

THE BIG READ

Next steps in Bays buyout are keenly awaited

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Last month the people of the Bays of Harris Estate voted in favour of taking the land where they live into community ownership, following a postal ballot organised by Comhairle nan Eilean Siar on behalf of the Bays of Harris Steering Group.

Prior to the ballot, the Surrey-based Hitchcock family, owners the Estate since 1925, indicated that they would consider a negotiated sale of the Estate if there was a 'decisive' vote in favour of pursuing a community buyout.

That decisive vote has duly arrived with 63% in favour of community ownership on a 70% ballot turnout.

The ballot result matters for several reasons. Most obviously, it provides the necessary mandate for a legally constituted body to be established to commence negotiations to purchase the Estate and its income-generating assets on behalf of the community.

The scale of that income is considerable. The business plan prepared as part of the feasibility study on community ownership notes that, 'the estate has a diverse range of income streams including telecoms masts, fish farm leases, wayleave payments, minerals, sporting and croft rents, bringing in over £80,000 per year and in excess of £100,000 in years where land sales occur'.

The result is also important because it confirms that

the appetite for community land ownership in the Outer Hebrides – where 75% of the population already live on such land – remains undiminished.

As Murdo Mackay, Chair of the West Harris Trust wrote in a letter of support on behalf of the Trust prior to the ballot: "Of all the challenges facing the islands in these turbulent times and the numerous questions we all have as to how they should be solved; there are none that prompt the answer 'more large-scale private land ownership' Community land ownership is no panacea but has proven repeatedly to be an effective way to deliver tangible community benefit".

He's right. As the examples of what community landownership has delivered in West and North Harris, Galson, Barvas, Carloway and elsewhere in the islands testify.

At its most fundamental level, the ballot result provides a strong signal of the community's confidence that collective ownership of the Bays of Harris Estate offers the opportunity to stem the decades-long flow of land-related wealth out of the area and redirect it towards investment benefiting the Estate's entire community spanning Berneray, Northton and the Bays themselves.

That investment aspiration is hard-wired into the business plan for the Estate, focusing as it does on delivering affordable housing and employment opportunities, together with support for crofting and community projects that will benefit

residents and support the wider common good.

The wider land reform policy context within which the Bays of Harris ballot result has occurred is also significant.

Diversifying Scotland's highly concentrated pattern of large-scale rural land ownership has been a public policy objective of successive Scottish Governments since devolution in 1999, due to the structural barrier such concentration presents to the sustainable development of rural communities.

That has resulted in successive Land Reform Acts in 2003 and 2016 and a Community Empowerment Act in 2015 that collectively introduced four distinctive Community Rights to Buy.

Separately, the Scottish Land Fund provides investment from its annual budget of £10 million to support the capital costs of community land and built asset buyouts.

Coincidentally, the Bays of Harris ballot result comes as the Scottish Government is consulting on its proposals for a new Land Reform Bill due to be introduced by the Scottish Parliament by the end of 2023.

The proposals are set out in a consultation paper titled 'Land Reform in a Net Zero Nation' and focus mainly on the role of large-scale rural landholdings in delivering land use that meets 'net zero' carbon and wider rural sustainable development objectives.

Amongst other measures, the Government proposes to introduce a Public Interest Test to regulate the market in large-scale land transfers; a duty to notify of



A report found community ownership of the Bays of Harris was economically feasible. (Pic: John Maher)

the intention to sell large-scale landholdings, with a presumption in favour of community ownership; a duty to comply with the principles underpinning the currently voluntary Land Rights and Responsibilities Statement; compulsory Land Management Plans; and new conditions for those in receipt of public funding for land-based activity.

The legislation is not enough to address market imbalance

These are potentially significant proposals. But only if the metrics for what constitutes 'large-scale' landholdings are designed in ways to maximise their contribution to the Scottish Government's stated policy objectives for a just transition to 'net zero', community wealth building, and more community land ownership.

'Land Reform in a Net Zero Nation' proposes classifying 'large-scale' landholdings under the following three criteria: a fixed minimum threshold of 3,000 hectares; land accounting 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; and land accounting for more than a specified minimum proportion of a permanently inhabited island.

The 'data zones/local authority wards' and 'minimum proportion of a permanently inhabited island' criteria lack sufficient detail in the consultation paper to assess their potential effectiveness.

However, a minimum threshold of 3,000 hectares sets the bar far too high for what constitutes a 'large-scale' landholding for the purposes of triggering other aforementioned measures proposed for inclusion in the forthcoming Bill. It should be substantially lower, and less than the 1,000 hectares minimum threshold recommended by the Scottish Land Commission in its advice to Scottish Ministers in February 2021 if it is to have meaningful impact.

The gulf between policy intent and potential practical impact of the proposed 3,000 hectares minimum threshold is best illustrated by the proposed require-

ment on the owners of 'large-scale' landholdings to provide notification of their intention to sell the land in question, with a presumption in favour of community ownership.

It's a progressive idea in response to concerns about the growth in off-market sales of farmland, estates, and forestry and plantable land documented in 'Scotland's Rural Land Market Insights Report', research published by the Scottish Land Commission earlier this year.

The report found that off-market sales of estates rose from 33% of all sales in 2020 to 64% in 2021. The figures for forestry and plantable land follow a similar trajectory with off-market sales rising from 11% of total sales in 2019 to a third of total sales in 2020.

The Scottish Land Commission's report also found that, of the 70 sales transactions for planting land (for £53M) in 2021, the average size of landholding was 93 hectares. It also noted that the average size of estates marketed in 2020 was 971 hectares.

It's highly doubtful that

giving a green light for off-market estates and plantable land sales to continue is the policy intention of the proposed 'prior notification of intention to sell' requirement.

Yet that's exactly what the proposal will do if the 3,000 hectares minimum threshold remains as a trigger for notification. Or even if the threshold is lowered to 1,000 hectares.

Despite its focus on the relationship between large-scale landholdings, net zero and the public interest, the Scottish Government's consultation paper is curiously silent on how 'land value capture' legislation (an SNP manifesto commitment for the 2021 Scottish Parliament election) could be incorporated into the Land Reform Bill.

Might there be scope, for example, to include provisions in the Bill to ensure that communities can benefit appropriately from uplifts in land values associated with natural capital, rather than such benefits remaining out of their reach?

Perhaps even more surprisingly, the consultation



In a ballot, 63% of residents backed a new direction over ownership.



Other communities are waiting in the wings to follow Bays example.

paper says nothing about how the Scottish Government intends to ensure that the suite of four existing Community Rights to Buy (including the Crofting Community Right to Buy) can be amended to ensure they are fit for their intended purpose of bringing more land and assets into community ownership.

That issue will doubtless be of particular interest to the people of Great Bernera, a full seven years after they voted overwhelmingly in favour of community ownership of the island yet find themselves no nearer to achieving that objective. It should also be of interest to Scottish Ministers and Parliamentarians,

given their self-proclaimed commitment to effecting genuine community empowerment through legislative means.

Policy discussions regarding what provisions the forthcoming Land Reform Bill should contain may seem far removed from the ballot result regarding community ownership of the Bays of Harris Estate – especially given that the current owners have indicated their commitment to a negotiated sale of the Estate and its income-generating assets to the community.

Nevertheless, the outcome of that negotiation is sure to be awaited with considerable interest; not least because it will offer important and timely insights about how key aspects of land reform policy are put into practice.

(Dr Calum MacLeod is Policy Director of Community Land Scotland. This article is written in a personal capacity. Twitter: @CalumMacLeod07)



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