



University
of Glasgow

Adams, D. (2013) The potential for urban land reform in Scotland. In:
AESOP-ACSP Joint Congress, 15-19 Jul 2013, Dublin, Ireland

Copyright © 2013 The Author

A copy can be downloaded for personal non-commercial research or
study, without prior permission or charge

Content must not be changed in any way or reproduced in any
format or medium without the formal permission of the copyright
holder(s)

When referring to this work, full bibliographic details must be given

<http://eprints.gla.ac.uk/81527/>

Deposited on: 27 June 2013

THE POTENTIAL FOR URBAN LAND REFORM IN SCOTLAND

David Adams

University of Glasgow, UK, e-mail david.adams@glasgow.ac.uk

Keywords: Land reform, economic and community regeneration, vacant and derelict land

ABSTRACT

Scottish land reform has been a focus of concerted campaigning for well over a century. The latest legislative measure, the Land Reform (Scotland) Act 2003, has made only modest progress and is now under review. Up to now, land reform has been seen primarily as a rural issue and there remains plenty of scope to address the Scottish land question in a rural context. The focus of this paper, however, is on the urgent need for urban land reform, and specifically to tackle those ownership and valuation constraints that keep urban land vacant by impeding its redevelopment for productive use. Drawing on the property rights literature, the paper argues for innovative and radical responses to Scotland's urban land problems, involving legislation to introduce a 'Community Right of Sale' (CRS), 'Majority Land Assembly' (MLA) and 'Urban Partnership Zone' (UPZs).

1. INTRODUCTION

In 2003, the Scottish Parliament passed the Land Reform (Scotland) Act as the core part of a land reform programme that also included setting up a Scottish Land Fund and establishing a Community Land Unit within Highlands and Islands Enterprise. The Act had three main parts. The first part created statutory public rights of access to open land for recreational and other purposes. The second part established what was perhaps misleadingly called a 'Community Right to Buy' (CRB) since its effect was merely to enable largely rural communities to register an interest in purchasing land not in their ownership, giving them a right of first refusal if ever the land came to be sold. The third part of the Act was confined to crofting communities located in Scotland's Highlands and Islands and bestowed the equivalent of compulsory purchase powers in defined circumstances.

The Land Reform (Scotland) Act 2003 was thus a wholly rural measure and the latest in a long line of legislative attempts to address the 'Scottish land question' going back at least as far as the Crofters' Holdings (Scotland) Act of 1886. That same year the Scottish Land Reform Alliance had been founded, providing the initial focus for what has become more than a century of campaigning for Scottish land reform. This campaign has consistently highlighted the concentrated ownership of rural land in relatively few large estates (sometimes with 'absentee' landlords), the unequal power relationship between landlords and tenants, and the detrimental impact of such ownership patterns on the prospects for rural economic and community development.

In the context of the intense controversy that these issues have generated over many decades, the achievements so far of the Land Reform (Scotland) Act 2003 can best be described as modest. According to the Scottish Government (2012), the public rights of access to open land had generally worked well, especially as awareness of the Scottish Outdoor Access Code has increased and as local authorities have begun to prepare Core Paths Plans. There was been slower progress, however, with the two other parts of the Act. Although 142 applications had been made to register a community interest in land under the CRB, of which 95 had been approved by Scottish Ministers, only 11 such purchases had taken place by 2012. No purchases had been made under the Crofting Community Right to

Buy (CCRB) provisions, although two such applications had been submitted. Nonetheless, there was evidence that the introduction of the CRB and CCRB had created a framework which encouraged voluntarily negotiated purchases between landowners and communities. Nevertheless, at this pace, although the Land Reform (Scotland) Act 2003 may produce useful experiments and exemplars, it is unlikely to transform the face of rural Scotland at least for many decades to come. Still, many would argue that it was never intended as the final word on Scottish land reform, but merely as another stage in a long journey.

Perhaps with this in mind, in July 2012, Scotland's First Minister, Alex Salmond MSP established a Land Reform Review Group (LRRG)¹ with the remit to consider how further land reform could:

- Enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland;
- Assist with the acquisition and management of land (and also land assets) by communities, to make stronger, more resilient, and independent communities which have an even greater stake in their development;
- Generate, support, promote and deliver new relationships between land, people, economy and environment in Scotland.

What is perhaps most noticeable about the LRRG's remit is the intended linkage between land reform and sustainable economic and community development. Whereas those of more radical persuasion might see land reform as an important end in its own right ('breaking up the power of the large estates'), the remit given to the LRRG suggests that the current Scottish Government takes a more pragmatic view, regarding land reform primarily as a means to an end. This does not necessarily alter the direction of travel, but requires changes to be well justified by evidence of their likely positive impact on the economy, the environment and local communities.

Hidden away in the remit is another and perhaps far more powerful word: 'urban'. For decades, the Scottish land debate has been so exclusively rural that it appeared peripheral to most of the country's population who live in urban areas, unless of course, they wanted to enjoy freedom of access to Scotland's vast open areas. The provisions of the Land Reform (Scotland) Act 2003 purposely do not apply to urban areas. What then is the urban dimension to land reform, if it exists at all? One answer would be to extend the 'Community Right to Buy' across the whole of Scotland, hopefully after some significant simplification and improvement, so treating urban and rural areas alike. There is much merit in this, despite its technical challenges, for community ownership, if considered beneficial, should surely serve to empower people in urban Scotland as much as in rural Scotland.

But if community ownership is all that is offered to urban areas, it would suggest a very narrow view of land reform. Instead, one needs to step back and discover the land-based constraints that hold back economic and community development in urban Scotland. It is the contention of this paper that, in many ways, these mirror those found in rural Scotland. Specifically, certain private interests who own land in urban areas can sometimes pursue strategies that conflict significantly with the interests of the wider community. To understand this, we need to develop a common language for both rural and urban land reform, which it is argued, can be drawn from the property rights literature.

The next section of the paper therefore explores the concept of property rights and links it to that of property responsibilities. Significantly, I suggest that property rights are not absolute, but fashioned by law and custom, and curtailed by property responsibilities. Where holders of property rights so neglect their responsibilities that economic and community development is impeded, the case for reform is strong. The prime example of this in urban areas is that of

keeping land and property idle, when its transfer to another owner, be that a local community, entrepreneur or public authority, would help bring that asset back into use and so create new employment, new housing and so on. Unused land and property are so significant in urban Scotland that they bedevil urban regeneration. This is explained in Section 3 of the paper, which outlines the challenge of regeneration in relation to the scale of vacant and derelict land in Scotland. This has hardly changed for over a decade, despite an economic boom (and slump!).

Many people look to the planning system to bring vacant urban land back into use. While the planning system has immense power in preventing unwanted development, its ability to generate desirable development, at least on its own, is really quite limited. So we need to link the planning system to other policy tools if we want to see significant urban regeneration take place. Traditionally this has involved developer subsidies and compulsory purchase. Both are potentially expensive (and therefore less likely at a time of austerity) and both address symptoms of the problem, rather than the problem itself. So the middle sections of the paper, I try to pin down the real problem, which is really that of a dysfunctional urban land market. It is here that urban land reform, or as I put it 'property rights reform' has real potential to come to the aid of Scottish urban regeneration and help deliver much needed economic and community development. But if it is to do so, radical and innovative solutions are necessary to disturb the settled complacency of the urban land markets, which suits certain private interests, but which works against the public interest. So towards the end of the paper, I put forward an agenda for urban land reform, which might turn out to be just as radical as anything proposed for rural areas.

The first proposal is termed a 'Community Right of Sale' (CRS) which I suggest should sit alongside and reinforce any extension of the 'Community Right to Buy' to urban areas. Put briefly, it would enable any community fed up with vacant and derelict land in its midst to require that the land be put to public auction and a new owner be found who can bring it back to beneficial use. The second proposal is for what I call 'Majority Land Assembly' (MLA) which is intended to prevent one or two uncooperative owners holding up a much-needed redevelopment project. This would act as an alternative to compulsory purchase and would not require any great resource commitment from the public sector. The third proposal is for what I term an 'Urban Partnership Zone' (UPZ). This would encourage owner participation as an alternative (or addition) to compulsory purchase in major redevelopment schemes and would involve resource commitment from the public sector. The final section of the paper draws these proposals together and suggests that they could provide the basis for a new Scottish urban land policy to match and reinforce urban planning and regeneration policy.

2. LOOKING AT LAND REFORM THROUGH THE LENS OF PROPERTY RIGHTS

Whereas planning policy concentrates almost exclusively on land use, land policy is much broader since it links three key dimensions of land – use, ownership and value – through to decisions about management and development. Some see land reform as primarily an issue of ownership and argue that breaking up large landed estates would make an important contribution to the redistribution of wealth. Others take a more pragmatic view, asking whether or not different ownership patterns would generate more beneficial uses. To understand how use and ownership relate, we must also think about value. Value can be interpreted in many different ways, some financial and some non-financial. In financial terms, we can distinguish between use and exchange or market value, which may or may not coincide. But many areas of land may also have important environmental, social or cultural value, which may be hard to reflect in financial terms.

As this suggests, land is essentially a multi-dimensional good, which is not readily comparable to other goods such as a car or television. Not only is it fixed in location, but the common law tradition has long recognised that different people may have different rights in the same parcel of land. So what in Scotland has since 2004 been termed 'outright ownership' (the equivalent of freehold ownership in England) is not really that at all where, for example, the land is rented out, or a developer is granted an option to purchase within a set number of years. Several different rights can co-exist on the same piece of land. So the concern of land and property law is not primarily with the land itself, but the disposition of, and relationship between, the various rights in that land, and specifically with who holds those rights, how they are exercised and potentially conflict, and what limits exist to them.

Rights in property, unlike the land itself, are socially constructed and re-constructed over generations. They have developed and evolved as statute and case law have reshaped relationships between holders of different property rights over many centuries. This process has involved increasing recognition that property rights are matched by property responsibilities. So, for example, under the Occupiers Liability (Scotland) Act 1960, property occupiers have a duty of reasonable care to see that no-one suffers injury or damage by virtue of some danger on the premises. Private law as well as public law constrains property rights. Over time, both the nature of, and balance between, property rights and responsibilities evolves. This process of evolution can happen gradually as case law develops and more formally as new legislation is passed. Seeing land reform as an exercise in adjusting and rebalancing property rights and responsibilities makes it equally applicable to urban and rural areas.

In this context, it is both unhelpful and incorrect to regard the rights of the certain property holders as somehow absolute and worthy of protection above all other considerations. The strong legal tradition of protecting private property derives from a time when it was seen as a bulwark of freedom against the absolute tyranny of the monarch. But time has moved on, and today's test is between the public and private interest or rather between many different public and private interests. This makes it important to appreciate how the exercise of property rights by one individual may restrict the opportunities (social, economic or environmental) of many others. Even the European Convention on Human Rights, which declares that 'every natural or legal person is entitled to the peaceful enjoyment of his possessions', allows lawful interference in the public or general interest (see Allen, 2012). Since property rights are socially constructed, each generation will choose to refine their disposition, adjusting the balance of rights and responsibilities to achieve what at that period is best seen to represent some conception of the public or general interest. In the context primarily of urban Scotland, the argument in this paper is that keeping large areas of land vacant and derelict does not serve the public interest, when some rebalancing of property rights could help bring it back into use. With this in mind, the next sections turn to understanding the Scottish land question in an urban context.

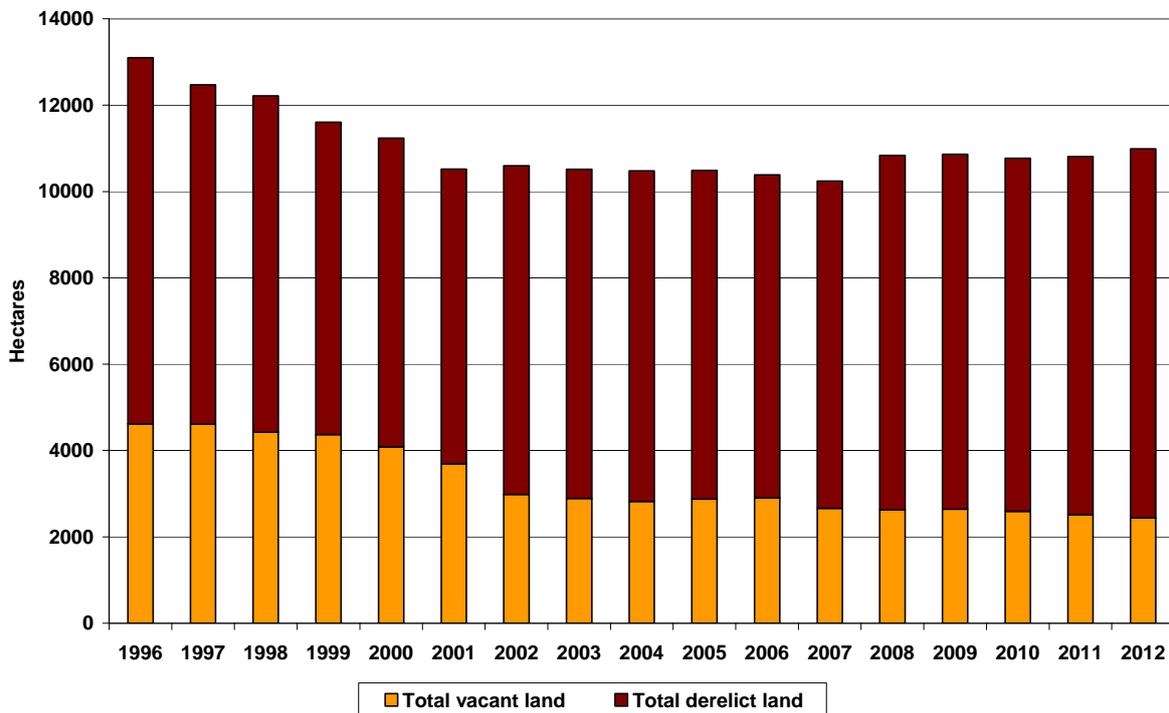
3. TRANSFORMING SCOTLAND'S CITIES THROUGH RE-USING URBAN LAND

In the post-industrial era, the prosperity of cities to re-invent themselves demands the ability to take land and buildings left vacant by economic change and transform them into sites of future opportunity. Owner attitudes and strategies are crucial in enabling this to happen. Cities without the desire or capacity to regenerate will spread outwards as they grow, leaving the doughnut effect so evident in many parts of North America. In the UK and Europe, where sustainable urban development has long been associated with the idea of keeping cities compact, constraints on outward expansion have been reinforced by regeneration policies intended to meet development needs through the re-use of redundant urban land.

Urban regeneration has been at the core of Scottish urban policy for at least 60 years. Major postwar slum clearance in the 1950s and 1960s, for example, enabled extensive public housing estates to be subsequently built on inner city land. In the 1970s, the Glasgow Eastern Area Renewal (GEAR) programme demonstrated the potential of a more comprehensive approach to urban renewal. From the 1980s, with the widespread closure of shipyards and other industrial uses, new housing, retail and leisure uses began to emerge, sometimes systemically and sometimes sporadically, on former industrial land. Attempts have been made to co-ordinate some of these recent developments through public sector initiative or comprehensive masterplanning, as evident at both Glasgow and Edinburgh waterfronts. However, except in particular locations at particular times, there is little recent evidence that Scotland has produced well-rounded or well-planned strategic urban transformations. At a time when the State has pulled back from large scale direct intervention in urban restructuring, this can be mainly attributed to the lack of an effective institutional framework to integrate what individual landowners and developers want to achieve

Yet, despite its pepper-potted nature, much new activity has been generated on reused land in Scotland over the past 35 years. In Glasgow alone, former docks and shipyards are now home to the Braehead Shopping Centre, the up-market Glasgow Harbour development, the Scottish Exhibition Centre, the BBC, STV and Science Centre, for example. Such success stories show what can be achieved through the creative re-use of urban land, but they are not necessarily typical of Scotland’s urban landscape. Indeed, beyond such limited nodes of prosperity lie thousands of hectares of vacant and derelict land, much of which has remained unaltered for many years. The scale of this problem is shown in Figure 1.

Figure 1: Vacant and Derelict Land in Scotland



Source: Scottish Vacant and Derelict Land Surveys 1996-2012

As Figure 1 reveals, after a noticeable fall in the late 1990s, the overall scale of vacant and derelict land in Scotland has hardly changed in the past decade. Over the same period, Scotland’s towns and cities have continued to spread outwards, often with intense development pressure experienced at the urban fringe. Figure 1 disguises an annual ‘inflow’

of new vacancy and dereliction and ‘outflow’ of vacant and derelict land reused or reclaimed since it merely presents overall ‘stock’ figures.

Between 2002 and 2005, for example, annual inflows averaged just under 700 hectares per annum, and outflows just under 900 hectares per annum, so producing a small year-on-year fall in the total stock (Adams *et al.*, 2010). As this suggests, the landscape of most of urban Scotland is in the midst of a lengthy journey from the industrial to the post-industrial. Since 2001, whatever success has been achieved in re-using vacant and derelict land in Scotland has largely matched by a steady stream of new vacancy and dereliction. There thus still remains a substantial hardcore of vacant and derelict land in Scotland, concentrated very largely in the urban areas of Glasgow, North Ayrshire, North Lanarkshire and Renfrewshire (Scottish Government, 2012).

To what extent could urban land reform help accelerate the redevelopment of vacant and derelict land and so contribute to sustainable regeneration in urban Scotland? Much depends on whether urban land markets are considered to work effectively or not. Evidence presented in the next section suggests that the operation of such markets is as much part of the problem as part of the solution since ownership and valuation constraints can significantly impede urban redevelopment. The speed of transition from the old to the new is thus determined not only by external factors over which the Scottish Government may have limited control, such as global economic cycles, but also by more local institutional factors, over which it has substantial influence. The nature and pattern of property rights fall into the latter category. Urban land reform provides an opportunity to address these issues and thus contribute to the achievement of sustainable economic growth in urban Scotland.

4. OWNERSHIP CONSTRAINTS TO URBAN REDEVELOPMENT

Where development is unable to proceed because the required ownership rights cannot rapidly be acquired through normal market processes, an ownership constraint can be said to exist. Such constraints derive the distinctiveness of land as a commodity, the imperfect nature of the land market, the behavioural characteristics of landowners and the institutional context for land ownership, exchange and development (Adams *et al.* 2001). As Table 1 shows, there are five main types of ownership constraint, each of which can be further subdivided into more precise categories.

Table 1: Typology of Ownership Constraints to Urban Redevelopment

Ownership unknown or unclear	<ul style="list-style-type: none"> • Title deeds incomplete or missing • Ownership in dispute
Ownership rights divided	<ul style="list-style-type: none"> • Land held in trust • Land subject to leases or licences • Land subject to mortgages/other legal charges • Land subject to restrictive covenants • Land subject to easements • Land subject to options or conditional contracts
Ownership assembly required for development	<ul style="list-style-type: none"> • Ransom Strips • Multiple ownership
Owner willing to sell but not on terms acceptable to potential purchasers	<ul style="list-style-type: none"> • Restrictive terms or conditions of sale • Unrealistic expectations of price
Owner unwilling to sell	<ul style="list-style-type: none"> • Retention for continued current use for occupation • Retention for continued current use for investment

	• Retention for continued current use for making available to others on non-profit basis
	• Retention for control or protection
	• Retention for subsequent own development
	• Retention for subsequent sale: Indecision
	• Retention for subsequent sale: Postponement
	• Retention for subsequent sale: Uncertainty
	• Retention for subsequent sale: Speculation
	• Retention for no specified purpose: inertia

Source: Adams *et al.* (2001) where further explanation of each category and analysis of its significance in practice can be found.

How significant are such constraints? From a detailed investigation of 80 large redevelopment sites in four British cities (Aberdeen, Dundee, Nottingham and Stoke-on-Trent) Adams *et al.* (2001) found that such ownership constraints disrupted plans to use, market, develop or purchase 64 of the sites between 1991 and 1995. Although divided ownership rights emerged as the most prevalent form of constraint, multiple land ownership was the most disruptive, at some point impeding the redevelopment of 24 out of the 80 case study sites.

Multiple or fragmented ownership of even small sites can be endemic in urban areas, proving highly problematic to development. Without state intervention, development cannot proceed unless agreement is reached with each owner. In a private market, the last owner to settle is in the strongest position to drive a hard bargain with any developer who has already bought out all other owners. Compulsory purchase by the State provides a potentially effective means to accelerate the development of such land by taking over and assembling all the different individual interests into the single ownership of a local authority or other State agency, and then selling on to whichever developer willing to implement planning policies makes the highest offer.

In practice, however, most local authorities regard compulsory purchase as a last resort. There are three main reasons for this. The first is administrative and legal: compulsory purchase is a lengthy and cumbersome procedure with no certain outcome (Winter and Lloyd 2006). Substantial opposition may be generated. If objections are received, local authorities must make a strong case at public inquiry to show that the particular planning purpose is in the public interest and cannot be achieved without compulsory acquisition. Ministers certainly do not confirm every order submitted and even confirmed orders may subsequently be overturned by the courts (Riley 2009).

The second reason is political and ideological. Many local authorities regard compulsory purchase as an undue interference in private land markets. They do not consider it to be a legitimate role of local government to support certain private interests above others, whether such action enables planning policies to be implemented or not.

The third, and perhaps the most important reason, is financial. Compulsory purchase is simply a very expensive business. Disposed owners are entitled to claim compensation not merely to cover the loss of land and property but also to meet legitimate costs of disturbance, together with any reasonable bills that they incur in instructing surveyors, solicitors or other professional advisers to handle their case. It is therefore not surprising that financially constrained local authorities are reluctant to incur such costs. Indeed, most authorities are prepared to undertake compulsory purchase for planning reasons only when persuaded to do so by a particular developer who agrees in advance both to purchase the land from the authority as soon as compulsory acquisition is complete and to reimburse the authority in full for any expenses incurred.

5. VALUATION CONSTRAINTS TO URBAN REDEVELOPMENT

Valuation constraints are a subset of ownership constraints but deserve special mention. They occur when estimates of value diverge materially from prices actually achieved in open market transactions. They may be evident in owners' unrealistic expectations of price as well in decisions to retain land for subsequent sale. In the regeneration context, valuation constraints arise because of the inherent difficulties involved in estimating the value of vacant urban land and property. Professional valuation works best when there is plenty of recent comparable evidence to draw upon. Yet, actual transactions in vacant urban land are relatively few in number, with the prices paid per hectare varying substantially. Moreover "Since the size, location and particularly the physical condition of each vacant site endow every transaction with individual characteristics, it becomes extremely difficult for the valuer to generalise a particular level of prices from a recent set of transactions" (Adams *et al.*, 1985: 172). In the absence of comparable evidence, a development appraisal might be used to construct a residual land valuation for a specific project, but such appraisals are known to be notoriously susceptible to the particular assumptions they incorporate. In any event, there is no certainty that a residual land valuation produced for a potential developer will find favour with the existing owner.

Such valuation constraints can be understood only in relation to the scale of structural change experienced, and indeed required, within urban areas. Within urban Scotland, the most important structural change of recent decades has been the replacement of the industrial by the post-industrial. Where this involves a transition to a higher-value use, such as a shopping centre or an upmarket block of apartments, valuation constraints tend not to be a problem, at least during boom times, since the financial appraisal of the proposed development will usually produce a residual valuation that enables the developer to meet the owner's expectations. But the regeneration of urban Scotland cannot be achieved by shopping centres and apartment blocks alone. Indeed, it is precisely away from the shopping centres and blocks of upmarket apartments that the really hardcore problems of vacancy and dereliction are concentrated. In these kinds of places, structural change does not imply a higher-value use but usually requires some write-down of former patterns of value to stimulate new activity. This is where urban land markets grind to a halt, especially where the comparative method of valuation reinforces the reluctance of owners to acknowledge structural change. For as the RICS recognised as long ago as 1977, the comparative method could be open to criticism "if, in a falling market . . . too much regard was paid to levels of values pertaining in the past when better times prevailed."

Compulsory purchase is not really much help here, even if were widely implemented by local authorities precisely because the valuation assumptions inherent within compulsory purchase law and practice prioritise the comparative method of valuation and encourage undue reliance on past evidence. Ironically, owners willing to sell vacant urban land may do better out of compensation from compulsory purchase than if their land were sold at public auction. While the former is based on a valuation or estimate of price, with all the difficulties that involves, the latter involves an actual market transaction which automatically reflects the extent of structural change within the area. Moreover, actual transactions can expand the evidence base for subsequent comparable valuations, making the latter more reliable. This suggests that valuation constraints to urban redevelopment are best tackled not by seeking to improve the technicalities of professional valuation, but rather by ensuring that more vacant land and property in urban areas is put to public auction. This is because public auction is a faster and more effective way than compulsory purchase to generate the re-alignment of urban land values needed to reflect the extent of structural change and so enable new uses to come forward for hardcore vacant land.

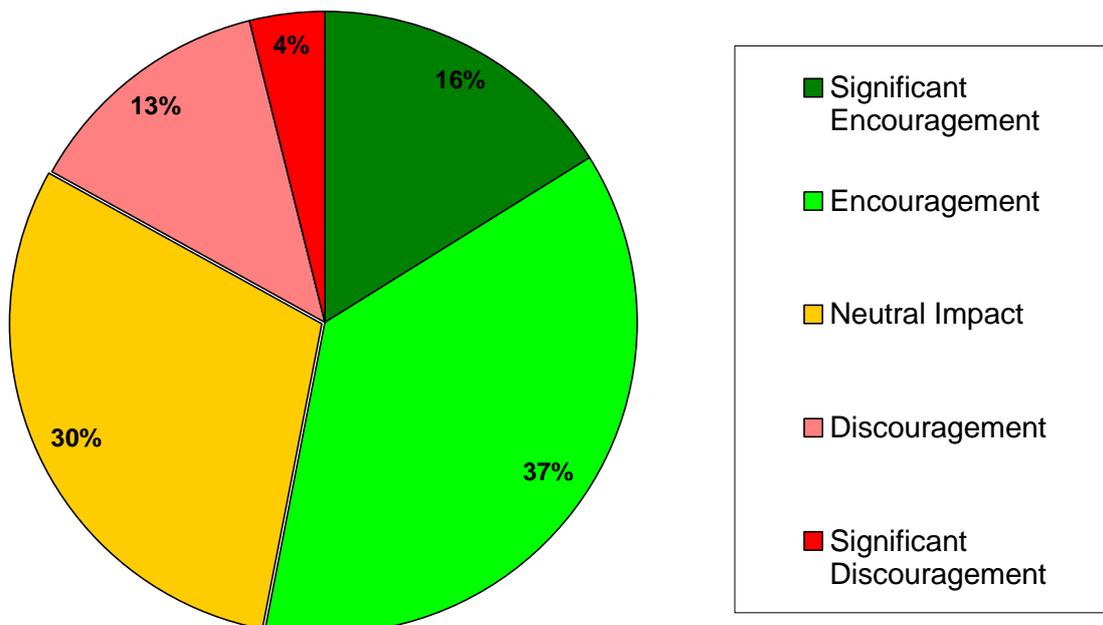
6. ACTIVE AND PASSIVE OWNER BEHAVIOUR

We can think of active landowners as those who develop their own land, enter into joint venture development or make their land available for others to develop. Active landowners may try to overcome site constraints to make land more marketable or suitable for development. This could involve applying for planning permission, appealing against a planning refusal, or tackling problematic physical or infrastructural constraints. Active behaviour may be motivated by political concerns, or the prospect of financial reward, or their desire to meet their own land needs. Active owners who obtain planning permission, tackle development constraints or offer their land for sale without undue influence from developers, make a significant contribution to the development process.

In contrast, passive landowners take no particular steps to market or develop their land, even though they may intend to do so in the distant future. They may respond, or fail to respond, to offers from potential developers, but otherwise they retain land without development. They rarely attempt to overcome constraints in order to make land more marketable or suitable for development. Passive owners therefore contribute little to the development process, and nothing at all, if they refuse to sell land that has development potential. Indeed, as compulsory purchase is rare, owners of land with development potential who refuse to sell, act as constraint in the development process.

The transfer of land from passive to active ownership is often an essential step in the urban redevelopment process. For example, one study in inner Manchester wards found that almost 60 per cent of the 83 hectares of brownfield land that had been developed or brought into use for purposes other than public open space had required a change to active ownership as part of that process (Adams *et al.*, 1988). Setting in place measures to encourage and indeed accelerate the transfer of vacant land into active ownership would be a useful focus of urban land reform.

Figure 2: Landowners' Attitudes towards Urban Redevelopment



Source: Adams *et al.* (2002)

Of course, the distinction between active and passive behaviour does not fully reflect the diversity of landowner strategies and actions. Passive owner behaviour, for example, may range from that which is merely responsive to interest from developers to that which is openly hostile. As well as categorising ownership constraints, Adams *et al.* (2002) examined the strategies, interests and actions of those owning land and property within the 80 large redevelopment sites they investigated in four British cities. As Figure 2 shows, they found that just over half the owners investigated in the four cities research encouraged or significantly encouraged redevelopment. Another third had a neutral impact on redevelopment. Less than one fifth discouraged or significantly discouraged redevelopment.

Most of the owners who had significantly encouraged redevelopment had pushed the process ahead energetically through such actions as assembling land, gaining planning permission, obtaining development finance and securing tenants. Those who had merely encouraged redevelopment intended either to complete necessary actions themselves at a later date or to pass the task over to others. Those whose impact was considered neutral were certainly not hostile to redevelopment. Indeed, most had either sold or were open to offers, even if the site was not formally on the market.

In contrast, most owners considered to have discouraged or significantly discouraged redevelopment were either unwilling to sell or, if nominally willing, held unrealistic expectations of price, discounting special purchasers. A classic case of unrealistic price expectations concerned a former marl pit of 8.5 hectares in Stoke-on-Trent, half of which had redevelopment potential. It was on the market in 1997 for £860,000. At interview, it transpired that the owner believed its open market value to be £600,000, but would accept £500,000 if offered an immediate cheque. This sum was calculated on the basis that it would cover original purchase price of £220,000 paid in 1987, the £220,000 spent in interest charges over the following ten years and approximately £60,000 of other expenditure. Yet, the owner admitted that a professional valuation of the land undertaken for his bank suggested that it was worth only £260,000. This was a case not so much of a valuation constraint but of an owner's unwillingness to accept what he considered a low valuation. What would have happened if the site had been put to public auction? Would even £260,000 have been achieved? If a public auction was the catalyst to deliver real regeneration, would the public interest involved in achieving that regeneration outweigh the private interests of any owner wishing to delay sale until such time as his or her price expectations were achieved, however long that took? These are difficult questions that not only reach to the core of debates around public and private interests but also have very practical implications for the future of urban communities.

7. THE OPERATION OF LAND AND PROPERTY MARKETS

What does such evidence have to say about the type of markets in which property rights are traded? First, as far as land and property are concerned, the perfectly competitive market does not exist – it is simply a theoretical ideal against which the extent of market imperfections can be measured. Such imperfections occur when the conditions of perfect competition are violated within the market. Indeed, some have argued that real estate markets are so riddled with market imperfections that they are among the least efficient of all (Balchin *et al.*, 1988). It is easy to understand this point of view. For example, the market for most real estate products, apart from standard houses and flats, is often dominated by few buyers and sellers. Far from exchanging homogeneous products, every real estate transaction is different since, at the very least, its location is unique. (Some products may be close substitutes, although substitutability of apparently similar commodities may diminish with age, location and tenure.) High transaction costs attributable to bespoke marketing and legal work involved in trading property, along with the costs and disruption associated with

relocation, deter entry and exit. Real estate is a bulky, capital good that most buyers acquire infrequently, rather than frequently. Finally, market information is sporadic, limited and notoriously asymmetric in the sense that sellers often know much more than buyers and indeed may adopt strategies to restrict the information available to buyers.

Secondly, land and property markets are not only imperfect, they may experience failure as a result of distortions that arise externally. These can prevent even the perfectly competitive market invoked in theory from delivering resource-efficient allocations. Certain types of markets are more prone to failure than others, with externalities, under-provision of public goods, and lost opportunities endemic within land and property markets. As a result, many economists see a strong rationale in welfare economics for government intervention to improve property market efficiency and enhance economic welfare.

Thirdly, it is important to recognise that there is nothing natural or immutable about land and property markets. The way such markets operate reflects the particular institutional characteristics of the society, culture and legal framework within which they are located. This means that we should see them as a “social construct . . . understood as part of the system of social relations” (De Magalhães, 2001: 106). This approach implies that people are strongly influenced in their economic decisions by their social context and by what others decide. It holds that market transactions, like social interactions, are highly conditioned by humanly devised rules, norms and regulations, and reflect dominant powers and interests.

If land and property markets are indeed socially constructed, it follows that they can be socially re-constructed. In part, this happens implicitly all the time as individuals and organisations make fresh choices and set off in different directions. It also happens explicitly when powerful market actors such as developers, landowners, funders and investors re-appraise their strategies so as to capture and direct such market movements to their own advantage. In this context, urban land reform may involve the State re-writing the ‘rules of the game’ that define property rights and responsibilities. So rather than look primarily to greater State intervention to resolve imperfections and failure within land and property markets, which find expression in part in high levels of vacancy and dereliction, the purpose of urban land reform might be to enable such markets to operate more effectively on their own. The next section suggests three possibilities of how determined urban land reform could help deliver sustainable urban regeneration in Scotland.

8. TOWARDS AN AGENDA FOR URBAN LAND REFORM IN SCOTLAND

The intention of the proposals outlined in this section is to remove or reduce ownership and valuation constraints to the redevelopment or re-use of vacant land and property in urban Scotland. They involve measures to encourage the transfer of such land and property out of the hands of passive owners whose previous purpose for holding that land or property no longer exists (as a result normally but not exclusively of economic or political restructuring) and into the hands of active owners with a determined purpose for its future use. Some of these active new owners might well be community groups, but they could equally well be individuals and companies in the private sector, or public-sector development agencies. Significantly, then, urban land reform would serve not as an end in itself, but as a crucial means to the end of helping Scotland’s towns and cities to flourish.

8.1 Community Right of Sale (CRS)

As previously argued, public auctions provide the most effective means to ascertain a fair price for vacant land and property, especially at a time of economic restructuring. They cut through the inherent difficulties involved in the valuation of such assets and ensure that any

responsibilities upon the seller to achieve the best price can be readily demonstrated. Of course, sellers are often reluctant to go to auction because the price may well be lower than that they believe to be achievable if they wait indefinitely for a purchaser. But, from a public policy perspective, this is precisely the point. It may well be necessary to write-down land prices across much of urban Scotland to enable regeneration to flourish and if auctions are an effective means to achieve this, surely they should be strongly encouraged? Of course, as with any auction, safeguards are needed to protect the seller's interests and these might involve minimum reserve prices along with requirements for proper marketing and the professional conduct of any auction. Nevertheless, there is much to be said for the use of public auctions as the normal means to sell redundant public-sector land and property, not least because auctions provides strong comparable evidence of real transaction prices in any locality. Nevertheless, the proposal for a CRS goes much further and would potentially affect all vacant land and property, whether in public or private hands.

The 'Community Right of Sale' is predicated on the basis that keeping urban land and property vacant when someone else could put it to beneficial use impedes the chances of achieving sustainable and resilient cities in which effective regeneration is able to stem the speed of peripheral expansion. There must therefore come a point when it is no longer acceptable to the public interest for an owner to retain land and property indefinitely without use or sale. However this point is defined, once it is reached, it would trigger the possibility of a sale order, effectively requiring the land to be sold by public auction. Legislation would be needed to define when a CRS could be exercised, who might have the power to do so, and to which categories of land and property it might and might not apply. Crucially, the public interest would need to be so clearly established that it would not be possible to argue that a CRS order constituted a breach of the European Convention on Human Rights.

This might suggest that, at least initially, any legislation might best be focused on urban areas with heavy concentrations of vacant urban land, where the public interest could be readily demonstrated and where the benefit of transferring land from active to passive ownership is greatest. In the context of current debates on finding a sustainable future for Scotland's town centres, it is arguable that CRS powers might also apply there. Crucially, introducing greater realism into land and property pricing even within limited areas could have a significant knock-on effect across Scotland more widely. Theoretically, the CRS would provide a powerful means to connect 'exchange value' back into expected future 'use value', so acting as an important stimulant to bring those future uses about.

For the CRS to be implemented successfully, five main questions need to be addressed:

1. What is the definition of vacant and derelict land and property? There are already a number of well-established definitions used in practice, but there may be scope to tighten these up.
2. How might potentially-qualifying sites be recorded? There is already one register in existence (the Scottish Vacant and Derelict Land Survey) but this would need to be enhanced, if it were to be used for a new purpose.
3. How long would land or property need to have been vacant or derelict land before it falls within the scope of this provision? Here, a balance would need to be struck between temporary and more permanent vacancy. In other words, six months may be short and ten years too long. A cautious approach might be to look to other legislation, e.g. the currency of a planning permission, to find an appropriate period, which would suggest somewhere of between three and five years. However, many urban communities suffering from vacancy and dereliction may really want to see faster action than that.

4. Who might have the power to initiate a CRS? In the first instance, it would be intended to allow local communities, however defined, to force the sale of land within their area that is vacant or derelict. This would complement any extension of the community right to buy to urban areas in Scotland. Let's say, for example, that an urban community wanted to create allotments or even build small industrial workshops on vacant land in its midst. By requiring the land to be put up for sale, the community would have to chance to make a fair purchase bid (which crucially may not need to be as high as a valuation under the CRB). If the community happened to be outbid by a private developer, then it would at least have ensured a beneficial future for what would otherwise have remained a vacant site. In practice, communities who initiate a CRS may well find themselves the only bidders at auction. It would also be appropriate for similar powers to be bestowed on local authorities and statutory bodies to exercise something similar to the CRS in appropriate circumstances.
5. What limitations might be set on the future use of such land? To ensure land is not bought by someone else who would keep it vacant for longer term development etc, it would be important to condition the sale in some way to ensure immediate re-use or development. This could be achieved the sale contracts and through linkage, for example, to an approved planning permission or in its absence to some statement of immediate development potential provided by the local planning authority. The implication would be that unless the successful bidder made early progress with the intended project, the sale could be cancelled and the land again put to auction.

These are rough ideas and they would need considerable refinement to make them watertight in law and practice. Nevertheless, they are based on strong evidence that facilitating the transfer of vacant land from passive to active ownership is fundamental to urban regeneration as a whole. CRS orders would encourage the transfer of such land to community groups, local entrepreneurs or even inward investors by injecting a greater sense of realism into the urban land market. By doing so, they would enable a whole variety of different projects to flourish in a way that would not be possible if the only answer to market imperfections and failure remains compulsory purchase.

8.2 Majority Land Assembly

In land law, a developer must either acquire or respect all the existing property rights in the site before development can proceed. Most substantial urban redevelopment sites, especially within towns and cities are in fragmented ownership. This makes it really hard to assemble such sites by negotiation because the last owner to settle is in a powerful position to drive a hard bargain with the developer. But in corporate law, a rather different logic applies to a very similar problem. In company takeovers, once the bidder has acquired a certain proportion of the company shares (which in most jurisdictions is around 85% to 90%), the remaining shares held by those who did not accept the bidder's offer can be compulsorily acquired by the bidder.

Do the principles of corporate law offer Scotland an effective way to solve the problem of land assembly without the need for compulsory land purchase by the State? For this to work, the intended redevelopment area would need to be clearly defined, along with all the ownership interests potentially affected. The developer would then set to work seeking to acquire those interests by negotiation. At this point, one might think that nothing has really changed since the developer still has to strike the necessary deals to purchase each private interest by negotiation. But actually the negotiation dynamics have changed fundamentally. Let's say that 100 different ownership interests need to be acquired. Whereas beforehand the developer might need to pay significantly above the odds to the final owner, the deal that

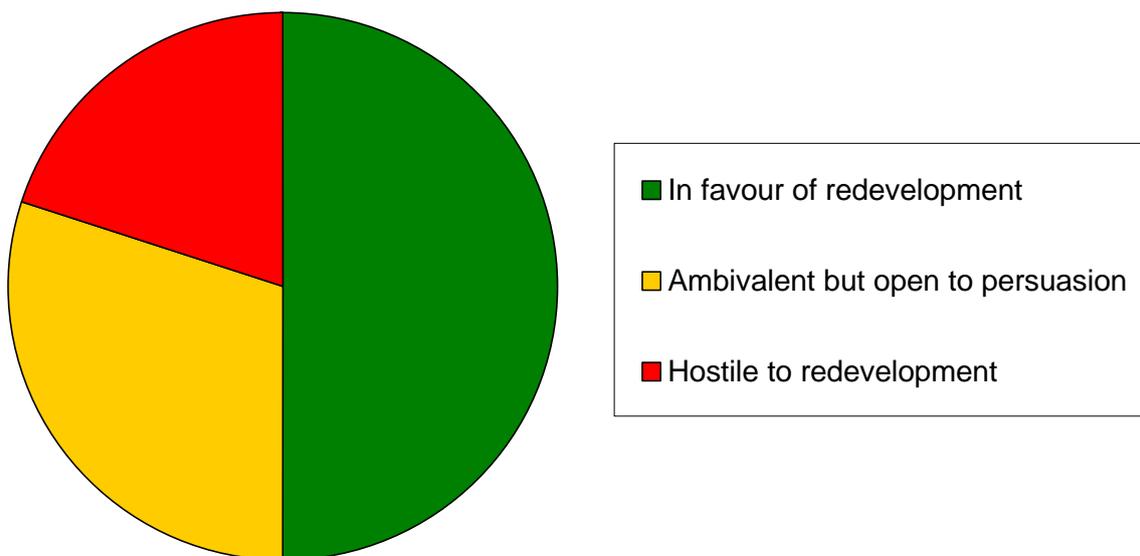
clinches the development is no longer that with Owner Number 100, but is instead with Owner Number 90. But crucially, whereas the identity of Owner Number 100 was clear, that of Owner Number 90 cannot be known in advance. You may be happy to be the 88th, 89th or even 90th owner to settle, but you don't want to be the 91st or all your bargaining power is lost. So what would happen in practice is that negotiating power would be rebalanced between developers and landowners, with the result with much-needed urban redevelopment could proceed faster without direct State intervention in the form of compulsory purchase.

If all this sounds a bit theoretical, it is precisely what was introduced by the Hong Kong Government over a decade ago. The Land (Compulsory Sale for Redevelopment) Ordinance was passed in Hong Kong in 1999 to enable private developers who had acquired 90 per cent of the property rights in any redevelopment project to apply to the Lands Tribunal to force the sale of the remaining 10 per cent of property rights. The ordinance removes the advantage of holding out to the very end, and so encourages all owners to settle by negotiation. This privatised form of compulsory purchase provides an interesting example of how markets can potentially be re-shaped to achieve desired policy ends (in this case, speeding up urban redevelopment) by making minor adjustments to property rights

8.3 Owner Participation in Redevelopment

Owner participation in redevelopment offers an effective alternative to owner eviction as implied by compulsory purchase. To explain why, let us simplify the pie chart shown in Figure 2 and turn it into a real redevelopment site, with 10 existing owners. As shown in Figure 3, five of these owners are keen to see redevelopment proceed and would like to participate, while three are ambivalent but open to persuasion, and only two are openly hostile. The logical strategy for any private developer is to work with the five active owners, reach an accommodation with the three neutral ones and seek to overcome the two passive ones.

Figure 3: Notional Attitudes of Site Owners Prior to Redevelopment



The developer's strategy may well be achieved through some form of a joint-venture arrangement, but it is likely to take considerable time and effort. Why not reform property

rights to enable this to happen more effectively? Many countries throughout the world do this effectively through statutory arrangements for what is known as land readjustment or land pooling. Urban land readjustment offers landowners much greater opportunity than compulsory purchase to share in the financial benefits of redevelopment, even if they, rather than the municipality, must bear significant redevelopment risk. This approach originated in Germany in the early 20th century (Doebele, 1982), was widely applied as the basis of urban planning in Japan (Sorensen, 1999 and 2000) and has since been adopted in many other countries, including Korea, India, Indonesia, Nepal, Palestine/Israel, Taiwan, Thailand and Malaysia (Archer, 1989 and 1992; Home 2007, Lin 2005). The system enables fragmented and irregularly shaped plots to be consolidated to create serviced and usable parcels. Land is then redistributed to the original landowners, with public infrastructure costs borne collectively by the increase in development value. As a development stimulus, land readjustment thus connects land assembly, disposal and infrastructure provision with a method to distribute the financial benefits of development between landowners and public agencies.

If this approach were introduced in Scotland, it would speed up urban regeneration by providing a statutory framework to encourage voluntary co-operation between owners. Having said that, Scotland could actually do much better by integrating the development process as a whole under local leadership through a form of 'land readjustment plus' which I call an Urban Partnership Zone (UPZ) The concept of a UPZ seeks to speed up urban regeneration through a statutory framework that combines an innovative approach to land assembly with greater planning certainty and, possibly, with taxation and other financial benefits as well. Significantly, it would enable local authorities to drive forward redevelopment projects with minimum compulsory purchase.

In practical terms, an Urban Partnership Zone would be an area specially designated for redevelopment by the local planning authority, where a development partner is also selected by the authority through open competition. At that stage, neither the local authority and nor its development partner need own any land within the proposed UPZ but nonetheless, a joint-venture development company would be formed between them, in which the local authority would be entitled to at least a minimum share irrespective of any land owned, in order both to reflect its own commitment and to ensure local democratic accountability. In some circumstances, partners who already hold an ownership stake in a suitable UPZ might invite the local planning authority to enter into partnership rather than vice-versa. It would be for the local authority to decide how best to respond to such an approach.

Once an Urban Partnership Zone is declared, existing landowners would acquire the statutory right either to join the development partnership or to sell out to it. Crucially, then in contrast to compulsory purchase, the process of land assembly would be designed to promote co-operation not confrontation between the joint-venture development company and existing landowners. This would provide a welcome means by which those already owning land and property within the Zone could benefit from the proposed redevelopment, either financially or by taking reserved space in the new scheme. To prevent further fragmentation of ownership within a declared UPZ, declarations would be entered as land charges and would entitle the local planning authority to pre-emption rights to any land and property in the area.

To provide vision, direction and planning certainty, UPZ declarations would be accompanied by an overall masterplan or development brief to ensure quality design and development. This would grant outline permission for the uses specified, so creating early planning certainty and enabling valuation disputes to be resolved more quickly. By so linking strategic development intentions at an early stage to a planning approval in principle, development risk would be reduced and valuation disputes between owners minimised.

Despite the statutory right to owner participation, it is likely that certain owners would wish neither to enter the development partnership nor to sell out to it at open market prices. The introduction of a statutory framework for 'majority land assembly' would help resolve this. In some circumstances, however, compulsory purchase powers might still need to be deployed to complete the assembly of land within the UPZ. However, if owner participation proved popular, it would be necessary to invoke compulsory purchase only against a minority of the original owners. This would make such action easier to accomplish and politically more acceptable. A UPZ would mean that on confirmation of any compulsory purchase order, title would transfer directly to the joint-venture partnership, rather than via the local authority, and the partnership would be directly responsible for compensation payments.

Although some aspects of UPZs draw on successful regeneration practices, other would be quite new in a UK context. These include the status of outline planning permission accorded to masterplans/development briefs, the grant of pre-emption rights to the local authority, the vesting of compulsorily acquired land directly in a joint-venture development company and especially, the proposed statutory rights and processes to encourage owner participation. In the latter context, by drawing on international experience of land 'readjustment', the blunt instrument of compulsory purchase would be supplemented with processes to encourage those who already hold ownership rights in an area to participate in any redevelopment. UPZs would thus provide a practical means to exploit the desire of many owners of vacant urban land to encourage its redevelopment while challenging those whose actions discourage its redevelopment.

9. CONCLUSIONS

Scotland still faces an enormous challenge in urban regeneration, but it can no longer rely on large-scale public intervention to meet that challenge. Yet, there are significant dangers of over-reliance on the private sector in building the urban Scotland of the future. Those dangers are most evident in the prospect of piecemeal uncoordinated urban development (generating greater costs for the public sector in the longer term) and in a rush to spread out to the countryside where development is often simpler and more profitable.

To avoid these dangers requires radical and innovative thinking across many areas of government, which is never comfortable at the best of times but which is essential at a time when public-sector resources are likely to be in short supply. Urban land reform can make a significant contribution here in tackling inherent failings within urban land markets and enabling them to work better without necessarily requiring extensive government intervention. The proposals in this paper would enable these markets to adjust more rapidly to structural economic changes, which in itself might encourage all sorts of new players including local communities to come forward with innovative ideas of how long-neglected parts of Scotland's towns and cities could be brought back into use for economic and community development. The proposals are also designed to challenge existing owners, whose strategies for whatever reason serve to impede the regeneration of urban Scotland. Whilst such proposals might be seen as a constraint on the property rights or freedoms of such owners, it is argued that they reflect the position that property owners have responsibilities as well as rights and that to delay economic and community regeneration while holding out for unrealistic sale prices is against the public interest.

This paper has concentrated deliberately on urban land reform but it may be that some of its ideas and principles might be equally effective in a rural context. For example, could a simple 'Community Right of Sale' be a better device than the current 'Community Right to Buy' in facilitating small-scale housing or industrial development on relatively underused pieces of land in rural areas? More generally, if the language of land reform was cast as much in the

discourse of property responsibilities as well as property rights, an easier way might be found to distinguish between those owners simply concerned with their own gain and those whose strategies and actions made a real contribution to the creation of resilient communities, whether in urban or rural Scotland.

REFERENCES

Adams, D., Baum, A. and MacGregor, B., 1985. The influence of valuation practices upon the price of vacant inner city land. *Land Development Studies*, 2, pp. 157-173.

Adams, D., Baum, A. and MacGregor, B., 1988. The availability of land for inner city development: a case study of inner Manchester, *Urban Studies*, 25, pp. 62-76.

Adams, D., De Sousa, C. and Tiesdell, S., 2010. Brownfield development: A comparison of North American and British approaches. *Urban Studies*, 47, pp. 75-104.

Adams, D., Disberry, A., Hutchison, N. and Munjoma, T., 2001. Ownership constraints to brownfield redevelopment. *Environment and Planning A*, 33, pp. 453-477.

Adams, D., Disberry, A., Hutchison, N. and Munjoma, T., 2002. Vacant urban land: exploring ownership strategies and actions. *Town Planning Review*, 73, pp. 395-416.

Allen, T., 2010. Liberalism, social democracy and the value of property under the European Convention on Human Rights. *International and Comparative Law Quarterly*, 59(4), pp. 1055-1078.

Archer, R. W., 1989. Transferring the urban land pooling/readjustment technique to the developing countries of Asia. *Third World Planning Review*, 11, pp. 307-331.

Archer, R. W., 1992. Introducing the urban land pooling/readjustment technique into Thailand to improve urban development and land supply. *Public Administration*, 12, pp. 155-174.

Balchin, P. N., Bull, G. H. and Kieve, J. L. 1988, 4th edn. *Urban land economics and public policy*. London: Macmillan.

De Magalhães, C., 2001. International property consultants and the transformation of local property markets, *Journal of Property Research*, 18, pp. 99-121.

Doebele, W. A., 1982. Introduction. In Doebele, W. A., ed *Land readjustment: A different approach to financing urbanization*, Lexington, Massachusetts: Lexington Books, D.C. Heath and Co, pp. 1-10.

Home, R., 2007. Land readjustment as a method of development land assembly: A comparative overview. *Town Planning Review*, 78, pp. 459-483.

Lin, T-C, 2005. Land assembly in a fragmented land market through land readjustment', *Land Use Policy*, 22, pp. 95-102.

RICS, 1977. *Inner city regeneration - A report of some aspects of inner city problems*. London: Royal Institution of Chartered Surveyors.

Riley, J., 2009. Well-being and the democracy of compulsory purchase, *Journal of Place Management and Development*, 2, pp. 230-239.

Scottish Government, 2012. Overview of evidence on land reform in Scotland, Edinburgh: Scottish Government Rural Analytical Unit, Rural and Environment Science and Analytical Services.

Sorensen, A., 1999. Land readjustment, urban planning and urban sprawl in the Tokyo metropolitan area. *Urban Studies*, 36, pp. 2333-2360.

Sorensen, A., 2000. Land readjustment and metropolitan growth: An examination of suburban land development and urban sprawl in the Tokyo metropolitan area. *Progress in Planning*, 53, pp. 217-330.

Winter, P. and Lloyd, R., 2006. Regeneration, compulsory orders and practical related issues. *Journal of Planning and Environmental Law*, pp. 781-804.

¹ The author was appointed one of eleven expert advisers to this review. The views in the paper are those of the author alone and should not be taken to represent those of the Land Reform Review Group or the Scottish Government.