OFFICIAL REPORT
AITHISG OIFIGEIL

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Net Zero, Energy and Transport Committee

Tuesday 28 January 2025

Session 6

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NET ZERO, ENERGY AND TRANSPORT COMMITTEE
4th Meeting 2025, Session 6

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Michael Matheson (Falkirk West) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)
*Monica Lennon (Central Scotland) (Lab)
*Douglas Lumsden (North East Scotland) (Con)
*Mark Ruskell (Mid Scotland and Fife) (Green)
*Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Rhoda Grant (Highlands and Islands) (Lab)
Laura Hamlet (Coigach Community Development Company)
Andrew Howard (Moray Estates)
Tim Kirkwood (Wildland)
Megan MacInnes (Applecross Community Company)
Dannie Onn (Colonsay Community Development Company)
Dennis Overton (Ardtornish Estate Company)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Net Zero, Energy and Transport Committee

Tuesday 28 January 2025

[The Convener opened the meeting at 09:15]

Decision on Taking Business in Private

The Convener (Edward Mountain): Good morning, and welcome to the fourth meeting in 2025 of the Net Zero, Energy and Transport Committee.

Our first agenda item is a decision on whether to take items 3 and 4 in private. Item 3 is consideration of the evidence heard on the Land Reform (Scotland) Bill, and item 4 is consideration of the committee's work programme. Does the committee agree to take those items in private?

Members *indicated agreement.*

Land Reform (Scotland) Bill: Stage 1

09:16

The Convener: Our second item of business is an evidence session on the Land Reform (Scotland) Bill. Today, we will hear from landowners, including community landowners, on part 1 of the bill.

Before we do that, I will make a declaration of interests. I remind everyone that I have an interest in a farming partnership in Moray, as is set out in my entry in the register of interests. Specifically, I declare that I own approximately 500 acres of farmed land, about 50 acres of which is woodland. I am also a tenant of approximately 500 acres in Moray under a non-agricultural tenancy, and I have another farming tenancy under the Agricultural Holdings (Scotland) Act 1991. In addition, I declare that I sometimes take on grass lets on an annual basis. I should probably also make it clear that, having been a surveyor in Inverness for about 14 years, I have come across two of the witnesses—Andrew Howard and Tim Kirkwood—before. In Tim Kirkwood's case, I was sitting on the opposite side of the table in various negotiations.

I welcome to the committee Laura Hamlet, who is chief executive of the Coigach Community Development Company; Andrew Howard, who is managing director of Moray Estates; Tim Kirkwood, who is the chief executive of Wildland; Megan MacInnes, who is the local development manager, atpplecross Community Company; Dannie Onn, who is the director and chair of the Colonsay Community Development Company; and Dennis Overton, who is the chair of the Ardtornish Estate Company. I also welcome Rhoda Grant, who has joined us for today's meeting and who will get to ask some questions at the end. Thank you all for attending, whether virtually or in person.

I will start off with an easy question, which I hope that you will be able to give me simple answers to. I will work along the table, before moving down on to the screen in front of me. I will start with Andrew Howard. Could you set the scene with regard to how you are involved in interests in land? You can be brief—I do not need a whole chapter.

Andrew Howard (Moray Estates): Certainly, convener. I am the managing director of Moray Estates, which is a large diversified landholding that is owned by the Earl of Moray and his family. We farm, we have forestry and we let property, but we also have significant renewable energy and development interests, including the new town of

Tornagrain, between Inverness and Nairn, which will eventually consist of 5,000 homes.

The Convener: How many hectares do you have, roughly?

Andrew Howard: About 16,000.

Tim Kirkwood (Wildland): I am chief executive of Wildland estates. Wildland is a company that has a number of subsidiary companies—there are 11 of them—which are all landowning companies. I will explain the historical situation. The estates, which now comprise three significant contiguous blocks of land, were bought separately and amalgamated. Each was either already bundled within an existing company or was bought through a separate company.

In effect, Wildland consists of three significant blocks of land. The two principal ones are Wildland Cairngorm, based in the Cairngorms, and Wildland Sutherland, based on the north coast of Scotland. Although they have slightly different topographies and ecosystems, both cover very extensive areas of ground. We also have a block of ground in Lochaber at Braeroy, which includes some significant commercial forestry interests, and Aldourie castle on Loch Ness.

Overall, Wildland has about 100,000 hectares of land, which is managed principally—in the large remote areas—for nature conservation and natural outcomes. We employ about 106 people at peak. We have a hospitality business that we are growing. We have a little bit of in-hand farming, some grass lets and some native and commercial woodland.

Dannie Onn (Colonsay Community Development Company): I am the chair of Colonsay Community Development Company, which, in effect, is the development trust for Colonsay. We are a relatively new and small-scale landowner. Colonsay is about 4,000 hectares, 80 per cent of which is in single private ownership. We own less than 100 hectares. It is mostly croft land, but there are some small development sites, which include new housing developments and business units.

Dennis Overton (Ardtornish Estate Company): Good morning. I am chair of Ardtornish Estate Company, which is a land-based business on the peninsula of Morvern. Morvern is about two and a half times the size of greater Glasgow and has a population of about 350 people. Ardtornish extends to 8,300 hectares. We are seeking to develop and build a sustainable business that is long term in its thinking. For the past 95 years, the ownership of Ardtornish has been in the Raven family, and we are now moving into fourth-generation involvement there.

Laura Hamlet (Coigach Community Development Company): I am the chief executive of the Coigach Community Development Company. Coigach is in the far north-west. We are part of a regional land use partnership with Wildland Sutherland, so there is a connection there.

About 250 people live in Coigach. The population density is 3.5 people per square kilometre, so it is quite sparsely populated. We are two hours from the nearest city hospital in Inverness and 40 minutes from the nearest village, which is Ullapool.

The development company was set up in 2010 to respond to an emerging housing crisis. Since then, a team of volunteers has worked to develop a wind turbine—the Varuna—and, in parallel with that, to acquire land. In 2023, we acquired three acres of land, and we are building 10 housing units there.

Last year, we were given a philanthropic donation to purchase the Badentarbat estate, which was split as part of the sale. That was a major development for us. The development company received the crofted portions of the estate. That land, which consists of around 3,000 hectares, is 100 per cent crofted—there is no freehold at all. Our major challenge there is to build a sense of community and to foster collaboration so that we can work on management, together with the grazings committees.

To put the situation in context, our school roll has dropped by 70 per cent since 1996, and we are now down to eight pupils. Tackling the depopulation crisis is our main focus.

Megan MacInnes (Applecross Community Company): Good morning, convener and members of the committee. Thank you for inviting me to give evidence this morning. I am sorry that I cannot be with you in person, and I hope that you can hear me okay.

I am the manager of the Applecross Community Company, which is a community landowner and the only development trust on the Applecross peninsula. The Applecross Community Company has been operational since 2008. It was set up to deliver a range of community developments and community benefit projects. In addition, we are increasingly stepping in to deliver some of the basic public services in the area.

The land that we own probably comes to less than 20 hectares in total. We have focused on acquiring a number of what could be called sites of community significance to focus our activities on. We own the local filling station, a community broadband network, affordable housing, allotments, a community garden and community

woodland. We have recently bought a Church of Scotland church building, which we are converting into a community hub, and we are now focusing on a larger affordable housing and business unit project. The starting point for all those projects is that they meet a community need that has been identified through community consultation activities.

We are the only development trust on the Applecross peninsula. The wider area is a 26,000-hectare peninsula that has about 260 people living on it, so its population density is similar to that of Laura Hamlet's area. There are 14 crofting townships across the peninsula, and more than 95 per cent of the peninsula is owned by the Applecross Trust.

At the moment, our key focus is on stepping up to deliver public services, which we are doing to an increasing extent as the public sector in the Highland region shrinks. We are also focusing on providing affordable housing, to tackle the problems that Laura Hamlet mentioned: a declining school roll and a declining population overall.

Before I finish, convener, I ask the committee to note that I am giving evidence today only on behalf of the Applecross Community Company, not on behalf of any organisations that I previously had roles in or in my capacity as a board member of Community Land Scotland.

The Convener: Thank you very much, Megan. Of course, you would have to have been invited. Applecross is one of my favourite stops on my summer surgery tour, and if you were not here, I would probably not be allowed back.

The first question will come from Kevin Stewart.

Kevin Stewart (Aberdeen Central) (SNP): This is a follow-up question. Mr Kirkwood said that Wildland has some 100,000 hectares, and Mr Howard said that Moray Estates has some 16,000 hectares. However, the research that has been done for the committee states that Wildland has in excess of 75,000 hectares and that Moray Estates has in excess of 12,500 hectares. The landholding figures that you have given are greater than those that our researchers have managed to find. Do you think that you need to be a little bit more open and transparent about the landholdings of each of your entities?

Tim Kirkwood: I do not know how we could be more transparent. All our entities are owned in United Kingdom registered companies. We do not seek to mislead or to conceal in any way the extent of our landholdings. I explained how they fall. I tend to think in acres, to be honest. There are some 100,000 acres up in Sutherland—that is an amalgamation of a number of estates that have been bought over a number of years. There is a similar area in the Cairngorms, a block of land in Lochaber and about 500 acres at Loch Ness, which includes some of the solum of Loch Ness. I do not think that there are any issues of transparency or of trying to conceal in any way the extent of the landholdings.

Kevin Stewart: Thank you. Mr Howard?

Andrew Howard: I am not quite sure what the source of your information is. We state on our website the size of our farming operations, the size of the landholding that we have let to other people and the size of the woodland resource that we are managing. Obviously, I will go away and check that those figures are accurate. It is perfectly possible that there are areas that are not actively managed for forestry or farming, for instance, that we have not included in the narrative on our website. I am very happy to check that information and to correct it. However, like Wildland, we have no desire to be anything other than clear about what we own and where we own it.

Tim Kirkwood: I would like to add that, if your researchers want to contact me, I will happily liaise with them.

Kevin Stewart: I am sure that they will.

The Convener: In fairness, I can see from looking at the paperwork that the bit at Lochaber has probably been missed off. Our paper certainly mentions Loch Eriboll, which is Wildland's northern bit, and Glen Feshie, so I think that that might be the discrepancy there.

I will go to the deputy convener, Michael Matheson.

09:30

Michael Matheson (Falkirk West) (SNP): Good morning. I want to pick up on how you engage with local communities in your estate management planning and considering how to use your land in the years ahead. Mr Overton, can you give me a sense of how you engage with and consult the local community on the development of management plans for your estate?

Dennis Overton: Over the past 10 years, we have seen an evolution in community communication and interaction from the quite informal process that had existed for many years on Morvern. First, we see ourselves as part of the Morvern community—we are within it. More than 35 people out of the population of 350 are part of the Ardtornish team, so we do not think of there being two clearly distinct entities.

However, about 10 years ago, we decided that we should take a more structured and proactive approach to interactions with the community. That

decision was informed by our change in strategic direction, which involved moving from a traditional mixed estate business to something much more focused. We realised the need for ecological restoration about 10 years ago, which set us to thinking about developing an ecological restoration plan, which is really our overarching driver and strategy—everything that happens at Ardtornish has to be consistent with that.

In thinking about how to develop that plan with the involvement of the wider community in Morvern, we moved to a more structured approach. In developing that plan, we had discussions with people in the community, both through reaching out to people directly and asking for comment on documentation. Just to give the committee a sense of the period that we are looking at, it is a 25-year plan, and we are now seven or eight years into it.

Moving on, about four years ago, we thought that we should start to consider reporting on the impact of what happens at Ardtornish in the community. That is about the economic and environmental impact, but also the social impact—what impact does what happens at Ardtornish have on the wider community of Morvern? We have done some work to build housing to seek to allow the population to grow, because the population of Morvern is too small—there are not enough people—so the social impact is relevant in that domain.

That process of consultation and the opportunity for people to comment formally and informally built on what happened in the ecological restoration plan work in 2016-17. That process has continued. A week on Saturday, we have an open session in the village hall in Lochaline to talk about biodiversity development and recovery at Ardtornish and, we hope, wider Morvern. We will be talking about things such as red squirrels and wood ants. That will be a busy meeting, because people are interested and it is very important that people understand what we are seeking to do. That is informed by the views that are expressed by what is a very active and articulate community.

I will stop there, but I hope that that gives you a flavour.

Michael Matheson: That is very helpful. I put the same question to Mr Howard.

Andrew Howard: Our engagement is with various communities that are close to or within the estate. The estate itself is over eight blocks of land between Stirling, Moray and Inverness-shire—we are not one big contiguous block—and engagement is a constant process.

Some of it will be informal. It might be with local community councils, community development trusts or even just individuals, if they have an interest. We did not consult with the communities over the development of our corporate plan, which contains lots of financial and other information that would be commercially confidential—that is the nature of the document; it was not designed to be a public-facing document. However, we communicate and engage with the communities over change, whether that be development, afforestation or any other change that is likely to have an impact on the local community.

At one end of the scale, there might be a relatively small and informal consultation over new afforestation projects or things such as long-term forest plans. Consultation on long-term forest plans is a requirement, so we have been doing that for many years. It would be fair to say that the level of interest that we get in those consultations is pretty small, despite our efforts. For example, we had a public session that was allied to the development of the local place plan in one of the communities. There was still relatively little interest, because there was no real change; it was just about the next 10 years of forestry management.

At the other end of the scale, the large project at Tornagrain, which ultimately will be a town, involved a major public engagement exercise—it was probably one of the largest for a development of that type. It ran for two weeks, and the public and the local communities were completely engaged in the design of the town, so it was a community-led design process.

Our engagement strategy tends to depend on the nature of the issue that we are dealing with. We do not engage over things where there is no change, but we engage where there is change, particularly if that is likely to have an impact on the community.

Michael Matheson: To clarify, do you have a land management plan for all the estates? You mentioned your corporate plan. I understand that that is for the business, but do you have a land management plan for each of the estates?

Andrew Howard: The objectives for the management of the land will be set out in the corporate plan, but that plan will also deal with things such as our strategy for our tenanted farm estate and for other aspects of the business. It is not a land management plan per se, but it has land management objectives and targets within it.

Michael Matheson: You mentioned that you engage around change. From what you have said, that sounds like change that is initiated by the estate and not necessarily change that the local community may be seeking. How do you engage with the local community on what its aspirations might be and how some of the land could be used for community benefit?

Andrew Howard: That sometimes comes out of the informal process of engaging, because we are part of the community as well. That might involve contact with the local community council, or it might just be individuals contacting us and saying, “We have an idea. Can we do this?” For instance, an allotment group might say, “Can we have a site for allotments?”

Sometimes, that has happened when we have engaged over development change. For instance, in one community, we held a smaller engagement process than the Tornagrain one over options for the development of that community, so that the community could be part of that process. That was several years ago and was in advance of the local place plan process, but it was effectively trying to do the same thing. That engagement exercise also flushed out a number of community aspirations for land uses or other facilities that might be of interest to the community, which we were then able to act on.

Michael Matheson: Mr Kirkwood, I put the original question to you. How do you go about managing it for your estates?

Tim Kirkwood: Could you repeat the question?

Michael Matheson: How do you engage with the local community on how you are developing your management plan for the land that you own?

Tim Kirkwood: With Wildland, it is horses for courses, to an extent. Wildland has had its management objectives and been active in the management of land in the Cairngorms for much longer than it has been up in Sutherland. Wildland was born in Glen Feshie some 20 years ago, when it took on an estate there. That was in the early stages of ecological restoration, which was a policy that was relatively well understood at the time, but it was predicated largely on bringing down deer numbers to reduce the impact of herbivores on the environment to allow the woodland and natural habitats associated with it to recover. At the time, that was a very contentious policy that was pretty groundbreaking. I was not on the scene at the time, but I was watching from the edges.

There was general mistrust and misunderstanding and a great deal of concern about the estate’s management practice at the time, which was not well understood. The reduction in deer numbers was seen as potentially destroying rural employment through the effect on deer populations in neighbouring estates, and I do not think that there was a great deal of consultation or engagement at that time. As a result, communities were split, misinformed and deeply sceptical about what was going on. There was probably a lesson learned at that stage. It was good work being done for good reasons, but it was not widely communicated or understood.

The world has moved on a lot since then, and there is a happier, more receptive and wider audience that understands the importance of land management and managing for natural outcomes, particularly in the face of the climate crisis and the biodiversity collapse. We are embedded in a more interested, more understanding and more engaged community.

We are a member of Cairngorms Connect, which is an amalgamation of like-minded landowners with similar management aspirations that is effective over, I think, 6,000km^2. Wildland has one of those landholdings. Forestry and Land Scotland, RSPB Scotland and NatureScot have others. We have a charity, two public sector landowners and a private landowner all working together in the interests of nature outcomes over a significant area of ground. There are long-term management objectives, stability of ownership—we hope—and an ability to deliver management policies at scale, consistently and over time, to give heritage outcomes and allow nature processes to work at a natural speed for landscape recovery.

Cairngorms Connect is well resourced for community engagement. We help to resource that through our efforts and by funding our part of it. The organisation also has public sector funding and grant aid coming in. It has a 200-year management plan, which reflects what Wildland is doing. It engages widely and consistently on that plan and its objectives. It produces an annual report on how the objectives are being met or not, and the impacts.

A Cairngorms Connect conference is run annually. Members of the public are invited to attend and hear what is going on by way of consultation. We take feedback on the outcomes of the conference, taking into account views that are taken there. There is a ranger service, which is partly funded by the Cairngorms National Park Authority and which is involved in the initiative—it is outreaching continually. A lot of public engagement is going on around the objectives and management of the estates, and we are part of that.

09:45

Similar to what Andrew Howard set out, we have a long-term forest plan, which involves extensive consultation with statutory stakeholders and others. If we are working on any kind of built development or land use change that requires planning, public consultation is of course required.

In the north, where we are newer on the block, not so advanced and perhaps not so well

understood, we have developed a community engagement plan that identifies the scale and likely impact of the land use change and, on the basis of that, criteria for how and when we engage with the community to consult over those propositions. We put that engagement plan in place through consultation with the Scottish Land Commission and its community engagement facilitation officer.

Part of that was about getting the community to engage with the Scottish Land Commission and its engagement officer so that people would coalesce as a community, with a single community voice that we could engage with, because we had found that the community up there is quite partisan. Different sections of the community have different interests, objectives and aims. Engaging with part of the community became problematic, because other parts of the community felt that we were not engaging with them. We thought that we were engaging with a community group that would then pass on the information and ingather and communicate locally. We had all sorts of problems with our engagement being perceived as partisan and perhaps being done with a degree of favouritism.

We therefore engaged the Scottish Land Commission in that. People from the commission visited the various community groups and representatives in an effort to find a way of engaging with us through a representative voice. Out of that came an initiative called the community conversation, which is convened by the local community development trust. Various community bodies send representatives and we meet periodically—once a quarter—to talk through a standing agenda. We talk about what we are doing and what the community is doing, to try to find points of common interest where we can work together.

We have had a number of initiatives. Dennis Overton mentioned impact assessment, and we are on the verge of instructing an impact assessment of what we are doing across the board, across many measures. That has been scoped out, and we are about to appoint someone to do that to help measure our performance and impact to inform our plans and how we engage going forward.

I am sure that we will get on to local place plans, but we are supportive of those. We have worked with Highlands and Islands Enterprise to try to bring that forward in the north, and we have even provided funding for a housing development officer to be engaged and to identify priorities.

We work across many fronts. Community engagement is a two-way thing—you have to have people on the other side who are willing to engage and bring their best to the process as well.

Michael Matheson: I will move on to the issue of identifying communities' aspirations and intentions and how those are taken forward through engagement with local communities. Megan MacInnes, in your experience, how does the Applecross Community Company identify and take forward communities' aspirations and intentions?

Megan MacInnes: The Applecross Community Company is only a small landowner compared with others in Applecross, but our primary objective is to consult, identify aspirations and intentions, as you said, and work out a way to take them forward. That is at the heart of what we do. I hope that what I say will provide a contrast with some of the approaches that have been outlined by other witnesses.

Like many development trusts, the Applecross Community Company is compliant with the Land Reform (Scotland) Act 2016, which provides certain parameters for how we can operate in relation to our governance and how we work with the local community. We are a democratic and member-led local organisation. Our existence is based on our members. Our membership is restricted to residents within a particular postcode. Our directors, who are elected from among those members, are, ultimately, liable for our regulatory compliance and for ensuring that we achieve our objectives.

We are currently delivering a five-year action plan, which was based on substantive community consultation. We worked with other partners in the area, including the Applecross Trust, to develop a community land use plan, which identified land and assets in the Applecross peninsula that we could consider acquiring to develop our community benefit activities. We are in the middle of the implementation of that five-year action plan, and we continue to regularly consult particular parts of the community and the community more broadly, including other community bodies, on the development of particular elements of the action plan.

We will hold a drop-in session on Thursday to get feedback and ideas about developing business units alongside our new affordable housing project. We have mechanisms for getting regular feedback and for communicating with our members and the local community through the annual general meeting, newsletters and other things.

From our perspective, communication and transparency are key. We do not always get that right, and we have learned to our detriment what happens when we do not get it right and are not adequately aligned with the community's needs, aspirations and concerns about a particular issue. However, given that we are member led and have

no objective other than to respond to the community's needs and deliver development objectives in response to those needs, a community development trust such as the Applecross Community Company works with and delivers for its community in a substantively different way when compared with other types of landowner. In the community landowning sector more generally, a lot could be learned from that local member-led approach that could be useful for developing land management plans, local place plans and other forms of community engagement and consultation in other parts of Scotland.

Michael Matheson: Mr Onn, I put the same question to you.

Dannie Onn: I will pick up on the previous question, too, because they roll together.

Michael Matheson: If you could do that briefly, that would be helpful.

Dannie Onn: Our set-up is similar to that of the Applecross Community Company. We perform the same role in the same way with the same kind of constitution, and we are community led. In 2022, we published a 10-year community plan, which followed considerable engagement and best practice with the community. That was funded under a graduate placement scheme. We are in the process of engaging with our community on the carbon-neutral islands net zero plan and energy audit. We are producing an island profile, which has been supported by the Scottish Government's islands team, and we are about to embark on a local place plan.

We engage fully with the community. We have a board meeting every month, and we issue a monthly bulletin to the community. I can give more detail if you wish.

By contrast, we are very much in the dark in relation to what happens with the majority of the land on the island. More than 80 per cent is under one owner, and there are also much smaller private landowners. We have no idea what is happening and have no influence over plans for the majority of the island.

For example, there was some talk last year about the main farming enterprise becoming organic and regenerative—I think that that was the other word that was used. That was mentioned to us, as a development trust, and to the constable of the crofting community, but we heard no more about it. It might have been related to a grant application that was not successful. We hear very little about what goes on.

Michael Matheson: That is helpful. I ask Laura Hamlet the same question.

Laura Hamlet: Our governance and membership-led structures are similar to those for Colonsay and Applecross. Since 2010, there has been extensive and intensive consultation with the community in a raft of creative ways. One of our staff members is an artist so, as you can imagine, we work with the community on arts projects to hear people's views, as well as the more traditional ways of consultation.

All of that led to the work that we did with Northwest 2045 during the Covid lockdown. Young people carried out telephone and Zoom interviews with members of the community and did a deep dive to find out their views. We collated everything into a list of priorities and, in 2024, we went out to the community to do a deep dive that involved asking people to set their top five priorities. In addition to the four main projects that are being delivered, we now have five projects on which, we believe, there is consensus in the community and that people want to be delivered.

Given that we acquired the land only last year, in October, we do not yet have a management plan for the Badentarbat estate. We are using the time that we have to build trust with the grazings committees and the townships on the estate. The development company covers a much wider area than the estate, so we have to be careful that we are not seen to be taking the views of people who do not live on the estate and applying them to the people who do. A trust-building exercise has to be done.

We are setting up an estate business working group. We have taken advice from the Galson Estate Trust on Lewis, which has been doing this for a very long time. It is proposed that the working group will operate with representatives from each of the grazings committees, but we are at a very early stage with that. We are in discussions with each of the grazings committees to get their views on how the management of the estate should be conducted. We hope to have the first meeting of that group in the next couple of months. We are at the very beginning of planning how to manage the estate.

Michael Matheson: Thank you.

The Convener: One of the problems with having a large panel is that everyone wants to answer every question, which, I am sorry to tell you, ain't going to be possible. If your view is the same as that of someone who has already spoken, do not feel that you need to chip in and give an explanation for why that is the case—we will take that as read. We would like, if possible, to hear dissenting views.

That will save me from signalling to the gentleman in the broadcasting team to cut off your microphone if you go on a long diatribe. I have

done that only once as convener, and I hope that I will never need to do it again. I ask you to keep your answers as short as possible.

One thing that did not come out of that discussion was the cost of community engagement. I will ask a question about that at the end, so you can be thinking about that.

Monica Lennon will ask the next question.

Monica Lennon (Central Scotland) (Lab): Good morning, everyone. I will stick with land management plans. The bill sets out what should be included in a land management plan, including the ownership structure, the long-term vision and objectives, and compliance with the outdoor access code and the deer management code. There is quite a lot in there, but I want to focus on how the land management plan would require the owner to set out how they intended to manage the land in a way that would contribute to achieving net zero emissions, adapting to climate change and increasing or sustaining biodiversity. I am keen to hear—perhaps not from all of you, in the interest of time, but please catch my eye—whether you think that the criteria and duties are adequate and appropriate or whether you think that something is missing or too stringent.

Andrew Howard has caught my eye, and I might go to Laura Hamlet next, if that is okay. Andrew, would you like to respond?

10:00

Andrew Howard: Those could be pretty big areas, particularly for diverse estates. We have everything from upland moorland—not much of it—to commercial forestry and intensive agriculture and then quite a lot of development activity. So, making a detailed assessment of the carbon emissions and everything else from the wide range of those activities would be quite a task, but it is a task that we have started on. Our agricultural businesses have had their carbon audits, and the forestry business's carbon audit will look a lot more positive than that. The carbon audits of our development activities would be quite complex.

There is a risk that management plans become quite a big onerous task, and, if we are being asked to report on statutory or other guidance requirements, I am not quite sure of the overall purpose of that. Clearly, we are required to comply with, for instance, the outdoor access code, and we do. I am not sure why we need to state that, because we are required to do that. If land management plans are introduced, they need to be proportionate and must deal with things that are of material interest to communities.

I am not trying to wheel back to a previous question, but one benefit of the local place plans—and why they are so important and should be supported more—is that they are a community-led process for understanding aspirations, what communities want to achieve and the information they would like to see. A land management plan is a landowner-led process and, to be honest, if we are candid, there is a real risk that, once the framework of what is to be supplied is set out, most landowners, to minimise the risk of creating a stick with which they could be beaten, will set out the minimum requirements of that plan. In that way, they will have complied but will not have created a rod for their own back at some point in the future by saying, "We aspire to do this" and setting out an ambitious aspiration that, for all sorts of perfectly genuine reasons, they are later unable to meet.

You need to be careful with big strategic objectives like resolving the biodiversity crisis, reaching net zero and all that sort of thing, because they are at risk of being quite ill-defined, and landowners will be a little bit cautious about setting out their stall if they have any concerns that they will not be able to meet targets or other aspirations that they have set out in those plans.

Monica Lennon: Thank you—that was quite a comprehensive answer. I am interested in hearing more about what people think proportionate looks like and what would be good practice in that area.

Let me unpack some of that. I take your point about net zero, biodiversity and climate change, but, on a large estate, would such assessment and planning not be happening anyway? You talked earlier about the business planning side of your operations and the more commercial stuff that is perhaps not all in the public domain. Would that work on biodiversity, nature restoration and net zero not be influencing the commercial side anyway?

Andrew Howard: Sometimes the two things can conflict. In terms of long-term sustainability, clearly we want our landholding to be in a good environmental condition because, over the long term, that will maintain its maximum productive potential. However, a lot of the nature regeneration and carbon compliance things will come with a short-term cost and, as a business, we have to try to balance the pace at which we do those things and when some of those activities take place. It is complex and we are learning.

We are perhaps not as far forward as we should be, so we are working our way through the sectors that we are involved in. As I said, we have done the agricultural carbon audits, but we have not done a net biodiversity audit of any of our businesses yet, and that is likely to come. We also have to balance the use of our resources between

our commercial activities and all those other things, because, in simple terms, what we can do on any given day is limited and this is a new layer of activity and management focus that did not exist 10 or 15 years ago. If it is difficult to monetise, we have to work out how we can bear the cost.

Monica Lennon: Dennis Overton was gesturing, so I will go to Dennis and then Laura Hamlet—I do not know whether she is keen to answer. I have put her on the spot, but I will stick to those in the room for now.

Dennis Overton: I have just a couple of points to make. The bill proposes the introduction of LMPs, and it is important that there is a clear understanding that one size does not fit all. The situation that Andrew Howard described is different from that faced by our business, which is on the other side of the country, so the need for flexibility and proportionality is important. The Land Commission's report last week on the bill suggested that the threshold for LMPs be dropped to 1,000 hectares from 3,000 hectares, as is proposed in the bill at the moment. That will bring a lot more people and businesses into the LMP space, which means that proportionality and flexibility will be really important.

Yesterday, the Land Commission held a workshop on the topic of land management plans and we had somebody from the team there. I think that there is a danger of mission creep, in terms of economic data beginning to creep into this, because there was discussion of the percentage of spend that takes place locally, which to my mind begins to look quite different from the initial idea of giving a clear explanation to communities as to what a land business does, although I have no difficulty with that.

Proportionality is really important, particularly if smaller businesses are going to be brought in, and it is also important to make sure that the breadth of what is covered does not creep too far and that it remains a land management plan.

The Convener: I would just like to understand that, before Monica Lennon continues her questioning. You said that the Land Commission had somebody in from the team. What team is that?

Dennis Overton: The Land Commission held a workshop yesterday on the topic of how to do land management plans well. Somebody from our team attended and they reported back this element—

The Convener: Sorry—I understand that. I thought that it was the Government that was clarifying what it thought should be in a land management plan. You are saying that it was somebody from your team.

Dennis Overton: Yes.

The Convener: I am sorry to interrupt, Monica. That clarifies the matter.

Monica Lennon: No—it is fascinating. We are here to learn in real time.

I will briefly follow up on that point, Dennis. I do not know who was in the room at that workshop, but one issue that we have, sitting in committee rooms like this, is that we want to make sure that legislation is fit for purpose but also that it does not exist in a silo. The Scottish Government has other aspirations and has other legislation coming forward, including the proposed community wealth building bill. I do not know whether the workshop that you mentioned was touching on local spend going back into the economy so that the people who live in an area benefit from the investment, just as they have an interest in any negative aspect of development. Was it in that space around community wealth building?

Dennis Overton: I think it was. To my mind, that is bringing in confusion. We spoke earlier about impact reporting, which is important, but we need to think about the whole space of reporting and the need to produce plans. A Morvern local place plan is being developed and we are contributing to that. The question in my mind is about the link between the LMPs and local place plans, and whether they should be more joined up. Farmers are having to produce plans as well, in relation to what they plan to do, in a way that has not been done before. My plea to legislators is to be aware of the danger of overloading communities and businesses with the planning process. Can we ensure that, in the design, the joined-up approach is maximised?

Monica Lennon: That is helpful. I will go to Laura Hamlet and then Dannie Onn, if there is time.

The Convener: Briefly.

Laura Hamlet: I will contribute something from the perspective of a landowner that works with crofters. The Crofting Commission reminds us that crofters have rights, which creates a dichotomy between landowner and crofter. However, to effectively manage a piece of land on an estate, you have to collaborate and work together. As a landowner, we could not produce a net zero plan without the full co-operation, support and collaboration of the grazings committees, because no section of the estate that we own is not under crofting tenure. It is a matter of being mindful that we need to be able to work together.

So, at the moment, it may be a false dichotomy between landowners and crofters when it comes to management. It is not particularly helpful for a collaborative relationship to set up such dichotomies. If there is an opportunity to create an environment where landowner and crofter can

collaborate and not be at odds with each other, that would be helpful.

We have been approached by the University of the Highlands and Islands, which is keen to work with us on the Badentarbat estate to produce a carbon audit and a biodiversity audit. We would love to do that, but we do not want to go in gung-ho, without first speaking to all the grazings committees and making sure that everybody is on board with that.

Monica Lennon: That was helpful. Thank you, Laura. It is good to get that perspective at stage 1. That will help us with our reporting on the bill. I will go to Dannie Onn and then I will hand back to the convener.

Dannie Onn: I have a quick point to make. I am hearing words like “minimal compliance” and “proportionate”. The concern for me is that there has to be sufficient detail in the land management plan for the community to understand what it is and to challenge it. It is not so much about proportionality in terms of content, but one size will not fit all, obviously. In a small community like ours, the plan can be made quickly and easily, but we must have the detail.

Monica Lennon: Thank you.

The Convener: Mark Ruskell has the next question.

Mark Ruskell (Mid Scotland and Fife) (Green): I want to drill down a bit into the Land Commission’s proposals for land management plans. It has come up with two specific recommendations. One is that there should be a duty on the landowner to demonstrate how community engagement has effectively informed the land management plan. The other proposal is to ensure there is a duty to refer to local place plans in the land management plans.

I want to get your quick reflections on both or either of those proposals. Are they useful? Would they, from your perspective, enhance the process of LMP development? I can see that Megan MacInnes has a hand up.

Megan MacInnes: Thank you. I want to come in on this point and maybe also respond to the more general question from Monica Lennon.

The Land Commission’s recommendation for an amendment to say that the land management plans need to demonstrate how community engagement has informed those plans is really important. From our perspective, living in a situation where there is concentrated land ownership, we strongly agree with the introduction of land management plans and the transparency that we hope will come as a result.

However, we believe that some elements of the bill could be strengthened. Some of those are procedural, as you just mentioned, Mark. The land management plans would need to clearly discuss how community engagement had informed the plan and how the plan had been changed as a result of that community engagement. We at the Applecross Community Company are developing a land management plan for our sites, which, arguably, we already do through our action plan and our community land use plan. A clear part of that for us is including a methodology on how we as a development trust have responded to community need. Making sure that the land management plans are embedded in what the community needs, as demonstrated through community engagement, is really important.

I will say a couple of things in relation to Monica Lennon’s questions about the overall policy objectives. We support what is in the bill, but it does not go far enough. The bill needs more explicit reference to the land management plan leading to a focus on contributing to wider Government national targets as well as local objectives. Particularly in our sparsely populated area, the land management plans should explain how they contribute to tackling depopulation, improving access to affordable housing and promoting the rural economy. The plans should also have more explicit reference to the land rights and responsibilities statement and what that means on a pragmatic basis, as well as saying how they contribute to increasing the diversification of ownership of land, the progressive realisation of human rights, and thinking around community wealth building and other things. A lot more detail could be provided in the land management plan about that.

While I have the microphone, I want to say a little bit about the question of proportionateness, which is important. We agree, as Monica Lennon said, that landowners at this scale, if they are responsible, should already have long-term management plans for their land and for their assets. I also want to remind the committee that community development trusts and community landowners have to reach a substantially high bar in terms of their business plans and demonstrating community support for the smallest asset if they are to be successful in getting Scottish Land Fund funding, for example, for the acquisition of that asset. From the perspective of a community landowner, what is in the land management plan is no more burdensome than what is expected of community landowners. Thank you.

Mark Ruskell: Thanks for those comments. I am looking for others to come in. Andrew Howard, you mentioned previous developments and I am aware that there was quite a lot of controversy around your proposed development in the wood of

Doune. You alluded to that earlier. It would be useful to hear your thoughts, particularly on local place plans and how your thinking has perhaps evolved from that episode.

Andrew Howard: As I hear some of the comments and we hear from other witnesses about the scale of the ambitions for land management plans, the financial memorandum to the bill underplays quite significantly the potential cost for landowners. Running a public engagement exercise in which the community is properly engaged involves a process of helping the community to develop a degree of understanding of the issues that you are dealing with—some of the land uses might involve a degree of technical understanding about why you are proposing to do something—so that the community can engage properly in the process. Those are major undertakings.

You referenced the small community charrette that we had in Doune about 12 or 13 years ago, which was centred on one community. That exercise cost about £70,000, it ran for two or three days and it involved the production of information afterwards. It was controversial and we responded to the feedback that we had from the local community. This time around, the local community has produced a local place plan, which is absolutely how things should be done, because it is a community-led process rather than something that the developer is doing. Critically, that is available to pretty much all communities.

One thing that is not being talked about is that, even if you reduce the threshold to 1,000 hectares, the vast majority of communities and citizens in Scotland will not be affected by a land management plan. If the objective here is something that benefits communities, all landowners should have to prepare one and it would need to be proportionate. It is irrational and illogical to have a threshold because, if it is important for one community, it should be available to all communities. Land management plans will not be that, but local place plans will be. They are a community-led process, so they are an excellent idea, but they could do with more support so that the communities themselves are in a better place to be able to advance those LPPs as effectively as possible and set out their aspirations.

Mark Ruskell: Leaving aside your comment about the cost of engagement and following the logic of your argument, would that save you money? Instead of having perhaps a speculative housing development on an area of green belt, you would have been able to say, “The community does or does not want this. Therefore, we have done all the consultation. We can go straight into consulting on a land management plan that is driven largely by the local place plan and what the community wants.” I take the point that you did a process that took £70,000 for a couple of days—that is eye-watering—but are you saying that the local place plan sets the agenda and you feed off that and that is a bit simpler?

Andrew Howard: Yes. Dealing with the cost point, it is a couple of days, but it is loads of work beforehand and it is also a lot of work afterwards reporting and responding to the feedback that you got and changing your original plans. It is a two-day exercise with the community, but there is a whole process that runs up to that and after it.

I do not wish to give the impression that I am averse to the idea of engaging and trying to understand what communities want. I am averse to excess bureaucracy over things that will not benefit communities. We should be focusing on—the LPPs do this extremely well—the change and the aspirations of communities in and around their communities. The focus would be best placed there.

Mark Ruskell: Thanks. Dennis Overton, you want to come in. Could you also cover the specific Land Commission proposals?

Dennis Overton: I will go back to your question on the second point that you raised, about consultation with the community and evidencing that in the development of the LMPs. That suggests an episodic approach to the relationship between the business and the community, which is not our experience. We see something much more organic. Ideas and aspirations are being put on the table fairly regularly and we can see projects evolve.

A specific example is the community’s aspiration to place pontoons in the loch, which is an attractive stopping spot for yachtsmen for six or eight months of the year. That has been a clear objective. It was possible to lease land quickly and allow that development to continue. That conversation moves on to ownership and the possibility of the community owning that land, which we would be open to. That is reflected in our land management plan and it is in the LPP, but the process is one of on-going consultation and the relationship is much more organic than episodic.

I do not view engagement as a one-off process of consultation that happens once every five years. That time period is probably too short, actually; the land management plans should have a longer time perspective than that. Our experience is that it is an on-going conversation about understanding community ambition. We should be well aware of that ambition and, vice versa, the community should understand the plans of the business to evolve and develop.

Mark Ruskell: You see what is in the plan as a summation of work that is already on-going.

Dennis Overton: You are capturing that process once in every—whatever the period is for the updating of the LMPs.

The Convener: Bob, you wanted to come in.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): Mr Overton may just have addressed the point.

Mr Howard, it was quite challenging to hear some of the things that you said, but it was important to hear them. I wanted to double check whether good quality land management, irrespective of whether there is a statutory land management plan and community engagement, would have an on-going structure to engage with the community anyway, whether we legislated or not, to ensure that that land management plan fits in with the on-going community structures. Mr Howard, does community engagement happen anyway, irrespective of whether we legislate? That would be quite helpful to know.

Andrew Howard: Yes, it is vital. We are part of the local communities that are in or adjacent to the estate. I will not repeat everything that I said earlier, but there will be engagement with individuals, community councils, local councillors, and local development trusts where they exist. It may be within formal groups of people. As Dennis Overton has said, the process is happening almost every day. We try to make ourselves accessible. We have an estate office in Moray. We have an office at the Tornagrain new town development. We have an office at Doune as well. Our door is open and people know where we are. It is a constant process.

Bob Doris: Convener, that gives me assurance. This is not a question, but I am a trustee of a local charity that commissioned a charrette quite recently for around £28,000. I am happy to talk to you afterwards, Mr Howard, about how to drive best value in the charrette process.

The Convener: Briefly, Kevin.

Kevin Stewart: I will play devil's advocate, convener. We know that sometimes good community engagement costs next to nothing. When we hear scenarios of charrettes costing £70,000—and I have been involved in charrettes over a number of years—some may argue that such a charrette is more about salesmanship and selling the plan rather than listening to a community. I wonder whether Mr Howard would respond to that, please.

Andrew Howard: The cost depends on the scale and the complexity of the issues. The Tornagrain charrette cost £500,000 but it was for a town of 5,000 homes. Cost is largely driven by the amount of design information and things like that that you will provide to the community. The Doune charrette was cheaper. If you are doing a long-term forest plan or something much more informal, that cost might be down to a few hundred pounds.

To deal with your point specifically, the community told us in Doune in 2010 that they did not wish to see development in one particular site and they did not wish to see development yet in another. We honoured that and said, "We will not bring that site forward for development because we hear what the community has said." On the other side, we said, "We will come back to that at the next iteration of the local plan," which is what we will do. We definitely listened to what the community said. As Mr Ruskell said, they said it to us loud and clear, so it was a helpful exercise from that point of view and we responded directly to it.

The Convener: Mr Stewart has started to delve into the area that I said I would ask about, which is cost. Andrew and Tim, it is fine for big landholdings and big builds to have big consultation, but if we drop it down and consider someone with 1,000 hectares, a small farmer could be required to come up with a land management plan that would require the same engagement or the same principles of engagement. Do you have a view on that? What might it cost somebody with 1,000 hectares if they had to produce a land management plan with proper consultation? I assume that there would be surveyor fees for drawing it up. Do you have an idea of what they should put in the piggy bank in case that comes in?

Andrew Howard: I am happy to have a go at answering that, and then Tim Kirkwood can follow up if he wishes. It depends where they are. If their 1,000 hectares is in a sparsely populated area with a small community and their land use is relatively straightforward—let us say that it is a hill farm—the range of issues that they will report on will be quite narrow and the engagement process is likely to be a lot simpler. The cost would probably be in the few thousands of pounds. You are right—I think that they would go to a firm of chartered surveyors to do it.

10:30

However, if their 1,000 hectares is adjacent to a busy community and they own the land in and around that community, the financial memorandum's estimate of anything up to £20,000 is not unreasonable if you want the engagement process to be a genuine one rather than someone publishing their plan and saying, "Here you are—what do you think?" There is a real risk of underestimating the cost.

The key point is that, if someone has 20 hectares but it is all the land in a community, it will be more important to that community than 1,000 hectares that is 5km away.

The Convener: I do not want to put words into your mouth, but you agree that the local place plan deals with it.

Andrew Howard: Yes.

The Convener: Laura, will you estimate the cost of the time that you and the board spend carrying out community consultation? Do you spend 90 per cent of your time on that, or 50 per cent? What is the cost of that? If you do not know the answer straight off, I am happy for you to come back to us with a written answer. I would put the same question to Megan MacInnes and Dannie Onn. You can either answer on the hoof or think about it a bit and write to us.

Laura Hamlet: I can certainly provide accurate figures later but, off the top of my head, our overheads are about £150,000 a year. On consultation, engagement is constant and on-going and it involves people coming to us as well as us going to them. Maybe about 50 per cent of our time is spent doing engagement in some way. I got a quote for doing a local place plan last year and it came in at just under £6,000 plus VAT.

The Convener: That is helpful. Megan, do you want to consider that and come back to us?

Megan MacInnes: Yes.

The Convener: Dannie, do you want to do that, too?

Dannie Onn: I will come back to the committee on that, but I will make a quick point. We think that we can do a local place plan in-house, which will save a considerable amount of money. Having already done a community plan, we can transfer from one to the other. It would be really helpful if there was a land management plan from the major landowners so that we had something else to work with, so we will be engaging with them.

The Convener: I understand that. My slight concern is that the landowner could have produced the management plan for a tenant farmer and would have no ability to respond in any shape or form to the requirements of the community. The entire 1,000 hectares could be rented. The community might have all sorts of aspirations, but the landowner's hands would be tied by the Agricultural Holdings (Scotland) Act 1991.

On that note, I bring Bob Doris back in to ask some further questions.

Bob Doris: It has come through loud and clear that there is a quite helpful tension between making sure that land management plans are thorough and making sure that they are not burdensome. We can clearly see that they have a use and, if they exist, they should of course be complied with. My question is about what we mean by complying with land management plans.

The list of those who may report a breach of a land management plan is rather narrow, and you may be aware that the Land Commission has suggested that it be extended to include community councils, enterprise agencies, national park authorities and the Crofting Commission. Would that be helpful? What is the balance of views on the panel?

Tim Kirkwood: A key point here is that, if you extend the authority of those who can bring up a matter of breach, the question that arises is whether they can do that without a complaint being brought to them by a member of the community. Would they have the power to initiate an action from their perspective with no community input on a breach?

Bob Doris: I am absolutely willing to be corrected, but my understanding of the bill is that a report would be made to the land and communities commissioner, and the bill says what the content of that report should be and how the matter should be reported to the commissioner. There is a set process for that in the bill. As it stands, a potential breach may be reported only by a community with a registered interest in land within the terms of the land management plan, Historic Environment Scotland, a local authority within whose area the land sits, the Scottish Environment Protection Agency or NatureScot. We can look separately at whether the set process is appropriate, but should the list of those who may report or allege a potential breach be extended to include community councils, enterprise agencies, national park authorities and the Crofting Commission?

If you want to digest that question and think about it, that is fine. You do not need to comment now, but you have an opportunity to say what your gut tells you about extending the list in that way.

Dennis Overton: The list largely comprises agencies. One assumes that due consideration will be given to the validity of a complaint and that that will be tested. The issue that comes to mind is vexatious complaints or challenges. Our business is large in the community within which it sits, but it is small in relation to the UK average, and our ability to deal with complaints that were not fully formed would be limited. For me, it is key that the commissioner has a good test against which to check any issues that are raised.

One assumes that, if those agencies were to raise a breach, something would be seriously amiss. In that case, I suppose that they should have the right to do that.

Bob Doris: I hate paraphrasing what witnesses say, but are you saying that, if the commissioner can weed out vexatious complaints ahead of an investigatory process so that it does not have to happen because it is not required, you would be content with the list being amended as the Land Commission has suggested?

Dennis Overton: Yes.

Bob Doris: Okay. I am not trying to put words into your mouth, but I want to be clear.

Can we hear from one of our witnesses who is online? Megan, what are your views?

Megan MacInnes: From the perspective of a community group and a community member who lives in an area of concentrated land ownership, we are concerned about the narrowness of the list of bodies that may report a breach, so we welcome the Scottish Land Commission's recommendation that it be broadened out. There are two reasons for that. First, the Applecross Community Company is one of the few Land Reform (Scotland) Act 2003 compliant bodies in the area, and restricting community groups to those that are LRA compliant would unnecessarily limit who may register or report a breach.

Secondly, it is really important that committee members have a clear understanding that, in places of concentrated ownership, local community groups may not feel comfortable reporting a breach because the jobs and homes of the volunteers that are involved in those groups are dependent on the landowner. It therefore places community members in a very awkward position if they are the ones who need to be relied on to report a breach.

It could be argued that local authorities and other statutory bodies have other, higher-level priorities than undertaking the investigations that would be needed for them to consider reporting a breach, so it is really important that the number of bodies is extended. We also agree with the Land Commission's recommendation that the land and communities commissioner should be able to proactively investigate a breach.

It is also important that reports of breaches remain anonymous in order for there not to be any adverse impacts on the individuals involved, particularly in areas of concentrated land ownership where there are problems that have led to the need to report a breach in the first place.

Bob Doris: That is helpful. You have moved on to where I was going to take the line of questioning. Before we come to that, however, do any of our other witnesses have a different view on adding the four organisations? If so, it would be good to get that on the record.

Tim Kirkwood: The four organisations may already have statutory regulatory powers in connection with a breach. The bill adds another layer of powers to those in other legislation that has already been enacted. I am concerned that we are adding another layer of legislation in places where there is existing legislation that deals with the problems anyway. That is something to be sensitive to and aware of.

Bob Doris: That is helpful. I might come back to the anonymity question raised by Megan MacInnes in a moment, but first I will ask about the land and communities commissioner's proactive role to investigate potential breaches.

I will stick with you, Mr Kirkwood. I have suggested to witnesses before that I would quite like the land and communities commissioner to be able to pick a random sample of land management plans and do a bit of digging, not to catch landowners out, but to see whether they are compliant. Mr Overton was talking about the Land Commission having a forum about what a good land management plan looks like and how landowners can be supported to produce them. If we are going to drive up standards and ensure best practice, the land and communities commissioner has to have more of a proactive role.

Mr Kirkwood, what are your views on the land and communities commissioner having proactive powers to investigate potential breaches. More generally, what are your thoughts on its ability to dip its toe in the water to find out what is happening out there across Scotland with land management plans?

Tim Kirkwood: If there is a statutory obligation to put in place a land management plan, and that is proportionate and the requirement to engage on developing that plan is proportionate and reasonable, too, my gut feeling is that there should be a similar obligation on the community to produce an LPP. I do not know whether that can be a statutory obligation, but, clearly, having an LPP in place that is works in tandem and co-operation with a land management plan will deliver a lot of the benefits that the bill seeks to deliver. The two together are good.

On delivery and performance, yes, there probably should be some overall governance and ability to question what is going on but, again, it should be proportionate and appropriate. The bill has been forward on the basis that scale and extent of land ownership is the problem, and that is linked to control. That starting position is open to fundamental question. In certainly in terms of Wildland, the scale of land ownership is a side effect of the overall ambition of conservation at scale over a long period for nature outcomes.

Bob Doris: Mr Kirkwood, I apologise for cutting you off in full flow—

Tim Kirkwood: Maybe I am digressing, but I was trying to make a point about land management plans, enforcement and control. There is an element of proportionateness. What is the bill trying to achieve?

Bob Doris: The convener will be quite terse with me if I do not stay focused on the questions. I will bring in Mr Howard.

Andrew Howard: Setting aside the need to prepare a land management plan in the first place, if the regulation of compliance is put on a statutory footing, one potential risk is about compliance of performance and the content of the land management plan. There is a real risk that that will curtail the ambitions that go in the land management plan. You will go back to the situation that I discussed some while ago. Anybody preparing a land management plan may be tempted to stick not to the bare minimum, but to what they are required to do to meet compliance, to avoid the suggestion later that they might be upbraided for not meeting some of the targets or aspirations that are set out in their land management plan.

10:45

To deal with your second point, if the proactive function of the land and communities commissioner could act in the same way that the role of the tenant farming commissioner has been discharged to date, it would be helpful. You would see the commissioner starting a process of dialogue between the complainant and the land manager. The compliance failure may be either inadvertent or outwith the land manager's control and may be something that should be resolved without the need for anybody to get big sticks out.

I will put one further thing on the record. I do not know Applecross at all. I have worked in land management for 30 years. I have never experienced any shortage of enthusiasm among local communities for expressing a view, whether they live on or are adjacent to the estates that I have managed. I have not witnessed a fear factor in providing that feedback. People are usually incredibly candid, whether they want to say something good or have a complaint to make, and we encourage that.

Bob Doris: We have heard from some witnesses in private, because they were concerned about airing their views in public. I get that every landowner, tenant and community group is different, but we have heard some of that concern, and it is important to put that on the record.

Not everyone has had an opportunity to speak, but I will put in my final question and we can maybe mop this up. Megan MacInnes spoke about anonymity for those who complain because of the potential risk that we have heard about. Witnesses should feel free to comment on the first two questions, but perhaps Laura Hamlet has a view on anonymity.

Laura Hamlet: Yes. It reminds me of the situation with the Crofting Commission. At the moment, crofters, grazings committees and landowners can report any crofting violations, but that it does not happen. People do not do it. I have certainly heard a lot in the north-west region that people are reluctant to come forward and make those reports. I can absolutely see how that would apply in this instance as well.

Bob Doris: Dannie Onn, you have not had the opportunity to comment during this section of questions. Do you want to put anything on the record in relation to the questions that I asked?

Dannie Onn: Yes, please. On Colonsay, there are issues where anonymity would help. People come to us and do not want to be on the record because they are housed or their housing is paid for by a particular party. It would help if at least community councils were included because that gives people a route to make a personal approach.

Bob Doris: Does it give the community organisation a degree of protection?

Dannie Onn: It does for the organisations that are reporting on those people's behalf.

Bob Doris: I do not have any further questions. Is there anything regarding this area that the witnesses feel that they should have put on the record but have not been able to?

Thank you, convener.

The Convener: Thanks. Laura Hamlet's evidence was quite interesting. There are plenty of examples of crofters complaining against each other and starting the equivalent of the third world war in the crofting community. Certainly, the crofting legislation that allows for common grazings and for people to report people not attending has caused a certain amount of angst. That is a fair description.

Douglas Lumsden, you wanted to ask a question briefly and then we will have a break before we go into the next section.

Douglas Lumsden (North East Scotland) (Con): Thank you, convener. I have a brief question on the land management plans.

We have had evidence about whether, if there was a transfer of ownership, the new owner would be required to meet the land management plan.

Do you have any views on whether the LMP should be transferred with ownership or whether that would even be legal?

Tim Kirkwood: I can answer that. For Wildland, the land management plan would be related to management of land at scale for long-term objectives in nature conservation and recovery. If a small area was disposed of, the land management plan for that small area would probably be irrelevant because the outcome sought probably could not be achieved in the way that it could by the current estate and management. Other parts of the bill deal with transfers and the appropriateness of new owners and community interest in the delivery of the bill's aims, and all of those things interface with that issue.

My answer to your question is that, for Wildland, I cannot see the land management plan that applies to a significant area of ground being of any value or relevance to a small-scale disposal.

Dennis Overton: This is a theoretical response, because I do not see it cropping up in our own situation, but the idea that a compulsory element of acquiring a piece of land of whatever size is that the new owner has to operate it in exactly the same way as the predecessor would be very unusual, and it would be a particularly unusual legislative requirement. The practicalities of it are difficult and it would have a chilling effect on the land market.

Dannie Onn: I do not know the legalities of the issue. It would seem logical to me that a land management plan should go with the land. It is about managing that particular piece of land. If that is passed to someone else, the onus would be on them to change the management plan that they have inherited.

Douglas Lumsden: I guess that there are complications about how that would be done.

Andrew Howard: If I understand Dannie Onn correctly, logically, the new owner would be required to review or to produce a new LMP because they might have slightly different or quite different but perfectly valid management objectives that they wish to set out.

Douglas Lumsden: I guess, if that plan was agreed with the community, the new owner would have to almost start the whole process again. How would they take those views forward?

Andrew Howard: They would need to sit down with the community and prepare that plan. I have already made clear my views on the merits of LMPs. In a way—I might sound like a broken record—an LPP, which is a community-driven process, is probably more appropriate.

Douglas Lumsden: I will bring in Megan MacInnes.

Megan MacInnes: Thank you. I want to come back in on the question about whether it would be legal for land management plans to be transferred over. I am not a lawyer, but it seems to me that there are already precedents in existing systems where burdens on a piece of land are transferred to a new owner. We can see that clearly in how crofting assignations are applied and the continued burdens on crofting land. We can also see that in long-term management plans for forestry being transferred over as a piece of forestry land changes hands. For example, many of the burdens that are introduced when a piece of woodland is registered in the woodland carbon code are placed on the land itself rather than on the owner. It would not be too much of a stretch to consider the same model for land management plans.

I had a question for the convener. I wanted to make a point about land management plans, sanctions and what happens when a breach is investigated. Can I make that point now or are we returning to this topic after the break?

The Convener: We will not return to this topic. That was a well-engineered way of getting yourself in, Megan. However, you can only do so if you are brief.

Megan MacInnes: I will be brief, I promise. I want to connect the proposed maximum sanction of £5,000 as proposed in the bill to the conversation that we were having earlier about best value in costs of community consultation and charettes. It seems as though the best-value route for some landowners may be to ignore the requirement to develop a land management plan if they will be fined only £5,000. As a result of that, we think that what is in the bill is not appropriate and would not be an adequate deterrent. We support some of the proposals in the Land Commission's most recent recommendations around the introduction of cost-compliance measures.

From the community perspective, we also think that it is important that the scope of the breaches is clarified and extended to cover not just whether a land management plan has been developed and published but whether it has been implemented.

Those were the various points on land management plans that I wanted to put on the record at this stage. Thank you for the chance to do that before the break.

The Convener: Well done, Megan MacInnes, for getting it in.

On management plans transferring with ownership, an estate is up for sale in the

Highlands, which Jeremy Leggett is selling, with a management plan in place. One of the requirements is that the buyer has to buy it with that management plan. I do not think that he has not found a buyer yet, but I might be wrong.

My question is for Tim Kirkwood. If people who are acquiring estates are not allowed to change what happens on that estate for a period of time, might that stop them helping the Scottish Government to reach its net zero targets?

Tim Kirkwood: Yes, that is a real risk. A new owner coming in will have their own aspirations. They will be aware of the legislation, once the bill is enacted, and they will need to comply with that. They would need to bring their own management objectives forward through whatever the statutory process would be at the time. If there is a legally binding requirement to take on an obligation that has been imposed by a previous manager with their own aspirations and objectives, that will affect value and could have the effect that you describe.

We are working in a fast-changing world. We need rapid and appropriate solutions at scale. To take on a property that is not best equipped for that could be seriously detrimental.

The Convener: Thank you. I will suspend the meeting until 5 past 11 to allow people to stretch their legs before we go on to the final run of questions.

10:57

Meeting suspended.

11:05

On resuming—

The Convener: Welcome back. The next questions will come from the deputy convener, Michael Matheson.

Michael Matheson: You will be aware of the proposed 1,000-hectare threshold for the prohibiting and notification of land transfer levels that has been set out in the bill. Do you think that that is the appropriate level for advance notification?

Dannie Onn: In my submission, I said that the threshold should not be increased, but by that I meant that it should not be weakened. From a Colonsay community perspective, the threshold is fine because it captures what it needs to capture, but I can see the merits in it being reduced so that smaller communities, or communities that are affected by smaller amounts of land transfer, are brought within the scope of the legislation.

Andrew Howard: I will repeat something that I said a few minutes ago. Having any threshold is illogical because it does not address the nature of the land or the site or the asset that is of interest to communities across Scotland. You will end up with some communities that have rights and some communities that do not. You either think that these things are a good idea and they should apply to everybody or you think that they are a bad idea and they should not apply to anybody.

Personally, I think that the prior notification and lotting proposals are a bad idea—I am sure that we will come on to that—but, if we are dealing with the issue of thresholds, the position in the bill is illogical because, as I said earlier, an owner could have 20 hectares and own all the land within or around a settlement but would not be covered by these arrangements, while someone with 1,000 hectares that are kilometres away from a community and have no assets that are of interest to anybody in the area would be covered. It is illogical.

Michael Matheson: To clarify, is it your view that no threshold should be set for prohibiting or notifying land transfer?

Andrew Howard: No, I am saying that there should be no prior notification or lotting provisions. I am sure that we will come on to that. However, if you were to have prior notification and lotting, I see no logic in having a threshold.

Michael Matheson: I understand that your point is that we should not have prior notification and lotting, but let us work on the basis that we will have that arrangement. If we did, should there be no threshold at all?

Andrew Howard: In that case, some of the recent communication from the Scottish Land Commission is probably helpful, because it has started to identify a de minimis scale of assets that it thinks should not be covered by prior notification. Logically, if you included everything, you would have a massive and unnecessary bureaucratic burden in relation to 99.9 per cent of assets being disposed of, as they will not be of interest to communities, which would not take forward any action. There is a range of assets that should not be included in the prior notification arrangements, such as small additional plots of land being added to homes when, for example, somebody gets a garden extension; individual homes; and development sites where the planning permission is already in place.

Under the arrangements in the bill, every development transfer or land transfer in Tornagrain will need to go through the prior notification process. We have set up a house-building subsidiary, and every individual house sale from that house-building subsidiary would need to go through prior notification. I do not think that that can have been the intention of the bill

team, so I think that a careful examination of the exemptions would need to be put in place to avoid excessive bureaucracy getting in the way of transactions that are highly unlikely to be of interest to local communities.

Michael Matheson: Okay, so you would recommend removing the threshold and going for an exemptions process?

Andrew Howard: That would be more logical than having a threshold, but that is not going to make me very popular with landowners around the country with less than 1,000 hectares, but you have asked me for an opinion, so I am giving you an opinion based on logic.

Michael Matheson: I am grateful for that.

Dennis Overton: There is obviously an arbitrary nature to the thresholds. Of more interest to me on this point is the whole question of prior notification in the bill when, in the 2003 act, there seems to be a mechanism set out for community right to buy, which is now under review—I saw that the cabinet secretary set out a review process of that last summer. If that is not working in some shape or form, I wonder why that is not being resolved first before layering this prior notification process on to the statute book. My question is more about the necessity of what the bill proposes, particularly when a review is under way on the question of the efficiency of community right to buy.

Michael Matheson: So, notwithstanding the review that is being undertaken, is it your position that the existing land reform legislation deals with the issue sufficiently without the need for further legislation in this area?

Dennis Overton: Theoretically, it does, but it seems that elements of it are not working, so a review is under way. In my view, that is the right way of proceeding, and it might mean that the prior notification requirement in this bill is, therefore, unnecessary.

Michael Matheson: Mr Onn, would this type of prior notification make a difference in your community, given that you have significant landowners in your area with whom, from what you have said, you have limited engagement as they are not overly proactive in terms of their engagement with the community? Would prior notification be a valuable thing to a development company such as yours?

Dannie Onn: It would be a valuable thing. I can understand the point about exemptions but—I am sorry, could you repeat the question?

Michael Matheson: Do you think the prior notification process that is set out in the bill would be a helpful thing for a community-based development company such as yours, given the nature of the relationship that you have with your existing landowners?

Dannie Onn: I think that it would be a help. I am not sure what role we would have in terms of being consulted in that regard, but the fact that there would be an obligation to let the community, the commissioner or whoever know about such a transfer must be of benefit, because we are in the dark on so many things.

11:15

Tim Kirkwood: I think that the provisions on prior notification appeared at the point of the bill being published. I do not think there had been much consultation or engagement on the matter prior to that. I echo Dennis Overton's point about the fact that there is existing legislation that is currently undergoing review. I repeat the point I made earlier in response to Bob Doris, which is that I think that there is a risk of stacking legislation on top of legislation and doubling up where it is not necessary.

The idea of having an area measurement as part of the process is predicated on the notion that concentration of power is a function of scale of land ownership, but it actually depends on many more factors than just area. Each case is pretty much unique, so that must be borne in mind.

If one accepts that there is going to be a threshold—if the bill goes through and it is all procedurally correct and right—I think that we would concede that having a threshold of 1,000 hectares is probably right, on the basis that it is probably better than something smaller. Having a lower threshold is just going to bring forward many more cases, with the associated administrative burdens in terms of cost and time, for probably no worthwhile outcome. That would be my view.

Michael Matheson: I think that the tension is whether to have what some may argue is an arbitrary threshold of 1,000 hectares, and, if you do not have a threshold, whether to introduce an exemption regime instead. Do you have an objection in principle to the idea of the prior notification process?

Tim Kirkwood: There is already a prior notification process. I think that the concern is that there is a perception that a private off-market sale is not caught by the existing legislation, but it is. If a landowner wishes to sell, even privately, land in which a community has registered an interest through the statutory process that is available to them, he needs to declare that and the community has the right to intercede. I question whether it is necessary to have a further layer of regulation and statute in place when powers are already there and are, in any event, currently under review.

Michael Matheson: Would the landowner have to declare the sale if the community had not registered an interest?

Tim Kirkwood: I am not an expert but I believe that, if the community has not registered an interest, then, under the existing statute, there is a route to registering under an emergency procedure.

The Convener: There is a 30-day period in which that can be done.

Tim Kirkwood: Yes, so the proposal is somehow leading communities by the nose. It is almost flagging it up and saying, "This is happening. Surely you should be interceding." It is a sort of prodding measure adding to that imperative, even though there is existing statute that deals with the matter anyway.

Megan MacInnes: I want to talk about the thresholds first and then address the question of prior notification and the community right to buy. There are quite a lot of issues to deal with here, so, if I do not answer all your questions, please let me know.

On the question of the thresholds for any of the measures that are introduced by the bill, we agree that there is a certain arbitrary nature to them. Nevertheless, it is important to have a threshold to start with. There is a lot of complexity and lack of clarity currently with regard to the various thresholds, so having a single threshold where those measures come into force is important. However, if we are thinking about maximising the scope and the impact of the bill and what it is trying to achieve, it is important to think about the broader local context. That is why, as other witnesses have told you, it is important to have concepts such as public interest placed at the centre of the bill, as that would help to achieve that. It is also important to ensure that decisions are made based on sites of community significance, if that is what we are calling them, which are identified through various processes, such as land management plans, local place plans, action plans of development trusts and so on.

Given that thresholds are relatively arbitrary, one measure that could help in all of this is to regularly review and, if necessary, amend the thresholds at which the measures come into force.

Another question comes to my mind in reading through the bill and understanding the local context. What can be done to address any potential loopholes that are being introduced by this bill's approach of using the thresholds as a way of deciding who is responsible for the obligations and who is not? I want to bring a couple of those loopholes to the committee's attention.

One is that the bill does not include aggregate holdings, which creates an opportunity for land ownership that is at scale not being included in the measures in this bill because it is registered under different companies. The other loophole is the fact that contiguous landholdings—for example, land that is severed by railways and roads—will be excluded. We think that those loopholes could be dealt with relatively straightforwardly in the bill.

On prior notification, from our perspective, there is absolutely a need for increased transparency and disclosure around potential sales of large landholdings. That is in response to the recent trends that we have seen in land sales, with an increase in off-market sales. We regularly hear from community groups across the Highlands who are caught by surprise when they hear about an estate where they live, or nearby, suddenly changing hands with no information available.

One of the other witnesses mentioned the fact that communities can already register an interest in a piece of land. That is correct, but not all communities have done that. In our case, the ownership of land in the Applecross estate has not changed in more than 150 years, and communities in such a situation might not prioritise registering an interest in that land.

We think that the prior notification measures are important. However, we do not think that what is proposed in the bill will work, with the burden of having to register and be a compliant body under the Land Reform (Scotland) Act 2003 being placed on the community body in order for it to be notified of a forthcoming sale. We liked what was included in the recent Land Commission recommendations, where the disclosure of forthcoming sales would be based on measures that are already in place for planning and crofting regulations, with notifications being made available to the local community council and published in the local media, for example. That seems to be a much more straightforward and light-touch approach than what was suggested in terms of a new register being created.

On the connections between the bill and the wider community right to buy, we agree with the other witnesses that it is unfortunate that the wider review of the community right to buy mechanisms is still under way and has not been completed yet. Ideally, that wider review would have been completed before the measures of this bill were connected to it, because some fundamental elements of the bill rely on the existing community right to buy regulations and measures. From our perspective, and from the perspective of other community landowners, the wider review into the community right to buy mechanisms is urgently needed as there are some significant challenges that are preventing community groups from taking

up those rights and working through the various routes that exist in the right to buy. This land reform bill is weakened by its dependence on those mechanisms when there are some well-documented flaws and ways in which the existing measures need to be improved in order for them to function and to deliver what they are trying to deliver in terms of improving land ownership across Scotland. There are questions about the sequencing of that that we think need to be considered.

I also want to touch on the Land Commission's recommendations around de minimis exclusions.

The Convener: Megan, with respect, I have to let some of the other witnesses come in as well. I think you have had a fairly good run at it.

I want to bring in Laura Hamlet on the issue of the prior notification for a crofting estate. If somebody wanted to buy their croft and their apportionment or have their common grazing apportionment tied into that, they would have to go through the prior notification period. Does that worry you? On the basis of the Scottish Land Commission's latest recommendations, that might add 90 days to the process. Have you thought about that?

Laura Hamlet: Not at all. I think I would probably contact my solicitor. It sounds very complicated.

The Convener: It could be an interesting point because crofters have the absolute right to buy their croft and without having exemptions, that provision could be triggered.

Douglas Lumsden: I want to build on the convener's question. The bill proposed a two-stage prohibition period, which would prohibit transfer for 30 days to allow groups to express an interest and then 40 days to complete an application. The Land Commission has now said that there should be a single 90-day period to allow more time for communities to organise. Would you support that? Is 90 days long enough for communities to get their ducks in a row? Maybe we could start with Laura Hamlet.

Laura Hamlet: Sorry, could you repeat the beginning of the question, please?

Douglas Lumsden: The bill proposes a two-stage process,. with 30 days to express an interest in a community right to buy and 40 days to complete an application. The Scottish Land Commission is proposing changing that to a 90-day process. Is that long enough for communities to get everything organised?

Laura Hamlet: Given our experience with Badentarbat, I would say no. We started the expression of interest process at the end of 2023. We had done our initial petition and there was so much feedback—we were still busy trawling through, responding and dealing with all the initial feedback when the estate came on to the market. At that point, we had to go through the late application process. We were advised by the community land team in the Scottish Government that there had been 39 applications since 2018; four of them were late applications and none of those was successful. If we had gone down that route and we had not had a philanthropic donation then we would not have been able to complete the process. We could not have provided the required level of detail within the time period.

Douglas Lumsden: What time period do you think would be appropriate for communities?

Laura Hamlet: It depends on the level of detail that we would need to provide. It takes a lot of time to provide detailed evidence that the community wants to buy the land and on what they want to do with it. You are asking me to put a length of time on it. Could we do it in 90 days? If we did nothing else, we could get it done in 90 days, I think.

Douglas Lumsden: Megan, do you have a view on the timescales required?

Megan MacInnes: We have purchased assets and land either through the community asset transfer or through a negotiated transfer, so we do not have concrete experience of the deadlines that Laura Hamlet has. However, my understanding from the landowning sector supports what Laura Hamlet says about the 30-day and 40-day periods not being adequate for what is happening currently. There have also been delays with the section 34 letters that need to come back from the Government confirming compliance with the Land Reform (Scotland) Act 2003. In some ways, the Land Commission's proposal for an extension to 90 days would be helpful. The problem is that it is difficult to separate that from some of the wider issues with the community right to buy mechanisms, which fall within the scope of the wider review that is happening in parallel to the bill.

One way to help move this all forward is for the bill to consider the proposal that has been made by several different groups, including the Land Commission, to allow communities to proactively designate sites as sites of community significance. Already having public knowledge of the areas that the communities are interested in would be a helpful way of moving forward.

11:30

Douglas Lumsden: Thank you. Does anybody else have a view on that?

Andrew Howard: As a general principle, it would be better to identify in advance the areas that Megan MacInnes has just called areas of community significance. If there is going to be an intervention, the bureaucratic burden should be as little as possible and the intervention should have the least detrimental impact on the land market, while meeting the objective of facilitating communities' aspirations to acquire land. The best way to do that is to enhance support for the local place plan process because that is the best vehicle to identify areas of community significance and to review the rights that are currently in statute so that they are more flexible and more fit for purpose. That would make it increasingly likely that if somebody was making a disposal of land they would know in advance that there was an issue. They would know that that area of community significance had been identified and they could open discussions with the community group as a part of the sales process.

However, if you wait until the moment that the person decides that they are going to sell, the disruptive effects will be very significant. That might be through the lotting process or through all the bureaucracy associated with prior notification that could potentially trap sales. For instance, the individual sale of a house that we have built at Tornagrain would get bogged down for 90 days—the community is not going to come forward to say, "We want to buy the house", so what on earth is the point of trying to capture things like that? It is better to work to identify those areas of community significance first. Then everybody knows where they stand.

Douglas Lumsden: Are you fearful that the 90 days could be used as a tool by some people to delay sales of certain pieces of land?

Andrew Howard: I am not sure that there would be any malicious element. That would be a natural part of the process of creating this potential opportunity. For instance, every time we took a house that we had built to the market, the purchaser would say, "Well, now I have to wait for 90 days to make sure that they have been through the process". They would be sitting waiting for three months and they just want to buy their house. That is going to make any houses that we build much less attractive to somebody than a house built by a housing developer who would not be caught by some arbitrary threshold. It is important that you do not have interventions like that where sellers can get caught at the last minute. You should work to reform existing processes so that you can understand where communities have an interest in acquiring.

Douglas Lumsden: There could be exemptions put in place to avoid that sort of scenario.

Andrew Howard: That would be helpful and I am pleased that the SLC has started to look at that.

Dannie Onn: There is not much that I can disagree with there. We have not looked at it because we do not have the resources to consider any right to buy registration currently. We are told that it is complex. We are told that late registrations can be frustrated and can fail. There must be something to take account of the fact that there might be a transfer that no one was aware of. For small communities to have as long as possible and as many resources as possible would be helpful. However, I understand the point.

Having looked at the changes that are proposed to the Land Reform (Scotland) Act 2003, I suggest that extending the period slightly and having that little bit of extra time could make a big difference. However, that opinion is not based on experience.

Tim Kirkwood: Given that there is likely to be an obligation to produce a land management plan through community consultation and that there is the clear aspiration that communities will pick up and put in place local place plans and that the two should marry together, a local community should be in a position to identify assets that it thinks are important to the sustainable development of the community in the long term, should they come to the market. There is legislation to enable people to register an interest in those assets, which would catch a private sale in the way we discussed earlier.

I go back to what I said before. A lot in the bill and the statute as a whole would solve the problems that we are discussing. I do not think that it is necessary to add anything further on the right to buy if the statute is properly constructed and put together.

Douglas Lumsden: Do you feel that the Government should remove the community right to buy section from the bill and just concentrate on getting the community right to buy? It has already undertaken a review—

Tim Kirkwood: There is a review and the timing as I said earlier is not that helpful. I think the review for the existing statute needs to be completed and then this legislation constructed to make use of it so that the two run together properly without adding more legislation and creating a scenario for confusion and difficulty.

Douglas Lumsden: Dannie, did you want to come back on that point briefly?

Dannie Onn: You saw me smile.

Douglas Lumsden: I saw your face.

Dannie Onn: It is not unusual for legislation to amend existing legislation. It seems to be a fairly

straightforward and simple process. If it is something that needs doing, it could be done now for good reason, even in advance of a review of the earlier legislation.

The Convener: I am just thinking that through. To pass legislation that you know might get amended does not work for me as a politician, although I am sure that it would work for some other people.

On that note, I will hand over to Mark Ruskell for his questions.

Mark Ruskell: I want to ask about lotting decisions. Megan—I think that you mentioned the Land Commission's proposals to put the public interest more at the heart of the bill. I will start with you. I am sure that others also have views.

Megan MacInnes: In general, the concept of lotting decisions has the potential to increase diversity of land ownership in Scotland, and to bring sites of community significance into community ownership for community benefit. Based on that, it is something that we very much agree with. It is in line with how we have approached the acquisition of small areas of land in Applecross for delivering community benefit activities.

However, there are things in how the bill is framed that will limit its impact. One is the focus on the test in lotting decisions being based on the concept of community sustainability rather than on a broader public interest measure. The reason why it would limit impact is that "community sustainability" is not a recognised term in Scots law, as far as we are aware, whereas "public interest" is a tried and tested measure. It already exists in various pieces of Scottish and UK legislation. That is one reason.

The other reason relates to the extent to which the provisions will interfere with property rights as they are protected under the European convention on human rights, article 1, protocol 1. That element of the ECHR provides the rationale and legal basis for Governments to interfere with property rights based on a public interest argument. If you use the public interest as the basis of what is called a transfer test or a public interest test, and lotting decisions are made subsequently, you will have a much stronger basis when it comes to the space within which the Government can act.

Dennis Overton: First, I will reflect from our experience, in trying to imagine how the provision would work out in practice.

Our objective is to meet community demands. If there is land that the community is interested in, there should already be a process of discussion and negotiation. To me, the provision feels somewhat theoretical. In our community, we have seen no interest in managing land at scale. When there has been the opportunity for community purchase and it came to a vote, the community has decided not to go down that route. That is my context, in the matter.

The bill is a big change that raises some very big questions. Megan MacInnes referred to some of them in respect of how the land market works. While reading through the proposals in the bill, which is not something that I do regularly, I have found it very difficult to follow them.

I am surprised by the number of references to powers being given to ministers, rather than information about how things would work in practice, being set out in the bill. I was interested to see the report from the Delegated Powers and Law Reform Committee last week, which made the similar point that there are a lot of delegated powers set out in the bill. That makes it quite difficult for me to respond with a clear understanding of how the quite complicated process of lotting, as it is in the bill, will work. I see that the DPLR Committee questions 14 out of 50 proposed uses of delegated powers in the bill. I think that I might question a slightly higher number than that.

It is hard to understand how the lotting process will work. That is wrong, in terms of our trying to consider the impact of the bill, which proposes such a major change to how land is transferred. If such a process comes into being, the public interest test will be absolutely critical and should certainly be included in the bill so that we understand very clearly the circumstances in which the lotting process would come into play.

Mark Ruskell: Do you think that it is a problem that a public interest test in relation to transfer of land is not currently included in the bill? There is a transfer test that is applied to the seller, but there is not really anything applied to the purchaser, as a public interest test.

Dennis Overton: My point is that public interest should be the reason for ministers deciding to go down the route of lotting, rather than the rather vague "community development". We need the term "public interest" to be more clearly understood, as Megan MacInnes has said. That would be the starting point. We need much greater clarity about what would stimulate a lotting decision by ministers.

I find it hard to be definitive in answering, because how the process would work and the level of powers that will be given to ministers—if the bill is passed as exists today—are so unclear to me. I have a lot of questions and concerns about those things.

Mark Ruskell: Thank you for highlighting the DPLR Committee's consideration of the bill. Andrew, I sense that you probably want to come in with your thoughts on the public interest aspect.

11:45

Andrew Howard: I will not go over again what I said to Mr Lumsden about it definitely being preferable to have identified in advance the assets that might be of interest to the community, because that makes for the least disruptive intervention. If things have reached the point at which somebody has decided to dispose of their property, but then the whole process comes to a grinding halt, it would have been better to have identified in advance what might be of interest to the community.

This has not been mentioned, but banks will be interested in anything that delays the potential sale of properties if they have securities. Our experience of banks is that they like securities over assets that they know will sell quickly, if they have to call them in. If that happens to be in a landholding over a particular threshold, banks might become concerned that they could get dragged into a delayed process, should they wish to dispose of a property. I imagine that the committee or the bill team will have taken evidence from banks: I think that that would be helpful. Certainly, our bank raised an eyebrow when we took it through the bill.

As Dennis Overton said, it would be helpful to understand the term "public interest" a little more, because it is at the back of all this. Whether it is called "community development" or "community wealth building", it is to be deemed to be in the public interest. My understanding of the legal position is that "public interest" is pretty much whatever the Government thinks it is. That has certainly come through in previous ECHR cases.

It would be helpful if the bill was clearer about long-term outcomes. If it brings about diversity of land ownership, that is fine, but I do not see that as an end in itself. Delivery of other benefits—in agriculture, in forestry, in net biodiversity, in carbon reduction and all those sorts of things—are the objectives that the Government should try to achieve. Some of those will be more readily and easily delivered at scale. Diversity in land ownership will not always fit with the most effective delivery of some of the Government's wider objectives.

Overall, the important thing will be to have the least impact by identifying what is wanted in advance, rather than catching it at the last minute.

Tim Kirkwood: I have some concerns. Lotting applies to transfer of the land, not just to the sale of the land. Many aspects of the bill will depend on secondary legislation that is yet to come forward on the definitions and mechanisms in the bill. Much of that is not in the bill. Those aspects' being dependent on secondary legislation will make interpretation and assessment of the overall impact difficult to define for any party. That is a general point. It appears that a transfer could mean things other than a sale, so that is a concern.

There is also reference to "fair value" in the bill. I do not really know what fair value is, in terms of the bill, or what the intention is in that respect. There are definitions of "value" and "market value" that are clearly understood. There is a definition of "value" in the community right to buy in the Land Reform (Scotland) Act 2003, and there are set criteria for how value is to be established relating to the impact on the residue of the holding and the like. There are complexities around that, which need to be understood.

The public interest test is absolutely essential, in that there are several other policy objectives in the bill that go beyond making ownership of land more accessible. They should be worked into the public interest test that would be applied to a lotting decision: that is essential. Those are the points that I want to make.

Mark Ruskell: Okay. If no one else wants to come in, I ask for your views on the transfer test that will be applied to sellers prior to sale, rather than there being a public interest test at the point of transfer. Do you have any more points to make on that?

Tim Kirkwood: Are you asking me?

Mark Ruskell: I am asking all the witnesses.

The Convener: Mark, could you to limit this question to two people? We are quite short of time and I have been quite generous to everyone.

Mark Ruskell: Okay. Megan wants to come in on the question. Thank you very much.

Megan MacInnes: Yes—I will do so very quickly.

That is another area that is unclear in the bill. The wider burden of assessment in the transfer test is on the seller, not on the buyer. If the Government's intention is to derive greater public good from land, it will be critical to know and consider the intentions of the buyer, as well as those of the seller, when approving the sale of a large landholding. That would be easier to achieve, given the ECHR restrictions: I point the committee to research by James Mure KC, who has looked into he matter. I am sure that that is something that you already have access to. It is another area on which work could be done to improve the impact of the bill.

Mark Ruskell: Why, do you think, has the Government gone down this particular route? I think that the original consultation suggested a public interest test on the buyer rather than the transfer test on the seller. I am curious. Do you or any of the other witnesses have views about why the Government has gone down this route, and why it rejected the original proposal?

Megan MacInnes: I do not know. I think that the Government has inadvertently made it more difficult to get the bill to work. Had the Government focused on what was originally consulted on, there would have been greater space for implementation in terms of the ECHR. It is not clear why this route has been chosen.

Kevin Stewart: I have a very quick question for Dannie and Megan. You have both suggested and highlighted difficulties and tensions that have arisen in respect of dominant landowners. You have commented on large aspects of the bill. Is there anything else that you think should be in the bill that would help in your situations in your communities? I will go to Dannie first, please.

Dannie Onn: That is a big question. There are many things that I could say, but I do not think that we have the time for all of it.

Kevin Stewart: Let us go to Megan, please, to give you a wee bit of time, Dannie. That puts you on the spot now, Megan.

Megan MacInnes: Yes. There are many elements of land reform that are needed that are not touched on in the bill. I am assuming that we will shortly be considering future land reform bills going through Parliament. The bill does not address all the areas of need.

Elements of the scope of the bill have been mentioned, such as the need for a wider range of groups who can report a breach of the various provisions, and the requirement for anonymity. Focusing on communities being able to identify sites of community significance is key. I have already mentioned those things. They are the key areas in the focus on using the public interest, rather than less well-defined terms, as the measurement in assessment.

The broader community right to buy mechanisms and making sure that they are reviewed and addressed will also be very important in terms of legislative changes, once the review is complete. It is essential that the committee continue to consider that.

Dannie Onn: I am trying to read through all my notes. I do not think that there is much to add. I was going to mention the opportunity to take local community views into account at the point of a lotting decision. I do not know whether that is adequately covered in the bill.

We have talked a lot about local place plans and so on helping to define best uses and informing land management plans. How will that approach in planning the use of land be considered in lotting decisions? That should be something that ties community aspiration into what is—as they say—on the face of the bill, rather than it being left to subordinate legislation. The mechanics could be left out, but there is scope to include that in the bill.

The Convener: Rhoda, we now come to you. You have been waiting very patiently.

Rhoda Grant (Highlands and Islands) (Lab): It has been a very interesting discussion. We heard from the community development companies that they were looking for land in order to retain populations, but the bill covers land at the moment of sale; it does not cover on-going development. Is there something that we could add to the bill to allow communities easier access to assets of community importance? Would compulsory purchase be a vehicle for doing that? If so, who would have the power to do it? Is there anything else that the community development companies suggest could be added to the bill that would apply prior to the point of transfer or sale?

Dannie Onn: The community right to buy legislation allows for compulsory purchase of assets or land that is required for sustainable development. Is that not the solution, rather than adding something to the bill?

Also, I think that giving compulsory purchase rights to a small community, however well intentioned and skilled those in it might be at any time, would add a financial burden to cover all the help that it would need and make life quite difficult for those in it.

Rhoda Grant: Could it be done through local authorities that already have those powers?

Dannie Onn: We had an example of the local authority resolving to make a compulsory purchase order—CPO—which persuaded the landowner to reach agreement. That was about rights over the land rather than about transfer or sale.

Compulsory purchase can work. In my experience, it is good to have it as an option, because it can persuade the parties to come to agreement rather than having to go through a lengthy process, which would probably be beyond the ability of small communities.

Megan MacInnes: It is absolutely the case that more could be done in the bill to make it easier for community development trusts like ours to acquire land to build affordable housing or respond to other urgent community needs, which would eventually help to retain population and sustain

our communities in the long term. CPO powers could be interesting.

It would be worth the committee considering the Land Commission's recently published proposal that ministers should

"have the ability to make a fair market value offer to buy landholdings".

While the processes in the bill are under way, that could make a huge difference to communities who wish to acquire more land and assets but face major challenges such as limits to funding. We are seeing restrictions in the Scottish land fund and a simultaneous significant increase in land values, particularly in popular locations on the north coast 500, such as Applecross, where 50 per cent of the houses on the peninsula are second homes and short-term lets and are not available to local residents. There are things that are certainly worth considering.

Some elements to the lotting process could be strengthened to help communities take best advantage of that. It is not clear, for example, what can be done to prevent one buyer from using the lotting process to subsequently buy all the lots of land through friends or family or holding companies. Local context and sites of community significance would also need to be considered in the lotting process to ensure that community groups have a chance to acquire them. There is a lack of clarity on how those lotting decisions would work. That is why embedding all these things within the public interest test is critical.

There are lots of other things that community groups need in order to retain populations, including continued access to the rural and islands housing funds in the long term, that are outside the scope of the bill but that I very much hope are on the committee's radar. It is one thing to acquire a piece of land but quite another in the current market context and in the post-Covid construction sector reality to be able to deliver affordable housing on that site. The wider enabling factors that let community groups deliver the community benefits to their communities need to be taken into account.

12:00

The Convener: Andrew Howard wants to come in.

Andrew Howard: As others have mentioned, local authorities in particular would have compulsory powers to acquire land if, for instance, there was a demonstrable housing need and land was not coming on to the market to address that.

Local place plans are an excellent first rung on the planning ladder. Previously, developers made their submissions and that is how the first stage of the local plan process started. You now have opportunities for communities to prepare their own local place plans. That engagement process with all the stakeholders—that includes landowners; they want to be part of that process because they will want, like everybody else, to influence how that local place plan develops—is an opportunity for all parties to get greater clarity about what communities want. That might release sites or at least develop a better understanding of what communities aspire to.

You quite rightly mention the need to retain populations and even to enhance housing opportunities. I have sat on a body with the Land Commission and with Prosper, which used to be the Scottish Council for Development and Industry before it rebranded. As Megan MacInnes has suggested, it is clear that a range of problems are limiting the development of housing, particularly in fragile areas. Those problems include infrastructure and Scottish Water. They also include planning, because some communities object to housing and that can complicate things. There are environmental regulations to take account of and, as Megan MacInnes has suggested, you sometimes just cannot get anybody to build. Prior to all that, you have to sort out all the funding problems. Therefore, it is right to look at whether compulsory purchase could work. However, the powers probably exist already. I could not tell you whether local authorities are using them when they could, but I think that the powers are there for them to use.

Rhoda Grant: Okay. Laura Hamlet, do you have anything to add to that?

Laura Hamlet: I do not have anything more to add to that. I absolutely agree with Dannie Onn and Megan MacInnes. They reflect our situation.

Tim Kirkwood: I have a little point. I think that the Scottish Land Commission says that the provisions in the bill mean that public acquisition would take place only following a lotting decision. That does not help with the risk of lotting for the transferer. There is an alternative approach. If there was a public interest in the land being broken up, that should apply before lotting. That would be a different phasing of the public interest test and the designation of the public interest in the land. If that happened, ministers could identify the areas that are probably better being in public ownership and could acquire them. That would give the transferer free rein, with the balance in the market. That might work better than the sequencing that is in the bill.

Rhoda Grant: The sequencing is on transfer of the land. Some of the concerns are to do with land that is not being transferred when there is a community development need for land. Why wait until the land transfers? I get that some landowners will enter negotiations with

communities, but others will not. The issue is about how you make it happen for those who are in the difficult situation in which the landowner will not enter into discussions with the community.

Dennis Overton: I agree with the comments that have been made about existing powers, particularly with regard to local authorities and especially in relation with housing. However, there might be other community areas of demand that are not being met for which compulsory purchase might not be so effective. Are you thinking about areas beyond housing?

Rhoda Grant: Yes, indeed—I am thinking about any kind of community development. Housing is the obvious one, but I am also thinking about things such as the development of renewables, which would give an income to a community company, and the development of units for local businesses. The list of what communities might want to develop is endless.

The Convener: Can I push you for your next question, because we are up against the clock? We still also have to have our work programme discussion.

Rhoda Grant: Yes. I want to turn to crofting, which is missing from the bill. Yet again, we have had a lot of discussion about crofting and its impact on land ownership. Should crofting be specifically mentioned in the bill? We have heard that crofters have an absolute right to buy individually. Should the crofting community right to buy reflect that, to make it easier? I am looking at Laura Hamlet, because her company has just bought a crofting estate that is totally made up of crofting land. Should that not have been very easy to do, given the existing powers of crofters?

Laura Hamlet: As I understand it, the crofters have to set up some sort of vehicle or body that can make the purchase. Then, of course, there is the issue of funding to make the purchase. It is not an easy pathway by any means. With Coigach, the most efficient option was to use the community development company, because that was already compliant and able to make the purchase and hold the land. In the future, it might be possible that townships could set up a body that would be able to take a transfer of land. What form that would take is yet to be decided.

As ever, crofting complicates things. Absolutely, the bill must take into account the existing rules and regulations and everything around crofting, otherwise it may create even more complication for communities and crofting communities to deal with.

Rhoda Grant: Okay, but could the process have been easier for the crofters if they had individually exercised their right to buy, rather than having to go through the complex process of the crofting community right to buy?

Laura Hamlet: Do you mean purchasing their crofts individually and apportionments and that kind of thing?

Rhoda Grant: Yes.

Laura Hamlet: Many crofters have done that. With the Badentarbat estate, many crofts have been purchased individually in the past, and the development company has bought what is left of the crofting estate.

Rhoda Grant: But it was complex.

The Convener: I am going to get in a short and simple question at the end. I am looking for a yes or no answer and, just to give you fair warning, I will be going in reverse order from when I started.

The cabinet secretary has outlined the three main aims of the bill as introduced, which are to give communities greater involvement in decisions, to promote more diverse ownership and to benefit environmental purposes and modernise the legal framework for tenant farming and smallholdings. Those were her aims. Will the bill as introduced deliver those—yes or no?

Megan MacInnes: Not yet.

Laura Hamlet: No.

Dennis Overton: Only in part.

The Convener: That is an on-the-fence answer.

Dennis Overton: Well, no.

Dannie Onn: Every little helps.

The Convener: Again, that is on the fence. I am looking for a yes or a no.

Dannie Onn: I do not know about the third one but, on the first two, yes.

The Convener: Okay, there is one yes.

Tim Kirkwood: No.

Andrew Howard: No.

The Convener: That brings us to the end of the session. Thank you very much for giving us your time—it has been very helpful.

We are coming to the end of our evidence taking on the bill. I think that Laura Hamlet and Megan MacInnes have kindly offered to feed in ideas on the costs of consultation, which would be helpful. If there is anything else that you want to feed in, that would be helpful.

We now move into private session.

12:09

Meeting continued in private until 12:48.

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