenda to be taken forward during the present parliamentary term. Our aim is to set out ambitious but credible proposals that can all be implemented by the Scottish Government using existing devolved powers. Importantly, this paper does not attempt to set out an all encompassing agenda for land reform. There are important areas that we do not cover, including in relation to agriculture, crofting, and foreshore and seabed rights.

3.1 Transforming land market governance

A key problem that this paper has highlighted is that Scotland's rural land market remains largely unregulated, meaning that anyone in the world can buy land with little scrutiny. This places Scotland as an outlier internationally. As discussed in section 2.2, in most countries there are regulations and laws that govern who can purchase land, and for what purpose. In this section we set out a series of recommendations to transform how land is governed in Scotland.

Public interest test

In its Land Reform Bill consultation paper, the Scottish Government proposed to address this by a Public Interest Test (PIT) for large-scale land transfers, building on the recommendation of the Scottish Land Commission.⁹²

Under this proposal, a PIT would be applied to any changes in land ownership over a certain size threshold. The test would be applied at the point of sale or transfer, and would be applied to both the buyer and seller of the land. The definition of 'large-scale' proposed by the Scottish Government is as follows:

- A fixed threshold of 3,000 hectares
 - Land that accounts for more than a fixed percentage of a data zone (or adjacent data zones) or local authority ward(s) designated as an Accessible Rural Area or Remote Rural Area
 - Land that accounts for more than a specified minimum proportion of a permanently inhabited island
- Meeting one or more of these criteria would mean that a landholding would be considered 'large-scale'

We consider that the introduction of a PIT is a crucial step in modernising Scotland's land market. Importantly, the test should apply to all transfers, including (but not limited to) open and private market sales, inheritance, the sale of shares in a controlling company culminating in a shift of the majority shareholder or controlling interest, the creation of an open agreement over land and a change in trusteeship.⁹³

However, the proposals set out by the Scottish Government can be strengthened in a number of ways. Firstly, we consider that the 3,000 hectare threshold for ownership transfers is too large to have a transformative impact on Scotland's land market. The Scottish Government acknowledges that only 0.02% of the titles in the Land Register of Scotland have a total land area of over 3,000 hectares, equating to 20.2%

of Scotland's total land mass.⁹⁴ However, as the Land Register only contains title information on some of Scotland's total land mass, the true figure could be less than this. As such, we recommend that the threshold for applying a PIT at the point of sale or transfer is reduced to 500 hectares. This threshold would not affect any domestic households, crofters or the average scale landowner. It would also not affect the vast majority of agricultural holdings. According to Scottish Government figures, only 3.6% of agricultural landholdings exceed 500 hectares, and these holdings would only be subject to the test at the point of sale or transfer.⁹⁵

As most land rarely comes onto the market, many of the largest landholdings in Scotland will not be impacted by the test. As such, while applying a PIT at the point of transfer may prevent further concentration of land ownership, it is unlikely to address many of the problems associated with Scotland's land market in the near future. In addition, if tests can only be applied at the point of sale there is a risk that large landowners will be hesitant to bring land onto the market to avoid being subject to the test, which could reduce supply and put further upwards pressure on prices and exacerbate the problems highlighted in this paper.

As such, we recommend that the Scottish Ministers should also be granted discretionary powers to apply a PIT to existing land holdings (of any size). This power would be exercised in exceptional cases where compelling evidence is presented that a landholding is being managed in a way that is detrimental to economic, social and environmental wellbeing. The decision on whether to subject an existing landholding to a PIT could be informed by evidence submitted by local communities, third sector organisations, public bodies and elected representatives. The evidence threshold for applying a PIT should be very high, and tests should only be applied following careful scrutiny and consultation. However, the benefit of such a power is not limited to its application: the very existence of a power to apply a PIT on existing land can help shift incentives, and encourage landowners to ensure they are managing land in the public interest.

Following the application of a PIT to a land transfer or existing landholding, there would be a range of possible outcomes. If a landholding subjected to the test fails, the next step would be to explore whether conditions could be attached or modifications made to the holding that would enable it to pass. Examples of conditions that could be attached include, for example:

- Requirements for to change the governance structure, for example to ensure accountability or to enter shared governance arrangements
- Requirements for specific management/operational practices – including environmental practices such as as restoring degraded peatlands;
- A requirement to sell on part of the newly acquired landholding, or existing holding

If a satisfactory agreement cannot be reached, the public authority would have the power to intervene to terminate the landholding. In the case of new acquisitions, this would mean being granted the power to prohibit the acquisition from taking place. In the case of existing land holders, we recommend that local authorities should be granted powers to issue a compulsory sale order (CSO) to require the sale of part or all of such land holdings – including by lot – as a last resort where public interest risks associated with large holdings fail to be mitigated. Our recommendations on CSOs are discussed further in section 3.2.

We recommend that the Scottish Land Commission is tasked with creating a model for public interest test criteria and governance, with meaningful engagement from land, community and climate rights organisations and movements. Alongside assessing key standards related to scale and concentration, as well as alignment with the existing Scottish Land Rights and Responsibilities Statement, we recommend that the criteria used in the PIT be guided by the principles of Community Wealth Building. This could include, for example, the extent to which the ownership and management of land promotes collaborative decision making, commits to a fair work agenda, and supports local economic multipliers. The renewed expectations on landowners can be codified in a revised Land Rights and Responsibilities Statement.

While concerns have been raised over whether the introduction of a PIT would violate property rights as enshrined in human rights legislation, a number of recent studies published by the Scottish Land Commission and Scottish Government suggests this is not the case.^{96 97} Similar mechanisms already exist in other countries and cases of international best practices in developing a values-led approach should be used to support the creation of public interest tests in Scotland.⁹⁸

Limits on ownership

As outlined in section 2.2, Scotland's land market is unusual in that anyone in the world is able to acquire large amounts of rural land in Scotland relatively quickly, with few questions asked. This has left large swathes of Scotland owned by absentee individuals and legal entities based overseas, sometimes to the detriment of local communities. This proliferation of absentee land ownership also poses challenges for the Scottish Government's ambitions to scale up Community Wealth Building, which seeks to ensure that more wealth is retained and recirculated locally.

In 2014, the Land Reform Review Group recommended that it should be incompetent for any legal entity not registered in a member state of the European Union (EU) to register title to land in the Land Register of Scotland, to improve traceability and accountability in the public interest.⁹⁹ The Scottish Government consulted on this proposal, however, it was not included in the Land Reform (Scotland) Act 2016. The Scottish Government's consultation on the Land Reform Bill sought views on requiring those seeking to acquire large-scale landholdings in Scotland to be registered in an EU member state or in the UK for tax purposes.¹⁰⁰

We consider it vitally important that the Land Reform Bill introduces new limits on who can register a title to own land in Scotland. Following the UK's departure from the EU however, we recommend that registering a title to own land in Scotland should be limited to those registered in Scotland or the UK for tax purposes. As well as addressing absenteeism and supporting Community Wealth Building principles, this would also ensure that tax revenue benefits stay in the UK. In addition, we recommend that this requirement applies to all landholdings, not just large-scale landholdings. Applying this requirement only to the Scottish Government's definition of 'large-scale landholdings' is arbitrary, and could lead to perverse incentives.

3.2 Diversifying land ownership

Scaling up community ownership

Community ownership has grown significantly in Scotland in recent decades, and has played a crucial role helping to diversify patterns of land ownership in Scotland. In 2003 the passing of the Land Reform (Scotland) Act introduced Community Right to Buy, which empowered rural communities with the right to register an interest in land and obtain first refusal when the landowner wishes to sell. It also introduced the Crofting Community Right to Buy, which granted crofting communities the right to acquire and control the croft land where they live and work without consent of the landowner.

The Community Empowerment (Scotland) Act 2015 further enhanced Community Right to Buy powers by introducing new rights in relation to a 'Community Right to Buy Abandoned, Neglected or Detrimental Land'. Finally, the Land Reform (Scotland) Act 2016 extended this further by introducing a Community Right to Buy land for the purpose of furthering sustainable development. Significantly, this enabled communities to acquire land for sustainable development compulsorily, without a willing seller, as long as certain criteria were met.

In recent years many community owned initiatives have pioneered a holistic approach to climate action which aims to optimise social, economic and environmental outcomes in the local community.¹⁰¹ By focusing on delivering sustainable development in the local area and reinvesting all profits back into the local community, community ownership can generate a virtuous cycle which can be harnessed to support new local job creation.¹⁰² As such, among different land ownership models, community ownership exhibits the strongest alignment with Community Wealth Building and just transition principles.¹⁰³

In 2022, there were 754 assets in community ownership in Scotland - an increase of 2% compared to 2021. Most assets in community ownership are land and buildings, which cover an area of 212,342 hectares. Despite progress under land reform measures, this amounts to 2.7% of the total land area of Scotland.¹⁰⁴ One reason for this has been inaccessible rural land prices. When community buy-outs take place, landowners must be remunerated at market value. As rural land prices have soared over the past decade, communities have had to raise ever more funds to acquire land. This has been exacerbated further in recent years by the rise of so-called 'Green Lairds' and the surge in demand for rural land for carbon offsetting and other natural capital purposes.¹⁰⁵ Recent increases in carbon prices, as well as expectations and future price increases, have been capitalised into Scottish land prices.¹⁰⁶

We therefore recommend that the Scottish Government examines the scope to strengthen Community Right to Buy powers to enable communities to purchase land at below market value under certain circumstances, for example if the land's existing use is not contributing to sustainable development. As noted above, Part 5 of the Land Reform (Scotland) Act 2016 introduced new Community Right to Buy powers to further sustainable development. Under this provision, communities can acquire land compulsorily, without a willing seller as long as the following criteria are met:¹⁰⁷

- the transfer of land is likely to further the achievement of sustainable development in relation to the land,
- the transfer of land is in the public interest,
- the transfer of land:
 - is likely to result in significant benefit to the relevant community
 - is the only practicable, or the most practicable, way of achieving that significant benefit, and
 - not granting consent to the transfer of land is likely to result in harm to that community.

Given the clear public interest criteria for such transactions, we recommend that the Scottish Government introduces legislation to enable communities to acquire land at below market value when these criteria are met. The Scottish Government has a legal obligation to act in a way that is compatible with the European Convention on Human Rights (ECHR), which enshrines the right to “peaceful enjoyment of possessions.”¹⁰⁸ However, the individual property rights enshrined in the ECHR are not absolute, and it is legitimate for the state to interfere with individual property rights if it is in the public interest to do so. We therefore recommend that the Scottish Land Commission is tasked with examining the legal implications of such an approach – and establishing a valuation methodology to determine the level of compensation that should be paid on such transactions.

Another key barrier to scaling up community ownership in Scotland relates to access to finance. While there is limited funding available to support community buyouts from the Scottish Land Fund, in practice this has not kept pace with rising land values, and pales in significance to the resources at the disposal of large private investors. Even if buyouts are successful, communities often find it difficult to access finance to support investment and expansion, as commercial lenders often view community owned initiatives as high-risk and relatively niche. There is therefore a need to establish new financing mechanisms to support the expansion of community ownership in Scotland.

In 2021 the Scottish Government established the Scottish National Investment Bank (SNIB) with a mandate to support three ‘missions’:¹⁰⁹

- Achieving a just transition to net zero by 2045;
- Extending equality of opportunity through improving places by 2040;
- Harnessing innovation to enable our people to flourish by 2040.

As such, investing in community-led climate initiatives has a strong alignment with two of the Bank's three missions (the net zero and place missions). The Bank's investment strategy states that its minimum investment size is £1m, but that smaller amounts of £500,000 will be considered where an investment opportunity has a particularly strong mission alignment.¹¹⁰ However, there is a strong case for setting out distinct criteria for community initiatives tailored to the specific needs and context of the sector, and establishing a dedicated team tasked with overseeing investment in community initiatives. We therefore recommend that the SNIB establishes a dedicated fund to support community owned initiatives that would be tailored to the specific needs and context of the sector. This could provide low-cost debt financing to support community buyouts and invest in community initiatives such as renewable energy and affordable housing. The SNIB could also seek to crowd-in investment from socially-oriented private investors through innovative co-investment models. While many private investors currently view community-owned projects as high-risk, the presence of the SNIB as a cornerstone investor would help to de-risk community initiatives and provide private investors with the confidence they need to invest.

Public land acquisition

Another way to increase diversity of land ownership in Scotland is to scale up public acquisitions of land. It is estimated that 12.6% of public land is already owned by public bodies. However, scaling up democratic

public ownership of land is crucial. This is already happening to some extent via Forestry and Land Scotland (FLS) and Crown Estate Scotland (CES).

FLS was established as an executive agency of the Scottish Government in 2019. It has responsibility for managing Scotland's 640,000 hectares of national forests and land for multiple outcomes, a function previously undertaken by Forest Enterprise Scotland, an agency of the Forestry Commission.¹¹¹ National forests and land covers roughly 9% of Scotland's land area, with just under two-thirds forested and one-third open habitat and agricultural land.¹¹² In December 2021 FLS launched a new Acquisition Strategy to buy land to boost Climate Emergency mitigation efforts. The strategy is underpinned by a Scottish Government investment of £30 million into a Low Carbon Investment Fund, and the transfer of £9 million residual funds from the old woodland creation programme into a new Strategic Acquisition Fund (SAF).¹¹³ The new strategy will allow FLS to purchase land for commercial conifer or extensive native woodland creation, land suitable for peatland restoration and land that will enhance natural capital and other environmental benefits.

CES is the public corporation of the Scottish Government responsible for the management of land and property in Scotland owned by the monarch 'in right of the Crown'. It is responsible for a range of rural, coastal and marine assets across Scotland. Profit made from CES assets is paid to the Scottish Consolidated Fund which in turn funds the Scottish Government. CES is responsible for managing the ScotWind offshore wind auction, which leases areas of the seabed around Scotland for wind farm developments. CES also invests in land, buildings and other assets across Scotland, and in 2020 announced plans to invest £70m in line with its overarching purpose of "investing in property, natural resources and people to generate lasting value for Scotland."¹¹⁴

Scaling up public land acquisitions going forward offers a number of benefits. Firstly, some of the land acquired by FLS and CES land could be held in public ownership indefinitely, enabling each body to manage natural assets sustainably, generating long-term value for the public exchequer. In addition, scaling up public acquisitions of land presents an opportunity to break up some of Scotland's large estates into smaller holdings, which can then be transferred or sold to local communities, therefore helping to diversify Scotland's highly concentrated pattern of land ownership. As part of this approach however, it will be vital that FLS and CES engage comprehensively with local communities to ensure that acquisition strategies are aligned with local priorities.

While the current acquisition strategies being pursued by FLS and CES represent steps in the right direction, it is clear that the recent surge in private sector demand for land in Scotland requires a bolder approach. The combined budgets for new acquisitions from FLS and CES pales in comparison to the £450 million of private sector investment in the purchase of Scottish estates and forestry land in 2021. As the Scottish Land Commission has recognised: "There is a risk that the scale of investment required favours only large-scale financial institutions with associated risks of acting in ways that disempower local communities or failing to reinvest financial benefit locally and support Community Wealth Building."¹¹⁵

As current acquisition budgets will only have a limited impact on shifting trends in the land market, there is a strong case for scaling up FLS's strategic acquisition fund and CES's rural land acquisitions. Rather than being viewed as a cost to public budgets, land acquisitions by FLS and CES should be viewed as a strategic public investment that will generate significant financial and non-financial returns over the coming decades.

FLS and CES's acquisition strategies would also benefit from enhanced powers through stronger compulsory purchase laws. Compulsory purchase of land for the purposes of managing forestry land is currently governed by the Forestry and Land Management (Scotland) Bill that was first introduced to the Scottish Parliament in 2017.¹¹⁶ Prior to this, compulsory purchase of land for the purposes of managing forestry land was governed by the Forestry Act 1967. Under Section 16 of the original version of the Bill that was introduced to Parliament, Scottish Ministers would not only have the powers of compulsory purchase for the purposes of managing "forestry land in a way that promotes sustainable forest management", as already existed under the 1967 Act, but would also have the right to use those powers in order to manage "land... for the purpose of furthering the achievement of sustainable development." However, this extension of compulsory purchase powers for the purposes of achieving sustainable development was removed by opposition MSPs in the final version of the Bill that was transcribed into law.

Given the scale of the climate emergency and the rapidly changing conditions in Scotland's land market, there is a strong public interest case for extending compulsory purchase powers to include sustainable development objectives. Part 5 of the Land Reform (Scotland) Act 2016 introduced new Community Right to Buy powers to further sustainable development, and it is logical to extend similar provisions to compulsory

purchase laws.¹¹⁷ We therefore recommend that amending the Forestry and Land Management (Scotland) Bill to deliver this should be a key priority in the forthcoming Land Reform Bill.

As outlined in section 2.1 however, just because land is publicly owned it does not mean it is managed democratically. In reality, members of the public often have very little influence and control over land held by public bodies, and publicly owned land is not always stewarded effectively or sustainably. We therefore recommend that the forthcoming Land Reform Bill includes provisions to improve democratic governance of public land. As land expert Andy Wightman has proposed, this could include establishing regional land boards with democratically elected members to oversee the management of public land. These boards would have the power to delegate decision making over land to different entities for different purposes.¹¹⁸

Re-commoning Common Good property

Common Good Funds are a special type of property owned by local authorities in Scotland, which are legally distinct from all the other property which they own. These Funds are of ancient origin and consist of property that previously belonged to one of Scotland's burghs. By far the largest component of Common Good Funds is heritable property which mainly consists of public buildings and public spaces, such as parks, farmland and salmon fishings.¹¹⁹

The ownership of these Common Good Funds has undergone a series of changes as a result of local government reforms in Scotland since the Second World War. Common Good Funds were owned by 196 burghs at the time of the Local Government (Scotland) Act 1947, when the burghs became managed by Town Councils. Subsequently, when the Local Government (Scotland) Act 1973 abolished Scotland's Town Councils, legal title to Common Good Funds was transferred to the new District Councils and then, in 1996, to Scotland's current local authorities under the Local Government (Scotland) Act 1993. Throughout this period of change, the status of Common Good property has been degraded and many Common Good assets have been lost.

The Community Empowerment Act (Scotland) 2015 places a duty on local authorities to "establish and maintain a register of property which is held by the authority as part of the common good."¹²⁰ It also requires local authorities to publish their proposals and consult community bodies before disposing of or changing the use of Common Good assets.

However, to truly restore the original purpose of the Common Good Funds to people and places across Scotland, it is necessary to go beyond empowering local authorities to exercise more control over these assets. Instead, seeking ways to ensure that the management, ownership, and governance of the Common Good is redistributed down to the lowest level. As the Centre for Local Economic Strategies (CLES) has proposed, this can be done by introducing provisions in the new Land Reform Bill to 're-common' the Common Good.¹²¹ This would provide a new statutory framework to modernise Common Good law and replace the original Act of 1491. The provision would retain the original purpose of the 1491 legislation but update it into a modern context, and help to restore the stature of Common Good property.

The purpose of this would be to go beyond the local authority focus offered by the Community Empowerment legislation, and instead provide formal mechanisms for the residents of former Burghs to exercise direct democratic control over Common Good assets. In line with the CLES proposals, we recommended that a new Common Good (Scotland) Act should include the following provisions:

- an explicit statement that the purpose of the Act is to uphold the concept of the Common Good in accordance with the original Act of 1491, and that the Scottish Government considers Common Good a legitimate and necessary legal frame through which to make Scotland's land more productive, accountable, and sustainable;
- provides a clear definition of the Common Good, which should consider the current imprecision on the distinction between alienable and inalienable land; and
- gives the residents of former burghs the right to exert control over Common Good assets and Common Good Funds through a local 'Common Good Council'.

Compulsory sale orders

It is estimated Scotland has almost 11,000 hectares of vacant and derelict urban land.¹²² Much of this land has remained in the same state for decades, and almost a third of the Scottish population lives within 500

metres of a derelict site. This is clearly not in the public interest – there is little justification for having large amounts of land lying vacant or derelict in urban areas, particularly when land for housing is in short supply. While CPO powers offer one way to bring vacant and derelict land into use, compulsory sale orders (CSOs) may offer a more efficient means of doing so. Introducing CSOs would give local authorities the authority to require the sale of sites that have been vacant for an undue period to be sold by public auction.

As with CPOs, it is likely that few CSOs would ever need to be issued – their mere existence would act as a powerful way to shift the balance of incentives among owners of vacant and derelict land who would face a ‘use it or lose it’ dilemma. However, unlike CPOs, CSOs would not require up-front public investment – the public authorities would manage the auction process but would not take ownership of the land. Thus, CSOs could offer a low cost and efficient way to release vacant and derelict land back into the market.

New CSO powers were recommended by the Land Reform Review Group in its final report in 2014, and the Scottish Land Commission set out detailed proposals for introducing CSOs in 2018.¹²³ To date however, the Scottish Government has not brought forward legislation on CSOs to the Scottish Parliament. We therefore recommend that powers to introduce CSOs are included in the Land Reform Bill, drawing on the proposals from the Scottish Land Commission. As outlined in section 3.1, we also recommend that CSO powers are also extended to large-scale rural landholdings where public interest risks associated with large land holdings fail to be mitigated.

3.3 Developing land in the public interest

In 2021 the Scottish Government pledged to build 110,000 affordable, energy efficient homes by 2032 – with at least 70% of these in the social rented sector and 10% in remote, rural and island communities.¹²⁴ As outlined in section 2.3 however, it is clear that the current market-led approach to development is failing to deliver the affordable housing that Scotland needs.

Lessons from around the world, as well as from Scotland’s own history, indicate that development is more effectively delivered where the state plays a more proactive role in the land market, working in partnership with local communities, landowners and other relevant stakeholders.¹²⁵ We therefore recommend that the Scottish Government uses the forthcoming Land Reform Bill to establish a new development model that better serves the public interest.

Land value capture

As outlined in section 2.3, in many countries compulsory purchase laws enable the uplift generated by planning and collective development to be captured by the state. The Scottish Government’s 2021/22 Programme for Government pledged to “reform and modernise the compulsory purchase system in Scotland, making it clearer, fairer and faster for all parties.”¹²⁶ It also pledged to deliver “an effective, fair mechanism for capturing, for public benefit, a share of the increase in land value that occurs when development is supported through the planning system.”

As such, we recommend that forthcoming the Land Reform Bill introduces two measures to establish a more effective system of land value capture in Scotland. Firstly, we recommend that the Bill reinstates the ability of public authorities to use CPO powers to acquire land at nearer use value. As outlined in section 2.3, at present public authorities must compensate landowners not on the basis of what the land is actually worth at the time – but on the basis of what it one day might be worth if it ever got residential planning permission. This prevents public authorities from acquiring cheap land to develop affordable housing, and means that the majority of land value uplift accrues to developers rather than the state.

Reinstating the ability of public authorities to acquire land at near use value can be achieved by making relatively small amendments to the 1963 Land Compensation Act so that, going forward, no account is taken of prospective planning permissions with regards to compensation for land designated for housing and infrastructure.¹²⁷ This would mean that public authorities, rather than the landowner, would capture the uplift in the value of land, enabling the state to acquire low-cost land to deliver affordable housing while also unlocking significant funds for public investment. Although this relates to compulsory purchase orders (CPOs), in reality it is likely that few CPOs would ever need to be issued. Evidence from the UK’s own past, and from equivalent countries, shows that the very existence of strong compulsory purchase powers can be enough to shift the balance of incentives in the operation of the land market. In the knowledge that the land could be purchased by the state at near use value, landowners would be incentivised to part with land at a

low but fair price. This would have the powerful triple effect of increasing the supply of land, lowering the market price of land, and unlocking funds for public investment.

One criticism of this approach is that it would result in a ‘two price’ system, whereby landowners who sell their land through compulsory purchase would receive lower compensation than landowners who sell their land on the open market. It is believed that such an outcome could breach protections provided by the European Convention of Human Rights (ECHR).¹²⁸ As such, an important concomitant measure to reforming CPO compensation rules is the introduction of a tax on land value uplift arising from the granting of planning permission, otherwise known as ‘planning gain’ (or sometimes ‘betterment’). The precise rate of taxation should be subject to further examination and consultation, learning lessons from the UK’s history. In turn however, land acquired through CPOs would be compensated on the basis of market value less the tax levy applicable. Aligning CPO compensation and the taxation of planning gain in this way would reinstate the principle of equivalence, as landowners selling land on the open market would be subject to the tax, and would no longer receive more compensation than those subject to a CPO.

The Planning (Scotland) Act 2019 has already provided the statutory framework implementing such a tax in the form of an ‘Infrastructure Levy’, which was intended to enable public authorities to capture a proportion of land value uplift to fund investment in infrastructure.¹²⁹ To date however, the levy has not been implemented, with the Scottish Government stating that detailed proposals for the levy would be brought forward as part of its work on Land Value Capture during 2023-24. We therefore recommend that the forthcoming Land Reform Bill sets out a framework for implementing the infrastructure levy in Scotland, which would be designed to work in tandem with the compensation reforms outlined above.

As the Scottish Land Commission has highlighted, previous attempts to tax planning gain across the UK in this way were ultimately successful, because landowners simply delayed bringing land to market until there was a change in government and betterment taxation was repealed.^{130 131} However, it is important to recognise that these developments took place in the context of a first-past-the-post UK political system, whereby the UK periodically switched back and forth between majority Labour and Conservative governments. It is far from clear that such problems would apply in the context of devolution to the Scottish Parliament, whereby governments are formed on the basis of a more proportional electoral system, and where voting preferences in Scotland are distinct from that of the UK.

Scottish Land Agency

In combination with the above changes, we recommend that the Scottish Government establishes a new ‘Scottish Land Agency’ with the power to purchase, develop and sell land and ensure that this key resource is being managed strategically in the public interest. As noted in section 2.3, at present strategic land assembly in Scotland is largely carried out by private developers who aim to generate value for shareholders. This means they prioritise more profitable and less risky locations and market segments at the expense of rural areas and town centres. They are also incentivised to release new homes onto the market slowly in order to avoid putting downwards pressure on house prices. As the Scottish Land Commission has noted:¹³²

“To achieve better outcomes, we need to move away from a purely commercial model of housing land delivery focused on private value and toward a model that prioritises social value.”

A new Scottish Land Agency would not replace private developers, but would act as the ‘prime mover’ in the land market, working in partnership with local authorities, small and medium sized house builders, landowners and citizens to ensure that enough land is brought forward to deliver housing, infrastructure, new towns and regeneration projects. Unlike private developers, a public land agency would acquire and assemble land with social value in mind – prioritising affordable housing, better place-making, greenspace, and low carbon infrastructure.

Once land has been assembled, the Scottish Land Agency would contract out construction to housebuilders, prioritising local small and medium-sized firms, who would compete with each other on the basis of quality and design of house building. This means that the success or failure of private developers would be determined by construction quality rather than by their ability to navigate the speculative land market. As such, the model would involve socialising the provision and management of land for development, but not development itself. Research for the Scottish Land Commission has found that in countries where the public sector plays a leading role in assembling land for development, better outcomes are delivered – including in relation to green and public space, housing amenities, and public transport.¹³³

Creating a public land agency would also provide a hub of skills and expertise that local authorities and other public bodies could draw on to enable them to play a more active role in land promotion and shaping markets. While some local authorities in Scotland have played a significant role in land assembly and public interest led development, other local authorities lack the expertise and resources.¹³⁴

The creation of a new Scottish Land Agency would have an up-front cost, as the agency would need to be capitalised with sufficient funding. The Scottish Land Commission has highlighted that the cost of capitalising the Irish Land Development Agency was 1.25 billion euros, and the agency was also granted borrowing powers of up to 1.25 billion euros.¹³⁵ While this provides a relevant benchmark for a Scottish equivalent, more work needs to be undertaken to assess capitalisation needs. Importantly however, the up-front costs of capitalisation would likely be more than offset in the long run by savings in public expenditure and returns on the investments made. As such, rather than being viewed as a cost to public budgets, capitalising a new Scottish Land Agency should be viewed as a strategic public investment that will generate significant returns over the coming decades.

Taken together, the two changes outlined above would create a powerful new model of public-interest led development that could have a transformative impact on Scotland's economy.

3.4 Restoring nature for a just transition

Regulation of carbon markets

As outlined in section 2.4, a major factor driving demand in the land market relates to the growth of carbon credit markets, together with a broad consensus that carbon prices will increase in future. At present the carbon market in Scotland and the rest of the UK relies on a voluntary approach to certification, which is governed by the Woodland Carbon Code (WCC) and the Peatland Code (PC). However, it is clear that this system requires reform.

In addition to having a highly disruptive impact on Scotland's land market, there is evidence that carbon offsetting is undermining progress towards the more urgent task of reducing direct emissions. For carbon credits to contribute positively to net zero targets, it is critical that they are only used to offset emissions that are genuinely unavoidable. Sometimes described as 'residual' emissions, these are emissions that remain after all feasible efforts have been taken to directly reduce emissions. In practice they only apply in a small number of "hard-to-abate sectors" that are difficult to fully decarbonise with existing technologies.¹³⁶ As the Climate Change Committee has highlighted: "at a minimum, businesses should only be countering emissions via carbon credit purchase for scope 1, 2 and 3 emissions which genuinely cannot be reduced."¹³⁷

As such, businesses should only use carbon credits to meet net zero targets as a last resort, once all reasonable efforts have been made to reduce direct emissions. However, while the WCC currently includes some provisions to monitor the claims of sellers, there are no equivalent processes for the buyers of carbon credits. This means that purchasers can rely on purchasing carbon credits to meet net zero targets while doing little to actually reduce the level of their emissions. The spectacle of fossil fuel companies such as Shell generating carbon credits from land in Scotland while continuing to act as one of the world's largest polluters is a clear example of how this system can be exploited.¹³⁸ By turning to carbon offsetting as a 'first resort' before reducing emissions (either by acquiring land and 'insetting emission', or purchasing carbon credits on global markets), companies are allocating capital that could otherwise have been used to invest in decarbonisation. As such, the current laissez faire to carbon offsetting risks significantly undermining Scotland's net zero pathway.

Concerns also remain over the extent to which suppliers of carbon credits are delivering carbon sequestration that is genuinely additional (i.e. whether the credit genuinely leads to extra emissions reductions in the long run). If carbon credit markets are to avoid fuelling 'greenwashing', it is vital that businesses are not able to generate carbon credits from commercial activities that would have happened anyway. In the past, weak additionality criteria has meant that some projects have over-claimed the emissions reduction they are achieving, leading to overinflated claims of impact.¹³⁹

Overall it remains unclear whether carbon offsetting is helping Scotland to achieve net zero, and there is evidence to suggest that it is actively undermining progress. As the Climate Change Committee concluded in a report last year:¹⁴⁰

“The evidence reviewed for this report suggests that VCMs [voluntary carbon markets] are not currently supporting net zero globally: low prices and inaccurate claims mean that credits may not be meaningfully reducing emissions, while their use may cause buyers to take less action on their own emissions impact.”

As such, we recommend that the Scottish Government commissions an independent review into whether the role of carbon credit markets in delivering Scotland’s just transition to net zero. The review should engage with a wide range of stakeholders, and aim to assess:

- The impact that carbon offsetting is having on Scotland’s land market;
- The extent to which the current approach to carbon offsetting aligns with the principles of a just transition and Community Wealth Building;
- The extent to which carbon offsetting is diverting capital away from investment in emissions reduction;
- The extent to which carbon credits generated in Scotland are delivering carbon sequestration that is genuinely additional.

The review should also examine options for creating a mandatory system of certification with much greater scrutiny and regulation of sellers and buyers and strict enforcement mechanisms. Given that the Woodland Carbon Code and Peatland Code are UK-wide initiatives, it is likely that this would need to be pursued in partnership with the UK Government.

Funding nature restoration

As outlined in section 2.4, the Scottish Government hopes that attracting responsible private finance can help achieve Scotland’s nature restoration targets. In March 2023 Scotland’s nature agency, NatureScot, announced a new private finance pilot that aims to mobilise £2bn private investment in new woodland creation.¹⁴¹ Described as a ‘national first’, the agency signed a Memorandum of Understanding with three private financial institutions: private bank Hampden & Co, asset management firm Lombard Odier Investment Managers, and ‘global impact firm’ Palladium.

Under the scheme, the financiers will provide loans to land managers to fund tree planting, and generate profits from the sale of carbon credits based on the carbon sequestered. According to NatureScot, the scheme could create around 185,000 hectares of native woodland and sequester 28 million tCO₂e over the next 30 years.

Unlike prior instances of private investment in carbon offsetting, investors in the pilot would not acquire the land. Instead, investors would work with existing land owners to generate carbon credits.¹⁴² As such, NatureScot hopes that the scheme will avoid some of the associated harms with private investors acquiring land for natural capital purposes.

The Scottish Government and NatureScot have justified the scheme on the basis that it would help to fill Scotland’s £20bn nature financing gap.¹⁴³ However, as outlined in section 2.4, the £20bn figure has been heavily criticised, and likely represents a significant overestimate. The majority of the gap is accounted for by the cost of first acquiring land before undertaking nature restoration. However, land acquisition is not a prerequisite for nature restoration, as restoring nature does not need to involve a transfer in land ownership. Indeed, many existing landowners across Scotland are delivering woodland creation.

Importantly however, the majority of woodland creation and peatland restoration is already publicly funded through the Forestry Grant Scheme and the Peatland Action Fund. As the NatureScot pilot does not seek to acquire land, it remains unclear what ‘gap’ the pilot is seeking to address, or how investors will be able to generate a return from these investments. It also remains unclear why land managers would take out loans at commercial rates of interest to fund nature restoration, when they can access grants from the Scottish Government that do not need to be repaid. As such, it seems likely that the pilot model could only generate returns for investors if the current grant funding model is abolished or replaced.

Even if the current grant scheme were to be replaced, there remains a number of uncertainties regarding the practicalities of the pilot model. As outlined in section 2.4 Scotland is currently falling short of its woodland and peatland targets, even though the majority of the up-front costs are funded by public grants. As replacing grants with commercial loans would increase costs for land managers, it is likely that this would decrease – rather than increase – the rate of nature restoration. At present many land managers are not utilising the available grant funding, which indicates that the barriers to meeting Scotland’s targets are not

financial but practical (for example capacity constraints or a lack of technical knowledge). NatureScot has also said that the pilot will help to ease pressure on the public finances, noting that:¹⁴⁴

“In this new model, we will use an increasing amount of responsible private investment to pay for new woodland, reducing the burden on public finances and increasing the amount of woodland that can be created.”

However, while attracting private finance might seem like an attractive way to ease the burden on the public purse, doing so introduces significant new costs into the system. Scotland’s experience with private finance initiative (PFI) contracts for infrastructure projects provides an instructive example. Although PFI deals reduced up-front public expenditure, they ended up being much more expensive due to a higher cost of capital, profiteering, and large legal and consultancy fees.¹⁴⁵ While these contracts generated lucrative returns for investors, they imposed large costs in the longer term on the public purse. Designing private finance contracts for nature restoration is much more complex and uncertain than infrastructure projects, and the model is subject to considerable uncertainty. Under the NatureScot MoU, the financiers aim to generate profits by generating and selling carbon credits. However, it remains unclear how the model can satisfy the risk-return requirements for investors under current market conditions without some form of ongoing public subsidy. As a recent paper published by the Scottish Government acknowledged:¹⁴⁶

“At current market carbon prices, peatland restoration projects are not viable without partial (and typically substantial) grant funding.”

In order to attract investment, the Scottish Government may therefore have to provide ongoing subsidies to ‘de-risk’ investment for private investors, even if up-front capital grants are removed. This would likely involve using the public balance sheet to protect private investors from downside risks. The Scottish Government has already commissioned work on a model that would do this by creating a Scottish Carbon Fund and a Price Floor Guarantee or Contracts.¹⁴⁷ An alternative would be to establish a Contracts for Difference (CfD) model for carbon, mimicking the mechanism already used to support renewable energy in the UK. Both of these mechanisms would involve the Scottish Government guaranteeing a minimum price for carbon, and paying investors for any revenue shortfall if prices fall below this minimum. In doing so, the Scottish Government would assume significant contingent liabilities. As carbon prices are determined by global market forces, the scale of this liability would be subject to considerable uncertainty, and outside the Scottish Government’s control. As such, embracing these de-risking models could end up being substantially more complex, expensive and time consuming than direct public investment.

With the true ‘finance gap’ likely being much smaller than £20bn, as other estimates suggest, nature restoration could be delivered more cost effectively, and with more certainty, through public spending – particularly given the large scope for reforming taxation and subsidies in Scotland.¹⁴⁸ Instead of socialising risks while privatising rewards, this could ensure that rewards are shared fairly – including with local communities. Future Economy Scotland will be publishing more detailed work exploring alternative models for funding nature restoration in Scotland over the coming months. In the meantime however, we recommend that the Scottish Government:

- Undertakes detailed analysis to assess the true scale of nature finance gap in Scotland, acknowledging that most nature restoration is already funded from public grants, and that land does not need to be acquired for tree planting or peatland restoration to take place.
- Conducts a robust appraisal of different private investment models, including the subsidies that would be required to sustain them; their potential impact on the public finances; and their alignment with just transition principles.
- Assesses the costs and benefits of private-finance led models against an alternative public-led approach, funded by reforming taxation and subsidies.

3.5 Taxing land fairly and efficiently

In Section 2.6 we outlined how the taxation of land and property in Scotland is inefficient, and is in many cases regressive and arbitrary. As such, there is significant scope to reform the tax system in Scotland to incentivise a more efficient use of land, raise public revenue, and ensure an appropriate balance between public and private interests. As capital gains tax and inheritance tax are both reserved to Westminster, the Scottish Government is unable to reform them under the existing devolved settlement. However, the

Scottish Parliament's competence over local taxation and LBTT offers significant opportunities for tax reform in this parliamentary term.

The taxation of residential land

Although the Scottish Government does not have control over capital gains tax or inheritance tax, it does have control over council tax. As property is the single most valuable type of wealth held by households in Scotland, implementing a fairer and more progressive approach to council tax can not only raise revenue – it can also help tackle wealth inequality in Scotland.

Before the Scottish Government announced the freeze on Scotland in October 2023, it had consulted on reforming council tax to increase rates on the upper bands.¹⁴⁹ While this would make council tax marginally more progressive, overall the tax would still remain regressive. Perhaps most importantly however, the consultation did not propose to revalue council tax bands – meaning that charges would still be based not on what properties are worth now, but what they were worth in 1991.

As such, tinkering with council tax rates without changing the system of valuation represents a sticking plaster approach. We therefore recommend that the Scottish Government undertakes wholesale reform of council tax to create a fairer and more progressive system of property taxation.

While there are a number of different options for property tax reform, we consider that the most effective solution is to replace council tax with a land value tax (LVT). Economists have long recognised that levying a recurring tax on the market value of unimproved land is the most economically efficient way of raising tax revenue.¹⁵⁰ Being fixed in supply, taxing land does not distort economic activity in the same way that taxing other goods and services does. By attaching a cost to owning land, a LVT would diminish the incentive to buy land and property for speculative rather than productive purposes, and would ensure that any increases in land values would be shared with the public purse. As such, LVT can play an important role stabilising the price of land and, in turn, housing. A LVT also has a strong moral basis: capturing a proportion of the unearned windfalls that landowners receive from the activities of the state and wider community. Additionally, since land cannot be hidden or moved to a tax haven, land value taxation is difficult to avoid or evade.

In the absence of data on residential land values, it is difficult to estimate how much revenue a land value tax could raise. However, evidence indicates that it would be significantly more progressive than council tax, and could also be designed to raise more revenue to help address Scotland's fiscal challenges.^{151 152} To minimise the risk of creating large overnight winners and losers, a LVT could also be phased in gradually over an extended period of time, perhaps using a system of split rate taxation to transition between council tax and an LVT.¹⁵³ Cash poor owners of valuable land could be provided reliefs, or allowed to defer payment until the point of sale or death. They could also pay the tax in the form of a percentage of their equity in the property each year, enabling the community to gain from any capital appreciation.¹⁵⁴

A LVT on residential properties could also be designed to promote energy efficiency in support of Scotland's just transition. This could be achieved by offering discounts on LVT according to a property's Energy Performance Certificate (EPC), providing an incentive for all owners including landlords to improve the energy performance of their homes.¹⁵⁵ This 'green' approach to LVT offers the dual benefit of incentivising more efficient use of both land and energy at the same time.

As the Scottish Land Commission has noted, moving towards a LVT brings a number of practical challenges that need to be overcome before it can be implemented. This includes the need to enhance public awareness of how the tax works, establish up to date information on all land ownership, develop a robust methodology for valuing land for tax purposes, and adapt the planning system.^{156 157} However, as the Commission acknowledges, none of these are insurmountable, and many should be addressed regardless of whether an LVT is introduced. As a result, we recommend that the Scottish Government sets out a medium-term ambition to replace council tax with a LVT, and lays the groundwork for this by making efforts to address the associated practical barriers during this parliament.

In the meantime however, given the fiscal pressures facing Scotland, and the severity of the issues with the current model of council tax, we also recommend that the Scottish Government also introduces interim reforms to the council tax system to make it more progressive and raise revenue. We therefore recommend that, as an urgent priority, the Scottish Government undertakes a revaluation of property values across Scotland for taxation purposes. This would follow the lead of the Welsh Government, which recently

announced plans to reevaluate council tax bands. While this could not be implemented immediately, the Welsh Government hopes to deliver it by April 2025, and we recommend the Scottish Government does the same.¹⁵⁸

Following this, in place of council tax we recommend that local authorities apply progressive property tax, calculated as a flat rate percentage tax on property values. A flat percentage of value property tax would see lower value properties pay less than the current system and higher value properties pay more. According to modelling undertaken by IPPR Scotland, a property tax rate of 0.75% could raise around an additional £350m per year compared to the current system.¹⁵⁹ This system would see lower value properties, on average, pay the same as under the existing council tax system, with higher value properties on average paying more. We recommend that this system is used until the administrative systems required to implement a LVT effectively are in place.

Rural and non-domestic land

As outlined in section 2.6, the system of non-domestic rates in Scotland has become complex and, in some cases, arbitrary. We therefore recommend a series of changes to the taxation of non-domestic property to create a more efficient tax system that is more clearly aligned with the public interest.

Given the impact of changing rural land markets on the economy, data on land values is an important factor in making land markets and fiscal policies work efficiently and effectively. At present however, a significant proportion of land is not on the valuation roll, which hinders the ability to design taxation and public policy effectively. As such we recommend that the Scottish Government establishes a programme to bring all land on the valuation roll to enable a better understanding of land values, make the market more transparent and allow policymakers to target future policies effectively.

Secondly, we recommend that the Scottish Government undertake a review of all reliefs on non-domestic rates, and abolish reliefs that do not serve a clear public interest. In place of these reliefs, we recommend introducing target reliefs and/or penalties that would be conditional on whether employers meet fair work criteria set by the Scottish Government, such as the existence of a collective bargaining arrangement, adherence to the real-living wage and other criteria.

Thirdly, as outlined in section 2.6, there is no clear public interest case in maintaining the current universal exemption of agriculture and forestry from non-domestic rates. With appropriate exceptions taking into account scale and ownership structure, such as community-owned woodlands, we recommend agricultural land and wooded land be brought into the non-domestic rates regime, meaning that owners would be liable for paying the tax like any other rural business.

Fourthly, as with residential property, over the medium term we recommend that the Scottish Government replaces non-domestic rates with a LVT. The advantages associated with applying an LVT on housing also apply to non-domestic properties. In addition to this however, a LVT can also help capture the value associated with existing and future natural capital markets. As discussed in section 2.4, the emerging value associated with carbon and natural capital is already having a profound impact on Scotland's land market. Depending on what happens to carbon prices in the coming years, these markets could continue to put significant upwards pressure on land prices. As the market for carbon credits is relatively new however, the value generated from carbon reduction and sequestration in Scotland remains outside the sphere of taxation. As such, without policy intervention, this value would be captured exclusively by landowners. As the Scottish Land Commission has recognised:

“Public policy intervention will be required to ensure an appropriate balance of public and private benefit. In relation to potential windfall gains a well-designed tax instrument could incentivise carbon sequestration and, where there are significant increases in value created by carbon and natural capital markets, ensure a fair public share of that value.”¹⁶⁰

Land markets are incredibly effective at capitalising into land prices, and it is clear that expectations around rising carbon prices are already being capitalised into land values. As such, introducing a LVT would be a relatively simple and effective way to capture some of the value associated with natural capital activities for public benefit. Unlike levying a tax on the sale of carbon credits, it would also ensure that a share of the value from any new natural capital markets that emerge is also captured, and this will also likely be reflected in land values.

The John Muir Trust has proposed that a Carbon Emissions Land Tax (CELT) is introduced on large-scale landholdings 1,000 hectares.¹⁶¹ Under this approach, every landowner would be assessed for actual and potential carbon emissions and sequestration by relevant public agencies. Landowners would then be placed into a tax band according to their estimated negative or positive emissions, and local authorities would then levy tax per hectare for each tax band. The tax aims to incentivise landowners to use land in ways that sequester carbon most effectively. Landowners could move to lower tax bands by changing land use to maximise long term carbon sequestration. As the John Muir Trust acknowledges, the main aim of the tax is not to raise revenue, but to drive behavioural change.

While we consider that a CELT has strong merits, introducing it in addition to an LVT could be challenging and complex. However, we consider that similar incentives based on the CELT methodology could be incorporated into a LVT framework. This could work in a similar way as the green residential LVT described above. Whereas residential properties would receive discounts on LVT according to their Energy Performance Certificate (EPC), large-scale rural landholdings could receive a discount on their LVT based on their estimated negative or positive emissions.¹⁶² However, more work would need to be undertaken to establish how this could work in practice. Care would also need to be taken to ensure that such an approach does not fuel the carbon credit market in a harmful way, which as described in section 2.4 has had a disruptive effect on Scotland's land market.

Finally, we also recommend that the rate of LBTT could be equalised with that paid on residential transactions, and a surcharge could be introduced on land holdings over a certain scale threshold, operating on a similar principle to the Additional Dwelling Supplement for residential transactions. Modelling undertaken by the Scottish Land Commission found that introducing a surcharge rate of 4% could reduce concentration of land holdings by 2.5% over 20 years and generate c.£25 million in additional tax revenue over a five-year period. It may however be beneficial to introduce a significantly higher surcharge to significantly change incentives.¹⁶³

3.6 Enhancing information and transparency

As outlined in section 2.7, information on land ownership in Scotland remains incomplete and fragmented, and there is a near total absence of robust data on land values. Although the Scottish Government has set a target of completing the Land Register by 2024, it is unlikely this will be met on the basis of current trends. As such, we recommend that additional resourcing is committed to completing the Land Register and transferring titles over from the Register of Sasines. In addition, as establishing a methodology for collecting data on land values will be a prerequisite for implementing a LVT, we recommend that this should be a priority for the current parliament.

There is also a strong case for integrating data on land ownership and value with other data relating to land and property, such as information on buildings, (construction date, materials, energy efficiency), tax bands (for council tax and non-domestic rates) and ecological data (e.g. hydrology and flood risks).¹⁶⁴ Particularly as the climate crisis is expected to have a significant impact on nature and the built environment, the need for comprehensive and accessible information about land is more important than ever. At present much of this information exists in some form, but it is held by multiple different organisations, and is not made available in an integrated format.

In 2015 the Scottish Government committed to establishing Scotland's Land Information Service (SCOTLIS), which was described as a "one-stop-digital database for land and information services." As a report produced for the Depute First Minister in 2015 notes, the service would "make for easier access to key information for the citizen, support smarter conveyancing, and provide better access to important information to support policy- and other decision-making, while improving accountability and transparency and creating wider social and economic benefits through innovative use of data."¹⁶⁵ The service launched in October 2017, but only included data derived from the Land Register, which remains the case today.¹⁶⁶ As such, the vision for creating an open, integrated, accessible portal for all information relating to land and property in Scotland was never realised.

However, as land expert Andy Wightman has outlined, there is a strong case for delivering the original vision for SCOTLIS, building on the existing infrastructure.¹⁶⁷ This would require significant resourcing, and coordination between the Scottish Government, public bodies and numerous private and third sector organisations. While amalgamating data from multiple different sources presents a technical challenge, evidence from other countries shows that this is not insurmountable. The benefits of doing so would be

substantial – including more informed policymaking, greater opportunities for community participation, more efficient commercial activity, and opportunities for new academic research.

We therefore recommend that the Scottish Government commits to coordinating and funding a new and comprehensive SCOTLIS, providing an open access, one-stop digital portal for all information on land and property in Scotland. The portal should aim to consolidate a wide range of information from different sources, including property and ownership and value, building and construction information, energy efficiency, tax bands and ecological data. The portal should be made free to use and easily accessible, using interactive maps where possible.

Finally, the recent surge in investment in rural land for natural capital purposes also highlights the lack of transparency surrounding land sales. As discussed in section 2.4, a growing number of land transactions have happened off-market, and are therefore shrouded in secrecy. As well as making it difficult to monitor land market activity and design policy accordingly, this also effectively locks out community participation. As such, we recommend that the Scottish Government explores new measures to enhance transparency in the land market and prevent land sales from happening off market under the guise of secrecy. This could involve requiring all land sales over a certain size to be subject to a process of public notification, for example by information the Scottish Land Commission. More robustly, it could involve compelling all land sales over a certain size to be publicly advertised, openly detailing all relevant market information to all parties. This would enable communities and other interested parties to explore the option of buyouts and alternative bids where, in an off-market sale, it would be denied.

4. CONCLUSION

Despite multiple waves of land reform legislation, the ownership, governance and use of land in Scotland remains stuck in the past. On issues such as concentration of land ownership, the absence of regulatory oversight, and the lack of data and transparency, Scotland remains a significant outlier in an international context. An archaic and dysfunctional land market continues to lie at the root of many of Scotland's most pressing challenges – including the housing crisis, inequality, low productivity, and climate breakdown.

The forthcoming Land Reform Bill presents an opportunity to tackle the issues outlined in this report, and bring the ownership, governance and use of land in Scotland into the 21st century. This report has set out a bold agenda for land reform that would help create a more democratic, sustainable and just Scotland. The recommendations in this report can all be implemented by the Scottish Government using existing devolved powers. As such, there is no excuse for delay. Land is Scotland's most important economic asset. It is time to start treating it as such.

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